THE TAX INSTITUTE

Federal Budget Report 2021–22

May 11, 2021

Contents

Preamble

"Tax measures in the Federal Budget 2021-22 support economic resurgence, but holistic reform would take us further."

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President, The Tax Institute.

The Federal Budget 2021–22 is fundamentally one for spending on economic recovery, to build resilience and future essential services. It is intended to support accelerated economic growth on the back of the COVID-19 driven recession we had in 2020. It is not a taxing Budget.

Proposed expenditure on things like infrastructure, national security, health and aged care positively address long term economic issues. Measures like those that address imbalances in the housing sector, promote work force participation, gender equality and overall productivity will have a more immediate impact. Hopefully, the Budget will stimulate further spending and investment to keep the recent economic upturn continuing.

Sustainable long term economic growth should also have as one of its bases an efficient, fair and simple tax system. We do not have that, and we are still missing an opportunity to holistically change our system for the long term future benefit of the nation. A time of economic resurgence is an opportune one for holistic and well considered tax reform.

A snapshot of some key measures

The tax measures in this Budget are in the main a range of stimulus supporting changes. However, there is a pleasing appetite to support innovation and growth in the digital economy through tax policies. Major new changes have not been on the agenda, but rather there is a reliance on increases to overall revenue through the taxation of increased business profits.

While not increasing taxes, the Budget's tax measures are nevertheless consistent with the Government's desire to boost domestic expenditure and investment to repair the economy. Our report addresses these measures in more detail for you.

It is pleasing to see the extension by a year of the recent stimulus measures for the full expensing of depreciable assets and the carry-back of company tax losses.

The retention for another year of the low and middle income tax offset has received a lot of media attention and continues to give significant tax relief and more available cash to many individuals in the low and middle brackets.

The encouragement for innovation and the digital economy comes mainly from the proposed 17% patent box tax regime for the exploitation of medical and biotechnological patents, and in future a more attractive depreciation for intangible assets.

While reconsideration of the residency and international tax rules for individuals is welcome, the path of following the Board of Taxation proposal is suboptimal. We will be urging the Government to rethink this approach. Nonetheless, we will always be ready to assist members navigate whatever rules eventuate.

In addition, amongst other announced changes, there is some limited relaxing of the employee share scheme rules.

The work towards tax reform continues

We know that proposals like these do not altogether address underlying inefficiencies in the tax system. The Tax Institute has advocated for a more balanced tax base in our system, and against over reliance on individual and corporate tax, and tax on income, profit and gains. The Budget proposals do not reduce the long list of wasteful taxes. The Federal Budget 2021–22 does not address the complexity in our system and our administrative red tape.

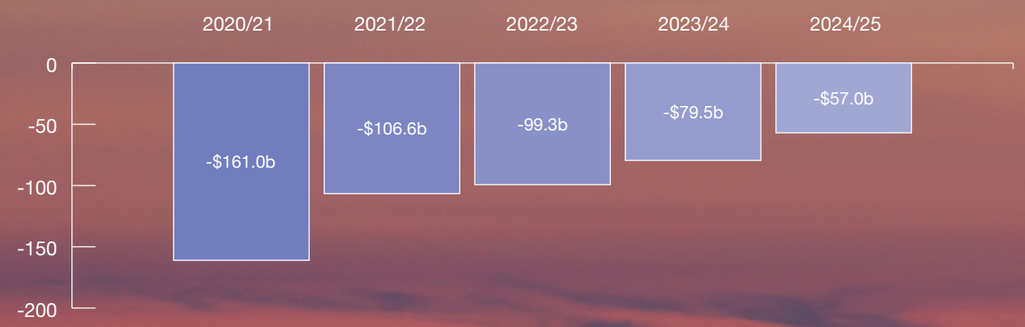
We also hear from our members that as tax professionals they are tired of uncertainty.

Long term efficiency, equity and simplicity in the tax system is still our challenge.

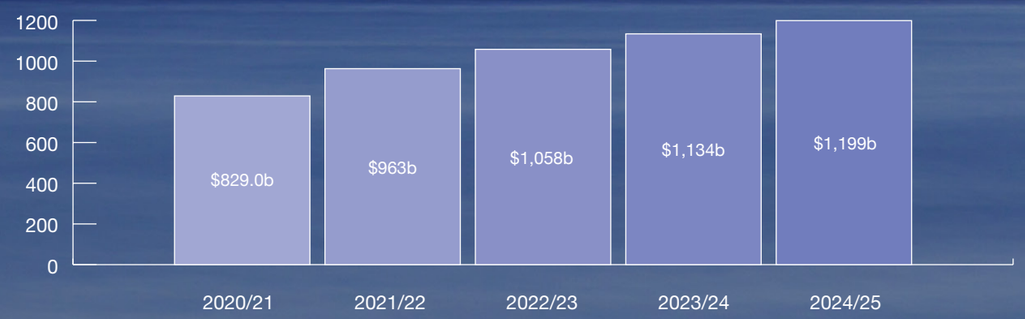
Hopefully, our economic resurgence will continue in the near future with the support of this Budget. Holistic, systematic tax reform would help ensure it continues for a lot longer.

