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AUSTRALIA

May 2018 Australian Budget

On 8 May 2018, the Australian Federal Budget was delivered by Treasurer, Scott Morrison. Following is a snapshot of tax measures announced in this budget that have the potential to affect non-residents.

These measures supplement the extensive changes to the taxation of foreign residents over the past few years.

Income Tax

Personal tax cuts to be phased in over the next seven years.

From 1 July 2018		
Taxable income	Rate	Tax payable
$0 – $18,200	0%	Nil (Residents Only) *Non-Residents pay 32.5% from $0 - $90,000*
$18,201 – $37,000	19%	+ 19% of excess over $18,200 (Residents Only) *Non-Residents pay 32.5% from $0 - $90,000*
$37,001 – $90,000	32.5%	+ 32.5% of excess over $37,000
$90,001 – $180,000	37%	+ 37% of excess over $90,000
$180,000+	45%	+ 45% of excess over $180,000

From 1 July 2022		
Taxable income	Rate	Tax payable
$0 – $18,200	0%	Nil (Residents Only) *Non-Residents pay 32.5% from $0 - $120,000*
$18,201 – $41,000	19%	+ 19% of excess over $18,200 (Residents Only) *Non-Residents pay 32.5% from $0 - $120,000*
$41,001 – $120,000	32.5%	+ 32.5% of excess over $41,000
$120,001 – $180,000	37%	+ 37% of excess over $120,000
$180,000+	45%	+ 45% of excess over $180,000

From 1 July 2024		
Taxable income	Rate	Tax payable
$0 – $18,200	0%	Nil (Residents Only) *Non-Residents pay 32.5% from $0 - $200,000*
$18,201 – $41,000	19%	+ 19% of excess over $18,200 (Residents Only) *Non-Residents pay 32.5% from $0 - $200,000*
$41,001 – $200,000	32.5%	+ 32.5% of excess over $41,000
$200,000+	45%	+ 45% of excess over $200,000

Measures to apply from 1 July 2018

A package of measures (previously announced on 27 March 2018) will apply to reduce the ability of foreign investors to access concessional tax treatment on stapled securities. These measures will also limit access to concessions for passive income utilised by foreign Governments and foreign pension funds. The key elements of the package are as follows:

- apply a final withholding tax set at the corporate tax rate (currently 30 per cent) to distributions derived from trading income that has been converted to passive income using a Managed Investment Trust (MIT), excluding rent received from third parties. A 15-year exemption is available for new, Government-approved nationally significant infrastructure staples;

- lower the associate entity threshold under the thin capitalisation rules from 50 per cent to 10 per cent to prevent foreign investors from using multiple layers of flow-through entities (i.e. trusts and partnerships) to convert their trading income into favourably taxed interest income;

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- limit the foreign pension fund withholding tax exemption for interest and dividends to portfolio investments only. As a result interest and dividend income derived by foreign pension funds from non-portfolio investments will be subject to withholding tax;

- create a legislative framework for the existing tax exemption for foreign governments (including sovereign wealth funds) and limit the exemption to portfolio investments. Income derived by foreign government investors from non-portfolio investments will be taxed;

- investments in agricultural land will not be able to access the 15 per cent concessional MIT withholding tax rate.

Budget Paper No 2

The definition of "Significant Global Entity" will be amended to include members of large multinational groups headed by private companies, trusts and partnerships and will also include groups headed by investment entities.

The research and development (R&D) tax incentive will be amended to:

- introduce an R&D premium tied to incremental intensity of R&D for companies with aggregated annual turnover of $20 million or more;

- amend the refundable R&D offset for companies with aggregated annual turnover below $20 million so it is a premium of 13.5 percentage points above the claimant's company tax rate;

- cap cash refunds from the refundable R&D tax offset at $4 million per annum; and

- increase the R&D expenditure threshold from $100 million to $150 million per annum.

Measures to apply from 1 July 2019

- High profile individuals such as will no longer be able to license their fame or image to another entity

- Income tax deductions will be denied for expenses associated with holding vacant land and these deductions will not able to be carried forward and claimed against income in future years.

- Employers will no longer be able to claim tax deductions for payments to employees or contractors where a requirement exists to withhold tax from payments but tax has not been withheld as required.

- Cash payments by businesses above $10,000 will be prohibited. Payments over $10,000 will need to be made through the banking system.

- The thin capitalisation rules will be tightened to require entities to value their assets for thin capitalisation purposes at the value included in their financial statements and foreign controlled Australian consolidated entities that control a foreign entity will be treated as both outward and inward investment vehicles.

