

Via email: PreBudgetSubmission@treasury.gov.au

Treasury  
Langton Creascent  
Parks ACT 2600

25 January 2024

Dear Sir/Madam

## **2024-25 PRE-BUDGET SUBMISSION**

BDO refers to the invitation by the Assistant Treasurer and Minister for Financial Services on 14 December 2023, to submit ideas and priorities for the 2024-25 Federal budget. BDO welcomes the opportunity to lodge a submission containing the firm's views in this regard.

BDO again urges the Government to consider meaningful and holistic tax reform to ensure that the tax system in Australia is fit for purpose in collecting sufficient tax revenue to fund necessary government activities, ensuring that tax is collected from the most appropriate sources, maintaining Australia's attractiveness as a business and investment destination and incentivising growth in business and employment activity.

BDO has been calling for a holistic review of the Australian tax system for many years. In our opinion, the major view that underpins the need for holistic tax reform is to produce an unambiguous tax system that also provides a fair and efficient means of revenue for the Australian Federal and State Governments.

Where there are tax concessions provided, they need to translate into increased productivity and opportunity.

While we understand there is a need from time to time to implement urgent tax changes to deal with unforeseen changes to economic / social conditions and/or natural disasters, these ad-hoc tax changes should not be mistaken for tax reform.

There should be an ongoing consideration of tax reform. To achieve this BDO recommends the establishment of an independent 'Tax Reform Commission', which would ensure that the journey of tax reform remains an ongoing process. This Tax Reform Commission could incorporate the Board of Tax's role but have a wider remit covering both Federal and State taxes.

Until a holistic review of the Australian Tax system can be undertaken there are several issue with the existing tax system that should be considered. BDO's recommendations and comments in this regard are summarised in the table below and in further detail in Appendix I.

Document4

Category	Recommendation
Company Tax	<p>Corporate Tax Rate should be reduced from 30% to 25% for all corporate tax entities. This will maintain Australia's attractiveness as a destination for domestic and international capital. The current OECD average corporate income tax rate is only 21.1%.</p> <p>The existing two-tier corporate tax system is causing double taxation from trapped franking credits. Further administrative complexity arises for base rate entities in determining eligibility and in managing the tax implications of distributing profits to shareholders.</p>
Private Companies and Division 7A	<p>Finalise the rewrite of the provisions of Division 7A of the ITAA 1936 in such a way that balances simplicity while maintaining integrity. These provisions are far too complicated in their application for private companies and their shareholders and associates.</p>
Imputation System	<p>Review of the recent changes to make the recipient of a franked distribution funded by way of capital raising ineligible for franking credit tax offset. These measures provide a disincentive for businesses to retain capital to fund business growth and create an incongruous outcome between the use of debt and equity capital for this purpose.</p> <p>Review and revise the 45-day holding rule so that it only applies where the taxpayer holds an equity interest in a corporate tax entity for the purpose of seeking to take advantage of the dividend imputation system.</p>
Superannuation	<p>BDO recommends a review of the superannuation contribution caps including increasing the concessional and non-concessional contributions caps in such a way that makes the superannuation system more equitable. This may be achieved through a combination of increasing contribution caps in tandem with a lifetime cap for individuals with superannuation balances below certain levels.</p>
Trusts	<p>Urgent review of the trust taxation rules and particularly those in relation to taxing trustees and beneficiaries. These rules are unnecessarily complex and can result in harsh and unfair outcomes in some instances.</p> <p>Recent Tax cases on Trust reimbursement agreements for section 100A of the Income Tax Assessment Act 1936 (ITAA 1936) have been at odds with the ATO rulings and guidance on this issue, which indicates that the immense difficulty in applying section 100A in practice. BDO recommends that this section be rewritten in such a way that is clearer in its application and targets only those arrangements that are clearly egregious.</p> <p>Section 99B of the ITAA 1936 should be reviewed and rewritten so that it only targets the intended arrangements.</p>
Small Businesses	<p>Recommend a review of the suite of small business income tax concessions and small business capital gains tax concessions, with reference to the 2019 Board of Taxation Review.</p>

