



Tax Insights

The alternative Government: Labor tax policies

Snapshot

In his address to the NSW Labor Conference in late July 2017, the Opposition Leader Bill Shorten outlined new Labor Party tax policy in respect of taxing income distributions from discretionary trusts.

This builds on measures announced by the Federal Opposition Leader in the traditional Budget-in-Reply speech in the House of Representatives on 11 May 2017, and the Shadow Treasurer, Chris Bowen's budget reply at the National Press Club on 17 May 2017.

So, what would an alternative Labor Budget hold in store? It is worthwhile taking stock of the tax-related announcements and statements that have been made by Labor.

*"And today, I want to declare again, as has been done in the past, a **Labor Government that I lead will have one defining mission: tackling inequality** wherever we see it."*

Opposition Leader Bill Shorten

Address to the NSW Labor Conference, 31 July 2017

A political platform of tackling inequality

The ALP election platform is "Tackling inequality" with leaders in the party referring to this as Labor's defining mission. To support this party has launched its key tax platform "Labor's Fairer Tax System for all Australians".

Two basic premises underlie the tax platform:

- That Australia has a substantial problem with inequality
- That there is a two class tax system operating. This has been described as an economy class system for ordinary PAYG earners claiming "vanilla" deductions, operating alongside another business class tax system for "Australians with lavish property portfolios, using complex deductions and of course stashing their money in offshore tax havens. Using every tax loophole that money can buy"¹. The business class system has been characterized as having a different set of rules for those who can afford it, which are legal but unfair.

Policy announcements in respect of taxing income distributions from discretionary trusts

The ALP proposes to apply a minimum tax rate of 30% on discretionary trust distributions to adult beneficiaries beginning on 1 July 2019. Currently, such distributions are subject to tax in the hands of beneficiaries at normal marginal income tax rates, which could result in low effective tax rates for those distributions.

The policy will apply only to discretionary trusts. It will not apply to:

- Special disability trusts
- Testamentary trusts (Deceased estates)
- Fixed trusts
- Cash management unit trusts
- Fixed unit trusts
- Public unit trusts (listed and unlisted)
- Primary producers
- Charitable and philanthropic trusts

Costed by the Parliamentary Budget Office, the ALP estimates this will deliver an extra \$4.1 billion in budget savings over the four-year forward estimates or \$17.2 billion over 10 years. Details of the costing have not yet been released.

Labor also will provide \$55 million per year to implement the reforms and to bolster the ATO's current trust anti-avoidance activities.

A 10-page [fact sheet](#) has been released on the policy.

¹ Opposition Leader Bill Shorten, Address to the NSW Labor Conference, 31 July 2017

Inheritance Taxes

On 30th July, Shadow Treasurer Chris Bowen has ruled out the introduction of an inheritance tax stating "That's not on our agenda".

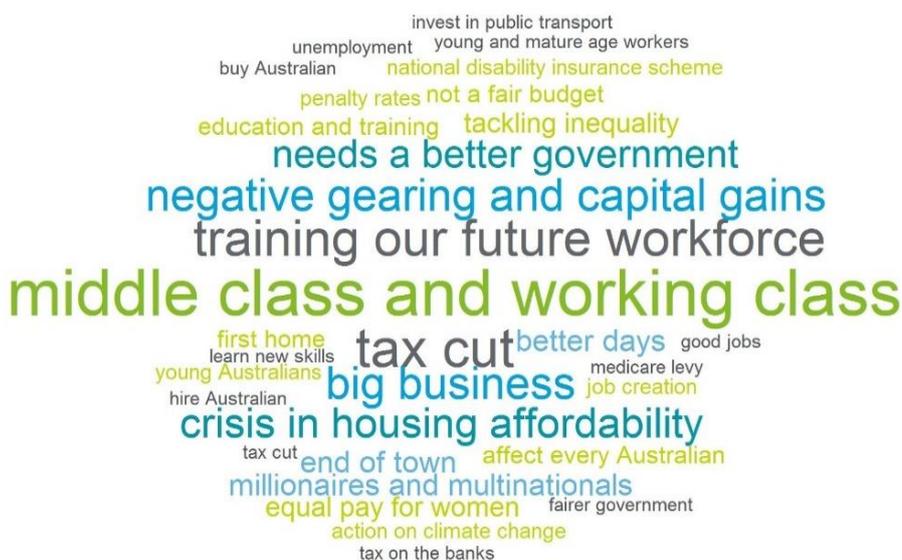
Budget-in-Reply speeches

The Budget-in-Reply speeches in May 2017 outlined Labor's response to the announced Federal Budget measures as follows:

