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OCTOBER 2022 FEDERAL BUDGET REPORT

INTRODUCTION

Against a backdrop of uncontrollable global turmoil – from a pandemic to natural disasters, war, an energy crisis and inflationary pressure - it's clear the Federal Government has put the focus on everyday Australians in this budget.

It is pitched as a family focused budget that leans on the 'Aussie way' of supporting each other through the hard times by being resilient in the face of uncertainty. In Labor's first budget in almost a decade, Treasurer Jim Chalmers outlined his five point plan to ease the cost of living – cheaper childcare, paid parental leave, cheaper medicine, housing affordability and wage growth. In doing so, he reaffirmed the Government's commitment to economic restraint and the caring economy.

> "*This is a responsible Budget that is right for the times and readies us for the future.*"
>
> **Dr Jim Chalmers MP, Treasurer**

The question is whether the sentiment of restraint has led to a budget that is more about resetting the agenda than taking the bold steps needed to act now on genuine tax reform that could deliver long term gain.

The Treasurer has handed down a reprioritisation budget that sets out the Government's high-level agenda, but it has not gone far enough to realise the Treasurer's intention to improve the fairness and sustainability of the country's tax system. What the budget lacks is meaningful measures to support Australian businesses domestically.

Instead, it delivers a mixed bag of announcements with little detail. This leaves the door open for what will need to be tougher decisions around tax reform come May 2023.

Amongst the big picture announcements, the Government outlined a cheaper childcare scheme aimed at getting more parents back into the workforce, with paid parental leave expansions supporting this further. Reductions to the Pharmaceutical Benefits Scheme's maximum general co-payment from 1 January 2023 will result in cheaper medicine for millions of Australians and entering the housing market will be made more affordable through the National Housing Accord between governments, investors and industry.

A raft of tax measures were announced targeting multinationals. Further, the Australian Taxation Office will receive funding in the hope of collecting additional revenue from all taxpayers - so Australians will need to get their compliance affairs in order in case they come under greater scrutiny.

Whilst the Treasurer said "*this is a responsible Budget that is right for the times and readies us for the future*", the Government has missed an opportunity to start the hard conversations needed around tax reform to deliver the certainty Australians desire. There is a big job ahead if serious reform to the tax system is indeed a goal.

BUSINESS

ESTABLISHMENT OF THE NATIONAL RECONSTRUCTION FUND

The Government has announced the establishment of a National Reconstruction Fund (NRF), which will see the allocation of $15 billion to partner with the private sector, to support investments capable of growing the economy and increasing employment, with a focus on regional development. Funds will be delivered under the expectation of receiving a return to cover borrowing costs – that is, it will be provided in the form of loans, guarantees and equity.

Key sectors that will benefit from the NRF include:

- Resources
- Agriculture, forestry, and fisheries
- Transport
- Medical science
- Renewables and low emission technologies
- Defence
- Enabling capabilities.

A large portion of the funding stems from a partial reversal of measures announced in the 2022-23 March Federal Budget, including a reversal of uncommitted funding from the Modern Manufacturing Initiative and the non-continuance of a third round of the Manufacturing Modernisation Fund. Both measures formed part of the Morrison Government's Modern Manufacturing Strategy.

Further savings that make the establishment of the NRF possible arise from the redirecting of uncommitted funding from the Entrepreneurs' Program, and a cessation of the Thermochemical Conversion Technology Trial Facility, which was announced as part of a 2019-20 Federal Budget.

Other changes to the grant funding landscape include the abolition of the Building Better Regions Fund and the Community Development Grants program. Instead, the Government will commit $1 billion to a newly established Growing Regions Program and Regional Precincts and Partnerships Program, which will provide regional local councils and not-for-profit organisations the opportunity to apply for funding through an annual competitive grant process.

BDO COMMENT

The delivery of NRF funds via loans, guarantees and equity is a marked difference to the previous government's strategy, which saw the delivery of funds via generous grant programs upon successful applicants meeting pre-stipulated milestones relating to increased employment and other project objectives. Given the current economic climate, such fund delivery is a good compromise to competitive grants and will hopefully continue to promote increased employment and regional development, while developing sovereign capability.

Of concern is that the funds may only start flowing after the NRF is established over the next two years.

Overall, BDO is pleased to see the new government is continuing to prioritise the reinforcement of the local industry, but it is disappointing to see the patent box regime has not been reintroduced. Without this, the attractiveness of commercialising intellectual property in Australia is lessened and it is likely the associated flow-on benefits, such as further investment and development activities, will instead be reaped by other jurisdictions that provide more generous incentives.

DEPRECIATION OF INTANGIBLE DEPRECIATING ASSETS

The Government has decided to reverse the previously announced measures that allowed taxpayers to self-assess the effective life of intangible depreciating assets. This unwinds the Morrison Government's intentions for the Digital Economy Strategy announced in the previous Budget in March 2022.

The superseded measures (which were due to commence with assets acquired from 1 July 2023) would have allowed business operators to self-assess the effective life of intangible depreciating assets in calculating their annual depreciation. This would have applied to patents, registered designs, copyrights, and in-house software.

The Labor Government will instead "maintain the status quo" to ensure the effective lives of intangible assets continue to be set by the legislation, rather than being self-assessed by taxpayers. This approach aims to mitigate any potential integrity concerns associated with taxpayers boosting their depreciation with overly favourable effective lives for intangible assets.

