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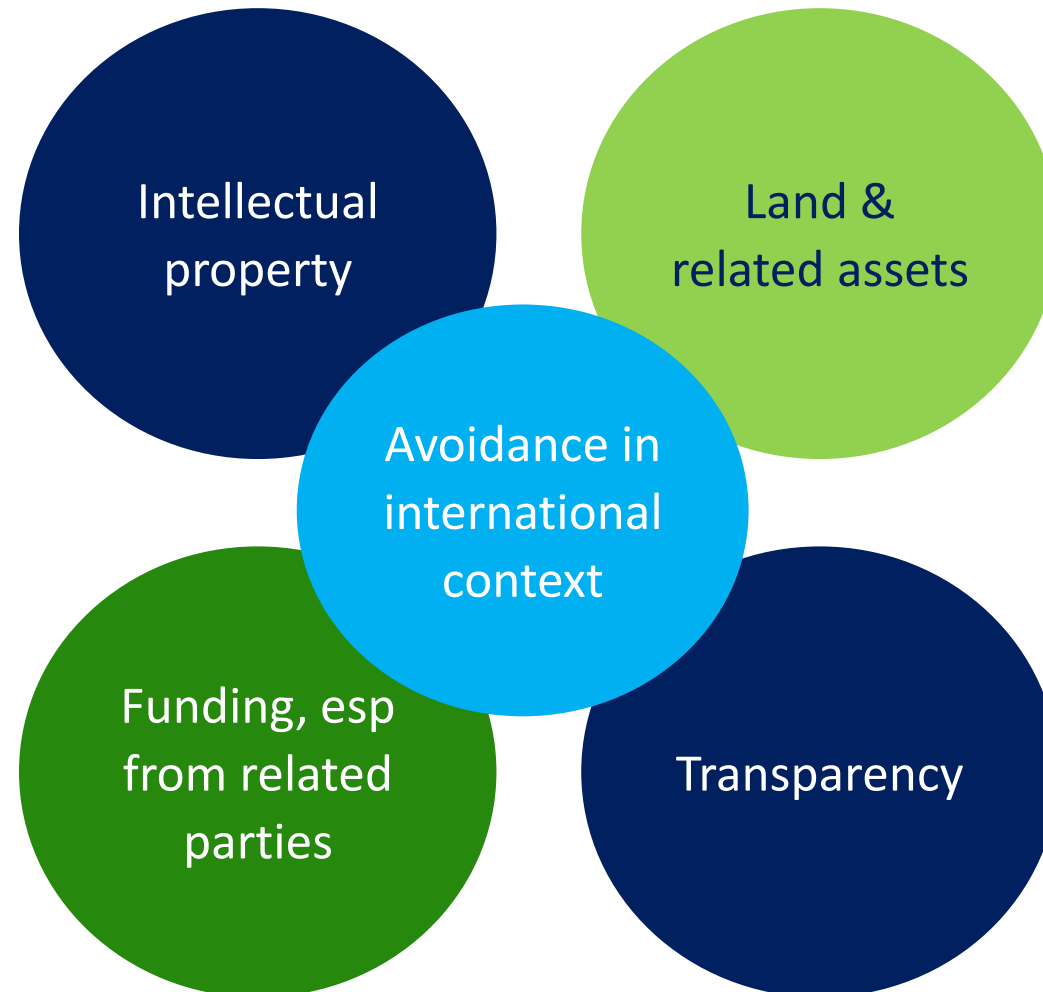
Back on track

