Tax & Super Australia

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Tax & Super Australia

2019 -20 Pre-Budget Submission

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CEO'S FOREWORD

Tax & Super Australia, formerly known as Taxpayers Australia Limited welcomes the opportunity to lodge a pre-Budget submission to the Government for consideration in the preparation of its 2019-20 Federal Budget.

Tax & Super Australia is a not-for-profit organisation committed to a fairer and more transparent taxation system for every Australian taxpayer. Our aim is to provide taxation practitioners, superannuation professionals, small businesses and individuals with up-to- date, informative and above all understandable information about Australian taxation.

As a community benefit organisation, we are independent and unaffiliated with any political or commercial groups, advertising or sponsoring organisations. We are a member-based organisation, and our loyalty is dedicated to our members.

Most of our members are small to medium sized tax agents. Small business taxpayers and individual taxpayers are the key client groups for these tax agents.

Small business operators and individuals who manage their own tax affairs represent the other major groups in our membership base.

Given our membership demographics, we focus our tax advocacy activities (including submissions to Government) on legislative and administrative matters that are relevant to individual and small business taxpayers. Our priorities in this regard are reflected in this 2019-20 pre-Budget submission.

Our pre-Budget submission recommendations have been driven by the priorities, concerns and ideas of our members. We receive this information directly from our members through various channels. These channels include our helpline service, member surveys, training activities and discussion groups. Our suggestions also reflect our overarching objective of achieving a suitable balance of fairness, efficiency and simplicity in the taxation system.

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Yours faithfully,

Mr Moti Kshirsagar
Chief Executive Officer

SUMMARY OF RECOMMENDATIONS

Recommendation	Key points	Page
A. Individuals taxation		
Recommendation A1: That the Government introduces a tax offset for mature age workers that: • reduces the effective tax rate applying to employment income • is uncapped • is refundable; and • is simple to understand and apply.	• Increasing the mature age workforce will reduce reliance on public spending • The former mature age worker tax offset was ineffective, but the concept remains popular • The proposed offset should provide sufficient incentive for the taxpayer to remain in employment • The Government needs to consider employer incentives to hire older workers, in conjunction with tax incentives for these employees	9
Recommendation A2: That the Government increases the standard work-related expense deductions, which are exempt from substantiation rules, to $2,000. Further, the government should also increase the reasonable limit threshold to a higher base rate.	• Work-related expenses are one of the most significant deduction categories for individual taxpayers • A key source of the high tax compliance burden is from low scale work-related expense deductions substantiation rules • Easing the tax compliance burden for taxpayers and tax agents must be a policy priority for Government • A higher statutory deduction will significantly ease the tax compliance burden for many employee taxpayers • The ATO would be better afforded to redirect its scarce resources away from a highly compliance focused enforcement of low scale deduction activities.	12

Recommendation A3: That interest income derived from bank deposits and other passive investment should be concessionally taxed.	• The Government needs to encourage personal savings to reduce the future reliance of an ageing population on public funding • Interest income from cash investments should be concessionally taxed • A tax concession on cash investments will particularly incentivise, lower income individuals and households to save • Returns on other forms of investment currently attract concessional taxation treatment • Interest income should be exempt up to a statutory cap, for simplicity of administration	**16**
B. Small business taxation .		
Recommendation B1: That the Government retains its proposed $25,000 instant depreciating asset write-off for 2019-20 as a permanent threshold for the small businesses going forward into future years. .	• Small businesses consider administrative requirements a costly burden and appreciate relief mechanisms • The instant asset write-off eases small business compliance burdens • A constantly changing threshold causes uncertainty and confusion • A permanent threshold of $25,000 will ensure stability and reinforce the Government's commitment towards helping small businesses. • This initiative would facilitate many small businesses to tax effectively invest in the much-needed plant and equipment • The permanency of the measure will continue to provide economic stimulus in alignment with the original justification of its introduction • Maintaining the $25,000 write-off threshold is unlikely to put public revenues at risk over the longer term	**18**

Recommendation B2: That the Government increases the threshold for the small business CGT concessions.	• The 2016-17 increase in the threshold for most small business concessions to $10m is commendable • Three small business concession thresholds will continue to cause confusion and add to the extra compliance burden • The annual turnover thresholds for both the small business income tax offset and the CGT concessions must be raised to $10m	23
Recommendation B3: That the Government reintroduces the loss carry- back tax offset for companies that are small business entities.	• The former loss carry-back tax offset be reinstated for small companies • The repeal of the former offset was not because the measure lacked merit or contained flaws. Small businesses will benefit from a capacity to draw on a loss carry-back offset	25
Recommendation B4: That the Government puts in place a targeted amnesty for the writing off, of pre- December 1997 Division 7A loans and pre-2009 UPEs,	• With pre-1997 loans proposed to come within the operational scope of Division 7A from 1 July 2019, affected entities should be afforded a capacity to write-off the loans without tax adversity prior to the introduction of the new measures. • Alternatively, a reasonable timeframe should be given to allow entities to renegotiate these grandfathered loans into compliant loans. • The proposed transitional rules could result in serious cash flow issues for small business • Generally, two- and four-year amendment periods for tax assessments which generally apply provide some form of certainty for Taxpayers where there is no fraud or evasion involved. The Treasury's proposed 14-year amendment period for Division 7A loans regarding inadvertent breaches could be viewed as unfair. • Defer the introduction of Treasury's proposed increased interest rate (from currently 5.2%) to the "small business, variable other, overdraft indicator" lending rate (to currently 8.3%) for at least 3 years (for existing loans less than 10 years) and apply the standard variable housing loan rate (and not the "small business, variable other, overdraft indicator" rate) for loans originally set-up as a fully secured 25 year loan.	28

Recommendation B5: That the Government reconsiders its stance on the loss and ineffective flow-through of franking credits due to the corporate tax rate cut.	• Changes to the small business tax rate have led to trapped franking credits. • Small business corporate taxpayers are currently able to only distribute franking credits to the extent of the current corporate tax rate even though such entities may have previously borne tax at a higher rate on their prior year profits.	**30**
C. Superannuation		
Recommendation C1: That the Government amends s307-80(4) of the ITAA97. Penalties for a failure by the superannuation income stream provider to comply with the commutation authority should be directed to the provider and not the superannuant	• New s307-80 requires a superannuation income stream provider to comply with a commutation authority • However, the penalty for non-compliance is levied on the superannuant. • The penalty should instead be directed to the superannuation income stream provider	**31**

