

Federal Budget 2011-12

The bottom line

The Federal Government handed down its budget for 2011-12 Tuesday night with an estimated cash deficit of \$22.6 billion to be followed by an estimated cash surplus of \$3.5 billion in 2012-13.

These figures represent a substantial improvement over the 2009-10 cash deficit of \$54.8 billion and the estimated cash deficit of \$49.4 billion for 2010-11.

With expenses still increasing throughout the period, this improvement is largely a consequence of the expected increase in taxation revenues.

The tax changes

Tax changes contained in the Budget are wide-ranging and whilst there is no particular measure that will affect all taxpayers, it is likely that one or more of the changes will be relevant to nearly all taxpayers.

We set out below details of changes most likely to impact upon our clients within broad categories. Note there will be a degree of overlap so changes discussed as part of one category may also be relevant to other categories.

Personal tax

- **Personal tax rates**

Personal tax rates were not changed in the Budget. We note, however, that the recently introduced flood levy will apply in the 2011-12 year to individuals with a taxable income exceeding \$50,000. For individuals with taxable incomes between \$50,001 and \$100,000, the flood levy will be 0.5% of the amount over \$50,000. Where taxable income exceeds \$100,000, the flood levy will be \$250 plus 1% of the amount over \$100,000.

- **Low income tax offset removed for unearned income of minors**

Since its introduction, the low income tax offset has been widely used (in particular by the trustees of discretionary trusts) to increase the amount of unearned income that can be distributed to children under 18 years of age tax-free.

With effect from 1 July 2011, the low income tax offset will be unavailable to minors, effectively reducing the tax-free amount that can be distributed to them to \$416.

For the year ending 30 June 2011, minors can still take advantage of the low income tax offset so trustees will still be able to make tax-free distributions to minors of up to \$3,333 (assuming the minors have no other income and we are not concerned with franked dividends).

- **Self-education expenses**

The recent decision in *Anstis* case, which allowed a taxpayer to claim a deduction for self-education expenses incurred in gaining the Youth Allowance is to be legislatively overturned effective 1 July 2011.

- **Dependent Spouse Tax Offset**

From 1 July 2011, taxpayers with a dependent spouse born on or after 1 July 1971 will no longer be eligible for the dependent spouse tax offset unless their dependent spouse is a carer, an invalid, is permanently disabled or eligible for the zone, overseas forces or overseas civilian tax offsets.

- **Higher Education Contribution Scheme (HECS) discounts**

From 1 January 2012, the discount available to students electing to pay their student contribution up front will be reduced from 20% to 10% and the bonus on voluntary payments to the Australian Taxation Office (ATO) of more than \$500 will be reduced from 10% to 5%.

- **Family Tax Benefit**

There are a number of changes to the family tax benefit, including suspension of indexation of the Part A and Part B supplements for 3 years, pausing indexation of the higher income thresholds and limits until 1 July 2014 and limiting eligibility to Part A amounts to children up to 21 years of age from 1 January 2012.

Company tax

- **Loss recoupment**

The continuity of ownership test ("COT") can potentially have an impact upon a company's ability to recoup losses. From the 2011-2012 income year the COT should be easier to satisfy in certain circumstances. In particular, ownership will no longer need to be traced through certain superannuation entities.

Superannuation

- **Excess concessional contributions**

Eligible individuals that breach the concessional contributions cap by up to \$10,000 will be able to request that the excess is refunded to them and included in their assessable income rather than incurring excess contributions tax (which can potentially result in an effective tax rate of up to 93% on the excess contribution). This refund option will be available only for the first breach which occurs in the 2011-12 or later income years.

- **Concessional contributions cap for over 50s**

The general concessional contributions cap of \$25,000 is indexed annually in increments of \$5,000 rounded down. At this stage it remains at \$25,000.

The \$50,000 concessional contributions cap currently applicable to over 50s (and which will continue to apply to over 50s with less than \$500,000 in superannuation from 1 July 2012) will from 1 July 2012 increase by the same dollar amount as the general concessional contributions cap.

- **Minimum pension drawdowns**

Pension drawdown relief of 50% has been available in the 2008-9, 2009-10 and 2010-11 income years as a consequence of the global financial crisis. Relief will be reduced to 25% for 2011-12 and minimum annual pension payments will return to normal in 2012-13.

- **Limiting the trading stock exception to CGT treatment**

Subject to transitional rules, with effect from 7.30 pm 10 May 2011 superannuation entities will not be able to apply trading stock treatment to specified assets (primarily shares, units in a trust and land) and consequently CGT treatment will apply. This is to counter the impact of certain superannuation entities seeking to deduct losses on such assets against income other than capital gains.

- **Superannuation reporting**

From 1 July 2012, an employee's payslip will include information about the amount of superannuation actually paid into their account and if regular payments cease superannuation funds will provide quarterly notification to employees and employers.

Capital Gains Tax

Many technical amendments are being made to the CGT provisions, including:

- Permitting scrip for scrip rollover to take place where the original shares are held on revenue account (rather than just capital account) with effect from 7.30 p.m. 10 May 2011 and a similar measure in relation to the exchange of shares in one company for shares in another;
- Ensuring that certain integrity rules in the scrip for scrip rollover provisions apply appropriately to trusts, superannuation funds and life insurance companies with effect from 7.30 p.m. 10 May 2011;
- Ensuring that, in applying the small business CGT concessions, the connected entity provisions apply appropriately to trusts with effect from 7.30 p.m. 10 May 2011;
- Exempting certain government incentives related to renewable resources or for preserving environmental benefits;
- Extending the application of the main residence exemption for special disability trusts; and
- Legislating the current ATO practice of allowing a testamentary trust to distribute an asset of the deceased person without a taxing point occurring.

