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Australia

Support for Australian Tax Changes to Be Tested In Senate

Snapshot

• Diverted profits tax, transfer pricing changes a priority

• Senate inquiry into corporate tax avoidance expected to reconvene

By Murray Griffin

Aug. 1 — Details of a raft of Australian tax legislation won't be known until at least September, but practitioners already are warning that the new, post-election Senate is likely to favor tough tax integrity measures.

The coalition government led by Prime Minister Malcolm Turnbull proposed significant corporate tax changes in its May 3 budget, then a few days later called an election that took place July 2.

Almost a month later, on July 31, official results were finally declared for the Lower House, with the Turnbull government's majority slashed to just one seat. The exact make-up of the new Senate won't be known for another few days, but the balance of power will rest with an eclectic mix of minor party senators.

The new parliament won't sit until Aug. 30, which means a range of tax bills can't be considered until at least September.

The legislation in question includes a 40 percent diverted profits proposal to take effect from mid-2017, legislation to adopt updated Organization for Economic Cooperation and Development transfer pricing guideline changes intended to retrospectively apply from July 1 this year, and provisions introducing OECD anti-hybrid rules.

Diverted Profits Tax, Other Bills

Melbourne-based Clayton Utz tax partner Niv Tadmore told Bloomberg BNA by phone that most parties in the new Senate would either be in agreement with government efforts to tackle aggressive tax practices “or would take a harder line.”

Consequently, he anticipates that the diverted profits tax “will sail through” the new Senate, noting that it could involve “quite a substantial change” for multinationals operating in Australia. Under the proposal, large multinationals that attempt to shift their Australian profits offshore to avoid paying tax would be charged a 40 percent penalty tax rate, 10 percent more than the current company tax rate of 30 percent (87 ITM, 5/5/16).

Tadmore also expects the bill will be a priority for the returned Turnbull government.

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Michelle de Niese, chief executive of the Corporate Tax Association, which represents large and multinational companies on tax issues, told Bloomberg BNA by phone that the complicated make-up of the new Senate would make it challenging to ensure the diverted profits tax and other integrity measures "are appropriately targeted."

The task of ensuring there was no over-reach was made more difficult by a general lack of understanding Australia already has "one of the strongest integrity regimes in the world," she said.

De Niese, whose organization has made a detailed submission to the Treasury Department on the proposal, described the diverted profits tax as "a very big stick" that had the potential to be applied broadly across a wide range of corporations.

Paul Suppree, the association's assistant director, told Bloomberg BNA that, as currently crafted, the diverted profits proposal could "capture up to 50 percent of all Australia's related-party dealings."

"That is a huge potential footprint," he said.

De Niese added that although the Australian proposal was based on the U.K. equivalent legislation, it would apply very differently. Australia's proposal would capture any transactions in a jurisdiction with a corporate rate lower than 24 percent, "which is an enormous number of our trading partners," while the U.K. version only applies to those jurisdictions below 16 percent, she said.

Retrospectivity Concerns

The Corporate Tax Association also is concerned about the intended July 1, 2016, application date for transfer pricing guideline changes recommended under the OECD's project to stem tax base erosion and profit shifting.

The government noted in a May 3 budget paper that the updated OECD guidelines provide more guidance on intellectual property and hard-to-value-intangibles, and would ensure that transfer pricing analysis reflects the economic substance of the transaction.

Suppree said companies deserved more time to assess the impact of the new guidelines, describing the proposed July 1 application date as "a little early," particularly as the OECD is currently seeking comments on further BEPS-related changes to the guidelines.

De Niese added that the association was more comfortable with the government's proposed timetable for OECD anti-hybrid rules, noting that they would be introduced in a way that gave corporations at least six months to prepare.

Administrative Changes

Meanwhile, not all the imminent changes and key developments will be legislative.

Tadmore noted the Australian Tax Office is devoting a much larger proportion of its internal resources to international tax and was undertaking more reviews of corporate arrangements (144 ITM, 7/27/16).

These reviews "are more forensic, more comprehensive and more robust" than they have been in the past, and the trend is likely to continue, he said.

"I won't be surprised if we see more court cases in this area in the near to medium future," he added.

By the end of 2016, the ATO will also have fully implemented arrangements for automatic exchange of operational rulings and advance pricing agreements associated with cross-border transactions,

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completing a process that began on April 1.

Exchange will occur when Australia has a comprehensive tax treaty with the other country or the other country is a signatory to the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

The new Senate will also shortly get its chance to make its voice heard on multinationals and tax, irrespective of the government's timetable for bringing forward tax bills.

A Senate committee inquiry into corporate tax avoidance, which in the last parliament issued several high-profile interim reports, is expected to reconvene when the new parliament meets.

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For More Information

Treasury's consultation paper is at http://src.bna.com/hiZ.

The Australian Corporate Tax Association comments are at http://src.bna.com/hjm.