The 2021-22 Financial Outlook

Underlying Cash Balance



Gross Debt



Key Tax Measures

- Personal tax cuts - unchanged
- Low to middle income tax offset
  - 1 year extension
- Child care offset
  - amended from 1 July 2022
- Amendments to employee share schemes
- Investing in the digital economy
  - 30% tax offset for gaming
  - Choosing effective life
- Superannuation
  - Expansion of downsizer
  - Removal of work test & $450 minimum threshold
- Small business to use AAT for suspension of collection on disputed debt
- Patent box
- Proposed changes to tax residency

Nominal GDP

2020/21	2021/22	2022/23	2023/24	2024/25
3.75%	3.50%	2.00%	4.75%	5.00%

Inflation (CPI)

2020/21	2021/22	2022/23	2023/24	2024/25
3.50%	1.75%	2.25%	2.50%	2.50%

Wage Growth

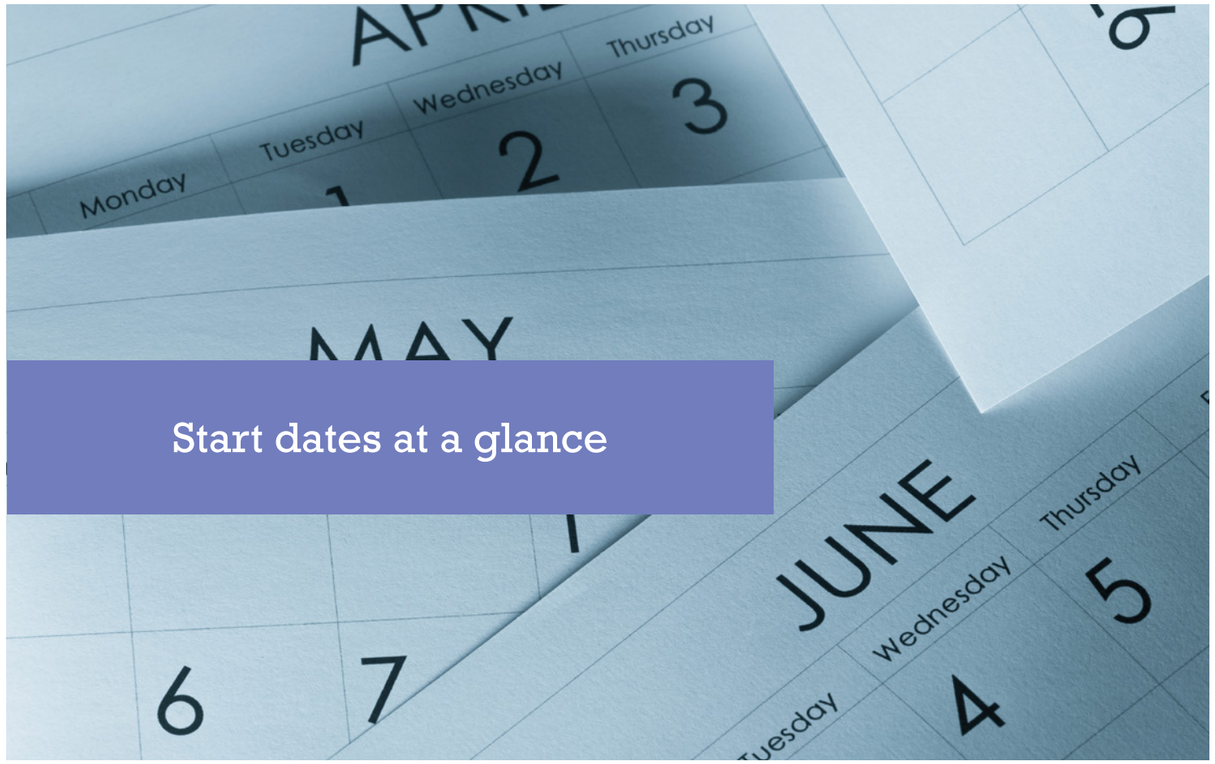
2020/21	2021/22	2022/23	2023/24	2024/25
1.25%	1.50%	2.25%	2.50%	2.75%

Unemployment

2020/21	2021/22	2022/23	2023/24	2024/25
5.50%	5.00%	4.75%	4.50%	4.50%

Investments

- Aged Care: $17.7b
- Infrastructure: an additional $15.2b over 10 years
- Defence: $270b over 10 years
- Health: $98.2b
- Education: $42.7b
- Environment: Circa $2b



Start dates at a glance

Measure	Start Date
Personal Tax & Transfer	
Increasing the Medicare Levy low-income thresholds	1 July 2020
Removal of the non-deductibility of the first $250 of self-education expenses	The financial year commencing after Royal Assent
Childcare reform	1 July 2022
Superannuation & Retirement	
Superannuation Guarantee	From the start of the first financial year after Royal Assent of the enabling legislation, which the Government expects to have occurred prior to 1 July 2022
Work test	
Downsizer contributions	
First Home Super Saver Scheme	
SMSFs residency	
Tax issues for SME's	
Change to taxing point for employee share schemes	1 July following Royal Assent
Temporary Full Expensing	Budget Night
Loss carry back	Losses incurred during the 2020 to 2023 years can be carried back to offset profits as far back as the 2019 year
Implementation of the SME Recovery Loan Scheme	1 April 2021

