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AUSTRALIA

2020-2021 BUDGET AND COVID-19 ECONOMIC RESPONSE

It is usual for the Australian Commonwealth Government to hand down its annual budget on the second Tuesday in May. However, on 20 March 2020, having regard to the advent of COVID-19 the Australian Government announced its decision to defer the 2020-21 Budget until 6 October 2020. This has allowed the Government to focus on the immediate threat of the coronavirus pandemic to the Australian economy with an emphasis on keeping Australians in jobs and it is anticipated that by October 2020, the economy will be better placed to enable the Budget to focus on the recovery of the Australian economy.

Since March 2020, the Australian Government has announced a series of economic stimulus measures aimed at combatting the economic impact of COVID-19. In an uncommon measure of bipartisanship the Australian Parliament delegated its power to legislate on a majority of these stimulus measures to the Treasurer. This facilitates a fast and flexible means of modifying the stimuli by legislative instrument rather requiring the passing of amending legislation by both houses of Parliament which can take months.

The Government's first step was to raise its debt ceiling from $600 billion (AUD) to $850 billion and measures have since been introduced to pump an estimated $259 billion into the Australian economy, the equivalent of around 6.9 per cent of GDP.

SUMMARY OF THE ECONOMIC RESPONSE

The Government's economic response supports households and businesses. It has been designed to support businesses in managing short-term cash flow challenges, provide support to individuals, severely affected communities and regions, and to ensure the continued flow of credit in the Australian economy.

1. Support for individuals and households - $24.9 billion

The Government is providing significant payments to assist lower-income Australians, including pensioners, other social security and veteran income support recipients and eligible concession card holders.

JobKeeper Payment

The JobKeeper Payment helps businesses significantly impacted by the Coronavirus cover the costs of their employees' wages, this enables more Australians to retain their jobs and continue to earn an income. Employers are required to pay each eligible employee at least $1,500 per fortnight and these payments are reimbursed to the employer by the Government.

Income support for individuals and households - $22.9 billion

Since 27 April 2020 the Government has temporarily expanded eligibility to income support payments and established a new, time-limited Coronavirus supplement to be paid at a rate of $550 per fortnight.

The Government is also providing two separate $750 payments to social security, veteran and other income support recipients and eligible concession card holders.

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Temporary early release of superannuation - $1.1 billion

The Government is allowing eligible individuals affected by the Coronavirus to access up to $10,000 of their superannuation in 2019-20 and a further $10,000 in 2020-21. Individuals will not need to pay tax on amounts released and the money they withdraw will not affect social security payments. Eligible temporary visa holders were also eligible to access up to $10,000 of their superannuation in 2019-20.

Temporarily reducing superannuation minimum drawdown rates

The Government has temporarily reduced superannuation minimum drawdown requirements for account-based pensions and similar products by 50 per cent for 2019-20 and 2020-21. This measure benefits retirees with account-based pensions and similar products by reducing the need to sell investment assets to fund minimum drawdown requirements.

Reducing social security deeming rates - $0.9 billion

The Government has reduced social security deeming rates. These rates are used to deem income to have been derived on financial assets and affect Government pension entitlements. The reductions reflect the low interest rate environment and its impact on the income from savings.

2. Support for businesses – $108.1 billion

JobKeeper Payment – $70 billion

The JobKeeper Payment helps businesses significantly impacted by the Coronavirus cover the costs of their employees' wages. Eligible businesses may include sole traders, whose turnover had reduced by more than 30 per cent if they have a turnover of less than $1 billion or by more than 50 per cent if they have a turnover of more than $1 billion.

Boosting Cash Flow for Employers – $31.9 billion

The Government is providing temporary cash flow support to small and medium businesses and not for profit (NFP) organisations that employ staff.

The Government provides tax-free cash flow boost payments of between $20,000 and $100,000 to eligible businesses, delivered through credits applied against tax withheld from employee wages.

Temporary relief for financially distressed businesses

The Government has temporarily increased the threshold at which creditors can issue a statutory demand on a company and to initiate bankrupt proceedings against an individual as well as temporarily increasing the time companies and individuals have to respond to statutory demands they receive. The package also includes temporary relief for directors from any personal liability for trading while insolvent, and providing temporary flexibility in the Corporations Act 2001 to provide targeted relief from provisions of the Act to deal with unforeseen events that arise as a result of the Coronavirus health crisis.