Goods and Services Tax

A number of minor changes and industry-specific technical changes (such as to ensure the appropriate application of the GST provisions to supplies of new residential premises) are to be made for the purposes of the GST.

Of more general application we note that the GST instalment system will be extended to allow access for small businesses that are in a net refund position. The purpose of this change is to allow the taxpayer to use an instalment amount of zero each quarter and reconcile any refund in their annual GST return.

Fringe Benefits Tax

- **Car fringe benefits – statutory fraction**

For contracts entered into after 7.30 p.m. on 10 May 2011 a new flat rate statutory fraction of 20% will be phased in to remove the incentive provided by the current sliding scale to drive cars further to reduce FBT payable where the statutory formula is used.

The phasing in for new contracts (and the comparison rate applicable to existing contracts is shown in the table below):

Distance travelled during the FBT year	Statutory rate				
	Existing Contracts	New contracts entered into after 7.30 p.m. 10 May 2011			
		From 10 May 2011	From 1 April 2012	From 1 April 2013	From 1 April 2014
0-15,000km	0.26	0.20	0.20	0.20	0.20
15,000-25,000km	0.20	0.20	0.20	0.20	0.20
25,000-40,000km	0.11	0.14	0.17	0.20	0.20
More than 40,000km	0.07	0.10	0.13	0.17	0.20

Trust taxation interim measures

The Government will introduce legislation with effect from 1 July 2010 to:

- Enable the streaming of capital gains and franked distributions by trusts; and
- Target the use of low-tax entities, especially exempt entities, to reduce the tax payable on the net income of a trust.

The Government considers the first of these changes is necessary to provide certainty (the ATO have cast doubt on the current practice of trusts streaming classes of income) while it updates and rewrites the income tax provisions applicable to trusts.

Small business depreciation

With effect from the 2012-13 year small businesses (broadly, those carrying on a business and satisfying the \$2 million aggregated turnover test) will be able to claim \$5,000 as an immediate deduction for motor vehicles and the remainder of the motor vehicle value will be pooled in the general small business pool and depreciated at 15% in the first year and 30% in later years.

This adds to the previously announced measures that from the 2012-13 income year small businesses will be able to immediately write off the cost of any new business asset worth less than \$5,000, write-off assets valued at over \$5,000 in a single depreciating pool at a rate of 30% and, if they are a company, access a company tax rate of 30%.

Extension of functional currency rules

From the date of effect of amending legislation the Government will allow certain trusts and partnerships that keep their accounts solely or predominantly in a particular foreign currency to calculate their net income by reference to that currency.

Not-for-profit sector

- **“Better targeting” of not-for-profit tax concessions**

The Government is to reform the tax concessions applicable to not-for-profit (NFP) entities to ensure that they are available only in respect of those activities that directly further the NFP's altruistic purposes. Accordingly, NFP's will pay income tax on profits from their unrelated commercial activities that are not directed back to their altruistic purpose (that is, the earnings they retain in their commercial undertaking).

Further, in respect of these unrelated commercial activities, NFPs will not be able to access the FBT exemptions or rebate, GST concessions or deductible gift recipient support.

Commercial activities that further the NFP's altruistic purposes and small scale and low risk unrelated commercial activities will not be affected by the reforms.

The new arrangements will commence on 1 July 2011 and will initially only affect new unrelated commercial activities which commenced after 10 May 2011. The Government will consult on transitional arrangements for existing unrelated commercial activities with the intention of phasing the application of the concessions to these activities out over time.

Government service delivery contracts entered into as at 10 May 2011 will be unaffected as will the National Rental Affordability Scheme allocations.

- **Introducing a Statutory Definition of Charity**

A statutory definition of charity, to apply to all Commonwealth laws, will be introduced with effect from 1 July 2013.

Film tax offsets

There will be a number of enhancements to the film tax offsets program, including:

- Lowering the Producer Offset threshold to \$500,000;
- Providing direct funding for low budget (under \$500,000) documentaries in place of the Producer Offset;
- Increasing the rate of the Location Offset from 15% to 16.5%;
- Increasing the Post, Digital and Visual Effects Offset from 15% to 30%;
- Permitting some additional screen production costs to be claimed as Qualifying Australian Production Expenditure (QAPE); and
- Allowing television series to benefit from the Producer Offset for the first 65 broadcast hours (rather than the current 65 episode limit)

On the negative side, however:

- GST paid will be removed from the definition of QAPE; and
- The minimum expenditure thresholds for documentaries will be increased from \$250,000 to \$500,000 in production.

Other

In addition to the above changes, many further changes of less general application have been announced, some of which relate to:

- The small business participation percentage for small business CGT relief purposes;
- Abolition of the entrepreneur's tax offset;
- Taxation of financial arrangements;
- International taxation;
- Infrastructure projects;
- Tax compliance;
- The main residence exemption; and
- Accessing farm management deposits.

For more information, please do not hesitate to contact us.