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AUSTRALIA

NEW COMPANY LOSS TEST - SIMILAR TO PREVIOUS TEST BUT NOT THE SAME

The Same Business Test has been replaced by the Similar Business Test

Previously, in order to access tax losses after a majority change in ownership or control, an Australian company was required to satisfy the same business test. On 1 March 2019, the Australian Government passed amendments to the loss integrity provisions which has resulted in a more flexible approach to recouping company losses.

Now referred to as the Similar Business Test, the new rules add onto the previous test and have a retrospective application to revenue and capital losses made in an income year commencing on or after 1 July 2015.

Prior to the new law tax losses could only be carried forward and deducted from assessable income in future income years if the company passed either:

- the continuity (greater than 50%) of ownership test (COT); or
- the Same Business Test (SBT)

Generally, a company satisfied the SBT if it carried on the **'same'** business in the recoupment income year (i.e. the 'same business test period') as it carried on immediately before the change of ownership or control that caused the company to fail the COT (i.e. the 'test time').

In addition, a company would not satisfy the SBT if the company:

- derived assessable income from a business of a kind that it did not carry on before the test time (the 'new business test'); or
- derived assessable income from a transaction of a kind that it had not entered into in the course of its business operations before the test time (the 'new transaction test').

These two extra elements of the same business test are the "negative limbs".

Companies that failed the COT Test, and had to rely on the same business test, struggled to deduct tax losses. This was due to the inflexible rules, where ***"same"*** meant "identical".

This effectively discouraged investing in new income activities to improve the business model of the company in question. In recognition of this the new changes give a new way to access prior year tax losses.

The Similar Business Test is a more flexible test than the Same Business Test

Simply, a company can carry forward and utilise its prior year losses if it carries on a business which is ***'similar'*** to the former business carried on immediately before the time the COT is failed.

In working out whether a business is 'similar', regard must be paid to the following factors:

- the extent to which the assets (including goodwill) that are used in the current business to generate assessable income were also used in the company's former business to generate assessable income;

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- the extent to which the activities and operations from which the current business generates assessable income were also the activities and operations from which the former business generated assessable income;

- the identity of the current business and the identity of the former business; and

- the extent to which any changes to the former business resulted from the development or commercialisation of assets, products, processes, services, or marketing or organisational methods, of the former business.

Companies that could not deduct losses due to failing the previous test in the 2016, 2017 or 2018 income years may wish to consider whether the outcome would be different on application of the new test and if so, amend their earlier assessment.

As company loss rules contiune to be a hotspot for the ATO's attention, it is important that companies keep detailed evidence in case of a review. In cases where difficult judgments are required to be made you may consider approaching the ATO for a private ruling.

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CHINA

CHINA VAT REFORM

Following the 13th National People's Congress, government announced detailed measures to implement the Value Added Tax (VAT) reform.

1. Reduction of VAT rates for general tax payers:

Goods/Services	Before Apr 1, 2019 (for general VAT tax payers)	Starting Apr 1, 2019 (for general VAT tax payers)
Sales or import of goods, providing repair or replacement services, tangible property leasing services	16%	13%
Construction, basic telecom services, postal services, traffic and transit services, sales and import of specified goods, real estate leasing services, sales of real estate	10%	9%
Modern services, life services, financial services, transfer of intangible assets(except for land use right)	6%	6%

2. Introduction of VAT super-credit：

VAT taxpayers from the following industries could be eligible for a 10% super-credit on their input VAT:

- Postal services;
- Telecommunication services;
- Modern services (such as R&D, information technology and consulting services);
- Lifestyle services (including cultural and sports services, education and mecial, travel and entertainment, food and beverage, accommodation services).
- There are requirements which need to be met in order to be eligible for the VAT super-credit:
- VAT taxpayers must obtain more than 50% of their total revenues from the specified industry category in the 12 months prior to their claim;
- Businesses started after April 1, 2019 will be evaluated based on the first 3 months of operation.

3. VAT refunds for claiming excess input VAT credit:

Taxpayers are entitled to a VAT refund if they meet the following criteria:

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- Starting from April 2019, incremental uncredited input VAT must remain positive for 6 consecutive months or 2 consecutive quarters; and the total amount is no less than 500,000 RMB;
- The taxpayer is a Class A or Class B taxpayer in the Chinese Tax Credit System;
- The taxpayer has good conduct in the past 36 months, meaning no engagement in tax deception, or punishment by the tax authorities for tax evasion more than twice.

4. Allowing input VAT credits for Transportation Services:

In addition to expanding the scope for input VAT credit for purchases of real estate, the new VAT policy also allows General VAT Taxpayers to claim input VAT credit for domestic (Chinese) passenger transport services; which can subsequently be credited against output VAT.