The Government states this reversal will increase receipts by $500 million over the four years from 2022-23.

BDO COMMENT

BDO appreciates the previous government's attempt at positioning Australia as a leading digital economy and the current government's concerns with the imprecision and ambiguity around the previous announcement. However, it is now the Government's responsibility to ensure the legislative effective lives properly reflect the reality of how fast such assets depreciate in the modern high-speed, high-tech economy.

FRINGE BENEFITS TAX EXEMPTION FOR ELECTRIC VEHICLES

The Government has announced that it will provide an exemption from Fringe Benefits Tax (FBT) in relation to electric vehicles commencing from 1 July 2022.

This measure has been previously announced. Legislation has already been introduced to Parliament and is currently before the Senate and scheduled for debate on Wednesday 26 October 2022.

The FBT exemption will apply to battery, hydrogen fuel cell and plug-in hybrid electric cars that are below the luxury car tax threshold for fuel efficient cars (being $84,916 for the 2022-23 financial year) and first held and used from 1 July 2022.

The exempt electric car fringe benefits will be subject to the Reportable Fringe Benefits regime, and accordingly will be reported on an employee's annual PAYG Payment Summary.

The exemption is available notwithstanding that the car fringe benefit is provided under a salary packaging arrangement between an employer and employee. The exemption also only applies to 'cars' as defined for FBT purposes, and therefore does not apply to vehicles designed to carry one tonne or more, or nine passengers or more.

The Government has indicated that this measure will be reviewed after three years.

BDO COMMENT

This measure is not new. Legislation is currently due to be debated by the Senate on Wednesday 26 October 2022, so may become law in coming days.

We welcome this measure that encourages the purchase of fuel-efficient vehicles, but there are several disadvantages to consider:

- The vehicle price is capped to the luxury car tax threshold
- The exempt electric vehicle will still be subject to reportable fringe benefits. This means it may impact on the individual employee's entitlement to certain tax concessions or obligation to certain tax liabilities, depending on the individual employee's circumstances
- There is additional administration required for employers. Employers will still need to calculate the fringe benefit for reportable fringe benefit purposes, even though the benefit is exempt from FBT
- Only employees can benefit from this exemption. Therefore, private individuals and sole traders are not eligible for any exemption
- It will be reviewed in three years' time, which may provide uncertainty to employers setting up these arrangements if they only provide a short-term benefit.

LEGACY TAX AND SUPERANNUATION MEASURES

The Government has opted not to proceed with various legacy tax and superannuation measures that were announced but not legislated by the previous Government, with several measures previously being delayed. Additionally, the Government will defer the start dates for further measures to allow sufficient time to legislate and implement the policies.

Broadly, these measures relate to financing arrangements, self-managed superannuation funds (SMSFs) and increased reporting for the cash and sharing economies.

CANCELLED MEASURES

- 2013-14 Mid-Year Economic and Fiscal Outlook (MYEFO)
  - Originally introduced in the 2011-12 Federal Budget, this measure was aimed at limiting the scope of adverse impacts of the integrity provision in the debt/equity rules resulting in a connected entity being treated as an equity interest, which would otherwise be classified as a debt interest.
- 2016-17 Federal Budget
  - Reform of taxation of financial arrangement (TOFA) rules to reduce scope and decrease compliance costs for a significant group of smaller taxpayers unfairly impacted by the TOFA rules. This measure was previously deferred to prevent unintended outcomes and ensure compliance cost savings are realised.
  - Clarification of the tax treatment for asset backed financing arrangements to ensure they are treated consistently with interest bearing loan or investment financing arrangements, to remove key barriers and improve access to more diverse sources of capital in Australia.
  - Implementation of a new tax and regulatory framework for collective investment vehicles that allow investors to pool funds and enhance the international competitiveness of the Australian managed funds industry.
- 2018-19 Federal Budget
  - Changes to a three-yearly audit requirement for SMSFs with a history of good record keeping and compliance to reduce red tape and compliance costs.
  - Recommendation by the Black Economy Taskforce to introduce a limit of $10,000 for cash payments to tackle tax evasion and money laundering.
  - Increased product disclosure and simplified reporting for providers of retirement income products to assist customer decision making.
- 2021-22 MYEFO
  - Establishment of a new deductible gift recipient category to increase the pastoral care and wellbeing services provided to Australian school students by attracting philanthropic donations and further supporting the not-for-profit sector.

DEFERRED MEASURES

- 2019-20 MYEFO measures targeted at ensuring consistent application of reporting obligations in the sharing economy for data matching purposes including:
  - One year deferral from 1 July 2022 to 1 July 2023 for transactions relating to the supply of ride sourcing and short-term accommodation
  - One year deferral from 1 July 2023 to 1 July 2024 for all other reportable transactions (i.e. asset sharing, food delivery and tasking-based services).
- 2021-22 Federal Budget measures deferred from 1 July 2022 to the income year commencing on or after the date of Royal Assent of the enabling legislation for:
  - Relaxing residency requirements for SMSFs to provide flexibility while temporarily overseas by extending the central control and management test safe harbour and removing the active member test
  - Technical amendments to the TOFA rules aimed at reducing compliance costs and correcting unintended outcomes, so taxpayers are not subject to unrealised taxation on foreign exchange gains and losses unless elected.

