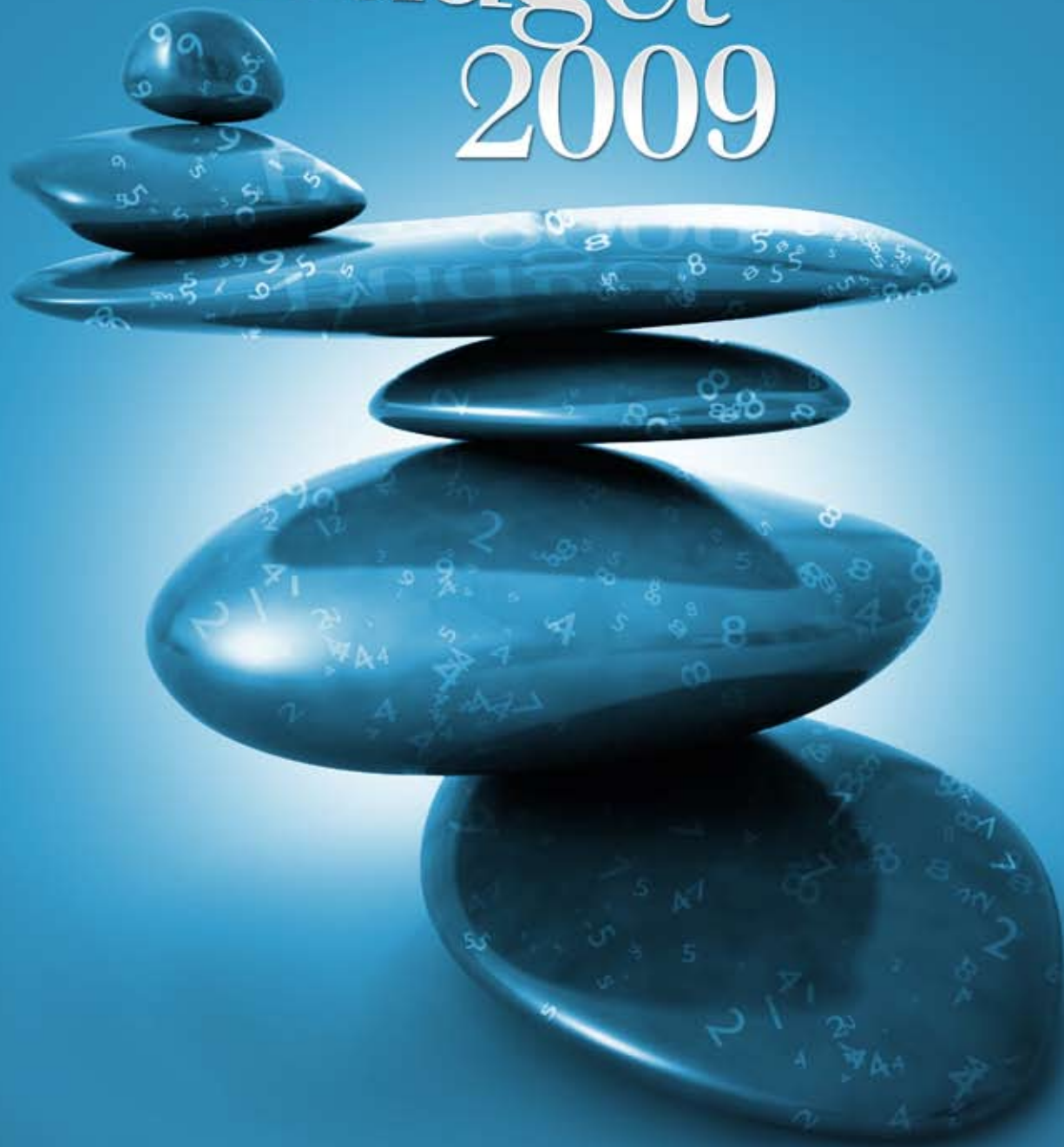




BDO Kendalls

Federal Budget 2009



The ultimate balancing act

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2009 Federal Budget

The ultimate balancing act – Or is it?

We live in “the most challenging global economic conditions since the Great Depression” stated the Treasurer, as he brought down his second budget in an economic environment few could have imagined twelve months ago.

In 2008, despite looming financial uncertainty, the Rudd Government attempted to be a prudent economic manager by budgeting for a \$21.7 billion surplus while launching major nation-building initiatives and measures to assist working families. Twelve months on, the Government is struggling to achieve the ultimate balancing act - economic stimulus while maintaining fiscal responsibility.

