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Tax Insights

Multinational taxation and the 47th Parliament

Now that the Prime Minister has called an election for 3 May 2025, it is opportune to look back on the tax-related developments of the 47th Parliament. What did the Parliament and in particular, the Albanese Labor government achieve on multinational tax matters in its 2022-2025 term?

Setting the scene

The 2022 election

The lesson learned from the 2019 election campaign was that the extensive list of tax related policies contributed to Labor's unexpected defeat. Having been scarred by that experience, the Labor Party went to the 2022 election with a small target campaign primarily focused on multinational taxation.

The 2022 election campaign outlined a three-part "Multinational Tax Integrity package":

1. Amending Australia's interest limitation (thin capitalisation) rules;
2. Denying deductions for payments relating to intangibles held in low- or no-tax jurisdictions;
3. Increased tax transparency.

As the term progressed, the government also formally committed to supporting the OECD's global 15 per cent minimum tax. Continuing with the Callaghan review recommendations on Petroleum Resource Rent Tax (PRRT) was also a focus.

The dominant narrative throughout the term was that multinationals should pay their "fair share of tax". This now pejorative term means different things to different sections of society; a need for a change in laws (which is a government responsibility), a need to ensure current laws are complied with (a taxpayer responsibility) and/or the need to vigorously audit multinationals (a tax administration responsibility).

Inevitably paying a "fair share" became a pithy political soundbite. Yet based on the ATO's own tax gap analysis, large taxpayers are one of the most compliant taxpayer groups in the system (both in dollars and in percentage of tax collected)[1].

An energetic and encouraging start

Shortly after coming to office, in June 2022, Treasurer Jim Chalmers gave a rousing address to Treasury staff:

"*I really want to encourage you to have the kind of mindset that I have, which is this very powerful machine that we have here is about winning arguments, and changing outcomes, and imposing ourselves on the government, and being the most influential part of a successful reforming government that builds big reserves of economic credibility … We need all of your ideas, all of your brain power, all of your commitment, all of your experience, all of your frankness, and all of your foresight*," he said.[2]

By August 2022, Treasury released the first consultation paper on multinational taxation[3], and by October the first consultation was released on the OECD's two pillar solution[4]. It was clear from the first few months in Parliament that Labor was focused on "keeping our promises" and would progress its legislative agenda as fast as Treasury could keep up. This strong work ethic continued throughout Labor's first term.

By design, previously announced but unenacted measures (ABUMs) of the Coalition government continued to languish, as they were not an ALP priority. For example, changes to the definition of corporate residency did not progress any further during the Albanese government's first term.

Political realities

The Government held a narrow majority in the lower House but did not control the Senate. This meant that in order to progress Bills through the upper House, the Government needed the support of the Coalition, or alternatively, needed to work with the Greens and a disparate group of other Senators to find a majority. Whether as a consequence of this or otherwise, progress of Bills through Parliament was often slow and unpredictable.

Follow the money

Revenue forecasting: an art, a science and sometimes just wrong

One of the data points in researching this article has been the Government announced revenue forecasts, typically first contained in Budget or MYEFO announcements and then confirmed in the relevant explanatory memoranda.

These amounts are forecasts and may not reflect the final outcomes. However, they serve an important role to indicate the scale of the expected impact of a measure. Further, once the revenue impacts are "booked" into the Budget numbers, they become very "sticky": governments are loathe to adjust the revenue forecasts downwards, and that becomes a limitation on post-announcement consultation.

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[1] Source:https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/tax-gap/australian-tax-gaps-overview/tax-gap-program-summary-findings published 1 November 2024.
[2] Chalmers challenges Treasury on change; The Australian; Joe Kelly, Patrick Commins 24 June 2022
[3] This 5 August 2022 discussion paper addressed (1) amending Australia's existing thin capitalisation rules, (2) a new rule limiting MNEs' ability to claim tax deductions for payments relating to intangibles and royalties that lead to insufficient tax paid and (3) tax transparency by MNEs (Part 3).
[4] 4 October 2022: "Global agreement on corporate taxation: addressing the tax challenges arising from the digitalisation of the economy"

Further, the revenue impacts of a particular policy measure are typically only provided over a four year forward estimates period. The revenue forecasts over the medium term and longer term are usually not stated and the effect of a particular policy essentially becomes baked into total tax collections in future years, without being attributed to particular measures.

