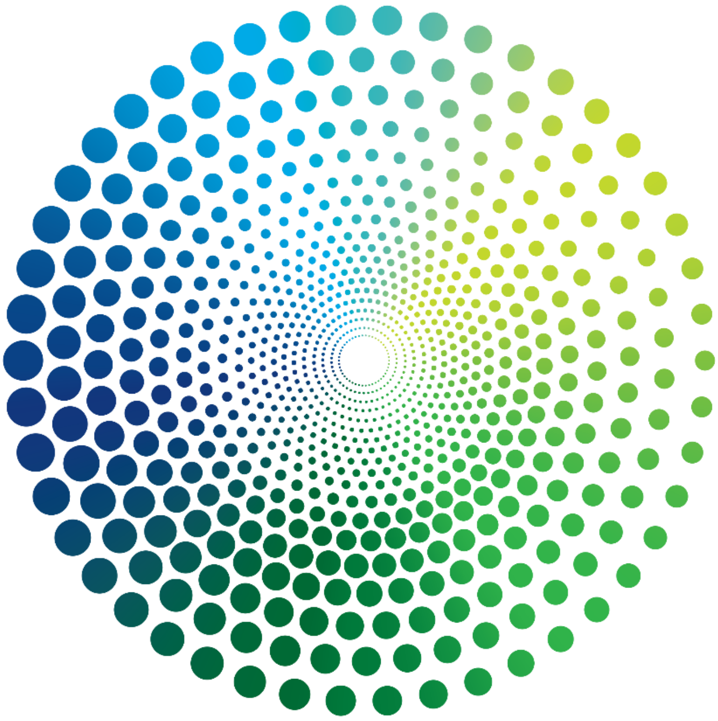
16 May 2022
Australia 2022/04



Tax Insights

Understanding the post-election tax policies

Snapshot

Australians go to the polls on Saturday 21 May 2022. Unlike the last election, tax-related policies have not been a large feature of this election campaign. Both the Coalition and the Labor Party have been particularly careful to reassure voters of their low taxing agendas.

Both party leaders have publicly stated that they will not commit to broad based tax reform in the next term.

Both parties have committed to continuing with the OECD multi-lateral Pillar 1 / Pillar 2 process which primarily affects the largest multinationals, and have also committed to the already-legislated individual income tax rate cuts from 2024.

This Tax Insight summarises what business can otherwise expect beyond the next election from the current Government or from a potential Labor Government.

16 May 2022

A return to Parliament & a new Budget?

The Parliament may meet as soon as the writs have been returned and, under the Constitution, must meet no later than 30 days after the last day appointed for the return of the writs. The return of writs date is Tuesday 28 June[1], meaning that the last day Parliament must resume is 28th July.

However, the ALP is proposing that should the ALP form Government, Parliament will return earlier than that. The ALP Shadow Treasurer has indicated that he proposes to deliver a Ministerial Statement on the economic and Budget outlook when the new Parliament returns in June.

In addition, the ALP will present a new federal Budget in the second half of October, subject to advice from Treasury[2].

What to expect from a Coalition Government

Lower Tax Guarantee

On 24 April, the Coalition announced a Lower Tax Guarantee for the next term of government which includes:

- The planned $100 billion of tax relief will be delivered to Australian workers over the next four years (this is broadly the already-legislated tax cuts for individual taxpayers)
- No new taxes on Australian workers, retirees, superannuation, small business, housing, and electricity
- A cap on taxes below 23.9 per cent of GDP.

In previous terms the tax cap was more significant as it was also matched by an aim to achieve a balanced budget, thereby also setting a default cap on spending.

Superannuation/Housing affordability

On 15 May, the Coalition announced the Super Home Buyer Scheme, which will allow first home buyers from 1 July 2023 to withdraw up to 40 per cent of their superannuation, up to a maximum of $50,000 to help with the purchase of their first home. The scheme will apply to both new and existing homes with the invested amount to be returned to their superannuation fund when the house is sold, including a share of any capital gain. There do not appear to be any income or property caps under the Super Home Buyer Scheme with eligibility restricted to first homebuyers who must have separately saved five per cent of the deposit.