Recommendation	Key points	Page
Recommendation C2: That the Government provides an alternative to the court system for establishing that a superannuation interest is reduced because of a loss suffered by the superannuation income stream provider as a result of fraud or dishonesty	• A debit is made to a taxpayer's transfer balance account if a loss to the superannuation interest is due to fraud or dishonesty • However, a court conviction for fraud or dishonesty is required for the taxpayer to obtain the debit • Court proceedings are very costly and time consuming • There needs to be an alternative mechanism, such as empowering tribunals or ATO and APRA to decide that fraud or dishonesty occurred, or empowering the relevant Minister to make a determination that fraud or dishonesty occurred	32
Recommendation C3: That the Government amends the law so that insurance proceeds received due to temporary or permanent incapacity or a terminal medical condition is given the same treatment as structured settlement proceeds	• The new superannuation law allows structured settlement proceeds to be excluded from calculations of certain balances • Consequently, a receipt of structured settlement proceeds does not have a negative impact • Insurance proceeds received due to temporary or permanent incapacity or a terminal medical condition should be treated in the same manner	32
Recommendation C4: The carry-forward concessional contributions of unused caps over five years rules (effective from 1 July 2018) be amended to allow for an unlimited carry forward provision as the restriction of a 5-year period for the calculation of previously unused concessional contribution cap amounts restricts the effectiveness of this measure.	• An unlimited carry forward provision will provide greater flexibility for various segments of the population i.e., women retiring with substantially less than the superannuation balance of men and those that experience substantial breaks in employment that wish to make catch up payments when they return to work.	

Recommendation C5: The work test for those aged 65-75 be removed.	• Whilst the Work Test Exemption rules recently introduced were a welcome softening of the work test rules, we consider the removal of the work test altogether would be a positive and practical change. Note this measure was proposed in the 2016 Budget but it has been shelved in the meantime.	
Recommendation C.6: The $25,000 concessional contributions cap be increased for people over 50 (irrespective of their super balance) to allow them to save for a secure and dignified retirement.	• Research shows that people tend to contribute more to super in their mid-50s, so they should be given the opportunity to do so without being penalised. • Older Australians have not had the benefit of compulsory superannuation over their entire work life and when compulsory superannuation was first introduced in 1992 the rate was significantly less at 3%.	
D. Other key issues		
The Government should dedicate funding and specific resources to bring about the necessary comprehensive legislative change for priority issues.	• The taxation of trusts • Review of the personal services income rules • Better targeting of the CGT discount • Commitment to long term tax reform • Introducing simplicity into Tax Legislation by using De Minimus Rules. • Providing certainty on the Superannuation Guarantee Amnesty Legislation • Effective Targeting of the Black Economy • Reviewing the Tax Residency rules for individuals and ensuring adverse tax consequences are not created in relation to the Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures no. 2) Bill 2018. This is particularly regarding prior residents of Australia disposing of their main residence and losing their entitlement to the main residence exemption during the period of residency but technically being a non-resident at the time of their residence being sold.	34

	• The three yearly audit cycle for some Self-Managed Superannuation Funds. • The refunding of franking credits • Improving whole-of-government use of technology and the digital rollout • Review the competitiveness of the Australian tax system considering legislated changes abroad .	

GLOSSARY

The following references, acronyms and abbreviations have been used in this submission:

Legislation	
Income Tax Assessment Act 1997	ITAA97
Income Tax Assessment Act 1936	ITAA36
Key reports	
Commonwealth of Australia, *Australia 's Future Tax System: Report to the Treasurer* (December 2009)	*Australia 's Future Tax System*
Australian Government, *2015 Intergenerational Report: Australia in 2055* (March 2015)	*Intergenerational Report*
Board of Taxation, *Review of Tax Impediment s facing Small Business* (August 2014)	*Review of Tax Impediments facing Small Business*
Other terminology	
Australian Taxation Office	ATO
Board of Taxation	the Board
Tax and Super Australia	TSA
Member survey conducted by TSA in May 2015 (relating to a range of taxation and superannuation issues)	our survey
Minerals Resource Rent Tax	MRRT

PART A: INDIVIDUALS TAXATION

A.1 Tax offset for mature age workers

Recommendation A.1: That the Government introduces a tax offset for mature age workers that:
• reduces the effective tax rate applying to employment income;
• is uncapped;
• is refundable; and
• is simple to understand and apply.

Increasing the mature age workforce will reduce reliance on public spending

According to the *Intergenerational Report,* the next 40 or so years will see an ageing population, attended by a decreasing proportion of the working age population. Population projections for 2054-55 include the following:[1]

- increased life expectancy: 95.1 years for men and 96.6 years for women (91.5 years and 93.6 years respectively at the time of the report);
- the number of people aged 65 and over will more than double; and
- 1 in 1,000 people will be aged over 100.

As a result, there will be fewer people of working age compared with the very young and the elderly. There are currently 4.5 people aged 15-64 for every person aged 65 and this will nearly halve to 2.7 by 2054-55.

The *Intergenerational Report* also notes that public spending is highest for the over-65 age group. The key driver s relevantly include decreased participation in the workforce and increased demand for government services and payments such as the Age Pension and aged care.[2]

[1] *Intergenerational Report,* pl .
[2] *Intergenerational Report,* p58.

Given the projected future demographic of Australia, the Government must put in place incentives for mature age Australians to continue workforce participation. Increasing labour income for these individuals will reduce net public spending on the Age Pension and age related transfers and benefit s. Further, labour income that is excessive to consumption needs will be available for personal savings and investments, leading to a greater capacity for an individual to self-fund their eventual retirement.

The former mature age worker tax offset was ineffective, but the concept had economic merit and remains popular.

The former mature age worker tax offset (MAWTO) was introduced in 2004-05 but abolished from 1 July 2014. The Government's rationale for abolishing the offset included the following flaws:[3]

- the MAWTO was complicated and not well understood (for example, it necessitated the calculation of multiple elements - including amounts that were not taxable; and it applied using a progressive "tax bracket" system)
- it was not a cost-effective way of encouraging mature age workforce participation;
- the $500 maximum value itself wasn't generally a sufficient incentive.

Even though the MAWTO has been repealed due to its ineffectiveness, our members still support the concept of offering tax incentives for older workers. In fact, only 24% of our respondents from a previous survey conducted disagreed with the principle of using concessional tax rates to encouraging mature age workforce participation.

The Government should reintroduce the worthy concept of a mature age worker tax offset - one without the flaws of the former MAWTO. Such a tax incentive for workers would complement non-tax Government initiatives aimed at employers, such as the *Restart Program*.

[3] The Explanatory Memorandum to the *Tax and Superannuation Laws Amendment (2014 Measures No. 5) Bill 2014.*

How should the proposed tax offset work?

