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Australian Tax Law
Bulletin

Reducing the company tax rate and abolishing the MRRT: a step forward or back?

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Introduction

The *Australia's Future Tax System Review*,[1] commonly referred to as the Henry Tax Review (the Review) has been "one of the most comprehensive reviews of the tax and transfer system" ever undertaken in Australia.[2] The overall aim of the Review was to restructure the way in which the government collects taxes so as to place the nation in a position where it could effectively deal with "its social, economic and environmental challenges and enhance economic, social and environmental well-being".[3] As a product of the review, Recommendations 27 and 45 have gained political and economic attention, suggesting a reduction of the company tax rate coupled with improved arrangements for charging for the use of non-renewable resources via a "uniform resource rent tax".[4]

The first part of this paper will evaluate the Review's Recommendation 27 that "the company income tax rate should be reduced to 25%,"[5] by first discussing the proposed reform, then examining what impact it may have on the current tax system and evaluating the purported benefits of implementing the Recommendation. The second part of this paper will consider the second limb of Recommendation 27, which sets out that "[i]mproved arrangements for charging for the use of non-renewable resources should be introduced at the same time"[6] together with Recommendation 45 which advocates the introduction of a "uniform resource rent tax". Particular focus will be given to the Australian experience in relation to its failed attempt to introduce the Mineral Resource Rent Tax (MRRT).

The Recommendations

Recommendation 27 states that:[7]

> The company income tax rate should be reduced to 25 per cent over the short to medium term with the timing subject to economic and fiscal circumstances. Improved arrangements for charging for the use of non-renewable resources should be introduced at the same time.

Recommendation 45 states that:[8]

> The current resource charging arrangements imposed on non-renewable resources by the Australian and State governments should be replaced by a uniform resource rent tax imposed and administered by the Australian government that:
> a) is levied at a rate of 40 per cent, with that rate adjusted to offset any future change in the company income tax rate from 25 per cent, to achieve a combined statutory tax rate of 55 per cent;
> b) applies to non-renewable resource (oil, gas and minerals) projects, except for lower value minerals for which it can be expected to generate no net benefits. Excepted minerals could continue to be subject to existing arrangements if appropriate;
> c) measures rents as net income less an allowance for corporate capital, with the allowance rate set at the long-term Australian government bond rate;
> d) requires a rent calculation for projects;
> e) allows losses to be carried forward with interest or transferred to other commonly owned projects, with the tax value of residual losses refunded when a project is closed; and
> f) is allowed as a deductible expense in the calculation of income tax, with loss refunds treated as assessable income.

There are two parts to Recommendation 27. First, it notes that "the company tax rate should be reduced to 25% over the short to medium term with the timing subject to economic and fiscal circumstance".[9] According to the Australian Government's 2013 Policy projections, such an approach will have an expected cost of $5 billion.[10] This expected cost directly reflects the cost to tax revenue from the tax cuts. The expected losses to government revenues is however counteracted to a degree by the interplay of the second part of Recommendation 27 which notes that "improved arrangements for charging for the use of non-renewable recourses should be introduced at the same time". The non-renewable recourses referred to in Recommendation 45 refer to minerals such as ore and fossil fuels.[11] Accordingly, the effect of both Recommendations 27 and 45 was that ultimately, the mining industry was to compensate for the government revenue losses associated with the proposed 5% reduction in the company tax rate.

Reduction in the corporate tax rate

Current tax system & responsive changes

In Australia, every resident company[12] is liable to pay tax on all assessable income which is sourced from within or outside Australia,[13] and every foreign-resident company is liable to pay tax on ordinary and statutory income which is sourced from Australia.[14] Effectively, the company tax rate has a large effect on the tax liability of both resident and foreign companies.

Currently, Australia's company tax rate is the lowest it has been in Australia since it trended downwards after the late-1980s,[15] however it still remains above the Organisation for Economic Co-operation and Development (OECD) worldwide average of 23.4% for 2014.[16] Indeed, in comparison to other similar sized OECD countries, the current company tax rate of 30% in Australia is relatively high.[17] For example, in the United Kingdom, the current company tax rate lies between 20% and 21%.[18] From April 2015, the UK Government has indicated that a general rate of 20% will apply to all corporations.[19] As a further example, the net federal corporations rate in Canada (after the general tax reduction) is currently at 15%.[20] Further, in a recent survey conducted by KMPG, 24 out of 33 monitored countries decreased their corporate income tax rate in the 2013 fiscal year.[21] Interestingly however, Australia's company tax rate is not as high as that in the United States.[22]