BDO COMMENT

BDO is not surprised the Government has decided to cancel and defer various proposed measures dating back to 2014 given many of them have already been deferred and the unquantifiable nature of the original measures. BDO encourages the Government to promptly implement targeted measures addressing key issues that have a quantifiable and practical impact in the future.

It is our view that legislation by press release must end if taxpayers are to have confidence in their tax system.

SUPPORTING SMALL BUSINESS OWNERS

An additional $15.1 million, over two calendar years, from 1 January 2023 will be provided to extend the Small Business Debt Helpline and the NewAccess for Small Business Owners program. The helpline and NewAccess programs were introduced to support the financial and mental wellbeing of small business owners.

To fund this proposed measure, partial funding will be redirected from the Australian Small Business and Family Enterprise Ombudsman component of the 2022-23 March Federal Budget.

WHAT ARE THE SERVICES BEING OFFERED?

The Small Business Debt Helpline is a free service offered to small business owners in financial difficulty, allowing them to speak confidentially to qualified financial counsellors.

The NewAccess for Small Business Owners program is a free and confidential, guided self-help mental health coaching program. The program is developed by Beyond Blue and offers small business owners the opportunity to:

- Talk through their challenges
- Develop a problem statement
- Create a plan based on their needs.

Where symptoms are too severe or complex for the program, the coach will help the owner find a more appropriate service.

BDO COMMENT

BDO welcomes the continued support of small businesses and the mental health of all Australians. Small businesses are an integral part of the Australian economy and whilst these measures are a start, they do little to meaningfully reduce the increasing levels of mental health struggles amongst small business owners. We hope the Helpline and NewAccess program will be able to service more complex and severe mental health issues in the future.

IMPORT DUTIES FOR UKRAINE, RUSSIA AND BELARUS

In response to Russia's invasion of Ukraine, the Government has announced temporary measures to impose additional tariffs on goods imported from Russia and Belarus and waive import duty on Ukrainian goods imported into Australia.

CURRENT TREATMENT OF GOODS IMPORTED INTO AUSTRALIA

Broadly, where goods are imported into Australia for home consumption, regardless of the place of origin, a liability for import duties arises. This means goods imported into Australia are generally subject to a tariff rate of approximately 5% (there are exceptions) on the customs value of the goods.

THE PROPOSED EXEMPTION FOR UKRAINIAN GOODS

As part of the Government's support for Ukraine, it announced that goods imported from Ukraine will be exempt from import duties for a period of 12 months from 4 July 2022. Broadly, this measure results in a 'free' rate of duty for goods manufactured and/or produced in Ukraine. However, excise-equivalent goods from Ukraine such as alcohol, fuel, tobacco and petroleum products are excluded from the measure and will not be exempted from import duty. This measure is estimated to decrease receipts by $2 million over the four years from 2022-23.

ADDITIONAL TARIFFS ON RUSSIAN AND BELARUSIAN GOODS

In contrast, the Government has extended the additional 35% tariff on goods imported into Australia that are manufactured and/or otherwise produced in Russia and Belarus. This additional tariff will continue to apply for a further 12 months up until 24 October 2023.

BDO COMMENT

BDO notes these tax changes are only one of the measures in the Government's ongoing commitment to the support of Ukraine. Whilst it appears imported goods from Ukraine will remain subject to import GST, BDO considers it vital to maintain bilateral trade and stimulate the Australian economy by providing ongoing support to the Ukrainian community.

HOUSING ACCORD AND AFFORDABLE HOUSING

The Government has announced a Housing Accord with a target to build one million homes in five years commencing from 2024-25. It has outlined three key measures it believes will assist to provide more affordable housing.

Firstly, the Government has committed $350 million over five years from 2024-25 to support the funding of an additional 10,000 affordable homes. The state and territory governments have agreed to a Housing Accord to collectively match the 10,000 affordable homes provided by the Federal Government.

Secondly, $324.6 million has been allocated to the Help to Buy scheme, which will be established to assist people on low to moderate incomes to purchase a new or existing home with an equity contribution from the Government.

Finally, the Government will invest $10 billion in the Housing Australia Future Fund, which will generate returns that will fund 30,000 social and affordable homes over five years. In the first five years, $330 million of the fund's returns will be allocated to finance acute housing needs for remote indigenous communities, women and children fleeing family violence, older women on low incomes and veterans at risk of homelessness. In addition, the returns from $1.6 billion of the fund will be directed to long term housing for women and children fleeing family violence and older women at risk of homelessness.

Whilst previous budget measures introduced by the former Government have aimed to help buyers enter the market, such as the Home Guarantee Scheme, the new Government has shifted focus to addressing the supply issue in the Australian property market.

BDO COMMENT

Whilst BDO supports the Government's setting of an ambitious target, whether it is achievable in the current market with its material supply constraints remains to be seen.

PUBLIC COMPANIES AND MULTINATIONALS

OFF-MARKET SHARE BUY-BACKS

The Government aims to improve the integrity of off-market share buy-backs undertaken by listed public companies by aligning their tax treatment with on-market share buy-backs.

Under the current law, a distinction is drawn between buy-backs made through an official stock exchange in the open market (an on-market buy-back) and buy-backs where the company buys its shares directly from a shareholder (an off-market buy-back).