The Government should introduce a tax offset for mature age workers with the following characteristics:

- it reduces the effective tax rate applying to employment income (to provide sufficient incentive for the taxpayer to remain in employment);
- it is uncapped (so that taxpayers are not discouraged from earning more labour income);
- it is refundable (so that it genuinely results in a reduction to the effective tax rate on employment income and the tax benefit is not compromised by unrelated tax matters); and
- it is simple to understand and apply (so that taxpayers can easily see the benefit gained from working and are not deterred from actively seeking to access the offset).

The proposed tax concession will encourage mature age individuals to re-enter or remain in the workforce - but they can only do so if employers are willing to hire them.

The Government is commendably addressing this issue outside of the taxation arena. The *Restart* program provides wage subsidies to employers of older workers. Under the *Corporate Champions* program, large employers that commit to best practice in employing older people can access publicly funded assistance from industry experts.

It is critical that the Government builds on these existing efforts to encourage employers to hire older workers. We therefore urge the Government to allocate resources, in the 2019-20 Budget, to creating more incentives and support mechanisms for employers to recruit, train and retain older workers. Tax incentives for older workers will then supplement and support these employer-focused programs to keep mature age individuals in the workforce.

A.2 Standard work-related expense deduction

Recommendation A.2: That the Government increases the standard work-related expense deductions, which are exempt from substantiation rules, to $2,000.

Work-related expenses are the most significant deduction category for individuals

Australia's Future Tax System reports that work-related expenses are the most commonly claimed deductions for employees - and that claims have been growing substantially over recent years.[4] ATO statistics support these claims. Stated as a proportion of total deductions (by dollar value), work-related expenses rose from 49% in 2005-06,[5] to 56% in 2009-10, [6] to 64% in 2015-16 [8].

The ATO data also shows that in 2015-16, just over 8.6 million taxpayers claimed work-related expenses to the value of just under $22 billion.[8] This equated to an average deduction of **$2,548** per claimant.

Work-related expense deduction substantiation rules, a key instigator of the tax compliance burden

Australia's Future Tax System reports that in 2007-08, 86% of individual taxpayers either claimed no deductions at all or only claimed work-related expenses, gifts and the cost of managing tax affairs.[9] Yet, 72% sought advice from a tax agent.[10] In that year, the value of total work-related expense deductions comprised 48% of total deductions for individuals.[11]

In 2015-16, based on the ATO's data, 72.4% of individual tax returns were lodged through a tax agent. [12]

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[4] Chapter 4.1 of *Australia' s Future Tax System* .
[5] ATO, Table 7 of *Taxation Statistics 2009-10*.
[6] ATO, Table 7 of *Taxation Statistics 2009-10*.
[7] ATO, Table 1 of *Taxation Statistics 2013-14*.
[8] ATO, Table 4 of *Taxation Statistics 2015-16.*
[9] Chapter 4.1 of *Australia's Future Tax System*.
[10] Chapter 4.1 of *Australia's Future Tax System* .
[11] ATO, Table 7 of *Taxation Statistics 2009-10.*
[12] ATO, Table 1 of *Taxation Statistics 2013-14* .

Over the past decade, a majority of taxpayers have sought professional advice in completing their tax returns - and the vast majority of the expenses that they are claiming are work-related. It is clear that the deductibility of work-related expenses is a key driver for taxpayers to seek professional advice.

The current compliance, substantiation and record keeping burdens impose enormous financial and time costs for both taxpayers and tax practitioners.

Work-related expense deductions are usually taken under the general deduction provision in s8-1 of the ITAA97. There are few prescriptive legislative rules governing work-related expense deductions, with the exception of a few specific types of expenditures (e.g., car expenses and self-education expenses). Most judicial and ATO guidance available to taxpayers is principles based and significantly fact-specific.

Accordingly, ascertaining whether an expense is deductible in nature and quantifying the deductible amount (including any necessary apportionment between work and private use) are tasks which are complex, time-consuming and loaded with uncertainty.

Stringent statutory substantiation rules[14] add to the compliance burden.

Easing the compliance burden needs to be a policy priority for Government

In a previous survey we conducted, 63% of respondents indicated that improvements to the work-related expense deduction system are necessary. Specifically, 26% wanted a standard deduction *to reduce compliance burdens.* It appears that practitioners are frustrated with the inherent uncertainty and voluminous administrative burden involved in determining and substantiating claims.

The legislation currently provides limited relief from the compliance burden by providing an exemption from the substantiation rules where the total of work expenses claimed does not exceed $150 of laundry expenses[15] or $300 of total work-related expenses (including laundry expenses).[16]

[14] The work expenses substantiation rules are contained in Subdivision 900-B of the ITAA97.
[15] Section 900-40 of the ITAA97.
[16] Section 900-35 of the ITAA97.

While this legislated relief is appreciated, in practice the low thresholds do not assist the majority of taxpayers who incur work-related expenses, as evidenced by the data cited above: i.e. that the average claim exceeds $2,000 and most claimants still need professional assistance.

A higher statutory deduction should ease the burden of many salary and wage earners

The statutory cap for work-related expense deductions that can be claimed without substantiation should be increased from its current $300 (which has applied unchanged since the introduction of the self-assessment system from 1 July 1986) to $2,000. As cited above, the mean average work-related expense deduction for 2015-16 was $2,548. Therefore, a cap of $2,000 would enable most of Australia's "average" employee taxpayers to claim their legitimate deductions without the substantiation burden.

Where the claim exceeds $2,000, the entire claim (including the first $2,000) should be subject to the substantiation rules to prevent high value improper claims.

The ATO can efficiently redirect its resources away from a compliance focus on low scale deductions

Driven by the volume and proportional significance of work-related claims, the ATO has clearly been focusing on these deductions in its compliance activities in recent years. The most recent years have seen the ATO take a much wider approach than in the past. In 2013 the ATO trialed a pilot in which expected deduction amounts were derived from an analysis of comparable t axpayers.[17] For 2014-15, the ATO focused on "unusually high" work-related expense claims across all industries and occupations.[18] Currently, the ATO is scrutinising claims that are "higher than expected" and has warned taxpayers that better technology and extensive use of data have expanded the ATO's ability to check these claims.[19]

The scale and substance of the ATO's compliance approach to work-related expense deductions demonstrate the ATO's concern over these claims.

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[17] Item 9 of the ATPAG minutes, November 2014.
[18] Media release dated 27 May 2015.
[19] Media release dated 24 October 2016.

