



## Tax Insights

# Understanding the post-election tax policies affecting business

### Snapshot

The Prime Minister has announced that Australians will go to the polls on 18 May. Tax matters, relating both to individuals and business, look like being a central point of policy distinction between the Coalition and the Labor Party, and the source of much of the election debate.

The Coalition's legislative focus has been on the Black Economy, integrity measures across the multinational and small business markets and a tax-driven stimulus package which set out to reduce the rate of corporate tax. The Labor Party in Opposition has been active in announcing numerous tax policies affecting business.

This Tax Insights summarises what business can expect beyond the next election, from the current Government or from a potential Labor Government, depending upon what the voters decide. For information on the post-election tax policies affecting individuals, please [click here](#).

Updated following the April  
2019 Budget

## Planning beyond the impending election

Experience tells us there are many uncertainties ahead in the electoral and political process, which in turn create uncertainties. As always, the best plan to address uncertainty is to be well informed, and irrespective of the election outcome, to anticipate possible outcomes and their impact on you.

Most of the Coalition's announced measures in relation to business are already legislated, with the exception of the April 2019 Federal Budget measures. The Coalition position is largely well documented and well known. Accordingly, much of this publication is taken up with setting out Labor's proposed tax policies for business. For comparison, we note the Coalition position on the same policy where relevant.

We expect that some Labor policies will evolve during consultation when the practicalities of implementing these policies are explored and unintended consequences are identified. In addition, whichever party is in government will also likely have to deal with a challenging Senate composition. It is therefore to be expected that the tax policies on both sides of the political divide will evolve post election.

## The Coalition agenda

The Coalition's recent legislative program, so far as it is relevant to business, has had a focus on the Black Economy (including illegal tobacco and phoenixing activity); additional integrity measures, especially in relation to multinational tax; and the Enterprise Tax Plan. The political realities meant that the Enterprise Tax Plan resulted in a phased reduction in the company tax rate to 25% for eligible companies with turnover up to \$50 million.

Previously, major reforms to the superannuation tax system were tackled. Significant legislation was passed to address multinational tax avoidance and base erosion and profit shifting, additional funding was provided to the ATO, and increased transparency measures were developed.

The Coalition went into the last sitting days in April with a full book of Bills at different stages of the Parliamentary process. Some of those measures were passed before the election whilst others did not pass.

Measures that were passed by the Parliament prior to the election being called:

- Expanding the instant asset write-off (previously a cap of \$20,000) to assets with a cost of \$25,000 from 29 January 2019 and to \$30,000 from 2 April 2019. The legislation was updated to reflect the extension announced on Budget night on 2 April 2019;
- Introduction of the similar business test (in addition to the same business test) in connection with the recoupment of prior period tax losses;
- An overhaul of the tax regimes affecting stapled structures & sovereign immunity; and
- Petroleum Resource Rent Tax amendments.

The following measures were not passed:

- Reforming the R&D Tax incentive regime;
- Amending the definition of a significant global entity, and creating a new concept of a "country by country reporting entity";
- Removing the ability for entities to revalue their assets for thin capitalisation purposes;
- A technical amendment ensuring that foreign controlled Australian tax consolidated groups and multiple entry consolidated groups that have foreign investments or operations are treated as both outward investing and inward investing entities;
- Applying the principal asset test on an associate-inclusive basis for capital gains made by foreign residents;
- Removing the entitlement to the main residence CGT exemption for foreign residents;
- Establishing new criminal offences and civil penalties for illegal phoenixing activity;
- Increasing the maximum membership of a SMSF from 4 to 6 members;
- Reintroducing the 'opt-in' rule for insurance with superannuation; and

- Creating a new Commonwealth business registry and director identification numbers.

Following the election being called, all Bills still before Parliament have lapsed. Subject to further announcements, we expect that if the Coalition is returned, it would move to legislate measures announced prior to the election.

In addition, the Government has recently made announcements to proceed with the following measures:

- Creation of a small business concierge service within the Australian Small Business and Family Enterprise Ombudsman's office that will support small businesses without legal representation in disputes with the ATO; and
- Creation of the Small Business Taxation Division within the AAT.

## The Labor agenda

Going back to at least 2015, the Labor Party has been steadily releasing numerous tax policies as part of a strategy to demonstrate its "preparedness for Government"<sup>1</sup>.

