

MAAL client experience roadmap

A guide to assist taxpayers transition to compliance with the new MAAL provisions

Please contact for additional information:

MAAL@ato.gov.au

Elizabeth Hardcastle, Assistant Commissioner (07) 3907 2474

Jennifer Kong, Director, (02) 9374 8971

Fabian Fedeles, Director, (03) 8632 4889

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations. If you feel that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

If you follow our information and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we will take that into account when determining what action, if any, we should take.

We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for more recent information on our website at www.ato.gov.au or contact us.

Client experience roadmap

The Multinational Anti-Avoidance Law (MAAL) applies to certain schemes that obtain a tax benefit on or after 1 January 2016. The ATO will work closely with taxpayers to provide greater certainty on whether the MAAL applies, and (where applicable) work with those taxpayers to restructure their operations in Australia to comply with the new law.

What is the purpose of this roadmap?

This roadmap is designed to assist taxpayers in the initial period of the new law and outlines the process for taxpayers who are looking to engage in an open and transparent manner with the ATO with respect to the MAAL. This will increase the likelihood of reaching mutually agreeable positions and reduce the need to proceed with ordinary compliance activities.

Differentiating your client experience:

Taxpayer situations will differ depending on their current situation and engagement with the ATO. We envisage that taxpayers who are in scope of the MAAL (e.g. the taxpayer's business structure has the requisite hallmarks of a scheme to which the MAAL may apply) will fall into five categories. These are set out below. Each category will have a slightly different client experience and we have tailored the roadmap accordingly. The client experience may also depend on the particular facts and circumstances of each case.

MAAL taxpayer	Description
Category A Taxpayer under current review	Taxpayer had compliance activity as at 1 January 2016: taxpayer is in scope of the MAAL and has a permanent establishment / transfer pricing / Part IVA risk currently under review by the ATO (e.g. risk review / audit).
Category B Responsive taxpayer	Taxpayer was not a Significant Global Entity (SGE) in the 2016 income year and is contacted by ATO by 31 March 2017: taxpayer is (potentially) in scope of the MAAL, is contacted by the ATO and the taxpayer engages with the ATO within 28 days of notification. If the taxpayer does not respond to the ATO within 28 days, they will fall within category D (see below).
Category C Voluntary disclosure taxpayer	Taxpayer was not a SGE in the 2016 income year and contacts the ATO by 31 March 2017: taxpayer (who does not fall within either category A or B) voluntarily approaches the ATO (i.e. via early engagement) by 31 March 2017 seeking to restructure their arrangements in response to the MAAL.
Category D Subsequently identified taxpayer	Taxpayer is identified as being in scope of the MAAL after 31 March 2017: taxpayer does not approach the ATO, and we identify that they are in scope of the MAAL after 31 March 2017 via our risk identification channels. Included within this category is any taxpayer in category B who does not respond to the ATO within 28 days of receiving a letter. Actions will be initiated to review whether the MAAL applies through ATO standard processes.
Category E Out of scope taxpayer	Taxpayer is outside the scope of the MAAL: taxpayers who are not contacted by the ATO by 31 March 2017 and want to obtain confirmation from the ATO that they are outside of the scope of MAAL can do so either via a private ruling or risk assessment.

