Ashurst

Global Tax Controversy Newsletter

Q1 2026

Outpacing change

contents

The first quarter of 2026 has seen significant activity across global tax controversy, with legislative reforms, regulatory consultations, and enforcement actions shaping the risk environment for multinationals. In this edition, we highlight key developments and themes across jurisdictions to help multinationals navigate the evolving landscape. We also look ahead to major reforms and pending litigation that will impact taxpayer strategy in the coming months.

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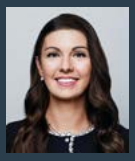

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1. Legislative Developments and Consultations

This quarter, two significant regulatory developments warrant close attention from multinational taxpayers. Australia's proposed foreign resident capital gains tax (CGT) reforms and the UK's consultation on extending the Uncertain Tax Treatment (UTT) regime both signal an increasingly assertive approach by tax authorities to broaden their reach and enhance transparency.

Proposed expansion of Australia's foreign resident CGT regime

In a critical development for foreign investors in Australian assets, the Australian Government has released exposure draft legislation in connection with the foreign resident CGT reforms originally announced in the 2024/25 Budget. The legislation, if enacted in the current form, would broaden the scope of assets that fall within Australia's foreign resident CGT regime. It would do so by broadening (with retrospective effect) the meaning of the term "real property" within the regime to capture assets which did not previously satisfy that term under the existing law. This includes, among other things, structures or thing(s) "fixed or installed" on land, and licences, leases and contractual rights over such thing(s). The proposed provisions disregard technical matters, such as the operation of State and Territory severance provisions or the common law status of an asset as a fixture or chattel. The exposure draft proposes to enact this expanded meaning of "real property" into law despite it being rejected in two separate Australian Federal Court proceedings late last year.

Most surprising to those monitoring this space is the proposed retrospective application of some of the provisions as far back as 20 years (to 12 December 2006) without grandfathering or transitional provisions. Such retrospective application will impact many taxpayers, including those currently in dispute with the ATO through the Court system and formal audits. The scope of the retrospective application is unprecedented, and has been described by a leading tax Counsel in Australia as "outrageous". From an enforcement perspective, it is not known whether the ATO will disturb historical disposals by foreign resident investors, which presents a significant tax liability risk.

The suite of proposed reforms are extensive, and further include as follows:

- The exposure draft introduces a 365-day principal asset test, which will test whether more than 50% of the underlying property was not taxable Australian real property (**TARP**) at any point during the 365 days prior to the disposal (rather than the current approach of testing at just before the CGT event happens).
- The broadened definitions of "real property" and TARP have not been adopted for the managed investment trust (**MIT**) rules, so we anticipate tension in the interpretation of the rules for MITs.
- The reforms may bypass certain aspects of Australia's double-tax agreements (**DTAs**) with other jurisdictions, to the extent the relevant treaty contains an alienation of real property article. If a DTA provides more favourable outcomes than Australia's domestic tax law, the new changes appear to prevent foreign resident investors from accessing that more favourable treatment.
- In certain conditions, the proposed reforms will require foreign resident vendors to notify the ATO of a proposed sale worth A$50m or more. This means purchasers will need to obtain evidence from the vendor's notification to the ATO as part of the due diligence process and is likely to extend parties' transaction timelines.

The Australian Taxation Office (**ATO**) updated its website (16 April 2026) on this issue to state:

- "The draft law confirms, with retrospective effect, the ATO's long-standing view and compliance approach that the term 'real property' is not limited to its narrow, technical legal meaning. This aligns with how the ATO has administered the law. If the law is enacted, the ATO would not expect to change its existing administrative approach.

- In practice, the ATO would continue its current compliance approach for disposals that:
    - are currently subject to review
    - have occurred in the past 4 years.
- Generally, they do not conduct reviews on disposals older than 4 years, even if the period of review is still theoretically open. However, if an older case came to their notice for other reasons, they may review it. For example, if a taxpayer applied for a ruling that involved the amended law, they would consider any retrospective effects.
- Similarly, the ATO will not seek to re-open settlements that the parties intended to be final, except in very rare exceptions.
- Therefore, the ATO does not expect the retrospective changes to the law, if they are enacted, to affect many taxpayers. The changes will mainly clarify the law for those taxpayers already subject to review or who would normally be subject to review."