The scheme appears to supplement the existing legislated First Home Super Saver Scheme (FHSSS) which allows a maximum releasable amount of voluntary concessional and non-concessional contributions of $50,000 (from 1 July 2022). Under the FHSSS there is a number of conditions around the amount and type of contributions which can be withdrawn per year.

Also on 15 May, the Coalition announced a further reduction to the eligibility age for downsizer contributions. This measure allows eligible individuals to contribute up to $300,000 from the proceeds of the sale of their home into their superannuation fund outside of the existing contribution caps. From 1 July 2022 the eligible age is 60 years or older (previously 65 years or older). The Coalition has announced that the eligible age will be further reduced to 50 years or older from 1 July 2022. Pensioners who downsize their home will also be given greater flexibility by exempting the proceeds of the sale of the property from the assets test for two years. This policy announcement has ALP support.

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[1] https://www.aec.gov.au/election/
[2] "Chalmers aiming for October budget", The Australian – Online, 6 May 2022

Federal Budget 2022-23 tax policy announcements

The following measures were announced in the March 2022 Budget:

- Cost of living relief in the form of a:
  - $420 increase in the Low and Middle Income Tax Offset for 2021-22
  - $250 payment to eligible recipients and concessional card holders
  - Excise duty reduction of 50% on petrol and diesel for six months
- Extension of tax avoidance taskforce funding for a further two years to 30 June 2025
- Extension of proposed patent box regime applying to agricultural and low emissions technology sectors from 1 July 2023
- 120% tax deduction for small businesses to upskill employees and encourage digital adoption (Skills and training boost, and Technology investment boost).

For further announcements within the Federal budget 2022-23, read about the business tax measures here and Innovation and digital transformation here.

What to expect from a Labor Government

Overview

In March 2021, the ALP National Platform adopted at the ALP's Special Platform Conference stated the guiding principles of the Labor approach to tax as follows:

> *"Labor will deliver a progressive and sustainable tax system. This will provide incentives for all Australians to work and undertake productive enterprise, while guaranteeing adequate revenue to fund quality public services, bring about a more equal distribution of income and wealth, and achieve the nation's social, economic and environmental objectives."*
>
> *"Australia's taxation system should be efficient, simple, transparent and equitable. There is no place for tax evasion. Meeting Australia's economic and fiscal challenges requires everyone, including Australian and multinational corporations, to pay their fair share of tax."*[3]

Labor is not intending to adopt a tax to GDP ratio.

The Shadow Treasurer also noted that Labor's multinational policy generally was not geared towards any sector or another.

Set out below is a summary of key tax policies announced by the ALP, noting that in most cases, limited detail is currently available.

Individuals

The ALP has announced:

- Support for tax cuts for individual income earners over $45,000 already legislated and the increase to the 2021-22 Low and Middle Income Tax Offset of $420
- It is not committed to extending either the LMITO or the Fuel Excise Cut past September 2022[4].

[3] https://www.alp.org.au/about/national-platform/ p.5
[4] Jim Chalmers, Shadow Treasurer, Press Conference Parliament House, Canberra 27 April 2022

Adoption of the OECD Pillar 1 / Pillar 2 plan

The ALP has indicated support of the OECD's Two-Pillar solution which includes:

- A global minimum tax proposal to ensure multinationals pay an effective tax rate of at least 15 per cent on the profits they make around the world (Pillar Two); and
- An allocation of profits of the largest and most profitable multinationals to market countries (Pillar One).

A Labor government will join other OECD members in implementing the arrangements in line with global action. The OECD is expecting these arrangements to begin in or after 2023.

This policy is consistent with the position of the current Coalition government. This policy is not costed by either party as Treasury considers it premature to put a number against these measures, which are still being developed by the OECD.

Debt deductions: adopt OECD approach

The object of Australia's thin capitalisation rules is to ensure that Australian entities in a multinational group do not erode the Australian tax base with excessive amounts of interest deductions on debt funding. The OECD BEPS report on this issue recommended a response that will cap interest deductions based on a percentage of EBITDA (the OECD recommended a "corridor" of an EBITDA ratio of between 10-30 per cent) and contemplates a worldwide gearing approach as an additional test.