Measure	Start Date
Corporate Tax	
Digital games tax offset	1 July 2022
Self-assessment of effective lives for intangibles	Assets acquired from 1 July 2023
Introduction of a patent box	1 July 2022
Consultation on broadening of amendments to corporate tax residency rules to include trusts and corporate limited partnerships	Part of consultation on corporate tax residency test amendments announced in Federal Budget 2020–21
Access to the hedging method in the Taxation of Financial Arrangement provisions, permitted on a portfolio hedging basis	Transactions entered into on or after 1 July 2022
Introduction of Corporate Collective Investment Vehicles (CCIV) – corporate structures with a flow-through tax treatment	1 July 2022
International Tax	
Update to the list of exchange of information countries	January 2022
Concessional 10% tax rate for income derived from eligible offshore banking activities removed	Concessional rate ceases at the end of the 2022–23 income year. Withholding tax exemption ends from 1 January 2024
New individual residency test	1 July following Royal Assent
Tax Administration	
Pausing debt recovery action for small business	On or after date of Royal Assent
Introduction of ATO early engagement service	Service available from 1 July 2021
Other measures	
Increased excise refund cap for small brewers and distillers	1 July 2021
HomeBuilder program	Increase from 6 months to 18 months to commence construction for existing applicants
JobTrainer Fund extension	2021-22 income year (subject to matched State and Territory Government funding)
Family Home Guarantee	1 July 2021 subject to Royal Assent
Philanthropy — updates to the list of specifically listed deductible gift recipients	1 July 2021
Not-for-profits — enhancing the transparency of income tax exemptions	1 July 2023

Personal Tax & Transfer

Increasing the Medicare levy low-income thresholds

The Government will increase the Medicare levy low-income thresholds for singles, families, and seniors and pensioners from 1 July 2020. Under this measure, low-income taxpayers will generally continue to be exempt from paying the Medicare levy.

The thresholds will be increased:

- for singles – from $22,801 to $23,226;
- for families - from $38,474 to $39,167;
- for single seniors and pensioners - from $36,056 to $36,705; and
- for family seniors and pensioners - from $50,191 to $51,094.

For each dependent child or student, the family income thresholds increase by a further $3,597 (previously, $3,533).

LMITO

Retaining the low and middle income tax offset for the 2021-22 income year

As expected, the Government has announced that the low middle income tax offset (LMITO) will be extended for the 2021-22 income year.

This will provide significant tax relief to individual taxpayers. In particular, low and middle income earners will receive tax relief of up to $1,080.

The benefit will depend on a taxpayer's taxable income. For taxpayers with a taxable income of:

- $37,000 or less – they will benefit by up to $255;
- $37,000 and $48,000 – the value of the offset will increase at a rate of 7.5 cents per dollar to the maximum offset of $1,080;
- $48,000 and $90,000 – they will be eligible for the maximum offset of $1,080.
- $90,000 to $126,000 – the offset phases out at a rate of 3 cents per dollar.

This measure is designed to help economic recovery. The measure will put more money into the pockets of taxpayers in the expectation that they will spend much of it. In turn, these funds will assist businesses to continue operating.

See also **Appendix B**

Child care reform

As foreshadowed by the Government, the Budget includes changes to the Child Care Subsidy (CCS). The objective of these changes is to make childcare more affordable and boost workforce participation. Under the proposed changes:

- The CCS rate will increase by 30 percentage points for the second child and subsequent children aged five years and under in care, up to a maximum CCS rate of 95% for these children, commencing on 1 July 2022; and
- The CCS annual cap of $10,560 per child per year will be removed commencing on 1 July 2022.

The Institute welcomes the removal of the annual cap. However, we consider the proposal is unnecessarily complex and more limited than otherwise necessary. It is difficult to see how these measures will address the underlying systemic issues in relation to child care costs and disincentives to return to paid work or accept additional work. The Tax Institute considers that holistic tax reform is required to achieve simple and affordable childcare.

See also **Appendix C**

Self-education expenses

The current non-deductibility of the first $250 of eligible self-education expenses will be removed from the financial year commencing after Royal Assent. While non-deductible self-education costs can be offset against the current $250 threshold, the removal of this threshold eliminates the need to retain substantiation in this regard.

The non-deductibility of the first $250 of self-education expenses is a historical quirk that has been around since there was a $250 concessional rebate for such expenses in the 1970s.

This measure applies for the financial year commencing after Royal Assent.

Exemption for pay and allowances for Operation Paladin

The Government has announced that it will provide a full income tax exemption for the pay and allowances of Australian Defence Force (ADF) personnel deployed to Operation Paladin from 1 July 2020.

Operation Paladin is the ADFs support to the United Nations Truce Supervision Organisation. Under the operation, ADF personnel are deployed in Israel, Jordan, Syria, Lebanon and Egypt.

The objective of this measure is to ensure that ADF personnel are subject to consistent tax treatment regardless of the operational area of Operation Paladin to which they are deployed.

Superannuation & Retirement

Making access to Superannuation more flexible – a key driver of the 2021 budget!

Flexibility in contributing to superannuation is a key feature of tonight's Federal budget with, in particular, three carefully targeted changes:

- Repealing the work test for those aged 67 to 74;
- Extending access to the downsizer contributions scheme; and
- Abolishing the $450 per month minimum threshold for SG contributions.

These measures will both simplify the system and help many gain access to superannuation in circumstances where they were previously either excluded or more limited in access to superannuation arrangements.