The Australian Taxation Office will also tailor solutions for owners or directors of business that are struggling due to the Coronavirus, including temporary reduction of payments or deferrals, or withholding enforcement actions including Director Penalty Notices and wind-ups.

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Increased instant asset write-off – $0.7 billion

The Government has increased the instant asset write-off threshold from $30,000 to $150,000 and expanded access to include businesses with aggregated annual turnover of less than $500 million (up from $50 million) initially until 30 June 2020. This measure has since been extended to 31 December 2020.

Backing business investment – $3.2 billion

The Government has introduced a time-limited 15 month investment incentive (through to 30 June 2021) to support business investment and economic growth over the short term, by accelerating depreciation deductions. Businesses with a turnover of less than $500 million will be able to deduct 50 per cent of the cost of an eligible asset on installation, with existing depreciation rules applying to the balance of the asset's cost. This measure will support business investment and is estimated to lower taxes paid by Australian businesses by $6.7 billion over the next two years.

Supporting apprentices and trainees – $1.3 billion

This measure is aimed at supporting small business to retain their apprentices and trainees. Eligible employers can apply for a wage subsidy of 50 per cent of the apprentice's or trainee's wage until 30 September 2020. Employers will be reimbursed up to a maximum of $21,000 per eligible apprentice or trainee ($7,000 per quarter).

Support has also been provided to the National Apprentice Employment Network, the peak national body representing Group Training Organisations, to co-ordinate the re-employment of displaced apprentices and trainees throughout their network of host employers across Australia.

Support for Coronavirus-affected regions and communities – $1.7 billion

The Government has set aside $1 billion to support regions most significantly affected by the Coronavirus outbreak. These funds are available to assist during the outbreak and the recovery. In addition, the Government is assisting our airline industry by providing relief from a number of taxes and Government charges estimated to total up to $715 million.

3. Supporting the flow of credit – $125 billion

The Government, the Reserve Bank of Australia and the Australian Prudential Regulatory Authority have taken coordinated action to ensure the flow of credit in the Australian economy. Timely access to credit is vital for businesses to manage the impacts of the Coronavirus.

Support for immediate cash flow needs for SMEs – $20 billion

Under the Coronavirus SME Guarantee Scheme, the Government will provide a guarantee of 50 per cent to SME lenders to support new short-term unsecured loans to SMEs. The Scheme will guarantee up to $40 billion of new lending.

Quick and efficient access to credit for small business

The Government has cut red tape by providing a temporary exemption from responsible lending obligations for lenders providing credit to existing small business customers. This reform is intended to help small businesses get access to credit quickly and efficiently.

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Reserve Bank of Australia — Supporting the flow and reducing the cost of credit – $90 billion

The Reserve Bank of Australia (RBA) announced a package on 19 March 2020 that will put downward pressure on borrowing costs for households and businesses. This will help mitigate the adverse consequences of the Coronavirus on businesses and support their day-to-day trading operations. The RBA is supporting small businesses as a particular priority.

The RBA announced a term funding facility for the banking system. Banks will have access to at least $90 billion in funding at a fixed interest rate of 0.25 per cent. This will reinforce the benefits of a lower cash rate by reducing funding costs for banks, which in turn will help reduce interest rates for borrowers. To encourage lending to businesses, the facility offers additional low-cost funding to banks if they expand their business lending, with particular incentives applying to new loans to SMEs.

Support for Non-ADI and smaller ADI lenders in the securitisation market – $15 billion

The Government has provided the Australian Office of Financial Management (AOFM) with $15 billion to invest in structured finance markets used by smaller lenders, including non-Authorised Deposit-Taking Institutions (non-ADI) and smaller Authorised Deposit-Taking Institutions (ADI). This support will be provided by making direct investments in primary market securitisations by these lenders and in warehouse facilities.

Australian Prudential Regulatory Authority — Ensuring banks are well placed to lend

The Australian Prudential Regulatory Authority has announced temporary changes to its expectations regarding bank capital ratios. The changes will support banks' lending to customers, particularly if they wish to take advantage of the new facility being offered by the RBA.

