

— Exclusive

How Uber, Facebook used PwC schemes to beat tax crackdown

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KEY POINTS

- ◆ Why it matters: This is the first time any of the schemes used to avoid the MAAL have been revealed.
- ◆ Context: The Tax Office audited 44 companies that restructured to avoid the MAAL. Audits of Microsoft, Apple, Facebook and Google raised \$1.25 billion.
- ◆ What next: The involvement of US companies could lead to referrals to US regulators.

US tech giants Uber and Facebook set up new company structures to sidestep Australia's multinational tax avoidance law using PwC advice, days before the legislation came into effect in January 2016.

Uber transferred its Australian business to three general partnerships registered in the Netherlands, in a structure devised by its then tax adviser PwC to bypass the new law.



The structures are revealed in filings with the Australian Securities and Investments Commission, which also show the companies dumped the schemes, as part of negotiated confidential settlements with the Tax Office. **Evelyn Barota**

The speed with which Uber, Facebook and other clients were able to restructure to sidestep the new tax avoidance law in time for the January 1 start shocked the Tax Office.

It also reflected the head start that PwC gained before the legislation was unveiled in September 2015, thanks to confidential information obtained by its head of international tax, Peter Collins.

The Uber structure closely resembled a PwC scheme which the Tax Office discovered in a September 2016 meeting with the firm and an unnamed client. This discovery triggered alarm at the Tax Office, which issued sweeping discovery orders against all big four firms to name clients that had restructured to avoid the Multinational Anti-Avoidance Law.

The Tax Office notices to produce eventually revealed that PwC had used confidential Treasury information obtained by former partner Mr Collins to design workarounds of the law to market to new clients.

"Uber received advice from PwC Australia on how to comply with its obligations under the Multinational Anti-Avoidance Law after the draft legislation was released," an Uber spokesman told *The Australian Financial Review*.

“We had no knowledge the advice from PwC may have been based on information that was improperly obtained.”

Uber did not address whether it was the PwC client at the September 2016 meeting with the Tax Office, but the spokesman said: “We ended our relationship with PwC Australia as our tax adviser in 2016.”

A second PwC client, Facebook, owned by Meta, also distanced itself from the big four firm’s advice about the tax avoidance law.

“Facebook had no knowledge that any of the advice provided by PwC in regard to the MAAL was based on improperly obtained information,” a Facebook spokeswoman said.

PwC has previously said its clients “were not involved in any wrongdoing and no confidential information was used to enable clients to pay less tax”.

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In an internal PwC email dated January 6, 2016, which was tabled by the Senate in May, an unnamed PwC partner described how the firm had booked \$2.5 million in initial fees, after signing up 14 US tech companies to advise on the new laws. PwC has refused calls by senators to release the names of the 14 clients.

Key events	
Dec 13	PwC partner Peter Collins joins tax experts advising Treasury on the government’s new anti-avoidance tax laws.
May 12, 2015	The Multinational Anti-Avoidance Law, or MAAL, and colloquially known as the “Google tax”, is announced in the federal budget.
	PwC emails 23 US tech companies warning of the MAAL threat and a “suggested work plan” to get around it. Apple, Google and Microsoft are among those firms.
Sep 16, 2015	The MAAL legislation is released.
Dec 1, 2015	Uber restructures its Australian operation.
Jan 1, 2016	The MAAL law starts.
Jan 6, 2016	Internal PwC email: “The team have been very busy over the last couple of months and we are assisting 14 clients with their efforts to comply with the MAAL...We were aggressive in telling these relationships they needed to act early (heavily helped by the accuracy of the intelligence that Peter Collins was able to supply us).”
By April 2016	The Tax Office is “alarmed” after discovering schemes designed to subvert the MAAL.
Sep 16	ATO learns of an ‘aggressive’ foreign partnership scheme to avoid the MAAL in a meeting with PwC and an unnamed client.
By Dec 2016	ATO has probed 44 companies that restructured in response to the MAAL law. A third of those companies were PwC clients. But all of the big four firms were involved.
During 2017	ATO issued notices to acquire information from all the big four accounting firms – Deloitte, EY, KPMG and PwC – about their involvement in marketing of 11 types of schemes designed to get around the MAAL.
May-Oct 2017	ATO audits of Microsoft, Apple, Facebook and in 2019 Google raised \$1.25 billion.