Faced with rising unemployment and a global recession, the Government has chosen to forego the usual path of tax increases or expenditure cuts in favour of further borrowing to fund its latest economic stimulus package - one of the largest infrastructure investments ever seen in this nation's history.

Major spending expected to drive the economy includes:

- Road, rail, ports and infrastructure projects - \$22 billion;
- National Broadband network - \$43 billion;
- Clean energy initiative supporting low emission technologies - \$4.5 billion;
- Tertiary education, research and innovation - \$5.3 billion over 6 years; and
- Hospital and health care – over \$5 billion.

However, this comes at a cost. The budget deficit for 2009/10 is forecast to be a massive \$57.6 billion dollars.

Given the size of the deficit, it is not surprising that there are few major tax and business initiatives. As part of this budget the Government has indicated that it will adopt a number of technical recommendations made by the Board of Taxation and will engage in further consultation in relation to these proposed recommendations.

Apart from those in the construction industry, winners include pensioners and those entitled to paid parental leave. Losers include those caught by the reduction in the concessional contributions cap for superannuation, participants of employee share plans and changes to the private health insurance rebate and Medicare levy surcharge impacting higher income earners.

Mr Swan believes “you can offset a temporary collapse in revenue with a program of responsible borrowing that also provides the stimulus the economy needs when private sector investment is in retreat”.

Time will tell whether the collapse in revenue is in fact temporary, and whether the program of borrowings is indeed responsible.

Corporate tax

Off-market share buy-backs

The Government will introduce legislation which will implement all of the six recommendations of the Board of Taxation in respect of the taxation treatment of off-market share buy-backs, with effect from the date of Royal Assent of the amending legislation.

In particular, the Government will introduce legislation to:

1. ensure the Australian Taxation Office removes the '14% administrative cap' on the level of the discount under off-market share buybacks conducted by listed companies;
2. establish a specific provision to debit the franking account of a company that undertakes an off-market share buy-back to cancel the tax benefit of streaming imputation credits from non-resident to resident shareholders;
3. deny notional losses to shareholders that participate in off-market share buy-backs conducted by listed companies;
4. modify the income tax law to specify the basis for determining the capital/dividend split, extend the period of lodgement for a distribution statement for a company conducting an off-market share buy-back, and confirm that certain integrity rules do not apply to tender style off-market share buy-backs;
5. provide amendments to ensure the off-market share buyback provisions apply generally in the same way to listed and unlisted companies (subject to certain modifications); and
6. transfer the share buy-back provisions from the Income Tax Assessment Act 1936 to the Income Tax Assessment Act 1997.

Legislation reflecting the Board's recommendations will be introduced as soon as practicable, with further details due to be released by the end of May 2009.

BDO Kendalls' comment

Although the Government believes this measure will increase certainty and flexibility for companies undertaking off-market share buy-backs and their shareholders, a robust and comprehensive consultation process will be required to ensure this objective is satisfied.

Changes to the foreign source income and anti-deferral regimes

The Government will implement various reforms to the anti-deferral and attribution regimes, including reforming the controlled foreign company (CFC), foreign investment fund (FIF) and other anti-deferral and attribution regimes. The proposed reforms will have effect for income years on or after the relevant legislation receives Royal Assent.

These regimes were originally intended to restrict the ability of Australian residents to accumulate income offshore and to defer (or avoid) Australian taxation. However, the Government has acknowledged that these regimes have become inefficient and poorly targeted given the internationalisation of the Australian economy.

The proposed changes aim to implement many of the recommendations arising from the Board of Taxation's recent review of the anti-deferral regimes. In particular:

- the CFC rules will be modernised and re-written into the Income Tax Assessment Act 1997. Furthermore:
 - the definitions of what constitutes active and passive income will be updated,
 - the existing listed country exemptions and Australian financial institution subsidiary exemptions will be retained, with additional exemptions to be introduced for complying superannuation entities; and
 - the CFC reforms will provide a choice of attribution methods (including a branch equivalent calculation, market value and deemed rate of return methods).
- the existing FIF rules will be repealed and replaced with a more specific anti-avoidance rule which will be applicable to offshore accumulation or roll-up funds,
- as a result of the removal of the FIF rules, closely held fixed trusts will be brought into the rewritten CFC rules where this is required to prevent deferral,
- the deemed present entitlement rules will be repealed; and
- the transferor trust rules will be amended to “enhance their effectiveness and improve their integrity”.

However, the Government will not proceed with the listed public company exemption recommended by the Board of Taxation.