Multinational taxation revenue impacts

Of the three part Multinational Tax Integrity package, the interest limitation and transparency rules have been legislated and are in force, whilst the intangibles related measure did not proceed. As Meatloaf first sang in 1977, "two-out-of-three ain't bad". The Australian legislation to give effect to the OECD-developed Pillar Two measure has also been legislated and is in force.

The revenue impacts of the multinational package are below, as measured via the relevant budget forward estimates or bill.

Measure	2024-25 $M	2025-26 $M	2026-27 $M	2027-28 $M
Interest limitation rules: thin capitalisation and debt deduction creation rules	360	340	*	*
Multinational tax transparency -country by country reporting	Unquantifiable impact on receipts			
Pillar Two, Global and Domestic Minimum Tax		160	210	*

*Estimates not available

Relevantly in the context of company tax collections of in excess of $150 billion per annum, and the Governments high profile agenda in respect of multinationals, these anticipated collections seem little underwhelming.

This is misleading for a number of reasons: it is expected that the revenue forecasts especially for the interest limitation rules are on the "low side", the impacts will not be evenly spread (some taxpayers will be particularly adversely affected) and these measures come with built in and ongoing compliance costs.

In contrast, Pillar Two (global minimum tax) is seen as a significant measure on a global basis and is forecast to raise additional annual taxation revenues of USD 220 billion[5]. However, the forecast Australian tax collections are modest (see above)[6]. That is testament to the status quo in Australia: strong tax laws already in place, effective enforcement by the ATO and high levels of voluntary compliance. Although the additional Australian tax paid will be relatively small and likely confined to a small number of taxpayers, there will be significant complexity and compliance cost across the market in doing the required work, which in many cases is expected to confirm that no Pillar Two tax is due.

Both Pillar Two and the alignment of the thin capitalisation rules to broadly international best practice has been important for Australia to demonstrate our support to the OECD tax reforms.

[5] Revenue impact of international tax reform better than expected: OECD, https://www.oecd.org/en/about/news/press-releases/2023/01/revenue-impact-of-international-tax-reform-better-than-expected.html

[6] https://www.ato.gov.au/media-centre/pillar-2-where-are-we-at-tax-institute-2023-tax-summit

Getting more from Australia's gas and oil resources

When discussing multinational taxation, a common grievance is around the effectiveness of Australia's Petroleum Resource Rent (PRRT) Tax (particularly when compared with Norway's huge sovereign wealth funds set up from surplus revenues from its petroleum sector).

In May 2023, the Treasurer advised of significant changes to the design of the PRRT[7]. This included the Labor government's response to the Callaghan Review, with respect to recommendations that were accepted but not implemented by the previous government.

Four major initiatives around the PRRT which were all legislated during this term were:

PRRT measures	2023-24 $M	2024-25 $M	2025-26 $M	2026-27 $M
Limit PRRT deductions to 90% of PRRT assessable income (PPRT deductions cap)	500	600	800	500
Align the PRRT general anti-avoidance with Part IVA	Unquantifiable impact			
PRRT: clarifying the meaning of exploration for petroleum	Unquantifiable impact			
Clarification of mining, quarrying or prospecting rights	Unquantifiable impact			

The most significant of the changes was the introduction of the PRRT deduction cap, effectively setting a limit to how much deductions (such as capex) can be offset against revenue (thereby bringing forward taxation into the current year). The government settled at a 90% deduction cap, with the Greens (and many other groups) lobbying for an 80% deduction cap or less.

It is easier to opine in opposition that act in Government. The settling of the PRRT deduction cap at 90% was a (semi) palatable position reached with industry behind closed doors. It is presumed that this position was necessary to deal with issues of sovereign risk, but the compromise did not satisfy many community stakeholders, who saw it as an opportunity missed to establish a better national dividend for developing Australia's valuable oil and gas reserves.