In 2014, the ATO contacted 2,000 taxpayers in relation to their 2012-13 claims. As of November 2014, the 2013-14 work-related claims for 1,167 of those taxpayers had collectively decreased by **$10 million.**[20] On average, each of those taxpayers had significantly reduced their deduction by **$8,569.** Clearly there is a need for the ATO to conduct educational, compliance and audit activities for taxpayers with deductions that are significantly larger than average.

Raising the statutory deduction threshold to $2,000 will enable the ATO to devote more of its limited financial and human resources to compliance activities relating to high value deductions.

The Government should also raise the reasonable limit thresholds

In conjunction with the above-mentioned points, the Government should also consider raising the reasonable limit thresholds, in areas such as travel, overtime allowances and meal allowances.

With the ever-increasing cost of living, the rates do not appear to be increasing at a rate that is in line with inflation. The thresholds should be increased at a proportionate rate to the raise in expense substantiation rules.

[20] Item 9 of the ATPAG minute s, November 2014.

A.3 Concessional taxation of interest income

Recommendation A.3: That interest income derived from bank deposits and other passive investments should be concessionally taxed.

The Government needs to encourage personal savings

The *Intergenerational Report* projects that the next 40 years will see an ageing population and a decreasing proportion of the population that are of working age. It is expected that by 2054-55, there will be only 2.7 aged 15-64 for every person aged 65 (currently there are 4.5). See the commentary in section A.1 for more detail.

To ensure that Australia can maintain its standard of living in those future years during which there will be proportionally fewer working taxpayers to fund Commonwealth welfare and transfer programs, TSA recommends that the Government implements initiatives to encourage personal savings (in additional to superannuation) to reduce future reliance on the publicly funded transfer and welfare systems.

Specifically, we recommend that interest income derived from deposits held at financial institutions, bonds and other cash investments should be concessionally taxed, to increase household savings.

A tax concession will particularly incentivise lower income individuals and households to save as cash investments are often low risk, liquid, simple to administer and require minimal capital outlay. For taxpayers with higher levels of disposable income, interest-bearing investments will become a more attractive and competitive savings vehicle relative to other forms of investment, many of which currently attract favourable taxation treatment .[21]

ATO data shows that in each year from 2010-11 to 2013-14, between 7.1 million and 7.5 million taxpayers derived assessable interest income[22] - i.e., over half of the approximately 13 million individual taxpayers that lodged tax returns that year. A tax concession on interest income would benefit most Australian individuals and households from immediate tax savings as well as encourage them to save for retirement.

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[21] For example, franked dividends provide imputation credit s which in many cases reduce the tax rate on the dividends to below the taxpayer's marginal tax rate, and CGT assets held for longer than 12 months attract a 50% discount on the net capital gain.

[22] ATO, Table 1 of *Taxation Statistics 2013-14.*

A capped tax exemption

We recommend that the Government implements an exemption for interest income derived by an individual up to a statutory cap per taxpayer per year. Any interest income exceeding the cap would be taxed at the individual's marginal tax rate.

Taxpayers can simply exclude their interest income, up to the cap amount, from their assessable income. Individuals deriving lower than the cap amount would not need to include any interest income. This is the simplest method of offering a tax concession as there would be no need to calculate discounted assessable amounts (as is required with various CGT concessions) or to apply specific tax rates.

The existing pre-fill and data matching arrangements that the ATO has with financial institutions would make it easy for taxpayers to comply and for the ATO to conduct integrity checks.

The exemption cap should be adjusted to an economic indicator (e.g., CPI) periodically (e.g., every 2 or 3 years) as interest rates on passive cash investments broadly move in line with adjustments to the Reserve Bank's official government interest rate. The cap should also only be available in respect of Australian source interest income to encourage taxpayers to keep their investments in Australia, for the benefit of the Australian economy.

PART B: SMALL BUSINESS TAXATION

B.1 The instant asset write-off threshold

Recommendation B.1: That the Government retains its proposed $25,000 instant depreciating asset write-off for 2019-20 as a permanent threshold for the small businesses going forward into future years.

Administrative obligations are a costly burden for small business

From our constant interaction with our members, we know that record-keeping is a costly burden for small businesses - and their advisers. For example, in a previous survey we conducted 63% of respondents reported that administrative obligations were the most significant driver of tax compliance costs for small business. Further, the simplification of administrative requirements was the most popular option for improving small business taxation (with 40% nominating this as their preferred improvement).

A small business often expends a lot of time, labour and costs on external advisers just to claim a capital allowance deduction to which it is entitled under the ITAA97. We receive many questions in relation to the detailed mechanics of the tax depreciation rules. Our members also show a lot of interest in the small business depreciation concessions. Small businesses appreciate the administrative relief that those concessions offer, and they are keen to use them. However, small business operators still find the concessions to be complicated and require clarification and assistance.

The Government can simplify the depreciation concessions further and provide permanent, ongoing compliance relief to small businesses by retaining the Government's proposed extension for the 2019-20 year of $25,000 threshold for the instant asset write-off as the permanent threshold.

The instant asset write-off eases small business compliance burdens

Small businesses benefit from the instant asset write-off in two broad ways:

- relief from the burden of maintaining depreciation records over a long period of time for such low-cost assets; and
- upfront tax benefit arising from the immediate deduction of the full cost of the asset.

The instant asset write-off is commonly used within our membership base. Each year we receive many queries about the mechanics of the concession. In fact, the temporary increase of the instant asset write-off threshold to $20,000 was the 2015-16 Budget announcement that generated the most queries and interest from our members.

However, in recent years, multiple changes to the " low cost" threshold have unfortunately negated some of the administrative benefits offered by the writ e-off.

A constantly changing threshold causes uncertainty and confusion

Up to 2012-13, the threshold was $1,000. Then, for a mere 18 months - from 1 July 2012 to 31 December 2013 - the threshold was increased to $6,500. This increment was then ascribed *inter alia* to the Government ' s removal of the Entrepreneur' s Tax Offset.

For a further period of less than 18 months - 1 January 2014 to 12 May 2015 - the threshold reverted to $1,000.

The most recent change to the threshold was a significant and generous increase to $20,000, from 7.30pm (AEST) on 12 May 2015. By default, this threshold will revert back to $1,000 on 1 July 2019 unless the Government's proposal for $25,000 write-off goes ahead and would be reverting back to $1,000 once again on 1 July 2020.

There was also a temporary concession which allowed small businesses to write off the first $5,000 on a motor vehicle costing at least $6,500 (with the remaining cost amount depreciated over the effect life of the vehicle). This concession applied for 2012-13 and 2013-14 - it existed in conjunction with the $6,500 instant asset write-off for all depreciating asset categories. As noted above, the introduction of these concessions as then permanent measures was then ascribed *inter alia* to the Government's removal of the Entrepreneur's Tax Offset.