On 12 November 2018, in a speech to the UBS Australasian Conference titled 'Why business should back Labor', the Shadow Treasurer Chris Bowen discussed Labor's stability in personnel and policy, energy policy, corporate tax policy, competition policy, and approach to economic growth. Mr. Bowen stated:

*"If I become Treasurer I want to stand at the dispatch box and bring down a budget that delivers what we said we would. On the back of a mandate received from the Australian people. An approach that will allow us to govern with more moral authority. An approach that will allow us to govern on a no surprises basis which is good for businesses looking to invest and grow.*

*I am not suggesting that everybody loves all our policies. But I am suggesting that a business environment that craves certainty can take comfort from the fact that we have used our stability in personnel and leadership to construct a clear and comprehensive plan for government which business can factor in to its plans."*

Whilst the Coalition's position on most of the Labor tax policies is not formally known, recent experience has told us that the success or otherwise of tax policies will depend upon the composition of the Senate post the election, and will likely vary from one policy measure to the next.

## At a high level

The Labor National Platform, A Fair Go for Australia<sup>2</sup>, was issued in conjunction with the Australian Labor Party National Conference in December 2018, and finalised in early 2019. The guiding principles of the Labor approach to tax are as follows:

*"Labor will reform tax, guided by the principles of **efficiency, fairness and simplicity**, the need to boost revenues to fund public services, and to create a more equal distribution of wealth and income. Labor will identify specific progressive taxation measures to secure resources for effective government on a fair and efficient basis. These should consider overall capacity to pay rather than just income."<sup>3</sup>*

The National Platform frames at a high level the future corporate income tax reforms as follows<sup>4</sup>:

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<sup>1</sup> Welcome to Labor's National Platform, A Fair Go for Australia, Labor's 48<sup>th</sup> National Platform

<sup>2</sup> A Fair Go for Australia, Labor's 48<sup>th</sup> National Platform

<sup>3</sup> Labor's 48<sup>th</sup> National Platform, Item 166

<sup>4</sup> Labor's 48<sup>th</sup> National Platform, Item 172

- Ensure corporations – at home and abroad – pay their fair share of tax, while encouraging investment and jobs growth;
- Ensure our corporate tax rate is fair and competitive, whilst also providing adequate revenues to support our essential public services and build tax equity through our transfer payment system;
- Help Australian business and industry to integrate into the global economy, so Australian companies win places in global supply chains;
- Stop multinationals unfairly shifting profits to minimise tax paid in Australia;
- Provide public transparency and deterrence of the use of tax havens, including procurement policy and guidelines for superannuation funds;
- Enhance transparency of tax payable, including the public release of information about where and how much tax multinationals pay, and related-party dealings by large and multinational businesses ;
- Encourage and reward whistle-blowers who report on tax offences; and
- Listen to diverse voices in tax policy development, and ensure community sector representation on the Board of Taxation.

Labor would also review the Tax Expenditures Statement, with particular view towards tax breaks and other incentives, benefits or tax agreements granted to companies operating in Australia along with a cost/benefit analysis of public benefits obtained. Labor would consider the merits of clawback mechanisms in any future agreements that require any subsidies to be returned if the promised economic benefits (i.e. jobs, revenues, etc.) do not materialise<sup>5</sup>.

### What to expect from a Labor Government

Labor has for some years now been announcing its tax policies and there should be no surprises to the electorate. The policies, and some of the more specific details, can variously be found in the National Platform, a Labor Party website called [Their Fair Share](#) and in numerous speeches, policy announcements and fact sheets. We have been tracking all of these various sources to bring together the various Labor tax policies and announcements.

On the day after the Prime Minister called the election, the Labor Party made an announcement (principally about a \$5 million commitment to Tax Inspectors Without Borders) which also set out a “one-pager” of its various integrity provisions and other measures to “tackle multinational tax avoidance”. The media release (12 April 2019) is as follows:

“If elected, a Shorten Labor Government will:

- Tighten debt-deduction loopholes used by multinational companies, improving the Budget by \$3 billion over the medium term.
- Close a debt deduction loophole to ensure consistent treatment in related party financing arrangements.
- Automatically deny deductions from companies for travel to and from tax havens, and clamp down on unsubstantiated allowances related to tax havens.
- Increase penalties for individuals and entities promoting tax evasion and avoidance.
- Crack down on citizenship shopping by requiring all individual Australian taxpayers to notify and declare to the Australian Taxation Office if they have residency or citizenship of any other jurisdiction and the name of that jurisdiction.
- Introduce public reporting of country-by-country reports, ensuring the release of high-level tax information about where and how much tax was paid by large corporations (over \$1 billion in global revenue).

