

The Treasury
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29 January 2021

2021-22 Pre-Budget Submission EY views and recommendations on tax policy

Dear all

Ernst & Young (EY) welcomes the opportunity to provide our views and recommendations regarding priorities in tax policy for the 2021-22 Budget.

We applaud the Government for implementing various economic recovery measures following the COVID-19 crisis. The Treasurer's media release on 2 December 2020 noted the OECD now expects Australia's economy to contract by 3.8% in 2020 (0.3% less than the previous outlook of 4.1% contraction) which is significantly lower than the average fall of 5.5% across developed countries. EY congratulates the Government in achieving these milestones.

We recommend the Government monitor the ongoing impact of the economic recovery measures as we move towards the 2021-22 Federal Budget. It is likely that positive impact of some of these measures will diminish as they expire in the next few months or years. We therefore urge the Government to consider a number of additional tax policies that will help the Australian economy to recover in the long run through attracting private sector investment and reducing red tape.

Our submission includes discussion and recommendations on several high priority measures (Appendix A) and a list of announced but unlegislated measures (Appendix B). Tax policies that would have favourable impact on the broader economy include:

- ▶ Low investor confidence and lower cashflows caused by the COVID-19 crisis has made capital injections in heavily impacted industries less likely. It is more likely impacted businesses would increasingly rely on debt funding to meet their obligations which may drive the businesses into unfavourable position under the thin capitalisation rules. We reiterate Government should explore introducing an exclusion for increase in third party debt from the thin capitalisation safe harbor limitations in the tax law for an appropriate time period. This exclusion should be in place once the current administrative approach by the ATO expires and would provide an exclusion for the incremental debt in question. In the long term, we recommend that the Government simplifies the complex thin capitalisation rules subject to broader consultation by stakeholders. (Appendix A.1)
- ▶ Further, we still believe for thin capitalisation arm's length debt test (ALDT) the definition of "commercial lending institutions" needs attention specifically in the context of infrastructure investment. We submit that the definition of 'commercial lending institution' be broadened to give taxpayers a higher arm's length debt amount (ALDA) under the lenders test where they raise Government backed debt. This will not increase the ALDA by default as the ALDA is the lower of the amounts determined under lender and the borrower test. (Appendix A.2)
- ▶ We support the current full expensing of depreciating assets measure and appreciate calls subsequent amendments were answered by opening the measure up to a broader spectrum of investors. However, this measure provides a timing only and not a permanent benefit. In the post-COVID era, it will be extremely important how Australia competes against other developed economies to retain existing business activities in Australia and remain an attractive destination for

onshoring activities. We note the new Biden administration in the US is in looking at introducing new attractive onshoring incentives designed to create a permanent tax benefit. In order to remain competitive, we submit that the Government introduces an investment allowance to enhance the after-tax outcome of investments. This investment allowance could be introduced with a three-year sunset clause which can be extended on a need's basis depending on the state of the economy (Appendix A.3)

- ▶ We applaud the Government's enhancing R&D tax incentive (R&DTI) measure as announced in the 6 October 2020 budget. EY has been a strong advocate of broadening of R&DTI measures as you have seen in our previous pre-budget submissions and other R&DTI-related consultations. We further commend the Governments action to resolving persistent uncertainty by taking quick legislative action and securing fast passage of the law with close to universal parliamentary support of the revised measures.

We submit that the Government focus on implementing further policies to make Australia a significantly more attractive location for R&D through offering:

- ▶ On-shoring incentives through targeted lower tax rates for companies operating in Australia, relating to their income from domestic and foreign sources attributable to IP/technology/patents (Appendix A.4)
- ▶ A collaboration premium of up to 20% for the non-refundable tax offset to provide additional support for the collaborative element of R&D expenditures undertaken with publicly funded research organisations Appendix A.5)

The Government's response in the 2020-21 budget to further clarify the Australian corporate tax residency test with retrospective effect was much appreciated. It still is vital for businesses impacted by the uncertainty regarding their residency in Australia to see the legislation finalised and introduced into Parliament as soon as possible.

