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A fork in the road?

Tax and the 2016 federal election

## The tax policy choices in the 2016 federal election

The Government has relied on the 2016-17 Federal Budget to provide a launching pad for the election campaign. By concentrating their announcements to 3 May 2016, the Government aimed to capitalise on the exclusive focus the media gives the Federal Treasurer in 'setting the scene' for the Government's agenda.

The 2016-17 Federal Budget was not a Tax Reform Budget. Capital "R" reform has been left to another day. Time will tell as to whether the Government of the day, after the next election has the courage to yet again take on Tax Reform.

Whilst not a Tax Reform Budget, there were many tax announcements were made on the night – addressing tax concessions for wealthier Australians (such as in relation to superannuation), and incentives to work and invest (rate cut reduction for companies and some individuals). The Budget also contained some significant development for multinational companies.

In contrast, the ALP has effectively been campaigning for the election for well over a year – aspects of the ALP policy on multinational taxation were announced in April 2015. Many of the ALP policies have been developed over the past 12 to 18 months so their talking points are familiar and well tested. More recently, the Opposition Leader toured the country's supermarkets advocating against changes to the GST.

The Prime Minister has confirmed that we are off to a double dissolution election on 2 July 2016. Tax will be a central issue in the election campaign, and whilst there are some similarities in the opposing policies, there are also some stark differences.

Below is a summary of the policy statements made by both of the largest political parties in the lead up to the 2016 Federal Election.

Government	Company tax rate		Australian Labor Party
Company tax rate to be reduced to 25 per cent over 10 years			
Year	Lower rate %	Turnover less than	<ul style="list-style-type: none"> <li>• Labor will support a tax cut for small business with a turnover of less than \$2 million per year and are still committed to cut the tax rate for small business to 25 per cent</li> <li>• In his Budget reply speech, the Opposition leader stated in respect of large companies “As important as they are to the economy, they don’t need a taxpayer subsidy which Australia cannot afford to pay”</li> <li>• Andrew Leigh has stated back in November 2015 that the ALP would support a <b>competitive company tax rate</b>, but...               <ul style="list-style-type: none"> <li>○ It is a <b>long-term</b> objective of lowering the rate to 25 per cent</li> <li>○ This couldn’t be done with the deficit as it is or while Commonwealth spending exceeds revenue by 1.5 per cent</li> <li>○ A lower rate in the long-term would be achieved by ensuring the tax net is “as tight as it can be” referring to multinational tax avoidance.</li> </ul> </li> </ul>
2015-16	28.5	\$2 M	
2016-17	27.5	\$10 M	
2017-18	27.5	\$25 M	
2018-19	27.5	\$50 M	
2019-20	27.5	\$100 M	
2020-21	27.5	\$250 M	
2021-22	27.5	\$500 M	
2022-23	27.5	\$1 B	
All other companies at 30% up to and including 2022-23			
2023-24	27.5	All	
2024-25	27	All	
2025-26	26	All	
2026-27	25	All	

## Government

## Australian Labor Party

## Addressing multinational tax avoidance

- **Penalties will be increased** (up from \$4,500 to \$450,000 max) for significant global entities **failing to lodge ATO tax documents** (including Country-by-Country reporting)
- **OECD BEPS compliant anti-hybrid rules will be introduced** from 1 January 2018, or six months after Royal Assent
- **Beneficial ownership register for companies to be developed**
- **Funding of \$679 million over 4 years for the ATO for a new Tax Avoidance Taskforce** targeting both multinational and high wealth individual tax avoidance and evasion.
- **No changes to thin capitalisation rules**
- **An Australian Diverted Profits tax will be introduced at 40%** on significant global entities using artificial or contrived arrangements to reduce tax by diverting profits offshore
- **OECD BEPS compliant transfer pricing rules will apply** from 1 July 2016
- **Introduce a new disclosure regime** requiring tax and financial advisors to report potentially aggressive tax planning schemes
- **Introduce new protection for whistleblowers** from 1 July 2018
- **Voluntary tax transparency code** introduced.