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<sup>5</sup> Labor’s 48<sup>th</sup> National Platform, Page 247

- Provide protection for whistleblowers who report on entities evading tax and, where whistleblowers' information results in more tax being paid, allow them to collect a share of the tax penalty.
- Introduce a publicly accessible registry of the beneficial ownership of Australian listed companies and trusts, allowing the public to find out who really owns our firms.
- Introduce mandatory shareholder reporting of tax haven exposure, requiring companies to disclose to shareholders as a 'Material Tax Risk' if the company is doing business in a tax haven.
- Appoint a community sector representative to the Board of Taxation to ensure community sector voices are heard in tax design and review processes.
- Introduce public reporting of Australian Transaction Reports and Analysis Centre (AUSTRAC) data and require the annual public release of international cash flow data.
- Require all firms tendering for Australian Government contracts worth more than \$200,000 to state their country of domicile for tax purposes.
- Develop guidelines for tax haven investment by superannuation funds.
- Require that the Australian Taxation Office's annual report provide information on the number and size of tax settlements.
- Restore Labor's \$100 million threshold for public reporting of tax data for private companies, which was raised to \$200 million by the Liberals and Greens in a move which exempted two-thirds of private firms from tax transparency.

Only a Shorten Labor Government will get tough on tax havens and offer our neighbours the support they need to do the same."

In addition to the integrity measures above, there are some measures that will be welcomed by business such as the "Australian Investment Guarantee" (accelerated depreciation measure) and the Build to Rent incentives. We summarise below our list of all of the Labor tax policies for business, followed by additional information and commentary where available.

1. Company tax rate
2. Accelerated depreciation: Australian Investment Guarantee
3. Debt deductions
4. Build to Rent scheme
5. Bad debt deductions involving related parties
6. Dividend imputation
7. Deductions for flights and other travel to/from tax havens
8. Research and development
9. Employer superannuation
10. Australian shipping industry tax incentives
11. Transparency and disclosure measures
  - 11.1 ATO annual reporting of company data
  - 11.2 Country-by-Country reporting
  - 11.3 Mandatory adoption of the Voluntary Tax Transparency Code (VTTC)?
  - 11.4 Transparency within stapled structures and other entities receiving government funding
  - 11.5 Transparency in the extractive industry
  - 11.6 Mandatory shareholder reporting of tax haven exposure

- 11.7 Public reporting of AUSTRAC data
- 11.8 Government tenders
- 11.9 Financial statement disclosures
- 11.10 Public register of beneficial interests
- 11.11 ATO disclosure of settlements and reporting of aggressive tax minimisation

12. Other

- 12.1 Anti-phoenixing plan including "name and shame powers"
- 12.2 Change of composition of Board of Taxation advisory panel
- 12.3 Whistleblower rewards
- 12.4 Separate appeals area within the ATO
- 12.5 Increase penalties for individuals and entities promoting tax evasion and avoidance
- 12.6 Tax haven investment by superannuation funds
- 12.7 Transfer pricing

**1. Company tax rate**

After the long and drawn out Enterprise Tax debate, Labor supports the now-legislated position of a lower tax rate (25 per cent) for eligible companies with up to \$50 million turnover. Labor last year blocked legislation that would have lowered tax rates for larger corporates.

The company tax rate as legislated for eligible corporates is as follows (and is not expected to change):

Income year	Eligible company rate (per cent)	Other company rate (per cent)
<b>2019-20</b>	27.5	30
<b>2020-21</b>	26	30
<b>2021-22 and subsequent</b>	25	30

**Deloitte comment**

In January 2019, the OECD released a new report and database, *Corporate Tax Statistics*, which provides internationally comparable statistics and analysis from around 100 countries worldwide on corporate tax revenues, statutory corporate income tax rates, corporate effective tax rates and tax incentives related to innovation.

In terms of headline rates, at 30 per cent Australia has the second highest tax rate in the OECD behind France at 34.4 per cent. In terms of effective tax rates, Australia, at 28.5 per cent, has the second highest composite effective marginal tax rate in the OECD behind Chile at 31.3 per cent.

