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The Australian taxation system is complex and cannot be explained briefly without omitting some details that may be relevant to particular factual circumstances. The taxation system in Australia has also undergone, and will continue to undergo, significant reform. Accordingly, the following comments should only be used as a guide to a range of tax imposts that are commonly relevant in undertaking M&A transactions in Australia. Foreign investors also need to consider the tax regime in their home jurisdiction and any double taxation agreement between Australia and that jurisdiction.

1. INTRODUCTION

a. Forms of Legal Entity

Typical legal structures that are encountered in an M&A context in Australia include:

- Companies incorporated in Australia, including Australian subsidiaries of foreign companies. The most common type of company is a proprietary company limited by shares;
- Registered foreign companies carrying on business through a permanent establishment in Australia;
- Partnerships and limited partnerships;
- Joint ventures; and
- Trusts (the most common type of trust, again in an M&A context, being Australian unit trusts).

b. Taxes, Tax Rates

The main taxes imposed in Australia are:

- Federal income tax, (including tax on net capital gains). The tax rate payable by companies is 30% (25% for certain small businesses in the 2021-22 income year). Income tax payable by resident individuals is applied progressively with the lowest rate being 19% on taxable income above the tax free threshold of AUD 18,200 and the highest rate being 45% (excluding certain other levies));
- Withholding tax in respect of certain amounts paid to non-residents (the withholding rate is 10% for interest payments and 30% for unfranked dividends (that is, dividends paid out of untaxed profits) and royalty payments – subject to any limitations in accordance with Australia's double taxation agreements);
- Indirect taxes, such as goods and services tax ("GST") (our VAT equivalent) which is a broad-based tax of 10% on most goods, services and other items sold or consumed in Australia;
- State based taxes such as payroll tax, land tax and duty (the liability threshold and rates of these state based taxes differ in each of the Australian states and territories); and
- Employment related taxes and withholdings, including fringe benefits tax (levied on the employer at a current rate of 47% for most fringe benefits) and superannuation guarantee (currently 10%).

A company incorporated in Australia, or foreign incorporated companies which have either their central management and control in Australia or their voting power controlled by shareholders who are resident in Australia, will be a resident of Australia for tax purposes.

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Non-residents of Australia are, ordinarily, only taxable on income derived from sources in Australia and capital gains made from the sale of Australian real estate, resource interests and business assets (see the section on Capital Gains Tax below).

Residents of Australia are taxable on their worldwide income (that is, from sources both in and outside Australia). Certain income of individuals that are temporary residents of Australia may be exempt from Australian income tax (e.g. foreign source income and some capital gains).

Income tax is levied on taxable income. In determining taxable income, allowable deductions are offset against assessable income. In general, tax losses from prior years can be carried forward (but not back) indefinitely. Where the taxpayer is a corporation, a loss may only be offset against future taxable income if the corporation satisfies the continuity of ownership test or, in some cases, the same business test. Capital losses can only be offset against capital gains arising in the same or future tax years.

Wholly owned groups of Australian resident entities (including companies, partnerships and trusts, but excluding branches) may elect to consolidate for the purpose of calculating the group's Australian taxation position. The principal benefits of forming a consolidated group include the lodgement of only one Australian income tax return on behalf of the group, the ability to ignore (for tax purposes) any intragroup transactions (e.g. asset transfers, loans, payments of dividends, returns of capital) and the effective offset of losses within the group.

Typically, trusts are taxed as a flow through entity, but certain trusts carrying on a trading business can be taxed as a company. Limited partnerships are taxed as a company (subject to the concession discussed below).

Australia has concessional tax regimes for eligible managed investment trusts, venture capital limited partnerships ("VCLPs") and early stage venture capital limited partnerships ("ESVCLPs").

2. RECENT DEVELOPMENTS

a. Transfer Pricing

On 13 March 2019, the Australian Taxation Office ("ATO") released Practical Compliance Guideline PCG 2017/1 (PCG 2019/1), setting out its guidance on transfer pricing issues related to inbound distribution arrangements. PCG 2019/1 contains a risk assessment framework and four schedules covering general and more specific industry distribution arrangements.

b. Hybrid mismatch

On 24 July 2019, the ATO released Practical Compliance Guideline PCG 2019/6 OECD hybrid mismatch rules, concept of structured arrangements (PCG 2019/6). The document provides guidance to taxpayers to assess the risk of the hybrid mismatch rules applying to their circumstances. Further detail is set out below under 'Use of hybrid instruments'.

c. Intellectual property

On 22 January 2020, the ATO released Taxpayer Alert TA 2020/1 which sets out the types of arrangements relating to offshore transfers of intellectual property that the ATO considers high risk from an Australian taxation perspective. At a high level, the ATO has indicated that it is generally concerned with cross border arrangements under the Australian transfer pricing and general anti-avoidance provisions.

d. Foreign investment in Australian entities

On 22 January 2020, the ATO released Taxpayer Alert TA 2020/2 regarding the mischaracterisation of arrangements connected with foreign investment into Australian entities. Amongst other things, the ATO has indicated that it will focus its attention on arrangements that do not comply with the Australian withholding tax rules, the deductibility of returns (e.g. whether the investment is debt or equity and whether the thin capitalisation rules should apply), gains on the exit from the investment and the application of the general avoidance rules.

e. COVID-19

As part of the response to the COVID-19 pandemic in Australia, the Australian government implemented a number of tax related measures. Some of the measures that may be most relevant in an M&A context are:

- Administrative concessions in determining whether a foreign company may be considered to have central management and control in Australia or a permanent establishment in Australia for the purpose of determining residency for Australian tax purposes.
- A concessional approach to the companies applying the Australian thin capitalisation rules where balance sheets are impacted by COVID-19.
- Wage subsidies to eligible employers that have suffered declines in turnover during the COVID-19 crisis. The threshold shortfalls (15%, 30% or 50%) broadly depend on the annual revenue of the relevant entity. The wage subsidy scheme operated until 28 March 2021.
- Instant asset write offs for assets valued at less than AUD150,000 and accelerated depreciation provisions for businesses with an aggregated turnover of less than AUD500 million, for new assets that are first used or installed ready for use for a taxable purpose between 12 March 2020 and 30 June 2021.
- Deferral of certain tax payment obligations for eligible businesses.

State governments in New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania and the Northern Territory also introduced various measures to defer, waive or discount payroll tax and, in some states, land tax liabilities.

All of the above measures were subject to change as the COVID-19 pandemic developed, including the eligibility requirements such as thresholds and the time for which the measures were/will be available. Whilst certain measures may no longer be operative, it is likely to be important to review eligibility and compliance as part of M&A tax due diligence processes.

