Tax Working Group
Te Awheawhe Tāke

Tax Working Group Public Submissions Information Release

Release Document

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INTRODUCING A "SAME OR SIMILAR" BUSINESS TEST IN THE TAX LOSS CARRY-FORWARD RULES

Introduction

1. The Tax Working Group ("**TWG**") stated in its Interim Report that it will make recommendations in its Final Report as to options that could enhance business productivity. One option mentioned in the Interim Report (at page 106) concerns the tax loss continuity rules:

> The [Tax Working] Group believes the existing loss continuity rules are appropriate for most companies, but may not be working well for small start-up firms. These firms require equity capital to grow, but are often inherently loss-making. The existing loss continuity rules may be constraining their ability to grow through additional equity capital. Any relaxation of the rules would need to be carefully calibrated to ensure that the change does not facilitate trading in losses among larger firms.

2. The current loss continuity rules are not, in our view, appropriate. The current rules are a barrier to businesses (large and small) raising the additional capital they need in order to grow.

3. We submitted to the TWG on 27 April 2018 regarding a proposal to improve the current policy settings. The proposal is to supplement the current rule (requiring 49% continuity of ownership to carry forward tax losses) with a rule that losses can also be carried forward so long as the company's business (regardless of size) remains the same or similar.

Submission

4. The TWG should recommend this proposal as:

   (a) The proposal would remove a barrier that inhibits large and small businesses from raising new capital. In a recent speech, the Secretary of the Treasury observed that "the question of properly functioning markets isn't simply about whether big or small firms can compete. It's about **all** markets and whether they are functioning well."[1]

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1 Gabriel Makhlouf, Secretary of the Treasury "Improving Living Standards: We Need to Talk About Productivity" (Queenstown, 7 September 2018).

(b) The proposal would make the tax system more neutral, by reducing the asymmetric tax consequences of successful risk taking (resulting in profit on which tax is paid) compared to unsuccessful risk taking (resulting in a loss that not only does not result in a refund, but may have no value if a change of ownership occurs).

(c) Inland Revenue officials have already undertaken work regarding both the substantive proposal and possible implementation costs, and have estimated the cost at between $30 million and $60 million per annum. By comparison, the Government intends to spend over $1 billion over four years on its R&D tax credit package. The proposed same or similar business test for carrying forward tax losses would represent, at a relatively modest cost, an important companion reform to the R&D tax credit package, and would remove an impediment to businesses accessing additional capital in order to grow.

(d) Implementing the proposal would bring New Zealand into line with the rules in comparable countries.

5. We would be happy to provide further information or meet with the TWG if that would assist.

Yours faithfully

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