From our member feedback over the years, the multiple and differing write-offs offered led to confusion and resources dedicated to understanding them.

The efforts of successive governments to retain the concession in order to simplify compliance obligations and reduce administrative costs for small business is appreciated. However, the frequent changes to the threshold over the past number of years, as well as the additional and temporary motor vehicle write-off, have caused confusion and uncertainty amongst the small business and tax professional communities.

Administrative costs are unnecessarily increased as users of the concession dedicate human and financial resources to understanding the changes, ensuring that their low-cost purchases meet the timing and cost rules and adjusting their financial and business plans accordingly.

A permanent threshold of $25,000 will help many small businesses

The threshold is currently legislated to reduce to $1,000 on 1 July 2019 - this means that the $20,000 threshold will be in place for less than 50 months. (We acknowledge and appreciate the Government's planned extension for the 2019-20 year of $25,000 to 1 July 2020 and request this be a permanent threshold for small business).

Treasury data released in mid-December 2015, which was publicly reported in the mass media,[23] relating to small business tax returns lodged in the period from 1 July to 15 December 2015 (in respect of the 2014-15 financial year), shows the extent to which the increased threshold had benefitted small businesses:

- 99,335 small businesses claimed a total of $418.5 million .[24] By comparison, 77,951 small businesses claimed a total of $250.3 million in the same period in the previous year (when the threshold was $1,000).[25]
    - This equates to a net increase of about 21,000 small businesses. According to Treasury figures, there were about 56,000 new claimants.[26]
    - This also equates to a total increase in instant asset write-offs of over $168 million claimed by the small business community.
- The average claim was $4,213, compared with $3,211 the previous year.[27]

This data indicates that upon its implementation, the $20,000 threshold was achieving its desired effect of encouraging small businesses to invest in necessary capital items by alleviating the cash flow burden that usually accompanies a long effective life of a costly asset.

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[23] For example, see:
- Mather, Joanna : *Tax break taken up by 99k small businesses,* Australian Financial Review , 23 December 2015.
- Waters, Cara: *Small business cashes in on $20,000 tax break,* The Sydney Morning Herald, 15 December 2015.

[24] Waters, Cara: *Small business cashes in on $20,000 tax break,* The Sydney Morning Herald, 15 Dec 2015

[25] Waters, Cara: *Small business cashes in on $20,000 tax break,* The Sydney Morning Herald, 15 Dec 2015.

[26] Waters, Cara: *Small business cashes in on $20,000 tax break,* The Sydney Morning Herald, 15 Dec 2015

[27] Waters, Cara: *Small business cashes in on $20,000 tax break,* The Sydney Morning Herald, 15 Dec 2015

Many small businesses had until May 2016 to lodge their 2014-15 tax returns. Therefore, the final figures in relation to 2014-15 would show an even larger uptake of the instant write-off than the above data suggests.

The Government's oft-stated commitment to assisting small businesses is commendable. In line with this objective, the Government should amend the law so that $20,000 ($25,000 under the Government's planned extension) becomes the permanent threshold. This threshold is having a real effect in the small business community, in both encouraging investment in productive assets and reducing compliance burdens.

The Government is obviously supportive of an extension of the $20,000 write-off, based on its recent announcement of a planned increase to $25,000 to 1 July 2020. We urge the Government to consider our submission to make this increase a permanent change for small business, consistent with the Government's interest in helping the small business community.

The proposed $25,000 threshold should also be maintained for the small business pool write-off

Under the temporary $20,000 threshold rules ($25,000 under the Government's planned extension for the 2019-20 year), taxpayers are also currently able to deduct the entire balance of their general small business pool if that amount is less than $20,000 (or $25,000 as recently announced) for an income year. Under current law, this threshold will revert to $1,000 on 1 July 2019 (or 1 July 2020 as recently announced).

The pool deduction threshold is the same as the instant write-off threshold. Therefore, the movements in this threshold have been equally rapid and varied. Our recommendation to permanently maintain the $20,000 (or $25,000 as recently announced) instant write-off threshold also extends to permanently retaining $20,000 (or $25,000 as recently announced) as the threshold for writing off low pool balances

Maintaining a $20,000 (or $25,000 as recently announced) threshold for these related depreciation rules will mitigate the uncertainty and confusion that the small business community currently experiences.

Maintaining the proposed $25,000 threshold is unlikely to put public revenues at risk

Maintaining the $20,000 (or $25,000 as recently announced) threshold permanently should have a negligible effect on total Government revenues over time.

The permanency of the measure will continue to provide economic stimulus in alignment with the original justification of its introduction.

In any event, any reduction in tax payable in the year that a business claims the write-off is compensated for in subsequent years for which it will not claim depreciation on that asset.

The Government increased the threshold to $20,000 (and proposed $25,000), albeit temporarily) to encourage businesses to invest in income-producing assets, where they otherwise may have delayed or never made that investment. Therefore, it is reasonable to anticipate that a permanent
$20,000 ($25,000 as announced) threshold will result in increased tax revenues for the Government over time from income that may otherwise have never been derived.

These additional tax revenues should far offset any lost revenues from immediate tax deductions including any timing losses incurred from the time value of money. Although a high threshold prima facie encourages illegitimate claims, the Government itself has mitigated the risk by introducing various integrity measures alongside the increase to $20,000 ($25,000 as recently announced). The general anti-avoidance rule in Part IVA of the ITAA36 also exists as a deterrent. Finally, the Explanatory Memorandum to the amending legislation clearly states that the Government is willing to consider further legislative action if other integrity measures fail.

A permanent $20,000 (or $25,000 as recently announced) threshold will encourage small businesses to invest in income - generating assets by reducing costs of acquisition and administration, without any substantial risk or decrease to government revenues over time.

B.2 Harmonising the small business entity threshold

Recommendation B.2: That the Government increases the threshold for the small business CGT concessions and the small business tax offset to $10 million.

The $10 million threshold for most concessions is commendable

The Government's announcement in the 2016-17 Federal Budget that the previous $2 million small business entity concessions threshold would be increased to $10 million from 2016-17 for all concessions except the small business income tax offset and the small business CGT concessions were much appreciated. The threshold uplift will now enable many more businesses with turnovers between $2 million and $10 million to access a broad range of concessions.

Three different thresholds cause confusion and add to the compliance burden

The flaw with the otherwise commendable initiative to raise the threshold to $10 million is that it will not apply to two key concessions. The threshold for the tax offset for unincorporated small businesses has been increased to only $5 million. The threshold for the CGT concessions remains at $2 million.