Other Announcements

- From 1 January 2019, The Government will update the list of countries whose residents are eligible to access a reduced withholding tax rate of 15 per cent on certain distributions from Australian Managed Investment Trusts. The updated list will include 56 jurisdictions that have entered into information sharing agreements since 2012.

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- The taxation of financial arrangements (TOFA) reforms announced as part of the 2016-17 budget aimed at simplifying the system and originally intended to apply from 1 January 2018 have been deferred until after enabling legislation has been passed by Parliament and received royal assent.

Goods & Services Tax

From 1 July 2019, online sellers of hotel accommodation in Australia will be required to account for GST on supplies of Australian hotel accommodation in the same way as local sellers.

Australian Resident Tax and Superannuation Changes

- The above snapshot is in addition to numerous announcements targeted at Australian residents including:

- Increases to the low income tax offset for low income earners

- Raising the low income threshold for exemption from the Medicare levy

- Extending the immediate write off of assets costing up to $20,000 for small businesses to 30 June 2019

- Extending the reportable payment system to the security, road freight and IT services industries

- Limiting the concessional tax treatment of income distributed by testamentary trusts

- Increased funding for tax education, audit and compliance activities by the Australian Taxation Office

- Increased funding to enable the Australian Taxation Office for data analysis and to combat illegal behaviour including corporate phoenixing

- Designing a new framework fro the Australian Business Number (ABN) system

- Modifications to limit access to the small business capital gains tax concessions in relation to partnerships

- Amendments to improve the operation of the shareholder loan provisions contained in Division 7A to be deferred to 1 July 2019

- Further modifications to the tax consolidation regime entry and exit rules

- Extending the anti-avoidance rules fro circular trust distributions with effect from 1 July 2019

- Removing the capital gains tax discount at the trust level for Managed Investment Trusts (MITs) and Attribution MITs from 1 July 2019

- Changes to Superannuation to enable employees to cap employer contributions at $25,000, improve integrity over personal superannuation contributions, exempt recent retirees from passing a work test, increase the number of members in self managed superannuation funds (SMSFs) from 4 to 6, change the audit cycle for selected SMSFs to 3 years, ban fund exit fees, and removing default insurance cover for members with small superannuation balances.

Compiled by David Martin on 27 May 2018
Harding Martin
Contact No: +61 7 3812 2233
Email: dcmartin@hardingmartin.com.au

MALAYSIA

Updates on GST in Malaysia

Malaysia had a general election on 9 May 2018 and for the first time since independence in 1957, we have a change in new government. The new government promised in its election manifesto to repeal the widely unpopular GST within 100 days of being elected.

Six gazette orders were released on 16 May. Five of them revokes various GST orders including the zero-rate supply order, while the sixth amended the standard rate from 6% to 0%. All other provisions remains unchanged.

The Royal Malaysian Customs Department (RMCD) has also released FAQ for implementation of zero-rated standard rate. The first FAQ was released on 17 May, follow by series of updated version on 22 May, 25 May and the latest on 30/5.

The FAQ and gazette orders can be downloaded here: www.gst.customs.gov.my

The gazette orders are to take effect from 1 June and they will effectively make all supplies to be either standard rate at 0% or exempt, paving the way for Sales and Services Tax (SST) to return. Even though the GST rate is at Zero now, it is still requirement for taxpayers to retain their tax files, as there may be accounting, transaction-related or administrative issues during the transition period.

Prime Minister Tun Dr Mahathir announced that SST will be reintroduced in September 2018 to replace the GST. The repeal of GST and reintroduction of SST will require legislations to be passed by Parliament. Transitional issues and the review of the past SST system are factors that need to be considered before the legislation can be formed. There will be transitional issues such as outstanding GST refunds, stock held at hand on the date of repeal of GST, contracts that straddle pre-GST, GST and post GST as well as ongoing appeals before the GST Appeal Tribunal.

Tun Daim Zanuddin, Chairman of the Council of Eminent Persons, informed that the report on the SST implementation method will be submitted to the government by middle of this month. Daim said that there is no immediate need to introduce any new taxes or increase income tax rates at this point. He further added that the SST is able to bring in enough revenue to cover the shortfall from the removal of GST, as oil prices are increasing steadily. However, many believe the government should do a tax reform to introduce a tax system that is sustainable and still remains competitive.