Terms / explanation

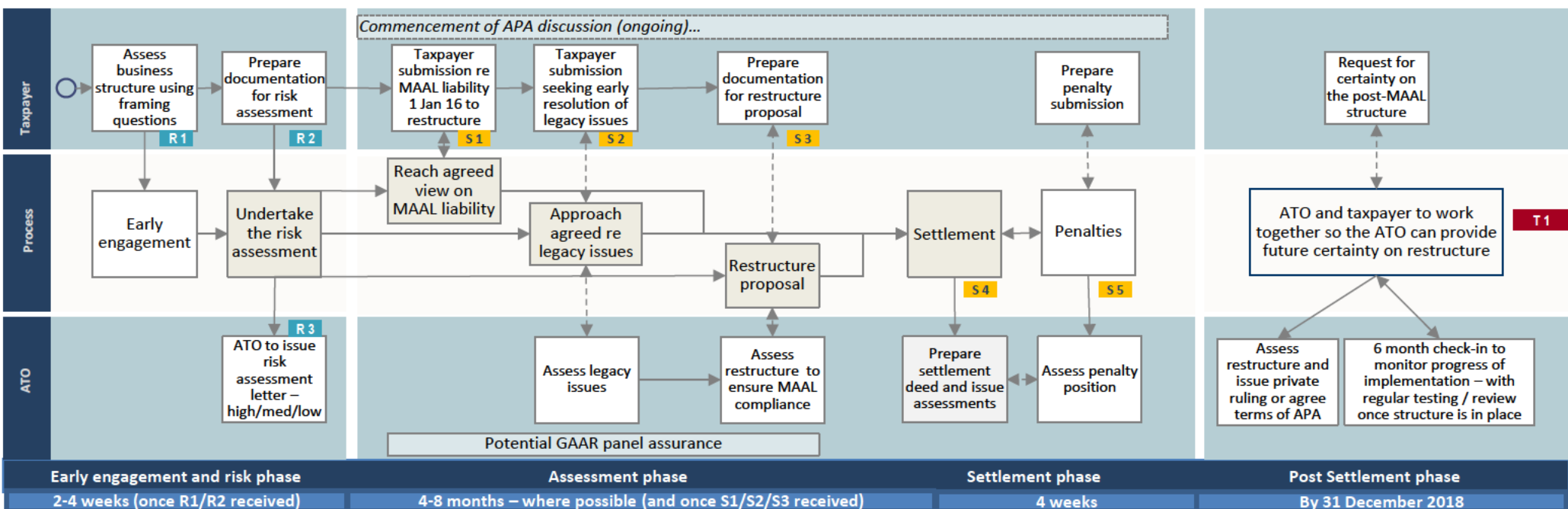
- "in scope of the MAAL" means the taxpayer has a scheme that has the requisite hallmarks of a scheme to which the MAAL may apply and "the MAAL applies" means the scheme meets all of the required elements of s.177DA
- The five categories outlined above are designed to assist the process by defining how the taxpayer enters the process. They should not be interpreted as pre-determining what the outcome will be, and a taxpayer may leave the process at various exit points. Furthermore, if a taxpayer's business evolves, or there is an increase in annual global income, at some future date (such that they subsequently fall in scope of the MAAL), then we would encourage the taxpayer to engage with the ATO at that point in time.

What are our expectations and what can you expect from the ATO?

We expect taxpayers and advisors to engage early to discuss how and if the MAAL applies to a taxpayer's existing structure. We expect taxpayers to review their structure beforehand and to provide accurate, relevant and complete information to ensure we have a meaningful discussion about the MAAL's application. In return, the ATO will provide you with guidance about how the provisions apply and options to obtain certainty, including risk assessments, binding interpretative views and advance pricing arrangements.

Client experience roadmap

Category A – Taxpayer under current review	Steps S1 to S5 and T1 most applicable (e.g. steps R1 to R3 likely not to be necessary or timeframes significantly reduced)
Category B and C – Responsive/Voluntary disclosure taxpayer	All steps likely to apply
Category D - Subsequently identified taxpayer	Roadmap may not apply as taxpayer did not voluntarily approach the ATO - normal compliance review processes
Category E – Out of scope taxpayer	Step R1 most applicable with steps R2 and R3 optional (if taxpayer wants additional certainty a private ruling might also be requested (in addition to, or instead of, a risk assessment))



Early engagement and risk phase
2-4 weeks (once R1/R2 received)

Undertake risk assessment process – ATO to follow standard risk assessment process to formulate a risk hypothesis to determine whether the MAAL is likely to apply to the existing structure. A risk assessment will entail a risk rating of high, medium or low, depending on the facts and circumstances. The documentation to be provided at **steps R1, R2 and R3** (as well as some of the accompanying processes) are set out on the next page. A low risk assessment will mean an early exit from this process. It is noted that this phase may not apply in particular circumstances e.g. where the taxpayer considers the risk assessment to be high – as well as some category A taxpayers - proceed directly to step S1.

Assessment phase
4-8 months – where possible (and once S1/S2/S3 received)

MAAL liability – Taxpayer to prepare functional analysis and profit attribution calculations (including comparability analysis) as discussed over page at **item S1**. ATO to review the taxpayer’s materials and form a view on the appropriate MAAL liability. Settlement discussions will follow to examine whether a negotiated position can be reached.

Legacy issues – While facts and circumstances will differ, the ATO will work with taxpayers to reach a concluded view on the application of the existing law to legacy risks for periods prior to 1 January 2016. This will be the preferred course of action in most cases, unless there is a strategic reason to continue with the existing compliance activity. ATO risk assessment process for legacy issues, and taxpayer submission content discussed over page at **item S2**.

Restructuring – We will not provide advice on how the taxpayer should restructure, but we will require that the resultant structure, and the arm’s length profits returned to Australia thereunder, be appropriate for and commensurate with the functions performed, risks borne and assets owned / used. We would also expect that the restructure would result in an allocation of functions performed, risks borne and assets owned/used by the Australian operations that is not artificial or contrived. Taxpayer submission content discussed over page at **item S3**.