Where an on-market buy-back occurs, the entire amount received is treated as the capital proceeds in the hands of the shareholder. Under an off-market buy-back, the proceeds received by the shareholder are split into two components - a capital component and a frankable dividend component.

Ordinarily, the split is determined by the way the company accounts for the buy-back. The amount of the buy-back proceeds debited to the company's share capital account form the capital component, with the balance being treated as a frankable dividend. Several anti-avoidance rules apply to ensure no inappropriate capital/dividend allocations are adopted.

The Budget contains no specific detail on how the proposed alignment of rules will be implemented. It is assumed no changes will be made in relation to off-market share buy-backs undertaken by private companies.

This measure applies from budget night, with an estimated increase in revenue of $550 million over four years.

BDO COMMENT

The Australian Taxation Office (ATO) has long been concerned about the allocation between the capital and dividend component of off-market share buy-backs, particularly where this results in what the ATO views as inappropriate streaming of capital or dividends to shareholders.

In particular, large superannuation funds are worst affected by this measure.

MULTINATIONAL TAX INTEGRITY – LIMITING INTEREST DEDUCTIONS (THIN CAPITALISATION RULES)

THIN CAPITALISATION

The Government has announced changes to Australia's thin capitalisation rules (that apply to taxpayers with overseas operations) for years starting on or after 1 July 2023 to bring Australia in-line with the Organisation for Economic Cooperation and Development's recommended approach. Under the current thin capitalisation rules, the debt (interest) deductions of multinational taxpayers are limited by the following tests:

- The safe harbour debt amount (an asset to debt ratio)
- The worldwide gearing debt amount (based on the debt ratio of the worldwide group)
- The arm's length debt test.

The proposed changes seek to replace the safe harbour and worldwide gearings tests with an earnings based test. Specifically, the measure includes changes to:

- Limit an entity's debt deductions to 30% of EBITDA (earnings before interest, taxes, depreciation, and amortisation). This test will replace the existing safe harbour rules and will allow taxpayers to carry forward disallowed deductions to subsequent income years
- Replace the worldwide gearing test to allow an entity in a multinational group to claim debt deductions up to the level of the worldwide group's net interest expense as a share of earnings
- Retain an arm's length debt test as a substitute test, which will apply only to an entity's external (third party) debt, disallowing deductions for related party debt.

▶ NEW EARNINGS BASED TEST

The new safe harbour calculation will limit deductions to 30% of EBITDA and is likely to disadvantage taxpayers with fluctuating earnings, including:

- Real estate companies (especially in construction stage)
- Companies in early stages of operations
- Companies with high start-up costs
- Taxpayers with lower level of earnings, especially in the declining economy.

These changes will likely result in increased uncertainty for taxpayers as the deductibility of interest will be subject to annual performance. Similarly, the changes to the worldwide gearing test will likely impact those businesses whose performance may fluctuate year-on-year.

NEW ARM'S LENGTH DEBT TEST

The arm's length debt test follows the market approach that considers the amount of debt a stand-alone Australian business would reasonably be expected to borrow from independent commercial lenders operating at arm's length. This often places a higher reliance on debt-to-asset and debt-to-equity ratios that are less likely to be volatile than earnings tests.

It should be noted that although the arm's length debt test will remain as a substitute test, the test will now only apply to an entity's external (third party) debt. All related party debt deductions will be disallowed under this test.

Under this new change it is evident the Australian Taxation Office will place a greater focus on the use of related party debt to fund an Australian taxpayers' business. This will require taxpayers to consider this matter further when determining the best way to finance their Australian operations.

BDO COMMENT

BDO considers that the proposed measures are likely to significantly increase the compliance burden for a wide range of taxpayers – adding to already complex compliance requirements. Whilst these changes may give a certain competitive advantage to Australian taxpayers with local operations, they will ultimately lead to greater uncertainty for multinational entities.

With these changes, BDO is concerned that this may negatively impact the level of investment into Australia by multinational companies in the long run. Overall, it is disappointing to see the Government implementing these changes without considering more targeted measures for taxpayers who have limited capacity to manage the complexity, cost and time required to deal with these new changes.

There is one silver lining, however, interest deductions denied under the current thin capitalisation rules are gone forever. Under the proposed legislation, debt deductions denied in one year may be carried forward for use in future years.

DENYING DEDUCTIONS FOR PAYMENTS RELATING TO INTANGIBLES HELD IN LOW OR NO-TAX JURISDICTIONS

The Government has announced an anti-avoidance provision to prevent significant global entities (typically defined as members of a global group with gross revenue of at least A$1 billion) from claiming tax deductions for payments made directly or indirectly to related parties in relation to intangibles held in low or no-tax jurisdictions.

A low or no-tax jurisdiction is defined as a jurisdiction with a tax rate of less than 15% or a tax preferential patent box regime without sufficient economic substance.

The measure will apply to payments made on or after 1 July 2023 and is estimated to increase tax receipts by $250 million up to 2025-26.

A MYRIAD OF CURRENT RULES

Currently, payments to related parties in relation to intangibles are deductible for income tax purposes subject to the taxpayer complying with:

- Withholding tax obligations
- Hybrid mismatch provisions
- Transfer pricing provisions
- Published Australian Taxation Office (ATO) guidance, such as Practical Compliance Guidelines.

The deductions may be denied if any of the above rules are not satisfied, regardless of the tax rate applicable to the recipient entity.