Work test abolished – a positive move

From 1 July 2022, individuals aged 67 to 74 will no longer be required to meet the work test in order to make superannuation contributions.

The work test required the person to be gainfully employed - they would be taken to be gainfully employed if they worked at least 40 hours in a period of not more than 30 consecutive days in the financial year in which the contributions are made.

This work test has often proven to be an impediment to healthy Australians in their late 60s who were underfunded. They could not contribute to their superannuation without meeting what were quite irrational work requirements. This often led them to create work arrangements that achieved no discernible policy objective. For example, a person who has worked 40 hours in just one fortnight in the financial year in which a contribution is made would meet the work test for the whole year. This simply encouraged artificial work arrangements that served no real purpose.

The Tax Institute welcomes the removal of this unnecessary impediment to superannuation access but sees no clear reason why the abolition has to be delayed to 1 July 2022.

The downsizer extension

The Downsizer superannuation contribution scheme has met with limited success with an estimated 22,000 households utilising the measure so far. In order to expand its attractiveness the minimum age to gain access will be lowered from 1 July 2022 from 65 to 60.

The broad effect will be that from 1 July 2022, anyone aged over 60 can sell the house they have lived in for at least the last 10 years and contribute up to $300,000 to their superannuation fund within 90 days of settlement of the sale. This will be the case even if:

- The concessional and the non-concessional caps have already been reached;
- The transfer balance cap of $1.7 million (from 1 July 2021) has already been reached;
- A new home is not purchased or a new more substantial home is purchased.

However, there are some downsides to the downsizer contribution. Firstly, it may count for the purposes of determining what future contributions can be made. Secondly, while the family home does not count for the purposes of the Age Pension assets test, any sale proceeds contributed to superannuation count towards the Age Pension assets test.

The Tax Institute welcomes the extension to the downsizer arrangements but cautions members as to the often unforeseen downsides referred to above.

Abolishing the $450 minimum threshold – a mixed blessing?

The abolition of the $450 per month minimum income threshold, with likely effect from 1 July 2022, is a welcome move as it will benefit some 300,000 people who would otherwise have missed out on receiving the benefit of a superannuation contribution. It is conservatively estimated that roughly 60% of that cohort will be women thus providing some additional support to women who consistently end their working careers with considerably less than their male counterparts. This will at least in some small way redress that situation although it is disappointing that bolder steps in the direction of addressing that imbalance have not been included in this Federal budget.

With the casualisation of the workforce whereby there are lots of part-time workers on low incomes, this is an important measure that will provide more universal coverage.

It may however also give rise to very small amounts being accumulated in some accounts that may be difficult to manage on an economical basis such that fees may eat up all or a large part of the accumulating amounts., This space will need to be carefully watched to ensure a fair an equitable outcome especially for very low income earners.

Relaxing super residency rules

The Government proposes to relax the residency requirements for self-managed superannuation funds (SMSF).

Currently in order for such funds to accept contributions from members the fund must be an Australian superannuation fund. This will only be the case if:

- the fund is established in Australia or any asset of the fund is situated in Australia;
- the central management and control (CMAC) of the fund is ordinarily in Australia; and
- a certain level of active membership exists.

Currently, the central management and control test is satisfied even if the fund is temporarily outside Australia for a period of not more than two years.

These rules will be relaxed for SMSFs such that the active membership requirement will be removed entirely and the 2 year rule for temporary foreign CMAC will be extended to 5 years.

Similar changes (as needed) will apply to small APRA-regulated funds (SAFs).

The Tax Institute welcomes these changes as they will allow SMSF and SAF members to continue to contribute to their superannuation fund while temporarily overseas. This will ensure parity with members of large APRA-regulated funds. It will also provide SMSF and SAF members with flexibility to keep and continue to contribute to their preferred fund while undertaking overseas work and education.

Transfer of superannuation to the KiwiSaver Scheme

The Budget provides that the Government will provide $11.0 million over four years from 2021–22 (and $1.0 million per year ongoing) to the ATO to administer the transfer of unclaimed superannuation money directly to KiwiSaver accounts. KiwiSaver accounts are the New Zealand equivalent of Australian superannuation funds.

Tax issues for SMEs

Temporary Full Expensing

The Government has announced that it will support businesses with an aggregated annual turnover of less than $5 billion by extending the ability to deduct the full cost of eligible acquired from 7:30pm (AEDT) on 6 October 2020 and first used and installed ready for use by a further year, to 30 June 2023.

Full expensing the cost in the year of first use will apply to new depreciable assets and the cost of improvements to existing eligible assets. For small and medium-sized businesses, full expensing also applies to second-hand assets.

The extension by 12 months will be of benefit to those businesses with longer term projects that have depreciable assets acquired at different stages of the project and those cases where there have been supply chain issues.

See also **Appendix D**

Loss Carry Back

The Government announced that the temporary loss carry back measures introduced in the last Budget will be extended for a further year to assist companies with their cash flow during the economic recovery.

Losses incurred up until 30 June 2023 can be carried back as far to the year ended 30 June 2019 with eligibility being limited to corporate taxpayers with a turnover of under $5 billion.

While there is no rigid limit on the quantum of losses that can be carried back, there are two limitations:

- Losses can only be carried back to the extent they offset previously taxed profits, and
- A franking account deficit cannot be generated.