## Specific industry / technical measures

- **Funds management:** two new forms of Collective Investment Vehicles to be introduced
- **Taxation of Financial arrangements:** reform and simplify TOFA (foreign currency, tax hedging etc.)
- Technical changes to the **tax consolidation rules** in respect of deductible liabilities and deferred tax liabilities.

- **Increase penalties on failure to provide Country by Country reporting:** Raise penalties from the current \$4,500 to \$270,000
- **Support the better alignment of Australia's rules on hybrid entities:** this measure is based on the OECD BEPS Action 2
- Establish a **publicly accessible central registry of the beneficial ownership of companies, trusts and other corporate structures**
- **Increase funding to the ATO** to track down and tackle corporate tax avoidance.
- **Restructure the thin capitalisation rules** limiting the financing costs companies can claim to a limit based on the debt-to-equity ratio of a group's global balance sheet
- **Restore the \$100 million threshold for reporting the tax affairs of Australian owned private companies** bringing them back in line with public companies.

## Government

## Australian Labor Party

## Small business

- From 1 July 2016 extend the unincorporated tax discount (from 5% to 8%) to unincorporated businesses with turnover of less than \$5M- up to a max of \$1,000
- Phase in the discount to a final rate of 16% in 2026-27
- From 1 July 2016, all businesses with turnover of less than \$10 million will be allowed to access simplified depreciation rules including immediate write off of asset up to \$20,000. Other measures will include simplified trading stock rules, simplified payment of PAYG rules, have the option of calculating GST on a cash basis, benefit from the immediate deductibility of professional expenses and some special FBT concessions
- Will introduce targeted changes to simplify Division 7A (broadly loans/payments to shareholders & associates).

## Individual taxation &amp; bracket creep

- From 1 July 2016, the second top tax bracket (marginal rate of 37%) threshold will be raised from **\$80,000 to \$87,000**
- The **temporary budget repair levy of 2% will cease as legislated** on 30 June 2017.

- Labor will support the government's measures on bracket creep
- However the ALP wants **the Temporary budget repair levy** of 2% to continue beyond 30 June 2017
- Chris Bowen stated on 10 May 2016: "It is true that the income deficit levy was proposed to be temporary. I accept that, of course. But it was also proposed to deal with the deficit. The fact is that the deficit has tripled from when it was instituted by the Government. If it was justified then, it is more than justified now."

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## Superannuation

- **Extend the superannuation surcharge to individuals with income over \$250,000** (previously \$300,000)

Limit excess balances:

- Impose a limit of \$1.6 million on the amount that can be transferred into the retirement phase. Individuals in retirement as at 1 July 2017 with balances in excess of \$1.6 million will need to either:

- Transfer the excess back into an accumulation superannuation account; and pay tax on earnings at 15% or
- Withdraw the excess amount from their superannuation.

- **Enshrine the purpose of superannuation in legislation** in order to better target superannuation tax concessions

- Limit excess balances by:

- **Lowring the concessional contributions cap to \$25,000 p.a.** from 1 July 2017
- Replacement of non-concessional contribution cap with a **lifetime cap of \$500,000** from 3 May 2016
- Make changes to taxation of **transition to retirement income streams**

- **New low-income superannuation tax offset**

- Where superannuation balances are under \$500,000 - **unused concessional caps can be carried forward**, and/or people under 75 will be able to **claim tax deductions up to the concessional cap**.

- **Extend the superannuation surcharge to individuals with income over \$250,000** (previously \$300,000).

Limit excess balances:

- Proposed to tax any earnings over \$75,000 on superannuation assets transferred into the retirement phase at 15 per cent (currently not subject to tax). It is anticipated this will largely impact taxpayers with balances in excess of \$1.5 million. Capital gains will be grandfathered. Labor will also remove the 10 per cent tax offset for defined benefit income above \$75,000. If implemented, the measure is to apply from 1 July 2017
- Do not support aspects of the Government's \$1.6 million retirement phase cap on the basis of retrospectivity (as tax would be payable from 1 July 2017 on balances in excess of \$1.6 million at a rate of 15% as accumulation funds: see ALP policy above which also taxes from 1 July 2017 large balances).
- Establish a **Council of Superannuation Custodians which would every five years, on a timetable linked to the Intergenerational Report, consider changes to superannuation tax treatment** in an open and transparent manner and make recommendations to Government on possible changes
- Do not support aspects of the non-concessional lifetime contribution cap on the basis of retrospectivity (going back to 2007 to calculate whether \$500,000 limit is reached)
- Support some form of rebate or superannuation support for low income earners to replace the Low Income Super Contribution
- Escalate the timeline for the superannuation guarantee contribution rate to rise to 12%
- If elected, **"these are the final and only changes Labor will make to the tax treatment of superannuation"**.

