2016 Federal Budget Commentary

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What can be made of the Federal Treasurer's first budget, which has been delivered against the backdrop of an imminent election and in the midst of, some would say, unparalleled global economic times?

With the Federal Government firmly in election campaign mode, the following revenue measures captured our attention:

- **From 1 July 2016, a 27.5% company tax rate for companies with turnovers under $10m (to be gradually reduced further to 25% in 2026/7).**
    - If anything, this will exacerbate the difference between the corporate tax rate and the highest marginal tax rate, which is set to be reduced due to the removal of the temporary budget deficit repair levy. In turn, there will be more emphasis on companies retaining profits rather than distributing them via dividends and shareholders paying "top up tax".
- **Superannuation changes.**
    - A number of measures are designed to cap amounts able to be put into super, and, ultimately, the amount available in a super fund upon retirement. This is designed to ensure that superannuation is not used as a form of tax effective vehicle in excess of providing for funds in retirement. A new 15% tax on balances in excess of $1.6m when in retirement phase, which effectively applies retrospectively as well, may cause a flow of money out of superannuation funds in order to avoid the impost.
    - The question is – where should these funds be put? A family trust or private company is looking likely, leading to more of the same sorts of structures (and their complexities) currently in use. A useful and logical measure to be introduced from 1 July 2017 is the ability to "catch up" on yearly contributions if they haven't been made in past years (on concessional contributions up to a lifetime balance of $500,000).
- **The introduction of a diverted profits tax, colloquially called a "Google tax", akin to that introduced in the UK to target and curb the same behaviour.**
    - Although details are yet to be released, it appears that the tax (applicable from 1 July 2017) is aimed to apply where the multinational corporation's revenue is "diverted" away from Australia and taxed at a discount of 20% or more to Australia's tax rate, it is reasonable to conclude that the arrangement is designed to achieve the avoidance of Australian tax, and there is not sufficient economic substance to the arrangement. In practice, there is generally sufficient economic substance to the arrangements – great effort is usually expended in ensuring this is so.
    - What may be much more difficult to show, however, is whether it is reasonable to conclude that the arrangement is designed to achieve the avoidance of tax. For example, where a substantial global brand is used to derive revenue in Australia, it may be reasonable to expect a large payment to be made by the Australian subsidiary to the offshore holding company that owns that brand. The other interesting point to note is that many non-tax haven countries that are Australia's trading partners have corporate tax rates at least 20% or more less than Australia's. This includes the UK, for example, with a 20% tax rate.
- **Changes favourable to taxpayers will be made in relation to Division 7A; the deemed dividends regime for loans, payments and debt forgivenesses involving private companies.**

    - The exact details of those changes are yet to come, but they are bound to be welcomed by tax practitioners and clients alike.
- **A suite of changes to the venture capital limited partnership and start up tax incentives.**
    - This is in line with the Federal Government's innovation policy. Again, these will be welcome changes to those in that sector and will drive investment.
- **GST on "low value" imports into Australia.**
    - In other words, prepare to begin paying 10% more for online shopping where goods are coming from offshore. The proposal will require offshore vendors to become registered for Australian GST and remit the 10% GST to the Australian Government. We will continue to watch with interest the Australian Government's progress in enforcing compliance with these measures from afar.
- **A 55% increase in funding for the ATO to undertake compliance reviews and audits.**
    - This is a huge increase and will inevitably mean that more taxpayers will be reviewed and/or audited. Now is the time to undertake a tax risk review, before the ATO comes knocking.

For more information or discussion, please contact HopgoodGanim Lawyers' Taxation team.

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