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| Support for the 0.5 per cent increase in the Medicare levy but only for those earning over \$87,000 | Reintroduction of the 2 per cent budget repair levy on individuals earning over \$180,000 |
| Supports the Major bank levy but reiterated its call for a Royal Commission into the Banking industry. The Bank Levy is now law. | Opposes the plan to enable first home buyers to save pre-tax income in existing super accounts |

With regard to the Labor position on corporate tax rate cuts already passed, Bill Shorten has confirmed that Labor would support corporate tax rate cuts only in respect of businesses with turnovers under \$2 million. Under this policy, we would see some companies being subject to a tax rate increase from 27.5 per cent back to 30 per cent.

Labor has also sought to dismiss the effectiveness of the components of the housing affordability package contained in the Budget, and also recommitted to the need to reform the CGT discount and negative gearing. The details of these intended Labor policies are discussed further below.



Word cloud representation of 11 May 2017 Budget-in-Reply speech

Multinational tax package

In an early May 2017 pre-Budget document entitled 'Their fair share', Labor announced a multinational tax package which it says will improve the budget bottom line by \$5.4 billion over the decade.

This proposed package has five elements:

- *Debt deductions*

Eliminate the safe harbour and the arm's length debt test in the thin capitalisation rules and have a single test limiting debt deductions: the world wide gearing ratio. This means that the amount of permissible debt would be limited to the debt to equity ratio of the entire global group.

This policy has been on the record since prior to the last election. At this stage, there is no clear direction on grandfathering or transitional rules, but the policy is costed to raise \$1.1 billion over the 2018-19 & 2019-20 years, so is modelled on having an immediate and substantial impact. The Greens also support such a measure.

- *Tax consolidation integrity*

Amendment of the tax consolidation rules to implement the 2015 Treasury recommendations for reform to multiple entry consolidated groups. The current rules can result in the retention of higher cost bases of assets, and thus could reduce future capital gains or enhance depreciation deductions, depending on the character of the assets. This recommendation is already on the Government's tax reform agenda.

- *Transparency*

The ATO annually publishes tax-paid data for many companies. Labor proposes to reduce the threshold for tax transparency reporting for private companies to \$100 million; a measure estimated to affect approximately 600 large private companies with turnover of between \$100-200 million.

- *ATO funding*

Increasing ATO compliance funding by \$50 million per annum for three years for multinational tax compliance, which Labor estimates will generate \$200 million in revenue.

- *Community input*

Ensuring community sector representation on the Board of Taxation to balance feedback.

Tax transparency package

Labor's focus on transparency and multinational tax avoidance has been further built upon in a subsequent post-Budget tax policy document entitled 'A fairer tax system'.

In this document, Labor has set out further tax policies to introduce an eight-point 'tax haven transparency package'.

Some of these measures have already been set in progress by the government and are already at consultation stage in one form or another. The specific details of the proposed measures are as follows:

- *CbC public reporting*

Australia is currently one of many countries that have agreed to facilitate the exchange of country-by-country (CbC) reports that will be lodged with revenue authorities by significant global entities (SGEs) for income years commencing on or after 1 January 2016.

These multinationals are required to report details regarding their international related party dealings, revenues, profits, and taxes paid by jurisdiction.

Contrary to Government and OECD policy, Labor supports the public disclosure of these reports.

- *Whistle-blower rewards*

Whistle-blowers protections are currently the subject of Treasury consultation and a Parliamentary Joint Committee Inquiry. Labor also proposes to provide rewards for whistle-blowers who report entities evading tax to the ATO.

Labor proposes, where the whistle-blowers' information results in more tax being paid, to allow them to collect a share of the tax penalty (capped at \$250,000 or 1 per cent of the penalty figure, whichever is higher). This share would be taxable as ordinary assessable income.