The announced renewed commitment to modernise and expand Australia's tax treaty network is important for reducing uncertainties and tax barriers with international transactions and promote trade, investment and skilled employment. We submit that the Government keeps the momentum going. EY has been an active participant in public and private consultations on various international tax policies issues and we look forward to continuing participation in future consultations.

We are grateful to the Government for announcing fringe benefits tax (FBT) exemption for certain employer-provided retraining and reskilling costs, for employees who are redundant or soon to be made redundant. EY has urged the Government to implement this measure in consultations held with the Senate Committee on Financial Technology and Regulatory Technology in 2020. We also applaud the other FBT announcements made in the 2020-21 budget. We submit that the Government move ahead to implement these measures following public consultations so that the private sector is confident and certain in planning ahead based on these announcements. We would be pleased to work with the Government and offer our support in materialising these measures.

In addition to points above more efficient administration and certainty provided by the Government are important in reducing the cost of doing business in Australia. The list of announced but unlegislated tax measures outlined in Appendix B continues to grow. We urge the Government to review and resolve items on this list to support better certainty for the industry stakeholders. We would be very pleased to arrange a meeting with Treasury to discuss the way forward following a blueprint applied in the past where matters on the list were classed from high priority to items announced as discontinued.

To discuss these matters please contact Alf Capito (+61 2 8295 6473) or Tony Merlo (+61 3 8575 6412) in our Tax Policy Centre.

Yours sincerely,

Ernst & Young

Copies to:

Treasurer Mr Josh Frydenberg and Mr David Pullen - Treasury

Assistant Treasurer Mr Michael Sukkar and Ms Lucy Connor - Office of The Hon Michael Sukkar MP

Appendix A

A.1 Third-party loan considerations for thin capitalisation purposes

The Federal Government's SME loan guarantee scheme and State Governments' loan support measures were put in place in response to COVID-19.¹ Since our submission in September 2020 the RBA official cash rate was cut by another 0.15%, now sitting at a record low of 0.1%, is also driving commercial loans to historically low interest rates.²

Availability of credit at a low interest rate are important factors for businesses considering how to capitalise their business.

It is likely businesses impacted by COVID-19 will increasingly rely on debt funding to meet their liquidity requirements, and therefore either potentially be subject to a denial of tax deductions on interest expense where they rely on the safe harbour debt amount, or be subject to the strenuous and subjective obligations of the arm's length debt test (ALDT) for thin capitalisation purposes.

The ATO provided a concessional approach to COVID-19 and Thin Capitalisation³ for taxpayers temporarily pushed out of the Thin Capitalisation safe harbour for income years including the months of February and March 2020. The concession effectively allows taxpayers that might otherwise fail the safe harbour debt amount because of impaired asset values or increased debt to provide liquidity in direct response to COVID-19, to apply a simplified approach to the ALDT provided certain assumptions can be met. This concession will no longer be available for income year commencing on or after 1 April 2020.

There is a significant amount of uncertainty in the business community as to how the global and Australian economies will recover from the virus-led recession. Giving taxpayers a greater degree of certainty in relation to their tax deductions on their interest expense on tax returns for income years commencing on or after 1 April 2020, is an important support measure Government should consider. Many taxpayers will be unable to refinance and deleverage their balance sheets in the current environment.

The ATO has flagged in its final ATO compliance approach to the arm's length debt test (PCG 2020/7)⁴ that it is not common for independent Australian businesses to gear in excess of 60% of their net assets and relatively few entities have applied the ALDT.

This view does not consider the extremely unique scenarios COVID-19 has presented, with businesses expected to be more debt-dependent given liquidity requirements and using safe harbour rules for thin capitalisation has become problematic for many companies. For example, many commercial real estate investment companies are particularly vulnerable because of the significant impairment of their assets, and the impact on their cash flows due to State Government enforced COVID shutdowns and the non-payment of rent by tenants.

¹ The Coronavirus Small and Medium Enterprises (SME) Guarantee Scheme is supporting up to \$40 billion of lending to SMEs (including sole traders and not-for-profits) - [link](#).