BDO COMMENT

By adding a new measure to address the perceived risk of integrity issues associated with payments related to intangibles and royalties over and above the existing provisions, it is likely compliance costs for both taxpayers and the ATO will increase.

Given the brevity of the budget papers, it is currently unclear as to how ‘payments for intangibles’ is to be defined, and in particular whether embedded royalties (i.e. royalties embedded into the product price) are intended to be included by the measure. We note the recent consultation paper issued by Treasury implies this is being strongly considered.

If this outcome eventuates, additional guidance will be required from the ATO, and compliance costs for affected taxpayers would further increase again, as it would generally be a complex and subjective exercise to analyse payments into discrete components and evidence the process under which portion of a charge would be deemed to be an embedded royalty.

Australia’s existing integrity rules, including the transfer pricing rules and general anti-avoidance provisions, already seek to address several of the perceived issues targeted by the new rule (such as the low tax rate in the case of the hybrid mismatch rules or the requirement for substance in the case of the transfer pricing rules).

Australian groups with relationships to low tax jurisdictions, such as Ireland, Singapore and Hong Kong, used as centralised hubs for intangibles will need to re-consider these arrangements due to the risk of double taxation.

There also remains a risk of denial of deductions even where substantial activity (resulting in intangibles) is carried on in a country with a low tax rate. The rules could result in an economically appropriate and arm’s length payment being denied deductibility.

BDO is concerned these new measures may decrease Australia’s competitiveness in attracting foreign investment.

IMPROVED TAX TRANSPARENCY

The Government has introduced new measures intended to enhance reporting requirements for large multinationals, Australian public companies, and tenderers for Australian Government contracts worth more than $200,000, by requiring the public release of certain tax related information.

This reflects an expansion of the current approach in Australia, under which the amount of tax related information currently made public by the Australian Taxation Office (ATO) is very limited in nature. This improved level of tax transparency is intended to increase scrutiny of large multinational's tax affairs and thereby improve public trust in the Australian tax system.

OUTLINE OF THE TAX TRANSPARENCY MEASURES

The Government will require:

- Large multinationals with worldwide turnover of more than $1 billion, defined as significant global entities (SGEs), to disclose certain tax information on a country by country (CbC) basis, together with a statement on their approach to taxation for disclosure by the ATO
- Australian public companies (listed and unlisted) to disclose information on the number of subsidiaries and their country of tax domicile
- For tenderers for Australian Government contracts that are worth more than A$200,000 to disclose their country of tax domicile.

The public needs greater understanding of the contribution large taxpayers make to the community in terms of tax paid, but the information needs to be presented in a format that is easy for the public to digest and understand. It is uncertain whether publishing information on a CbC basis will achieve this goal, as existing CbC disclosures are not straightforward.

It is also unclear whether this measure applies to all SGEs, many of which do not currently need to prepare CbC information. More guidance is needed.

BDO COMMENT

Noting that the European Union has also recently announced similar requirements, a question remains as to how these measures may impact foreign investments from non-European countries, as well as Australia's existing commitment to keep the information that is disclosed as part of the CbC reporting private (under Action 13 of the OECD BEPS Action Plan).

It is also debateable as to whether the announced measures target companies proportionately, as several large Australian taxpayers (with global income less than $1 billion) will not be impacted to the same degree as Australian subsidiaries of overseas SGEs, which can have relatively small operations in Australia, compared with their global footprint.

What is clear is that this measure will increase the compliance burden for impacted taxpayers and increase the chance of reputational damage due to tax related disclosures being put in the public domain without sufficient context or explanation.

INDIVIDUALS

GOVERNMENT CONFIRMS THE TAXATION OF DIGITAL CURRENCIES

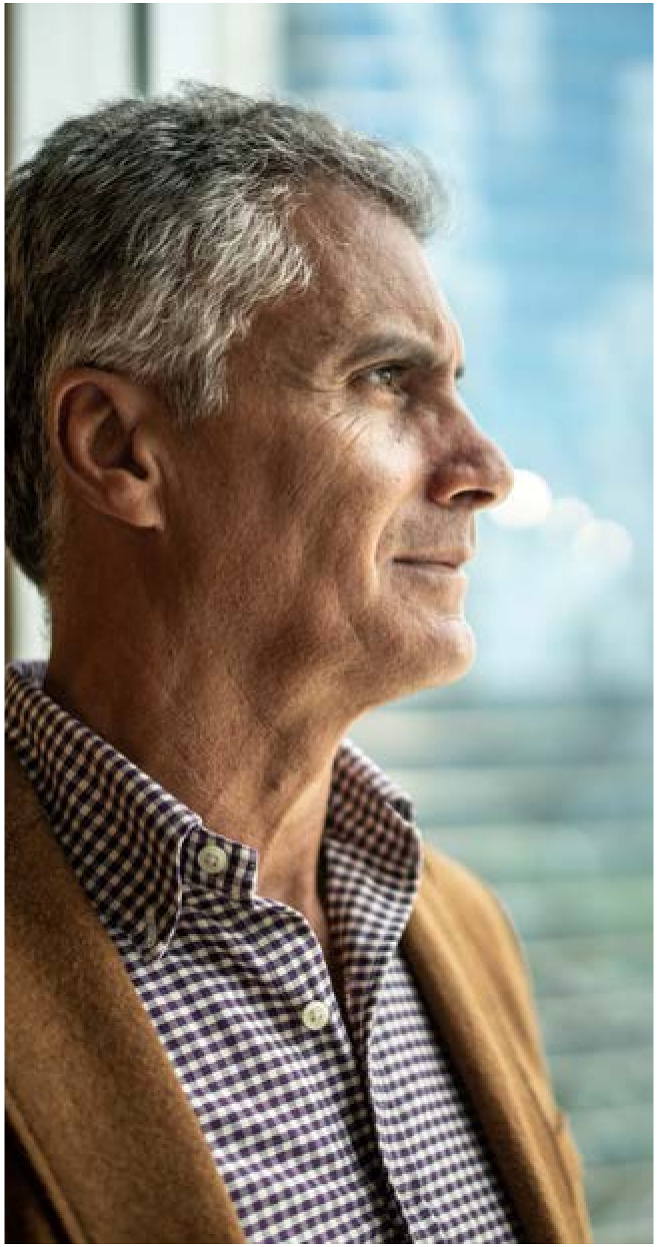
The Government has committed to treating digital currencies not issued by or under the authority of sovereign governments as a capital asset, rather than as foreign currency. Currently, there is an argument that digital currencies could possibly be treated the same as foreign currencies, where the gain or loss on their use is assessable or deductible.

