
New Australian government addresses unlegislated tax measures

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In brief

Following the recent change in government, the Australian Treasurer has issued a media release regarding the fates of previously announced but unlegislated tax measures. The release identifies the measures that will not proceed, those that will be implemented, and those that may be subject to further consultation.

There are 92 Australian tax announcements that have not been legislated, including one from March 2001. The media release was intended to “create significant operational certainty for businesses and consumers” and “significantly reduce red tape and associated costs.”

The government plans for Parliament to pass the bulk of legislation moving forward by July 1, 2014.

Of the 92 unlegislated announcements, the government will proceed with 18 initiatives. Three initiatives will be significantly amended. The government will not proceed with seven initiatives. The government will decide what to do with the remaining 64 measures following consultations with industry tax experts. These discussions are expected to take place over the next two weeks.

Among the measures addressed in the release, the decision to abandon measures that would have denied interest deductions to Australian companies with respect to funds borrowed to make foreign investments – that is, to acquire stock in a foreign company – may be relevant to US multinationals with Australian subsidiaries.

Details of the measures that will and will not proceed are outlined below.

In detail

Key measures that will not proceed

Among the seven tax measures that will not proceed, those affecting US multinationals include:

- the proposal to deny interest deductions to Australian companies with respect to funds borrowed to make foreign investments (that is,

to acquire stock in a foreign company). In place of this proposal, the government will introduce a targeted anti-avoidance provision. Details of this provision have not been released.

- proposals regarding offshore banking units and related-party transactions. The previous announcements were intended to address

loopholes in the offshore banking unit regime. The government will not proceed with the measure to exclude all related-party dealings with offshore banking units; instead it will develop targeted rules to address concerns over the integrity of the regime.

Key measures that will proceed

The government will proceed with 18 of the previously announced measures, including:

- amending the managed investment trust provisions to allow pension funds to access the managed investment trust withholding tax regime, as originally intended.
- introducing the third tranche of the Australian investment manager regime, which provides an exemption from Australian tax for foreign investment funds investing in Australian securities.
- amending the thin capitalization measures, as announced in the May Budget. One of these measures will reduce the safe harbor debt limit for general entities from 75% to 60% of adjusted Australian assets (that is, effectively reducing the limit from 3:1 to 1.5:1 on a debt-to-equity basis). See our [Newsalert dated May 16, 2013](#), for further discussion.
- removing the research and development (R&D) concession, which will deny access to the R&D tax incentive for large companies with incomes of AUD20 billion or more.
- amending the consolidation measures introduced in the May Budget. These were designed to improve the integrity of the consolidation regime and prevent entities from claiming double deductions.
- improving the integrity of the foreign resident capital gains tax regime (also announced in this year's Budget). These measures address issues in administering Australia's foreign capital gains tax regime and also clarify the operation of Australia's taxing rights over indirect transfers of Australian real property interests.
- improving the targeting of the mining exploration deduction. These measures will restrict the immediate deduction for the cost of acquiring mining rights so that it is available only for genuine exploration activities, as originally intended.

The takeaway

US multinationals with Australian subsidiaries, and US subsidiaries of Australian multinationals, should

understand the impact of the measures that will and will not proceed.

Also, there are many measures on the 'yet to be determined' list. The government believes that it has "a disposition not to proceed" with these remaining measures, subject to further targeted consultation within the next few weeks. This consultation will focus on possible unintended consequences from not proceeding with the measures and whether there are compelling reasons why the measures should proceed.

Although there may be some concerns about measures that do not proceed, the government has commented that "there will be legislated protection for any taxpayer who has self-assessed with announced changes that the government will not proceed with. Moreover, taxpayers that have complied with previous announcements that will no longer proceed, and have paid additional taxation, will be entitled to a refund."

However, no such assurance has been given regarding areas in which the government still intends to proceed with legislation.

Let's talk

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