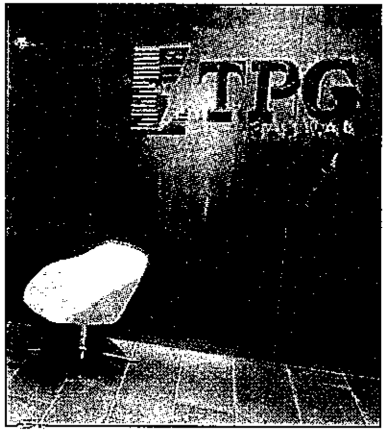
CONCERN THAT ATO ACTION MAY SCARE FOREIGN INVESTORS

# All quiet over float funds



**TPG:** no word yet from tax office.

**Ben Butler**

PRIVATE equity outfit TPG has yet to hear from the Australian Taxation Office, nearly a week after the ATO launched a $678 million claim against two offshore companies over the float of Myer.

The ATO took legal action last Wednesday in a bid to freeze accounts belonging to TPG companies based in the Netherlands, Luxembourg and the Cayman Islands, but abandoned its effort the next day after it became apparent the $1.5 billion TPG raised from the sale of Myer had already left the country.

While the private equity sector fears last week's action might scare foreign investors away from Australia, a prominent tax expert said the ATO had broad and long-standing powers to crack down on alleged tax avoidance.

In Supreme Court proceedings on Wednesday night, counsel for the ATO Terry Murphy, SC, said tax assessments had been sent by registered post to NB Queen SARL, in Luxembourg, and NB Swanston BV in the Cayman Islands.

But yesterday a spokeswoman for TPG's Australian arm, TPG Capital, confirmed that the ATO had yet to make contact with the company.

She said the company's statement last Thursday that it had "not been contacted by the Australian Tax Office regarding the matter raised by the ATO" was "still valid".

Melbourne University associate professor Miranda Stewart, who formerly worked on business tax policy at the ATO, said the ATO had broad "general anti-avoidance rules" covering alleged tax avoidance.

"They're not out of line administratively if they try to freeze money and they think there is a real risk it may leave the jurisdiction," she said.

The anti-avoidance powers, contained in Part IVA of the Tax Act, were invoked in court last week as the reason for the ATO's action against the two offshore TPG companies.

Prof Stewart said the powers allowed the ATO to take action against schemes that otherwise appeared to comply with tax law.

"They may then have thought that all the boxes had been ticked, but they can see a scheme so they've invoked the anti-avoidance provision," she said. "There must be a dominant purpose of obtaining a tax benefit."

Australian Private Equity and Venture Capital Association chairman Andrew Rothery said that while he couldn't comment on particular cases, members of the association were worried the ATO action might scare away foreign investors.

"We might be underestimating the nervousness of foreign investors when it comes to running the gauntlet of any country's revenue authorities," Mr Rothery said.

He said Australia's economy depended on overseas money.

"The issue is a more pointed one for an economy like Australia's because it has been a net capital importer for a long while and is likely to be a net capital importer for a long while."