September 2021

MYEFO 2021

The Mid Year Economic and Fiscal Outlook (MYEFO) was the subject of discussion in the September session of Parliament. The Treasurer describes the overall economic situation as on target to deliver the result anticipated in the 2021 Budget - which is a deficit equivalent to around 7% of GDP for the year. This result is expected to take advantage of significantly reduced interest costs of funding, in part due to the significant increase in the use of concessional financing through multilateral agencies and budget support from the Australian Government. The Treasurer reported that donor grants have increased by PGK 413 million.

However, overall economic growth remains weak with an expected GDP growth rate for 2021 of 1.8% down from the planned 3.5%. The impacts of the continued shutdown of Porgera as well as other incidents delaying production at Ok Tedi and Simberi have meant that the resource sector has underperformed the original budget expectations. The general strengthening of agricultural commodity markets has not been sufficient to offset the resulting loss of GDP in the resource sector.

On the basis the MYEFO indicates that the overall deficit will come in as planned for 2021, this could be the first time in several years that a supplementary budget is not required. However, continued challenges in the resources sector, the potential for a further surge in pandemic conditions, and other global and local challenges will still make economic stability and predictability difficult for some time to come.

IRC notice re mandatory valuations for all stamp duty applications

Stamp Duty is applied to a range of transactions, ranging from the transfer of marketable securities, to the execution of a lease, through to the transfer of an interest in real estate. As Stamp Duty is generally applied to the value of the transaction, there is a need to determine an appropriate value for dutiable transactions. The Stamp Duties Act contains a general requirement that the value used to determine duty should be market value and the base case is that the consideration determined between the parties should be market value. However, there is the opportunity for the Collector of Stamp Duties to impose a different value where no evidence of the value is provided, or if the evidence provided is unsatisfactory in the view of the Collector of Stamp Duties.

Where parties are dealing with each other at arm’s length, the value at which a transaction is completed will generally be accepted as market value. Therefore, the circumstances in which the Collector would normally seek to impose a different value would generally be limited to transactions between related parties.

However, a recently issued public notice appears to address the issue of transaction value more generally. The notice appears to be directed at all transfers of real estate (although the notice is arguably drafted more widely). The IRC is essentially stating that unless a value is determined by “several experienced property valuers”, any evidence that may be provided by a person involved in a dutiable transaction will be deemed unsatisfactory. The notice is stated to take effect on 30 September.

It appears the intention of the notice is to require taxpayers undertaking a real estate transaction - irrespective of whether they are related parties or acting at arm’s length - to obtain a valuation from an IRC approved valuer. This position appears to dismiss the notion that parties acting at arm’s length will do so at market value.

Further, as currently drafted, the administration of Stamp Duty by the IRC to real estate transactions is unclear. The range of uncertainties and unanswered questions include:

- When will the list of approved valuers be released
- Will the IRC allocate valuers to transactions after the application is submitted - or can taxpayers engage one of the listed valuers in advance
- Does this requirement apply to all dutiable transactions, or only to the transfer of real estate
- Does the requirement apply equally to third party and related party transactions

The examples provided by the IRC in the notice of under declaration of values, and even fraudulent claiming of exemptions certainly warrant action and the Stamp Duties Act allows action to be taken in such cases. However, it is hoped that additional clarity will be available in order for taxpayers to understand how to meet their tax obligations and to potentially limit the notice's application to related party transactions.

Tax Clearance Certificate administration continues to develop

Many taxpayers will be familiar with the basic requirements for obtaining a tax clearance certificate (TCC). The legislative background to the TCC arises from Division 2, Part 9 of the Income Tax Act 1959. The provisions were originally introduced to work in conjunction with foreign exchange control administered by the Bank of PNG. Although foreign exchange controls/restrictions are no longer part of the legislative framework, the TCC continues to have a legislative role to provide the IRC with the ability to not provide authorisation for a certificate if there is a risk that the action being the subject of the authorisation may involve or assist in the avoidance or evasion of tax. This should essentially mean that for a cross border payment, a consideration of whether there is a risk, in allowing the payment, of tax being evaded.

The current process, although it evolves over time and ebbs and flows in terms of administrative practice, does appear to have strayed away from the underlying legislative intent. Most recently, the TCC process appears to be moving against applications for groups of transactions which, although similar in nature (e.g. the payment of trade creditors), are heading to different international destinations. The trend is moving towards separate TCCs for separate destinations. We understand that this is potentially linked to facilitating further Bank of PNG reporting.

However, for taxpayers that are faced with a mounting administrative burden associated with TCCs, there are potential changes coming. The current draft rewrite of the Income Tax Act does not have a replication of the provisions of Division 2, Part 9 of the current Act - rather the tax clearance certificate provisions will be dealt with through the Tax Administration Act. The version of this act which is passed, but yet to become effective, currently contains an obligation on the Commissioner General to provide the certificate (or a refusal to provide a certificate) within 14 days of application and the TCC will be valid for 12 months.

If you would like to know more about any of these developments or have any other questions, please get in touch with your usual PwC contact.

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