Australia's current thin capitalisation rules address the matter from a different perspective and, in broad terms, limit deductions for interest based on either a debt-to-assets safe harbour ratio, worldwide gearing (WWG) or arm's length debt (ALD) amounts. The current general safe harbour limits debt to 60 per cent of adjusted Australian assets (or expressed differently, a 1.5:1 debt-to-equity ratio). As currently designed, the WWG or ALD amount is an optional basis for taxpayers to increase their level of permissible tax deductible debt funding.

The ALP proposal is to change the safe harbour rule from 60% of adjusted Australian assets to 30% of EBITDA (referred to as **taxable** earnings[5] before interest, taxes, depreciation, and amortisation) from 1 July 2023, consistent with the OECD's recommended approach. In addition, the ALP policy also maintains the ALD and the WWG tests.

The ALP expects that this measure will affect roughly 600 firms in Australia, and is expected to raise $1.45 billion over the forward estimates.

Deloitte comment

Debt deductions have been a consistent concern to the Labor Party for the past few years. The new policy which adopts the OECD recommendations, whilst maintaining the ALD and WWG tests provides a broader range of choices over the policy the party brought to the 2019 election, which proposed to remove the current safe harbour and the ALD test and have a single test limiting debt deductions being the world-wide gearing ratio.

The policy will be subject to consultation before its final form is settled. Key issues will be transitional measures (if any) and the treatment of current year excess deductions. We recommend that businesses model the effect of such a policy if they have not already done so.

[5] Jim Chalmers Media release 27 April 2022 (Table page 4)

Limiting the ability for multinationals to abuse Australia's tax treaties when holding intellectual property in tax havens

The Labor policy expresses concern with multinationals which treaty shop so as "to funnel payments into tax havens". A Labor government will legislate to deny a tax deduction for certain payments for the use of intellectual property (such as royalties) where the arrangement has the following features:

- There is an abuse of Australia's tax treaties, presumably involving treaty shopping
- Relevant intellectual property is held in a tax haven
- The transactions "are subject to the 'sufficient foreign tax test' aspect of the Diverted Profits Tax or involve a harmful tax preferential tax regime"
- There is a dominant purpose of tax avoidance.

It is proposed that the measure will apply from 1 July 2023, following a period of consultation. This measure would only apply to significant global entities.

It is unclear whether the relevant payments must be to a related party which was a condition in the ALP's 2019 policy[6].

The ALP expects that this measure will affect less than 100 companies and is expected to raise $445 million over the forward estimates.

Whilst the measure is stated to be similar to measures put in place in the UK, US and Netherlands, it has similarities to the German 'royalty barrier rule'[7] which limits the deductibility of related party royalty payments that result in the "low taxation" of the royalty income at the level of the recipient as a result of the application of a preferential tax regime (e.g., IP box, patent box, license box, etc.), and measures in Luxembourg, which disallow tax deductions for interest and royalties due to related entities established in a country or territory included in the EU list of non-cooperative jurisdictions for tax purposes.[8]

Deloitte comment

The precise scope of this measure is not clear. The in-scope arrangements appear to involve a deductible payment from Australia to a treaty country, where the payment benefits from the treaty (e.g., reduced withholding tax), and there is an on-payment from the treaty country to a tax haven or other low tax jurisdiction. The response is to deny the tax deduction for the payment.

It is not clear how this will interact with other measures which may address similar concerns, such as the Multinational Anti-avoidance Law, the Diverted Profits Tax and Part IVA generally, as well as the beneficial ownership requirements and the principal purpose test in relevant tax treaties.

[6] https://www.jimchalmers.org/latest-news/media-releases/labor-will-crack-down-on-loopholes-for-multinationals/ on 5 May 2019

[7] https://www.taxathand.com/article/22788/Germany/2022/MOF-publishes-decrees-detailing-the-application-of-the-royalty-barrier-rule

[8] https://www.taxathand.com/article/16061/Luxembourg/2021/Deduction-will-be-denied-for-certain-related-entity-payments-as-from-1-March-2021

Transparency and disclosure measures

Public reporting of tax information on a country-by-country basis

A Labor government will legislate to require public release of high-level data on how much tax large multinational firms pay in the jurisdictions they operate in, alongside the number of employees working there. In Australia, CbC reports are required for broadly, groups with over $1 billion in global revenue. Labor will consult on the specific details that firms operating in Australia would have to provide.