However, considering many non-resident taxpayers may have disregarded capital gains under the original provisions and not filed an Australian income tax return, this will impact the application of statutory time limits.

A separate exposure draft was also released providing for a CGT concession for foreign residents investing in Australian renewable energy assets. The proposed amendments would introduce a 50% CGT discount for a limited class of foreign resident corporate entities and trustees (not individuals) disposing of Australian renewable energy assets or qualifying indirect interests in such assets. The discount is designed as a transitional measure to assist foreign investors in the renewables sector to price CGT into their investment models. The concession is only proposed to be offered until 1 July 2030.

The consultation period closed at the end of April, which is an unusually short consultation timeframe for reforms of this scale. Foreign investors in Australia (those with current investments and those considering investments) are encouraged to monitor this space over the next few weeks. The Ashurst tax team in Australia has made a submission on the proposed changes to the Australian Government.

UK UTT Regime: Proposed Extensions Under Consultation

The UK Government is currently consulting on proposed extensions to the UTT regime. First introduced in 2022, the UTT currently requires large businesses to inform HM Revenue and Customs (**HMRC**) of when they have taken a tax position that is "uncertain" and a tax advantage arises (i.e. there is a tax benefit in adopting an interpretation the taxpayer has taken of the relevant legislation versus HMRC's interpretation) exceeding £5 million. The UTT aims to bring tax risks arising from legal interpretation uncertainties to HMRC's attention, so they may be "discussed and resolved sooner".

The consultation proposes to extend the UTT regime by widening the scope of UTT to additional taxes (stamp duty land tax (**SDLT**), national insurance contributions (**NICs**), construction industry scheme (**CIS**) obligations, inheritance tax (**IHT**) and CGT), bringing wealthy individuals and trusts within scope (in addition to companies and partnerships already in scope), and introducing an additional notification trigger.

The additional trigger would require all taxpayers (whether companies, partnerships, individuals or trusts) to notify where (i) HMRC's position is not known and (ii) there is more than one credible legal interpretation. The consultation summary notes that requiring notification in these circumstances "will help close the tax gap and increase certainty for the taxpayer".

However, this is a significant extension, as currently notification is only required where the business has taken a position that is contrary to HMRC's known position (as published in guidance or in direct dealings with HMRC) or the business has made provision in its accounts to reflect the probability that a different tax treatment will be applied. The threshold for a "credible interpretation" could be unworkably low, particularly given that HMRC's position is regularly unknown (e.g. in circumstances where there is no HMRC guidance for new or amended legislation or where guidance is significantly outdated, and/or fails to adequately address a taxpayer's position).

The consultation closes on 4 June 2026 and the Government is expected to publish its response later in summer 2026. If introduced, any changes would be included in the next Finance Bill and apply to returns filed after 1 April the following tax year.

If introduced as proposed, these reforms are likely to have a significant impact on wealthy individuals / high value trusts and the breadth of the new trigger will require notification in a far broader range of scenarios, increasing the burden on large businesses. Further, we note that insurers may seek higher premiums in circumstances where the relevant transaction has been notified to HMRC, which is more likely to be the case as a result of the expanded regime.

2. Tax Authority Enforcement and Investigations

Tax authorities continue to intensify their enforcement efforts, with a particular focus on cross-border arrangements, transfer pricing, and the real estate sector. This quarter, we highlight notable developments from Italy, Spain, and Australia that illustrate the breadth and complexity of current enforcement activity.

Criminal Tax Fraud Investigation in Italian Real Estate Sector

In Italy, we have assisted an Italian real estate company owned by a Korean fund in connection with a criminal investigation regarding alleged tax fraud that could trigger corporate criminal liability under Italian law. The case concerns a land acquisition to create a logistics hub, where the Public Prosecutor alleges the purchase price of the land was overestimated, leading to inflated costs and reduced taxable income through allegedly fraudulent tax filings. The Public Prosecutor suspects that the difference was diverted through a related-party transaction involving fictitious services provision.

