FEDERAL BUDGET 2022-23

October 2022

AT A GLANCE

$36.9bn
Budget deficit for 2022-23 (1.5% of GDP)

$927bn
Net debt for 2022-23 (37.3% of GDP)

3.25%
Forecast real GDP growth for 2022-23

$531.6m
Over 4 years to expand Paid Parental Leave to 26 weeks

$1bn
Investment in fee-free TAFE

$200m
Disaster prevention & resilience spending per year

"There are hard days to come and hard decisions to accompany them."

Treasurer Jim Chalmers

On 25 October 2022, the newly elected Treasurer Jim Chalmers handed down the 2022-2023 Federal Budget. This budget is aimed at cost-of-living measures amidst rising inflation and interest rates by supporting Australian families through child care, paid parental leave and PBS measures. Further social initiatives characteristic of a Labor government was investments in mental health and wellbeing, aged care, women's safety, schools, TAFE and veterans. Climate was not amiss with some initiatives for community batteries and solar, protecting our prized Great Barrier Reef and emission reduction targets legislated and net zero by 2050. All in all, a non-controversial budget.

SHARE BUY-BACKS

The share buy-back rules that apply to listed public companies (not private companies) are to be amended with effect from 25 October 2022. This is an anti-avoidance rule. Essentially, the proceeds of a share buy-back are split between return of capital and dividend components, applying one of a number of formulae.

CLARIFICATION OF DIGITAL CURRENCY FOR TAX

Legislation will be introduced to make it clear that digital currency such as Bitcoin is not foreign currency for tax purposes, unless it is issued by or under the authority of a government agency.

SHADOW ECONOMY PROGRAM EXTENDED

The shadow economy program is to be extended for another three years and is expected to collect over $1B over 4 years.

The role of this taskforce is in additional to those of the personal tax and shadow tax avoidance taskforce teams and it has been given an additional $200M a year for the next 4 years

SUPPORT FOR SMALL BUSINESS OWNERS

The Government will provide $15.1 million over two years from 1 January 2023 to extend the Small Business Debt Helpline and the New Access for Small Business Owners programs to support the financial and mental wellbeing of small business owners.

MULTINATIONAL TAX INTEGRITY PACKAGE

IMPROVED TRANSPARENCY

The Government will introduce reporting requirements to enhance large company tax disclosures to the public from 1 July 2023.

The requirements include:

- significant global entities disclosing certain tax information on a country-by-country basis.
- Australian public companies will need to disclose the number of subsidiaries and their country of tax domicile.
- Tenderers for Australian Government contracts worth more than $200,000 to disclose their country of tax domicile.

LIMITING DEDUCTIONS FOR INTEREST & BORROWING COSTS (THIN CAPITALISATION) RULES

The Government proposes amending the thin capitalisation (debt to equity ratio) rules to limit borrowing cost deductions.

These rules apply to non-residents investing in Australia and Australian residents investing offshore and to all types of taxpayers, e.g. companies, trusts, individuals, etc.

. The changes are to:

- Limit a taxpayer's debt-related deductions (e.g. interest and other borrowing costs) to 30 % of EBITDA, rather than being able to rely on the safe harbour test (broadly, a 60/40 debt to net asset cap).
- Allow deductions that are disallowed under the 30% of EBITDA test to be carried forward for up to 15 years.
- Allow an entity in a group to claim debt-related deductions up to the worldwide group's net interest expense as a share of earnings. This earning ratio will replace the worldwide gearing ratio (which hasn't been commonly used in the private business space).
- 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 (under this test).

These changes are to apply for income years starting on or after 1 July 2023.

WHAT ENDED ON THE CUTTING FLOOR

New Governments typically inherit legislative reforms proposed by the previous Government. They then decide which ones to implement. What is or is not proceeded with can be interesting as it provides some insight into the Government of the day's priorities and values.