	<p>In particular, BDO recommends alignment of the aggregated turnover thresholds for the small business income tax and capital gains tax concessions for ease of application.</p> <p>The \$6 million maximum net asset value test has been an area of significant complexity and much contention. BDO would like to see efforts to simplify the small business CGT concessions in being clearer and more appropriate for application in practice by small businesses and their owners.</p>
Capital Gains Tax	<p>Recommend a review of the application of CGT Event E4 to interests in unit trusts. The application of CGT event E4 to reduce an interest holder's cost base or trigger a capital gain can create harsh tax outcomes and is an area of tax that is overlooked altogether by some taxpayers and advisers, particularly in relation to timing differences. BDO recommends consideration of an 'overs and unders' mechanism, in a similar light to Attribution Managed Investment Trusts (AMIT).</p>
Fringe Benefits Tax	<p>Recommend that consideration be given to abolishing fringe benefits tax. FBT places a great administrative burden on employers and inappropriately taxes these benefits at the highest marginal tax rate instead of the employee's marginal tax rate. As an alternative, BDO recommends that Treasury consider including any benefits received by individual employees in their assessable income.</p> <p>The government should review the ATO's current view in relation to car parking fringe benefits in Taxation Ruling TR 2021/2. The original policy intent was to levy tax on car parking provided to employees in major city centres and CBDs. The ATO's position in TR 2021/2 does not align with this original policy intent by applying to car parking benefits provided in some suburban and rural centres. BDO recommends that the Government reconsider amending the FBT legislation to realigning it with the original policy intent.</p>

Should you have any questions or wish to discuss any of the comments made in our submission, please do not hesitate to contact me on 02 9240 9736 or via email ([lance.cunningham@bdo.com.au](mailto:lance.cunningham@bdo.com.au)).

Yours sincerely

Lance Cunningham  
BDO National Tax Technical Leader

## Appendix I

### Corporate Tax Rate

The Australian economy is considered safe and attractive due to Australia's political stability, quality infrastructure and regulatory climate. Australia does however need to be competitive with other jurisdictions in its tax rates. The OECD average corporate income tax rate has reduced to 21.1% in 2023 dropping from 28.2% in 2000 (Link to [OECD Corporate Tax Statistics 2023](#)). In order to align more with the OECD average, BDO recommends a reduction of the general corporate income tax rate from 30% to 25% for all corporate tax entities, not just base rate entities. The lower 25% corporate tax rate applicable to base rate entities does provide some cash flow benefit for small businesses, however it does little in the way of providing tax relief to shareholders of these businesses, particularly where shareholders are Australian residents. In BDO's experience to date, most shareholders of base rate entities are Australian residents. Consequently final tax is levied in the hands of the shareholder and depending on their tax profile, additional top-up tax being payable or a refund of excess franking credits.

A two-tiered corporate tax system results in double taxation in some instances in the form of trapped franking credits. This arises where a base rate entity has accumulated historical profits taxed at 30% or where such an entity is the recipient of dividends franked at 30%, and the entity is limited in releasing franking credits due to its maximum franking rate being 25%. Trapped franking credits effectively result in double taxation to the extent that franking credits are trapped in additional top-up tax.

BDO suggests that the government consider reducing the corporate tax rate to 25% for all corporate tax entities. This will alleviate the complexities associated with a two-tiered corporate tax system. Further, BDO recommends that a mechanism be implemented to allow companies with trapped franking credits to release these credits to shareholders to alleviate double taxation on any corporate income tax paid.

### Private Companies and Division 7A

The provisions of Division 7A of the ITAA 1936 are some of the most complex provisions in the Australian income tax legislation. The measures seek to ensure that a range of informal distributions to shareholders of private companies are subject to tax as dividends. The policy intent behind the measures was to prevent shareholders and associates of private companies from accessing company profits without having paid their share of income tax on those profits. The measures apply to a broad range of private company shareholders and associates ranging from unsophisticated small businesses to large and complex private businesses.

It is BDO's experience that taxpayers and tax advisers either overlook Division 7A or apply the rules incorrectly due to their complexity. BDO recommends that the provisions of Division 7A be rewritten in such a way that balances maintaining the effectiveness of the measures in preventing tax leakage by shareholders and associates of private companies with simplifying the measures such that they can be more easily understood by small and large private businesses alike.