² The RBA elements of the 3 November 2020 package - [link](#) - are as follows:

- a reduction in the cash rate target to 0.1 per cent
- a reduction in the target for the yield on the 3-year Australian Government bond to around 0.1 per cent
- a reduction in the interest rate on new drawings under the Term Funding Facility to 0.1 per cent
- a reduction in the interest rate on Exchange Settlement balances to zero
- the purchase of \$100 billion of government bonds of maturities of around 5 to 10 years over the next six months.

Under the program to purchase longer-dated bonds, the Bank will buy bonds issued by the Australian Government and by the states and territories, with an expected 80/20 split.

³ COVID-19 and Thin Capitalisation - Simplified approach to the arm's length debt test (ALDT) – [link](#).

⁴ Practical Compliance Guide PCG 2020/7: ATO compliance approach to the arm's length debt test – [link](#).

Time is running out quickly for taxpayers needing to recapitalise their balance sheet and for some there might be no viable refinance option to reduce the level of debt, potentially resulting in permanent denials of tax deduction on interest.

We submit that the Government introduces a moratorium which would grant an exclusion for thin capitalisation limits for increases in third party debt for an appropriate time period (e.g. up to 30 June 2021). This would be an exclusion for the incremental debt in question and would provide businesses a greater incentive to borrow in order to invest and grow their businesses and support the Australian economy's recovery from the COVID-19 recession.

Indeed, we would see it as somewhat counterproductive to make interest deductions non-deductible for new borrowings from third parties where the borrowing is used to invest in plant and equipment that qualifies for investment allowance, accelerated depreciation, or other COVID-19 incentives. The long-term solution is to simplify the complex thin capitalisation rules beyond the 2021-22 budget subject to broader consultation with stakeholders.

A.2 Thin capitalisation ALDT and definition of “commercial lending institutions”

The definition of “commercial lending institutions” is core to the lender’s test in the ALDT for thin cap provisions which checks “whether unrelated commercial lending institutions would reasonably be expected to have entered into the arrangement”.

Commercial lending institutions encompass banks, ADIs and entities that conduct activities (or perform functions) analogous to banking and finance businesses. These activities (or functions) would typically involve raising finance through borrowing and on-lending at a margin. It would be expected that the entity operates with a view to maximising its profit or return on capital such that the terms and conditions on which finance is provided are arm’s length. Investors that purchase or subscribe to bonds (or similar instruments) on debt capital markets are taken to satisfy the meaning of commercial lending institution.

However, PCG 2020/7⁵, states “entities such as special purpose vehicles or government-owned organisations (for example, Clean Energy Finance Corporation) would not be considered commercial lending institutions”.

The ATO explained in consultation Government backed loans are not necessarily commercial as the terms are not on a commercial basis and it is therefore constrained by legislation which does not allow a more favourable interpretation. The ATO sees the good intent by the Government in supporting business in securing loans but from a tax deductibility point of view this would need to be backed by legislation and EM.

We think this needs attention specifically in the context of infrastructure investment. Otherwise a company willing to invest infrastructure and with a track record of significant debt funding would see the arm’s length debt amount (ALDA) potentially reduced from the higher amount under the borrower test to the lower amount under the lender test, where a lower Government backed interest rate would have supported a higher amount of debt under the lender test.

It seems contrary to the national interest that ‘nation shaping’ pieces of infrastructure partially funded via concessional loans from a Government body are potentially subject to scrutiny by a separate Government body (i.e. the ATO) around the deductibility of the interest in relation to those loans. We submit that the definition of ‘commercial lending institution’ be broadened to give taxpayers a higher ALDA under the lenders test where they raise Government backed debt. This will not increase the ALDA by default as the ALDA is the lower of the amounts determined under lender and the borrower test.

⁵ Practical Compliance Guide PCG 2020/7: ATO compliance approach to the arm's length debt test – [link](#).

A.3 Investment allowance providing better project returns

We applaud the Government's temporary full expensing of depreciating assets measure announced in the 2020-21 budget and enacted soon after. However, the measure only provides a timing benefit to businesses by bringing forward depreciation deductions of eligible investments.