Adjusting existing measures

Two further measures are also of relevance to the large market segment, although will also affect other markets:

- A change in treatment of off market share buy backs, broadly treating them in the same way as on market buy backs
- Capital raisings and franking credits; a broadly drafted integrity measure that prevents certain distributions that are funded by capital raising from being frankable.

[7] https://www.taxathand.com/article/29877/Australia/2023/Proposed-reforms-to-the-petroleum-resource-rent-tax

The revenue forecasts associated with these measures are:

Measure	2022-23 $M	2023-24 $M	2024-25 $M	2025-26 $M	2026-27 $M	2027-28 $M
Off-market share buy-backs by listed public companies		150	200	200	*	*
Capital raisings and franking credits	10	10	10	10	10	*

*Estimates not available

The change in treatment of off-market share buy backs eliminated a mismatch in treatment between on market and off market buybacks.

The legislative change to capital raisings and franking credits seemed to be addressing an activity which no longer was a problem, and which due to its broad drafting had potential to impact almost all of the companies on the ASX before it was amended. The final drafting is still unhelpfully broad.

More unlegislated measures (ABUMS) added to the list

A series of ABUMs emerged during the last term of Parliament, adding to the already list of unenacted measures from Governments past:

- A further strengthening of **Part IVA**. This was initially announced to commence from 1 July 2024 and has been deferred to apply to income years after Royal Assent. At the time of writing, there has been no public consultation on this matter and no exposure draft issued.

- Penalising large taxpayers for **mischaracterizing or undervaluing dividend, interest or royalty** payments to which withholding tax would otherwise apply. This is to apply for payments from 1 July 2026. The precise scope of these changes remains unclear. At the time of writing, there has been no public consultation on this matter and no exposure draft issued.

- Expanded scope of **CGT on assets owned by foreign residents**: Announced to be applicable to CGT events commencing on or after 1 July 2025 (irrespective of when the asset was acquired), the foreign resident CGT rules will be expanded to “clarify and broaden” the types of assets that are subject to foreign resident CGT, to amend the point in time “principal asset test” to a one year look back test and to impose a pre-transaction reporting obligation in foreign residents disposing of shares. The March 2025 Budget has sensibly deferred the start date of this measure, likely to after Royal Assent. At the time of writing, there has been a high level consultation paper issued but no exposure draft or other developments.

USA, Trump and Australian taxes

The US has recently stated that it is reviewing fines, penalties, tax, and other burdens imposed by foreign governments that are discriminatory or disproportionate to American companies. Retaliatory action may result in the form of tariffs or taxation or other consequences.

The below matters in respect of taxation of intangibles, the News Bargaining incentive and some recent Australian “world-leading” tax transparency measures are believed to have caused significant consternation in the US as to whether our government is over-reaching in its right to tax, or to demand disclosures.

Getting to grips with intangibles

The Government (and the ATO) has had a heavy focus on taxation associated with intangibles during this term.

One of the first measures was to not proceed with the Coalition's proposal to allow self-assessment of the effective lives of intangibles. This amounted to a write up of revenue collections as the previously booked revenue cost of this measure ($550 million over the forward estimates) was reversed.

Next, the government announced a measure to deny deductions for intangible related payments to low / no tax jurisdictions. Revenue of $250 million was forecast over the forward estimates. Two exposure drafts were issued, but the precise scope of this measure remained elusive amidst extremely broadly drafted provisions. The finalisation of the Pillar Two proposals allowed for a face-saving reversal of this on this proposal. Unhelpfully, this only occurred almost a year after the measure was meant to commence. It is fair to say that this is not an optimal example of tax law making and created considerable uncertainty for all.

The mischaracterisation or undervaluing of royalties is a further concern in this area. Various royalty related issues are playing out in the courts via the High Court hearing of the PepsiCo matter (April 2023) and expected Federal Court litigation involving Coca Cola.

ATO draft rulings on royalties in relation to software remain on hold pending court proceedings. This is a highly contested technical matter in an increasingly significant segment of the economy.