The implementation measure clarified that special VAT invoices, electronic general VAT invoices and airplane, train, bus and ship tickets with the passenger name would qualify as a certificate for domestic transportation. These certificates could then be used to claim the aforementioned deductions.

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PAKISTAN

THE CREDIBILITY GAP – FISCAL DEFICIT VS. TRUST DEFICIT

Like any developing country Pakistan, tax revenue to Gross Domestic Product (GDP) ratio as per the Economic Survey, 2019 during the preceding financial year was a mere 13.9% along with an overall fiscal deficit of 4.9%. Astonishingly only 1.2% of the total population of the Country are bearing the burden of the economy and classified as an "Active Tax Payer" (a feather in the cap). During a recent interview, the Advisor to the Prime Minister on Finance and Revenue was quoted saying that only 40,000 of the 341,000 persons having an industrial connection of electricity and gas are registered under the Sales Tax Act, 2019.

As a nation people more actively donate to various non-profit organizations for the welfare of the people rather than paying taxes to the Government responsible for welfare of the masses. One wonders *"why this Credibility Gap"*? Are economies struggling under the burden of a fiscal deficit or rather a trust deficit?

Pondering upon this very question, we decided to venture into the minds of the common man whether salaried or engaged in a business activity. The questions people generally ask themselves while paying any amount of taxes are the following:

a) Where will this amount of tax be spent?

b) What benefit would entail to me as a person against payment of such amount of tax?

c) If I become an active tax payer, will I be subject to harassment in terms of proceedings?

Owing to the mismanaged fiscal policies, the paradigm develops into taking a more pessimistic approach and drawing negative conclusions towards each of the questions raised while paying any amount or nature of tax. As a result of which, a credibility gap develops between the people and its elected diplomats'/government bodies. The trust deficit so created embeds itself in the mindset of the people and is like 'amoeba' eating away the fiscal health of the country.

Predominantly, the fiscal deficit created is only a consequence of a trust deficit. Taxation is a critical ingredient in the quest to ensuring economic stability, improving the overall distribution of wealth and uplifting the standard of living of the people. It is essential that we figure out a way to rekindle the trust between the people and those acting in a fiduciary capacity for the people.

Barrack Obama (the 44th U.S. President) was quoted as saying: "if the people cannot trust their government to do the job for which it exists – to protect them and to promote their common welfare – all else is lost".

A very strong statement indeed, however it is the resilience of the people all else is definitely not lost! The governments need to devise a plan in order to rekindle this trust.

How can the Government win back the trust of the people though? According to a recent report of the Organization for Economic Coordination and Development (OECD) only 43% of the people trust their government amongst the member countries, stating that it has been a cause for concern of most of the Countries. This Report highlights six key areas which a government must focus on in order to win back the trust of its people.

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Reliability: Governments have an obligation to minimize uncertainty in the economic social and political environment. Ensuring economic stability with respect to the sound economic polices put in place would increase the reliability of the Government in the eyes of its people and investors.

Responsiveness: The interaction between the Government and its people is crucial in respect of revitalizing the trust between them. The people of any nation would judge the Government by how it responds to their needs and the manner in which public goods and services are provided to the nation. Moreover, making any citizen feel safe from any form of harassment with respect to government dealings is crucial as well.

Openness: Openness is a very crucial element in ensuing trust between the people and the Government, especially with respect to devising economic policies or promulgating new laws & regulations. 61% of the member countries of OECD have reported that increasing the level of trust is their main goal when investing in openness and engaging with citizens.

Better Regulations: According to the report of the OECD, an improvement in the design and manner in which any regulatory framework is enforced would increase the level of trust between the people and the Government. The OECD has suggested that any government should adopt a risk based approach while promulgating new regulations and monitoring their compliances.

Integrity and fairness: This is another crucial element of trust, hence the Government should ensure that no diplomat or government official should allow conflict of interest, bias or undue influence to comprise their integrity, fairness and objectivity. Lack of integrity and fairness has been a major contributor towards the trust deficit.

Inclusive policy making: Transparency and inclusivity in the policy making of the Government would allow a greater level of trust with the people, especially with respect to the policy being implemented. A good approach to this would be to release new policies/regulations in consultation with the stakeholders.

Keeping in view of the fiscal health of these economies and the uncertainty, it is crucial that catalytic measures should be adopted in this regard by these countries.

Once the people trust those in power and the people get what they expect from any government, the number of active tax payers and tax to GDP ratio would rise tremendously. One can conclude that it is not taxation alone which paves the way towards economic prosperity but in a bigger picture it is the taxation and trust of the people in its governments which makes/pushes an economy towards prosperity.

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