Creating a more dynamic and resilient economy inquiry

Questionnaire response 90

Name: EY Australia

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1. Support business investment through corporate tax reform

1. What features of the Australian business environment have encouraged or restrained investment over the past 10 years?

Australia's mature tax system, adherence to the rule of law complemented by advanced tax administrative guidance and judicial appeal processes contribute to engendering investment confidence and certainty which is vital to supporting business investment.

However, investment capital (both domestic and international) is mobile and drawn to internationally competitive tax and investment settings.

The Australian corporate tax system is internationally uncompetitive with both high headline and effective tax rates. Australia has the second highest effective tax rate in the OECD and ranks a lowly 57th for corporate tax rates in the 2024 IMD World Competitiveness Table.

Australia offers little in the way of internationally competitive corporate tax incentives and has been left behind by peers in Asia, Europe and the Americas.

Further, continued tinkering with the corporate tax rules including the introduction of numerous complex and overlapping anti-avoidance and base broadening measures undermines the stability and predictability of the Australian tax system. This has further constrained investment over the past 10 years.

2. What elements of the corporate tax system encourage and/or discourage investment and risk-taking?

Stable and predictable tax settings are essential to encourage investment and risk taking.

The evolution of the Australian tax system has favoured an anti-avoidance rather than the pro-investment approach adopted by other jurisdictions. This approach is characterised by novel, pro-revenue interpretations inconsistent with international norms; and tax law with retroactive effect and/or impact. This undermines confidence in the stability and predictability of tax settings, and can result in significant costs of compliance to merely confirm long standing tax treatments.

This is compounded by the normalisation of legislation by government announcement. There is often a long lead time from the time of announcement to the drafting of tax law, during which the new tax law is nonetheless operative. This may lead to a delay in investment decisions pending clarity of the scope of the new law. Some proposed changes take years to develop into material for public consultation.

A root cause of this feature of the Australian tax system is a lack of consultation at the policy development stage of new law (i.e. before announcement of policy to be enacted).

This contributes to poorly targeted law changes notwithstanding subsequent consultation.

Increasingly, the interpretation of new laws, especially complex changes, is left to the ATO since there is a lack of clarity in the legislation. This leads to further uncertainty, in particular during the period between the enactment of law and the finalisation of public ATO guidance.

There are occasions where the ATO's interpretation is not in line with the widely understood purpose of law changes. For example, the ATO's recent approach to potentially deny tax incentives to certain managed investment funds necessitated a government announcement of a change in law to ensure the tax incentive would continue to apply. Tax law administered in a manner inconsistent with the government's intention or policy objective undermines investment confidence and risk taking.

In addition, Australia's tax settings have failed to remain internationally competitive. For example, Australia's primary corporate tax incentive is the Research and Development (R&D) tax offset which needs to be more effective and internationally competitive to encourage investment and risk taking in Australia. It also requires complimentary incentives, such as those offered in many countries in Europe, that provide a concessional tax regime to encourage investment in local IP and discourage offshoring of IP ownership. Australia announced but did not proceed with a similar, more narrowly focussed patent box regime.

Australia also falls behind other countries' competitive tax regimes such as the US, China and Singapore because it does not encourage investment by providing reduced corporate tax rates for new investment in targeted industries, activities or regions.

3. Which parts of the corporate tax system do you find the hardest, or most time or cost-intensive to comply with? How could the compliance burden of the business/company tax system be reduced?

The high cost of tax compliance in Australia weighs on business costs and is a significant deterrent to investment.

Much of the compliance cost relates to compiling and providing significant volumes of data and does not result in additional revenue to government. Subsequent information requests are often duplicative and unnecessarily burdensome compared with other countries.

Further, businesses are required to create substantial non-standard business records or find such records from many years ago. For example, the recently enacted debt deduction creation rules, require documentation to demonstrate how funds were used years and even decades before the commencement date of the rules. Where such records are not available, there is a cost to business from denial of tax deductions.

For businesses, substantial expenditure on systems, people and processes is required to comply.

Australia's corporate tax system is becoming increasingly complex and businesses are finding it harder to comply with the various new corporate tax rules, especially when these new rules apply retrospectively.

New measures should apply prospectively and be implemented with transitional rules to ease the compliance burden. This is especially the case where reporting timelines overlap or where the same information is requested in multiple forms by the ATO.

2. Reduce the impact of regulation on business dynamism

1. What areas of regulation do you see as enhancing business dynamism and resilience? What are the reasons for your answer?

The participant did not respond to this question.

2. How has your regulatory burden changed over time?

The participant did not respond to this question.

3. What regulations do you find time-consuming, overly complex or otherwise constraining business dynamism and resilience? What are the reasons for your answer?

The participant did not respond to this question.

4. Can you share any specific examples of where you think a regulator has done a good or bad job of understanding and reducing regulatory burden on businesses and why?