This change provides some clarity to taxpayers on their reporting obligations by vocalising a consistent "bright line" going forward. Taxpayers will be entitled to the 50% Capital Gains Tax (CGT) discount on any profits realised but will no longer be entitled to claim a deduction for any losses against ordinary income, unless they can show they hold the cryptocurrency on revenue account.

BDO COMMENT

BDO understands the Government's decision to exclude digital currencies from being treated as foreign currency but doing so leaves taxpayers to navigate the difficult question of whether a particular transaction is on revenue or capital account each time they trade.

We hope the Board of Taxation's current inquiry into the tax treatment of digital assets produces a coherent set of principles for their taxation. Until then, taxpayers transacting in cryptocurrency must make difficult technical tax distinctions.



DOWNSIZER SUPERANNUATION CONTRIBUTION ELIGIBILITY

The Government has confirmed its earlier announcement that the eligibility age to make downsizer contributions of up to $300,000 per person in a couple, will be reduced from 60 to 55 years of age.

All other eligibility criteria remain unchanged. These are:

- Your home was owned by you or your spouse for 10 years or more prior to the sale (the ownership period is generally calculated from the date of settlement of purchase to the date of settlement of sale)
- Your home is in Australia and is not a caravan, houseboat, or other mobile home
- The proceeds (capital gain or loss) from the sale of the home are either exempt or partially exempt from Capital Gains Tax (CGT) under the main residence exemption, or would be entitled to such an exemption if the home was a CGT rather than a pre-CGT asset (acquired before 20 September 1985)
- You provide your super fund with the downsizer contribution into super form, either before or at the time of making your downsizer contribution
- You make your downsizer contribution within 90 days of receiving the proceeds of sale, which is usually at the date of settlement
- You have not previously made a downsizer contribution to your super from the sale of another home or from the part sale of your home.

ENCOURAGING AGE PENSIONERS TO DOWNSIZE

The Government has offered further incentives to older Australians to downsize their home. Extending the exemption for the asset test from 12 to 24 months and applying only the lower deeming rate of 0.25% to the proceeds for the first 24 months after the sale of the principal place of residence, is designed to reduce the financial impact on older Australians who choose to downsize.

BDO COMMENT

BDO is delighted the Government has not made any significant changes to Australia's superannuation and retirement systems.

Maintaining the status quo allows all Australians to save for their retirement with the confidence that the superannuation ground rules do not need to change with every budget.

BDO welcomes the Government's confirmation of the reduction in the age for eligibility for downsizer contributions to 55 years of age, as this initiative provides more certainty to older Australians as they approach retirement and beyond.

PLAN FOR CHEAPER CHILDCARE

The Government announced that $4.7 billion will be provided over four years from 2022-23 to deliver cheaper childcare. These measures aim to help ease the cost of living for families and encourage greater workforce participation by reducing barriers. As part of the proposed amendments:

- The maximum Child Care Subsidy (CCS) rate has increased to 90% from 85% in prior years
- An increase to the CCS rate for all families earning less than $530,000 in household income
- Whilst the current higher CCS rate for families with multiple children aged five or under has remained unchanged, the higher rate will cease 26 weeks after the oldest child's last session
- A comprehensive 12-month inquiry into the cost of childcare will be undertaken by the Australian Competition and Consumer Commission, and a review of the childcare sector by the Productivity Commission
- Large providers will be required to publicly report their CCS-related profits, in order to improve transparency of the childcare sector.

A further $43.9 million will be provided over four years from 2022-23 to improve early childhood outcomes for First Nations children and support the National Agreement on Closing the Gap targets. Funding includes:

- $33.7 million over four years from 2022–23 to introduce a base entitlement to 36 hours per fortnight of subsidised early childhood education and care for families with First Nations children, regardless of activity hours or income level
- $10.2 million over three years from 2022–23 to establish the Early Childhood Care and Development Policy Partnership with Coalition of Peaks partners and First Nations representatives, to develop policies on First Nations early childhood education and care.