In Australia, as a response to the Review's recommendations, the Federal Government recently announced in its 2014 Federal Budget report a phased reduction in the company tax rate from 30% to 28.5% effective from 1 July 2015.[23] However, to date, the legislation amending Pt III, s 23(2) of the Income Tax Rates Act 1986 (Cth),[24] which houses the income tax rate payable by companies, has not yet been enacted. Further, the Federal Government announced in its budget report that for companies whose taxable income exceed $5 million, they will be subject to paying a 1.5% paid parental leave levy, which will arguably moderately offset any tax cuts to the company rate.[25]

Economic efficiency and growth

According to the Treasury, Recommendation 27's core objective is to improve economic efficiency.[26] It is theorised that a reduced company taxation rate will increase business profitability, which then can be internally reinvested or distributed to investors, in turn increasing the Australian investment "rate of return".[27] "The positive effect on the investment 'rate of return' will arguably increase investment in Australian businesses, which in turn can increase the capital in the Australian economy, ultimately improving economic efficiency".[28]

In addition, any increase in domestic and foreign investment will simulate aggregate demand, which will lead to increased economic growth and gross domestic product (GDP) in the short term.[29] In the long term, if the Australian economy continues to operate at a rate over 2–3% of the desired economic growth rate, this could result in the economy obtaining a new equilibrium.[30] This outlook is consistent with a study conducted by the OECD which found that there was a determinative positive relationship between an increase in investment (as a result of company tax cut) and productivity growth,[31] which leads to GDP growth. Carling and Pope have also commented that "a cut in the corporate tax rate is one of the most effective ways of boosting long-term economic growth through the tax system, particularly for a medium size country such as Australia".[32]

Economic growth is extremely important for Australia, in order to remain competitive in the global market. Traditionally, Australia has been attractive to foreign investors due to its "traditional economic success".[33] A company tax cut would arguably make investment in Australia even more attractive.

Job growth

Ken Henry stated, "if the company income tax were to be cut, the principal beneficiaries would be workers."[34] Such reasoning may be explained by reference to an increase in investment, which can then lead to an increase in the number of jobs in Australia. First, investment entices foreign companies to set up Australian subsidiaries,[35] which can lead to an increase in job opportunities for Australian workers. Second, companies arguably would see a rise in savings, due to a decrease in their tax liability, which in turn may lead to reduced prices and an increase in consumer product demand.[36] In effect, the increase in consumer demand may lead to an increase in employment. Indeed, the Business Tax Working Group supports these postulations. They have estimated that a 1% cut in the company tax rates will increase labour by 0.1%.[37] This will lead to a decrease in the unemployment rate, consequently producing a growth in real GDP rate.[38] This decrease in the unemployment rate is also important for the Australian economy as the unemployment rate is currently at its highest rate in 12 years, sitting at 6.4% according to the Reserve Bank's latest findings.[39]

In conjunction with the fall in the unemployment rate, economists believe the increase in investment will benefit employees through an increase in incentives and wages.[40] Further, the lower unemployment, the lower the cost to government in transfer payments and coupled with this, increased revenue via income tax.[41]

Global competitiveness

As the Review noted, an increase in investment, both onshore and foreign direct, will "promote more entrepreneurial activity; and reduce incentives for profit-shifting offshore,"[42] allowing Australians to retain a larger amount of the profits generated in Australia.

Theoretically through a reduction of the rate of company tax, the Australian economy will compete more effectively in the international market.[43] It is undeniable that Australian businesses are reliant on international participants in the capital markets. A cut in the company tax rate will cause exports to become less expensive and may lead to producers passing on this saving to consumers, making Australian exports appear more attractive on the global market.[44] This may lead to improved economic growth and a reduction in Australia's current account deficit.[45]

There is significant evidence to indicate the existence of a direct relationship between the marginal tax rate and direct foreign investment.[46] De Mooij and Ederveen concluded that a decrease of 1% in the marginal effective tax rate will lead to a 4% increase in the "stock of inbound foreign direct investment".[47] Historically, it has been shown that a low company tax rate is "central to Australia's international competitiveness"[48] as it makes Australia an attractive investment destination.[49] This has been demonstrated previously as the company tax rate has followed a downward trend, after being reduced to increase international competition from its highest peak of 49% in the late-1980s.[50]

Nevertheless, statistics currently show that investment in the economy (primarily through the mining industry) is not deteriorating.[51] However, when the mining industry's investment growth plateaus, the Australian economy will need international investors to put money into other business sectors. By reducing the company tax rate, businesses that are struggling with difficult foreign and international trade, may appear as more ideal and comparable investment opportunities, therefore maintaining the country's economic growth as a whole.[52]

Personal tax system

While there are numerous benefits in reducing the company tax rate, as discussed above, these need to be weighed against the possible interactions that a company tax cut will have with the personal tax system.

