Parliament goes on break

21 July 2014

The Winter sittings of Federal Parliament wrapped up on 18 July 2014.

Opening with the handing down of the Government's first Federal Budget on 14 May, the Winter sittings of Parliament concluded with the first gatherings of the new Senate following last year's Federal Election. As the past two weeks will attest, the composition of the new Senate is likely to throw a number of roadblocks in the Government's path, although the Government has been successful in delivering on one of its signature tax commitments in this session – the repeal of the carbon tax.

Here, we provide a wrap-up of the current status of key tax measures that were before Parliament during the Winter sittings or are otherwise in the pipeline. Parliament resumes for the Spring sittings on 26 August 2014.

2014-15 Federal Budget measures

The Government has failed to make much progress on the new measures contained in its 2014-15 Federal Budget as it faces opposition in the Senate to many of these measures.

The proposal to reintroduce indexation of excise and excise-equivalent customs duty for all fuels except aviation fuels was introduced into Parliament during June 2014, but is likely to continue to be stalled in the Senate. Under this proposal, which is intended to commence from 1 August 2014, indexation will occur biannually with the revenue generated to be used for building new and upgrading existing road infrastructure.

The Temporary Budget Repair Levy (the Levy) and associated amendments announced in the 2014-15 Federal Budget have, however, already been enacted. The Levy imposes an additional two per cent tax on taxable income in excess of $180,000 for individual taxpayers for a three year period commencing 1 July 2014. Related amendments increase the rate of other taxes which are based on the highest marginal tax rate for individuals, including an increase in the fringe benefits tax rate to 49 per cent for the period 1 April 2015 to 31 March 2017.

See PwC's Federal Budget commentary for further details of the measures announced in the 2014-15 Federal Budget.

Repeal of the carbon tax

After a few false starts, the Government was successful in repealing the carbon tax in the last week of the Winter sittings. In addition to abolishing the carbon tax from 1 July 2014, the package of bills, which received Royal Assent on 17 July 2014, also includes:

- mechanisms to ensure that liable businesses and other entities meet all their carbon tax liabilities incurred up to 30 June 2014
- new powers to the Australian Competition and Consumer Commission (ACCC) to monitor prices and take action against business that attempt to exploit consumers by charging unreasonably high prices or making false or misleading claims about the effect of the carbon tax repeal on prices.

As part of the Senate negotiations, amendments were made to the Bills and subsequently enacted that seek to ensure that lower prices resulting from the repeal of the carbon tax are passed on to consumers. These amendments included giving the ACCC additional price monitoring and information-gathering powers in respect of suppliers of electricity, natural gas and bulk importers of synthetic greenhouse gas and providing new sanctions for contraventions of the new provisions. Additionally, electricity and natural gas retailers are required to provide information to customers of the average estimated cost savings arising from the carbon tax repeal.

Repeal of the Minerals Resource Rent Tax

The repeal of the Minerals Resource Rent Tax (MRRT) and associated measures did not complete its passage through Parliament in the Winter sittings. The legislation to give effect to the repeal of the MRRT from 1 July 2014 also proposes to repeal or re-phrase a number of measures for which funding was tied to the MRRT, including:

- repeal of the company loss carry back regime
- repeal of a number of concessions for claiming capital allowances in respect of depreciating assets for small businesses
- re-phasing the increase in the superannuation guarantee charge
- repeal of the Schoolkids Bonus and the income support bonus, and
- repeal of the low income superannuation contribution.

Although the legislation to give effect to these measures was passed by the Senate with amendments that removed the cost-saving measures to repeal the low income superannuation contribution, the Schoolkids Bonus and the income support bonus, these amendments were subsequently rejected by the House of Representatives. It is likely that Government will continue to negotiate with the Senate when Parliament resumes in late August.

The Australian Taxation Office's Resource Rent Tax working group will meet this week to urgently address issues related to the repeal of the MRRT and we expect further administrative guidance to follow. In the meantime, taxpayers that are liable for the MRRT are reminded that they must meet their obligations in respect of the period ended 30 June 2014, with the hope that there is further clarity on the repeal before the September 2014 quarter MRRT instalments are due.

International tax measures

The Government introduced legislation – Tax and Superannuation Laws Amendment (2014 Measures No 4) Bill 2014 - into the House of Representatives on 17 July 2014 to implement the previously announced changes to the thin capitalisation regime. These amendments, which will apply to income years commencing on or after 1 July 2014, seek to tighten the limits on deductible debt for certain inbound and outbound investors by:

- reducing the safe harbour debt limit for general entities (not an Authorised Deposit-taking Institution (non-ADIs)) from 3:1 (75 per cent) to 1.5:1 (60 per cent) on a debt-to-equity basis
- reducing the safe harbour debt limit for financial entities (non-ADI) from 20:1 to 15.1 on a debt-to-equity basis
- increasing the minimum safe harbour capital requirement for ADIs from 4 per cent to 6 per cent of risk weighted Australian assets, and
- reducing the worldwide debt limit for outward investing entities (non-ADI) from 120 per cent to 100 per cent of the gearing of the entity's worldwide group.

On a positive note, the proposals also increase the 'de minimis' threshold from $250,000 to $2 million of debt deductions, broadly meaning that smaller taxpayers with associate entity inclusive debt deductions of $2 million or less will not be subject to the thin capitalisation provisions.

The proposed amendments to the thin capitalisation regime also introduce a new worldwide gearing debt limit for inward investing entities (and inward investment vehicles that are also outward investing), which will allow these entities to be geared up to the level of the gearing of the Australian entity's worldwide group. The new worldwide gearing test for inward investing entities will, however, not be available where:

- the entity's worldwide equity or worldwide assets (as shown in the audited consolidated financial statements of the worldwide group) is nil or negative
- audited consolidated financial statements do not exist, or
- the relevant entity's Australian assets represent more than 50 per cent of the consolidated group's worldwide assets.

Amendments to the foreign dividend exemption, currently contained in section 23AJ of the *Income Tax Assessment 1936*, were also contained in the same Bill introduced into Parliament last week. These amendments, which will re-write this provision into the 1997 Act, will limit the availability of the exemption to non-portfolio returns (including non-share dividends) on equity interests as defined for tax purposes. It will, however, extend the exemption to returns received by all corporate tax entities (instead of being limited to companies) and to distributions received through interposed entities such as trusts and partnerships. Amendments were also made to ensure that the revised exemption can appropriately apply to relevant distributions received by a controlled foreign company. These amendments apply to distributions after the day the measures received Royal Assent.

The Bill also included amendments to tighten the capital gains tax (CGT) treatment of indirect interests in Australian real property held by foreign residents. These amendments are intended to prevent double counting of assets under the principal asset test and will operate to disregard assets that create a corresponding liability of a related entity. The amendments will apply to CGT events that occur after 7:30pm on 14 May 2013 where the entities involved are members of the same tax consolidated or multiple entry consolidated group or on or after 13 May 2014 for all other entities.

Consolidation measures

There has been no progress on a range of previously announced amendments to the tax consolidation regime since the Government reaffirmed its commitment to proceed with the measures announced by the former Government in the 2013-14 Federal Budget. This includes a new requirement that the head company of the tax consolidated group include in its assessable income an amount equal to the future deductible liabilities of a joining member, which will apply to arrangements that commence on or after 14 May 2013. Refer to PwC's Federal Budget commentary and the March edition of TaxTalk Monthly for a recap of these measures.

Let's Talk

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