We suggest that a permanent tax benefit for investment rather than the timing only benefit of the full expensing measure is required to make investment decisions in Australia more attractive as distinct from investing in other countries with lower corporate tax rates.

Following the global economic turmoil in 2020, many countries around the world have focused on providing investment incentives and onshoring business activities in their local jurisdictions. It is necessary that Australia monitors key incentives provided by other developed nations in order to retain business activities in Australia and remain an attractive destination for onshoring activities from foreign jurisdictions.

In the US, the Joe Biden administration has proposed⁶ the 'Made in America' initiative to establish a 10% advanceable tax credit for companies making investments that will create jobs and accelerate economic recovery in the US. The tax credit will be provided for:

- ▶ Revitalising existing closed or closing facilities: Investment to revitalise facilities so that it can reopen for job-creating production in any manufacturing area. For example, if a new company or worker-owned cooperative were to reopen or renovate a closed factory to produce a new product, it would be eligible
- ▶ Retooling any facility to advance manufacturing competitiveness and employment: For example, a steel plant that invests in new machinery and equipment to meet new standards, or to improve export competitiveness
- ▶ Reshoring production to the US that creates jobs: Any expense or new investment related to the process of bringing back production (or call centre jobs or other service jobs) from overseas to the US, including shipping and moving costs and the costs of training new personnel
- ▶ Expanding or broadening US facilities to grow employment: These activities are eligible if the investment represents an expansion of US production and not simply relocating existing jobs or production within the US
- ▶ Expanding manufacturing payroll: The tax credit will be applicable to a company's incremental increase in overall manufacturing wages in the US. The tax credit will apply to the increment of increased wages -- above that company's historic, pre-COVID baseline -- for manufacturing jobs paying up to US\$100,000

In order to remain competitive against the US counterparts, we submit an Australian investment allowance could be developed. Notably a new investment allowance:

- ▶ Would be an additional tax deduction, in addition to the ordinary capital allowances available for acquisition of plant and equipment and would therefore result in a premium tax benefit which would improve the effective tax rate applicable to the investment. It will amount to a targeted tax rate reduction which is conditional on new investment, new activity and the creation of growth and jobs for Australia

⁶ 'The Biden-Harris Plan to Fight for Workers by Delivering on Buy America and Make It in America' – Factsheet released on joebiden.com - [link](#)

- ▶ The premium additional tax benefit will actually enhance reported earnings of companies. Therefore, it will be more attractive than a mere pull-forward of tax depreciation claims
- ▶ The measure could be introduced with a sunset clause of three years which can be extended depending on the state of the economy.

A.4 Onshoring intellectual property (IP)

Australia's high corporate tax rates for larger companies make Australia's tax system internationally uncompetitive. Australia's mobile businesses with potential third-party IP-related revenues can relocate these functions overseas e.g. to achieve a UK tax rate of 19% or US tax rate of 21% or less.

- ▶ A 10% tax rate is offered by the UK for its patent box activities as well as the 19% corporate rate
- ▶ The US has introduced a specific tax concession for income which is deemed to be foreign derived intangible income (FDII) which offers a 13.125% corporate tax rate through to 2025⁷ as well as its 21% corporate tax rate
- ▶ Singapore offers a 17% tax rate
- ▶ The maximum tax rate for this incentive to be attractive would be the 19% UK corporate tax rate.

The most mobile activities of businesses relate, we submit, to their IP development and exploitation by way of licensing. These activities, in our view, and as highlighted by various business organisations, are drifting offshore as Australian companies, particularly early stage companies, relocate early-stage IP into foreign jurisdictions, to benefit from incentives of this nature.

We say the time is right for Australia to offer a comparable incentive for onshoring of IP revenue, to stimulate Australian business activity and employment of scientists, researchers, and STEM students and involvement of Australian tertiary sector.

We suggest that the Government could consider a targeted incentive to provide lower tax rates for companies operating in Australia, relating to their income from attributable to IP/technology/patents of Australian companies an "IP onshoring incentive."

