TaxMail

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Regular commentary from our experts on topical tax issues

Issue 1

2018 Tax Bill report back

Snapshot

The Finance and Expenditure Committee of Parliament has reported back its amendments to the Taxation (Annual Rates for 2018-19, Modernising Tax Administration and Remedial Matters) Bill. The Tax Bill:

- Changes how individuals will interact with the tax system.
- Introduces a new short-process binding ruling option for smaller taxpayers and extends the scope of the binding rulings regime more generally.
- Contains new information collection, use and disclosure rules for Inland Revenue.
- Introduces thresholds for correcting errors in subsequent returns.
- Extends the Commissioner's administrative power to address minor legislative anomalies.
- Makes various changes to KiwiSaver, including new contribution rate options.

Further detail on the above can be found in our July **taxmail**. The Committee's report and its amended Bill, and the Officials Report on submissions, are available **here**.

The report back on the Bill contains some useful changes.

One to highlight is the Committee's push-back on extending Inland Revenue's ability to use administrative powers to "bridge" minor legislative gaps.

This will make it even more critical that legislation is well developed and drafted the first time round.

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What's changed?

The Finance and Expenditure Committee's report outlines its key changes to the Bill as introduced.

The Committee's key change removes the clauses that would have allowed the Commissioner of Inland Revenue to make greater use of her administrative powers ("care and management") to deal with minor legislative anomalies. The concern appears to be that this may conflict with Parliamentary sovereignty as changes would in practice be made without amendment to the law. The Committee considers a cautious approach is warranted.

Other changes in the reported-back Bill include:

- Removing exposure to interest and penalties (until the terminal tax payment date) for individuals who earn only salary or wages and interest, if tax is incorrectly calculated. The Committee has also recommended that they should also be able to correct, rather than simply confirm, pre-populated tax return information.
- Allowing gains on receipt of insurance proceeds for buildings that were irreparably damaged by the 2016 Kaikoura earthquakes to be "rolled over", if the property is held on revenue account. This mirrors rules introduced following the 2010/11 Canterbury earthquakes. An August 2018 Supplementary Order Paper to the Bill extends the Canterbury earthquake depreciation roll over relief provisions for a further 5 years (to 2023/24).
- Deferring to 1 April 2020 (from 1 July 2019) the removal of the "lock in period" (which currently affects members who join KiwiSaver between the ages of 60 and 65). The transitional rule that would have still "locked in" for 5 years those over 60 years who join KiwiSaver before 1 July 2019 is removed. Instead, they would forfeit the right to any Government tax credits and employer contributions to KiwiSaver during this period.
- Increasing the turnover threshold for taxpayers to use the new short-process binding rulings regime from $5 million to $20 million. The requirement for the tax at stake, for the issue to be ruled on, to be less than $1 million will remain.
- Remedial amendments to the Government's recent extension of the "bright-line" period, for taxing sales of residential land, from 2 to 5 years. This clarifies the application date of the 5 year test for leases with perpetual rights of renewal that are subsequently converted to freehold ownership and purchases "off the plan" (both freehold and leasehold interests).
- Various technical amendments to new bloodstock tax deduction rules, which allow investors to claim tax deductions for standout yearlings they intend to use for breeding purposes. The new rules were included in an October 2018 Supplementary Order Paper to the Bill.
- Various changes to improve the operation of the PIE tax regime, in response to submissions.

The reported-back Bill is expected to be enacted by 31 March.

Our thoughts on the Committee's changes

As expected, the Committee's report and changes are mainly around improving the operation of the various proposals, in response to public feedback.

The Select Committee process remains an important and welcome process for ensuring that legislation operates as intended. However, our concerns remain around the speed with which recent tax legislation has been passed and the impact on its quality as a result.

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The Committee’s removal of the provisions in the Bill that would have allowed the Commissioner to apply her administrative powers to “bridge” minor gaps in the legislation makes this even more telling.

In our earlier taxmail, we noted that there are arguments for and against the proposed extension of the Commissioner’s “care and management” role to deal with minor anomalies in the legislation. A view that the Commissioner may be seen as usurping the role of Parliament in making tax law and that this power potentially derogates from the discipline of getting the law right the first time appears to have resonated.

This, in our view, puts greater onus on Government and Officials to take care in developing the policy and drafting the necessary legislation. It is also a cautionary message to policy makers about the consequences of legislating in haste. KPMG has consistently raised this point, most recently in relation to the BEPS legislation (which is the subject of a number of remedial amendments in this Bill). We hope this message finally cuts through.

For further information

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