The Government will consult on the implementation of these reforms.

BDO Kendalls' comment

The proposed reforms to the CFC regime and the removal of the FIF regime are a welcome development. In particular, the complex and potentially punitive nature of the FIF rules currently present a major impediment to Australian taxpayers investing and operating internationally.

Uniform Capital Allowance Regime – Technical changes

The Government has announced a number of technical changes to the Uniform Capital Allowances (UCA) regime “to correct deficiencies and improve certainty for taxpayers”.

Proposed changes, applying from 1 July 2001, include amendments to:

- reduce the balancing adjustment amount where a taxpayer ceases to hold an asset prior to use (or installation for use) and had intended to use that asset, wholly or partly, for a non-taxable purpose;
- ensure that the definition of depreciating asset includes ‘plant’ as defined in sections 45-40, to ensure that a depreciating asset includes all the components of plant;
- ensure that there is no change in the taxation treatment in circumstances where a mining right expires or is surrendered (along the lines set out in Subdiv 124-L for CGT purposes);
- ensure that there is no double taxation where a pre-UCA mining right together with a pre-UCA mine site improvements are disposed of; and
- ensure that where an improvement is made by the owner of a quasi ownership right, a subsequent owner of that right or the owner of a subsequent quasi ownership right over the land is a holder of the improvement.

Proposed changes, applying from 1 July 2009, include amendments to:

- remove any inconsistency that arises between subsections 28-45 (2) and 40-230 (1) when a car is acquired in one income year but is not used until the next income year and there is a change in the luxury car limit;
- provide a cost for a depreciating asset where that asset was acquired as a replacement asset for depreciating asset that was lost or destroyed;
- provide a reduction in the cost of a depreciating asset that is not fully paid (or a discount provided) where the taxpayer purchases that asset by instalments;
- provide roll-over relief under section 40-340 for taxpayers using low value pools to ensure that they are treated in the same way as other taxpayers;
- ensure that assets costing less than \$1,000 and first used for exploration or prospecting are not allocated to a low value pool;
- ensure that taxpayers take into account any initial non-taxable use of the asset before allocation to a low value pool; currently the cost is the original acquisition price;
- provide a basis for apportioning the total decline in value of all assets in the low-value pool across assets used for particular activities;
- ensure that the anti-overlap rules between the uca and capital gains tax provisions apply as intended;
- address issues arising where a taxpayer sells a depreciating asset for a certain sum payable by instalments where the full amount is not paid or a discount is provided;

- with respect to project pools, ensure that non-cash benefits, the amounts of terminated liabilities, set-offs, reductions in liabilities and amounts credited are included in assessable income when the project is abandoned, sold or disposed of and ensure consistency of language in subsections 40-830 (5) and (6) and section 40-885;
- capture non-taxable use in previous years when calculating the balancing adjustment for abandonment, sale or other disposal of a project;
- prevent taxpayers from including expenditures in project amounts in the pooling provisions that are specifically barred from tax relief under other provisions;
- remove the ability for taxpayers to claim double deductions in respect of certain intellectual property under the project pool provisions and the tax cost of a depreciating asset;
- clarify the identification of the 'economic owner' in items 5 and 6 of the table in section 40-40. There are currently difficulties in applying the 'reasonable to expect' test in item 6 where the lease arrangement has both a call and a put option and it is certain that at least one of them will be exercised;
- address the problems with the interaction between divisions 40 and 240, in particular in identifying the notional seller in a hire purchase agreement in all circumstances and ensure consistency in language between division 40 and 240;
- ensure that sections 40-95(4) (5) and (6) operate as intended;
- ensure that taxpayers claim correct deductions for car expenses using the one third of actual expenses method; and
- ensure that, if the 12% method is used to work out deductions for car expenses, then the taxpayer is not entitled to a balancing adjustment under the UCA regime.

Removal of exemption – Employees working overseas

Currently, income earned by an Australian resident while working overseas for 91 continuous days, which is subject to tax in the foreign country, is not included in the employee's assessable income.

Under the amendments announced in the Budget, this exemption will only apply to such foreign income earned by an aid worker, charitable worker, certain government employees or projects which are defined as being in the national interest (under section 23AF of the ITAA36).

All other employees will be required to include such foreign income in their Australian tax return (unless that income is excluded from the Australian tax net under a double tax treaty with the relevant country). The Australian employee may be able to claim a foreign tax offset in relation to the foreign tax paid.