3. SHARE ACQUISITION

a. General Comments

Foreign investment is regulated principally by the Foreign Acquisitions and Takeovers Act 1975 ("FATA"). A share acquisition may be subject to Foreign Investment Review Board ("FIRB") approval. As a consequence of the COVID-19 crisis, many acquisitions that would not typically require such approval, now do. The FIRB approval process is subject to change and should be considered carefully.

The purchase of shares means that the purchaser acquires the entire company including all assets and all liabilities including any historical liabilities (including tax liabilities). However, for tax purposes where an eligible head entity is established as the purchaser of 100% of the shares in the target, the wholly-owned groups of Australian resident entities (including companies, partnerships and trusts, but excluding branches) may elect to consolidate for the purpose of calculating the group's Australian taxation position.

Consolidated groups are treated as a notional single entity for Australian tax purpose. Under the single entity rule, the assets and liabilities of target are regarded as that of head company and transactions within the tax consolidated group are disregarded for income tax purposes. In an M&A context, the tax cost base of certain assets of a target entity can be reset when the target joins a tax consolidated group. The result of these rules is to effectively remove any preference from a tax perspective for acquiring either shares in the target or its assets.

The gain on the sale of shares is generally capital in nature and may be subject to preferential (discounted) tax rates if the seller is an individual, superannuation fund or trust. The Australian capital gains tax rules do not impose a separate tax but set out rules that result in net capital gains being included in assessable income and subject to ordinary income tax.

Foreign persons are not generally taxed on gains from the sale of a shares except where the company holds certain interests in land (defined broadly). In those circumstances where the shares are indirectly taxable Australian real property, the sale can be subject to capital gains tax (refer below).

Certain venture capital and private equity disposals may be considered revenue transactions by the Australian Tax Office ("ATO") and subject to tax as ordinary income (not a capital gain) subject to structuring and application of tax treaty relief.

b. Tax Attributes

A share acquisition generally does not result in the recognition of gain or loss at the target entity level. The tax attributes of a company generally survive a share acquisition, although some attributes, such as losses, will be subject to a limitation following change of ownership. That is, the company can continue to carry forward its tax losses indefinitely provided that it satisfies the "continuity of ownership test" (that is, same majority ownership) or alternatively the "same business test" or the "similar business test" (which applies to losses incurred in an income year beginning on or after 1 July 2015). Many M&A transactions will obviously result in a failure of the continuity of ownership test which would then require satisfaction of the alternative test in order to carry forward and utilise losses. This will ultimately require an assessment of the circumstances of the target post-closing of the transaction.

c. Tax Grouping

Wholly owned groups of Australian resident entities (including companies, partnerships and trusts, but excluding branches) may elect to consolidate for the purpose of calculating the group's Australian taxation position.

The principal benefits of forming a consolidated group include the lodgement of only one Australian income tax return on behalf of the group, the ability to ignore (for tax purposes) any intragroup transactions (e.g. asset transfers, loans, payments of dividends, returns of capital) and the effective offset of losses within the group.

There are special rules that give foreign owned groups with multiple Australian holding companies flexibility in defining the consolidated group. The Australian headquartered company for the group is primarily responsible for the group's income tax liability.

Other members can be jointly and severally liable if the head company defaults in respect of payments of the group's income tax liability unless a Tax Sharing Agreement ("TSA") is in place for the group. Certain groups may also form a group for GST purposes with similar principles to those described above applying to those groups. The liability for other taxes (e.g. fringe benefits tax) is not impacted by the formation of a consolidated group or GST group and will remain the responsibility of the individual group members.

d. Tax Free Reorganisations

Australia has a number of capital gains tax ("CGT") rollover provisions that are subject to specific conditions. That is, a capital gain or capital loss may be deferred or disregarded until a later CGT event occurs. For example a capital gain may be deferred if a shareholder disposes of their shares in a company in exchange for shares in the purchaser or the purchaser's ultimate parent. The rollovers contain very prescriptive conditions that must be satisfied based on the relevant circumstances.

Further, all transactions within a tax consolidated group (e.g. the transfer of assets between members of the tax consolidated group) are ignored for Australian income tax purposes.

Transactions within a GST group are also effectively ignored for GST purposes.

e. Purchase Agreement

In a share sale, the company continues to retain its historical, actual and contingent liabilities on completion including any tax liabilities. To mitigate the risks associated with these inherited liabilities, the purchaser would generally require the seller to provide sufficient representations, warranties and indemnities for an appropriate period of time under the Purchase Agreement. Given that most large corporates would form tax consolidated groups in Australia, one particular tax issue relating to share acquisition relates to secondary liabilities. Members of a consolidated group can be jointly and severally liable for all group liabilities if the head company defaults unless a valid Tax Sharing Agreement ("TSA") is in place for the group and the terms of that TSA relating to the exit of the target company from that consolidated group are complied with.

For a group liability to be covered by a TSA, the TSA must be in place before due date of the tax liability. The TSA will not be valid in relation to a tax debt that was due and payable prior to the date of execution.

Without a valid TSA, an entity acquired from within a tax consolidated group may be liable for the liabilities of the group that relate to the period of its membership.

Further, purchasers can be subject to withholding obligations depending on the residency of the seller and the nature of the asset.

Foreign resident CGT withholding tax can apply at 12.5%.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

Transfer taxes are imposed by the States and Territories in Australia.

Marketable securities duty no longer applies to a transfer of shares but landholder duty can be imposed on the transfer of shares relating to a landholder. Purchasers will need to confirm whether the target is a landholder and whether a relevant acquisition is being made. The landholder provisions relate to the jurisdiction in which the land is situated.

GST will not apply to a transfer of shares.

Capital gains are an item of statutory income. Typically foreign investors will derive all capital gains on assets that are not taxable Australian property, free of any Australian tax. However, a membership interest in a company will be taxable Australian property where both the non-portfolio interest test (10% or more) and the principal asset test are satisfied.

The principal asset test applies in relation to certain membership interests held by a foreign resident entity in another entity, and is satisfied if the market value of the other entity's taxable Australian real property ("TARP") assets exceeds the market value of its non-TARP assets. Generally speaking, this will be where 50% or more of the value of the entity is attributable to interests in Australian land (defined broadly).

g. "Purchase accounting" applicable to share acquisitions

This section is left intentionally blank.

h. Share Purchase Advantages

The seller will typically be better placed to avail itself of certain tax concessions (CGT discounts or exemption) from a share sale as opposed to a sale of business by the company and subsequent distribution of profits. A share sale may achieve lower transfer taxes, such as duty (usually payable by the purchaser), which may otherwise apply to asset sales provided that the share sale would not be subject to the landholder duty regime. See below.

i. Share Purchase Disadvantages

From the purchaser's perspective, one disadvantage is that the company acquired under a share purchase continues to retain its historical, actual and contingent liabilities on completion including any tax liabilities. There is also the risk of joint and several liability for certain taxes (e.g. where the company is acquired from a tax consolidated group). To mitigate the additional risks associated with a share purchase, the purchaser would generally engage in extensive and detailed due diligence to detect liabilities and risks associated with the target company and require the seller to provide sufficient representations, warranties and indemnities for an appropriate period of time under the purchase agreement. The requisite coverage would typically be consistent with international standards for share acquisitions. Refer above.