While no tax audit has yet been started against the real estate company, ongoing investigations involving counterparties may prompt action by the tax authorities before the statute of limitations expires. Depending on the tax authorities' approach (i.e. disallowance of costs/VAT deductions or confirmation of the existence of a fraudulent conduct) potential tax exposure against the real estate company, including interests and penalties, could range significantly (e.g. from approximately EUR 9 million to EUR 46 million).

2026 Audit Plan and continued enforcement in Spain

On 12 March 2026 the Spanish Tax Authorities published their Audit Plan for 2026 which contains the general guidelines of the tax audits to be carried out in the current year. New priorities for the Spanish tax authorities for 2026 include emerging sectors such as digital economy, cryptocurrency, neobanks, e-commerce and influencers as well as Pillar II (Global Minimum Tax), in order to ensure that the 15% global minimum tax under Pillar II is effectively levied on large corporate groups.

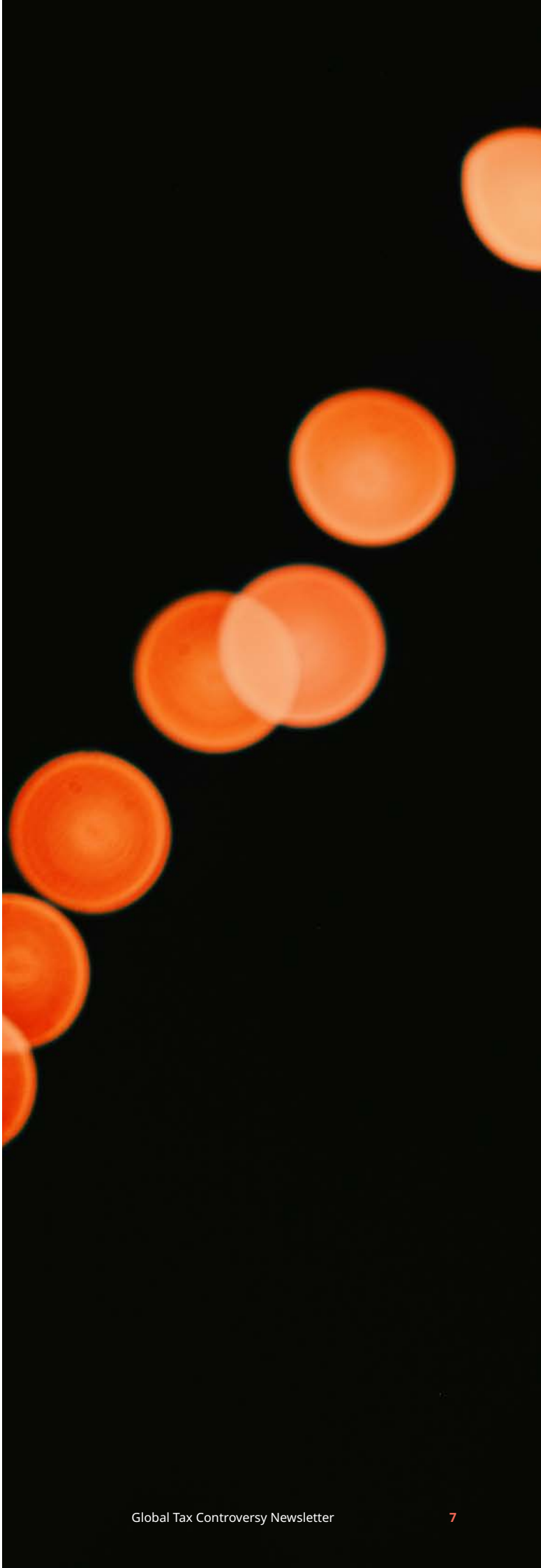
The main actions planned by the Spanish Tax Administration Agency in the field of international taxation include certain areas that we highlighted in our January 2026 Global tax controversy newsletter, such as transfer pricing; beneficial ownership of dividends, interest and royalties; instrumental companies and tax residency shopping; and VAT fraudulent structures. It should also be noted that the Spanish Tax authorities are paying particular attention to the real estate sector, where the authorities plan reinforced controls over REITs, related-party valuations, tax-driven structures aimed at reducing tax payments, and deductibility of financial expenses.