BDO Kendalls' comment

As a result of this measure, the employee may be required to pay tax in two jurisdictions in relation to the same income. Although the employee may be able to claim a foreign tax offset, the timing of lodgement of their Australian tax return combined with the fact that different countries have different year ends will result in substantial periods where tax is paid in two countries in relation to the same income. The Government's comment that the foreign income tax offset will relieve double taxation seems to conflict with its comment that this measure is expected to raise revenue by \$675 million.

Amendments to employee share scheme rules

Currently, an employee that acquires shares or rights at a discount under a qualifying employee share scheme can either:

- elect to be taxed up front on the discount in the year in which the employee receives the shares or rights and obtain an exemption from their assessable income of \$1,000; or
- make no election whereby the taxing point is deferred until a later 'cessation' time (which includes the date restrictions cease and the employee can sell their shares or rights).

Under the amendments announced in the Budget, any shares or rights acquired after 7:30pm (AEST) on 12 May 2009 will be subject to amended employee share scheme rules such that:

- the \$1,000 exemption will only be available where the employee has an 'adjusted' taxable income of less than \$60,000; and
- in all other cases, the full discount will be included in the assessable income of the employee in the year in which they receive the shares or rights (i.e. the taxing point cannot be deferred until a later time).

BDO Kendalls' comment

Part of an employer's purpose of offering share and options to employees is to encourage employees to remain employed with that employer. Accordingly, many employee share schemes only allow the employee to sell their shares or rights several years after they receive them. The previous tax rules aligned the tax treatment with this purpose.

Under the proposed changes a participating employee will be taxed on the discount in relation to their employee shares or options in the year of receipt and may be required to pay tax before they can realise their shares or options. This will ultimately make employee share schemes less attractive for employers and employees.

Thin capitalisation changes for ADIs

The Government will change the thin capitalisation regime for approved authorised deposit taking institutions (ADIs), with effect from 1 January 2009.

The changes will clarify how treasury shares, capitalised software costs, and the previous insurance asset known as excess market value over net assets, will be recognised under the thin capitalisation provisions.

In addition, the changes will take into account the views expressed by stakeholders in relation to how the Australian equivalents of International Financial Reporting Standards apply to certain thin capitalisation arrangements for ADIs.

An exposure draft of the legislation will be released for consultation.

Managed Funds – CGT election

In 2008, the Board of Taxation (the Board) released a discussion paper on the review of the tax arrangements applying to managed investment trusts (MITs) to facilitate stakeholder consultation. The objective of the review was to consider the options for introducing a specific tax regime for MITs that would reduce complexity, increase certainty and minimise compliance costs.

As an interim measure, the Government proposes to allow Australian MITs (excluding those taxed like companies) to make an irrevocable election to apply the capital gains tax (CGT) regime as the primary code for taxing all disposals of eligible investments in the first income year that commences on or after the 2009 income year. Appropriate integrity measures will also be implemented, including the requirement for the investments to meet the eligible investment business rules in Division 6C of the ITAA36.

Currently, gains or losses on disposal of investments (shares, units or real property) by MITs may be taxed on capital or revenue account, depending on the characterisation of the MITs investment activities.

CGT rollover for fixed trusts

From 1 November 2008, CGT rollovers will generally be available for assets transferred from one trust to another, subject to appropriate integrity measures, where both trusts have the same beneficiaries with the same entitlements and no material discretionary elements (that is, a fixed trust). Consequently, trustees of such trusts will be able to defer the CGT consequences of the asset transfer until the receiving trust subsequently deals with the asset.

This rollover will allow eligible trusts to restructure, without an immediate CGT impact.

BDO Kendalls' comment

This Budget measure appears to reinstate the trust cloning exception for fixed trusts, thereby allowing such trusts to restructure without immediate CGT implications. This is a welcome measure for businesses looking to simplify trust structures in place.

Repeal of certain unlimited amendment periods

For the purposes of applying certain provisions in the tax law, the Commissioner of Taxation currently has an unlimited period of time to amend a taxpayer's assessment. The time period available to the Commissioner of Taxation with respect to these provisions will instead be dealt with under the provisions dealing with general amendment periods.

The Government aims to provide more certainty for taxpayers by repealing unlimited amendment periods currently available to the Commissioner of Taxation for certain provisions. Over 100 provisions that currently provide the Commissioner with an unlimited review period with respect to income tax laws will be repealed.

The proposed amendments will apply from the date of Royal Assent of the enabling legislation.

BDO Kendalls' comment

These amendments represent a welcome change and provide taxpayers with greater certainty in managing their tax affairs, although further clarity is required as to whether these changes will apply in respect of income years prior to the date of the enabling legislation or will only apply on a prospective basis.

