Budget 2016

JOBS & GROWTH

Cracking down on tax avoidance

With this Budget the Turnbull Government is cracking down hard on tax avoidance.

This Budget makes important protections to the integrity of Australia's tax base, designed to ensure that all individuals and businesses pay the right amount of tax.

By avoiding their full tax responsibilities and by using aggressive tax minimisation schemes, individuals and companies not paying their tax are reducing vital funding available to the Australian community.

With this Budget, the Government has put on notice all individuals and companies who seek to avoid tax.

Already, the Government has taken dramatic steps to stamp out tax avoidance.

Adherence to Australia's tax laws is now an explicit condition on overseas purchasers that present a tax risk through the foreign investment approval process. The Australian Tax Office (ATO) has more powers and more access to global taxpayer data than ever before.

With the Budget, the Government goes further.

This Budget introduces a new Diverted Profits Tax.

With this measure the ATO will have the tools to pursue even the most complex schemes designed to minimise tax.

This is a message to multinationals, that if you wish to operate in Australia, the Government expects you to pay the right amount of tax or prepare to be challenged.

To police these new anti-avoidance laws, a new Tax Avoidance Taskforce of over 1000 experts in the ATO will be set up to pursue, test and prosecute companies and high wealth individuals not paying the right amount of tax.

The tax avoidance game is up.

The laws and tougher penalties introduced last year by the Government are having an impact but the Government is going further to ensure that companies that try to avoid tax are caught and punished.

At a time when the tax burden on business is being reduced, it's important that additional measures are taken to reinforce the integrity of Australia's corporate tax base.

The majority of Australian companies are doing the right thing in paying their taxes and complying with Australian law but we are being let down by those few who are not playing by the rules.

In circumstances of aggressive tax avoidance this Government will ensure that the law is fully enforced and where there are examples of gaming and manipulation then the laws will be strengthened.

This is a government that is prepared to take real action. This Government has been fully enforcing foreign investment laws in residential real estate.

The package contained in this Budget of corporate tax integrity, compliance and transparency measures will help achieve the Government's goal of having Australia as the world leader in the global fight against tax avoidance.

Tougher tax avoidance measures

The Turnbull Government will introduce new measures to protect Australia's tax base, enforce compliance and increase transparency. The Government will:

- Establish an ATO tax avoidance taskforce to enforce Australia's tax laws, supported by a number of external experts, including the formation of a panel of eminent former Judges.
- Implement a Diverted Profits Tax to apply to multinational companies paying insufficient tax on profits made here in Australia.
- Strengthen the protections for whistleblowers who come forward and report tax avoidance.
- Increase penalties on large multinationals that don't comply with tax and disclosure obligations.
- Consult on new laws to require tax advisers and promoters of tax schemes to disclose potentially aggressive tax schemes to the ATO.
- Strengthen transfer pricing rules to reduce the opportunity for companies to avoid paying tax on business activity in Australia by shifting profits offshore.
- Encourage large businesses to adopt the new tax transparency code and publish a reconciliation of profit and tax, together with other details of their taxation affairs.

We are committed to a tax system that ensures everyone pays the right amount of tax based on what they are earning in this country.

The Government has announced that it will implement new OECD rules to prevent multinationals from obtaining unfair tax advantages by exploiting differences in the tax treatment of an entity or instrument between countries.

An example of a hybrid mismatch is where a financial instrument is treated as debt in one country's tax law, and equity in another.

Without the Government's changes, multinationals may have been allowed to claim deductions for interest payments in one country but not pay tax on those payments in the other country.

Australia will be among the first countries in the world to implement the OECD anti-hybrid rules, along with the UK.

These new measures are needed because Australia's tax law does not currently take into account the tax rules in other countries. Therefore, multinationals can exploit hybrid mismatch arrangements between two or more countries which are not available to purely domestic Australian entities.

The new anti-hybrid rules will ensure a level playing field between multinationals and Australian entities and will strengthen the Australian corporate tax base.

Strengthening the foreign investment framework

Foreign investment has underpinned the development of our nation and we want to continue to attract the strong inflows of foreign capital required for our transitioning economy.