## Government

## Australian Labor Party

## Negative Gearing and CGT

- The Turnbull Government **ruled out making changes to negative gearing or capital gains tax** in the 2016-17 Budget
- **Labor will limit all negative gearing so that it is available only for one asset class (new housing from 1 July 2017)**
- All investments made before this date will not be affected by this change and will be fully grandfathered
- Negative gearing losses for other assets from 1 July 2017 will be quarantined and can be carried forward and offset against other investment income or the final capital gain on the disposal of the investment
- Labor will **halve the CGT discount for all assets purchased after 1 July 2017 (i.e. from 50% down to 25%)**. All investments prior to this date will be grandfathered
- The CGT discount will not change for superannuation funds nor for small business assets

## Innovation

- The Turnbull Government's tax incentives for early stage investors (tax offset and CGT exemption) and amending the arrangements for venture capital limited partnerships have been legislated and will commence 1 July 2016
- Exposure draft legislation has been issued for consultation on a new similar business test (to more easily recoup losses) and on a new option to self-assess the tax effective life of acquired intangible assets
- The ALP supported the Government measures for early stage investors and for venture capital limited partnerships but did challenge the Government to introduce its innovation measures immediately - not wait until 1 July 2016
- ALP has proposed alternative innovation incentives in the form of an Angel Investment Scheme similar to the UK.

## Goods &amp; Services Tax

- The Government has **ruled out an increase to the GST**. Economic modelling showed a GST increase would fail to deliver the growth result desired. The most limiting factor was the size of the compensation bill for low and middle-income households
- **No increases to the rate or base of GST:** this is the view at the Federal level. However, at the State level some Labor Premiers have given qualified support to an increase in the GST in order to fund health expenditure.

## Government

## Australian Labor Party

## Other tax policies

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• <b>Increase tobacco excise</b> in the form of four 12.5 per cent excise rate increases commencing on 1 July 2017</li> <li>• <b>Integrity changes to the Wine Equalisation Tax rebate</b> - reducing the WET rebate cap and tightening eligibility criteria.</li> </ul> | <ul style="list-style-type: none"> <li>• <b>Increases in tobacco excise</b> in the form of four 12.5 per cent excise rate increases commencing on 1 July 2017</li> </ul> |
|---|--|

Some of the other tax policy positions that have been publicly presented by other players may find their way into the mainstream tax debate.

The Greens Tax Integrity Package includes:

- Taxing trusts as companies
- Considering a company's tax arrangements as part of government tender/contract process
- Requiring the ATO to publish the names and financial figures of the top twenty companies that transfer money offshore
- Establishing an ATO settlements register
- Reducing the threshold on the ATO tax paid disclosure for all companies to \$50 million
- Working towards a global agreement on formulary apportionment

The tax policy platform of the ACTU as set out in the 2015 National Congress, includes support for 'The Buffet Rule' which imposes a minimum average rate of tax on very high income earners based on their total gross income.

## Status of previously announced tax measures

It is also timely to consider the current list of previously announced tax measures.

### Dealing with the tax measures the Government inherited

In late 2013, with the dust barely settled on the last federal election, the new Coalition Government indicated that there were 92 tax and superannuation outstanding announcements that had not yet been legislated. Of the measures inherited, 36 measures were ultimately marked to proceed with 56 discarded by the Government. Solid progress has been made on the 36 measures.

Of the 36 inherited measures, those of which no parliamentary progress has been made in this parliamentary cycle include:

- Clarification on the scope of the debt equity integrity rules (section 974-80); the Assistant Treasurer's [media release](#) on 2 April 2015 confirmed Government will consult on ED legislation
- Extending the range of entities eligible for the functional currency rules, although the Government confirmed its policy on this matter in the 2016-17 Federal Budget
- Two TOFA amendments dealing with hedging rules and foreign currency regulations; these were expected to be legislated in the Spring sittings in 2015. As per the 2016-17 Federal Budget announcement, TOFA rules are expected to be simplified.