Employee Share Scheme change

The Government is proposing to remove the cessation of employment taxing point for tax-deferred Employee Share Schemes (ESS) which will result in tax being deferred until the earliest of the remaining taxing points:

- in the case of shares, when there is no risk of forfeiture and no restrictions on disposal
- in the case of options, when the employee exercises the option and there is no risk of forfeiting the resulting share and no restrictions on disposal
- the maximum period of deferral of 15 years.

The change to the cessation of employment taxing point will apply to ESS interests issued on or after 1 July following Royal Assent.

The Government is also making regulatory improvements to the ESS regime related to disclosure requirements.

While the Government expects this to cost in the short term, ultimately the proposal is expected to have a negligible impact on receipts as the costs of the proposal are expected to be offset by the collection of previous deferrals.

The Government expects the changes will make it easier for companies to offer ESS to employees.

See also **Appendix E**

SME Recovery Loans

As confirmation the Government's announcement on 11 March 2021, the SME Recovery Loan Scheme will follow on from the previous Coronavirus SME Guarantee Scheme, however it will be broadened and extended and in attempt to improve take up of these Government-guaranteed loans.

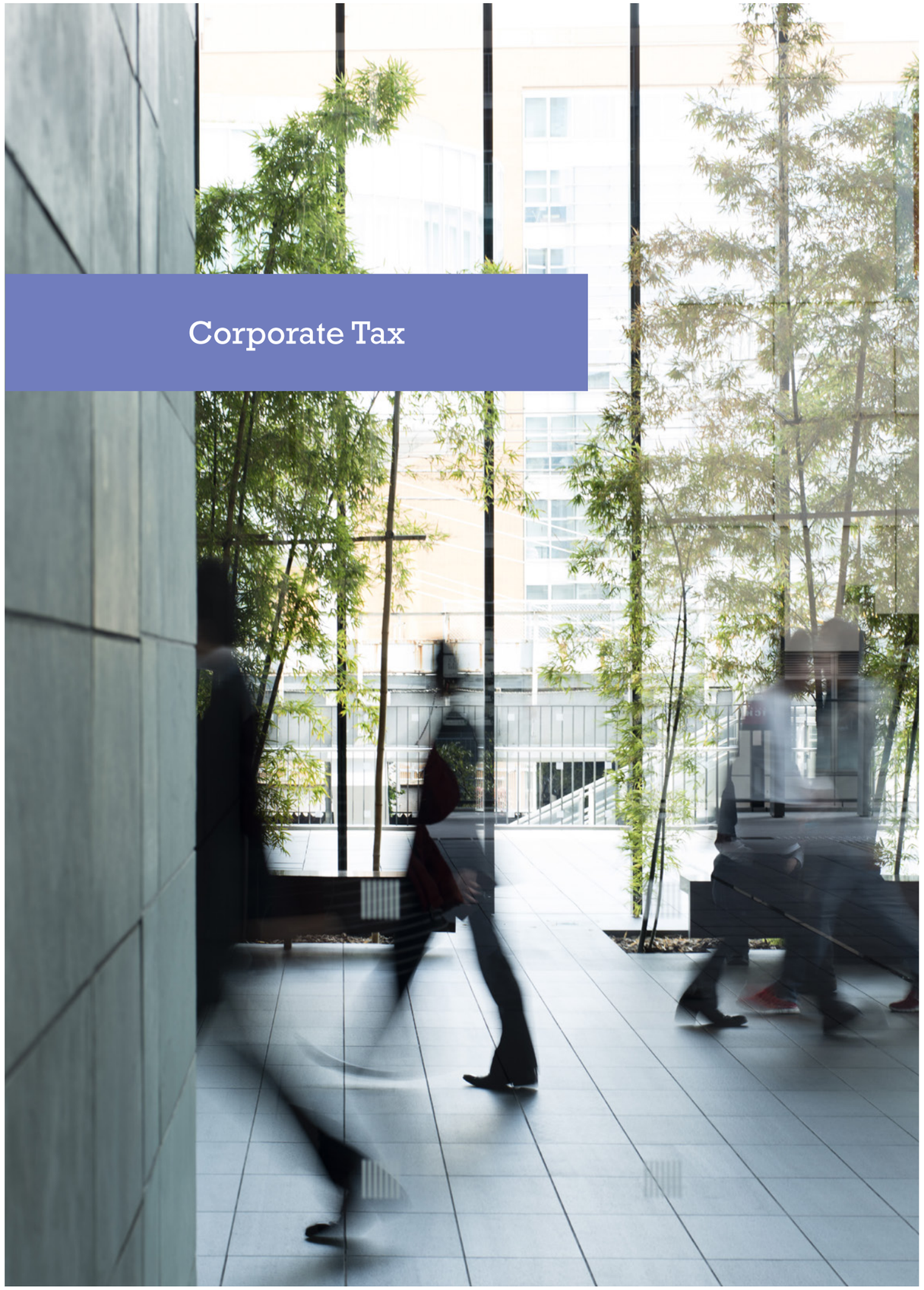
Phase 1 of the Coronavirus SME Guarantee Scheme only permitted loans of up to $250,000 over a 3-year term, with the Government guaranteeing half of the loan. Phase 2 extended the maximum loan amount to $1 million over a 10-year term.

The SME Recovery Loan Scheme goes beyond Phase 2 by extending the maximum loan amount to $5 million although the maximum term remains at 10 years. Under the SME Recovery Loan Scheme, a maximum interest rate of 7.5% applies. Furthermore, the Government will guarantee 80% of the loan.

