



International Tax

Australia Tax Alert

14 November 2013

Government announces plans for backlog of tax measures

Contacts

Vik Khanna
vkhanna@deloitte.com.au

Peter Madden
pmadden@deloitte.com.au

Claudio Cimetta
ccimetta@deloitte.com.au

David Watkins
dwatkins@deloitte.com.au

On 6 November 2013, the recently elected Australian government presented its position regarding a backlog of 96 announced, but unlegislated tax measures. This has arisen largely due to the so-called “legislation by press release” approach adopted in Australia. That is, tax-related announcements often are made on the basis that they will be effective from the date of announcement, even though the legislation will not be drafted and enacted until sometime in the future. Some of the announcements go back up to a decade, while many relate to the period of the Labor Government (2007-2013). The announcement identifies the measures that will be implemented, those that will not be implemented and those that may be subject to further consultation.

Legislation already has been introduced into Parliament to repeal the minerals resource rent tax and the carbon tax.

This alert looks at the key measures affecting inbound investors into Australia.

Key measures

Interest deductions and thin capitalization – The government will proceed with changes to the thin capitalization rules (as previously announced) to address structures that seek to shift profits by “artificially loading debt into Australia.” These changes include a reduction in the general safe harbor from 75% of adjusted Australian assets (i.e. a 3:1 debt-to-equity ratio) to 60% (1.5:1 debt-to-equity ratio), a reduction in the worldwide gearing ratio from 120% to 100%, an extension of the worldwide gearing test to inbound investors and an increase in the de minimis threshold from AUD 250,000 to AUD 2 million of debt deductions, including interest.

The thin capitalization changes are effective for years of income commencing on or after 1 July 2014. Where relevant, this matter should be addressed as a matter of urgency, as many foreign-owned Australian companies will have debt levels that exceed the new safe harbor.

An important change in policy is that the government will not proceed with the repeal of “section 25-90.” This provision allows deductions to Australian companies for interest expense on debt used to fund investments in foreign subsidiaries (dividends from which are generally tax exempt). The decision to

retain section 25-90 has been widely welcomed. However, the government will commence consultation on a targeted integrity rule to address certain “conduit arrangements.” The scope of the integrity rule is not yet known, but taxpayers, especially foreign-owned Australian companies, will need to monitor this matter.

Investment manager regime (IMR) – The government will proceed to implement element 3 of the IMR to provide an exemption from Australian income tax for eligible funds (broadly speaking, certain hedge funds) with eligible investments.

Disposals of taxable Australian property (TAP) – Broadly speaking, a nonresident of Australia will be subject to Australian capital gains tax on the disposal of TAP, which includes a more-than-10% interest in a company that is Australian “land-rich.” The scope of the TAP rules has been widened to include the value associated with “mining information” in the value of the land-related assets. Further, technical amendments will be made that will reduce the value attributable to non-land assets, making it more likely that a company may be Australian “land-rich.” These provisions will apply to disposals made after 14 May 2013.

In addition, the government will proceed with the introduction of a withholding regime for foreign residents that dispose of certain TAP. This will be applicable to disposals after 1 July 2016.

Miscellaneous – The government also will move ahead with:

- Closing technical loopholes in the tax consolidation regime; and
- Signing and enacting an intergovernmental agreement with the US in respect of the US Foreign Account Tax Compliance Act.

Further consultation

The Assistant Treasurer will make a further announcement in early December 2013 regarding 64 unenacted measures. The government currently has “a disposition not to proceed” with these measures, but is conducting a final consultation process before making a decision. Key matters still subject to this final consultation process include:

- Reforming the foreign-source income attribution regimes (i.e. controlled foreign companies) relevant to Australian companies with foreign subsidiaries;
- Formalizing the tax exemption for foreign governments (sovereign immunity);
- Limiting the scope of an integrity rule in the debt-to-equity rules that can have the effect of recharacterizing “debt interests” as “equity interests” (where applicable, this will result in the loss of interest deductions in Australia);
- Implementing the Board of Taxation recommendations to modify the treatment of off-market share buybacks;
- Enhancing taxation arrangements for venture capital; and
- Revising the Goods and Services Tax rules relating to cross-border transactions “connected with Australia.”

The 64 measures include proposals that have been outstanding for some time, and although the government indicates that the fiscal impact of these measures is expected to be minimal, some of the proposals have been anticipated by

business and may have been taken into account in income tax returns. This is acknowledged by the government, which indicated that:

- There will be legislative protection for taxpayers that have self-assessed (e.g. to reduce their income tax liability) in accordance with announced changes that the government will not proceed with; and
- Taxpayers that have complied with previous announcements that will no longer proceed, and have paid additional tax, will be entitled to a refund. Companies should identify such potential refund opportunities.

New measures

The government also added that “the integrity of our tax system will further be enhanced by a range of other reforms to be announced in coming months.” The government has yet to indicate the nature of these reforms and the timeframe and priorities for their enactment.

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