Private & entrepreneurial clients

Superannuation

The Government has announced a series of measures to modify the rate of contributions to and payments from superannuation funds, recognising the difficult economic climate. The key amendments were announced in part or leaked prior to today.

The halving of the concessional contribution cap and reduction in Government co-contributions are measures to protect the revenue base. On the other hand, the reduction of the minimum pension payment amount recognises the significant fall in value of superannuation funds over the past year.

Other measures relate to the unclaimed monies regime and support for a trans-Tasman retirement savings portability scheme.

Contribution caps reduced

The Government will halve the concessional contributions cap from \$50,000 to \$25,000 with effect from the 2009-10 financial year. This cap will be indexed.

The transitional concessional contributions cap (applicable to individuals aged 50-74 for the 2009-10, 2010-11 and 2011-12 financial years) will also be halved from \$100,000 to \$50,000. This cap will not be indexed.

Grandfathering arrangements will apply to certain members with defined benefit interests as at 12 May 2009 whose notional taxed contributions would otherwise exceed the reduced cap.

The annual cap on non-concessional contributions will remain unchanged for 2008-09 and 2009-10 at \$150,000 per annum. From 2010-11, the cap will be calculated as six times the level of the concessional contributions cap, as indexed.

The above caps will presumably override the 2009-10 caps recently announced by the Australian Taxation Office of \$55,000 for concessional contributions and \$165,000 for non-concessional contributions.

Temporary reduction of Government Co-contributions

From 1 July 2009, the Government will temporarily reduce the matching rate and maximum co-contribution that is payable on an individual's eligible personal non-concessional superannuation contributions. The matching rate will be:

- 100% for 2009-10, 2010-11 and 2011-12, with a maximum co-contribution of \$1,000.
- 125% for 2012-13 and 2013-14, with a maximum co-contribution of \$1,250.
- 150% from 2014-15 onwards, with a maximum co-contribution of \$1,500.

The matching rate will reduce where personal income exceeds set thresholds.

Account based pensions – Drawdown relief

The Government has reduced by 50% the minimum payment amounts for account based pensions for 2008-09 and 2009-10. This measure had previously been announced for 2008-09 only. The extension to 2009-10 also applies to allocated and market linked (term allocated) pensions.

Before these changes, minimum payments of between 4% and 14% of the opening pension account balance as at 1 July each year were required to be made each year to compel retirees to draw down on their superannuation balance over the course of their retirement.

The halving of the minimum payment amount is designed to reduce the need for self funded retirees to sell assets at a loss in order to meet the minimum payment requirement, given the fall in equity values since 1 July 2008.

Unclaimed monies regime

For payments of unclaimed money due after 1 July 2009, a superannuation provider's obligations under the general unclaimed money regime will be amended to align with those under the temporary resident unclaimed money regime.

The new regime will require superannuation providers to calculate their unclaimed money on a date set by the Commissioner and pay and report these amounts on a date also set by the Commissioner. The current general regime requires superannuation providers to ascertain whether they have unclaimed money in respect of a half year and report and pay for these amounts to the Commissioner by a set statement date.

Payment of small and insoluble lost accounts

Superannuation providers will be required to transfer lost accounts to unclaimed monies where the account has a balance of less than \$200 or has been inactive for five years and the account owner cannot be identified from existing records. This measure will have effect from the 2010-11 income year.

Currently, lost account balances are only transferred to unclaimed monies when a member reaches 65 and cannot be found or when a member dies and the trustee cannot ensure the benefit will be received by the intended recipient.

Trans-Tasman retirement savings portability scheme

The Government has agreed in principle to sign a memorandum of understanding with New Zealand to establish a trans-Tasman retirement savings portability scheme. The details of the scheme and effective date are yet to be finalised.

The scheme will allow the transfers of superannuation member balances between certain Australian superannuation funds and New Zealand KiwiSaver funds. Transfers between Australian and New Zealand funds are not currently permitted.

The scheme is designed to facilitate the free movement of people and remove the exposure to multiple fees where retirement savings are held in both countries. Overall, the scheme is designed to support the movement towards a single economic market with New Zealand.

Henry review on retirement income system released

The Government has released the report prepared by the Future Tax System Review Panel ('the Panel') into the retirement income system. The report outlines the Panel's broad strategic views on the retirement income system.

The Panel's key finding is that the three-pillar architecture of Australia's retirement income system (which consists of a means tested Age Pension, compulsory saving through the superannuation guarantee system and voluntary saving for retirement) should be retained.