## Review of the Imputation System

### *45 day minimum holding rule*

The 45-day minimum holding period rule for the ‘qualified person’ test in Subdivision 207-F Income Tax Assessment Act 1997 (ITAA 1997) was introduced with a view to countering arrangements that manipulated the imputation system where taxpayers were not effectively owners of shares or short-term holdings for the purpose of obtaining the benefit of a franking offset. In practice, the 45-day requirement can preclude franking offsets for shareholders who acquire company shares and have no intention of manipulating the imputation system, but are required to dispose of the shares within the 45 holding period.

In addition, the provisions for the qualified person rule in Subdivision 207-F refers to the repealed Division 1A of the former Part IIIAA of the Income Tax Assessment Act 1936 of the ITAA 1936. As part of the review of the 45 day rule any replacement provisions should be included in the ITAA 1997.

### *Franked distributions funded by way of capital raising*

BDO notes the legislative amendments passed in November 2023 making unfrankable corporate distributions funded by way of capital raising. BDO appreciates the importance of integrity measures preventing taxpayers from taking undue advantage of the Australian imputation system. However, placing limitations on how businesses fund franked distributions to shareholders appears a step too far. Further, it is unusual that parity does not exist in the use of debt and equity financing for this purpose. That is, there are no provisions placing restrictions on franking distributions funded by debt capital. BDO recommends that Treasury reconsider this measure and to the extent that a specific group of taxpayers are manipulating the imputation system in raising capital to fund franked dividends, more carefully targeting these measures.

## Increased Superannuation Contributions Caps

The objective of Superannuation was recently legislated as being “to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way”. The object of this legislation was to act as a guide for governments, regulators, the superannuation industry and the community. In order to preserve savings to deliver income for a dignified retirement, it follows that individuals must be able to make sufficient contributions to superannuation and to generate sufficient returns in superannuation.

The existing superannuation contributions caps are restrictive and provide limited opportunities for individuals to boost their retirement savings at a time most appropriate to them. BDO recommends the Government provides individuals, who have superannuation balances below a certain level, more flexibility in the amount and timing of contributions such that they can optimise their superannuation. Specifically, BDO suggests that consideration be given to:

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- An unlimited non-concessional contributions cap for taxpayers with superannuation balances below \$1 million, with the existing measures applying for taxpayers with superannuation balances exceeding \$1 million; and

- Consideration of life-time superannuation contributions caps for both concessional and non-concessional contributions.
- Increasing the unused concessional contributions cap carry forward period to 10 years;

The above measures should provide taxpayers more flexibility to make superannuation contributions as funds and life circumstances allow in such a way that makes the superannuation system more equitable. Noting that it is not uncommon for individuals to look to boost their superannuation contributions later in life.

## **Taxation of Trusts**

### *Simplification of the Trust taxation rules*

The existing trust taxation rules are extremely convoluted and complex in their application with many moving parts to consider. This complexity is not helped by the application of the rules relying on a combination of trust law concepts which are largely sourced from common law principles (some of which are very old), and tax law concepts from tax legislation and more recent cases. The application of a mixture of law creates much complexity in defining essential terms and in applying the trust taxation rules correctly.

Given the complexity of the existing rules, BDO recommends that the trust taxation rules be rewritten such that essential terms are easily defined and that the compliance requirements for taxpayers can be easily understood and complied with.

### *Section 100A*

The provisions in Section 100A of the ITAA 1936 are incredibly complex in their interpretation and application. BDO appreciates that there are instances where taxpayers engage in reimbursement arrangements to obtain a tax benefit and that these practices undermine the integrity of the trust taxation rules. However, the wording of Section 100A of the ITAA 1936 is convoluted and unclear in its application. Further, recent cases, ATO rulings and Practical Compliance Guidelines in relation to section 100A cast further doubt over its practical application as opposed to providing taxpayers with certainty. BDO suggests that section 100A be rewritten in simpler language such that it is punitive to taxpayers entering into targeted arrangements whilst not creating unnecessary complexity and uncertainty for taxpayers entering into low-risk arrangements.