2024 Deloitte National
Tax Conference

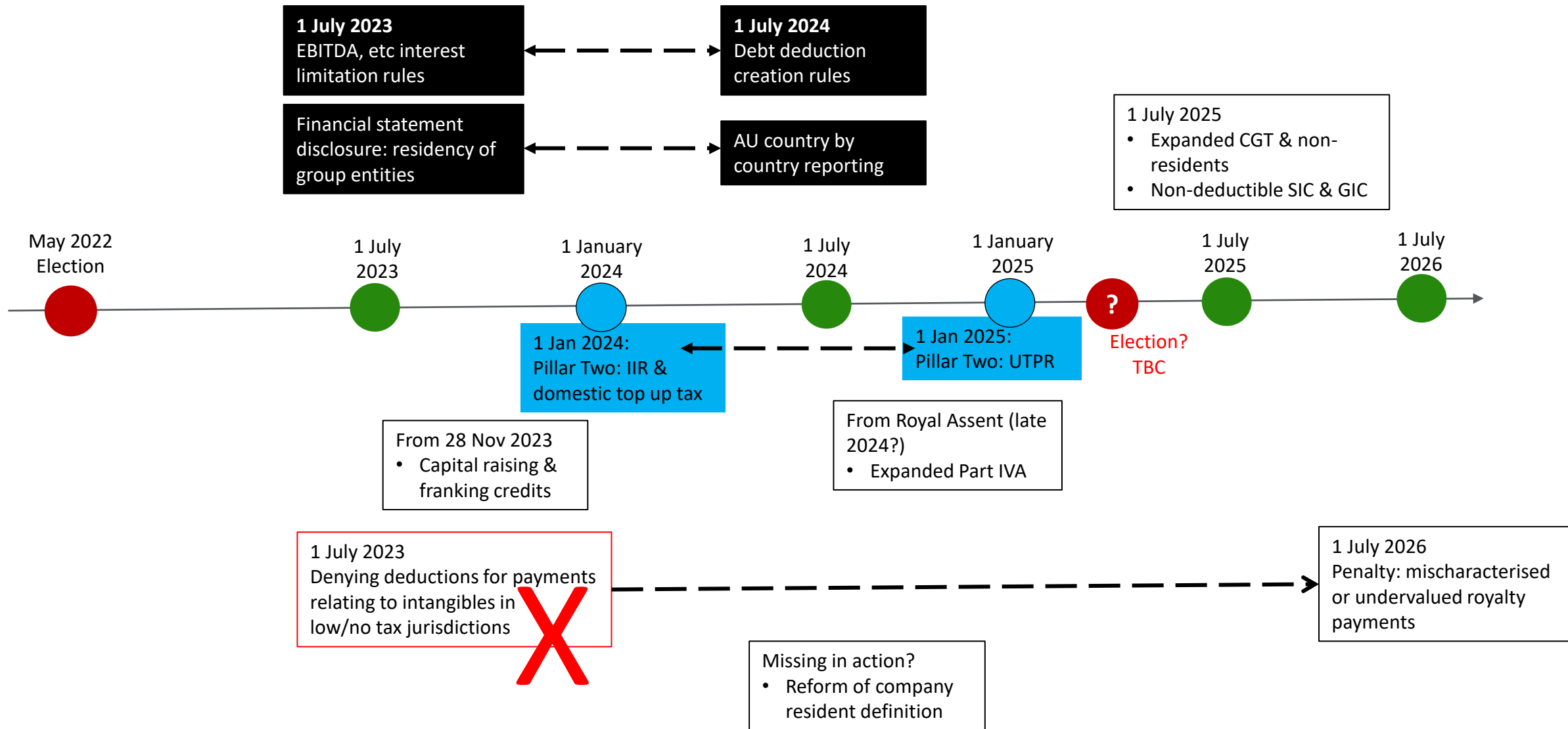
12 June 2024



Agenda



Legislative timeline



New interest limitation rules

Expanded scope of debt deductions

Apply transfer pricing rules to quantum and rate

Apply debt creation rules

Apply interest limitation rules

Debt creation rules

Interest incurred: years of income starting on or after 1 July **2024**

Applies to related party debt which is relevantly connected with funding of

- **acquisition** from a related party of a CGT asset
 - A CGT asset
 - A legal or equitable obligation
- Prescribed **payment** to related party, being:
 - Dividend, trust distribution, partnership distribution
 - Returns of capital
 - Royalty and similar payments
 - Repayment of principal of in-scope debts
 - Similar payments

Major issue:
establishing opening tax
balance sheet, esp for
AU inbounds

Interest limitation rules

Interest incurred: years of income starting on or after 1 July **2023**

- Fixed ratio: 30% of tax EBITDA, and carry forward of disallowed amount
- Group ratio
- Third-party debt test

Will be straightforward for many, will be problematic for ...