However, the Panel considers that some adjustments to this architecture are required to ensure that the retirement income system serves its purposes and retains its strengths. The recommendations of the Panel include:

- maintaining the superannuation guarantee at 9%, not extending the superannuation guarantee to the self employed and retaining the \$450 per month threshold;
- gradually increasing the age pension age to 67 years;
- gradually aligning the age at which people can access their superannuation savings (the preservation age) with the increased age pension age;
- improving the fairness and coherence of the pension means tests, possibly through a single test, and improve incentives to work beyond retirement age;
- reducing the complexities resulting from the interactions between the tax-transfer system and the aged care sector;
- maintaining tax assistance to superannuation but improving the fairness of concessions for contributions, including the broadening of access to them, and considering whether the current cap on concessions is appropriate;
- improving the ability of people to use their superannuation to manage longevity risk; and
- improving the awareness and engagement of individuals with the retirement income system.

In preparing its report, the Panel noted that a range of issues that were raised in submissions and consultations (such as the age beyond which a person cannot make contributions, the taxation of benefits received by members of untaxed funds and the taxation of superannuation death benefits) are not expressly dealt with in its report. However, these issues will be taken into account in the Panel's final report due in December 2009, as they may be affected by the Panel's recommendations on the broader tax-transfer system.

BDO Kendalls will provide a separate brief outlining the implications of the Panel's recommendations shortly.

Capital Gains Tax

Extension of capital loss roll-over for complying superannuation fund mergers

The Government has modified and extended the optional capital gains tax loss roll-over for complying superannuation fund mergers. The original roll-over was announced on 23 December 2008.

The roll-over will be extended by one year to 30 June 2011.

The measure will permit merging superannuation entities in a net capital loss position to elect to roll over assets with accrued capital gains as well as assets with accrued capital losses.

The roll-over will be expanded to permit the transferring superannuation entity's previously realised net capital losses and revenue losses to be transferred to the continuing entity.

In addition, the measure will now apply to pooled superannuation trusts where the continuing entity has at least five members, and to mergers involving the complying superannuation business of life insurance companies.

Small Business Tax and initiatives

Investment Allowance increased for small businesses

The Small Business and General Business Tax Break, also known as the Investment Allowance, will be increased to 50% for small businesses that acquire eligible assets between 13 December 2008 and 31 December 2009 and the asset is installed or ready for use by 31 December 2010. A small business is generally a business that has a turnover of under \$2m a year.

Under the previous proposed changes, small businesses were eligible for a 30% bonus deduction where it acquires an eligible new asset between 13 December 2008 and 30 June 2009 and the asset is ready for use by 30 June 2010. The bonus deduction is reduced to 10% where the small business acquires the eligible asset between 1 July 2009 and 31 December 2009 and the asset is ready for use by 31 December 2010.

The previously announced 30% and 10% bonuses will continue to apply for all other business. The changes to the Investment Allowance are in addition to the enhancements announced on 3 February 2009 that apply to all businesses. Under those changes, taxpayers can aggregate their investment in assets that are substantially identical, or that form a set, to meet the minimum investment threshold (being \$1,000 for small businesses and \$10,000 for all other businesses). Where assets are jointly held, a taxpayer can recognise all other business interests in the asset for the purpose of meeting the threshold, but will only be able to claim the Investment Allowance on their interest in the asset. Furthermore, where a taxpayer has met the investment threshold for an asset, they can claim additional investment in the assets as part of the Investment Allowance.

Division 7A extended to apply to the use of assets

The Government will extend the operation of the non-commercial loan rules in Division 7A of the Income Tax Assessment Act 1936 to cover circumstances where a shareholder (or their associates) is permitted to use a company asset such as real estate, a car or boat for free or at a discounted rate. While fringe benefits tax would apply to the use of such assets by employees, the same use of the assets by shareholders would be tax free.

This measure will remove this inconsistent treatment by deeming a 'payment' made to a shareholder through the free use of a company asset to be a dividend and taxable accordingly.

The non-commercial loan rules will also be further strengthened to ensure that corporate limited partnerships cannot be used to circumvent Division 7A.

The Government will consult on the form of the intended changes.

The measure has effect from 1 July 2009.

PAYG cash flow and CGT relief for Small Business

For the 2009-10 income year, the Government will reduce the GDP adjustment factor for calculating quarterly instalments under the GDP adjustment method from approximately 9% to 2%. This aligns with the expected increase in the CPI for 2009-10. This effectively means that small businesses that pay PAYG instalments under the GDP adjustment method may reduce their PAYG instalments. The Government expects that this measure will provide cash flow benefits to approximately 1.5 million eligible small businesses.