The small business tax concession regime now has three tiers. Many businesses with annual turnovers from around $2 million to around $10 million will now have to separately apply eligibility tests for the different concessions. Some will be eligible for some concessions and not for others. This will cause confusion and increase the time and costs necessary for businesses to obtain advice and ensure that they claim concessions correctly.

A small business taxation regime that is intended to alleviate tax compliance burdens should be simple to understand and apply. This includes minimal variance in eligibility thresholds between the different concessions.

All small business turnover thresholds should be harmonised at $10m

We recommend that the thresholds for all small business taxation concessions should be harmonised at $10 million. For the 2019-20 Budget, this means raising the threshold for the small business tax offset and the small business CGT concessions.

The Government clearly considers that $10 million is an appropriate turnover threshold for the majority of small business concessions. Therefore the $10 million threshold should also be appropriate for the small business tax offset and the CGT concessions. Specific concessions already have different eligibility criteria in order to target particular activities, business types or transactions. There is no need to also set varying turnover limits.

B.3 Loss carry-back tax offset for small companies

Recommendation B.3: That the Government reintroduces the loss carry-back tax offset for companies that are small business entities.

The former loss carry-back tax offset should be reinstated for small companies

The Government should reintroduce the loss carry-back tax offset for companies that are small business entities.

The former offset was effective for only one year, 2012-13. Companies could choose to carry up to $1 million of tax losses back to an eligible earlier year to obtain a tax offset for 2012-13, instead of carrying them forward.

The repeal of the former offset was not because it was flawed

The Government's repeal of the loss carry-back offset was not due to any ineffectiveness or failures of the measure. Rather, the offset was introduced as part of the MRRT package of tax measures - and consequently the offset was repealed solely because the MRRT was repealed.[28]

The merits of the loss carry-back offset (discussed below) warrant its reintroduction now.

The MRRT package also included an increase in the instant asset write-off from $1,000 to $6,500. The increase was repealed at the same time as the loss carry-back. Yet, the Government has introduced another increase to the write-off threshold to $20,000. This shows that the Government is willing to reverse an MRRT-related repeal - and, in fact, make the measure more generous - if it sees the merit in doing so.

Convincing arguments for having a loss carry-back tax offset are outlined in the Explanatory Memorandum to the legislation that introduced the original offset.[29] These include the following:

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[28] Explanatory Memorandum to the *Minerals Resource Rent Tax Repeal and Other Measures Bi /12014,* 2.4.
[29] The *Tax and Superannuation Laws Amendment (2013 Measures No. 1) Bill 2013.*

Encouraging companies to take opportunities

Loss carry-back will encourage companies to adapt to changing economic conditions and take advantage of new opportunities through investment. Firm s will be able to utilise their tax losses sooner and reduce the extent to which they risk never being able to use those losses.[30]

Reducing asymmetrical treatment between profits and losses

Without a carry-back mechanism, there is an asymmetric treatment of company profits and losses. This is because the Commonwealth collects, as a tax, a share of profits that the company makes in an income year but does not share directly in a company's loss. Instead, future tax may be reduced if the company deducts a carried forward loss.[31]

Reducing bias against risky investments

The asymmetry means that a company that makes a profit in one year and a loss in the next year will pay a higher effective tax rate over those two years than another company that makes the same total profit more evenly over the two years.[32] This can give rise to a bias against riskier investments, which diverts capital to investments that are of lower value for the economy.[33]

Improving cash flow

A loss carry-back offset improves the cash flow of affected companies by allowing them to access their losses in a timelier manner. This promotes sensible risk taking by companies, helping them to adjust to changing economic conditions.[34]

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[30] Explanatory Memorandum to the *Tax and Superannuation Laws Amendment (2013 Measures No. 1) Bill 2013,* 5.9.
[31] Explanatory Memorandum to the *Tax and Superannuation Laws Amendment (2013 Measures No. 1) Bill 2013,* 5.12.
[32] Explanatory Memorandum to the *Tax and Superannuation Laws Amendment (2013 Measures No. 1) Bill 2013,* 5.13.
[33] Explanatory Memorandum to the *Tax and Superannuation Laws Amendment {2013 Measures No. 1) Bill 2013,* 5.15.
[34] Explanatory Memorandum to the *Tax and Superannuation Laws Amendment (2013 Measures No. 1) Bill 2013,* 5.18.

Small businesses will benefit from the loss carry-back offset

The offset should be reintroduced for companies that are eligible small business entities.

This would complement the various small business measures that the Government has introduced over the past few years. It would provide a cash flow benefit and encourage the company to take opportunities. It will also encourage investors to devote capital to these companies.

The former offset was only available if the company had paid tax in the previous two years. According to the Explanatory Memorandum introducing the original off set, this was to ensure that the offset was targeted to companies with a history of conducting a profitable enterprise and that the offset was not to be used for seed funding .[35]

It would be appropriate to impose such a restriction on the reintroduced offset. This would ensure that the offset rewards previous success and encourage continuation of such success. The offset should not reward careless risk taking by management, which should not be done at public expense.

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[35] Explanatory Memorandum to the *Tax and Superannuation Lows Amendment {2013 Measures No. 1) Bill 2013,* 5.19.

B.4 Division 7A Amnesty

The Government should allow an amnesty period for treatment of pre-1997 loans and pre 2009 UPEs

With pre-4 December 1997 loans potentially falling within the operational scope of Division 7A, time should be afforded to allow entities to write-off these loans.

Practice Statement Law Administration 2006/2 (GA) advises that the Commissioner decided to take no active compliance action that would treat statute barred private company and trustee loans made prior to the enactment of Division 7A as giving rise to a deemed dividend under Division 7A. The treatment of "grandfathered loans" in this way shows - i.e., loans created pre-4 December 1997 gave taxpayers the opportunity to write off loans without negative tax consequences which could not have been foreseen at the time of the loan being granted.[36]

In many scenarios, these loans were not written off to keep the entity in question solvent. Another possible issue that could have arisen is that appropriate documentation - as required for loans commenced after 4 December 1997 - would not have been kept or maintained, with neither party being able to show how the debt had occurred and grown especially in cases where the loan would have been made in years exceeding the record keeping requirement.

Included in Treasury's documentation requesting submissions regarding targeted amendments to the Division 7A integrity rules, are proposals allowing for quarantined loans (i.e., loans pre-4 December 1997) and UPEs (pre-16 December 2009) to now be captured by Division 7A rules.

Tax & Super Australia are of the opinion that for UPEs' prior to 16 December 2009 that the Commissioner's view first expressed on 16 December 2009 included in ATO fact sheet ref. QC 24445 which states "..a UPE is capable of amounting to 'the provision of financial accommodation' by the private company beneficiary in favour of the trust, and therefore may be considered a loan for division 7A purposes……As the Commissioner first expressed his view on 16 December 2009, we will only apply this view to UPEs which come into existence on or after this date" should apply.