- Carry forward tax losses inappropriately depress tax EBITDA
- Relying on third-party debt test
- Non-consolidated structures
- Others

Transparency

Years commencing on or after 1 July 2023

Additional financial statement disclosure of all entities in the accounting consolidated group

Applies to “public companies” (Corporations Act), listed and unlisted

State on a true and correct basis whether group member is

- Australian resident; or
- If foreign resident, country of tax residency



Years commencing on or after 1 July 2024

Broadly, all groups (whether Australian or foreign) with turnover >A\$1B and Australian operations

Public CbC

- GRI 207 is the primary source of guidance
- Differs in some respects to EU public CbC

Disclosures

- Description of group’s approach to tax (per GRI 207)
- Australia & “specified” jurisdictions: separate country reporting
 - Draft list (TBC) included HK, Singapore, Switzerland
- All other jurisdictions: reported on an aggregated basis

Main business activities

Number of employees

Revenue from unrelated parties

Revenue from related parties

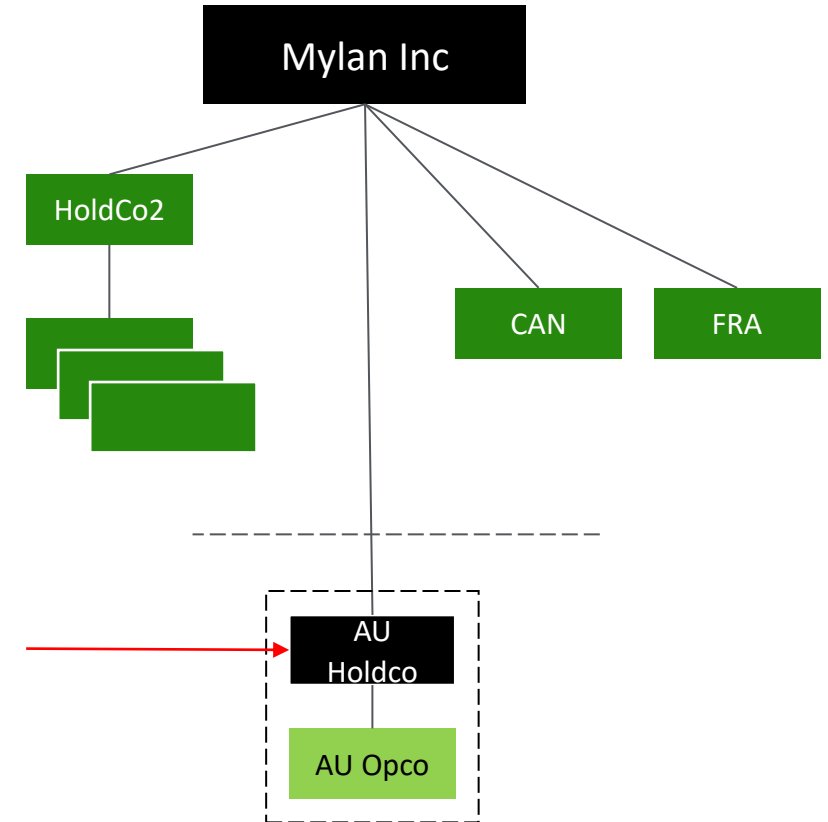
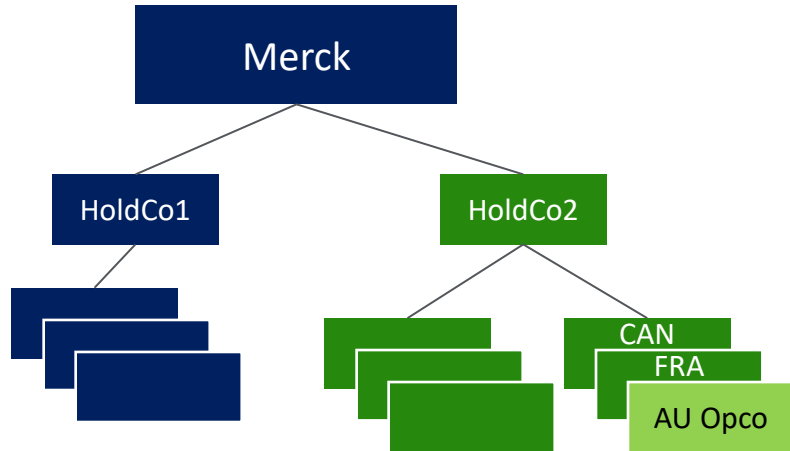
Pre tax profit / loss