The Government also announced further technical amendments to the small business CGT concessions to ensure that they operate as intended. These measures were introduced to Parliament on 19 March 2009 under the Tax Law Amendments (2009 Measures No. 2) Bill 2009.

BDO Kendalls' comment

Whilst the PAYG amendments will provide welcome relief for certain small businesses, we query why the Government did not extend similar relief to all other taxpayers, many of whom are struggling in the current economic environment.

Use of non-commercial business losses

The Government will tighten the application of the rules on the use of non-commercial losses by ensuring excess deductions from unprofitable business activities cannot be used to reduce salary and wage income of high income earners. Taxpayers with an adjusted taxable income of over \$250,000 will instead have excess deductions quarantined to the business activity.

The existing rules will continue to apply to taxpayers with an adjusted taxable income of \$250,000 or less.

Taxpayers will still have the ability to apply to the Commissioner of Taxation for relief from the rules if there are exceptional circumstances or because the nature of the activities means that a taxpayer is temporarily carrying on an uncommercial business but the activities they are undertaking are nonetheless independently assessed as commercially viable.

The measure has effect from the 2009-10 income year.

TFN Withholding extended to Closely Held Trusts

Currently, certain entities are required to withhold an amount, at the 46.5% tax rate, on payments to a recipient who has failed to quote a tax file number (TFN). Examples of this include payments of interest by a financial institution and payments of dividends to a shareholder of a public company.

From 1 July 2010, the Government will extend the tax file number (TFN) withholding arrangements to closely held trusts. Closely held trusts are trusts that generally have less than 20 beneficiaries but include family trusts. Where beneficiaries of a closely held trust have not provided a TFN to the trustee, the trustee will be required to withhold amounts from trust distributions at the top marginal tax rate plus medicare levy. Individuals who have tax withheld by trustees may claim a credit for the taxes withheld in their income tax return. The measures will not apply to income where tax is payable directly by the trustee of the trust, for example income assessable to minors.

Indirect tax initiatives

New R&D Tax Credit System

The R&D Tax Concession will be replaced with a new R&D Tax Credit System from 1 July 2010.

The main features of the proposed R&D Tax Credit System are:

- a 45% refundable tax credit for Australian owned businesses with a turnover of less than \$20m (without any expenditure cap);
- for businesses with a turnover of greater than \$20m a 40% non-refundable tax credit will be available (this equates to an effective tax concession of 133%). This will extend to foreign owned companies conducting research in Australia;
- the 'new scheme' will involve a new definition of R&D which is likely to be more restrictive than the current eligibility criteria;
- as an interim measure until 1 July 2010, the R&D tax offset R&D expenditure threshold will increase from \$1m to \$2m; and
- the current 175% tax premium will be abolished.

BDO Kendalls' comment

The proposed credit system will be more advantageous to those small to medium enterprises currently conducting R&D activities (i.e. those with a turnover up to \$20M). The restriction of what eligible R&D will be a matter for later consultation by the Government. Larger claimants may be disadvantaged by the removal of the premium tax concession.

Goods and Services Tax (GST)

The Government intends to introduce a number of GST reforms to clarify areas of the law. These include:

- clarification of the law relating to representatives of incapacitated entities (to ensure that the representatives are liable for the GST liabilities on transactions);
- the government proposes to review the margin scheme provisions affecting property transactions;
- proposed simplification of the financial services provisions;
- proposed simplification of the current law in relation to cross border transport provisions relating to the registration of non-residents for GST purposes;
- simplification of the GST treatment of the domestic transport of imported and exported goods for postal and non-postal containerised goods (from July 2010). The proposed changes include:
 - a change in calculating a value of taxable importation of goods;
 - the domestic transport leg of an international importation of goods is to be GST-free; and
 - the domestic leg of exported goods in some circumstances will be treated as subject to GST and not as currently apportioned. These changes are proposed to take place on 1 July 2010, but are subject to consultation.

The above proposed measures will be significant for both the financial services and property industries but will be subject to consultation prior to introduction.

BDO Kendalls' comment

The current GST Margin Scheme provisions are the source of many disputes between the ATO and taxpayers and whilst they have not been announced they are likely to be major changes proposed to place in July 2010.

Fringe Benefits Tax (FBT)

Donations made to deductible gift recipients by way of salary sacrifice arrangements will no longer be subject to FBT (effective for the 2008/09 FBT year).

