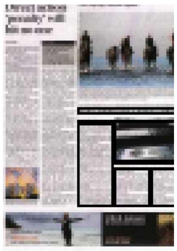

20 Oct 2015
Australian Financial Review, Australia

Author: Jonathan Barrett • Section: General News • Article type : News Item
Classification : National • Audience : 57,243 • Page: 13 • Printed Size: 211.00cm²
Market: National • Country: Australia • Words: 378 • Item ID: 483389539

isentia.mediaportal

Report outlines risk of phoenix schemes

Jonathan Barrett

The federal government might be cracking down on multinational tax avoidance schemes, but according to a new report, it should also look closer to home.

A University of Melbourne report said phoenix activity was causing "considerable difficulties for creditors, regulators and competitors".

"This justifies the commitment of government time and resources to attempt to minimise its impacts," the Melbourne Law School-led Phoenix Research Team report said.

"There is no specific offence of illegal phoenix activity. For this reason, there is not, nor can there be, any accurate quantification of the incidence, cost or enforcement of illegal phoenix activity in Australia."

Phoenix activity involves transferring assets from one indebted company to a new entity to avoid paying tax, creditor debts and employee entitlements. The new company is often run by the same directors, and continues to operate in the same industry as the old entity.

The strategy is a modern version of the "bottom of the harbour" schemes of the 1970s that involved transferring assets from one company to another, before letting the first company sink.

The Australian Taxation Office has estimated that illegal phoenix behaviour costs the country up to $3.2 billion each year in reduced tax revenue and money unpaid to trade creditors and former employees.

The ATO says phoenix activity costs the country $3.2b annually. PHOTO: LOUIE DOUVIS

While the new report does not argue that a specific legal offence be introduced to prosecute directors, it does say that the lack of such an offence has made it difficult to quantify the problem. Most directors involved in such behaviour are prosecuted under generic laws for breaching their director duties.

According to the report, the industry with the most companies entering external administration – but not necessarily involved in phoenix activities – is business/personal services, followed by construction companies and food services.

The release of the Phoenix Research Team report comes as authorities seek to dismantle profit-shifting strategies that allow some major companies to book profits from local operations offshore.

The Combating Multinational Tax Avoidance Bill includes a requirement for companies to provide a breakdown of their tax affairs in each country to local authorities.

The Tax Office said it would target about 80 multinational companies when the new anti-avoidance laws come in on January 1.