Tax agenda for Federal Parliament

11 February 2019

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In brief

Federal Parliament will resume sittings for the 2019 calendar year on Tuesday 12 February 2019. The House of Representatives is only expected to sit for seven days and the Senate will only sit for three days before the Federal Budget is scheduled to be handed down on 2 April 2019. In addition, the latest possible date for a simultaneous (half-Senate and House of Representatives) election is Saturday 18 May 2019.

This alert summarises some of the key tax proposals which are either currently before Parliament or which are yet to be introduced.

In detail

Many of the tax measures announced in the 2018-19 Federal Budget have progressed and are now either law or on the way to completing their passage through Parliament. However, there are some announced measures that are still to be progressed. With Federal Parliament resuming sittings on 12 February 2019, we summarise below some of the key announced tax measures that remain unenacted.

Bills currently before Parliament

As of the start of the 2019 Federal Parliament, there are a number of tax-related Bills currently before Parliament which cover a wide range of previously announced proposals, many of which are scheduled to now have retrospective effect, including the following:

- *CGT main residence change for foreign residents* - The entitlement to the capital gains tax (CGT) main residence exemption for foreign residents is to be removed with effect from 7.30pm (ACT time) 9 May 2017, subject to grandfathering to apply to those pre-existing properties until 30 June 2019.

- *Similar business test* - Access to company losses is to be improved by supplementing the existing same business test with a more flexible similar business test for losses incurred in income years from 1 July 2015.

- *Broadening SGE definition* - The scope of the concept of a significant global entity (SGE) is to be expanded so that it also applies to groups of entities headed by an entity other than a listed company in the same way as it applies to groups headed by a listed company. A SGE is subject to additional rules such as the diverted profits tax (DPT) and the multinational anti-avoidance law (MAAL) and increased penalties. The proposed measure also amends the country by country (CbC) reporting requirements to apply to a subset of SGEs referred to as "country by country reporting entities". The new definitions will apply to income years commencing on or after 1 July 2018.

- *GST on online hotel bookings* - Offshore suppliers of rights or options to use commercial accommodation in Australia are to include these supplies in working out their goods and services tax (GST) turnover from 1 July 2019.

- *Thin capitalisation changes* - An entity will be required to use the value of the assets, liabilities and equity capital that are used in its financial statements for thin capitalisation purposes, i.e. the ability to revalue assets off balance sheet will be limited from 8 May 2018, subject to a transitional rule applicable until income years that commence on or after 1 July 2109. In addition, for income years commencing on or after 1 July 2019, non-authorised deposit taking institution (ADI) foreign controlled Australian tax consolidated groups and multiple entry consolidated groups that have foreign investments or operations will be treated as both outward investing and inward investing entities (which will limit their ability to access the worldwide gearing test).

- *R&D tax incentive* - The Research and Development (R&D) Incentive is proposed to be changed to a more targeted incentive for income years commencing on or after 1 July 2018. This is proposed to include, among other things, a tiered intensity threshold system to the non-refundable R&D offset.

- *AMIT technical amendments* - Proposed technical amendments are to be made to attribution managed investment trusts (AMITs) and managed investment trust (MITs), including modifications to the AMIT primary and transitional rules, and MIT and AMIT CGT and withholding tax rules. The amendments generally apply to the 2018-19 income year and later income years.

- *Stapled structures and MIT concessional income* - The integrity of the tax law for arrangements involving stapled structures is to be enhanced and access to tax concessions for foreign investors is to be limited, broadly from 1 July 2019, subject to certain transitional rules, by an increase in the MIT withholding rate on fund payments that are attributable to non-concessional MIT income (eg trading income, agricultural and residential rent income) to 30 per cent; modifications to be made to the thin capitalisation rules to prevent double gearing structures; the withholding tax exemption for super funds will be limited; and the scope of the sovereign immunity tax exemption will also be limited.

- *SG integrity measures* - Compliance with taxation and superannuation guarantee (SG) obligations are to be strengthened generally with effect from 1 July 2018.

- *SG amnesty* - A one-off 12-month amnesty to encourage employers to self-correct historical superannuation guarantee (SG) non-compliance is to apply until 24 May 2019. Periods from 1 April 2018 are not subject to the amnesty as proposed.

- *Single touch payroll reporting* is to be extended to all employers including small employers (entities with less than 20 employees) from 1 July 2019.

- *Whistleblower protections* are to apply in relation to disclosures made on or after 1 July 2018.

Measures yet to be introduced

Below is a list of key tax measures that are yet to be introduced into Federal Parliament:

- Extending the instant asset write-off for small business depreciating assets that cost up to AUD 25,000 and until 30 June 2020.

- Removal of the CGT discount for MITs and AMITs at the trust level which is proposed to now apply from 1 July 2020.

- Private company deemed dividend “Division 7A” reforms which are proposed to apply from 1 July 2019.

- From 7:30PM (AEST) on 8 May 2018, partners that alienate their income by creating, assigning or otherwise dealing in rights to the future income of a partnership will no longer be able to access the small business CGT concessions in relation to these rights.

- From 1 July 2019, anti-avoidance rules are to apply to circular trust distributions involving family trusts.

- Certain deductions for expenses associated with holding vacant land where the land is not genuinely held for the purpose of earning assessable income will be denied from 1 July 2019.

- Integrity measures to ensure that all remuneration provided for the commercial exploitation of a person's fame or image is assessable income of the individual are proposed to apply from 1 July 2019.

- SG minimum penalties after the amnesty period are to be increased from 50 per cent to 100 per cent of the SG charge for employers who could have come forward under the SG amnesty but did not.

- Implement the new Corporate Collective Investment Vehicle (CCIV) framework.

- Prevent the distribution of franking credits on distributions directly or indirectly funded by certain capital raisings proposed to apply to distributions made after 19 December 2016.

- New procurement policy guidelines are proposed to apply to businesses seeking to tender for Federal Government procurement contracts over AUD4 million (inclusive of GST) from 1 July 2019. This will require the provision of a statement of tax record from the ATO that indicates that the tenderer is generally compliant with their tax obligations - note this proposal does not require legislation to be implemented.

- Petroleum Resource Rent Tax (PRRT) reforms are to apply from 1 July 2019, including measures to lower the uplift rates for general expenditure and exploration expenditure and removal of onshore projects from the PRRT regime.

- Provide greater certainty in relation to integrity rules regarding the taxation of debt and equity.

- Barriers to the use of asset backed financing are proposed to apply with effect from 1 July 2018.

- The taxation of financial arrangements (TOFA) regime is to be reformed in respect of income years that begin after the legislative changes are enacted.

- Improve the transparency of taxation debts.

- Technical changes to the Investment Manager Regime (IMR) are proposed to clarify that when a foreign investor invests in Australia through a foreign fund or an independent Australian fund manager it will be in the same tax position as if it had invested directly.

The takeaway

Understanding the impact of new tax laws is not always easy, but it is equally important to keep track of announced measures and their status, particularly their date of effect, as often by the time a new measure is enacted into Australian law, the start date for the measure has passed.

Time will tell whether the Government can progress the bulk of its proposed tax measures through the Parliamentary process before the Federal election.

Let's talk

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