Another possible disadvantage is that the assets of the company acquired under a share purchase would not have their tax cost reset (that is, the assets would retain their existing cost base). A share acquisition may more closely align with an asset acquisition if the target company joins a tax consolidated group with the purchaser which would then require the tax cost of the assets of the company to be reset based on the purchase price for the shares (subject to some adjustments), broadly in proportion to market value.

4. ASSET ACQUISITION

a. General Comments

Asset acquisitions are not as common as share acquisitions where the entire business is being acquired. One of the reasons for this is that the seller will typically have a less onerous tax outcome in a share sale compared with the underlying assets being sold and proceeds then being distributed by way of distribution. The purchaser is also not likely to be subject to duty on a share acquisition, unless the landholder regime applies.

For the purchaser, an asset acquisition type outcome can be achieved through the operation of the tax consolidation regime.

b. Purchase Price Allocation

The purchase price must be allocated on a fair and reasonable basis.

c. Tax Attributes

An asset acquisition generally results in the recognition of a gain or loss by the selling company as well as at the owner level if the proceeds of sale are distributed. Other tax attributes (e.g. tax losses) are not capable of being transferred under an asset acquisition.

The advantage of the purchaser receiving a step up in cost base for an asset sale can be replicated under the tax consolidation regime.

d. Tax Free Reorganisations

Tax free reorganisations are only possible within a tax consolidated group.

e. Purchase Agreement

Purchasers can be subject to various withholding obligations depending on the residency of the seller and the nature of the asset. Foreign capital gains tax ("CGT") withholding tax (non-final) can apply at 12.5% and in addition certain property sales may be subject to Goods and Sales Tax ("GST") withholding (currently 10%). Specifically, foreign resident CGT withholding applies to the disposal of certain taxable Australian properties.

The assets subject to the foreign resident CGT withholding tax are:

- Taxable Australian real property (defined broadly) with a market value of AUD750,000 or more;
- An indirect Australian real property interest (broadly a 10% or more interest, such as shares, in an entity whose underlying value is principally attributable to an Australian real property); or
- An option or right to acquire such property or interest.

The withholding will be required unless the vendor can provide the purchaser with a "clearance certificate" (mainly in cases involving the sale of Australian real property). The clearance certificate is issued by the ATO and certifies that withholding is not required (e.g. because the vendor is an Australian resident). For other transactions such as share acquisitions, withholding will not be required if the vendor can make a valid declaration that it is an Australian resident or that the shares are not indirect Australian real property interests (please see above).

Where withholding is required, the purchaser must pay 12.5% of the purchase price to the ATO. The seller can claim a credit for the foreign resident capital gains withholding payment by lodging a tax return for the relevant year.

GST withholding can apply to a purchaser of:

- A new residential premise; or
- Potential residential land included on a property subdivision plan.

If GST withholding applies, the purchaser must withhold and pay either:

- One eleventh of the contract price (for fully taxable supplies);
- 7% of the contract price (for margin scheme supplies); or
- 10% of GST exclusive market value of the supply (for supplies between associates for consideration less than GST inclusive market value).

f. Depreciation and Amortisation

Cost bases for depreciation will be reset for plant and equipment. Purchase price allocation must be on a fair and reasonable basis.

g. Transfer Taxes, VAT

GST will apply to an asset transfer where the seller is registered or required to be registered for GST. The rate is 10%.

Various exemptions are available including GST free treatment for the sale of a going concern.

Duty will be imposed on the sale of dutiable property which includes land and various business assets.

h. Asset Purchase Advantages

The historical risk and liabilities of the company are not taken on by the purchaser. There is less tax due diligence required. The purchaser may be able to recognise the price paid for the assets in the tax cost of those assets (refer above).

i. Asset Purchase Disadvantages

Potentially greater duty liability of business sale. The seller is likely to strongly favour a share sale and this may impact the commercial negotiation of the deal. The parties will need to make an assessment of whether the asset purchase qualifies as a GST-free supply of a going concern.

5. ACQUISITION VEHICLES

a. General Comments

The typical corporate acquisition structure would involve establishment of an Australian incorporated purchaser. This allows for ease of contractual dealing and allows for the financing of the acquisition to be put in place having regard to Australian tax requirements (including thin capitalisation and transfer pricing).

b. Domestic Acquisition Vehicle

A wholly owned special purpose Australian company is typically established as the purchaser.

c. Foreign Acquisition Vehicle

It is uncommon for an M&A transaction to be conducted in Australia without establishing an Australian entity for the purpose of acquiring a target.

d. Partnerships and joint ventures

Joint ventures can be either incorporated or unincorporated. An incorporated joint venture involves the incorporation of a separate limited liability company, which is established for the purpose of undertaking a particular purpose. An unincorporated joint venture is a purely contractual arrangement between two or more entities. No separate entity is established to undertake the project. From an income tax perspective, in a true unincorporated joint venture where each participant is entitled to its share of the output of the joint venture which it uses or trades on its own behalf, the participants account for their own assessable income and deductible expenses.

However, if the joint venture extends to the sale of the output, the unincorporated joint venture will most likely be a partnership for income tax purposes on the basis that the participants are in receipt of income jointly.

A partnership is not a separate legal entity but is often governed by a partnership agreement. Each of the participants in a partnership is jointly and severally liable for partnership debts. From an income tax perspective, a partnership is not a separate entity. Each partner will be taxed on their respective share of the net income of the partnership or can claim a deduction in respect of their share of any partnership loss.

M&A activity in Australia is not typically undertaken using unincorporated joint ventures or partnerships.

e. Strategic vs Private Equity Buyers

This section is left intentionally blank.

6. ACQUISITION FINANCING

a. General Comments

For financings involving foreign lenders, interest withholding tax of up to 10% and the potential additional requirement to gross up for interest payments will need to be taken into account. Interest withholding tax can be reduced under one of the Double Taxation Agreements concluded with Australia, including the United States and United Kingdom that offer an interest withholding tax exemption for interest paid to a "non-related financial institution". However, lead arrangers and other lenders typically like to set up the financing to be as flexible as possible going forward in terms of sell down options and secondary trading. This means structuring the financing so that it falls within what is called the "section 128F withholding tax exemption" under Australian law. The exemption from interest withholding tax under section 128F of the Income Tax Assessment Act 1936 (Cth) is for interest paid to foreign lenders on debentures or debt interests that pass the "public offer test". Companies can have a debt to equity ratio of 1.5:1 before debt deductions (e.g. for interest) begin to be denied (although this recent tightening up of the rules is subject to a number of qualifications, so please refer to the relevant section in this publication for further details).

