TaxMail

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Regular commentary from our experts on topical tax issues

Issue 1

Goodbye 2015! Welcome 2016?

Snapshot

A busy tax year draws to a close. A slow start to 2015 has gathered pace. From bright line rules and Business Transformation to Base Erosion and Profit Shifting and "GST on online", a lot has been talked about and consulted upon.

The consultation has generally produced good or improved results. However, in other cases, the results are less than ideal. The sheer scale and speed of change means, we suspect, that some corrections will be required.

These will add to what will be a busy 2016.

Taxmail wishes our readers a happy and safe festive season and, in this last edition for the year, we consider some of 2015's themes and what 2016 might hold.

We hope that taxmail has informed and provoked in 2015

Importantly, we hope it has helped you to understand, and deal with, our ever changing tax system

We wish you the best for the festive season and look forward to your continued readership in 2016

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Of bright lines and carpenters

The Auckland residential property market is a concern for Government and the Reserve Bank. The Government's solution is to tax those who sell within two years and give Inland Revenue more information about land transactions.

This is the "ask a carpenter and he/she will use a hammer" solution (no offense intended to carpenters). Whether the tax rules are the cause of the current state of the Auckland property market is an open question. However, ask a tax person and the solution is likely to be: change the tax rules.

The Government expects very little tax to be paid because of the new bright line rule. Only those who have to sell their investment properties or holiday homes within two years will pay.

Inland Revenue will, however, be in a better position to tax those who sell after two years, due to the new tax information requirements. This includes a requirement for some to provide their IRD numbers.

These rules have created problems for the smooth operation of the tax system. There are delays in issuing IRD numbers to non-residents, who must now open a New Zealand bank account, even if they don't need one. This rule is already proposed to be amended for the upcoming GST changes for offshore suppliers.

Of BEPS and cross-border trade and investment

October saw the OECD publish its final recommendations to combat Base Erosion and Profit Shifting ("BEPS"). The focus is on taxing profit where the economic activity takes place. Like beauty, where that is, is in the eye of the beholder.

The OECD's proposals are many and varied. Consistency and coherence is key but there are already signs that not everyone agrees. Global implementation is therefore uncertain.

New Zealand's own response to BEPS needs to balance New Zealand's national interest with being a "good global citizen". The signals (refer the Government's NRWT on related party debt proposals earlier in the year) are that New Zealand is leaning towards, and being pressured on, the latter.

Historically, the focus of NZ tax policy has been a foreign investor who is sensitive to New Zealand tax. If tax is too high, they will either not invest here or will pass the tax cost on to New Zealand businesses. The tax rules are therefore designed to minimise disincentives to invest for those investors and to reduce the cost of capital for NZ firms.

The new focus? The investor who wants, or is prepared, to pay New Zealand tax. New Zealand's risk is that it will lose foreign investment, which is needed to fund our budding businesses and boost exports, to countries who are prepared to play the tax competition game.

2016 promises a discussion on New Zealand's international tax framework and consultation on interest deductibility and hybrid structures. These will be opportunities to test New Zealand's position on BEPS.

The less visible developments will be the OECD work to implement BEPS tax treaty and transfer pricing recommendations. A key OECD recommendation is to strengthen the "permanent establishment" concept (i.e. who is taxable). It is also working on how to determine what profits should be allocated to a permanent establishment (i.e. what is taxable). The results of that work will have implications for New Zealand's business tax base. We hesitate to mention it but, as the Trans-Pacific Partnership illustrates, tax treaty changes are less transparent than domestic tax policy changes. Its importance will require a keen eye being kept on this work.

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Of new technology and the inevitable

New Zealand's comprehensive GST is held up as world leading. Offshore supplied goods and services are a key omission. This is changing. Draft legislation is sitting with the Finance and Expenditure Select Committee of Parliament to charge GST on services supplied from offshore to New Zealand consumers.

There are various equity-related reasons for this change: a level playing field for NZ suppliers and a level playing field for spending in New Zealand. The other factor is that Governments need cash and the online economy is too big to ignore. New Zealand is simply following the global trend.

Although submissions are due 26 January, the likely outcome is the proposed rules will apply from 1 October 2016.

Possible changes to collect GST on all imported goods will be the focus when NZ Customs issues its consultation document on the "low value" goods threshold. In the case of imported goods, administration and compliance costs are more likely to slow the inevitable.

Of a 21st Century tax administration and tax disruption

Increasingly, what got us here today won't get us there tomorrow. Inland Revenue knows this too. It is focused on how it will collect tax. It knows the best time to collect tax is when cash is paid.

The other key focus is information to support the correctness of the tax collected. The proposal is for a real-time exchange when information is entered or processed in business's systems.

Proposed changes to PAYE follow these principles. Other tax types are likely to follow suit.

Businesses can look forward to doing more. That will inevitably come with a need to change. The system won't be the same. This will have a cost for business. The cost/benefit trade-off will need to be worthwhile.

2016 will be the year to focus on how business integrates with the demands of the tax system.

Of tax reform and two elections

Australia is important to New Zealand, both for investment and trade. Its tax settings impact on both.

While our focus is on NZ developments, Australia has started its own tax reform process. From this side of the Tasman, that process seems less smooth than New Zealand's own Tax Working Group in 2010.

Australian tax reform seems to be another term for "don't tax me, tax that other guy", or "my tax cut, your tax increase". However, the need to repair looming budget deficits and re-weight the tax mix seems to be providing momentum for change. The challenge is achieving reform that is politically sustainable. Tax reform proposals are expected to form a key part of the different parties' policies going into the 2016 Australian Federal election.

Australia is further advanced with its response to BEPS concerns than New Zealand. It is implementing an anti-avoidance rule for multi-nationals which it thinks are not paying their "fair share" of Australian tax, and tax disclosures for public and some private companies. It has already negotiated tax treaties which are BEPS aligned.

2016 will also see Presidential and Congressional elections in the United States. The US position on BEPS, and the taxation of its own companies, is important. The well-publicised BEPS examples generally involve US businesses. The elections may provide an indication of how far the US is prepared to go in adopting BEPS recommendations.

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But wait, there's more…

If you are keen for some light holiday reading, 2015's taxmails which cover these and other topics can be found here for a refresher.

And finally

This is the last taxmail of 2015. We hope there are no last minute tax policy Christmas presents (or lumps of coal). If there are, these will be covered in January.

We trust that taxmail has informed and provoked. Importantly, we hope it has helped you to understand, and deal with, our ever changing tax system.

We wish you the best for the festive season and look forward to 2016.

For further information

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