Other News

1 August 2014

White Paper on Reform of Federation

On 28 June 2014, the Prime Minister released the Terms of Reference for the White Paper on the Reform of the Federation. In his media statement, the Prime Minister said that the Terms of Reference had been developed in collaboration with the States and Territories, as agreed at the last meeting of the Council of Australian Governments (COAG). He added that the Federation White Paper, which will be delivered by the end of 2015, will be coordinated with the White Paper on the Reform of Australia’s Tax System.

According to the Prime Minister’s media statement, the Federation White Paper will seek to clarify roles and responsibilities to ensure that, as far as possible, the States and Territories are sovereign in their own sphere. Its objective will be to:

- reduce and end, as far as possible, the waste, duplication and second guessing between different levels of government
- achieve a more efficient and effective federation, and in doing so, improve national productivity
- make it simpler for citizens to interact with government, and
- ensure our federal system:
  1. is better understood and valued by Australians (and the case for reform supported)
  2. has clearer allocation of roles and responsibilities
  3. enhances governments’ autonomy, flexibility and political accountability
  4. supports Australia’s economic growth and international competitiveness.

Within the constitutional framework, consideration will be given to:

- the practicalities of limiting Commonwealth policies and funding to core national interest matters, as typified by the matters in section 51 of the Constitution
- reducing or, if appropriate, eliminating overlap between Local, State and Commonwealth responsibility or involvement in the delivery and funding of public programmes
- achieving agreement between State and Commonwealth governments about their distinct and mutually exclusive responsibilities and subsequent funding sources for associated programmes, and
- achieving equity and sustainability in the funding of any programmes that are deemed to be the responsibility of more than one level of government.

The Federation White Paper will be a standing item on the COAG agenda and the Federation White Paper Steering Committee, chaired by the Commonwealth and involving all States and Territories and the Australian Local Government Association, will oversee the development of the White Paper. Issues papers will be released in the second half of 2014 and the White Paper by the end of 2015.
Consultation on Australian Charities and Not-for-profit Commission replacement arrangements

On 4 July 2014, the Department of Social Services (DSS) released an options paper regarding proposed replacement and transitional arrangements for the reporting obligations of charities and not-for-profits with the abolishment of the Australian Charities and Not-for-profits Commission (ACNC). Included in the paper are details of administrative options around the responsibility for determining eligibility for charitable status returning to the Australian Taxation Office (ATO), including the proposed establishment of an independent panel and the formation of a separate area within the ATO that would be responsible for determining outcomes for applicants who objected to findings on eligibility for charitable status and related tax concessions.

Written submissions are required to be forwarded to the DSS by 20 August 2014.

ATO’s administration of penalties

The Government has released the Inspector-General of Taxation’s Review into the Australian Taxation Office’s administration of penalties. The review examined the effectiveness of the penalties regime for taxpayer compliance. Nine recommendations were made to the ATO aimed at improving its penalty decisions, guidance material and identification, and collection and analysis of penalty information. In particular the Inspector-General made a number of recommendations on the publication by the ATO of penalty information. Whilst some of these recommendations have been accepted by the ATO, in its response the ATO said that it does not propose to undertake a program of work for additional reporting, noting in particular, the significant staff costs involved in keying further data and its limited capacity to deliver all of the items noted in the report.

Japan-Australia Economic Partnership Agreement

The Japan-Australia Economic Partnership Agreement (JAEPA) was signed in Canberra on 8 July 2014 by the Prime Minister and the Prime Minister of Japan.

The website of the Department of Foreign Affairs and Trade lists the following benefits of Australia entering into the JAEPA:

- 97 per cent of Australia’s exports to Japan will enter duty-free or will receive preferential access when the JAEPA is fully-implemented
- The JAEPA will slash prohibitive agricultural tariffs on a wide range of products to Australia’s second-largest agricultural export market, including rapid tariff reductions for beef, Australia’s largest agricultural export to Japan
- The JAEPA eliminates tariffs on all of Australia’s current minerals, energy and manufacturing exports
- The JAEPA guarantees Australian service providers outcomes equal to or better than the best commitments
- Under the JAEPA, both governments will support work towards enhanced mutual recognition of professional qualifications
- The JAEPA will promote Japanese investment in Australia by raising the screening threshold at which private Japanese investment in non-sensitive sectors is considered by the Foreign Investment Review Board, and
- Australian innovators will enjoy levels of protection for their intellectual property in Japan broadly equivalent to protections provided in Australia.