Source: Financial Review

The MAAL, also colloquially known as the “Google tax”, was designed to target multinationals selling services or products into Australia from offshore offices in low-tax countries. It was announced in the federal budget on May 12, 2015, and the

legislation was released four months later in September ahead of the January 1, 2016, start date.

The Tax Office became alarmed in 2016 over the speed that schemes to avoid the MAAL appeared and issued a series of taxpayer alerts starting in April that year.

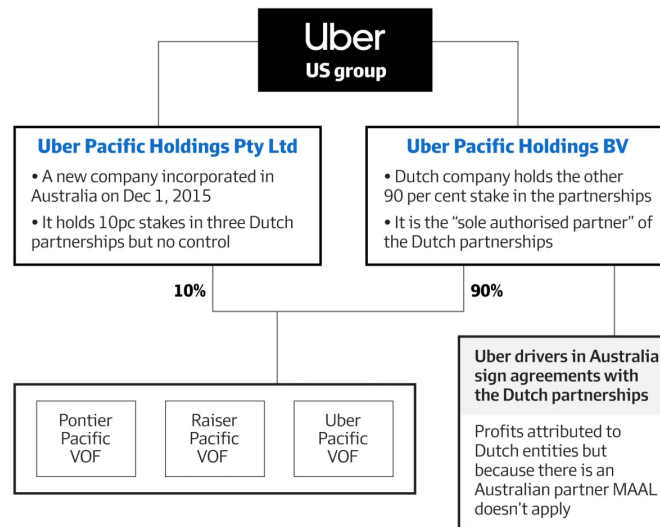
In early September, Tax Office deputy commissioner Mark Konza stormed [\[https://www.afr.com/link/follow-20180101-h16f25\]](https://www.afr.com/link/follow-20180101-h16f25) out of PwC's Sydney office after partners explained a new structure under which an unnamed international client would bypass the MAAL entirely.

A taxpayer alert was issued on September 15 in connection with this new scheme, which involved a foreign multinational directing its Australian business through an offshore partnership, in which an Australian entity was a minor partner.

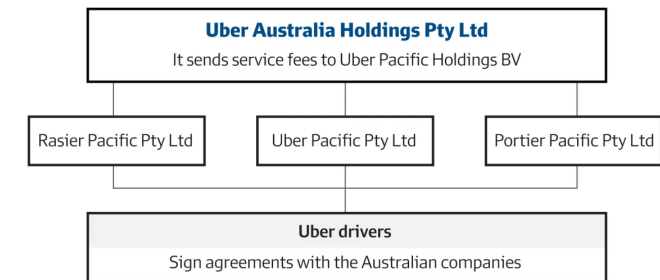
The Australian partner had no control over the operation and received little or no profits, but its involvement as a minority partner allowed the multinational to claim this was an Australian operation and thus exempt from the MAAL.

In an October 2015 submission to the Senate tax avoidance inquiry Uber Australia said it had created new jobs and donated \$50,000 to charity but offered no details on tax payments.

Uber restructured in response to the MAAL



And unwound it after the ATO audit



SOURCE: FINANCIAL REVIEW

On December 1, 2015, the US group incorporated Uber Pacific Holdings Pty Ltd, which then acquired a 10 per cent stake in three general partnerships registered in the Netherlands: Portier Pacific VOF, Rasier Pacific VOF and Uber Pacific VOF.

In a new technology services agreement [\[https://uber-regulatory-documents.s3.amazonaws.com/reddog/country/Australia/logistics/UberEATS%20Services%20Agreement%201%20Dec%202017.pdf\]](https://uber-regulatory-documents.s3.amazonaws.com/reddog/country/Australia/logistics/UberEATS%20Services%20Agreement%201%20Dec%202017.pdf) issued in July 2016, drivers had to acknowledge that a Dutch company, Uber Pacific Holdings BV, was "a technology services provider that does not provide delivery

services”, and that it was the “solely authorised partner” of the VOF Netherlands partnerships.

While these Dutch partnerships conducted Uber’s Australian business, Uber could say it had an Australian presence and thus was not caught by MAAL, even though Uber Pacific Holdings Pty Ltd had no control and minimal earnings.

Facebook, meanwhile, on December 9, 2015, set up a new local company, FCL Tech Australia, owned by FCL Tech Ltd in Ireland. However a Facebook spokeswoman said FCL Tech Australia was a separate venture not connected with Facebook sales

Facebook’s initial approach appears consistent with another anti-MAAL scheme described by the ATO in which multinationals reversed previous arrangements and set up an Australian company as the distributor of services or products, while the foreign entity that actually distributed the services (from a low tax jurisdiction) was deemed an agent of the Australian company, again avoiding MAAL. However Facebook says it engaged early with the ATO over its MAAL arrangements.