Two key examples of this occurring are as follows:

(1) There will be an impact on companies' abilities to frank their dividends.[53] Consequently, this will impact on the after-tax profit that is made by resident shareholders on dividends, as they will have to pay more tax themselves on the return on dividends.[54] This is due to the fact that under the imputation system, the company will pay their share of tax (30% or 28.5%), and the shareholder will have to pay the "top-up" amount, depending on their rate of personal income tax. If the rate of company tax decreases from 30% to 28.5%, shareholders will be taxed an extra 1.5% on the dividends (as their franking credit will decrease). This is a disadvantage to shareholders, but an advantage for companies.

(2) There will be increased incentives arising for domestic residents to defer their tax, such as by retaining income in a company instead.[55]

Non-renewable resources

This second part of the paper considers the second limb of Recommendation 25, that "[i]mproved arrangements for charging for the use of non-renewable resources should be introduced at the same time"[56] as well as Recommendation 45 for the introduction of a "uniform resource rent tax".

It is arguable that if there is a reduction in the tax rate without other measures, this "would lead to lighter taxation of Australia's location-specific rents."[57] The Review recommended that it would be more effective to tax these location-specific rents through a "uniform resource rent-based tax".[58]

Prior to the release of the Review and any subsequent legislative reforms, the obligations of Australian mining companies consisted of paying royalties to the states, mostly dependent on the value of the minerals they produced.[59] Offshore energy resource companies producing petroleum were also required to pay a petroleum resource rent tax (PRRT), a tax on profits, at a rate of 40%.[60] In addition, the entire mining industry paid general taxes such as Commonwealth company taxation at a rate of 30% of its taxable income.[61]

Resources super profits tax

In response to the Review, the Rudd Government proposed the introduction of the resources super profits tax (RSPT) in May 2010.[62] The RSPT was designed to raise revenue in order to fund a reduction in the corporate tax rate[63] and support superannuation contributions.[64]

It was to apply to all mining and petroleum companies, abolish state royalties and be wholly administered by the Commonwealth Government who planned to pay states compensation in return for their control over the mining tax and the revenue it raised. The proposed RSPT heavily reflected the suggestions in Recommendation 45 envisaging a tax on "above normal" mining profits, or economic rents.[65] Additionally, allowance for corporate capital was inbuilt in the rent tax to speed up the payment process.

Just weeks after Kevin Rudd made an attempt to execute part of Recommendation 45, a political coup occurred and Julia Gillard was declared his replacement[66] and the tax was immediately rejected by mining companies with costly and aggressive campaigning.[67]

The RSPT was altered through negotiations between the Gillard Government and major mining companies to form the MRRT.

Minerals Resource Rent Tax

The Minerals Resource Rent Tax (MRRT) came into effect on 1 July 2012,[68] and unlike the RSPT, it conflicted substantially with and watered down the suggestions in Recommendation 45. The object of the MRRT was "to ensure that the Australian community receives an adequate return for its taxable resources"[69] and although the RSPT and MRRT had similar revenue-raising objectives, the design of the tax was vastly different. The MRRT taxation rate was set at 30% rather than 40% as suggested in the Review and proposed under the RSPT. In addition, the MRRT also allowed for a 25% "extraction allowance" which reduced the resource tax rate to an adjusted rate of just 22.5%.[70] While the statutory tax rate under the MRRT was set at between 42% and 45% this was also lower than the 55% suggested by the Review.[71] Another major point of difference is that the MRRT provided an exemption to companies whose profits fell under $75 million meaning they did not have any liability under this tax.[72] In addition, unlike the recommendation of a "uniform" tax to apply to the extraction of all non-renewable resources under the Review, the MRRT only applied to iron ore and coal (and coal by-products as a result of coal mining). This was a much narrower application than suggested in the Review, although the existing PRRT was extended simultaneously with the implementation of the MRRT to apply to onshore as well as offshore projects.[73] The MRRT was calculated on a project basis, based on a taxpayer's interest in each project and allowed losses to be transferred to a taxpayer's other iron ore and coal projects consistent with Recommendation 45. However, the losses under MRRT were not refundable.[74] Finally, the MRRT was an allowable deduction for income tax purposes consistent with Recommendation 45.[75]

Why Recommendation 45 and subsequent legislation ultimately failed

An ambitious Labor Government initially predicted the new tax would generate $22.5 billion in the first four years.[76] In reality, the tax raised a mere $126 million in the first six months.[77] As a device for raising revenue, the performance of the MRRT was nothing short of lacklustre. The policy was also forever in the cross hairs of both the Liberal party as well as the mining industry.