Source: Australian Government Treasury
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HONG KONG

HONG KONG TAX AUTHORITY ISSUES TAX GUIDANCE ON DIGITAL ECONOMY

With increasing e-commerce business activities, tax authorities around the world escalate attention to how profits derived from digital based business activities should be taxed. Hong Kong's tax authority, Inland Revenue Department (IRD), issues a revised guidelines (Departmental Interpretation and Practice Notes No. 39) in 2020 on tax treatment of e-commerce transactions and digital economy.

This article discusses the following three key issues relating to IRD's tax position:

Locality of Profits

Hong Kong adopts a territorial source principle, where only profits arising or derived from operation in Hong Kong will be taxable. In the context of online business operation, physical resources required to operate are substantially reduced. With heavier reliance on software development platforms or a server system, the source-base approach becomes more challenging to determine.

In the revised practical guidance, the IRD takes the position that the focus of determination should be on the core operations required to effect the e-commerce transactions to earn the profits in question, and the place where those operations have been carried out, rather than on what has been done electronically.

Case example:

A Hong Kong Company provides consultancy services in Hong Kong. The Company operates a server, which is hosted outside of Hong Kong, with the following functions:

1. Provide services details
2. Answer enquiries
3. Act as a communication platform with potential and existing clients
4. Accept payment for services.

The Company obtains both local and overseas clients through the server. Actual consulting services are performed by professionals in Hong Kong. Final deliverables are sent to clients electronically through e-mail or uploaded to the server for downloading by the clients.

The server in this case was used to facilitate e-service provision. Although the server was located outside Hong Kong, the activities performed through the server were substantial to give rise to the profits earned in question. Therefore, the profits should be subject to Hong Kong tax.

Permanent Establishment

In the context of e-commerce, the permanent establishment determination of a server hosted outside of Hong Kong is parallel to whether a non-HK resident person carrying business for the purpose of charging profits tax is considered permanent establishment.

IRD's view on the proper approach is to determine whether the server, treated as a "fixed place of business", constitutes the essential and significant part of the activity of the company as a whole.

Case example:

A Hong Kong Company carries a business of selling products through the online platform.

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It operates a server at its own disposal in Hong Kong and the server is used for providing product information. The sale transactions were not performed using the server.

Since the activities carried out through the server were support and auxiliary in nature, the server would not constitute a permanent establishment in Hong Kong.

Digital Assets

In regards to the taxation of digital assets, DIPN 39 clarifies the view that it is the nature, not the form, of a digital asset that determines its tax treatment.

For example, a digital asset that represents equity or ownership interests in the issuer would be capital in nature and not subject to Hong Kong profits tax. However, a cryptocurrency used under a regular trading operation is considered a normal part of the business, therefore subject to profits tax.

Conclusion

IRD has provided much clarity to the tax treatment of the e-commerce transactions and digital assets. The growing opportunities in these types of business will further create complexity, however, the tax treatment and determination of source should be practical and focus on the substance over the form.

Secondly, given that IRD places heavy emphasis on transfer pricing requirements since 2019, it is worth noting that IRD might be in the direction of extending and adopting transfer pricing type of analysis, to analyze business functions in the context of the company's value chain, and determine the substance which will affect the determination of issues such as permanent establishment.

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NEW ZEALAND

WHAT'S MY EXPOSURE TO NEW ZEALAND GST

A common question I am asked by fellow AGN members who have clients looking to undertake business activities within New Zealand's ("NZ") jurisdiction, is "what are my client's exposures to NZ GST registration obligations".

Goods and Services Tax, or GST as it is more commonly referred to, is NZ's value added consumption tax – a charge, presently 15%, on the consumption of goods and services within NZ. It is a cost borne by the ultimate end consumer of the relevant good or service.

Presently, your client may register for, or more importantly, be required to register for, GST, via one of four trigger points:

Trigger 1 –

Your client is going to make a supply of goods and/or services in NZ, where the annual value of those supplies will exceed $NZD60,000.

One critical element here, will be whether the supply will be deemed to be made in NZ by your client, and there are some specific rules in this regard.

