How to reduce your company's tax

If you haven't been paying attention to the Ralph Report, then now is definitely the time to keep a close eye on developments in what is the most significant period of business tax reform since the mid-1980s

The Government is expected to release the Ralph Report on the Review of Business Taxation and its policy and legislative response this month, with some measures expected to take effect immediately.

The results of the review should be especially interesting for businesses operating in the information, communications and entertainment industries. The following summary considers a few of the issues likely to be of interest.

Reduction of company tax rate

By now nearly everyone will be aware that the Review has been considering lowering the corporate tax rate from its present 36%. The Review has targeted capital intensive industries as a means of providing the revenue gains required to fund the proposed reduction to 30%. That is, the reduction in tax rate will be primarily achieved by removing the current accelerated depreciation rates in favour of depreciation rates reflecting the effective life of physical assets.

Given the current political pressure for a 30% company tax rate, this proposal is likely to be implemented and welcomed by many in the service based industries.

Capital gains tax relief - takeovers and mergers

The Review has considered proposals to provide relief to shareholders from capital gains tax on scrip for scrip takeovers and mergers involving Australian public companies. Industry representatives have sought to extend the roll-over relief:

- To include takeover and merger activity where at least one party is a listed public entity; and
- To shares held by Australian residents in non-resident companies and shares held in Australian resident companies by non-residents.

It is believed that the Minister for Communications, Information Technology and the Arts, Senator Alston, returned from his recent trip to Silicon Valley supporting these reforms and advocating further measures to encourage the development of high technology start up companies. These included a proposal to allow such companies to remunerate employees with shares in the company instead of cash wages. It remains to be seen whether the Government will consider any of the further measures in the context of the Review.

Blackhole expenditures

The term "blackhole expenditure" refers to a range of expenditure undertaken for the purpose of earning assessable income for which no tax benefit is presently available. The Review identified 14 categories of blackhole expenditure. These include: costs of winding up and closing down a business; costs of feasibility studies; company pre-incorporation expenses and legal and consulting fees to establish a business; some prospectus and underwriting costs; export market development expenses; takeover defence costs; and expenditure to preserve title to an asset (e.g. copyright).

The Review has canvassed treating blackhole expenditures in one of the following ways:

- Deductible at the time the expenditure is incurred;
- Added to the cost of an asset and treated in the same manner as the cost (e.g. for depreciation);
- Write-off over a statutory period of time.

The monitoring of the tax discrimination against certain types of expenditure is a welcome improvement to the taxation of businesses.

The recent introduction of the spectrum licence cost amortisation rules improved the situation for telecommunications companies. But telcos have been concerned at the inadequate and misplaced consideration given to the deductibility of expenditure on the acquisition of indefeasible rights of use. Again, it remains to be seen how these concerns will be addressed in the final report and the Government's response.

Goodwill

The Discussion Paper issued by the Review in February included a proposal for acquired goodwill (as opposed to internally generated goodwill) to be depreciated. Unfortunately, at this stage, it is expected that the Government will not adopt this option.

Thin capitalisation - implications for non-resident investors

The proposals to change the thin capitalisation regime (which currently impacts on the deductibility of foreign debt of certain entities with 15% or more foreign ownership) have a

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Screen production gets ready for GST

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clear how this will affect producers when they raise private investment or bodies such as the Film Finance Corporation.

Other implications

Other significant changes include the replacement of the provisional tax system with the Pay As You Go (PAYG) system, and the introduction of the Australian Business Number (ABN). Under PAYG, taxpayers who previously made provisional tax payments will now pay quarterly instalments on October, January, April and July 21, based upon estimated actual income earned for the quarter on non-PAYE income.

The ABN is designed to be a single business identifier for all registered companies, government entities and other business enterprises. The definition of an enterprise includes individuals and other unincorporated entities. Whatever the administrative efficiency aim, the measure clearly has anti-avoidance implications. Any business that receives an invoice will be required to withhold up to 48.5% of the payment unless the supplier provides an ABN.

As a result, given the freelance nature of the production industry and the use of lender companies to supply services, many in the industry will need to decide if it is more cost efficient for them to be treated as employees.

Nick Herd is executive director of the Screen Producers Association of Australia

The New Internet Content Laws

Federal Parliament recently passed the Broadcasting Services Amendment (Online Services) Bill 1999, which regulates the activities of Internet service providers and others hosting Internet content. How will the new Internet content laws work? How will they affect your business?

A seminar series organised by the Communications Law Centre, Clayton Utz and the Internet Industry Association of Australia provides an opportunity to hear from the key people involved in the regulation and self-regulatory arrangements for Internet content in Australia.

The speakers are Andree Wright, Director, Policy and Content Regulation, Australian Broadcasting Authority; Kathryn Patterson, Director, Office of Film and Literature Classification; and Peter Coroneos, Executive Director, Internet Industry Association

The seminars will take place from 8.15am for 8.30am - 10.00am at the following places:

- Sydney, Tuesday October 12, 1999 at Clayton Utz, Level 34, 1 O'Connell Street.
- Melbourne, Thursday October 14, 1999 at Clayton Utz, 333 Collins Street.
- Brisbane, Tuesday October 19, 1999 at Clayton Utz, 215 Adelaide Street.

Cost: IIA members $35; others $45. Contact the Communications Law Centre on telephone (02) 9663 0551.

What do people prefer to read

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Women's weeklies and monthlies, and fashion titles also had mixed results. The weeklies suffered falls in circulation - apart from ACP's *Take 5* which launched in February 1998 and gained 16.8% in circulation to reach 188,940. The biggest gain in the women's monthlies went to *For Me*, up 37.5% to more than 165,000 copies but all women's fashion titles lost circulation. *Vogue Australia* and *Marie Claire* were both down 1.6%, *Elle* dropped by 3.1% and *Harper's Bazaar* by 3.2%.

Karen Winton

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stated increase in consolidated revenue of $500 million. That is, the changes are expected to result in more than $1,500 million of interest deductions being denied.

The proposals considered by the Review for tightening the current provisions are:

- To retain a fixed debt to equity ratio; and
- To limit permitted gearing to the gearing level of the world wide group of which the Australian entity is a member. If this level is exceeded, an arm's length test would be applied (i.e. are the debt levels comparable to those of an independent operation?).

The Review considered a higher ownership threshold for foreign control than the existing rules (though the proposed threshold was not specified).

It appears that the proposed test is evolving into a combination of the above alternatives. The thin capitalisation test is likely to be that if the ratio of debt (both related and unrelated party debt) to equity exceeds 2:1 and gearing of the Australian operations exceeds worldwide gearing, there will be a partial disallowance of interest expenses.

Kieran Lane, partner, and Brad Hopwood, manager, of KPMG in Sydney.

The comments made in this article should be taken in the context of the proposed developments mentioned in the Review of Business Taxation s original discussion paper A Platform for Consultation . At the time of writing, the Review s report was before Cabinet and the final proposals were still not known.