Tax consolidated groups

It is common for Australian companies in the same corporate group to become part of a tax consolidated group. This makes the ultimate Australian parent company primarily liable for the group's income tax liabilities. If the parent fails to pay any tax liability, then each of its Australian subsidiaries will be jointly and severally liable for the entire group's tax liability. This creates issues where you have debt facilities involving non-recourse special purpose vehicle ("SPV") borrowers, or group security arrangements that involve cross guarantees being provided by certain members of the group but not others (e.g. concepts of obligors/non-obligors or restricted subsidiaries/unrestricted subsidiaries). In these scenarios there are potential risks of cash leakage because obligors or non-recourse SPV borrowers could become jointly liable for the tax liabilities of other members of the group that sit outside the lenders' security net. The solution for this is to ensure that appropriate tax sharing agreements ("TSAs") and tax funding agreements ("TFAs") are put in place among all of the members of an Australian tax consolidated group. If a group tax liability is covered by a valid TSA, the Australian parent company and each Australian subsidiary will not be jointly and severally liable for that group tax liability. Instead, depending on the allocation of the group tax liability under the TSA, an Australian subsidiary may be liable for all, part or none of the group tax liability. A valid TSA will essentially ensure that each member of the group is only responsible for its own tax liabilities (despite being part of a tax consolidated group). Facility agreements will often contain covenants and conditions precedent ("CPs") that require TSAs and TFAs to be maintained at all times during the term of the relevant financing.

b. Equity

Australia has a favourable holding company regime for most jurisdictions. This includes no withholding tax on conduit foreign income, no CGT on share sales (that are not TARP) and no tax on foreign non-portfolio dividends.

Further treaty benefits are available, with the US and UK being the most preferred treaty jurisdictions for financing arrangements.

c. Debt

In Australia, the financing arrangements must qualify as a debt interest for the returns to be deductible.

The Debt/Equity Rules contain the provisions which classify interests in companies as either debt interests or equity interests for certain taxation purposes. The rules are complex but the financing arrangement must in substance be a loan and it must be structured accordingly.

Interest withholding

Interest withholding tax is an issue that appears on the radar of many non-Australian lenders to Australian borrowers. Interest withholding tax is typically 10% of the gross interest paid. Financing arrangements will typically include a gross up clause such that the additional cost is ultimately borne by the Australian borrower. However, a number of exemptions are potentially available.

Australia taxes non-residents on their Australian sourced income. Unless an exemption applies, an Australian entity making certain payments (including payment of interest) to a non-resident (e.g. foreign lender) is required to withhold tax (usually 10% of the payment) from such payments and remit the tax to the Australian Taxation Office. The rate of withholding tax may be reduced by any relevant Double Tax Agreement.

Also, interest withholding tax is unlikely to be applicable if the loan is made through the Australian branch of an international bank.

Thin capitalisation

The deductibility of interest is limited to certain borrowers under Australia's thin capitalisation regime.

The safe harbour limit is based on a ratio of 1.5:1 on a debt to equity basis (that is 60% on a debt to total asset basis). The debt/equity rules in Division 974 of the Income Tax Assessment Act 1997 determine whether an interest is a debt interest or an equity interest.

In addition, there is a de minimis threshold for application of these rules of AUD2 million of debt deductions, meaning that the thin capitalisation rules will not apply for any given year in which the interest deductions of a taxpayer and its associates are AUD2 million or less.

If funding of an entity exceeds the debt to equity ratio, deductions relating to debt in excess of this level nevertheless may be allowed if the entity can establish that an arm's length financier would have lent a higher amount to the entity, considered on a stand-alone basis (i.e. without parent company guarantees). In addition to this so called "arm's length debt test", companies can rely on the worldwide gearing test, which is available to inward investing entities. Under the worldwide gearing test, a company can gear its Australian operations consistently with the level of gearing across the corporate group.

In order to push down debt, a new Australian holding company would be established, which would elect to form a consolidated group with the acquired entity and debt deductions (subject to thin cap and transfer pricing limits) would be deductible against the assessable income of the tax consolidated group.

d. Hybrid Instruments

Following the OECD Base Erosion and Profit Shifting ("BEPS") Action recommendations, the OECD released its Action 2 Report, Neutralising the Effects of Hybrid Mismatch Arrangements (Action 2 Report).

In the context of financing arrangements, hybrid instruments may give rise to interest payments that are deductible under Australian tax rules but non-assessable in the country of residence of the lender.

The Action 2 Report sets out recommendations for countries to make changes to their domestic law to neutralise the effect of the hybrid mismatch arrangements and includes changes to the OECD Model Tax Convention to address such arrangements.

In Australia, the Board of Taxation ("Board") provided their report to Government on the implementation of the OECD hybrid mismatch rules. Based on the Board's recommendation, the Australian Government legislated to address the mismatch by:

- Denying deductions in Australia where the payment would have been deductible in the country of residence of the lender; and
- Including an amount in the taxpayer's assessable income where the payment would have been non-assessable in the country of residence of the lender.

e. Other Instruments

This section is left intentionally blank.

f. Earn-outs

Earn-outs are subject to a special tax regime in Australia. Eligible earn-out arrangements are taxed on a look-through basis such that the original share disposal is the subject of taxation. This is different to the previous rules regarding earn-outs which valued the earn-out right as part of the consideration for the disposal of the shares.

7. DIVESTITURES

a. Tax Free

Non-residents may not be subject to tax in Australia unless disposing of certain assets (refer to section 3.e above).

b. Taxable

Most gains realised on divestitures will prima facie be subject to tax in Australia (subject to the comments above regarding non-residents).

c. Cross Border

Refer to section 7.b above.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or territorial tax system

Australia taxes residents on worldwide income and non-residents on Australian source income, subject to the application of applicable treaties.

b. CFC Regime

Australia operates a CFC regime that applies to two lists of countries. Listed countries include the UK, US, France, Germany, Canada, Japan and New Zealand. For listed countries the only type of income attributed under the CFC rules is eligible designated concession income ("EDCI"), which is a small list of certain types of income subject to exemption in the listed country, for example EDCI would include capital gains from tainted assets of a New Zealand CFC.