The ATO would develop detailed criteria for a test regarding the contribution of an individual leading to court action. Essentially, the test would consider whether court action was undertaken due to the information identified by an individual.

- *Mandatory shareholder reporting of tax haven exposure*

Labor proposes changes to the *Corporations Act 2001* such that companies would be required to disclose to shareholders dealings in any 'international material tax risk jurisdiction' (i.e. known or suspected tax havens).

The ATO would be required to issue guidance on the types of activity, and details, that businesses must disclose. A list of these jurisdictions would be maintained by the ATO and issued as a guidance note to companies, and would be similar to the design of the European Union's "blacklist".

- *Public reporting of AUSTRAC data*

Labor would require the annual public release of international funds transfer data, being the aggregate total of funds transferred from Australia to individual overseas destinations.

This would show aggregated cash flows sent to overseas destinations including low-tax and non-compliant jurisdictions (tax havens).

- *Disclosure of domicile for government contracts*

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.

- *Guidelines for tax haven investment by superannuation funds*

Labor proposes that the ATO (in collaboration with the Australian Securities and Investments Commission and the Australian Prudential Regulation Authority) develop guidelines for responsible investment by superannuation funds. This is intended to ensure that funds are transparent about their dealings in such jurisdictions.

- *Publicly accessible registry of the beneficial ownership of Australian listed companies.*

Treasury consultation is currently underway on the details, scope and implementation of a beneficial ownership register for companies.

Labor has reiterated its election policy for a publicly accessible central registry of the beneficial ownership of companies, trusts and other corporate structures to be established.

- *ATO disclosure of settlements and reporting of aggressive tax minimisation*

Finally, Labor would require that the ATO's annual report provide information on the number and size of tax settlements above a value of \$50 million, estimated to be approximately 8 settlements per annum.

Many of these measures are similar to those contained in the Greens Tax Integrity Package that was proposed before the 2016 Federal Election, so are likely to garner the support of the Greens in the future.

Further Labor policy measures have also been announced around tougher penalties for breaches of directors' duties, and measures to tackle phoenix activities which result in unpaid worker entitlements, tax bills and creditors.

Labor would seek to require all existing and potential company directors undertake a 100-point identity check and be assigned a unique director identification number via ASIC for a small fee. This is intended to allow the tracking of directors to expose sham directors and repeat offenders, and to prevent their involvement in multiple failed companies. Labor also intends to strengthen the protections available for employee entitlements.

Capping deductions for managing tax affairs

Labor would seek to cap the amount individuals can deduct for the management of their tax affairs at \$3,000 from 1 July 2019 based on a concern that a small number of high-wealth taxpayers appear to have reduced their taxable income below the tax-free threshold with such deductions. The measure is stated to save over \$1.3 billion in the medium term.

This cap would affect individuals, trusts and partnerships. A carve-out would be provided for individual small businesses with positive business income and annual turnover up to \$2 million. The measure is stated to affect less than 1 per cent of taxpayers.

The deduction currently includes expenses relating to preparing and lodging tax returns and activity statements, obtaining tax advice from a recognised tax adviser, appealing to the Administrative Appeals Tribunal or court in relation to tax affairs, interest charges by the ATO, and dealing with the ATO about tax affairs.

This cap could hinder individual taxpayers from seeking private rulings or making valid challenges against ATO assessments.

Previous Labor announcements

In the lead up to the 2016 Federal Election, the Labor platform also included a number of tax-related statements. The key policy statements that remain relevant include the following:

- Support for the anti-hybrid rules based on the OECD's BEPS Action 2 – these rules are currently the subject of consultation.
- Negative gearing would be retained in its current form for new housing and existing assets. Negative gearing losses in respect of all other assets will be limited to being deductible against other investment income or capital gains (but not against wages and salaries).
- The CGT discount would be reduced for individuals (not super funds or small business assets) to 25% with existing assets to be fully grandfathered.
- No increase to the rate or base of GST.

It is also likely that Labor would support conversion of the existing Voluntary Tax Transparency Code (TTC) into a mandatory code should take-up of the code be perceived as deficient.

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