These statistics further demonstrate the validity of concerns about Australia’s competitiveness in respect of attracting and retaining investment. Despite this, and conscious of the reality of politics, it appears unlikely that either party will propose further corporate tax cuts in the medium term.

However, Labor has a policy platform to “ensure the corporate tax rate is fair and competitive”<sup>6</sup>. Labor has also promised to deliver preferential taxation assistance measures to small business consistent with recommendations from the Henry Tax Review<sup>7</sup>. Details on how these will materialize will be eagerly awaited.

<sup>6</sup> Labor’s 48<sup>th</sup> National Platform, Item 172

<sup>7</sup> Labor’s 48<sup>th</sup> National Platform, Item 65

## 2. Accelerated depreciation: Australian Investment Guarantee

As an alternative to a lower company tax rate, Labor has proposed an Australian Investment Guarantee applying from 1 July 2021. This is a form of accelerated depreciation, which would allow businesses to immediately expense 20 per cent of the cost of eligible depreciable assets in the first year of all new investments, with the balance (i.e., 80 per cent of the asset cost) depreciated over the effective life from the first year (refer Example below).

The details of the measure are set out in the [Investment Guarantee Fact Sheet](#). Based on that information, the measure is available to all businesses operating in Australia (presumably without regard to size) and is to reward businesses making new investments in Australia. Whilst similar measures have in the past been temporary, the Australian Investment Guarantee is to be a “permanent measure”.

The scope and key design features of the new Australian Investment Guarantee are:

- It applies to “eligible investments valued at over \$20,000 ... to ensure it is well-targeted at productivity-enhancing investments”; and
- Eligible assets include tangible machinery, plant and equipment for both upgrades and new purchases, including non-passenger motor vehicles and depreciable intangible assets; for example, new investments in computerised technology, new software, and intellectual property such as patents and copyrights.

The following would be excluded:

- Investments in structures and buildings, consistent with previous accelerated depreciation policies used in Australia;
- Otherwise eligible expenditure currently claimed under the existing research and development tax concession; and
- Passenger motor vehicles.

Labor also supports the Government’s instant asset write-off, which was recently expanded to assets with a cost of \$25,000 (increased from \$20,000). This Government measure is due to cease at 30 June 2020<sup>8</sup>.

### Example from the Fact Sheet

Manufacturing Company A purchases a new \$10 million piece of machinery

Under normal depreciation rules for this piece of machinery (assuming a straight-line depreciation method) Manufacturing Company A is allowed to deduct 10 per cent or \$1 million of the \$10 million in each year over the effective 10-year life of the asset.

Under Labor’s Australian Investment Guarantee, Manufacturing Company A will be able to immediately expense 20 per cent (\$2 million) of its investment in the first year.

The remaining 80 per cent (\$8 million) would then be depreciated over the effective life of the asset from the first year in line with the original depreciation schedule – which in this case is 10 per cent per year, or \$800,000 of the \$8 million.

This means Manufacturing Company A can write off a total of \$2.8 million in the first year (\$2 million plus \$800,000) of its investment (instead of \$1 million under existing arrangements).

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<sup>8</sup> <https://ministers.jobs.gov.au/cash/increasing-and-extending-instant-asset-write>

#### **Deloitte comment**

An accelerated depreciation regime will go some way to reduce the effective corporate tax rate, although only for capital intensive industries.

The Labor proposal is more extensive than the Coalition's instant asset write-off, in that it is available to all businesses irrespective of size, and applies to larger capital purchases. By contrast, the US tax reform model has been to allow an immediate full expensing of much capital expenditure – a far more extensive (and expensive) measure.

Whilst the Investment Guarantee was originally intended to operate from 1 July 2020, the start date was deferred to 1 July 2021 as part of the trade-off for the Labor support of the acceleration of the start of the lower company tax rate. It is to be hoped that the start date will be brought forward from 1 July 2021, as the current policy could act as a disincentive on investment prior to the start date.

For eligible assets and projects, it will be important to model the impacts of the Investment Guarantee on proposed capital expenditure. In large projects undertaken by companies not in tax losses, the allowance may have a material impact on the investment decision.

Business will only be able to reliably build such an allowance into their planning when there is sufficient certainty of the legislative form and the start date. Unfortunately, political certainty on tax measures has been in short supply in recent years.