Exposure draft legislation: foreign pension funds and access to MIT withholding regime

The Commonwealth Treasury has released exposure draft legislation which proposes that certain foreign pension funds will be able to access the Managed Investment Trust (MIT) withholding regime and the associated lower rate of withholding tax on their Australian investments. According to the draft explanatory material released with the draft legislation, a foreign pension fund, as a foreign beneficiary or foreign custodian of a trust, will not have access to the MIT withholding tax regime if it receives fund payments as a trustee and does not have beneficiaries that are presently entitled to the payments. Instead, the foreign pension fund may be liable to tax under the general provisions relating to the taxation of trusts and may
be taxed at the highest marginal tax rate.

The exposure draft legislation proposes to amend Division 840 of the Income Tax Assessment Act (ITAA 1997) to ensure that certain foreign pension funds can access the MIT withholding tax regime. As presently drafted, the amendment will only apply to an entity, the principal purpose of which is to fund pensions (including disability and similar benefits) for the citizens or other contributors of a foreign country, if:

1. the entity is a fund established by the government of a foreign country (or of part of a foreign country) or by an authority of such a government (if of a similar nature to an exempt Australian government agency), or

2. the entity is established under a foreign law for a government or authority referred to in 1.

3. the entity is a wholly owned subsidiary of an entity referred to in 1. and 2.

Under the amendments, these entities will be treated as the final beneficiary of a fund payment and will be liable for MIT withholding tax.

The amendments are proposed to apply to income years commencing on or after 1 July 2008. This retrospective commencement date is to ensure that affected foreign pension funds can access the MIT withholding tax regime as originally intended, and according to the draft explanatory material, will also reflect current industry practice. Whilst the amendments generally address the concerns raised by industry with the government over a lengthy period, the reason for limiting the amendments to entities established by or for foreign governments and their agencies is unclear. We would expect that this limitation on the scope of the amendments will be at the centre of submissions to government in respect of the exposure draft legislation.

Financial System Inquiry: interim report

The Committee of the Financial System Inquiry released its interim report setting out the Committee’s views on the objectives of the financial system and the principles that should guide its development. The report discusses the financial system from nine perspectives and makes 28 observations on how the system is currently working. The report identifies a number of taxes that distort the allocation of funding and risk in the economy and identifies other tax issues that may adversely affect outcomes in the financial system including: differentiated tax treatment of savings vehicles; negative gearing and capital gains; dividend imputation; interest withholding tax; taxation of superannuation funds, goods and services tax on financial services; and managed funds. The interim report indicates that these tax issues should be considered as part of the Tax White Paper process unless they are already under active Government consideration.

Productivity report on public infrastructure

The Commonwealth Government has announced the release of the Productivity Commission’s Final Inquiry Report into Public Infrastructure. A number of key points were identified, including the need to use well-designed user charges to partly fund infrastructure projects where this can be economically justified, and the urgent need to comprehensively overhaul processes for assessing and developing public infrastructure projects.

Exploration Development Incentive

On 2 July 2014, the Commonwealth Government released the operational details of the proposed Exploration Development Incentive, which will support ‘junior’ exploration companies to conduct ‘greenfield’ mineral exploration. Legislation to implement the incentive is still being finalised.

The operational address the following:

- which explorers will be eligible to access the Incentive
- how exploration credits can be provided to investors in these companies
- what expenditure will be eligible
- how the Incentive will be capped, and
- the treatment of exploration credits.

Under the proposal, qualifying companies will effectively convert tax losses incurred through post 1 July 2014 exploration expenditure into tax offsets (exploration credits) which are then passed on to shareholders. Only expenditure on exploration for minerals will be eligible for the Incentive.

Since the scheme has a revenue cap of $100 million, the quantum of offsets able to be
passed on will be determined on a ‘post modulation’ basis. Companies that choose to participate in the Incentive will notify the ATO after the expenditure year of the lesser of their exploration expenditure and their tax loss from the financial year. The ATO will then advise eligible companies of the proportion of this amount they will be entitled to provide to shareholders as exploration credits. As long as they do not exceed this amount, companies will be able to choose the tax losses to convert into exploration credits at the company tax rate. Companies participating in the Incentive and providing exploration credits to shareholders will need to make an irrevocable choice whether to provide exploration credits to all shareholders, or only to holders of shares issued after 30 June 2014.

Let’s talk

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