

18 March 2019

The Hon Josh Frydenberg MP
Treasurer
House of Representatives
Parliament House
Canberra ACT 2600

By e-mail: josh.frydenberg.mp@aph.gov.au

Dear Treasurer



Important tax legislation before Parliament

Chartered Accountants Australia and New Zealand (CA ANZ) is writing to you to urge the Government to expedite the passage of certain tax-related bills through Parliament in the early April Parliamentary sitting days in the interest of providing certainty to the business community.

As the Government has indicated in the media that the Federal Election is likely to be held in May 2019, CA ANZ is conscious that in practical terms, there are only two more sitting days (2 and 3 April 2019) for both the House of Representatives and the Senate to debate and pass bills which are currently before them.

We urge that Government to expedite the passage of the following bills:

- [Treasury Laws Amendment \(Increasing the Instant Asset Write-Off for Small Business Entities\) Bill 2019](#) (Small Business Instant Asset Write-Off Bill) – before the House of Representatives
- [Treasury Laws Amendment \(Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures\) Bill 2018](#) (Multinationals Tax Bill), subject to our comments below regarding the R&D tax incentive proposals – before the House of Representatives
- [Treasury Laws Amendment \(Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures\) Bill 2018](#) (Foreign Investors Tax Bill) and accompanying bills, [Income Tax \(Managed Investment Trust Withholding Tax\) Amendment Bill 2018](#) and [Income Tax Rates Amendment \(Sovereign Entities\) Bill 2018](#) – before the Senate.

Whilst CA ANZ has reservations on some aspects of the bills, given that the bills have largely been through the legislative process, and contain proposed start dates which have already passed or is 1 July 2019, we believe that it is more important now to give businesses certainty in relation to their tax position.

Small Business Instant Asset Write-Off Bill

The Small Business Instant Asset Write-Off Bill extends by 12 months to 30 June 2020 the period during which small business entities can access expanded accelerated depreciation (by way of instant asset write-off), and increases the threshold below which amounts can be immediately deducted under these rules from \$20,000 to \$25,000.

As this measure has been announced and proposed to commence from 29 January 2019, it is crucial that the passage of this Bill is expedited through Parliament so as to provide certainty to those small businesses that are anticipating purchasing assets based on the higher \$25,000 threshold before the end of the current financial year.

Multinationals Tax Bill

The Multinationals Tax Bill contains various tax integrity measures including:

- the reform to the R&D tax incentive

- amending the definition of “significant global entity”¹
- amending the thin capitalisation rules to align the value of an entity’s assets with the value included in its financial statements and ensure that foreign controlled Australian consolidated entities and multiple entry consolidated (MEC) groups that control a foreign entity are treated as both outward and inward investment vehicles²
- removing the GST registration turnover concession that applies to non-resident entities to level the playing field for online hotel bookings³
- removing liability for luxury car tax from cars that are re-imported following service, repair or refurbishment overseas.⁴

We note that the Senate Economics Legislation Committee recommended the reconsideration of the R&D tax incentive reform measure in the Bill - CA ANZ agrees with the Senate Committee’s recommendation. That said, given the number of other tax integrity measures contained in this Bill that have commencement dates of 1 July 2018 or 1 July 2019, in the interests of certainty for the business community, we recommend that the R&D tax incentive amendments in Schedules 1 to 3 of the Bill be removed from the Bill so as to not further delay the passage of the remaining measures in the Bill through Parliament.

Foreign Investors Tax Bill

The Foreign Investors Tax Bill contains the following tax integrity measures:

- Improves the integrity of the income tax law for arrangements involving stapled structures and limits access to tax concessions for foreign investors by increasing the managed investment trust (MIT) withholding rate on fund payments that are attributable to non-concessional MIT income to 30%⁵
- Modifies thin capitalisation rules to prevent double gearing structures⁶
- Limits the withholding tax exemption for superannuation funds for foreign residents⁷
- Codifies and limits the scope of the sovereign immunity tax exemption.⁸

In the interest of certainty for the business community, we urge that this Bill be considered and passed by the Senate during the 2-3 April sittings. In particular, we understand that there are stapled structures which have set the pricing and gone to market in anticipation of this Bill being enacted.