### **3. Build-to-Rent scheme**

On 29 March 2019, as part of its housing plan, Labor announced measures to encourage institutional investors into the housing market. Labor will revamp the Build-to-Rent scheme – giving institutional investors better tax concessions, encouraging more construction and stimulating the housing market.

The plan also cuts the managed investment trust withholding rate from 30 per cent to 15 per cent, on tax distributions attributable to investments in build-to-rent housing - encouraging new housing supply.

### **4. Debt deductions**

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 focus 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).

Australia's thin capitalisation rules address the matter from a different perspective and, in broad terms, limit deductions for interest where the debt-to-assets ratio of the entity exceeds the prescribed limit being the greater of the safe harbour, worldwide gearing (WWG) or arm's length debt (ALD) amounts.

Taxpayers can elect which method to apply, but practically speaking, most taxpayers use the safe harbour. 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.

Labor proposes to remove the safe harbour and the ALD test and have a single test limiting debt deductions: the worldwide gearing ratio. This means that the amount of tax deductible debt for Australian members of a group would be limited to the actual debt ratio of the entire global group, having regard to external funding of the group. The policy appears to equally apply to inbound and outbound groups.

The measure has been estimated to raise “\$3 billion over the medium term”<sup>9</sup>.

#### **Deloitte comment**

Debt loading has been a consistent concern to the Labor Party for the past few years. Since the policy was first announced in 2015, the global and Australian position around interest deductibility in Australia has changed significantly as a result of various developments including the finalization of the OECD BEPS reports, the Chevron transfer pricing case, the hybrid mismatch rules and the targeted integrity rule. As noted, the OECD BEPS final reports recommend an EBITDA-based approach, and contemplate a worldwide gearing approach, but as a basis for additional debt in a country, relative to the EBITDA safe harbour.

The measure is likely to significantly impact many inbound groups, as well as Australian outbound groups. The policy will need to be subject to consultation before its final form is settled, including to address matters such as transitional measures, identifying the relevant group, ascertaining the relevant group ratio and interactions with other provisions in the tax law.

We recommend that businesses model the effect of such a policy if they have not already done so. In some cases, the impact would be significant.

#### **5. Bad debt deductions involving related parties**

Labor proposes to deny a creditor (lender) a tax deduction for a bad debt write-off, where the debtor (borrower) is a related party not in the same tax consolidated group. In addition, the corresponding gain to the debtor would be disregarded.

The rationale behind the measure is that it will ensure a more consistent tax treatment for bad debts between related parties irrespective of whether they are members of a tax consolidated group, and introduce better symmetry between the tax treatment of the creditor and the borrower where they are related parties.

This measure was previously announced in the 2012-13 Federal Budget but was never legislated.

#### **6. Dividend imputation: Removal of franking credit refunds**

From 1 July 2019, under a Labor government, individuals and superannuation funds would no longer be able to claim a cash refund for excess franking credit tax offsets (i.e., where franking credits exceed the taxpayer’s tax liability). The rules will be modified for pensioners and part-pensioners.

#### **Deloitte comment**

In light of this possible change, many investors are currently reviewing whether to reweight their investment strategy (where franked dividends are a major source of income) and companies are assessing their distribution and capital management policy. These decisions also raise a host of other tax and non-tax issues to consider as a consequence.

The proposed Labor policy may also have wider implications for businesses and their competitors on returns on investment and stock market valuations more generally.

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<sup>9</sup> Labor to Make Multi-Nationals Pay - Media Release, 1 November 2018, Andrew Leigh, Shadow Assistant Treasurer  
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## **7. Deductions for flights and other travel to/from tax havens**

The proposed change would automatically deny flight expenses and other travel-related deductions where the expense relates to a jurisdiction on a Tax Haven Blacklist.

An individual, business or legal identity may apply to the Commissioner for a deduction for the expenses by providing complete substantiation of all costs, and demonstrating that the costs were incurred in the production of assessable income in Australia. If the deduction is denied, then Fringe Benefits Tax is applicable.

## **8. Research and development**

In its National Platform, Labor states "Australia today is competing in a global innovation race. To secure our future prosperity, Labor has set a national goal of 3 per cent of GDP to research and development by the end of the next decade. Australia must put innovation, science and research at the heart of industry policy. We must foster a culture of entrepreneurialism across the economy, from start-ups to established businesses and within the public sector"<sup>10</sup>.