Australian regulator responds to High Court decision

The ATO has released its Decision Impact Statement (**DIS**) on the High Court of Australia's decision in *Commissioner of Taxation v PepsiCo Inc & Anor* [2025] HCA 30 (**PepsiCo**). The purpose of the DIS is to provide the ATO's view on the implications of the decision, including on related public advice or guidance.

In PepsiCo, the High Court accepted that PepsiCo's arrangements did not result in Royalty Withholding Tax (**RWT**) and, further, that Diverted Profits Tax (**DPT**) did not apply. The DIS emphasises that the ATO will continue to take a broad approach to assessing RWT and DPT, and that the PepsiCo decision is largely confined to its particular facts. Taxpayers with cross-border arrangements (including intra-group intellectual property (**IP**) licences) should expect continued scrutiny of those arrangements.

- On RWT, the DIS states that the ATO will rigorously "understand and, if necessary, test, the economic fundamentals of arrangements that involve the provision of IP but where no royalty is recognised". Taxpayers can expect this approach to extend beyond the value of IP rights to the values of other things (goods, services or rights) being exchanged as part of the arrangement.
- On DPT, the High Court determined that no tax benefit arose for PepsiCo, since there was no reasonable alternative postulate to the scheme in question. The ATO's view in the DIS is that the PepsiCo decision is confined to its unique facts, and that the decision has limited implications for the application of DPT and GAAR. It will therefore remain critical for taxpayers to properly evidence their position before entering into pricing arrangements. Taxpayers should proactively document their pricing arrangements, consider tax risk in contractual arrangements, and consider the implications of related and non-related party dealings.