Additionally, the Government will provide $9.5 million over two years from 2022–23 to communicate the changes to the CCS system to childcare providers and families.

BDO COMMENT

BDO welcomes the Government's proposal to make the cost of childcare cheaper for a larger number of Australians. These additional subsidies are expected to result in the equivalent of 37,000 extra full-time workers being available to employers, which is a positive outcome. However, with more children in need of care, a greater strain will be placed on the already understaffed childcare industry. BDO urges the Government to consider the impact the additional demand for care and reporting administration will have on childcare providers.

UPLIFT FOR PAID PARENTAL LEAVE

The Federal Government was eager to announce its improvements to the Paid Parental Leave Scheme, building on the Women's Economic Security Package previously announced in prior budgets. The Treasurer proudly declared the improvements in the Budget are the biggest boost to the Paid Parental Leave Scheme since its inception.

The Government has committed to a cost to budget of $531.6 million over four years towards this program in a bid to improve the flexibility of parental leave. The scheme will now allow either parent to claim the payment concurrently on a 'use it or lose it' basis. The specifics of this innovative approach are yet to be finalised but will be spearheaded by the Women's Economic Equality Task Force to determine the most appropriate proportion of 'use it or lose it' weeks. Sole parents will be able to claim the full period of leave.

These announcements also expand both the definition and quantum of parental leave, allowing both eligible birth parents and non-birth parents to receive the payment. The scheme starts with 20 weeks of leave in the 2023 financial year, and this will be extended by two weeks per financial year, until the target of 26 weeks is achieved from 1 July 2026.

BDO COMMENT

Delivering a family friendly budget that further implements the Women's Economic Security Package was undoubtedly a top priority for the Federal Government. The implementation of a 'use it or lose it' scheme incentivises both parents to take more time away from the workplace to give their children a better start in life. BDO suggests that those planning a family become familiar with the scheme's parameters.

OTHER MEASURES

INCREASE TO FOREIGN INVESTMENT FEES AND PENALTIES

On 29 July 2022, the Federal Government doubled the Foreign Investment Review Board (FIRB) fees for all applications made under the foreign investment framework. This Budget expands on these changes by also doubling the maximum financial penalties that can be applied for breaches in relation to residential land. These measures are set to apply from 1 January 2023.

The increases are designed to ensure Australians do not bear the cost of administering the foreign investment framework, as well as to encourage compliance.

These measures are a part of the Government's 'Plan for a Better Future' and are estimated to increase receipts by $457.4 million over the four years from 2022–23.

BDO COMMENT

These changes appear to be in response to the strong focus on housing affordability and the residential property sector, coupled with the considerable resources required to administer the foreign investment framework. Although BDO welcomes the increased financial penalties as an effort to increase compliance with the legislative framework, we note that these changes may act as a disincentive to foreign investment within Australia at a time when global capital flows are slowing.

INCREASED FUNDING FOR TAX COMPLIANCE PROGRAMS

Keeping in theme with previous budgets, the Government has announced an increase in funding for various tax compliance programs. The measures are aimed at supporting the integrity of the tax system and will target a broad range of taxpayers.

EXTENSION OF EXISTING AUSTRALIAN TAXATION OFFICE (ATO) COMPLIANCE PROGRAMS

The Government has extended funding for the following compliance programs:

- Funding for the ATO Tax Avoidance Taskforce will increase by approximately $200 million per year over four years from 1 July 2022 and extend for an additional year through to 1 July 2025. The taskforce was established in 2016 to undertake compliance activities, detect tax avoidance and protect the integrity of the tax system by targeting multinationals, large corporates, and high wealth individuals. By extending the taskforce, it is estimated to increase receipts by $2.8 billion
- The Government will extend the ATO Shadow Economy Program for a further three years from 1 July 2023. This program was established to develop a strong and co-ordinated response to target shadow economy (dishonest and criminal) activity, protect revenue and "level the playing field" for businesses following the rules. It is expected that this extension will boost receipts by $2.1 billion, including an increase in GST payments to the states and territories of $442.3 million.
- The Government will allocate $80.3 million to extend the Personal Income Taxation Compliance Program for two years, commencing from 1 July 2023. This program targets non-compliance, including the overclaiming of deductions and the incorrect reporting of income. This increased funding will allow the ATO to modernise its guidance and allow for earlier engagements with taxpayers and tax agents, while meeting compliance activity targets. This has been estimated to increase receipts by $674.4 million over the next four years.

TAX PRACTITIONERS BOARD (TPB) COMPLIANCE INVESTIGATIONS

The Government has allocated $30.4 million over four years to the TPB to increase investigations into high-risk tax practitioners and unregistered preparers. The measure will improve tax compliance and raise industry standards. The TPB intends to achieve this via "new risk engines to better identify tax practitioners who engage in poor and unlawful tax advice". This is estimated to increase receipts by $81.9 million.

COMMONWEALTH PENALTY UNIT INCREASE

As part of the Budget, the Government will increase the amount of a Commonwealth Penalty Unit from $222 to $275. A penalty unit is used to calculate fines under the Commonwealth law. The total amount of the fine is calculated by multiplying the value of a single penalty unit by the number of penalty units assigned to an offence.