Book value of tangibles

Income tax paid / income tax accrued, and reasons for difference

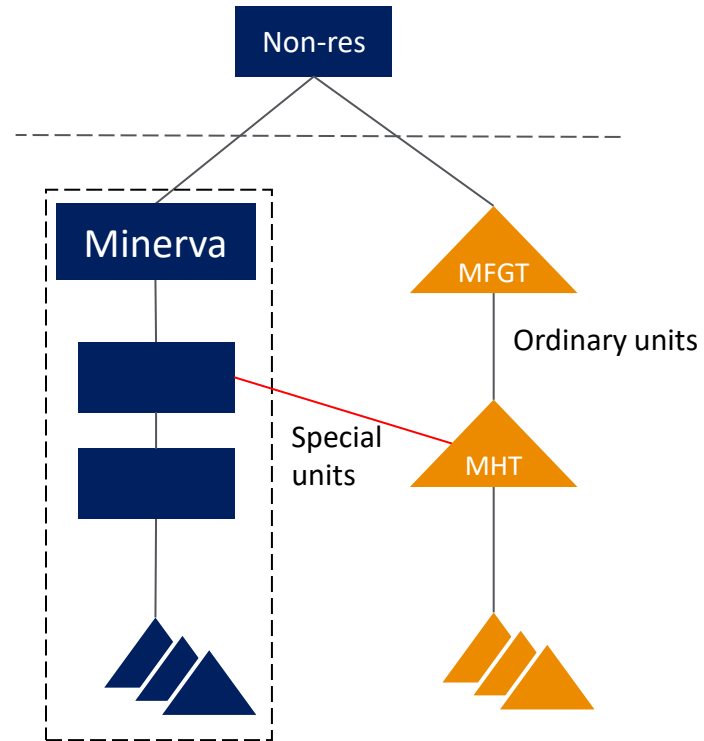
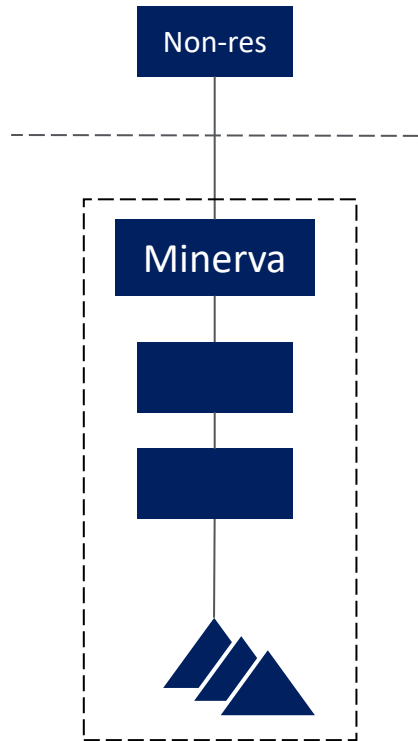
Mylan: funding a global acquisition