¹ The relevant Explanatory Memorandum notes as follows as regards the date of effect: “The amendments made by Schedule 7 apply in relation to income years or periods commencing on or after **1 July 2018**.”

² The amendments relating to the valuation of assets, liabilities (including debt capital) and equity capital generally apply from 7.30 pm by legal time in the Australian Capital Territory, on 8 May 2018. The amendments relating to non-ADI foreign controlled Australian tax consolidated groups and multiple entry consolidated groups apply to income years beginning on or after **1 July 2019**.

³ The amendments apply in relation to supplies where consideration is first received, or before consideration is received an invoice is issued, on or after **1 July 2019**.

⁴ The amendments apply to importations made on or after **1 January 2019**.

⁵ The amendments [relating to Schedules 1 and 5] apply from **1 July 2019**. Transitional rules apply to appropriately protect existing arrangements from the impact of the amendments”.

⁶ The amendments apply to income years starting on or after **1 July 2018**.

⁷ The amendments apply from **1 July 2019**. Transitional rules apply to appropriately protect existing arrangements from the impact of the amendments.

⁸ The amendments apply from **1 July 2019**. Transitional rules apply to appropriately protect existing arrangements from the impact of the amendments.

Deferral of commencement dates

CA ANZ also requests the Government formally announce a deferral of commencement dates for certain measures that have not been enacted but have an announced commencement date that has already occurred or is impending. We suggest that the Government clarify that the measures will start no earlier than 1 July 2020. It should be noted that these measures are not ones that CA ANZ has asked to be expedited through Parliament.

These measures are:

- R&D tax incentive reform – as discussed above, this measure needs to be reconsidered. However, some parts of the proposed reforms have already commenced on 1 July 2018.
- Capital gains tax (CGT) changes for foreign investors to deny foreign and temporary tax residents access to the CGT main residence exemption – this measure commenced 9 May 2017 and with the transitional grandfathering rule proposed to end on 30 June 2019. In the absence of clarification, people may be in the process of making a major decision to sell a main residence prior to 30 June 2019. As we have previously noted concerns (set out in a letter to you from CPA Australia and CA ANZ dated 10 October 2018), we strongly recommend that this measure be reconsidered and the commencement date be deferred to a later date.
- Changes to Division 7A (integrity provisions dealing with disguised distributions from private companies) to bring in unpaid present entitlements and clarifying the operation of Division 7A – this 2018-19 Budget measure is proposed to apply from 1 July 2019, but is not yet in a Bill before Parliament. With very little detail available on the mechanics of this proposal, we request that the Government defer the commencement date of this measure from 1 July 2019 to a prospective date that is at least no earlier than the date that applicable exposure draft legislation is released.

If you wish to discuss our comments, please contact Susan Franks at first instance on 0401 997 342 or via email at susan.franks@charteredaccountantsanz.com.

Yours sincerely



Simon Grant
Group Executive - Advocacy and International
Chartered Accountants Australia and New Zealand

Cc:

Assistant Treasurer, The Hon Stuart Robert MP
Shadow Treasurer, Hon Chris Bowen MP
Shadow Assistant Treasurer, Hon Dr Andrew Leigh MP
Maryanne Mrakovcic, Deputy Secretary Revenue Group, Department of Treasury

Appendix A

Chartered Accountants Australia and New Zealand

CA ANZ is made up of over 120,000 diverse, talented and financially astute professionals who utilise their skills every day to make a difference for businesses the world over.

Members of CA ANZ are known for professional integrity, principled judgment and financial discipline, and a forward-looking approach to business.

We focus on the education and lifelong learning of members, and engage in advocacy and thought leadership in areas that impact the economy and domestic and international capital markets.

We are represented on the Board of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance, and Chartered Accountants Worldwide, which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.