The aim of this increase is to ensure the financial consequence for Commonwealth offences deters unlawful behaviour and aids in repairing the budget. Penalty unit amounts will continue to be indexed every three years to keep in line with the pre-existing Consumer Price Index Schedule. The next indexation is due to occur on 1 July 2023, meaning there could be a further increase to the amount of a single penalty unit in 2023. This change has been estimated to increase receipts over the next four years by $31.6 million.

BDO COMMENT

The above measures indicate the Government is returning to a pre-COVID enforcement posture, and taxpayers have been put on notice.

Whilst the measures are estimated to provide a significant financial boost to the Government, the extent to which these measures will be effective is uncertain. For example, an Australian National Audit Office review of the Tax Avoidance Taskforce in 2019 found that the ATO could not conclusively demonstrate that the taskforce met the revenue and resourcing commitments set out in the 2016–17 Federal Budget. It is unclear whether extending the taskforce, along with additional government compliance programs, will achieve the estimated revenue and resourcing commitments for the current budget.

NATIONAL DISABILITY INSURANCE SCHEME FRAUD FUSION TASKFORCE

The Government has pledged new integrity measures to bolster the National Disability Insurance Scheme (NDIS) with a reinvigorated anti-fraud taskforce. The new Fraud Fusion Taskforce will replace the existing NDIS Fraud Taskforce and integrate across several government departments to better identify and prosecute fraud perpetrated within the NDIS by third parties that provide the scheme's services.

It has been estimated in 2022 that as much as 5% of the NDIS's annual budget was lost to fraud. This could amount to $1.45 billion being lost in 2022 alone. However, public reporting indicates that only 18 people since 2020 have been charged with fraud by the existing task force, recovering a mere $14 million compared to the estimated billions lost.

The new taskforce will be comprised of 12 government agencies and will receive $126.3 million out to the 2026 financial year. It will include the NDIS's administration agency, the Australian Taxation Office (ATO), law enforcement agencies, Services Australia, and the Department of Education, potentially drawing on the resources and data from half of government.

This policy has been implemented alongside an extension of the ATO's enforcement task force, which is concerned with tax fraud and the shadow economy.

BDO COMMENT

The NDIS has 9,456 current providers who manage hundreds of millions of dollars in scheme funding to provide their services to NDIS participants. Whilst the Government hopes to draw in nearly $300 million in additional revenue through its heightened enforcement measures, which is a laudable goal, the potential costs go beyond the mere monetary. A multi-agency fraud taskforce with the ability to draw on data from social services and the ATO must avoid the mistakes made by the robodebt taskforce.

Fraud should be identified and prosecuted wherever it occurs, but special consideration should be given to the unique and vulnerable position of NDIS participants.

ADDITIONAL FUNDING FOR PRIORITY INFRASTRUCTURE PROJECTS

In addition to existing investments, the Government has committed a further $8.1 billion over ten years for priority rail and road infrastructure projects across Australia. It states that the additional funding improves regional rail and road networks and will support economic growth and development. The Government will fund $2.8 billion of the increased investment via the cancellation and reallocation of previously announced infrastructure projects as well as savings identified as part of the Government's budget audit.

STATE AND TERRITORY MEASURES

Australian Capital Territory

The Government will provide a further $85.9 million for the Australian Capital Territory to fund the Canberra Light Rail Stage 2A Project.

New South Wales

New South Wales will receive an additional $1.4 billion in funding, which will help fund key projects including:

- $500 million for planning, corridor acquisition and early stage works for the Sydney to Newcastle High Speed Rail
- $268.8 million to build a Muswellbrook bypass on the New England Highway to reduce travel times for freight operators.

Northern Territory

The Northern Territory will receive an additional $550 million in additional funding for priority road projects, including:

- $350 million to improve Tanami Road up to the Northern Territory Border
- $180 million to improve the Stuart Highway between Katherine and Nhulunbuy, a key freight route for the mining and pastoral industries.

Queensland

A further $2.2 billion has been committed for key highway and supply route projects in Queensland. The additional funding will be allocated to key projects such as:

- $866.4 million for Bruce Highway upgrades including improvements to sections in Brisbane's outer northern suburbs as well as between Rockhampton and Gladstone
- $400 million to improving the inland freight route between Mungindi to Charters Towers.

South Australia

South Australia will benefit from an additional $460 million in funding for the state's Freight Highway Upgrade Program including upgrades to the Dukes, Stuart and August Highways.

Tasmania

The Government will provide an additional $78 million in funding for road projects in Tasmania including $48 million in additional funding towards the Tasmanian Roads Package, which is focussed on improving the Bass, Tasman and Tamar Highways.

Victoria

The Government will allocate a further $2.6 billion in funding for a variety of road and rail projects in Victoria. Spending on major infrastructure upgrades will include:

- $2.2 billion for the Suburban Rail Loop East connecting Werribee to Cheltenham
- $150 million to build Hume Freeway Diamond Interchange in Beveridge.

Western Australia

The Government will provide an additional $634.8 million in key infrastructure projects in Western Australia, focusing on projects such as:

- $350 million to improve the Halls Creek to Alice Springs freight corridor
- $125 million to build electric bus charging infrastructure in Perth.

BDO COMMENT

The fall in additional infrastructure investment from $17.9 billion in the last budget to $8.1 billion in the current budget is a clear indication that the Government is cautious about the current economic climate. BDO welcomes the additional funding for improving regional freight routes that will help support rural communities and reduce supply chain issues for the farming and logistics industries.

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