Settlement phase
4 weeks

Settlement – ATO to follow standard settlement process. The terms and conditions will be set out in a MAAL settlement deed. It is anticipated that in most instances the Deed will cover both legacy issues, and MAAL exposure, as well as the agreed restructure proposal. Part of these discussions will involve reaching agreement on the attribution of profits to Australia under the new structure going forward (with an APA / BAPA to be finalised subsequently, refer T1).

Post Settlement phase
By 31 December 2018

Future certainty – a taxpayer may request a private ruling (PR) regarding the new structure e.g. to confirm that the MAAL does not apply. This is not anticipated to be the case in every instance e.g. some taxpayers may prefer to seek a prospective Advance Pricing Arrangement (to cover the proposed structure on a prospective basis with critical assumptions to be tested and validated once the structure is in place and at regular intervals via a robust Annual Compliance Review)

Client experience roadmap – Additional information

Early engagement and risk phase	Assessment phase	Settlement phase
<p>R 1 Documentation including, but not limited to:</p> <ul style="list-style-type: none"> Current global business structure Answers to the framing questions outlined in the Law Companion Guideline (LCG 2015/2): www.ato.gov.au/general/new-legislation/in-detail/other-topics/international/combating-multinational-tax-avoidance---a-targeted-anti-avoidance-law/ TP documentation Submission/explanation from the taxpayer 	<p>S 1 Detailed submission including, but not limited to:</p> <ul style="list-style-type: none"> Full functional analysis Comparability and benchmarking analysis Profit attribution calculations and justification Staff employment contracts Evidence in relation to contractual negotiation process with customers <p>We may ask for additional information to that listed above where necessary.</p>	<p>S 4 ATO will agree settlement terms to cover the issues progressed in parallel, including, legacy risks under existing law, MAAL liability and restructure (including agreed pricing / attribution methodologies.) The Australian entity, foreign entity, and any related parties affected and the ATO will negotiate the settlement terms on primary tax and penalties (for both the MAAL and legacy risks)</p>
<p>R 2 Documentation including, but not limited to:</p> <ul style="list-style-type: none"> Contracts for related party transactions Breakdown of Australian sales Management accounts of the Australian and overseas entities Headcount and duties for staff undertaking functions connected with Australian sales 	<p>S 2 Legacy compliance risks arising under existing law (e.g. permanent establishment, transfer pricing and Part IVA) for periods prior to 1 January 2016:</p> <ul style="list-style-type: none"> ATO risk assessment for legacy compliance risks prepared Taxpayer submission with full functional analysis, profit attribution calculations and benchmarking Refer to “legacy issues” below which outlines ATO approach 	<p>S 5 Penalty submission may have regard to:</p> <ul style="list-style-type: none"> Reasonably arguable position as per MT 2008/2 Voluntary Disclosure as per MT 2012/3 Remission of administrative penalties relating to schemes as per PSLA 2011/30
<p>R 3 Risk assessment letter issued by the ATO (will outline engagement options). It is likely that the course of action will be:</p> <ul style="list-style-type: none"> Low risk the MAAL applies – No further action required in relation to the MAAL Medium risk the MAAL applies – Review by the ATO (proceed to S1) High risk the MAAL applies – Review by the ATO (proceed to S1) 	<p>S 3 Restructure proposal including, but not limited to:</p> <ul style="list-style-type: none"> Proposed Global and Australian business structure and value chain Restructure implementation plan, including proposed timeline Materials that demonstrate how contracts will be concluded with Australian customers going forward Proposed profit attribution calculations / related party pricing including supporting benchmarking 	<p>Note: if a settlement cannot be reached between the ATO and the group, the ATO will take appropriate compliance action. This may include:</p> <ul style="list-style-type: none"> A review and / or audit The issuing of default assessments Legal prosecution