However, unlike Phase 1 and Phase 2, loans under the SME Recovery Loan Scheme are only available to businesses with turnovers of up to $250 million who either received JobKeeper from 4 January 2021 or businesses which were impacted by the NSW floods during March 2021.

The Tax Institute welcomes this measure as the take up of Phase 1 and Phase 2 loans were significantly below expectation, possibly stemming from lenders' risk appetites not being sufficiently balanced out by the 50% Government guarantee.

Corporate Tax



Digital Economy Measures

The Tax Institute welcomes the Government's Digital Economy Strategy and the investment of $1.2 billion over six years from 2021–22 into Australia's digital future. The Digital Economy Strategy focuses on investment in the settings, infrastructure, and incentives to ensure businesses across all sectors in Australia's digital economy are able to continue to increase innovation, productivity and be globally competitive.

Digital games tax offset

The Government will introduce a Digital Games Tax Offset, a 30% refundable tax offset, for eligible businesses that spend a minimum of $500,000 on qualifying Australian games expenditure. Consultation with industry in mid-2021 is expected to take place to inform the criteria and provide clarity on the definition of qualifying expenditure to support the development of digital games. Games with gambling elements or that cannot obtain a classification rating will be ineligible.

This measure is intended to stimulate investment in digital technologies in sectors including the defence innovation, medical technology, education technology, emergency planning, construction, agricultural technology, modern manufacturing and beyond.

Self-assessment of effective lives for intangibles

The Government will amend the income tax law to allow taxpayers to self-assess the tax effective lives of eligible intangible depreciating assets, such as patents, registered designs, copyrights and in-house software, rather than being required to use the effective life as currently prescribed by statute.

Taxpayers are eligible to bring deductions forward if they self-assess the assets as having a shorter effective life to the statutory effective life.

This will apply to assets acquired from 1 July 2023, following the completion of the temporary full expensing regime. Taxpayers will continue to have the option of applying the existing statutory effective life to depreciate these assets.

Other measures

The Government has also announced the following measures:

- **Digital cadetships** – $10.7 million for a new pilot program for work-based digital cadetships comprised of formal training and on-the-job learning for a duration of 4-6 months.
- **myGov overhaul and digital ID system** - $200 million investment to overhaul myGov, simplify the system and make it easier for users, $302 million to enhance the My Health Record and the digital identity system and $124.1 million to further develop Australia's artificial intelligence capabilities, in turn allowing small and medium sized businesses with medium-high digital capability to increase their adoption of AI.
- **Review of venture capital tax concessions** – public consultation to be undertaken in 2021. We await further details in relation to the commencement or the expected completion date.

See also **Appendix F**

Introduction of a patent box

The Government has announced a patent box to encourage investment in Australian medical and biotech innovation. The patent box will tax income derived from Australian patents in the medical and biotechnology sectors at an effective concessional corporate tax rate of 17%. Currently, income derived from such patents is taxed at the headline corporate tax rate of 30% or, from 1 July 2021, 25% for base rate entities.

The concession is stated to apply from income years starting on or after 1 July 2022. Importantly, only granted patents which were applied for after the Budget announcement will be eligible.

The Government intends to consult closely with industry on the design of the patent box. The Government will also explore whether expanding the patent box would be an effective way of supporting clean energy.

The Tax Institute welcomes the announcement of a patent box and looks forward to participating in consultation with the Government on its policy and design. An internationally competitive patent box regime will support Australian businesses to undertake and commercialise their R&D and to continue to innovate. This will support the creation of skilled jobs in Australia. The design principles appear to be consistent with other regimes (albeit at a higher rate) and should not fall foul of OECD harmful practice regimes.

Building on this measure, The Tax Institute would support expanding the availability of the concession to existing patents and to industries beyond the medical and biotechnology sectors to encourage innovation in those fields.

See also **Appendix G**

Corporate tax residency rules

In the Federal Budget 2020–21, the Government announced amendments to clarify the corporate tax residency test. The amendments were in light of recommendations by the Board of Taxation and are intended to address uncertainty for foreign incorporated entities.

In the Budget 2021–22, the Government has announced that it will consult on broadening these amendments to extend to trusts and corporate limited partnerships (CLPs) which are subject to their own separate but similar residency tests. The Government has indicated that it will seek industry's views as part of the consultation on the original corporate tax residency test amendments.

The Tax Institute welcomes the announcement that the Government will consult on broadening the amendments which were announced in the Federal Budget 2020–21, to extend to trusts and CLPs. Extending the amendments to such entities would provide greater certainty to foreign investors who invest or otherwise carry on business in Australia through vehicles others than companies.

Taxation of Financial Arrangements

Technical amendments will be made to the Taxation of Financial Arrangement ("TOFA") provisions, to facilitate access to the hedging method on a portfolio hedging basis. The intention of these amendments is to reduce compliance costs and correct unintended outcomes such that taxpayers are not taxed on unrealised foreign exchange gains and losses unless this is elected.

This is yet another attempt to make the hedging rules in TOFA work. They have been the subject of much criticism since inception because they have failed to address the financial sector's practices. Of course, the fundamental problem is having implemented such specific rules when the normal assessing, deduction and capital gain and loss rules could easily be amended in a very straightforward way to deal with hedging.