For unlisted countries (all other countries), CFC attribution will depend on whether the relevant CFC passes the "active income test". The active income test looks to certain types of "adjusted tainted income" ("ATI"), which includes passive income, income from the sale of goods to Australian associates of the CFC (tainted sales income) and income from the provision of services to Australian residents (tainted services income). The CFC will be subject to attribution on its ATI if its ATI exceeds 5% of its gross turnover.

c. Foreign Branches and Partnerships

Broadly, foreign branches will be subject to equivalent taxation as a foreign company. Certain foreign income derived by an Australian company in carrying on business through a permanent establishment in a country with which Australia has a tax treaty is not subject to tax in Australia if the branch passes the active income test.

Where the foreign branch fails the active income test, the exemption does not apply to the same types of income that would be subject to CFC attribution if the branch were a foreign company (i.e. EDCI for listed countries and ATI for unlisted countries).

d. Cash Repatriation

No restriction. The requirements in the foreign jurisdiction would need to be considered.

Foreign dividends or distributions paid on equity interests as defined for Australian income tax purposes are generally exempt from tax when received by a resident corporate tax entity that holds at least a 10% participation interest in the foreign company. The exemption also applies to distributions received indirectly (e.g. via a trust) by resident companies. However, the exemption does not apply to dividends paid on legal form shares that are treated as debt interests. The hybrid mismatch rules, which apply to income years commencing on or after 1 January 2019, may also operate to limit the exemption (see the Group taxation section for more information).

Under the conduit foreign income rules, foreign sourced income may flow through interposed Australian companies to non-residents without being subject to Australian withholding tax.

Other foreign income of Australian resident corporations is subject to tax; however, in most cases, an offset for foreign income tax paid is allowed to the extent of Australian tax payable on such income.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Please also refer to section 3.e above.

A common vehicle for passive investments in Australian real estate is a unit trust. A unit trust is usually a "flow-through" vehicle for Australian tax purposes, with tax paid by the unit holders of the trust on their share of the net income of the trust according to their own tax profile.

For widely held trusts, flow through treatment will only be available where the trust is not carrying on a trading business.

Payments to non-residents of Australian sourced rent and capital gains on "taxable Australian real property" ("TARP") are also subject to withholding at the rate of 30%/Top marginal tax rate as a non-final tax. Different withholding rules can apply to distributions comprising interest, dividends and royalties.

If an Australian unit trust qualifies as a 'managed investment trust' ("MIT"), "fund payments" (e.g. Australian source rent) from the trust to non-residents may be subject to withholding at a concessional rate of 15% where the unitholder is resident of an information exchange country. Using a MIT is the market standard approach to structuring an investment from offshore into Australian real estate.

The trustee of the trust will not be subject to tax in respect of the fund payments.

The MIT withholding is a final tax on the relevant distributions, that is foreign investors are relieved of the compliance burden of filing Australian tax returns in respect of those distributions.

b. CbC and Other Reporting Regimes

Australia has implemented CbC reporting. Reporting obligations apply to significant global entities ("SGE"). Broadly, an entity is an SGE for an income year if it is either:

- A global parent entity with annual global income of AUD1 billion or more; and
- A member of a group of entities consolidated (for accounting purposes), where the global parent entity has an annual global income of AUD1 billion or more.

The reporting obligations require lodgement of a CbC report, master file and local file.

The statements require the SGE to report details, by jurisdiction, regarding their global and local operations and activities, transfer pricing policies, international related party dealings, revenues, profits, and taxes paid. Australia is one the jurisdictions that have signed the CbC Multilateral Competent Authority Agreement to facilitate the exchange of CbC reports between tax authorities in different jurisdictions.

10. TRANSFER PRICING

Australia adopts the OECD transfer pricing model and related party transactions are subject to arm's length requirements and substantiation.

An Australian entity will receive a "transfer pricing benefit" when the amount of profits accruing to that entity is less than the amount that might have been expected to accrue had the lender and borrower been dealing independently with each other within the meaning of the Associated Enterprises article contained in an applicable tax treaty. The Associated Enterprises article and the determination of the existence of a "transfer pricing benefit" are to be determined consistently with OECD guidance.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. Use of Hybrid Entities

This section is left intentionally blank.

b. Use of Hybrid Instruments

On 25 October 2018, the ATO released PCG 2018/7. PCG 2018/7 sets out the ATO's compliance approach to restructures out of existing hybrid arrangements to avoid the potential application of the hybrid mismatch rules. These rules, which generally took effect from 1 January 2019, address certain hybrid arrangements that exploit differences in the tax treatment of an entity or financial instrument under the laws of two or more countries.

PCG 2018/7 sets out six restructuring scenarios to which the Commissioner would not seek to apply the general anti-avoidance rules. In each scenario, there is a straightforward restructuring which removes the hybrid element of the existing arrangement but maintains the surrounding facts and circumstances. The guideline also lists various factors which the ATO expects to be present for a restructure to qualify as low risk.

c. Principal/Limited Risk Distribution or Similar Structures

This section is left intentionally blank.

d. Intellectual property (licensing, transfers, etc.)

"Intellectual property" is defined for Australian tax purposes as consisting of the rights a person has under a law of the Commonwealth as:

- The patentee, or a licensee, of a patent; or
- The owner, or a licensee, of a registered design; or
- The owner, or a licensee, of copyright.

Notably, trademarks are not included in this definition. Their tax treatment is, therefore, often different than for other intellectual property.

Intellectual property within the above definition will be a depreciating asset. Consequently, a trade mark is not a depreciating asset. All intellectual property rights are capital gains tax ("CGT") assets and each is a separate CGT asset.

e. Special tax regimes

Australia has concessional tax regimes for eligible venture capital limited partnerships ("VCLPs") and Venture Capital Management Partnerships ("VCMPs"). VCLPs are treated as flow through partnerships.

Capital gains made on assets held by a VCLP or a VCMP will be taxable to a partner in the same way as interests on assets held by an ordinary partnership.

As a VCLP is a partnership, any capital gains or losses made on the partnership's CGT assets are made by the partners individually and each partner's entitlement is calculated according to the relevant partnership agreement.

12. OECD BEPS CONSIDERATIONS

Australia has implemented the OECD BEPS directives in various legislative amendments (refer to the transfer pricing comments above).

13. ACCOUNTING CONSIDERATIONS

a. Combinations

This section is left intentionally blank.

b. Divestitures

This section is left intentionally blank.

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

To pay a dividend the Company must have sufficient profits and must also satisfy the requirements of section 254T of the Corporations Act, which states that a company must not pay a dividend unless:

(a) The company's assets exceed its liabilities immediately before the dividend is declared and the excess is sufficient for the payment of the dividend;

(b) The payment of the dividend is fair and reasonable to the company's shareholders as a whole; and

(c) The payment of the dividend does not materially prejudice the company's ability to pay its creditors.

b. Substance Requirements for Recipients

This section is left intentionally blank.

c. Application of Regional Rules

This section is left intentionally blank.

d. Tax Rulings and Clearances

Tax conditions are integrated in the FIRB approval process. The tax outcomes of the acquisition including the financing must be disclosed as part of the FIRB approval process.