### *Section 99B*

The original intention of section 99B was to prevent the sheltering of income in foreign trusts for the benefit of Australian beneficiaries. Targeted arrangements involved the accumulation of foreign income in a foreign trust as trust capital and the trustee making a non-assessable distribution of trust capital to an Australian resident taxpayer. However, section 99B can apply to other situations such as where a migrant to Australia who becomes a resident and then receives a distribution from a foreign trust that has accumulated income before the migrant became a resident of Australia. This is the case whether or not the accumulated income in the trust has been subject to foreign tax. This seems to be an inappropriate result.

Much of the mischief that section 99B was originally aimed at is now successfully dealt with by the transferor trust rules and therefore consideration could be given to repealing section 99B.

If it is considered section 99B is still required, it should be rewritten such that they target and apply only to the situations intended. The wording of these provisions is very general in nature and broad spectrum in its application and should be amended to make it clear that it applies only to the application of foreign sourced amounts that have not been taxed in any country and accumulated in a non-resident trust for the benefit of Australian resident beneficiaries while they are Australian residents.

### **Small Business Entities**

Small businesses vary vastly in their sophistication and understanding of the tax rules that impact their operations. The tax rules applicable to small business entities present significant challenges in their application for both advisers and taxpayers. The complexity of the tax rules and falling foul of these rules can present very real commercial risks to these businesses, particularly in situations where the risk to the Australian tax net is limited.

#### *Thresholds for Small Business Income Tax Concessions*

We note that the turnover thresholds applicable to the small business CGT concessions and income tax concessions vary broadly i.e. \$2 million for small business CGT purposes and \$10 million for small business income tax concessions. BDO recommends alignment of these thresholds, in conjunction with a review of the small business CGT concessions, discussed below. Alignment of these thresholds will improve administrative simplicity drastically for both taxpayers and advisers alike.

#### *Instant Asset Write Off*

The instant asset write-off currently applies to entities with aggregated turnover below \$10 million to claim an immediate deduction for eligible asset purchases up to \$20,000. BDO recommends that the instant asset write off limit be increased to assets costing \$50,000 or less. BDO suggests that the increased threshold strikes a balance between the timing of tax deductions and minimising administrative complexity for small business entities.

Further, an increase to the instant asset write-off threshold should decrease taxpayer's reliance on the small business pooling provisions. The small business pooling provisions along with the low value pool provisions are excessively complex. BDO recommends a rewrite of the decline in value measures applicable to small businesses such that they are cohesive and simple in their application.

#### *Trading Stock Provisions*

The existing small business income concessions include a concession to allow small business taxpayers to make a choice not to account for changes in trading stock from start to end of an income year so long as the change in trading stock value is reasonably estimated to be less than \$5,000. BDO suggests either increasing the threshold to \$50,000 or alternatively scrapping this measure. In their current form, these measures do little in providing meaningful administrative relief to small businesses. An increase in the threshold should increase the utility of these measures whilst managing any potential tax leakage arising from timing differences. Given that trading stock deductions are temporary differences, an increase in deductions only benefits taxpayers temporarily.

### *Small Business Capital Gains Tax Concessions*

The small business capital gains tax concessions are some of the most complex provisions in the income tax legislation. As a result small businesses struggle with their application without significant specialist adviser assistance or intervention.

### *Alignment of aggregated turnover thresholds*

As noted above, alignment of the various small business aggregated turnover thresholds would be a useful starting point. BDO suggests increasing the small business CGT aggregated turnover threshold to \$10 million to align with the various small business income tax concessions and restructuring provisions in Subdivision 328-G of the ITAA 1997.

### *\$6 million net asset value test*

The \$6 million net asset threshold is extremely complex in its application, particularly where interests in small businesses are held via companies and trusts. The application of this test is the cause of significant compliance costs and risk for taxpayers in applying it.

The test is also limited in its operation in assuming that the net assets of a small business entity and its associates reflects the size of the business itself. Further, the tracing required to determine entities that are controlled by a given taxpayer and their respective net asset positions is extremely convoluted.