We would be pleased to participate in detailed development of the concession, consistent with relevant OECD requirements. An additional condition might be that the relevant income is not derived from an Australian resident (a requirement of the section 448 tainted services income definition).

The company tax rate for "on shored IP income" could be set at a rate in the region of 13%-19%:

- ▶ A 10% tax rate such as the UK offers for its patent box activities may be achievable but may not be appropriate in the long-term given the likely "Pillar Two" under the OECD digitalisation policy
- ▶ The US offers a 21% corporate tax rate for onshore activities, with its specific tax concession for foreign derived intangible income (FDII) which offers a 13.125% corporate tax rate

⁷ Broadly, this is achieved using a statutory deduction which provides domestic corporations with a 37.5% deduction for any FDII. This reduces the 21% corporate tax rate for a domestic corporation to an effective US federal tax rate of 13.125% on its FDII, before claiming any available foreign tax credits. Refer <https://www.ey.com/gl/en/services/tax/international-tax/alert--us-proposed-section-250-regulations-on-gilti-fdii-deduction-have-implications-for-partnerships---s-corporations---trusts-and-individual-owners-of-cfcs>

- ▶ The 17% tax rate which Singapore offers is likely to be acceptable in the Pillar Two context and would make Australia's activities comparable to that of a key competitor or location
- ▶ The maximum tax rate for this incentive to be attractive would be the 19% UK corporate tax rate.

We submit this low tax rate for onshoring IP income:

- ▶ Could make Australia an attractive location for scientific, engineering and R&D activities which generate actual real income for Australia
- ▶ Would encourage employment of scientists, engineers and STEM graduates in Australia instead of the ongoing brain drain when such people seek to progress their careers
- ▶ Would create broader highly paid white-collar employment opportunities related to the DEMPE activity managing and protecting the IP as well as commercialising and dispatching products
- ▶ Would achieve a lower corporate tax rate for Australia's most mobile business sector
- ▶ Would not amount to a race to the bottom, but instead a prudent response to the major international trends including the UK patent box concession, the US FDII, and the UK and US lower corporate tax rates. These are not tax haven countries and we submit their policies must be considered as acceptable under the international BEPS policy development process.

A.5 R&D collaboration premium

A related incentive recommended by the April 2016 Review of the R&D Tax Incentive report (3F report⁸) which proposed the introduction of a collaboration premium of up to 20% for the non-refundable tax offset to provide additional support for the collaborative element of R&D expenditures undertaken with publicly-funded research organisations.

We note that collaboration between publicly funded research organisations (such as universities) and industry is comparatively low in Australia. While Australia generates world-class research, translation to commercialised products and services is low. As such, we support an – in this case in the R&D tax incentive to provide additional support for collaboration.

We also submit that the collaboration premium could apply to expenditure with Research Service Providers (RSPs). RSPs are already 'natural' partners for undertaking R&D activities and a collaboration premium will further promote and encourage this behaviour by industry.

In addition, if collaboration premium expenditure was exempt from the R&D expenditure threshold (increased to \$150 million in following 2020-21 budget announcement), it may encourage large companies to choose to conduct more R&D with publicly funded research agencies. This policy would:

- ▶ Encourage companies to engage undertake more collaboration R&D expenditure in Australia to enhance Australian IP
- ▶ Enhance funding for the relevant research organisations and (to the extent they are in the tertiary education sector) potentially reduce pressure on tertiary education funding requirements.

⁸ Recommendation 2 of the *Review of the R&D Tax Incentive*, by Mr Bill Ferris AC, Chair, Innovation Australia, Dr Alan Finkel AO, Chief Scientist and Mr John Fraser, Secretary to the Treasury, 4 April 2016