15. MAJOR NON-TAX CONSIDERATIONS

a. Registration of Foreign Companies

Foreign companies who wish to carry on business in Australia directly must be registered with the Australian Securities and Investment Commission ("ASIC"). As a result of becoming registered, the foreign company will need to comply with certain parts of the Corporations Act such as maintaining a registered office and a local agent, ensuring its company name and Australian Registered Body Number (which is assigned to the company by ASIC upon registration) appear on all company documentation and complying with the financial reporting obligations prescribed in the Corporations Act.

b. Foreign Investment Review Board

If a foreign company intends to acquire land or shares in an Australian company or invest in a new business in Australia, the company may be required by the FATA to notify the Foreign Investment Review Board regarding the proposal. FIRB will examine the acquisition proposal and will make recommendations to the Australian commonwealth government as to whether or not these proposals are suitable under the Australian government's policy.

c. Australian Competition and Consumer Commission

Completion clearances may also be required.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends [A]	Interest [B]	Royalties [C]	Footnote Reference
Argentina	10 / 15	12	10 / 15	[1] [2]
Austria	15	10	10	
Belgium	15	10	10	
Canada	5 / 15	10	10	[3]
Chile	5 / 15	5 / 10 / 15	5 / 10	[4] [5] [6]
China	15	10	10	[7]
Czech Republic	5 / 15	10	10	[8]
Denmark	15	10	10	
Fiji	20	10	15	
Finland	0 / 5 / 15	0 / 10	5	[9] [10] [11]
France	0 / 5 / 15	0 / 10	5	[12] [10] [11]
Germany	5 / 15	0 / 10	5	[13] [10] [11]
Hungary	15	10	10	
India	15	15	10 / 15	[14]
Indonesia	15	10	10 / 15	[15]
Ireland	15	10	10	
Israel	0 / 5 / 15	0 / 5 / 10	5	[16] [17]
Italy	15	10	10	
Japan	0 / 5 / 10 / 15	0 / 10	5	[18] [10] [11]
Kiribati	20	10	15	
Korea	15	15	15	
Malaysia	0 / 15	15	15	[19]
Malta	15	15	10	[20]
Mexico	0 / 15	10 / 15	10	[21] [22]
Netherlands	15	10	10	
New Zealand	0 / 5 / 15	0 / 10	5	[23] [10] [11]
Norway	0 / 5 / 15	0 / 10	5	[9] [10] [11]
Papua New Guinea	15 / 20	10	10	[24]

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Jurisdiction	Dividends [A]	Interest [B]	Royalties [C]	Footnote Reference
Philippines	15 / 25	15	15 / 25	[25] [26]
Poland	15	10	10	
Romania	5 / 15	10	10	[27]
Russia	5 / 15	10	10	[28]
Singapore	0 / 15	10	10	[29]
Slovakia	15	10	10	
South Africa	5 / 15	0 / 10	5	[4] [10] [11]
Spain	15	10	10	
Sri Lanka	15	10	10	
Sweden	15	10	10	
Switzerland	0 / 5 / 15	0 / 10	5	[30] [31] [11]
Taipei	10 / 15	10	12.5	[32]
Thailand	15 / 20	10 / 25	15	[33] [34]
Turkey	0 / 5 / 15	0 / 10	10	[35] [36]
United Kingdom	0 / 5 / 15	0 / 10	5	[9] [10] [11]
United States	0 / 5 / 15	0 / 10 / 15	5	[37] [38] [11]
Vietnam	10 / 15	10	10	[39]

Footnotes	
A	Generally, the Australian domestic dividend withholding tax ("DWT") rate for dividends paid to non-residents is 30%. However, dividends paid to non-residents are not subject to DWT to the extent that they are "franked" (i.e. the dividend has been paid out of profits that have previously been taxed in Australia).
B	The Australian domestic interest withholding tax rate ("IWT") for interest paid to non-residents is 10%. There are certain exemptions that may be available (e.g. for interest paid in relation to certain publicly offered company debentures and debt interests).
C	The Australian domestic royalty withholding tax rate for royalties paid to non-residents (except in respect of an Australian PE of a resident of a treaty country) is 30% on the gross amount of the royalty.

Footnotes	
1	Dividends - maximum rate of 15%. 10% rate applies to franked dividends paid by an Australian company to a person which holds directly at least 10% of the voting power of the paying company (although Australia does not impose DWT on franked dividends). 10% rate also applies to dividends paid by an Argentine company to a person which holds directly at least 25% of the capital of the paying company.
2	Royalties: maximum rate of 15%. 10% rate applies to the gross amount of royalties for copyright, industrial or scientific equipment, the supply of scientific, technical or industrial knowledge, associated ancillary assistance and other technical assistance. 10% rate also applies to the net amount of royalties for certain technical assistance. 3% rate applies in the case of Argentina to the transfer of news by an international news agency to an Australian resident.
3	Dividends - maximum rate of 15%. 5% rate applies to franked dividends paid by an Australian company to a company which holds directly at least 10% of the voting power of the paying company (although Australia does not impose DWT on franked dividends). 5% rate also applies to dividends paid by a Canadian company (other than a non-resident owned investment corporation) to a company that controls, directly or indirectly, at least 10% of the voting power of the paying company.
4	Dividends - maximum rate of 15%. 5% rate applies to dividends paid to a company which holds directly at least 10% of the voting power of the paying company.
5	Interest - maximum rate of 10% for Australian sourced interest and 15% for Chilean-sourced interest. 5% rate applies to interest derived by a financial institution which is unrelated to and dealing wholly independently with the payer.
6	Royalties: maximum rate of 10%. 5% rate applies to the gross amount of royalties for industrial, commercial or scientific equipment.
7	China does not include Hong Kong and Macau for these purposes.
8	Dividends - maximum rate of 15%. 5% rate applies to franked dividends paid by an Australian company in some circumstances (although Australia does not impose DWT on franked dividends). 5% rate applies to dividends paid by a Czech company to a company which holds directly at least 20% of the capital of the paying company.
9	Dividends - maximum rate is 15%. 5% rate applies to dividends paid to a company which holds directly at least 10% of the voting power of the paying company. An exemption applies to dividends paid to a company that has owned at least 80% of the voting power of the paying company for the 12 months ending on the date the dividend is declared and meets certain public listing conditions.
10	Interest - maximum rate of 10%. An exemption applies to interest derived by an unrelated financial institution dealing wholly independently with the payer, or a government, local authority or central bank of the other country.
11	Royalties: maximum rate of 5%. Refer the relevant definition of “royalties”.
12	Dividends - maximum rate of 15%. An exemption applies to dividends that have borne the normal rate of company tax and are paid to a company which holds directly at least 10% of the voting power (in the case of Australia) or capital (in the case of France) of the paying company. 5% rate applies to other dividends paid to a company which holds directly at least 10% of the voting power (in the case of Australia) or capital (in the case of France) of the paying company.