These changes will take effect on a prospective basis, applicable to relevant transactions that are entered into from 1 July 2022.

See also **Appendix H**

Collective Investment Vehicles

This is the introduction of the Corporate Collective Investment Vehicle ("CCIV") – first announced in the 2016-17 Budget's Ten Year Enterprise Plan measures, which can be created from 1 July 2022. The CCIV is an investment vehicle that has a corporate structure but with a flow-through tax treatment, to be used in the managed funds industry. The Government's aim of the CCIV is to enhance Australia's international competitiveness, by allowing fund managers to offer investment products through vehicles that are more familiar with foreign investors.

The Government has previously proposed a CCIV tax and regulatory framework in the *Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2017* and the *Corporate Collective Investment Vehicle Bill* in 2019, which set out:

- How its establishment, operational and regulatory requirements will be governed by a new Chapter 8B of the *Corporations Act 2001*,
- Certain amendments to other legislation such as the *Personal Property Securities Act 2009* to support its implementation, and
- The tax legislation to govern its tax treatment, including features of an attribution regime.

Broadly for tax, the flow-through tax treatment of CCIVs is intended to align it with that of attribution managed investment trusts (AMITs), and investors in CCIVs generally will be taxed based on the underlying nature of the investment assets. This proposal finds its origin in Board of Tax reports going back over a decade and a regime that has been promised by successive governments over a similar time frame. One suspects that it is not quite as important to those governments as they have made out.

The Tax Institute expects there would be new focus on these Bills or least their contents, as the Government moves forward to implement CCIVs.

International Tax

Changes to Individual Residency Tests

The Government has announced it will adopt the recommendations of the Board of Taxation contained in their report "Reforming Individual Tax Residency Rules – a model for modernisation".

The current individual residency test is based on principles around residency, domicile, permanent place of abode and some clearer tests such as the 183-day rule. This is the same as many other jurisdictions, even those that have a primary citizenship test.

The proposed changes will adopt a set of rules that start with a 2-step process, the first step is a "bright line test" – the 183-day test as is presently the case. Failing these, the individual will need to test whether they are a continuing resident or commencing residency. The proposed rules claim to be more targeted and objective rules but are still depending on each individual's circumstances.

The secondary rules set out criteria as to when an individual, who is in Australia for less than 183 days in an income year, commences or ceases residency. These secondary rules adopt a day-count test together with a new Factor Test – four objective factors of which any two need only be satisfied for an individual to commence to be resident. These are:

(a) The right to reside permanently in Australia (including citizenship and permanent residency);

(b) Australian accommodation;

(c) Australian family; and

(d) Australian economic connections

Of course, some of these criteria are somewhat flexible concepts themselves.

The Board's report was not without controversy. What has been traded is a facts and circumstances test criticised for uncertainty with a set of tests that are considerably more complex. While the test may end up giving rise to a more certain outcome once the complexity is worked through, the likely outcome is that more individuals will be treated as resident.

See also **Appendix I**

Removal of OBU preferential tax treatment

The Government will abolish the tax concessions currently afforded to Offshore Banking Units (OBU), in a move to reaffirm Australia's commitment to support the OECD to address harmful tax practices.

Currently income derived from eligible offshore banking activities is concessionally taxed with a 10% effective tax rate (ETR). Government reform will remove this concessional taxing and close the regime to new entrants to avoid Australia being designated a harmful tax regime by the OECD and European Union. The OECD's Forum on Harmful Tax Practices had previously raised concerns of the regime.

Existing Offshore Banking Units (OBU) will be able to access the concessional 10% effective tax rate until the end of the 2022-23 income year. Entry into the OBU regime will also close, effective from 26 October 2018. Additionally, from 1 January 2024, the current withholding tax exemption applying to interest and gold fees paid by OBUs on certain offshore borrowings will end.

On 17 March 2021, the Government introduced the *Treasury Laws Amendment (2021 Measures No. 2) Bill 2021* to abolish the OBU regime. Industry consultation will also take place to ensure that Australia remains globally competitive.

Exchange of Information Countries

The Government will update the list of jurisdictions that have an effective information sharing agreement with Australia to include:

- Armenia
- Cabo Verde
- Kenya
- Mongolia
- Montenegro; and
- Oman.

The updated list will be effective form 1 January 2022. The jurisdictions to be added to the list will be eligible to access the concessional MIT withholding rate of 15%.

Tax Administration

Pausing Debt Recovery Action for Small Business

The Tax Institute welcomes the move by the Government to enable small businesses, defined as those with an aggregated turnover of less than $10 million, to apply to the Small Business Tax Division (SBTD) of the Administrative Appeals Tribunal (AAT) to pause or modify ATO debt recovery actions where the debt is being disputed within the AAT.

Currently, businesses must apply through the courts to pause or modify ATO debt recovery actions. These changes will allow the SBTD of the AAT to pause or modify any ATO debt recovery actions, such as garnishee notices and the recovery of the General Interest Charge or related penalties, until the underlying dispute is resolved by the AAT.

These changes will apply for proceedings commenced on or after the date of Royal Assent of the legislation. We anticipate bipartisan support of this measure.

Introduction of ATO early engagement service

The Government has announced that the ATO will introduce a new early engagement service to encourage and support new foreign business investments into Australia.