Legacy Issues	<p>Category A - the ATO may continue with its current risk review / audit activities, or alternatively, if agreed, seek to settle the legacy risks under existing law. Settlement is our preferred course of action, unless there is a strategic reason to continue with the existing compliance activity (e.g. contentious point of law which requires judicial clarification of the law).</p> <p>Category B and Category C – the ATO will seek to settle legacy issues where they are identified by the ATO, and assessed by the ATO as either *high risk or where there is a material quantum of tax at risk. Whilst every case is different, the ATO does not anticipate pursuing legacy issues for category B and C taxpayers for periods prior to 1 January 2016 where they are rated as *low risk.</p> <p>Category D – compliance review activities will be initiated by the ATO to assess the risk profile and materiality of any legacy issues (if they arise). As this activity is initiated by the ATO, the legacy issues will be assessed in existing compliance review products. It is anticipated that we will pursue all legacy risks unless the risk is *low risk and/or quantum is of low materiality.</p>
	<p>* Low risk / *high risk assessment: refer to the ‘high risk’ and ‘low risk’ example referenced in the Law Companion Guideline (LCG 2015/2). Although this guidance is in relation to the MAAL, the examples may be relevant risk benchmarks for legacy issues where the taxpayer has the same structure in place both pre and post 1 January 2016. In some instances, these examples may not be relevant – and in these cases the ATO will rely on our usual risk assessment processes and tailor these to best fit the specific circumstances.</p>

Penalties and Legacy Issues

Issue	Description	
Penalties on Legacy Issues	Any liabilities for penalties arising under Division 284 of the <i>Tax Administration Act 1953</i> for legacy risks will be determined on a case-by-case basis (most likely via settlement discussions). As the legacy risks relate to pre-existing law, every case will be slightly different, but general guidance is provided in table 2 below.	
MAAL penalties	Schedule 3 of the <i>Tax Laws Amendment (Combating Multinational Tax Avoidance) Bill 2015</i> doubles the penalties for SGEs for a 'scheme shortfall amount' where the taxpayer does not have a reasonably arguable position (RAP). The MAAL penalty provisions apply to scheme benefits arising from 1 January 2016, and a 'scheme shortfall amount' will arise after an assessment is made for the relevant income year. It is envisaged that, pursuant to the early engagement approach, a settlement (or similar arrangement) will be agreed with the ATO prior to the relevant return being lodged (such that MAAL penalties should not arise). In the event this is not possible e.g. due to extraneous factors, then the proposed approach with regard to the imposition of MAAL penalties is outlined below:	
	Category A - under current review	Refer to Table 1 to determine which penalty % is likely to apply. For example, where a taxpayer has a RAP for a scheme to which the MAAL applies, then penalties are likely to be: <ul style="list-style-type: none"> 25% (assuming there are no aggravating factors) This may reduce to 20% if a voluntary disclosure is made during the examination
	Category B - Responsive taxpayer	Refer to Table 1 to determine which penalty % is likely to apply. For example, where a taxpayer has a RAP for a scheme to which the MAAL applies, then penalties are likely to be: <ul style="list-style-type: none"> 5% (if there has been voluntary disclosure before an examination – assuming no aggravating factors)
	Category C - Voluntary disclosure taxpayer	Refer to Table 1 to determine which penalty % is likely to apply. For example, where a taxpayer has a RAP for a scheme to which the MAAL applies, then penalties are likely to be: <ul style="list-style-type: none"> 5% (if there has been voluntary disclosure before an examination – assuming no aggravating factors)
	Category D - Subsequently identified taxpayer	Refer to Table 1 to determine which penalty % is likely to apply. For example, where a taxpayer has a RAP for a scheme to which the MAAL applies, then penalties are likely to be: <ul style="list-style-type: none"> 25% (assuming there are no aggravating factors) This may reduce to 20% if a voluntary disclosure is made during the examination

Table 1 – MAAL penalties

Culpable behaviour	Base Penalty Amount	Aggravating factors	Disclosure during examination	Disclosure before examination
Tax avoidance schemes (principal purpose test met)	100% [if RAP, reduces to 25%]	120% [if RAP, reduces to 30%]	80% [if RAP, reduces to 20%]	20% [if RAP, reduces to 5%]

(Note – in determining MAAL penalties, the Commissioner will have regard to all of the facts and circumstances)

Table 2 – Legacy penalties

Type of scheme	Base Penalty Amount	Disclosure during examination	Disclosure before examination
Scheme where sole or dominant purpose test met	100% (1 July 2015 to 31 December 2015); otherwise 50% [if RAP, reduces to 25%]	80% (1 July 2015 to 31 December 2015); otherwise 40% [if RAP, reduces to 20%]	20% (1 July 2015 to 31 December 2015); otherwise 10% [if RAP, reduces to 5%]
Scheme where sole or dominant purpose test not met	50% (1 July 2015 to 31 December 2015); otherwise 25% [if RAP, reduces to 10%]	40% (1 July 2015 to 31 December 2015); otherwise 20% [if RAP, reduces to 8%]	10% (1 July 2015 to 31 December 2015); otherwise 5% [if RAP, reduces to 2%]