The mining industry's aversion to the MRRT can be illustrated by the challenge brought about by Fortescue Metal Groups.[78] In 2013 the High Court held the tax to be constitutional and consistent with the Government's taxation head of power.[79] Fortescue Metals Group brought forward arguments to the court which suggested that the tax was discriminatory to Queensland and Western Australia based on location.[80] The High Court rejected these arguments on the basis that the tax rate was different among states not based on a government legislation but the state laws that operated in unison with the Commonwealth law.[81] The High Court's judgment has found academic consensus.[82]

Subsequently, both the Liberal party and the mining industry lobbied hard and effectively, driving home their message that the new tax would potentially kill the industry, to raise support in the community to have the Act repealed.[83] The Liberal party made it a major focus of their 2013 federal election campaign.[84] The (then) Opposition leader made it an election promise that his government would ensure the MRRT be repealed.[85] Abbott was ultimately successful in becoming Prime Minister and after a long and drawn out battle against the Australian Labor Party (ALP), the Greens and a number of key independent Members of Parliament (MPs) and senators,[86] the government introduced a Bill to repeal the MRRT,[87] which was successfully passed through the House of Representatives and the Senate on 2 September 2014.[88]

Given the above in-depth discussion into the reasons why the MRRT ultimately failed as a longstanding legal reform, it stands to reason that a direct adoption of the even more hard-line Recommendation 45 would also meet at least as harsh a reception. While the Review sought to create a simplified taxation system that would simultaneously generate a "fairer" Australia, Recommendation 45 presented itself as too ambitious. While both the "super profits tax" and the MRRT were designed to tax one of Australia's most thriving industries in order to generate increased revenue to improve the lives of the Australian public, in reality the proposed legislation (it was argued) could have had a detrimental effect. Possible outcomes included a decrease in foreign investment that may have put a halt on the nation's "mining boom".

The way forward

The government has a responsibility to ensure that the Australian community is compensated for the exploitation of non-renewable resources.[89] The policy underpinning the MRRT was designed first and foremost to promote wealth equality in our economy[90] by taxing the "super profits" of Australia's largest miners, 83% of whom are controlled by foreign interests.[91] The government made it clear that this policy was a way of enforcing large-scale mining companies to pay their "fair share" for the profits they make due to the exploitation of Australia's natural landscape that (while perhaps not strictly legally speaking) belong to all Australians.[92]

The policy underlying a form of taxation for the use of non-renewable resources is sound. The Australian Government has a social obligation to the community to ensure that all enjoy the benefits of Australia's resources.[93] This would ensure that Australian individuals receive a more "consistent share" of the revenue derived from *their* land.[94]

The literature also suggests that the resource rent tax enables a higher rate of return to the population while ensuring the attractiveness of Australian mining exports.[95] Academic research has suggested that the mining tax is essentially a fine and in this context research suggests that countries where taxation fines have been imposed have experienced success in achieving their desired outcome.[96]

Accordingly, at some point the re-introduction of a tax for the use of non-renewable resources is likely to be put back on the Australian Government's agenda, particularly given the reduction of the corporate tax rate from 1 July 2015 that will create a positive profit advantage for these companies who are exploiting Australia's natural resources.[97] Perhaps more effective measures in the future could come in the way of law reform approaches that look at the mining industry on a state-by-state basis, eventually creating a uniform piece of legislation.

Conclusion

In conclusion, it is clear that a reduction in the company tax rate will be highly beneficial to Australia's economy, ensuring that Australia is an attractive place to invest[98] and ensuring that its "reputation as a safe, certain destination for investment funds"[99] is maintained. However, it is important to balance this against the other considerations, such as the interactions with the personal income tax system, to minimise any tax-deferring incentives and alleviate the burden of increased personal tax liability on dividends.[100] A transitional decrease in the company tax rate over the short to medium term to 25% would be consistent with this, as it would allow any potential economic or fiscal circumstances to be taken into consideration.[101]

In addition, we have argued that given that the MRRT has now been abolished, and that from 1 July 2015 there will be a reduction in the company tax rate without other measures, this can lead to lighter taxation of Australia's location-specific rents. The policy considerations which centred on the introduction of the MRRT are however still relevant. In that regard, the Federal Government has a responsibility to ensure that the tax system achieves greater wealth equality in our economy by compensating the Australian community for the exploitation of non-renewable resources.[102] Accordingly, it will be interesting to see what will evolve in this area, particularly after 1 July 2015.

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