The service is envisaged to provide assurance to foreign investors about the operation of Australian tax laws and support in relation to federal tax obligations. The service is intended to be bespoke to the needs of each eligible investor and flexible to accommodate external time constraints such as commercial project timeframes and foreign investment review board (FIRB) approvals. To the extent applicable, it is intended to integrate with the tax aspects of the FIRB approval process so that information is not required to be provided more than once. Importantly, where binding advice is sought, the early engagement service will incorporate access to expedited private binding rulings and advance pricing agreements.

The ATO will consult with business and other stakeholders to develop the early engagement service during May and June 2021 with a view to the service being available for eligible investors from 1 July 2021.

The Tax Institute welcomes the announcement of this initiative and looks forward to participating in consultation with the ATO. While the details of the service including any eligibility requirements are not yet clear, it should assist to encourage foreign investment into Australia and provide confidence to foreign investors about the operation of Australian tax laws.

Other measures

Increased excise refund cap for small brewers and distillers

On 1 May 2021, as part of the Federal Budget 2021–22, the Treasurer, The Hon Josh Frydenberg MP, and Assistant Treasurer, The Hon Michael Sukkar MP, jointly announced $225 million in tax relief for small brewers and distillers in the form of an increase in the excise refund cap.

With effect from 1 July 2021, eligible brewers and distillers will be able to receive a full remission of any excise they pay, up to an annual cap of $350,000. Currently, eligible brewers and distillers are entitled to a refund of 60% of excise paid, up to an annual cap of $100,000.

The Tax Institute welcomes this measure which supports small brewers and distillers, many of which have been severely impacted by the COVID-19 pandemic, and should help to create jobs in this growing industry. The measure is intended to align the benefit available to brewers and distillers under the Excise Refund Scheme with the Wine Equalisation Tax Producer Rebate available to winemakers.

JobTrainer Fund extension

The Government will extend the JobTrainer Fund by providing $506.3 million over two years from 2021-22 income year. Funding is subject to matched funding by State and Territory governments. The extended JobTrainer Fund will deliver a further 163,000 low fee and free training places including 33,800 training places for existing and new aged care workers to upskill and 10,000 places for digital skills courses.

The extended JobTrainer Fund will continue to support job seekers, school leavers and young people helping them access valuable upskilling and reskilling opportunities. Eligibility for the Fund will be expanded to include selected employed cohorts that are continuing to be affected by COVID-19, expansion details have not been provided at this time.

HomeBuilder program

The HomeBuilder program was designed to protect trade persons' jobs and boost activity in the construction industry in response to the downturn caused by COVID-19.

The HomeBuilder program provides eligible owner-occupiers (including first home buyers) with a grant of $25,000 to build a new home or substantially renovate an existing home where the contract is signed between 4 June 2020 and 31 March 2021. Initially, construction had to commence within three months of the contract date. This was subsequently extended to six months.

As announced on 17 April 2021, the construction commencement requirement for the successful HomeBuilder program will be extended from six months to 18 months for all existing applicants.

The extension will provide an additional 12 months to commence construction from the date on which the building contract was signed.

This means that, under the extension, assuming a contract was signed on 31 March 2021, construction would need to commence by 30 September 2022, being 18 months from the date of contract. Of course, the construction commencement deadline will depend on the date on which the building contract was signed.

The Government has stated that its decision to provide existing applicants with an additional 12 months to commence construction responds to unanticipated delays in the construction industry caused by COVID-19 related supply constraints including delays in global supply chains and recent natural disasters.

The Tax Institute considers that the extension is a sensible and positive step to boost the residential construction industry.

Home ownership for women and families

The Government has several initiatives to support individual's entry into the housing market by way of loan guarantees with eligible lenders. Proposed to commence from 1 July 2021, the Family Home Guarantee will provide support to 10,000 single parents with dependant/s to enter or re-enter the housing market with a deposit of at least 2%.

The Family Home Guarantee is aimed at single parents with dependents, regardless of whether that single parent is a first home buyer or previous owner-occupier. Applicants must be Australian citizens at least 18 years of age and have an annual taxable income of no more than $125,000. We have been informed further eligibility criteria will be available next week via the National Housing Finance and Investment Corporation (DHFIC) website.

The Budget also announced the extension of the existing First Home Loan Deposit Scheme for an additional 10,000 eligible participants which will be available between 1 July 2021 and 30 June 2022. This scheme guarantees up to 15% of the property purchase price for eligible first home buyers seeking to build or purchase a newly built home.

Both schemes are administered by the DHFIC with applications made directly to participating financial institutions.

NFP

Currently, NFP can self-assess their eligibility for income tax exemptions with no reporting requirements to the ATO. From 1 July 2023, the ATO will require income tax exempt NFPs with an active ABN to submit an online confirmation of their eligibility for the income tax exemption. The measure will ensure that only eligible NFPs are accessing the income tax exemptions.

DGRs

The following organisations have been approved as deductible gift recipients (DGRs): Australian Associated Press Limited, Virtual War Memorial Limited and Scripture Union Queensland.

The following organisation's DGR status has been extended for a further 5 years: Cambridge Australia Scholarship Limited and Foundation 1901 Limited.

Taxpayers can claim an income tax deduction for gifts of $2 or more to these organisations.

The East African Fund Limited (operating as School of St Jude Limited) has been removed from the listing at the request of the organisation.

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