Finance Minister Lim Guan Eng said the government will probably table a “mini-budget” when Parliament convenes in July.

During the transitions from GST to SST, consumers are currently enjoying a three-month tax holiday between the Zero-rating of GST and the implementation of SST in September. However, many expect the new SST mechanism will have a wider base than the previous one but not as wide as the one under the GST regime.

The transitions also poses a lot of challenges for

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service providers, many retailers, agents and service operators are still trying familiarize themselves with the Zero-rating of the GST, claiming do not have a clear directive on next course of action. Some are not keen to adjust the pricing model as the return of SST will require another change to their pricing mode. Some insurance agents are unclear whether they should stick to the current contribution rate or reduce the amount in line with the Zero-rated GST as they have yet to receive a clear directive.

A survey from the Bernama showed that food prices mostly remained the same. Hotel operators informed that prices displayed are not inclusive of GST in the first place. Restaurants operators informed that raw material prices are still high. Retailers of non-food items, however, have taken advantage of the Zero-rating of GST to hold sales promotions.

The Malaysian Retailer Association (MRA) hopes that the SST rate will be set at less than 6% to encourage consumer spending as their business were not good due to oversupply of retail malls in Malaysia.

Meanwhile, The Ministry of Domestic Trade, Consumerism and Cooperatives is conducting a nationwide "Ops Catut 4.0" with the aim of monitoring and ensuring compliance among business operators during this period of Zero percent GST. The operation is run together with the RMCD.

Compiled by Foong Kok Keong on 14 June 2018
GEP Tax Services Sdn Bhd
Contact No: +60 03 7803 3390 ext 555
Email: foongkk@gep.com.my

NEW ZEALAND

Sit Back & Relax – NZ's Transitional Tax Resident's Regime

Packing up and moving to another country, will often involve multiple decisions needing to be made, some of which can have material consequences for you if you make the wrong choice. The process is often made harder, by the numerous emotions that will usually accompany the shift – leaving family & friends, new cultures and customs to learn and the ability to navigate the new location upon your arrival there.

One decision obviously, is what to do with your various investments, particularly if the destination jurisdiction has a less favorable taxing regime to the one you presently experience. Should you restructure, or at least sell up now, in order to avoid potentially more onerous taxation consequences should you decide to wait until you are settled in your new country before you take any action.

If your destination is NZ, and you have not been a tax resident of the jurisdiction for the past ten years, then as the title to this article suggests, you can essentially sit back and relax, wait until all the emotions of the move have passed, and then take time to make some key decisions. The ability to take this approach is all due to NZ's transitional tax resident's regime ("TTR") which was first introduced in 2006, essentially as a carrot to attract more skilled talent to NZ.

Under TTR, once you have triggered a NZ tax resident status, essentially for the next 48 months, the only foreign sourced income subject to NZ taxation, is that which you derive either from employment or from the supply of personal services. So take for example a case where you need to sell your home, however the market is somewhat depressed so you decide to rent the house out for 18 months hoping the market will improve. During TTR, this foreign sourced rental income is exempt from NZ taxation. Equally are dividends from shares held in foreign companies and interest earned from those foreign bank account deposits.

Should you still derive foreign sourced employment or personal services income post your arrival in NZ, while it may still be exposed to NZ taxation, usually you will receive a credit against the NZ tax payable, for any foreign income taxes you have already paid.

TTR is essentially an opt-out regime, which in other words means, unless you actually elect for TTR to not apply to you (which you might do for example if you wish to claim family assistance benefits in NZ), it automatically applies to you for the four year period, once you are considered a NZ tax resident. In this regard, your status as a NZ tax resident is usually triggered once you have either physically spent more than 183 days in NZ in any rolling 12 month period (then applying from the first day of the 183 day period), or you have established in NZ, what is referred to as a permanent place of abode (PPOA – residency commencing from the date of deemed establishment).

The benefits of TTR can only ever be claimed once, so once the regime has applied to you, if you go away from NZ for more than 10 years and then return, you do not qualify for TTR again.

So if NZ is a destination you or your client's are considering, bear TTR in mind, and most certainly do not hesitate to contact us for any further advice.

Compiled by Richard Ashby on 15 June 2018
Gilligan Sheppard Ltd
Contact No: +64 9 365-5532
Email: richarda@gilshep.co.nz

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connected.
individual.

For further information, or become involved, please contact:

AGN International
E-mail: info@agn.org | Office: . +44 (0) 20 7971 7373 | Web: www.agn.org