Australia's Thin Cap Provisions

One size does not fit all

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State of Play - Thin Cap/Financing

What are we seeing from the ATO?

- ATO Taxpayer Alert TA 2016/1
  - Recognition of assets outside of AASB 138
  - Examples: market-related items, not separately identifiable from goodwill, flow of future economic benefits to other person
  - Challenging unsupportable management assumptions

- ATO consideration of tenements and licenses
  - Can tenements and licenses qualify as intangible assets?
  - Can they be revalued for thin cap purposes?
  - A draft ruling is expected to be released by year-end
  - We expect the ATO to put forward various safeguards

State of Play - Thin Cap/Financing

What are we seeing from the ATO?

- Review of arm's length debt test (ALDT) positions
  - Scrutiny of assumptions
  - Assessing choices
- Part IVA – counterfactual of equity
  - Safe harbor satisfied
  - ALDT potentially satisfied
  - Worldwide gearing is nil - debt internally pushed down to Australia
- Part IVA – use of swap arrangements
  - Interest withholding tax and thin capitalization benefits
- Diverted Profits Tax
- Debt portfolio reviews – PCG 2017-D4

State of Play - Thin Cap/Financing

What are the options for taxpayers?

- Intangible asset revaluations
- Test assumptions – classification of debt liabilities
- Worldwide gearing
- ALDT
  - ALDT is an important integrity measure – but must rigorously test
  - Unclear of status of ATO guidance as recommended by BoT
  - Work needs to be done pre-lodgment for each year

State of Play - Thin Cap/Financing

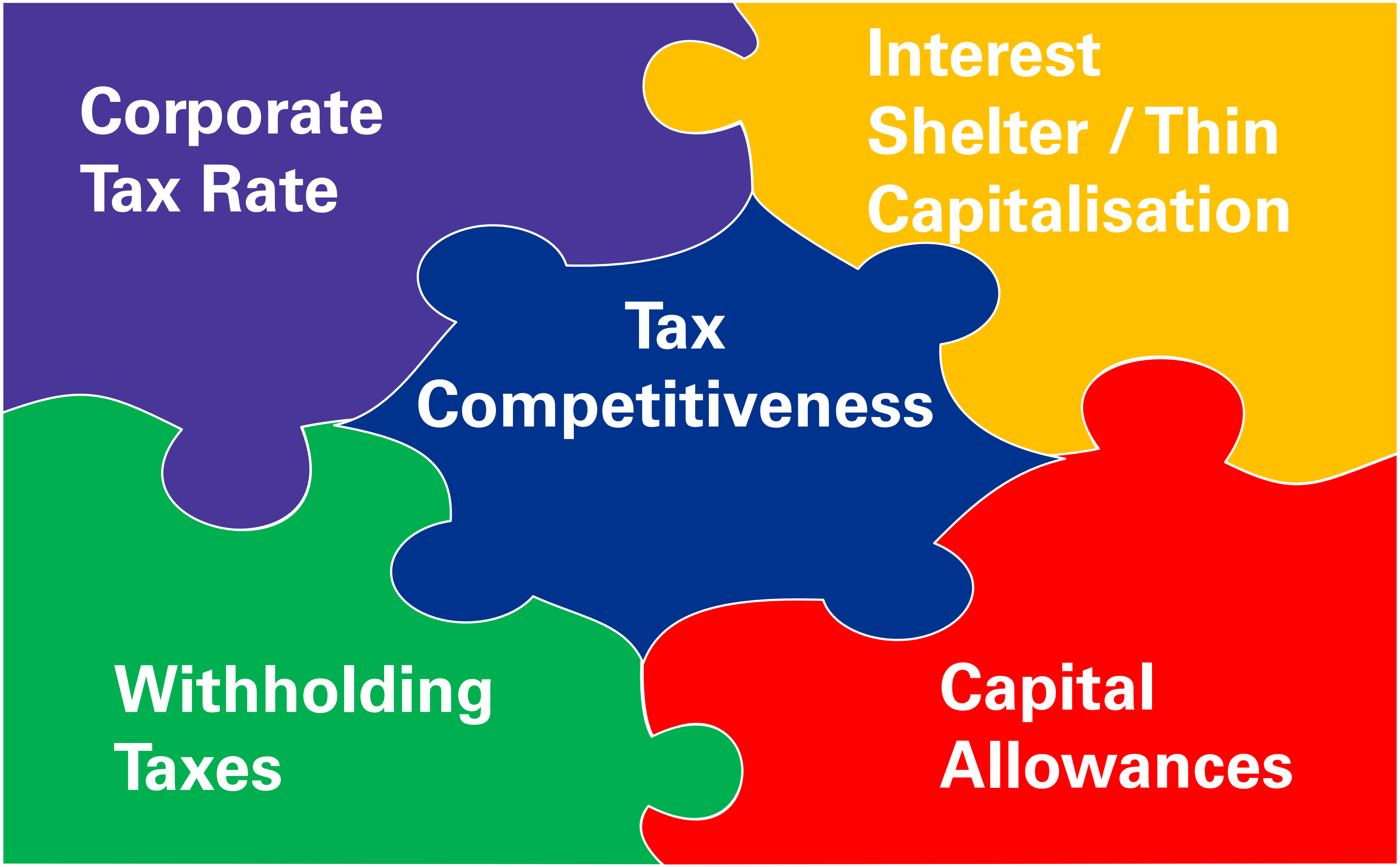
‘What else could happen?