Further inherited measures that are currently under consultation in ED format include:

- Tax consolidation modifications including deductible liabilities – Further announcements, including a change in the technical approach, were made in the 2016-17 Federal Budget.
- Clarification on the need for income tax exempt entities to be operating principally in Australia - no recent developments since ED legislation was released on 12 March 2014

### The Government's own tax platform

Despite the composition of the Senate cross-benches, the Government has made progress since 2013 in securing the passage of its own taxation measures. Some of the more significant pieces of legislation include:

<b>Government's own tax measures that have been legislated since 2013 include:</b>
• The multinational anti-avoidance law (MAAL) effective from 1 January 2016
• Increased penalties for significant global entities
• Country by Country reporting for significant global entities
• Reduction in the small company tax rate to 28.5%
• Introduction of new sub-division 768-A to replace section 23AJ
• Reform to the taxation of employee share schemes
• A comprehensive new foreign investment review board (FIRB) regime
• Imposition of GST on services and intangibles from 1 July 2017
• Introduction of the Exploration Development Incentive tax offset
• Temporary immediate deduction for assets costing less than \$20,000 for small business
• Temporary budget repair levy on individual income over \$180,000

In addition, the Government has remained committed to the implementation of the OECD BEPS recommendations.

In respect of the Government's own tax measures that currently remain outstanding, Bills containing the following proposed measures were progressed but are now lapsed include:

- Proposed reduction of the rate of the R&D tax offsets by 1.5% from 1 July 2014 (as announced in the 2014 Federal Budget)
- Abolition of the seafarer tax offset (as announced in the 2014 Federal Budget)
- The establishment of a statutory remedial power for the Commissioner of Taxation
- Proposals to reduce the harshness of the superannuation guarantee charge for employers and enable the Commissioner to pay lost superannuation directly to individuals with a terminal medical condition

Measures that have been released (e.g., for consultation) but not yet in Bill form:

- The relaxation of the same business test
- Self-assessment of the life of intangible depreciating assets
- New double tax treaty with Germany, adopting the OECD BEPS recommendations in respect of tax treaties

The Government affirmed in the 2016-17 Federal Budget that the GST will be extended to low value goods imported by consumers from 1 July 2017. No formal exposure draft has been released on this measure.

In addition, as a result of concerns raised from the tourism and agricultural industry, and the Government's own review (announced on 16 March 2016), the Government is still considering its proposed changes to tax residency rules (known as the "backpacker tax").

## Senate and House of Representative Inquiries

As Parliament is dissolved, all House of Representatives and Senate Inquiries have ceased. Therefore the following inquiries have lapsed:

- **House inquiry into Tax Deductibility** and
- **Senate Inquiry into Corporate Tax Avoidance.** This is despite the Senate granting the Committee further time to report to 30 September 2016.

There has never been a more exciting time to be a tax practitioner!

## Quotable quotes

Chris Bowen MP misquoting Prime Minister Turnbull:

***"Labor is bad, the economy will be left in ruins, plagues of locusts will attack, the four unicorn-men of the apocalypse will bear down upon us, negative, negative, negative...it's never been a more exciting time to be an Australian."***

Treasurer Scott Morrison discusses the Australian economy:

***"This is a Test match, not Twenty20 Big Bash when it comes to fixing the budget and to improving the budget. It requires Test match patience. It requires Test match tactics. It takes Test match endurance. It takes a really clear understanding about what your principles are and the players you have to back in that are going to deliver the big runs and do the big innings and take the big wickets and [for our economy] they are the ones who are out there earning every day."***

Treasurer Scott Morrison on the GST:

***"What you're suggesting is that we should have gone ahead with the GST change, this was somehow some litmus test of tax testosterone. It's not."***

Nationals Senator Matt Canavan on the GST:

***"People think that the GST is the Thermomix of Australian politics."***

***"It can bake, it can make soup, it can improve your love life, it can do all of those things, but it can't. It will raise a finite amount of money."***

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