Appendix B

Key unlegislated measures list

Measure and Date of Effect (DOE)	Announced	Developments	Current Status
<p>Modernising Australia's treaty network The Government has committed to modernise and expand Australia's tax treaty network which is important for reducing uncertainties and tax barriers with international transactions and promote trade, investment and skilled employment DOE: Date following exchange of instruments</p>	6 October 2020 (2020-21 Budget)	None	Waiting for consultation
<p>Corporate residency test The Government's response in the 2020-21 budget to the BoT Recommendations on clarifying the Australian corporate tax residency test with retrospective effect was much appreciated. It still is vital for businesses impacted by the uncertainty regarding their residency in Australia to see the legislation finalised and introduced into Parliament soon. DOE: 15 March 2017</p>	6 October 2020 (2020-21 Budget)	None	Waiting for ED/Bill
<p>Fringe benefits tax on retraining redundant employees One of our submission points in 2020-21 pre-budget submission was the amendment of FBT law to exempt from FBT, costs and activities undertaken by employers to attempt to re-skill and retrain terminating employees. We would like to thank the Government for announcing this measure prior to the 2020-21 budget. DOE: 2 October 2020</p>	2 October 2020 (2020-21 Budget)	None	Waiting for ED/Bill
<p>Education and training expense deductions for individuals The Government announced in 2020-21 Federal Budget that it would consult on allowing individuals deduct education and training expenses they incur, where the expense is not related to their current employment. DOE: Unknown</p>	6 October 2020 (2020-21 Budget)	Treasury discussion paper on 11 December 2020	Waiting for ED/Bill
<p>CGT exemption for granny flat arrangements The Government's response in the 2020-21 budget to the BOT recommendations was to introduce a CGT exemption for the creation, variation or termination of a formal written granny flat arrangement entered into. DOE: Income year following commencement</p>	5 October 2020	None	Waiting for ED/Bill
<p>Tax consolidation law change from new AASB 16 "Leases" accounting standard Changes to the Part 3-90 Income Tax Assessment Act 1997 (ITAA 97) tax consolidation groups law must be developed following the introduction and commencement of new accounting standard AASB16 "Leases" (AASB16). DOE: Reporting periods commencing on/after 1 January 2019</p>	N/A	None	Waiting for Government response
<p>Updated list of information exchange countries The list of Information Exchange Countries will be expanded to add Hong Kong, Dominican Republic, Ecuador, El Salvador, Jamaica, Kuwait, Morocco, North Macedonia, and Serbia. Kenya will be removed. DOE: 1 July 2021</p>	6 October 2020 (2020-21 Budget)	None	Waiting for ED/Bill
<p>Division 7A reform The Treasury consultation paper largely does not follow the relevant recommendations of the BoT report and does not provide the simplification and certainty sought. Rather the Treasury apparent focus is on expanding the scope of the provisions generally, including winding back current mechanisms that provide reasonably acceptable outcomes for private company groups and their owners. The proposals only include very limited changes which might simplify the application of the rules however the higher required interest charges and integrity rules lead to increased taxpayer costs entering into complying loan agreements and outweigh any potential benefits. DOE: On or after Royal Assent of the enabling legislation</p>	2016 Budget	Commencement date deferred	Waiting for ED/Bill
<p>Incentives for Hong Kong businesses relocate into Australia Incentives to attract export-oriented Hong Kong based businesses to relocate to Australia. New visa arrangements for students, temporary graduates and skilled workers. Permanent visa pathways for all critical Hong Kong based staff of the relocated businesses. DOE: Unknown</p>	9 July 2020	None	Waiting for ED/Bill