As a part of this goal, Labor has committed to preserve the R&D Tax Incentive<sup>11</sup>. Proposed R&D amendments are presently before Parliament. However, the Bill lapsed before the election with a [February 2019 Senate report](#) recommending refinements to the proposals. Debate on the fate of the existing R&D tax incentive regime will start anew after the election.

In a recent [Science & Research for Australia Fact Sheet](#), Labor has also committed to:

- Institute a charter with the Australian science and research community;
- Establish a Prime Minister's Science and Innovation Council, supported by a National Scientific Expert Panel; and
- Review and strengthen the National Science and Research priorities, giving the priorities a central role in guiding Government investments in innovation, science and research.

## **9. Employer Superannuation**

When prudent, Labor will end the freeze of the superannuation guarantee at 9.5 per cent and fast-track the superannuation guarantee increase to 12 per cent<sup>12</sup>.

Labor does not support the Government's proposed superannuation guarantee contribution amnesty, which was to provide a twelve-month period for employers to self-correct past super guarantee non-compliance without penalty.

Instead, Labor proposes to introduce legislation to ensure that employers who underpay superannuation to their staff because of a false or misleading statement would face fines equal to 100 per cent of the unpaid superannuation. Employers who fail to advise the ATO about unpaid superannuation when asked would face fines equal to 300 per cent of the unpaid superannuation contribution.

Labor will pursue reforms to require superannuation guarantee contributions for low-income contractors, and also propose to eliminate the \$450 minimum threshold for compulsory employer contributions.

Labor will also include superannuation within the National Employment Standards (NES) in the Fair Work Act. This will enable employees to recoup unpaid or underpaid superannuation from employers through

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<sup>10</sup> Labor's 48<sup>th</sup> National Platform, Item 191

<sup>11</sup> Labor's 48<sup>th</sup> National Platform, Item 227

<sup>12</sup> Labor's 48<sup>th</sup> National Platform, Item 44 "Labor will urgently prioritise this objective by ending the freeze and increasing the Superannuation Guarantee to 12 per cent as soon as practicable. Once the important goal of 12 per cent has been achieved Labor will set out the pathway to its original objective of 15 per cent to further enhance retirement income adequacy for workers".

the Fair Work Commission or the Federal Court. Currently, unpaid employer superannuation contributions are a debt owed to the ATO, and not technically owed to the employee.

## **10. Australian shipping industry tax incentives**

Labor has outlined in its National Policy Platform that it would revitalise the Australian shipping industry with improved corporate and seafarer tax incentives<sup>13</sup>.

## **11. Transparency and disclosure measures**

### **11.1 ATO annual reporting of company data**

Currently, the ATO is required to annually publish tax-paid data for many companies. Labor proposes to reduce the threshold for tax transparency reporting for private companies from \$200 million to \$100 million; a measure estimated to affect approximately 600 large private companies with turnover of between \$100-200 million, currently excluded from this measure.

This reporting is currently limited to total income, taxable income and tax payable. Labor will also consider adding additional data points, such as:

- Carried forward losses and other right-of-reply type data; and
- A link to a company statement/explanation of tax practices or tax transparency report (this is a current recommendation by the Board of Taxation to the Government).

### **11.2 Country-by-Country reporting**

Labor supports excerpts of country-by-country (CbC) reports being made public (e.g. tax, employee numbers). In Australia, CbC reports are required for broadly, groups with over \$1 billion in global revenue.

The Commissioner of Taxation has noted in Senate Estimates (25 October 2017) that the architecture of the CbC regime is that the reports are to be kept confidential and shared only amongst tax authorities.

We expect however, that Labor will instead require companies themselves to report publicly on a CbC basis, for example, to disclose their revenue and profits as well as taxes and royalties paid.

### **11.3 Mandatory adoption of the Voluntary Tax Transparency Code (VTTC)?**

The VTTC is a set of principles and minimum standards to guide medium and large businesses on public disclosure of tax information. The VTTC was developed by the Board of Taxation and endorsed by the Government in the Federal Budget 2016–17.

More recently, the Board of Taxation has finalised a post-implementation review of the Code for the Government. The Government has previously supported a voluntary take-up of the code subject to it being widely adopted.