But the Government must ensure that foreign investment occurs only where it is not contrary to Australia's national interest. The Government's approach is to be open, transparent and sovereign in foreign investment decisions.

The Foreign Investment Review Board (FIRB) advises the Government on Australia's foreign investment framework and the extent to which foreign investment proposals meet the national interest test. The national interest test considers a range of factors, including national security, the impact on competition, the character of the investor, and the impact on the economy and the community.

An important aspect of the national interest test relates to taxation. The Government believes that safeguards must be in place to ensure foreign companies investing into Australia pay tax on their Australian earnings.

Tax conditions can now be imposed on foreign investors where it is decided that a particular foreign investment application presents a risk to Australia's revenue. Tax conditions include compliance with

Australian taxation law and any ATO directions to provide information in relation to the investment.

Investors will also be required to advise the ATO if they enter into any transactions with non-residents to which the transfer pricing or anti-avoidance measures of the tax law may potentially apply. A breach of these conditions could result in prosecution, fines and potentially divestment of the asset.

While foreign investment is welcomed in Australia it is also imperative that critical infrastructure sales are scrutinised to ensure any potential national security risks can be addressed.

The Turnbull Government has further bolstered Australia's foreign investment rules after securing State and Territory support to amend the Foreign Acquisitions and Takeovers Regulation so that the sale of critical state-owned infrastructure assets to private foreign investors is now covered.

It will be increasingly important for the FIRB to not only have the commercial expertise and background to deal with complex commercial transactions, but to also have an even greater understanding of the broader strategic issues, including national security issues, that are essential to protect our national interest.

To bolster the FIRB's ability to advise on national security issues, the Government has appointed Mr David Irvine and Mr David Peever to the FIRB. Mr Irvine is a former Director General of both the Australian Security Intelligence Organisation and the Australian Secret Intelligence Service, and Mr Peever chaired the Minister of Defence's First Principles Review of Defence and now chairs the Oversight Board.

The above changes support the recent reforms by the Turnbull Government to strengthen our foreign investment framework, including:

- Greater compliance powers for the ATO and strict new penalties for those caught breaking the rules;
- A new foreign ownership of agricultural land register and reduction of the screening threshold for proposed foreign purchases of agricultural land by private investors to $15 million;
- FIRB screening of direct interests in agribusinesses valued at $55 million or more; and
- Forced sales of 30 properties, worth more than $78 million, illegally acquired by foreign nationals.

Building on previous measures

The Government has been assiduously tackling tax avoidance.

The Multinational Anti-Avoidance Law introduced last year meant that around 1,000 multinationals needed to review whether their arrangements needed to change to ensure they complied with the new rules. Following the announcement of the Law the number of multinational companies being pursued by the ATO has expanded from an initial 30 to 170 large multinationals. The ATO has identified these companies as having significant activities in Australia and as potentially using contrived structures to book Australian sales overseas to avoid Australian tax. The Multinational Anti-Avoidance Law prevents companies from avoiding paying tax in Australia by claiming that their arrangement was designed to avoid foreign tax. Lowering the purpose test from 'sole or dominant purpose' to 'one of the principal purpose' has strengthened the ATO's capacity to act on corporate tax avoidance. This means that more tax will be paid on profits from Australian activities.

Penalties for large companies that enter into tax avoidance or profit-shifting schemes were doubled from 1 July 2015.

The Government is introducing GST on digital products and services imported by consumers, so companies are obliged to remit GST regardless of where they are located, and has announced GST would apply to goods below $1,000 dollars acquired by consumers from foreign sellers.

Country-by-Country Reporting was introduced to give the ATO greater access to information on the worldwide operations of multinationals, in addition to the Common Reporting Standard which provides the ATO with detailed information to individual and entity accounts worldwide.

These measures, together with the new measures announced in the 2016-17 Budget, will help ensure that Australia has a sustainable tax system that can continue to fund public services like schools, hospitals, defence and welfare while creating the right settings for enterprise, innovation and investment.