<p>Sharing economy platform providers reporting regime Reporting obligations for sharing platform providers and financial institutions. Measures on design characteristics of the regime, scope of reporting requirements and reporting obligation alternatives DOE: 1 July 2022, 1 July 2023</p>	8 May 2018 (2018-19 Budget)	Treasury consultation paper on 22 January 2019	Waiting for ED/Bill
<p>Initial Coin Offerings (ICOs) regulatory and tax issues Treasury consultation on various aspects of cryptocurrency ICOs including definitions and token categories, drivers of the ICO market, opportunities and risk, regulation of ICOs and regulatory frameworks in Australia, and the tax treatment of ICOs DOE: Unknown</p>	30 January 2019	Treasury issues paper 30 January 2019	Waiting for consultation paper
<p>Doubling the value limit and reduced public disclosure under Employee Share Scheme (ESS) Amends the ESS framework including:</p> <ul style="list-style-type: none"> disclosure, licensing, advertising and on-sale obligations; doubling the value limit of eligible financial products from \$5,000 to \$10,000; expanding ESS to include contribution plans; and allowing small businesses to offer ESS without publicly disclosing commercially sensitive financial information unless it is required <p>DOE: Unknown</p>	13 November 2018	Treasury consultation paper 3 April 2019	Waiting for government response
<p>Amending Australia's Offshore Banking Unit (OBU) Regime Reform of Australia's OBU regime to strengthen the integrity of Australia's tax system. On October 16 the OECD's Forum on Harmful Tax Practices raised concerns during a review of this regime, including the concessional tax rate and the ring-fenced nature of the regime DOE: Unknown</p>	26 October 2018	None	Waiting for government response
<p>Accounting standard: Taxation of insurance companies - AASB17 Consultation paper (CP) on tax impacts of implementing the new accounting standard for insurance contracts (AASB17) which will apply mandatorily for annual reporting periods beginning on or after 1 January 2021, including:</p> <ul style="list-style-type: none"> whether the tax law for health insurers should be codified rather than relying on the ordinary principles whether the tax law should specify how to calculate outstanding claims liabilities for general insurance companies <p>DOE: 1 January 2021</p>	5 November 2018	None	Waiting for ED/Bill
<p>Removing CGT discounts for MITs and AMITs Announced in 2018 Budget - Managed Investment Trusts (MITs) and Attribution MITs (AMITs) will no longer be eligible to apply the 50% capital gains tax (CGT) discount at the trust level. MITs and AMITs will still be able to distribute a capital gain that can be discounted in the hands of the beneficiary, when entitled DOE: Income years commencing on/after 3 months after Royal Assent of the enabling legislation</p>	8 May 2018 (2018-19 budget)	Commencement date delayed to income years commencing on/after 3 months after Royal Assent	Waiting for ED/Bill
<p>Increasing transparency of the beneficial ownership of companies Improve transparency of information on beneficial ownership and control of companies available to relevant authorities DOE: Unknown</p>	12 February 2017	Treasury discussion paper 12 February 2017	Waiting for government response
<p>Mandatory reporting by professionals of aggressive tax Requires tax advisers and/or taxpayers to make early disclosures of aggressive tax arrangements to provide tax authorities with timely information on arrangements that have the potential to undermine the integrity of the income tax system DOE: Unknown</p>	3 May 2016 (2016-17 Budget)	Treasury discussion paper 3 May 2016	Waiting for government response
<p>CCIV non-resident withholding taxes Consultation paper released concerning proposed changes to non-resident withholding tax rules for Corporate Collective Investment vehicles (CCIVs). The proposals are intended to ensure that the Australian funds management sector is internationally competitive DOE: Unknown</p>	4 May 2016 (2016-17 Budget)	Treasury discussion paper 3 November 2016	Waiting for government response
<p>Redesign of the TOFA framework to reduce scope, decrease compliance costs and increase certainty DOE: 1 January 2018</p>	3 May 2016 (2016-17 Budget)	None	Waiting for ED/Bill