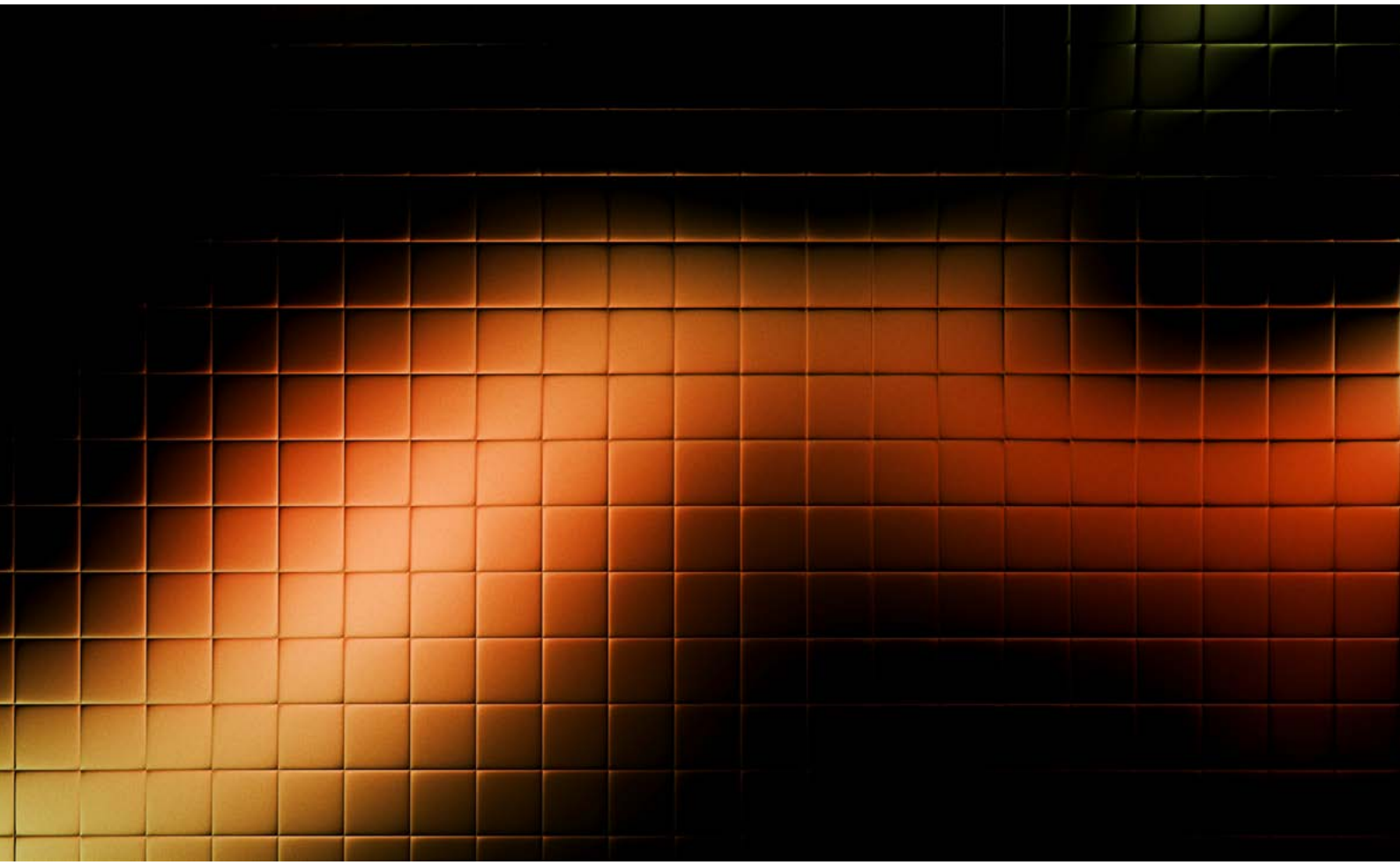
3. International Developments

Updated Manual on Effective Mutual Agreement Procedures

In February 2026, the OECD released an updated Manual on Effective Mutual Agreement Procedures (**MEMAP**) (the first update to the 2007 version). The MEMAP serves as a practical guide to navigating mutual agreement procedures (**MAPs**) by setting clear behavioural expectations for tax authorities and providing practical guidance aimed at resolving double taxation.

Notably, the MEMAP encourages pre-MAP consultations and the early triage of issues rather than forcing taxpayers into the full MAP processes where that can be avoided. At the same time, the MEMAP states that taxpayers should not be prevented from obtaining assistance via MAP, for example via overly strict interpretations of time limits to request MAP in a treaty, reinforcing taxpayers' right of access to resolve controversies.

This is a welcome development for multinationals navigating cross-border disputes, particularly in the context of the growing importance of MAP as an alternative or complementary mechanism to domestic litigation.



4. Looking Ahead

Two significant developments will shape the transfer pricing and anti-avoidance landscape in the coming months. In the UK, major transfer pricing reforms under the Finance Act 2026 are set to modernise the regime and introduce new compliance requirements. Meanwhile, in Australia, a series of High Court decisions are expected to provide important guidance on the scope of anti-avoidance provisions. Both developments warrant close attention from multinationals with operations in these jurisdictions.

Major UK transfer pricing reforms

The UK's new Finance Act 2026 is set to introduce major UK transfer pricing reforms (with many already applying to accounting periods beginning on or after 1 January 2026). These reforms introduce significant changes to the current regime with the stated aim of modernising the UK's regime and improving alignment with OECD norms and are introduced alongside changes to permanent establishment and the replacement of DPT. Key features include:

