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Global Tax Alert

New Zealand announces new measures to assist businesses in response to COVID-19

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Executive summary

In April 2020, the New Zealand Government announced a new suite of measures designed to provide further relief to businesses in response to the economic impact of COVID-19. This package is valued at NZ$3.2 billion (US$1.92 billion) and is in addition to the significant spending already announced.

The new package comprises both tax and non-tax measures. This Alert summarizes the tax measures, including a new tax loss carry-back scheme, proposed changes to the tax loss continuity rules and greater flexibility for statutory tax deadlines.

Some of the changes were enacted on 30 April 2020 under urgency. Others will be subject to further consultation later in 2020 and enacted before March 2021. Most of the changes will apply retrospectively.

Detailed discussion

Tax loss carryback scheme

Future measure

The New Zealand Government intends to introduce changes to apply from the 2021/22 and later income years,[1] to allow businesses to offset current year tax losses against the prior year's taxable income. Under this proposal, businesses

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can receive a refund of tax paid in the previous year, instead of carrying the tax loss forward to offset against future taxable income. Legislation to implement this change will be introduced later in 2020 following further consultation.

Interim measure

In the interim, a similar change has been enacted to allow businesses with a tax loss during the 2019/20 or 2020/21 years to carry back the loss to the immediately preceding year. If the taxpayer had taxable income with taxes paid in the immediately preceding year, they can obtain a refund of prior year taxes paid (or current year provisional taxes paid).

Businesses can base the claim on forecast tax losses for the current year. However, if the forecast tax losses are not realized, businesses must repay any refunded tax losses received and will be liable for use-of-money interest.

Companies that wish to carry back tax losses must have sufficient imputation credits to allow for the release of the refund of prior taxes paid. They also need to maintain 49% shareholder continuity from the start of the profit year to the end of the following loss year.

Some, or all, of the available tax loss can be carried back, limited to the amount of taxable income in the preceding year. Additional limitations apply for companies that are part of a tax consolidated group (as defined in New Zealand's tax legislation).

The Government anticipates the tax loss carryback scheme could lead to refunds and reduced tax bills of NZ$1.2 billion in 2019/20 and NZ$1.9 billion in 2020/21 (US$720 million, and US$1.14 billion, respectively).

Changes to the tax loss continuity rules

In addition, the Government has announced it will introduce legislation in the second half of 2020 to relax the operation of the tax loss continuity rules from the 2020/21 and later income years.

Currently, businesses that do not maintain 49% shareholder continuity will lose access to some, or all, of their carried-forward tax losses. The Government has recognized for some time that these rules can have undesirable effects on capital investment decisions and had already committed to a review of these rules. In light of the economic consequences of COVID-19, the urgency to change these rules has increased as some companies will be looking to raise capital to stay afloat.

To address the forfeiture of losses that would otherwise occur, the Government is proposing to introduce a "same or similar" business test, akin to that used in Australia. This new approach would allow a business to change ownership beyond the current 49% threshold, provided the business is still carrying on the same fundamental income earning activity.

The new test is expected to supplement, rather than replace, the existing continuity threshold; businesses that do not meet the new same or similar test would still be able to carry forward their tax losses if they meet the existing 49% continuity requirement.

Greater flexibility for statutory tax deadlines

A discretionary power has been enacted providing New Zealand's Commissioner of Inland Revenue with greater flexibility to mitigate the burden of certain administrative obligations when compliance is impossible, impractical, or unreasonable as result of COVID-19. This power is time limited and applies from 17 March 2020 to 30 September 2021.

The Commissioner may use this power to vary procedural and administrative requirements across New Zealand's Revenue laws. This includes, for example, extending a due date or time-period for compliance with a particular requirement.

The new power can only be used if Inland Revenue considers existing provisions do not already allow for an appropriate outcome, or that outcome is difficult to achieve. Before a variation can apply, the Commissioner must publish details of the variation. Taxpayers can choose whether to apply the variation or follow the legislation as is.

Next steps

More details of the new tax relief will emerge over the coming weeks and months as further guidance is issued on the already enacted measures and consultation takes place on the measures expected to be enacted in the future.

New Zealand's 2020 Budget on 14 May 2020 is likely to provide further relief to help kickstart the country's economy. Additional tax relief measures could also be announced by the Government in the future.

Endnote

1. The New Zealand income year runs from 1 April to 31 March of the following calendar year.

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