Labor will consider mandatory adoption of the VTTC for all medium and large corporations operating in Australia, including subsidiaries of multinational corporations<sup>14</sup>.

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<sup>13</sup> Labor's 48<sup>th</sup> National Platform, Item 85

<sup>14</sup> Economics Reference Committee, Final Report, May 2018, Recommendation 8

#### **11.4 Transparency within stapled structures and other entities receiving government funding**

Labor may enhance the Government stapled structure reforms by including transparency measures to require any listed stapled structures, in which trusts derive a majority of income from related parties, to disclose the terms of all such transactions.

This measure may also apply to any group that has annual government funding of over \$10 million which has a trust structure within it that receives a majority of income from related parties.

#### **11.5 Transparency in the extractive industry**

Labor supports the compulsory adoption of transparency in extractive industries.

Labor's Extractive Industries Transparency Regime will require large extractive corporates to disclose payments arising from any activity involving exploration, prospecting, discovery, development or extraction. Disclosure would be on a country-by-country and project-by-project basis. The regime would commence for payments to governments from 1 July 2020.

Payments to be disclosed would include:

- Taxes on income, production or profits;
- Royalties;
- Dividends;
- Signature, discovery and production bonuses;
- Fees including licence fees, rental fees and entry fees and other payments for licences and/or concessions;
- Payments for infrastructure improvements; and
- Production entitlements (such as profit resources).

Payments must be disclosed if they are made to any national, regional or local authority of a country.

A large extractive company shall be defined as a company that meets two out of three criteria below (in the financial year to which the statements relate):

- Total assets exceed \$50 million;
- Net turnover exceeds \$100 million; and
- The average number of employees during the financial year exceeds 250.

Related payments within a financial year must be disclosed if the payments amount to at least \$150 million.

A Shorten Labor government would work with a multi-stakeholder committee to implement the regime including defining project-level reporting, and the establishment of an online reporting mechanism.

Companies captured by other jurisdictions due to dual listings would only be required to produce one report.

#### **11.6 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. a known or suspected tax haven).

### **11.7 Public reporting of AUSTRAC data**

Labor would introduce public reporting of Australian Transaction Reports and Analysis Centre (AUSTRAC) data and require the annual public release of international funds transfer data, being the aggregate total of funds transferred from Australia to individual overseas destinations.

### **11.8 Government tenders**

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.

The Government has announced proposed requirements to demonstrate a good tax record in relation to Government procurement. Labor proposes to broaden this measure to other matters.

### **11.9 Financial statement disclosures**

Labor will consider introducing policy to require all entities receiving \$10 million in annual government payments to file full and complete financial statements with ASIC (or ACNC for non-profits), with no exemptions, and including full disclosure of all beneficiaries (through a beneficial ownership register).

Labor will also consider policy to eliminate reduced disclosure or special purpose filing options on annual financial statements filed with ASIC for subsidiaries of multinationals with over \$500 million in annual revenues.

### **11.10 Public register of beneficial interests**

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 has not progressed further as yet.

Labor has promised to quickly establish a register for companies, as well as trusts and other corporate structures.

### **11.11 ATO disclosure of settlements and reporting of aggressive tax minimisation**

Labor proposes to require that the ATO provide information on the number and size of tax settlements above a value of \$50 million.

The ATO already provides unidentified settlement data in their annual reports, split across taxpayer groups.

## **12 Other**

### **12.1 Anti-phenixing plan including "name and shame powers"**

Labor proposes to provide the Commissioner of Taxation with the ability to "name and shame" individuals and entities as a penalty for serious tax offences under a disallowable legislative instrument. Specifically, the Commissioner will be expected to list taxpayers involved in the following activities:

- Fraudulent phoenix activity;
- Tax evasion and serious avoidance through the use of tax havens and/or offshore accounts;
- Black economy related fraud; and
- Significant Global Entities (and their directors) in breach of the anti-avoidance rules in Part IVA (including the Multinational Anti-Avoidance Law (MAAL) and the Diverted Profits Tax (DPT)).

There are no minimum penalty tax thresholds to the proposed reporting<sup>15</sup>.