<p>TOFA 2 foreign currency technical changes Makes technical and compliance cost savings amendments to foreign currency regulations under TOFA. Makes minor technical amendments to the foreign currency provisions to provide further clarity. Measure confirmed to be proceeding in “Integrity restored to Australia’s Taxation System” Assistant Treasurer media release 14 December 2013 DOE: Unknown</p>	5 August 2004	None	Waiting for ED/Bill
<p>TOFA 3 & 4 tax hedging rules Ensures only the effective portion of the gains and losses from hedging financial arrangements will be subject to the TOFA tax hedging treatment. Also clarifies Measure confirmed to be proceeding in “integrity restored to Australia’s Taxation System” Assistant Treasurer media release 14 December 2013 DOE: Unknown</p>	11 May 2010 (2010-11 budget)	Treasury discussion paper 15 February 2012	Waiting for ED/Bill
<p>MEC Group rules review Loss integrity rule for eligible tier one companies and clarify certain interaction rules for MEC groups DOE: 1 July 2014</p>	14 May 2013	Treasury discussion paper 16 March 2015	Waiting for ED/Bill
<p>Functional Currency Extending the range of entities that can use a functional currency. Measure confirmed to be proceeding in “integrity restored to Australia’s Taxation System” Assistant Treasurer media release 14 December 2013 DOE: Unknown</p>	10 May 2011 (Budget 2011-12)	None	Waiting for ED/Bill
<p>Removal of key barriers to the use of asset backed financing arrangements Measures include deferred payment arrangements and hire purchase arrangements. The reforms will ensure that asset backed financing arrangements are treated in the same way as financing arrangements based on interest bearing loans or investments (this was formerly designated as Islamic finance review but is broader) DOE: Unknown</p>	3 May 2016 (2016-17 budget)	None	Waiting for ED/Bill
<p>Proposed franking integrity rule for distributions funded by capital raisings A specific tax integrity measure preventing the distribution of franking credits where a distribution to shareholders is funded by capital raising activities DOE: Unknown</p>	17 April 2015; Confirmed in 2016/17 MYEFO on 19 December 2016	None	Waiting for ED/Bill
<p>Non-resident CGT ED introduced to amend the principal asset test in Australia’s foreign resident CGT regime to prevent double counting of certain non-TARP assets. Technical correction made to ensure the rules operate as intended when it refers to the permanent establishment rules DOE: Unknown</p>	14 May 2013 (2013-14 Budget)	ED 13 May 2014	Waiting for legislation

Board of Taxation reviews awaiting government response

Measure and Date of Effect (DOE)	Announced	Developments	Current Status
Board of Taxation - Post implementation review of the Tax Transparency Code Proposes several revisions to the TTC including, introduction of best practice standards, reconciliation to ATO transparency reports DOE: Unknown	August 2018	BoT post implementation consultation paper 26 February 2019	Waiting for government response
Board of Taxation - Income tax residency rules for individuals Canvasses stakeholder views on: <ul style="list-style-type: none"> options for a two-step model for individual tax residency; and integrity risks posed within the existing and any reformed individual residency rules by 'residents of nowhere' and related schemes to circumvent the tax residency rules DOE: Unknown	9 July 2018	BoT final report 12 December 2019	Waiting for government response
Board of Taxation – Small business tax concessions Board review to improve tax concessions that can help small businesses and positively contribute to the broader economy DOE: Unknown	21 May 2018	BoT final report 12 December 2019	Waiting for government response
Board of Taxation – Asset merger rollover relief Board to consider technical and implementation issues that would need to be further examined, including the characterisation of assets, substantial interest requirements and the absence of stamp duty relief which could impact on the proposal's success DOE: Unknown	January 2016	BoT final report 12 December 2019	Waiting for government response
Board of Taxation – Income treatment of certain forms of deferred consideration (earnouts) Self-initiated post-implementation review of CGT look-through provisions for eligible earnout arrangements contained in Subdivision 118-I of ITAA 97. Also investigated deferred consideration arrangements that fall outside the scope of the earnout rules DOE: Unknown	26 May 2017	BoT final report 12 December 2019	Waiting for government response
Board of Taxation – Greater alignment between tax and accounting systems in Australia Self-initiated project to consider potential areas for greater alignment between tax and accounting treatments, to reduce the compliance and administrative burden on taxpayers that produce financial statements DOE: Unknown	April 2015	BoT final reports October 2018	Waiting for government response
Board of Taxation – Self-initiated review of the tax treatment of bare trusts and similar arrangements Self-initiated review into the tax arrangements applying to bare trusts and similar arrangements, used widely in society by individuals, domestic and multinational businesses, and charities with almost \$4.5 trillion in assets held via these arrangements by licensed custodians alone DOE: Unknown	June 2017	None	Waiting for government response
Board of Taxation Study: Differences in core definitions and concepts between state, territory and federal tax laws Analysing the increased costs of conducting business associated with a lack of harmonisation of core definitions and concepts across all levels of tax law in Australia DOE: Unknown	30 March 2017	None	Waiting for government response