Footnotes	
13	Dividends - maximum rate of 15%. 5% rate applies to dividends paid to a company which holds directly at least 10% of the voting power of the paying company throughout a 6 month period that includes the dividend payment date, unless it was paid by a German Real Estate Aktiengesellschaft with listed share capital. An exemption applies to dividends paid to a company that has owned at least 80% of the voting power of the paying company for the 12 months ending on the date the dividend is declared and meets certain public listing conditions.
14	Royalties: maximum rate of 15%. 10% rate applies to the gross amount of royalties for the use of, or right to use, industrial, commercial or scientific equipment, and for certain ancillary technical or consultancy services relating to such equipment.
15	Royalties: maximum rate of 15%. 10% rate applies to the gross amount of royalties for the use of, or right to use, industrial, commercial or scientific equipment, the supply of scientific, technical industrial or commercial knowledge, and the supply of ancillary assistance relating to such equipment.
16	Dividends - maximum rate of 15%. 5% rate applies to dividends paid to a company (other than a Real Estate Investment Fund resident in Israel) which holds directly at least 10% of the voting power of the paying company throughout a 365 day period that includes the dividend payment date. An exemption applies to dividends paid to certain recognised pension funds or a government, local authority or central bank of the other country, which holds less than 10% of the voting power in the paying company.
17	Interest - maximum rate of 10%. 5% rate applies to interest derived by an unrelated financial institution dealing wholly independently with the payer, or certain recognised pension funds (unless the recipient is in a position to control or influence the key decision-making of the issuer of the debt). An exemption applies to interest paid to a government, local authority or central bank of the other country.
18	Dividends - maximum rate of 15% for dividends paid by a Japanese company that is entitled to a deduction for the dividends in Japan if more than 50% of its assets consist, directly or indirectly, of real property situated in Japan. 5% rate applies to dividends paid to a company which holds directly which holds directly at least 10% of the voting power of the paying company. An exemption applies to dividends paid to a company which holds directly at least 80% of the voting power of the paying company for the 12 month period ending on the date that the dividend is declared, and satisfies certain limitation on benefits conditions. 10% rate applies to all other cases. There are special rules for real estate investment trusts (“REITs”).
19	Dividends - maximum rate of 15% for Australian sourced unfranked dividends. An exemption applies to franked dividends paid by an Australian company to a company which holds directly at least 10% of the voting power of the paying company (although Australia does not impose DWT on franked dividends). An exemption also applies to certain Malaysian sourced dividends.
20	Dividends - maximum rate of 15%. In the case of Malta, DWT on the gross amount of the dividends cannot exceed the tax chargeable on the profits out of which the dividends are paid.
21	Dividends - maximum rate of 15%. An exemption applies to franked dividends paid by an Australian company or dividends paid from the net profit account by a Mexican company, that are paid to a company which holds directly at least 10% of the voting power in the paying company (although Australia does not impose DWT on franked dividends).
22	Interest - Maximum rate of 15%. 10% rate applies to interest that is: paid to a bank or insurance company, derived from bonds and securities that are regularly and substantially traded on a recognised security market, paid by banks (except where the preceding apply), or paid by the purchaser to the seller of machinery and equipment in connection with a sale on credit. An exemption applies to certain interest from investment of foreign exchange assets of Government and other central banking functions.

Footnotes	
23	Dividends - maximum rate is 15%. 5% rate applies to dividends paid to a company which holds directly at least 10% of the voting power of the paying company. An exemption applies to dividends paid to a company which owns directly or indirectly, at least 80% of the voting power of the paying company for a 12 month period ending on the day the dividend is declared and meets certain public listing conditions. An exemption also applies to dividends paid to a government or local authority (including a government investment fund) of the other country which no more than 10% of the voting power in the paying company.
24	Dividends - maximum rate of 15% for Australian sourced dividends and 20% for PNG sourced dividends.
25	Dividends - maximum rate of 25%. 15% rate applies where relief by way of rebate or credit is given to the recipient.
26	Royalties: maximum rate of 25%. 15% rate applies to royalties paid by certain approved Philippines enterprises.
27	Dividends - maximum rate of 15%. 5% rate applies to franked dividends paid by an Australian company to a company which holds directly at least 10% of the capital of the paying company (although Australia does not impose DWT on franked dividends). 5% rate also applies to dividends paid by a Romanian company out of profits that have been subject to the profits tax, to a company which holds directly at least 10% of the capital of the paying company.
28	Dividends - maximum rate of 15%. 5% rate applies to dividends paid out of profits that have borne the normal rate of tax to a company which holds directly at least 10% of the capital of the paying company, where the recipient has invested a minimum of AUD 700,000 or the RUB equivalent and, for Russian sourced dividends, the dividends are exempt from Australian tax.
29	Dividends - maximum rate of 15% for Australian sourced dividends. An exemption applies to dividends paid by a Singaporean company or a Malaysian company out of profits derived from sources in Singapore.
30	Dividends - maximum rate of 15%. 5% rate applies to dividends paid to a company which holds directly at least 10% of the voting power (in the case of Australia) or capital (in the case of Switzerland) of the paying company. An exemption applies to dividends paid to a company that has held, directly or indirectly, at least 80% of the voting power (in the case of Australia) or capital (in the case of Switzerland) of the paying company for the 12 months ending on the date the dividend is declared, and meets certain public listing conditions.
31	Interest - maximum rate of 10%. An exemption applies to interest derived by an unrelated financial institution dealing wholly independently with the payer, or a government, local authority or central bank of the other country. In the case of Australia, an exemption also applies to interest derived by an Australian resident from carrying on complying superannuation activities. In the case of Switzerland, an exemption also applies to a pension scheme whose investment income is exempt from Swiss tax.
32	Dividends - maximum rate of 15%. 10% rate applies to franked dividends paid by an Australian company (although Australia does not impose DWT on franked dividends). 10% rate also applies to Taiwanese-sourced dividends paid to a company which holds directly at least 25% of the capital of the paying company.
33	Dividends - maximum rate of 20%. 15% rate applies to dividends paid by a company engaging in an industrial undertaking to a company which holds directly at least 25% of the capital of the paying company.
34	Interest - maximum rate of 25%. 10% rate applies to interest paid to a financial institution (including an insurance company).

