Inland Revenue
Te Tari Taake

May 2013

Black hole expenditure fact sheet

Introduction

When costs are incurred in earning business income, that income can usually be offset by those costs for tax purposes. Certain business expenditure however does not result in a tax deduction, either immediately or over time and is commonly referred to as "black hole" expenditure. The Government is proposing some changes and clarifications to the tax treatment of some types of business expenditure.

Proposed changes

Intellectual property

- Capitalised expenditure on legal and administrative fees that would have been part of the depreciable cost base of a patent application or plant variety rights, but where no depreciable asset is recognised for tax purposes, will be made immediately tax deductible.
- A taxpayer will receive the deduction in the income year in which they decide to no longer proceed with seeking the registration of the applicable intellectual property right.

Making capitalised expenditure that would have been part of the depreciable cost base of a patent application or plant variety rights, but where no depreciable asset is recognised for tax purposes, tax deductible helps to improve the symmetry between the tax treatment of expenditure on successful and unsuccessful projects. Providing a deduction for this expenditure will remove a disincentive to obtaining intellectual property rights in respect of innovation.

Resource consents

- Fixed-life resource consents granted under the Resource Management Act 1991 to do something that otherwise would contravene section 15A (dumping of waste in coastal areas) or 15B (discharging hazardous substances from ships and offshore installations) of that Act will be made depreciable for tax purposes.
- Expenditure incurred in relation to abandoned resource consent applications that have not been lodged will be made immediately tax deductible. Currently taxpayers are required to lodge the application in order to access the deduction.
- A taxpayer will receive the deduction in the income year in which they decide to no longer proceed with seeking the grant of a resource consent.

Making fixed-life resource consents depreciable fits within the Government's depreciation framework, as their economic benefits are consumed over their lifetime. This change also improves the consistency of the tax system, as it grants these resource consents the same tax treatment as other fixed-life resource consents. Requiring taxpayers to lodge an application for a resource consent that is no longer sought solely in order to access a tax deduction is not a satisfactory policy outcome. Eliminating the requirement to lodge an application will remove unnecessary compliance costs for taxpayers.

Company administration costs

- All direct costs associated with the payment of dividends by a company to shareholders will be made immediately tax deductible.
- The annual fee for listing on a stock exchange will be made immediately tax deductible.
- The initial cost of listing on a stock exchange and the cost of additional share issues will be confirmed as non-deductible for tax purposes.
- It will be clarified that annual shareholder meeting (AGM) costs are immediately tax deductible.
- Costs incurred to hold special shareholder meetings will not be deductible for tax purposes.

These proposals are intended to clarify some capital/revenue boundaries related to some common company administrative costs.

Providing an immediate tax deduction for all direct costs associated with the payment of dividends will minimise compliance costs for taxpayers and provide certainty around the tax treatment of such costs.

The annual fee for listing on a stock exchange is being made tax deductible because it is a regular expense that provides only a short-term benefit. Initial listing and subsequent share issue costs are to remain non-deductible, as these create benefits that persist indefinitely. These changes clarify the tax treatment of these expenditure items for taxpayers.

Specifying that AGM costs are tax deductible and that special shareholder meeting costs are non-deductible will reduce compliance costs for taxpayers. Taxpayers will be required only to allocate expenditure between the AGM and special shareholder meetings (if any), rather than apply the capital/revenue test to special shareholder meeting costs. These changes also provide certainty to taxpayers about the tax treatment of these costs.

Legislation

These proposed changes will be included in a tax bill to be introduced later this year and will apply from the 2014/15 income year.