Anti-avoidance decision: taxpayer wins



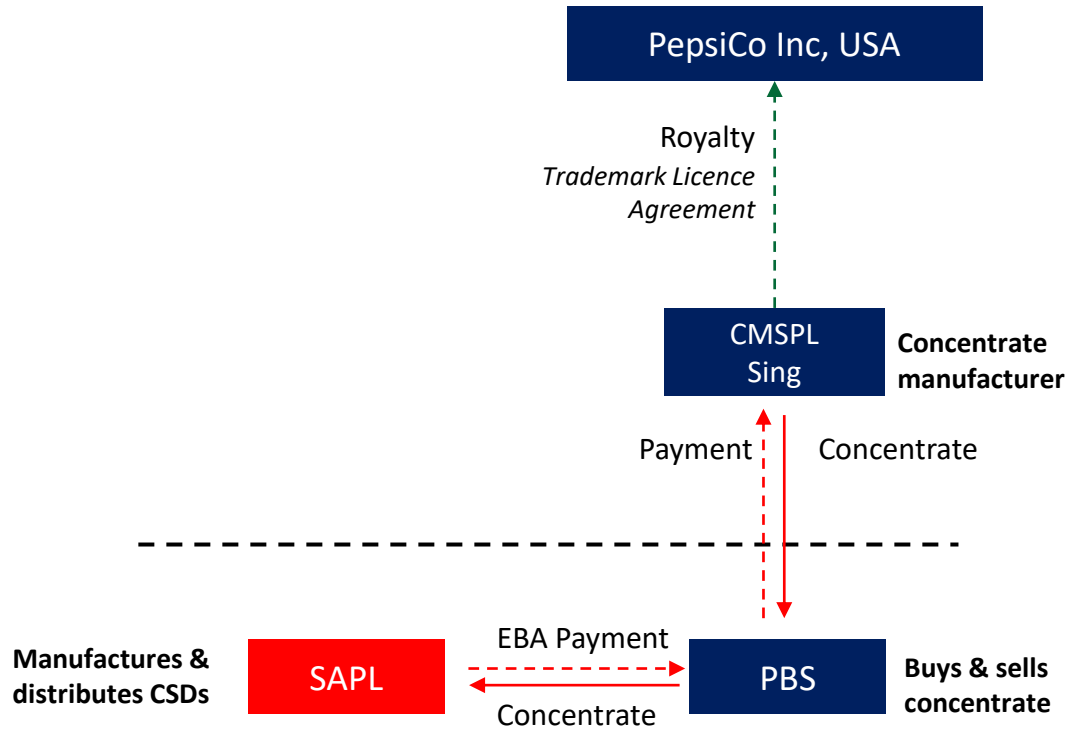
Minerva: non-exercise of a discretion

Anti-avoidance decision: taxpayer wins



PepsiCo: form vs substance

Commissioner wins at first instance, appeal heard



Dotted lines represent direction of payments

Accepted by all parties that there was a permitted use of a trademark by SAPL

The questions were

- Did SAPL provide **consideration for** the use of the trademark?
- Was the amount **income derived** by PepsiCo Inc?
- Was PepsiCo Inc **beneficially entitled** to the amount?
- Did SAPL **pay** the consideration to PepsiCo Inc?
- **What part** of the EBA Payment was a royalty?

If no, did the diverted profits tax apply to deem the above in any case? And do so at a higher tax rate.