Public register of ultimate beneficial ownership

A Labor government will implement a public registry of corporate beneficial ownership. The registry will show who ultimately owns, controls or receives profits from a company or legal vehicle, even when the company is registered as legally belonging to another person, such as an accountant or a shell company.

Deloitte comment

Under the Coalition Government, Treasury commenced consultation in February 2017 on the details, scope and implementation issues associated with Increasing transparency of the beneficial ownership of companies. The matter did not progress any further. In the 2019 election Labor had promised to also establish a register for trusts which has not been mentioned in this election (possibly due to the complexities).

Mandatory reporting of tax haven exposure to shareholders

Labor proposes that companies would be required to disclose to shareholders, a "Material Tax Risk" if the company is doing business in a jurisdiction with a tax rate below the global minimum (15 per cent).

Requiring government tenderers to disclose their country of tax domicile

In line with recommendations from the Senate Inquiry into corporate tax avoidance, all firms tendering for Australian Government contracts worth more than $200,000 would be required to state their country of domicile for tax purposes.

PRRT

Labor has confirmed that it is not proposing to amend the PRRT, and stated "Some of those tax arrangements are legitimate, when it comes to writing off big investments that they've made in Australia and they've done that under existing tax law."[9]

Superannuation

Superannuation is an important ALP platform. Whilst acknowledging the importance of certainty in respect of superannuation savings, Labor has set out its policy direction as follows:

- Commitment to the legislated Superannuation Guarantee of 12 per cent, and once that has been achieved will set out a pathway to increasing it to 15 per cent
- Pursue reforms to require superannuation guarantee contributions for low-income contractors
- Pursue reforms to close the gender gap in superannuation savings, and preservation arrangements to reflect people's ongoing capacity for work and life expectancy, including in First Nations communities

[9] Jim Chalmers MP, Shadow Treasurer, Radio Interview ABC Brisbane Drive, 28 April 2022

- Include superannuation within the National Employment Standards (NES) so it is enforceable as an industrial entitlement by an employee
- Create a Council of Superannuation Custodians, independent of Government, to provide advice on superannuation policy which will include representation by trade unions
- Support equal representation governance of superannuation boards and oppose the mandating of independent directors.

Progress of the Coalition's current term measures

Measures which have lapsed on dissolving of the House of Representatives

Measures which lapsed before Parliament include:

- The ability to **self assess the effective life of certain intangible assets**

- Reducing the **effective tax rate on certain income earned by foreign resident workers** participating in the Australian Agriculture Worker Program or the Pacific Australia Labour Mobility scheme

- Introduction of a **limited patent box regime**, for eligible Australian patents in the medical and biotechnology sectors

- Ability for **small business entities to apply to the Small Business Taxation Division of the AAT for an order staying,** or otherwise affecting, the operation or implementation of decisions of the Commissioner that are being reviewed by the AAT.

Measures still before the Senate

Measures still before the Senate include:

- **A sharing economy reporting regime** from 1 July 2022 for transactions in relation to the supply of taxi travel and short-term accommodation, and from 1 July 2023 for all other transactions

- **Removal of the $250 non-deductible threshold for work-related self-education expenses** for income tax assessments from the 2022-2023 income year and FBT years starting on 1 April 2023.

Announced but unenacted measures

There is an extensive list of announced but unenacted measures, which is to some extent due to the reduced sitting days during the pandemic and the focus of Treasury and the Government to address the myriad of issues resulting from the pandemic. This list includes:

- Introduction of a partnership CIV
- Division 7A reform
- Asset-backed financing
- TOFA reform
- Skills and Training Boost
- Technology and Investment Boost
- Expansion of Patent Box regime
- Digital Games Tax Offset
- Individual residency test reforms
- Corporate residency test reforms
- SMSF - relaxation of residency rules from 2 to 5 years.

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