In applying the threshold, vastly different tax outcomes can arise for taxpayers whose net asset value is marginally above and below the threshold which seems fundamentally unfair. The threshold also provides taxpayers with tax planning opportunities with regard to the market value of assets and liabilities.

### *Holistic changes to the small business CGT concessions*

BDO recommends that Treasury revisit some of the recommendations made in the Board of Taxation's 2019 'Review of Small Business Tax Concessions' and specifically repealing the 15-year exemption, active asset reduction and retirement exemptions and introducing a single CGT exemption subject to a cap or threshold. Such a threshold may include the following:

- Application to small businesses with aggregated turnover of less than \$10 million; and
- Limiting exempt capital gains to a certain threshold e.g. \$2 million per taxpayer

It is expected that this approach will achieve the following:

- Ensuring that deserving small business taxpayers are still entitled to relief under the measures
- Preventing inappropriate claims under the small business CGT concessions
- Continuing to incentivise small businesses to invest in future growth
- Ensuring that small business owners continue to be rewarded with a premium upon sale of a successful business.



## Capital Gains Tax

### *CGT Event E4*

CGT Event E4 is triggered when a taxpayer who has an interest in a trust receives a non-assessable amount from the trust in relation to that interest to the extent that non-assessable payments received exceed the taxpayer's cost base.

Non-assessable distributions arise from permanent and temporary differences in accounting and tax treatments. As an example, accelerated depreciation claims may result in a lower net income position for tax purposes than accounting purposes. In this instance, where the accounting income is paid out in full, the lower net income for tax purposes may result in a reduction in cost base or a capital gain, depending on the quantum. CGT event E4 is one sided in its application in that there is no reversal or account keeping mechanism in situations where a trust's net income for tax purposes exceeds its net accounting income.

In BDO's experience, CGT event E4 is a complex area and one that some taxpayers and advisers overlook altogether. To improve parity, BDO suggests that Treasury may like to consider aligning the treatment of non-assessable distributions from trusts in a similar way to the AMIT regime in allowing unitholders to record cost base adjustments for overs and unders with any capital gain or loss to be accounted for on disposal of the relevant interest. Alternatively, Treasury may wish to consider resolving these issues as part of a broader review of the trust taxation rules.

## Fringe Benefits Tax

### *Abolition of Fringe Benefits Tax*

The intention of the Fringe Benefits Tax regime was to levy tax on employers for non-cash benefits provided to employees outside of their ordinary remuneration package. The measures were brought into effect in response to employers providing tax-free benefits to employees, commonly in the form of company cars, travel, and hospitality. These expenses were considered tax deductible due to being incurred in the course of doing business and were not included in the assessable income of the recipient.

We understand that the Government's intention in levying fringe benefits tax on employers was to simplify compliance and administration. FBT administration is burdensome to employers in requiring detailed record keeping in relation to non-cash benefits provided to employees and in lodging FBT returns as required. Further, charging FBT at the top marginal tax rate applicable to individuals may be considered excessive, and a disincentive to provide benefits outside of a traditional remuneration package.

BDO suggests that Treasury may wish to consider abolishing fringe benefits tax and instead consider the inclusion of certain non-cash benefits received by individual employees in their assessable income to be taxed at the employees marginal tax rate. According to the ATO's 2021-22 annual report, FBT collections accounted for \$3.3 billion of the ATO's \$516 billion in total tax collections. FBT collections make a small contribution to Australia's tax base when compared to the enormous administrative burden required of employers.

As an alternative to abolishing fringe benefits tax, consideration should be given to amending FBT, so it only applies to genuine remuneration benefits i.e. benefits that are provided as part of an employee's remuneration and not on incidental benefits that are merely provided as a consequence of performing the employment duties.

*Car parking fringe benefits - TR 2021/2*

The intention of the car parking fringe benefits regime was to levy tax on car parking benefits provided to employees in central business districts in major capital cities. The ATO's views in TR 2021/2 depart from this intention in that it now applies in some instances in suburban areas and country towns. BDO suggests that the Government should consider reviewing the position published in TR 2021/2, and either repeal it or consider amending the FBT carparking rules so that they align with the original policy intent of only taxing car parking in central business districts of major cities.