2015 Federal Budget Summary

13 May 2015
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Joe Hockey last night delivered the Federal Government's second budget. Two main themes stood out:

- Stimulating the economy, especially in relation to small businesses; and
- The tightening of international tax related measures, which are aimed at curbing the erosion of the Australian tax base, as well as stopping profits being shifted overseas.

There appears to be general consensus among economic commentators that the budget is aimed at generating growth in the economy, an essential ingredient required to bring the budget back to surplus over the medium term.

In this article, we outline the more pertinent measures announced in last night's budget.

Small businesses

Small business (generally being those with a turnover of less than $2m per annum) will benefit in a number of ways, including:

- An immediate tax deduction for depreciable assets up to $20,000 where acquired between 12 May 2015 and 30 June 2017. Although further details of the measure are yet to emerge, it would appear that not only are assets such as cars, computers, office furniture and the like included, but the measure could also extend to items of intellectual property such as patents, registered designs, copyrights and licences of those items. This may be of significant benefit to small business.
- A reduction in tax rate to 28.5%.Importantly, however, a fully franked dividend will still be able to be franked at 30%. This means that when dividends are received by shareholders, no additional "top up" tax will be payable by the recipient, compared with the current tax rules. Perhaps, therefore, the difference between the 28.5% company tax rate and a top marginal tax rate for individuals of 49% means that there is more of an incentive to not distribute dividends, and instead to re-invest monies into the company's business.
- An immediate deduction for start up businesses that incur certain professional related expenses. Expenses such as those for legal and accounting will qualify. The measures will apply from 1 July 2015. Currently, such start up costs may be required to be deducted for tax over a 5 year period.
- A CGT rollover for businesses that change their legal structures. The breadth of the rollover remains to be seen as no real detail was provided in the budget papers. However it appears to be the case that changes in structure from, for example, a company back to a trust, might attract the CGT rollover relief. The changes will only apply from 1 July 2016.

Large multinational corporations (those with a turnover in excess of $1bn)

A range of tax related measures have been introduced to ensure that Australia receives its "fair share" of taxes from economic activity related to Australia:

- The current general anti avoidance tax provision (Part IVA) will be amended by broadening its application to include instances where large multinational corporations structure their activities, and have the principal purpose of, avoiding tax in Australia. While a number of conditions need

to be satisfied before the anti avoidance rule will apply, it will still need to be shown that the principal purpose of the structure is to avoid Australian tax. Based on the Part IVA court decisions over the years, this is easier said than done. In other words, the ATO will still have a major hurdle to overcome before being able to collect the tax.
- The transfer pricing documentation[1] that will need to be submitted to the ATO each year by multinational corporations will disclose more telling information and, as a result, will be more transparent. Now, more than ever, the documentation produced by taxpayers will be of pivotal importance.
- The GST regime will be amended to include within its net, the download or sale of digital content by non-Australian resident suppliers of such content. GST will be required to be added to the price of the content downloaded and will therefore provide a level playing field for Australian based content providers, who have always had to pay the GST.

It remains to be seen how non-Australian resident suppliers will be brought into the Australian GST net. Presumably they will need to go through the registration process with the ATO in order to register for GST. Alternatively, a “reverse charge” mechanism could be employed, as is currently provided for in the GST law. This allows the Australian recipient of the supply (for example a reseller of digital content that is already registered for Australian GST) to pay the GST on behalf of the non-resident supplier. Note that such a mechanism would not be feasible in relation to an end user/consumer.

Employee share schemes

By way of further amendment to the current amendments before Parliament, the Government has announced that the general 50% CGT discount will apply to a sale of shares in a “start up” company where those shares are issued after exercise of an option to acquire them. This will be so even where the shares are not held for 12 months or more – which is the current requirement for the 50% CGT discount to apply. The application of the current rule has always, arguably, been unfair in instances where the option and the share have been held for a combined period in excess of 12 months, yet the requirement was not technically satisfied. The current rules require the share (not counting any period the option has been held) to have been held for 12 months. This budget measure relaxes that rule.

Foreign residents coming to Australia on holiday visas

These individuals will be treated as non-tax residents for Australia for the duration of their stay. Therefore the non-resident tax rates will apply to them, which cut in at lower dollar values, starting at the first dollar earned. It is interesting to note that a matter went to court recently to test the law on this point. The court found that based on the particular facts of the case the individual was in fact a non-resident of Australia. Therefore, in the circumstances, more tax was payable than if the individual were classified as a resident of Australia for tax purposes. The budget announcement enshrines that court decision into legislation.

Research and development

The Government will cap the tax concession able to be claimed to $100m worth of eligible research and development expenditure.

Paid parental leave

From 1 July 2016, employees will have their entitlements to Government funded parental leave pay reduced by any employer funded paid parental leave. Currently, primary carers are entitled to 18 weeks' of Government funded pay at minimum wage (approximately $11,500), as well as any additional parental leave payments made by their employers. The stated object of this change is to ensure that primary carers will not "double dip" on these payments. The changes are likely to influence how employers structure their paid parental leave benefits and policies.

For more information or discussion, please contact HopgoodGanim's Taxation and Revenue team.

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1. The tax transfer pricing rules generally require that transactions entered into between an Australian entity and a foreign entity occurs, for tax purposes, on an "arms length" basis, irrespective of the actual terms of the transaction agreed between the parties.

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