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[36] Practice Statement Law Administration 2006/ 2 (General Administration), point 4, sub-point 3.

Our Organization has recently prepared a submission to the Treasury concerning our views and recommendations on the Government's proposed implementation of the amendments to Division 7A. We are hopeful that Treasury will review and take into account the views and recommendations of our submission when finalizing the proposed Division 7A amendments.

B.5 Loss of Franking Credits

That the Government reconsiders its stance on the loss of franking credits due to the corporate tax rate cut.

Changes to the small business tax rate have led to trapped franking credits

Whilst the progressive tax cuts for SBEs slowly reducing to 25% over the coming years is unquestionably good for business, the taxpayer-shareholders of these companies have not appropriately been considered and are impacted by these cuts.

For the 2015-16 financial year, small business companies paid tax at a rate of 28.5%. However, the SBE franking rate remained at 30%. As a result, companies could frank dividends at a higher rate than the rate at which tax was paid. This difference in rates could have potentially caused the company's franking account to be temporarily in debit - If the franking account was in debit at 30 June, the company would have been required to pay franking deficit tax in order to bring the franking account back to nil.

The corporate tax rate was reduced from 28.5% to 27.5% for the 2016-17 and 2017-2018 income years for small business entities - but the maximum franking credit that can be allocated to a franked distribution paid by a company will be based on the applicable corporate tax rate for that year, unless the entity's turnover for the prior year is equal or greater than the threshold for the current year.

With this reduction of the company tax rate and SBE franking rate, it will be common that companies will have retained profits which they have paid tax on at 30% but can only be franked at the 27.5% company tax rate. Where a company has no further retained profits to declare a dividend, and the company has a credit balance in their franking account, the company will not be able to pass the benefit of these franking credits on to its shareholders - these franking credits will be wasted.

PART C: SUPERANNUATION

C. Miscellaneous recommendations in relation to superannuation rules

The following are recommendations from reviewing the superannuation rules that were legislated in 2016. Below are three recommendations for improving specific aspects of the new laws.

C.1 Penalties for breach of the commutation authority requirement

Recommendation C.1: That the Government amends s307-80(4) of the ITAA97. Penalties for a failure by the superannuation income stream provider to comply with the commutation authority should be directed to the provider and not the superannuant.

The new s307-80 of the ITAA97, which came into force on the 1 July 2017, provides that where a commutation authority has been issued in respect of a superannuation income stream and the superannuation income stream provider is required to comply with the authority but has failed to do so, the income stream will not be in the retirement phase (subsection (4)).

The superannuation income stream will cease to be in the retirement phase from the start of the financial year in which the superannuation income stream provider failed to comply with the commutation authority and all later financial years.

The penalty is the loss of the income tax exemption on earnings. Therefore, the provision places the punitive burden on the superannuant, even if the failure to comply with the commutation authority was caused by the superannuation income stream provider and was no fault of the superannuant. This is likely to be the case for the vast majority of superannuants, except where they are also the trustee of the fund.

The penalty should be better aligned to the entity responsible for the non-compliance. Therefore we recommend substituting the loss of income tax exemption with an administrative penalty levied on the superannuation income stream provider.

C. 2 Alternative to a court conviction for fraud or dishonesty

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Recommendation C.2: That the Government provides an alternative to the court system for establishing that a superannuation interest is reduced because of a loss suffered by the superannuation income stream provider as a result of fraud or dishonesty.

The new transfer balance account rules provide that a "transfer balance debit" is made to the taxpayer's transfer balance account if there is a loss to the taxpayer's superannuation interest due to fraud or dishonesty. One of the conditions for the debit to be made is that an individual is convicted of an offence involving that fraud or dishonesty.

A practical issue with this condition is that obtaining a judicial conviction for fraud or dishonesty will likely be extremely costly and time-consuming.

We recommend that the Government amends the law to provide an alternative mechanism to establish that a superannuation fund member or a class of members suffered a loss to their superannuation interests due to fraud or dishonesty. For example, the law may be amended to empower the ATO and APRA to make a determination that fraud or dishonesty occurred. The law may also be amended to empower suitable tribunals to make a decision that fraud or dishonesty occurred. Another option is to empower the relevant Minister to make a determination that a particular class of members of the fund suffered a loss to their superannuation interests due to fraud or dishonesty.

C.3 Insurance proceeds from incapacity or terminal medical condition

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Recommendation C.3: That the Government amends the law so that insurance proceeds received due to temporary or permanent incapacity or a terminal medical condition is given the same treatment as structured settlement proceeds.

The newly legislated definitions for the terms "transfer balance account" and "total superannuation balance" broadly allows for structured settlement proceeds to be excluded from calculations of relevant balances. Consequently, a receipt of structured settlement proceeds does not impact the superannuation member's ability to make non-concessional contributions or to obtain an income tax exemption for assets supporting pensions.

We recommend that insurance proceeds received due to temporary or permanent incapacity or a terminal medical condition should be treated in the same manner. Such proceeds are expected to be spent primarily on medical treatment and/or to compensate for

the loss of capacity, similarly to the proceeds from structured settlements. In our view, there should be parity of treatment between them and they should all be excluded from the calculations of account balances.

PART D: OTHER KEY ISSUES

The following is a list of broad taxation issues which have required, but unfortunately lacked, urgent government action for some time.

Given the breadth of these topics, we have not made specific recommendations in relation to specific aspects for the 2019-20 Budget. Instead, we urge the Government to dedicate funding in the 2019-20 Budget to review these areas of taxation law and to bring about any necessary legislative change.

The taxation of trusts

We consider that creating legislative certainty in relation to the taxation treatment of trusts and the taxation of income derived by trusts (Division 6 of the ITAA 1936) should be a high priority for the Government.

The taxation of trusts has long been recognised by taxpayers, practitioners and politicians as an area in need of broad reform. In December 2010, the former government announced that it would take steps towards updating the trust income tax provisions and rewriting them into the ITAA97 (from the ITAA36). This announcement was in recognition of the "ongoing discrepancies", "unfair outcomes", "opportunities for taxpayers to manipulate their tax liabilities" and "major uncertainties" that arose from the trusts taxation regime.[37]

Since that announcement over six years ago, the only major changes that have been legislated are:

- the introduction of the provisions relating to the streaming of franked distributions and capital gains - this was marked as an "interim" change to the taxation of trusts; and
- the reform of the managed investment trusts taxation regime.