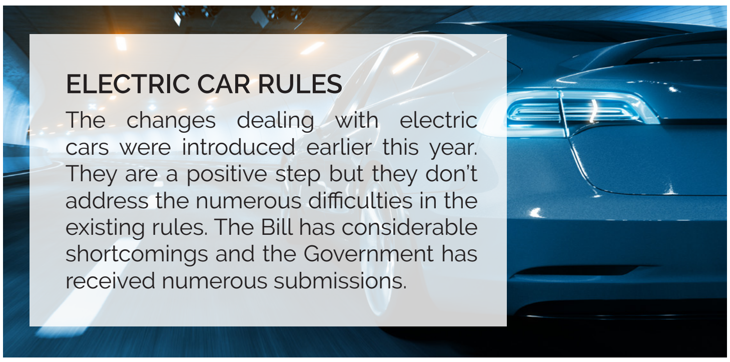
The Government has announced that the following proposals will not proceed:

- 2013-14 MYEFO measure to amend the debt/equity rules
- 2017-17 Budget changes to the taxation of financial arrangements (TOFA)
- 2016-17 changes to the taxation of asset-backed financing arrangements
- 2016-17 changes for limited partnership collective investment vehicles
- 2018-19 Budget proposal changing the annual audit requirement for self-managed superannuation funds
- 2918-19 Budget measure introducing a limit of $10,000 for cash payments made to businesses

WHAT WAS DEFERRED

In addition, the following measures are to proceed but subject to deferred start dates:

- 2019-20 MYEFO measures introducing a shared economy reporting regime, with
    - the 1 July 2022 start date deferred to 1 July 2023 for ride sourcing and short-term accommodation; and
    - the 1 July 2023 start date deferred to 1 July 2024 for all other reportable transactions, e.g. asset sharing, food delivery and tasking services;
- 2021-22 Budget measure relaxing the residency requirements for self-managed superannuation funds, e.g. when a member or member becomes a non-tax resident of Australia. The start date is to be deferred from 1 July 2022 to income years commencing after the legislation receives Royal Assent;
- 2021-22 Budget measure that proposed changes to the taxation of financial arrangements rules is to be deferred from 1 July 2022 to income years commencing after the legislation receives Royal Assent



ELECTRIC CAR RULES

The changes dealing with electric cars were introduced earlier this year. They are a positive step but they don't address the numerous difficulties in the existing rules. The Bill has considerable shortcomings and the Government has received numerous submissions.

TAXPAYERS BEWARE!...

More personal tax audits on the way!

$80M in further funding has been set aside for the personal income tax compliance program for just two years.

This is a timely reminder to ensure that your tax affairs are in good order.

SELLING YOUR HOME?

DOWNSIZER SUPERANNUATION

The minimum age to make a once-off post-tax contribution to a superannuation fund of up to $300,000 per person (from the proceeds of selling your home) is to decrease from 60 to 55 years of age. Contributions do not count towards your non-concessional contribution cap. This rule is to apply from the start of the first quarter after the legislation receives Royal Assent.

INTANGIBLE ASSETS

INTANGIBLE TAX DEPRECIATING ASSET

The Government will not proceed with the proposal in the 2021-2 Budget to allow taxpayers to self-assess the effective life of intangible depreciating assets such as patents, copyright and designs. Instead, the fixed rates in the tax legislation will apply. This is a result of anti-avoidance concerns.

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

The Government will introduce a new anti-avoidance rule to deny deductions for payments to related parties for intangibles, i.e. intellectual property, which is held in a low tax jurisdictions. This is a country with a tax rate of less than 15 per cent or a country with a "patent box" regime that lacks sufficient economic substance. This change will apply to payments made on or after 1 July 2023.

WHAT SHOULD I DO NOW?

The Budget measures provide us with at least two prompts, being:

- Please seek specialist help if you are considering becoming or giving up your Australian tax resident status, whether you are a member of a self-managed superannuation fund or not; and
- Given the enormous additional funding committed to tax audits, now is the time to make sure that your financial affairs are in top shape. When the sharing economy rules mentioned above start on 1 July 2023 or 1 July 2024, you should expect the ATO to also look at activities in prior years.

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