- BEPS Action 4
  - Proposed fixed ratio of net interest / EBITDA – 10% to 30%
  - Many countries adopting
  - Australia has rejected

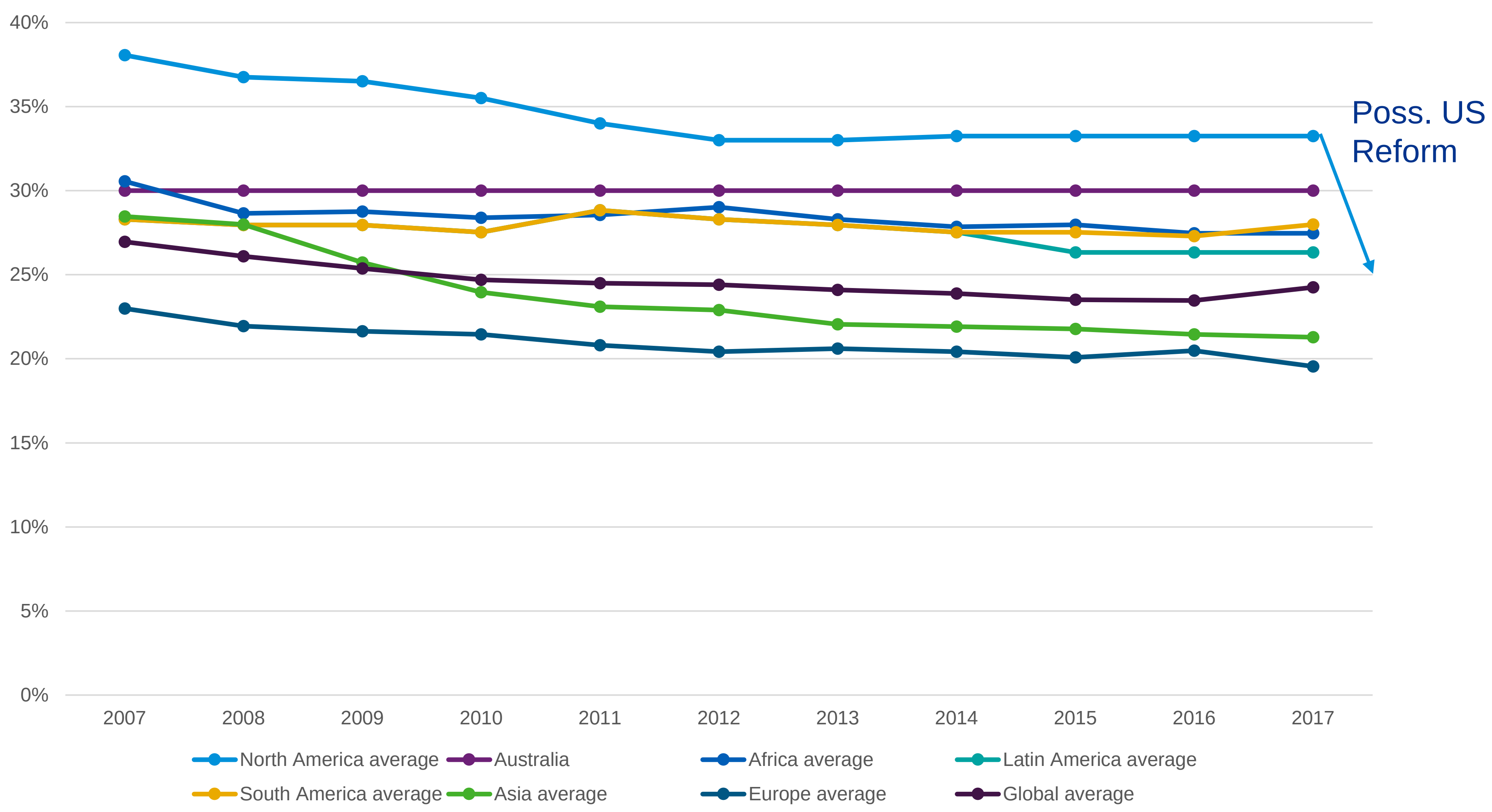
- Further tightening of safe harbour
  - 2016 Budget: rumours of further reduction, did not eventuate
  - Could this resurface?

- Debt pricing - PCG 2017-D4
  - Review of foreign related-party debt portfolio

Competitiveness



Average Corporate Tax Rates



Global Landscape

Resource-rich

Country	Statutory Tax Rate	Interest deductibility (safe harbor – non FS)	Application
Australia	30%	60% to assets (as adjusted). Excess denied but ALDT / WWG	All parties
Brazil	25%	66.7% to assets	Related parties only
Canada	25%	1.5:1 to equity (c.f. 60%)	Related parties only
France	33.3%	60% / 25% of EBITDA	Related parties only
Italy	27.5%	30% of EBITDA (excess c/f)	All parties
Spain	25%	30% of EBITDA (excess c/f)	All parties
United Kingdom	17%	30% of EBITDA (excess c/f). Worldwide Gearing	Related parties only
USA – current	35% (+ <=5%)	60%	Related parties only
USA – proposed	20% (+ <=5%)	30% of EBITDA	TBC
Norway	24%	25% of EBITDA	Related parties only

Key Points

- Global investment landscape is competitive
- Australia is not generous on many counts
- Further focus / tightening could have adverse impacts
- Need to maintain balance

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