Footnotes	
35	Dividends - maximum rate of 15%. 5% rate applies to dividends paid by an Australian company to a company which holds directly at least 10% of the voting power of the paying company. 5% rate also applies to dividends paid by a Turkish company out of profits which have been subjected to the full rate of corporate tax in Turkey to a company which holds directly at least 25% of the capital of the paying company.
36	Interest - maximum rate of 10%. An exemption applies to interest derived from the investment of official reserve assets by a government or central bank of the other country.
37	Dividends - maximum rate is generally 15%. 5% rate applies to dividends paid to a company which holds directly at least 10% of the voting power of the paying company. An exemption applies to dividends paid to a company that has owned at least 80% of the voting power of the paying company for the 12 months ending on the date the dividend is declared and meets certain limitations on benefits and public listing conditions. 15% rate applies to all other cases. There are special rules for Regulated Investment Companies ("RICs") and REITs - in some cases, there is no maximum rate on dividends paid by a RIC or REIT.
38	Interest - maximum rate is generally 10%. An exemption applies to interest derived by an unrelated financial institution dealing wholly independently with the payer, or a government, local authority or central bank of the other country. There are special rules for certain interest that is determined by reference to the profits of the issuer and for interest paid with respect to ownership interests in a person used for the securitisation of real estate mortgages and other assets.
39	Dividends - maximum rate of 15% for Australian sourced dividends or 10% for Vietnamese sourced dividends.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Copy of a detailed organisational chart showing the structure of the group of which the Australian company (Target) is a member, including all direct and indirect subsidiaries and parent companies and statements of ownership percentages.
2	Tax Due Diligence	General	Copy of company constitution for the Target and confirmation of shareholding.
3	Tax Due Diligence	Income tax	Confirmation that the Target is not a member of a consolidated group or multiple entry consolidated ("MEC") group for Australian income tax purposes.
4	Tax Due Diligence	Goods and services tax	Confirmation that the Target is not a member of a goods and services tax ("GST") group.
5	Tax Due Diligence	Income tax	Copies of final and signed income tax returns for the Target (including all schedules, supporting documentation and elections) for each of the last four completed tax years (or the completed years since incorporation if less than four years).
6	Tax Due Diligence	Income tax	Copies of audited financial statements (balance sheet and P&L) for the Target for each of the last four financial years for which they have been finalised (or the completed years since incorporation if less than four years) and most recent management accounts.
7	Tax Due Diligence	Income tax	Copy of the tax provision calculations for the Target for the latest statutory accounts and details of any reconciliation performed between the tax returns lodged with the Australian Taxation Office ("ATO") and the financial accounts of the companies.
8	Tax Due Diligence	Income tax	Details of any dividends paid by the Target during the last four completed tax years.
9	Tax Due Diligence	Income tax	Evidence of the current franking account balance of the Target, including movements in the balance during the last four completed tax years.
10	Tax Due Diligence	Income tax	Details of all tax losses (revenue and capital) of the Target and any movements in relation to those losses during the last four financial years (or the completed years since incorporation if less than four years). In particular, provide any analysis in relation to the satisfaction of the continuity of ownership test and/or same business test during the last four years.
11	Tax Due Diligence	Withholding tax	Evidence of royalty and interest withholding tax compliance in relation to any payments to non- residents of Australia.
12	Tax Due Diligence	Income tax	Copy of the current tax fixed asset register for the Target.
13	Tax Due Diligence	Stamp duty	List of all real property owned or leased by the Target (indicating for each property whether owned or leased) and locations thereof.
14	Tax Due Diligence	Land tax	Copies of all land tax filings (if any) lodged by the Target for the past 12 months.

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Nº.	Category	Sub-Category	Description of Request
15	Tax Due Diligence	General	Details (including advice) regarding any key transactions, acquisitions, divestments or corporate reorganisations which have occurred in the last four completed tax years or are contemplated (including in anticipation of completion) and involve assets being transferred by or to the Target and copies of any associated elections.
16	Tax Due Diligence	General	Copies of tax opinions, tax advice and tax position papers on structure, key transactions and significant issues.
17	Tax Due Diligence	Income tax	Copies of any workpapers and advice in relation to the thin capitalisation position of the Target and details of any debt deductions that have been denied.
18	Tax Due Diligence	Income tax	Details of any intragroup dealings (including loan agreements, management agreements and group services agreements) or dealings with non-resident counterparties and any advice in relation to the application of transfer pricing or value shifting rules which involves the Target.
19	Tax Due Diligence	Income tax	Copies of any transfer pricing policies and documentation substantiating the terms and conditions of any related party international dealings.
20	Tax Due Diligence	General	Details of any loans advanced by or to the Target involving any shareholder (or their associates) of the Target or the parent of the Target.
21	Tax Due Diligence	General	Details of any private binding ruling or advance opinion requests, decisions of the ATO in relation to any such ruling or advance opinion requests and objection or appeals against any ruling or assessment that have been instituted or are being contemplated by the Target.
22	Tax Due Diligence	International tax	Details of any overseas operations or investments of the Target (including any foreign permanent establishments, assets or personnel based overseas, details of how cash from these operations or investments is repatriated back to Australia and the Australian tax treatment of income derived offshore).
23	Tax Due Diligence	General	Copies of any material correspondence with the ATO or other government agency responsible for Tax (audit notifications, information requests, objections, amended assessments etc) during the last four financial years.
24	Tax Due Diligence	General	Copies of each Business Activity Statement (including supporting calculations) relating to the Target during the last 12 months and evidence of payment of all net GST amounts and pay as you go (“PAYG”) withholding amounts.
25	Tax Due Diligence	Employment taxes	Copies of the Fringe Benefits Tax (“FBT”) returns lodged by the Target for the past four completed FBT years (or the completed years since incorporation if less than four years).
26	Tax Due Diligence	Employment taxes	Copies of payroll tax returns (if any) lodged by the Target for the past 12 months.
27	Tax Due Diligence	Employment taxes	Confirmation that the Target is a not a member of a group for payroll tax purposes.

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Nº.	Category	Sub-Category	Description of Request
28	Tax Due Diligence	Employment taxes	Details of any employee share schemes (e.g. share plans, option plans, bonus plans) or other incentive arrangements available to employees (or their associates) of the Target.
29	Tax Due Diligence	Employment taxes	Evidence of procedures for determining whether individuals engaged by the Target are engaged as employees or as independent contractors and compliance with employment tax obligations in respect of the latter.
30	Tax Due Diligence	Stamp duty	Evidence that all continuing agreements (including mortgages, leases, share or asset acquisition agreements) of a material nature (involving payments or receipts in excess of AUD500,000) to which the Target is a party have been duly stamped.

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