- The introduction of a domestic exemption for UK-UK related-party transactions that meet specified conditions, meaning broadly that in-scope parties will not be required to calculate profits and losses on an arm's length basis. The intention behind this exemption is to reduce the disproportionate domestic compliance burden in circumstances where there is no risk of tax loss.
- Broadening the circumstances in which parties are treated as connected, including a reformed participant condition and a wider definition of "acting together". These rules will apply where two persons are subject to an agreement for common management and it is reasonable to suppose that this results in a prescribed alignment of economic interests. Concerns have been raised as to their breadth, and the possibility of unintended consequences, and the extent to which these concerns may be addressed by revised HMRC's guidance is unclear at this stage.
- Aligning the UK domestic definition of a permanent establishment with the OECD definition in Article 5 of the 2017 Model Tax Convention.
- Reforming the valuation of Intangible Fixed Assets (**IFAs**) in cross-border transfers between related parties so that they are valued on an arm's length basis, instead of at market value. This reform is designed to simplify the legislation and ensure consistency, though it will likely result in greater pre-transfer analysis, if for example the arm's length price is likely to differ from market value. This will heighten scrutiny on valuation methodology for cross border related party IFA transfers.
- The replacement of DPT with the new corporation tax charge on Unassessed Transfer Pricing Profits (**UTPP**). The UTPP retains the essential features of DPT but has been designed to clarify the relationship between the taxation of diverted profits and transfer pricing, as well as providing clearer access to treaty benefits (such as the Mutual Agreement Procedure). The UTPP rate is set at the underlying corporation tax rate plus an additional 6%.
- While the supposed simplification of this punitive tax regime towards a more conventional approach has been welcomed, there remain uncertainties, such as just how the broadly framed tax design condition (which will be met if it is reasonable to assume that there is a design to reduce, eliminate or delay the liability of any person to pay any tax) will be interpreted and applied in practice. Taxpayers will have a 15 month time period to amend CT returns following a UTPP assessment to avoid the additional 6% rate.

- Granting HMRC the power to establish the International Controlled Transactions Schedule (**ICTS**), which would put in place new mandatory reporting requirements (applicable to UK-resident businesses or UK permanent establishments with aggregate cross-border transactions above a specified threshold) relating to international controlled transactions. Information captured by the ICTS is likely to include counterparties to the transaction and their country of incorporation, type of transaction, transfer pricing policy and pricing applied, and the quantum of the transaction overall. The ICTS is expected to be implemented for accounting periods commencing on or after 1 January 2027.

The Ashurst UK Tax Controversy team acts for several clients facing protracted transfer pricing investigations involving significant amounts of CT over extended periods, highlighting the complexity of the existing regime and the need to modernise to better align with OECD norms.

Australian High Court pipeline

The continued pipeline of High Court appeals in Australia will be closely watched in the coming months. These cases, and others working their way through the Courts, should be monitored for their impact on the current state of the tax law in Australia and their broader impact on dispute resolution strategies.

- The High Court's refusal to grant special leave to the Commissioner to appeal the Full Federal Court's decision in *Commissioner of Taxation v Hicks* [2026] HCADisp 96 B1/2026 provided further taxpayer-friendly guidance on the limits of the Commissioner's anti-avoidance powers under section 45B and Part IVA anti-avoidance rules.
- At the same time, the anticipated decision in the jointly held cases of *Commissioner of Taxation v Merchant* (S157/2025); *Merchant v Commissioner of Taxation* (S158/2025) is expected to be handed down in the next few months (following the High Court hearing in March). The decision will further add to the Australian GAAR jurisprudence, in addition to dealing with the dividend stripping provisions.
- We also expect to see the adjourned *Commissioner of Taxation v Bendel* (Case No. M47/2025) hearing resume following the initial hearings in October and December last year concerning whether unpaid present entitlements owing to corporate beneficiaries constitute a loan under Division 7A.

5. Wrap Up

Q1 2026 underscores the increasingly complex and interconnected nature of global tax controversy. From proposed retrospective legislation in Australia and expanded disclosure regimes in the UK, to enforcement across Europe and the continued evolution of international dispute resolution mechanisms, tax leaders must remain vigilant. As we move through 2026, taxpayers should ensure that compliance frameworks are robust, documentation is contemporaneous and comprehensive, and dispute resolution strategies account for both domestic and treaty-based pathways.

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