In the first instance, if your client triggers a NZ tax residency status, then any supply of their goods or services, will be a supply made in NZ, with the associated GST registration exposures.

However, if your client will remain a non-resident at all times, then the rules do become a little more complicated. In this regard, the starting point is that a non-resident supplier is deemed to make all supplies outside of NZ, unless either the goods themselves are physically in NZ at the time of supply, or the services are to be physically performed in NZ by the non-resident, by a person who will be present in NZ at the time the services are performed.

For NZ GST purposes, the time of supply is the earlier of either any payment being received by the supplier in respect of their supply, or an invoice being issued in respect of the supply. So for example, if the client's goods are sitting in a NZ warehouse at the time the NZ customer is invoiced for the goods (no payment having yet been made), then that supply would be deemed to be made in NZ.

This deemed place of supply rule is further complicated however, to recognize that NZ GST is in essence a cost to be borne by the end-user consumer. Consequently, where a supply that would otherwise be deemed to be made in NZ, is a supply occurring between the non-resident supplier and a NZ GST registered business (so B2B), the supply is now deemed to be made outside of NZ, unless the two parties agree otherwise. This final deeming place of supply rule is in essence a compliance cost reduction mechanism, Inland Revenue taking the view that there is no point requiring a non-resident to register for and then charge GST on their supplies, if all their NZ customers are then simply going to recover that GST cost from Inland Revenue, via the filing of their own GST returns.

Trigger 2 –

Affectionately referred to as our "Netflix" tax, is the "remote services" regime that was introduced into NZ GST legislation from 1st October 2016. A remote service is usually defined as one where the supplier of the service and the customer are not required to be in the same place at the time the service is provided (in this case located in separate jurisdictions).

Where the supplier of the remote services (along with any standard supplies they are already making to NZ customers) will make annual supplies to NZ based customers (there is guidance to determine this aspect) exceeding

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$NZD60,000, then the non-resident supplier will have an obligation to register for NZ GST.

Once again this special regime is targeted towards the end-user consumer, so any B2B supplies are to be ignored when determining the value of annual supplies. In other words, only supplies to NZ non-GST registered customers (B2C) should be included in the $NZD60,000 threshold calculation.

Trigger 3 –

The most recently introduced special GST regime and given the pet name of the "Amazon" tax, 1st December 2019 saw the commencement of the "distantly taxable goods" regime.

Focused again on B2C supplies only, by a non-resident supplier to a NZ based customer, this regime targets "low value" goods being imported into NZ by the NZ customer from a non-resident supplier. A low value good is one which has a value of $NZD1,000 or less. Where the non-resident supplier is shipping low value goods in excess of $NZD60,000 per annum to NZ end-user customers, they now have an obligation to register for NZ GST, and to charge 15% GST on the supply.

Trigger 4 –

The final special GST regime is not so much one where the non-resident will be compelled to register for NZ GST, but instead provides them with an opportunity to do so, in order to recover any NZ GST costs they have incurred.

The regime was introduced to in essence remove the NZ GST cost factor from a non-resident's buying decision. It enables a non-resident business that is not entitled to register for NZ GST under the standard regime (because the non-resident is not making any supplies of goods or services in NZ), to register instead under the special non-resident business claimants regime, when specific criteria are satisfied.

A common example would be a non-resident business that sends its staff to NZ to attend a particular event. Since GST is a consumption tax, and those employees of the non-resident business will be consuming goods and services in NZ, NZ suppliers of those goods and services (hotels, restaurants, transport operators etc) are required to charge the non-resident business NZ GST on their supplies. This additional 15% cost for the non-resident business, could have the undesired consequence of the non-resident choosing to send its employees to an alternative jurisdiction instead, where such taxes may not be imposed (or are at a lesser rate than 15%).

Provided therefore that the non-resident business has a refund claim for their first GST return that will exceed $NZD500 (and subject to satisfying certain other criteria), the non-resident business will be able to register under the regime, and recover the NZ GST costs charged from Inland Revenue.

If in doubt, sing out

The above narrative is a very basic overview of the potential triggers that may require/entitle your client to register for NZ GST. Please do not hesitate to contact the writer however, should you wish to seek clarification as to your specific client's NZ GST compliance obligations.

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