News bargaining incentive

On 12 December 2024, the Australian government announced the introduction of a "News Bargaining Incentive" to incentivise commercial deals between digital platforms and news businesses. The intention of the measure was to "encourage" commercial deals under the News Media and Digital Platforms Mandatory Bargaining Code of 2021 by imposing a levy which could be offset by relevant expenditure.

The announcement stated that "[The Government] anticipate[s] Meta, Google and TikTok would fall within scope of the incentive." The proposal is to commence for income years starting on or after 1 January 2025. At the time of writing, there has been no public consultation on this matter and no exposure draft issued.

It is likely that the News Bargaining Incentive may fall foul of the US review.

Tax transparency initiatives

A major focus of the Albanese government was the introduction of a number of new tax transparency provisions for multinationals.

Public Country-by-Country reporting measures

In December 2024, new public country-by-country reporting (public CbC reporting) received Royal Assent. The public CbC reporting measures are intended to apply to multinational groups (wherever headquartered) that operate in Australia by requiring the public release of specified tax related data together with a statement on their approach to taxation, for years on or after 1 July 2024. Jurisdiction specific disclosures will be required for Australia and each "specified jurisdiction" (see the list here). All other jurisdictions in which the group relevantly operates can be reported on an aggregated basis.

The provisions have been marked by controversy as to the start date, the extent of the disclosures and the variations in the information sought as compared to existing OECD based (non-public) CbC reporting and proposed EU CbC reporting. The Government views the measure to be "world leading". Whilst some compromises have been made, the final measures will require significant work by tax teams.

Consolidated entity disclosure statement – tax residency of group members

The Government has legislated for a new consolidated entity disclosure statement requirement in the Corporations Act 2001, which requires financial statement disclosure of the tax residency of group members for financial years commencing on or after 1 July 2023.

The legislated tax transparency initiatives are justified in terms of increased disclosures for the public, media and social justice groups; however the measures do not directly raise additional taxation revenues and will require significant investment by tax teams to comply.

Tax incentives for large business

A further priority for the government was to progress its environmental agenda. In the large corporate tax space this has primarily been focused on grants and incentives for investments in green energy. A further priority has been around providing additional support to critical industries for Australian manufacturing & progressing housing affordability.

Hydrogen and critical minerals production incentive

The production incentives are perhaps one of the single biggest bets recently made by a government, to use the tax system to underwrite and encourage investment into preferred activities. The revenue impacts (reduced tax collected) start off at modest amounts in the forward estimates periods and then grow over the next 15 plus years to in excess of $30 billion. The community benefit rules have been received with some caution, with concerns raised as to what the influence of unions and other stakeholders will have on eligibility to the concessions. Time will tell as to the take-up of this incentive, the medium term cost to the budget and the long term benefit to the economy and the budget.

Green Aluminium Production Credit

In January 2025, the government also announced a production credit to Australian Aluminium smelters switching to renewable electricity before 2036. At a cost of up to $2 billion, the production credit will be available per tonne of clean Australian made aluminium made over a ten year period.

Build to rent incentives

As another plank to the housing affordability initiatives, in this term the government has passed legislation that provides incentives for certain BTR developments through the following tax concessions:

- An accelerated deduction of 4% for capital works relating to BTR developments
- A concessional final withholding tax rate of 15% on eligible fund payments (amounts referrable to rental income and capital gains from the BTR development).

While the incentives are welcomed, certain aspects of the amended bill are likely to reduce their attractiveness. These aspects include: one ineligible dwelling compromises the entirety; uncertainty on returns; oversized impact of the BTR development misuse tax & punitive tax rate, and significant administrative costs. All these factors add to uncertainty.

The costs of these reforms are modest.

Measure	2024-25 $M	2025-26 $M	2026-27 $M	2027-28 $M
Hydrogen production tax incentive				-200
Critical minerals production tax incentive				-300
Build to rent incentives		-10.0	-20.0	*
Supp EM: "The Parliamentary Amendments to Schedule 1 to the Bill are estimated to have a negative impact on the underlying cash of $45 million over the forward estimates and $185 million over the medium term."		-45.0		

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