The (tax) year ahead

Its full steam ahead for 2018. So what’s on the tax agenda, and how will it impact you?

Tax Working Group (TWG)

Established last December, the TWG is scheduled to have its first meeting by the end of February.

Under its terms of reference, a “fairer tax system” is one of the key objectives. This is a different point of emphasis to previous – i.e. the 2010 and 2001 – reviews of NZ’s tax system. This may affect how the TWG views the current system and different tax types, including a capital gains tax. (The 2010 tax review, for example, rejected a capital gains tax largely on administrative complexity grounds.)

Another objective is ensuring the tax system can fund Governments’ future expenditure needs taking into account the demographic, technological and employment changes likely in the next 5 to 10 years. This may lend itself to, if not require, some “out of the box” thinking, compared to previous tax reviews.

The proposed timeline has the TWG reporting to the Government early next year. There will be public consultation. The form of that engagement is not yet known. Any accepted, non business as usual, recommendations will not come into effect until after the next election.

The Government’s election tax policies

These include:

1 Replacing the previous Government’s personal tax changes (which were intended to take effect from 1 April 2018) with a “Families” package (containing targeted assistance).
2 Extending the “bright line” period for taxing residential land and properties (other than the main home) from 2 to 5 years.
3 Ring-fencing rental losses.
4 Re-introducing the R&D tax credit, at 12.5%, for business.

Labour’s Families package and reversal of National’s tax cuts have been passed into law. The bright line period extension is being included in the Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Bill. It will apply to disposals of properties acquired on or after the enactment of that Bill. To give some idea of the potential timing, the Bill will need to be passed into law by 31 March 2018 at the latest.

The rental loss ring-fencing and R&D tax credit changes are yet to be introduced. These may be part of the new Government's Budget announcements, on 17 May.

Base Erosion and Profit Shifting (BEPS)

The new Government is proceeding with the previous Government's BEPS policies. The Taxation (Neutralising Base Erosion and Profit Shifting) Bill, introduced in December:

- Imposes new interest limitation requirements on inbound related-party debt funding.
- Strengthens NZ's transfer pricing and thin capitalisation regimes.
- Contains a rule to prevent large foreign multinationals avoiding a New Zealand taxable presence ("permanent establishment") on certain local sales.
- Introduces comprehensive rules to stop NZ and foreign companies arbitraging differences in the tax treatment of transactions and entities between countries ("hybrid mismatches").

The drive for change is understandable. Some change is required. However, stepping back, our major concern is that New Zealand's approach goes beyond BEPS measures other countries are prepared to adopt, or have already implemented. Many countries have taken a blatantly national welfare approach, implementing only those measures that address their most pressing domestic concerns, often for political reasons. There has been a reluctance to adopt proposals that might harm economic competitiveness. New Zealand should take note. There is also a high risk of unintended consequences and errors, given the complexity and the short time frame.

Broadly, the BEPS changes will apply from income years commencing on or after 1 July 2018. Therefore, for many, there will be little time to act to ensure existing structures and funding are compliant.

New Zealand is signed up to the Multilateral Instrument (MLI) to change double tax agreements (DTAs) for BEPS measures. This requires both NZ and the other country to have completed domestic processes to implement the MLI, and for the specific DTA (and Article) to be within scope. New Zealand's process for ratifying the MLI has commenced. This is expected later this year.

Business as usual

This includes the Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Bill, which contains:

- New electronic reporting requirements for PAYE information (for employers), from 2019, and investment income information (for payers), from 2020, to support Inland Revenue's Business Transformation changes. There is not a significant amount of time for business to update their systems and processes to be compliant. This may mean stop-gap changes being made when a wider change would be more efficient.
- New employee share taxation timing rules. Employers with share incentive schemes will need to be aware of the new taxing point for share grants (and potential overlap between the "current" and "new" rules).

In addition to the two current Bills, we expect there will be new tax legislation this year – e.g. new feasibility expenditure tax rules, following the *Trustpower* case.

Finally, Inland Revenue's Business Transformation rolls on. Its impact to date, what is on the horizon, and what business needs to be thinking about will be the subject of another article.

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