“Facebook did not seek advice from PwC on how to comply with the MAAL until after Treasury issued the draft legislation, which is why we were surprised to learn of PwC’s alleged conduct,” the spokeswoman said.

However, Facebook quickly reversed course and became one of the first multinationals to become compliant with the MAAL. Facebook Australia became a reseller of advertising inventory for ads booked by the Australian sales team.

On October 13, 2017, Facebook made a \$31.3 million settlement with the ATO to cover disputes covering 2009 to December 2016, the first full year of MAAL.

Two days later, in what appears to be another settlement, Uber incorporated Uber Australia Holdings Pty Ltd (UBAH). The Netherlands partnerships subsequently transferred their business to the new local subsidiaries, Rasier Pacific, Uber Pacific and Portier Pacific.

Uber Australia went from reporting revenue of \$18.2 million in 2015 before the MAAL, to \$36.4 million with the offshore partnerships in 2016, then after the reset with the ATO the newly incorporated UBAH reported revenue of \$595 million in calendar 2017. Tax payments rose more modestly, from \$501,000 in 2015, to \$953,000 in 2016 to \$4 million in 2017.

It’s not exactly a tax bonanza. Last year UBAH reported \$2.55 billion revenue from “contracts with customers” (by which it means Uber drivers), but after paying \$1.14 billion service fees and \$1.3 billion in administrative expenses its tax bill was just \$14 million.

The key stories in the PwC tax leaks

- ◆ **‘For your eyes only’: How PwC leaks helped global clients dodge tax**
[\[https://www.afr.com/companies/financial-services/for-your-eyes-only-how-pwc-leaks-helped-global-clients-dodge-tax-20230501-p5d4rf\]](https://www.afr.com/companies/financial-services/for-your-eyes-only-how-pwc-leaks-helped-global-clients-dodge-tax-20230501-p5d4rf) Previously secret emails show PwC charged \$2.5 million in fees to advise 14 clients how to sidestep new tax avoidance laws in 2016, relying on confidential information.

- ◆ **PwC partner leaked government tax plans to clients** [<https://www.afr.com/companies/financial-services/pwc-partner-leaked-government-tax-plans-to-clients-20230120-p5ceaz>] The former head of international tax for PwC Australia, Peter Collins, has been deregistered by the Tax Practitioners Board for dishonesty and for sharing confidential government briefings with PwC partners and clients.
- ◆ **Two US tech giants called ATO over PwC leaks probe** [<https://www.afr.com/companies/professional-services/two-us-tech-giants-called-ato-over-pwc-leaks-probe-20230605-p5de68>] Two big US firms attempted to curtail the PwC leaks investigation in 2021 by putting pressure on the Tax Office to call off the industry regulator.
- ◆ **PwC chief steps down over tax leaks scandal** [<https://www.afr.com/companies/professional-services/pwc-chief-steps-down-over-tax-leaks-scandal-20230508-p5d6rf>] PwC boss Tom Seymour has stepped down three days after confirming he was linked to a tax leaks scandal that had threatened the firm's ability to win work from its largest client, the federal government.
- ◆ **PwC targeted Apple, Google, Microsoft with leaked tax plan** [<https://www.afr.com/companies/professional-services/pwc-targeted-apple-google-microsoft-with-leaked-tax-plan-20230513-p5d85y>] Apple, Google and Microsoft believed to be among 23 US tech firms that PwC Australia approached with a tax avoidance workaround hours after treasurer Joe Hockey announced a new law in 2015.
- ◆ **Panic at PwC: How a tax scandal played out behind closed doors** [<https://www.afr.com/companies/professional-services/panic-at-pwc-how-tax-scandal-played-out-behind-closed-doors-20230511-p5d7n9>] In the space of 10 days, an almost daily drumbeat of bad news has reduced the firm and its reputation to a level its partners could have barely imagined at the start of the month.
- ◆ **The inside story of PwC's tax scandal** [<https://www.afr.com/companies/professional-services/the-inside-story-of-pwc-s-tax-scandal-20230504-p5d5k5>] The consultancy is facing one of the biggest crises in its history following revelations that dozens of PwC operatives used confidential updates on government tax plans to drum up new clients. This is how it happened.

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