In addition, Labor has announced an anti-phoenixing plan (the Government has also made its own announcements). The Labor plan includes:

- Requiring all company directors to obtain a unique Director Identification Number with a 100-point identification check;
- Increasing penalties associated with phoenix activities;
- Introducing an objective test for transactions depriving employees of their entitlements;
- Clarifying the availability of compensation orders against accessories; and
- Allowing the Commissioner to make a direct application to the Australian Securities and Investments Commission (ASIC) to disqualify a director following successful civil or criminal action for serious tax-related non-compliance.

### **12.2 Change of composition of Board of Taxation advisory panel**

The Board of Taxation is an advisory body that provides the Government with real-time advice on tax policy issues by contributing a business and tax community perspective.

Labor would alter the Board composition to include more community sector representation.

### **12.3 Whistleblower rewards**

Greater whistleblower protections are currently being legislated.

Labor supports rewarding whistleblowers where the whistleblower's 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 would be taxable as ordinary income.

### **12.4 Separate appeals area within the ATO**

Labor proposes to legislate to establish a new position of Second Commissioner - Appeals within the ATO, reporting to the Commissioner of Taxation, to head up a new appeals area within the ATO.

This group would be responsible for managing tax disputes for all taxpayers, through pre-assessment reviews, objections, litigation including identifying test cases and providing oversight on settlements, and facilitating the use of Alternative Dispute Resolution throughout the compliance and dispute resolution process.

Funding of \$1.5 million will be provided to the ATO over the forward estimates.

### **12.5 Increase penalties for individuals and entities promoting tax evasion and avoidance**

Labor has announced it will double penalties under the Promoter Penalties regime to allow courts to impose maximum fines of up to \$2 million for individuals and \$10 million for body corporates.

### **12.6 Tax haven investment by superannuation funds**

Labor proposes that the ATO (in collaboration with the ASIC and APRA) develop guidelines for responsible investment by superannuation funds. This is intended to ensure that funds are transparent about their dealings in tax haven jurisdictions.

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<sup>15</sup> Currently taxpayer confidentiality is preserved unless a dispute enters the court system.

## **12.7 Transfer pricing**

Labor will consider whether new transfer pricing rules are required, within the first term of taking office, to incorporate:

- The implications of Federal Court decisions on offshore related party loans; and
- The feasibility of compliance certification, with company directors and auditors directly accountable for any breaches.

## Contacts

### Brett Greig

Partner  
Tel: +61 3 9671 7097  
[bgreig@deloitte.com.au](mailto:bgreig@deloitte.com.au)

### David Watkins

Partner  
Tel: +61 2 9322 7251  
[dwatkins@deloitte.com.au](mailto:dwatkins@deloitte.com.au)

### Mark Hadassin

Partner  
Tel: +61 2 9322 5807  
[mhadassin@deloitte.com.au](mailto:mhadassin@deloitte.com.au)

### Meghan Speers

Partner  
Tel: +61 3 9671 7508  
[mspeers@deloitte.com.au](mailto:mspeers@deloitte.com.au)

### Jonathan Schneider

Partner  
Tel: +61 8 9365 7315  
[joschneider@deloitte.com.au](mailto:joschneider@deloitte.com.au)

### Megan Field

Partner  
Tel: +61 8 8407 7109  
[mfield@deloitte.com.au](mailto:mfield@deloitte.com.au)

### Jacques Van Rhyn

Partner  
Tel: +61 7 3308 7226  
[jvanrhyn@deloitte.com.au](mailto:jvanrhyn@deloitte.com.au)

### Kamlee Coorey

Partner  
Tel: +61 2 9840 7030  
[kcoorey@deloitte.com.au](mailto:kcoorey@deloitte.com.au)

### Spyros Kotsopoulos

Partner  
Tel: +61 2 9322 3593  
[skotsopoulos@deloitte.com.au](mailto:skotsopoulos@deloitte.com.au)

### Shelley Nolan

Partner  
Tel: +61 7 3308 7232  
[shnolan@deloitte.com.au](mailto:shnolan@deloitte.com.au)

### Tim Maddock

Partner  
Tel: +61 8 8407 7123  
[tmaddock@deloitte.com.au](mailto:tmaddock@deloitte.com.au)

### Michael Gastevich

Partner  
Tel: +61 3 9671 8273  
[mgastevich@deloitte.com.au](mailto:mgastevich@deloitte.com.au)

### Peta McFarlane

Account Director  
Tel: +61 3 9671 7868  
[pmcfarlane@deloitte.com.au](mailto:pmcfarlane@deloitte.com.au)

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