Software and beyond

Draft ruling TR 2024/D1

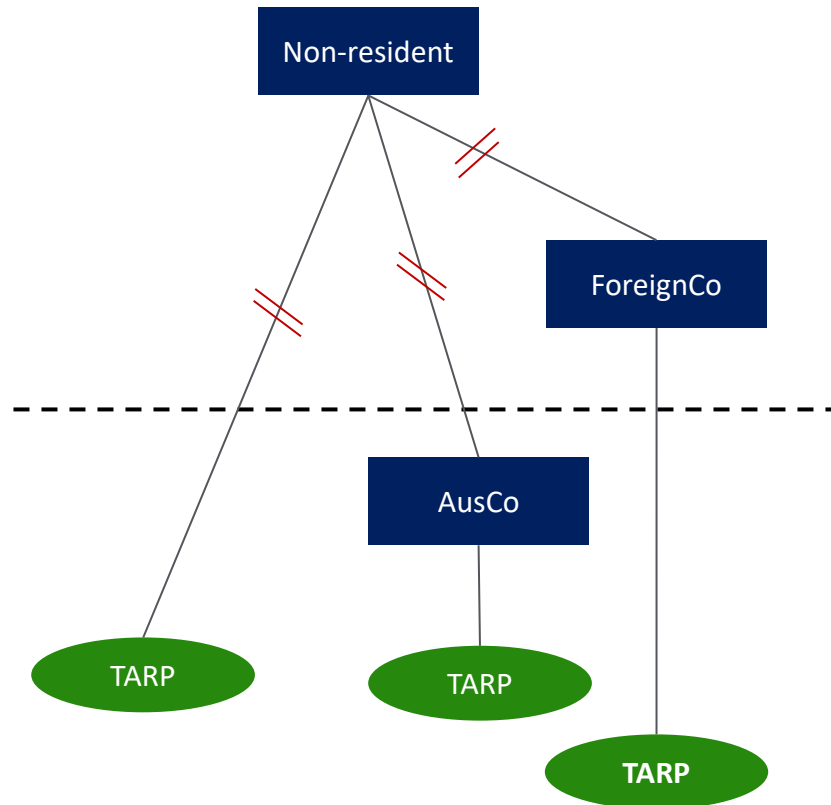
Is an amount paid under a **software arrangement** subject to royalty withholding tax?

Software arrangement: an agreement, arrangement or scheme under which a **distributor** makes payment or payments directly or indirectly to the owner or licensee (as the case may be) of the copyright (or other IP) for the right to be in a position to earn income relating to the use of, or right to use, software

Royalty: includes	Not a royalty: includes	
the grant of a right to use IP – for example, the grant of the right to reproduce a computer program – regardless of whether or not that right is exercised	consideration that is wholly for the grant of a right to distribute copies of a computer program, without the use of, or right to use, the copyright or another IP right	
the use of an IP right* – for example, the use of a copyright right consists of doing an act in respect of a copyright work that is the exclusive right of the copyright holder, such as authorising the communication of a computer program	payments from a distributor that are consideration wholly for the acquisition of physical carrying media on which software is stored ...	provided that the distributor does not use, and is not granted the right to use, any copyright or another IP right in the embedded software
the sale by a distributor of hardware with embedded software, where the distributor is granted or uses rights in the IP of the software	payments from a distributor that are consideration wholly for the acquisition of hardware with embedded software ...	

*IP right: Any copyright, patent, design, model, plan, secret formula or process, trademark, or other like property or right

The expanding net for CGT & non-residents



Strengthen and provide greater certainty to the foreign resident capital gains tax regime.

The amendments will apply to CGT events commencing **on or after 1 July 2025** to:

- Clarify and broaden the types of assets that foreign residents are subject to CGT on
 - Extend to “assets with a close economic connection to Australian land”
- Amend the point-in-time principal asset test to a 365-day testing period
- Require foreign residents disposing of shares and other membership interests exceeding \$20 million in value to notify the ATO, prior to the transaction being executed.

These reforms are stated to align Australia’s tax law for foreign resident capital gains more closely with OECD standards and international best practice.



Questions?



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