MT 2008/2A4 - Addendum - Shortfall penalties: administrative penalty for taking a position that is not reasonably arguable

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Addendum

Miscellaneous Taxation Ruling

Shortfall penalties: administrative penalty for taking a position that is not reasonably arguable

This Addendum is a public ruling for the purposes of the *Taxation Administration Act 1953* (TAA). It amends Miscellaneous Taxation Ruling MT 2008/2 to reflect amendments to the TAA contained in the *Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Act 2013* (Amendment Act). Under the Amendment Act an entity will be liable to a scheme penalty under subsection 284-145(2B) of the TAA where the transfer pricing provisions in Subdivisions 815-B or 815-C of the *Income Tax Assessment Act 1997* apply. Where this penalty applies, the Amendment Act inserts Subdivision 284-E that states that an entity *will not* have a reasonably arguable position for a matter if the entity has not met specific documentation requirements for that matter.

Miscellaneous Taxation Ruling MT 2008/2 is amended as follows:

1. Paragraph 3

Omit the second dot point, substitute:

- paragraph 284-160(1)(b) – base penalty amount for Part IVA schemes;
- paragraph 284-160(2)(b) and subsection 284-160(3) table items 1 and 2 – base penalty amount for transfer pricing schemes; and

2. Paragraph 14

Omit the dot points, substitute:

- income tax matters for the years commencing on or after 1 July 2000;
- fringe benefits tax (FBT) matters for the years commencing on or after 1 April 2001;
- MRRT and PRRT matters for the years commencing on or after 1 July 2012;
- withholding tax for transfer pricing scheme penalties for the years commencing on or after 29 June 2013; and

- matters relating to other taxes for the years commencing 1 July 2000.

3. Paragraph 17

Omit the fifth dot point, substitute:

- enters into a scheme to get a scheme benefit or a transfer pricing benefit – section 284-145.

4. Paragraph 35

After the paragraph, insert:

35A. There is an additional requirement for transfer pricing scheme penalties. Where an entity does not meet the documentation requirements in section 284-255, Division 284 will apply as though a matter were not reasonably arguable. Paragraphs 69 to 85 of Practice Statement Law Administration PS LA 3672 *Administration of transfer pricing penalties for income years starting on or after 29 June 2013* provides guidance on the process for determining whether an entity has a reasonably arguable position for transfer pricing scheme penalties.

5. Paragraph 36

After 'The' in the first line of the first paragraph, insert 'section 284-15(1)'.

6. Paragraph 52

(a) After the heading at paragraph 52, insert:

51A. The requirements for documenting a reasonably arguable position differ depending on whether the penalty is a transfer pricing scheme penalty or any other type of penalty.

Transfer Pricing Scheme Penalties: Documenting a reasonably arguable position

51B. If an entity does not meet the specific transfer pricing documentation requirements, the division will have the effect as if a matter were not reasonably arguable. Only transfer pricing scheme penalties imposed by section 284-145(2B) will apply in these circumstances.

51C. Section 284-255 sets out specific documentation requirements which may affect an entity's liability for transfer pricing scheme penalties. Section 284-250 provides that when an entity does not meet specific transfer pricing documentation requirements, then the transfer pricing treatment of that matter will not be reasonably arguable.

51D. Guidance on the specific documentation requirements for transfer pricing penalties can be found in paragraphs 71 to 79 of Practice Statement Law Administration PS LA 3672 *Administration of transfer pricing penalties for income years starting on or after 29 June 2013*. PS LA 3672 sets out the process for determining whether an entity has a reasonably arguable position, taking into account the documentation requirements, when assessing transfer pricing scheme penalties.

51E. Further guidance on the documentation requirements for transfer pricing scheme penalties is contained in Taxation Ruling TR 2014/D4 *Income Tax: transfer pricing: documentation requirements*. This ruling sets out the Commissioner's view on the meaning of the documentation requirements.

Documenting a reasonably arguable position in all other cases

(b) After 'The' in the first line insert 'general'.

7. Detailed contents list

Omit:

Documenting a reasonably arguable position	52

Insert:

Documenting a reasonably arguable position	51A
Transfer Pricing Scheme Penalties: Documenting a reasonably arguable positions	51B
Documenting a reasonably arguable position in all other cases	52

8. Related Rulings/Determinations

Insert 'TR 2014/D4'.

9. Legislative references

Insert:

- ITAA 1997 Subdiv 815-B
- ITAA 1997 Subdiv 815-C
- TAA 1953 Sch 1 Subdiv 284-E

- TAA 1953 Sch 1 284-145(2B)
- TAA 1953 Sch 1 284-160(1)(b)
- TAA 1953 Sch 1 284-160(2)(b)
- TAA 1953 Sch 1 284-160(3)
- TAA 1953 Sch 1 284-250
- *Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Act 2013*

10. Other references

Insert:

- Law Administration Practice Statement PS LA 3672

This Addendum applies on and from 29 June 2013.

Commissioner of Taxation
16 April 2014

ATO references

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