Environmental initiatives

The Government has announced the following climate change initiatives through its tax policy:

- the GST law will be amended to provide that Carbon Pollution Reduction Scheme units will be treated as personal property for GST purposes;
- \$400M will be provided to Clean Energy Initiative research;
- \$1.6 billion in solar technologies support; and
- \$100M of extra funding to a new body being Renewables Australia to support technology research and commercialisation.

Personal income tax

Personal tax rates

No changes have been made to the currently legislated personal tax rates for the 2009 and 2010 tax years.

Medicare levy low-income threshold increase

Effective 1 July 2008, the Medicare levy low-income thresholds will increase to the following amounts:

- \$17,794 for individuals (increase of \$485);
- \$30,025 for individuals in families (increase of \$818);
- \$25,299 for pensioners below Age Pension age (increase of \$2,377); and
- \$2,757 for each dependent child or student (increase of \$75).

The increases in thresholds have been introduced to ensure that low-income taxpayers will not be liable for the Medicare levy and also take into account Consumer Price Index movements.

Private health insurance rebate amendments

The existing Private Health Insurance rebates will remain in place for low and middle-income earners.

However, effective 1 July 2010, three new 'Private Health Insurance Tiers' will be introduced for singles and couples earning more than the following amounts:

TIER	SINGLES	COUPLES	PRIVATE HEALTH INSURANCE REBATE	AGE BAND
Tier 1	\$75,001	\$150,001	20% 25% 30%	Up to 65 years of age From 66 to 70 years of age Over 70 years of age
Tier 2	\$90,001	\$180,001	10% 15% 20%	Up to 65 years of age From 66 to 70 years of age Over 70 years of age
Tier 3	\$120,001	\$240,001	No rebate	

Furthermore, the Medicare Levy Surcharge for taxpayers who don't have private health insurance are as follows:

- Tier 1 - 1.00%
- Tier 2 - 1.25%
- Tier 3 - 1.50%

Paid Parental Leave Scheme

As recently announced, the new Paid Parental Leave scheme will provide 18 weeks postnatal leave paid at the federal minimum wage (currently \$543.78 per week). The scheme will be available to parents for births and adoptions that occur on or after 1 January 2011.

In order to meet the eligibility requirements of the scheme, a parent in paid work must have:

- worked continuously with one or more employers for at least 10 of the 13 months before the expected date of birth or adoption;
- worked at least 330 hours in those 10 months (equivalent to around one full day of work each week); and
- an adjusted taxable income of \$150,000 or less in the financial year prior to the date of birth or adoption of the child.

The Government proposes provide employers with funds in advance of the payments they make to employees.

Claims can be lodged from 1 October 2010.

Payments made under the scheme will be taxable.

First Home Owner Boost extended

The Government announced that it will extend the First Home Owner's Boost (FHOB) for an extra six months. However, the Boost will be reduced during this six month period.

For eligible first home buyers entering into contracts between 1 July 2009 and 30 September 2009, the FHOB will be as follows:

- \$7,000 for the purchase of established homes; and
- \$14,000 for the purchase of new homes.

Accordingly, purchasers of established homes will continue to be eligible for \$14,000 of assistance and purchasers of new homes will continue to be eligible for \$21,000 assistance.

For eligible first home buyers entering into contracts between 1 October 2009 and 31 December 2009, the FHOB will be as follows:

- \$3,500 for the purchase of established homes; and
- \$7,000 for the purchase of new homes.

Accordingly, purchasers of existing homes will be eligible for \$10,500 of assistance (including the \$7,000 First Home Owner's Grant) and purchasers of new homes will be eligible for \$14,000 of assistance (including the \$7,000 First Home Owner's Grant).

Family Tax Benefit changes

The Government will maintain the following higher income thresholds until July 2012:

- the income threshold for receiving the dependency tax offsets of \$150,000;
- the Baby Bonus eligibility threshold of \$75,000 (based on family income in the 6 months following the birth or adoption of a child (i.e. \$150,000 per annum));
- the higher income-free area of Family Tax Benefit Part A of \$94,316 (based on family income) plus \$3,796 for every subsequent child following the first; and
- the Family Tax Benefit Part B primary earner income threshold of \$150,000.

It is noted that the above thresholds were originally intended to be indexed by the Consumer Price Index (CPI).

Effective 1 July 2009, Family Tax Benefit Part A payment rates will be indexed by the CPI.



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BDO Kendalls' Commentary

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