COVID-19: Government announces tax changes to support businesses

➨ **Tax Tips Alert: 15 April 2020**

The Minister of Finance, the Hon. Grant Robertson, announced tax changes today as part of a suite of new measures to provide further support for businesses impacted by the COVID-19 pandemic. The tax relief provided could be as much as $3 billion.

Yesterday, the Treasury released economic scenarios that reflect the impact of the COVID-19 pandemic. The scenarios make for grim reading. The worst case scenario indicates that, without further fiscal support from the Government to assist our economic recovery, GDP could shrink by 13% and unemployment peak at 26%. The Minister described that outcome to the Epidemic Response Committee meeting yesterday as unacceptable and, as a result, has announced a third wave of fiscal stimulus in response to COVID-19.

The key tax changes:

1. **A temporary tax loss "carry-back" scheme** that will allow businesses that anticipate incurring tax losses in 2020 or 2021 to carry those tax losses back to 2019 or 2020 and, to the extent of the tax effect of the losses, get an immediate refund. This will put cash in the hands of businesses affected by COVID-19 much more quickly than if the tax losses had to be carried forward and offset against future profits. This temporary scheme will be replaced by a permanent tax loss carry-back scheme in due course that will apply to later tax years.

2. **Relaxation of the tax loss carry-forward rules by allowing a "same or similar" business test** (similar to Australia) that will allow tax losses to be carried forward despite a major change in the shareholding of the company. This relaxation will allow companies requiring and raising new capital to carry forward tax losses despite a significant change in shareholding that may arise from the capital raising.

3. **Temporary discretionary powers for the Commissioner of Inland Revenue** for a period of 18 months to modify all tax filing and payment time frames across the revenue legislation in response to COVID-19. This will allow Inland Revenue to respond quickly and flexibly to businesses struggling to meet tax deadlines as a result of COVID-19.

The key proposed tax changes are intended to be legislated under urgency as soon as Parliament can resume (currently scheduled for the week of 27 April 2020) with other aspects to be dealt with in the future under a normal legislative process, including the relaxation of the tax loss carry-forward rules.

The package also includes new measures to support commercial tenants and landlords by extending the time frames required before landlords can cancel leases (from 10 working days to 30) and mortgagees can exercise their rights to sale or repossession (from 20 to 40 working days for mortgaged land, and from 10 to 20 working days for mortgaged goods). Further business consultancy support will also be available for free.

PwC's view

Businesses impacted severely by COVID-19 will welcome these tax changes as another source of support to assist them to survive and recover from COVID-19. Despite the speed at which the changes are being made, they are founded on good tax policy work that has been done by the Government and that leverages work started by the Tax Working Group process. At the same time, the Prime Minister also categorically ruled out revisiting the Government's decision not to proceed with the capital gains tax recommended by the Tax Working Group last year.

Tax loss carry-back

This measure will be in two parts – an urgent temporary measure for 2020 and 2021 and, in time, a permanent approach that will be an enduring feature of the tax system.

Under the temporary measure, a business will be able to carry back a tax loss one year – from 2020 to 2019, or from 2021 to 2020. That tax loss can be deducted in that prior year and a refund of the prior year's tax will be available to the extent of the tax deductible loss. If the business is a company, we understand it will need sufficient imputation credits available to allow the release of the refund.

A key feature of the temporary measure is that the 2020 or 2021 tax loss can be estimated for refund purposes. There is no need to wait until the 2020 or 2021 tax return is filed to calculate the tax loss. This may enable some businesses affected by COVID-19 to access the benefits of the tax loss carry-back as early as 7 May 2020 when the third provisional tax instalment for 2020 is due for a 31 March 2020 balance date company. Furthermore, the proposed law change will make it possible for businesses to re-estimate it after the date of the final instalment. This will give businesses more time to work out any estimated loss for the 2021 year.

To help ensure the integrity of the ability to estimate the tax loss carry-back, use-of-money interest will be charged if a refund based on an estimated tax loss proves to be too much when the tax loss is finally calculated in the tax return. This is intended to discourage deliberate over-estimates by businesses to generate cash flow.

The permanent tax loss carry-back approach will be developed later this year under the normal generic tax policy process and will be expected to apply for 2022 and later tax losses.

Relaxation of the tax loss carry-forward rules for companies

The current 49% continuity of shareholding requirement will be supplemented by a "same or similar" business test, like the approach already taken in Australia. The proposed change is intended to apply from the 2020/21 income year.

At present, to carry forward a tax loss to a later year, a company must maintain continuity of ultimate shareholding of at least 49% from the beginning of the year of the tax loss to the end of the year in which the tax loss is deducted against future profits. For businesses raising capital to fund growth, this may mean that the benefit of tax losses incurred in earlier years are lost as new shareholders come in with new capital.

The Tax Working Group recommended that the Government relax the tax loss continuity rules to support the growth of innovative businesses. In September last year, the Government announced that it would adopt that recommendation and a policy development and consultation process began. In the light of COVID-19 and the need for businesses to raise new capital, that work has been accelerated.

Under a "same or similar" business test approach, a company will be able to carry forward its tax losses despite a major shareholding change as long as it stays in the same or similar business after the shareholding change. Inland Revenue will issue detailed guidance on the proposed changes as soon as possible so that businesses considering a capital raise can get as much certainty as possible in advance of the actual legislation as to how Inland Revenue will administer the test. In advance of that guidance being issued, it will be worth considering the Australian guidelines as the Government has given a clear indication that New Zealand's approach will be similar.

Temporary discretionary powers

There are many specific time frames contained in the main revenue legislation (e.g. GST, income tax, tax administration, and unclaimed monies legislation). These time frames apply to things such as time periods to file returns and make payments or to dispute a proposed adjustment. In many cases, the Commissioner has only limited discretion to vary or relax these time periods, despite the circumstances. Given the impact of the COVID-19 pandemic, some businesses may struggle to meet the prescribed time frames now and in the next while.

To respond to this, the Commissioner will be granted wider discretionary powers to modify the time frames in response to the COVID-19 crisis. The wider powers will be temporary and will expire after 18 months. As added protection, the discretionary extra powers can only be exercised in a taxpayer-favourable manner e.g. extending a deadline to allow more time to comply.

For further guidance on how these new measures can support your business, please get in touch with your usual PwC adviser.

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