Australia urgently needs trust taxation reform beyond the "interim" stage. The laws need to be robust, clear and fair and cut down compliance burdens for both business trusts and

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[37] Assistant Treasurer Bill Shorten, media release, *Farmers benefit with changes to trust laws,* 16 December 2010.

passive investment trusts. Further, the legislation should be completely rewritten into the ITAA97 rather than spread out across the ITAA36 and the ITAA97.

Groundwork analysis for the reform of trusts taxation already exists in the Board of Taxation's *Review of Tax Impediments facing Small Business*[41] and in the *Australia's Future Tax System* report .[38]

Review of the personal services income rules

Feedback from a previous survey we conducted indicates that tax practitioners consider the personal services income (PSI) measures contained in Part 2-42 of the ITAA97 are unduly complicated. TSA members experience high levels of uncertainty and compliance costs in applying the PSI rules to their clients.

The rules were introduced 18 years ago (2000-01) when the nature of contract work performed was different to what it is today. In the current day, service providers operate in a global and digitalised economy and are oftentimes able to deliver products and services remotely from - and to - any location. Further, individuals are commonly applying their skills and expertise using intellectual property and intangible assets rather than using tangible items. The legislation's reliance on concepts that are tangible in nature such as plant and equipment, tools of trade and business premises should be reviewed, and those tests expanded or updated if necessary.

In this regard, we recommend that the Government reviews the PSI measures to ensure that they are appropriate for contemporary PSI businesses. The outcome of the review may necessitate a rewrite of some or all of the PSI rules.

Further, in our view, the PSI rules are inadequate as a specific integrity measure due to the fact that there is still scope for the anti-avoidance provision of last resort, Part IVA, to apply to income splitting arrangements. We recommend that the Government reviews whether it is necessary to legislate more prescriptive rules against these tax avoidance practices so that there does not need to be a reliance on Part IVA.

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[37] See section 7.54 onwards.
[38] See section B2.

Better targeting of the CGT discount

To combat the problems that Australia will face over the next few decades from an ageing population, the Government needs to urgently implement measures to encourage personal long-term investment in capital appreciating assets which will generate income and capital gains on which taxpayers can rely on to fund their retirement.

Currently, the discount for individuals is 50% for a CGT asset held for longer than 12 months. This discount rate is the same regardless if the taxpayer holds the asset for 12 months and 1 day or for 20 years. We recommend that the Government considers implementing a phased system of discounting capital gains, under which the discount rate increases in proportion to the amount of time that the taxpayer has held the asset.

Commitment to long term tax reform

We urge the Government to commit to undertake comprehensive long-term tax reform. Reform is vital to ensure that Australia ' s taxation laws are appropriate for the modern day (including contemporary modes of employment and business, and changing social norms), can robustly accommodate change, keep Australia globally competitive and will adequately provide for the country's long-term spending needs.

There was widespread community disappointment when the Government abandoned its tax white paper process just over two years ago. There has been a history of successive governments promising structural tax reform but failing to deliver. For example, only a very small number of recommendations contained in the *A Future Tax System* report have been implemented, or even seriously considered, in the nine years since the release of the report in 2009.

We recommend that the Government continues the discussion that it commenced with its 2015 *Re:think* discussion paper, and construct a comprehensive tax reform plan to present to Australian taxpayers.

Introducing Simplicity intoTax Legislation by Using De Minimus Rules

It is well documented that our Tax Legislation is extremely complex and costly to administer. The use of De Minimus rules incorporated into tax legislation can simplify and minimize the number of Taxpayers required to interpret the laws, or engage professional assistance to do so, when their circumstances do not particularly warrant it and the amount of income tax at stake is not significant. Examples such as “a capital gain from a personal use asset being CGT exempt if it is acquired for $10,000 or less” or “the direct value shifting rules in Division 725 only apply where there is a material decrease ($150,000 on a scheme basis)”, are examples of common sense approaches to having a threshold of when it is considered necessary for a Taxpayer to tackle the relevant tax legislation. We consider the use of De Minimus rules could be used in a significant amount of tax legislation (i.e., Division 7A, the complexities of capital gains tax calculations etc.) to simplify the administration and compliance requirements of Taxpayers with our tax system.

PROVIDING CERTAINTY ON THE SUPERANNUATION GUARANTEE AMNESTY LEGISLATION

A recent survey from our Members on our budget submission contained responses that requested certainty in relation to the superannuation guarantee amnesty including an extension of the amnesty period for a further 12 months now that the amnesty’s original 12-month period ending 23 May 2019 has significantly elapsed yet is still to be legislated. This is creating a difficult environment for our Members to act and advise on these issues, particularly with the lengthy delays in the processing of legislation.

TARGETING THE BLACK ECONOMY

Our Organization has recently prepared a submission to the Treasury concerning our views and recommendations regarding improving black economy enforcement and offences. We are hopeful that Treasury will review and take into account the views and recommendations of our submission. In particular our Members response from a survey we conducted indicated a resounding “YES” to increased ATO audit activity. We recommend sufficient funding is provided for in the budget for effective ATO audit activity to occur.

REVIEW OF THE TAX RESIDENCY RULES FOR INDIVIDUALS

We have recently prepared a submission to the Board of Taxation regarding review of tax residency rules for individuals. We are hopeful that the Board of Taxation will review and take into account the views and recommendations of our submission, and pass on their findings to Treasury who will act accordingly. In particular, there is a Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures no. 2) Bill 2018 before the Senate, that includes removing entitlement to the capital gains tax main residence exemption for foreign residents. The future administering of this law, if passed, will be dependent on a Taxpayers residency status, a situation that currently is not always clear cut.

A concern we have with the Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures no. 2) Bill 2018 before the Senate, is mainly that the proposal doesn't contain an apportionment of the main residence exemption. i.e., the period the dwelling has been owned whilst an Australian Resident and used as a main residence is disregarded. Also, there is no consideration for the "absence rule" which would normally allow an individual to treat their dwelling as a main residence for CGT purposes. These components of the proposed legislation seem unfair for Australian residents who have resided in their home for numerous years, however at the point of time the residence is sold they are considered to be a non-resident with no main residence exemption factored in to the capital gains tax calculation.

THREE-YEARLY AUDIT CYCLE FOR SOME SELF-MANAGED SUPERANNUATION FUNDS

We have previously prepared a submission to the Treasury regarding the proposed three-yearly audit cycle for some self-managed superannuation funds, as a result of the Government's proposal in the 2018-19 budget. We are hopeful that Treasury will review and take into account the views and recommendations of our submission. As detailed in the submission, we are highly concerned about the impact of this proposal on the integrity of the superannuation system in Australia. During a period of volatility where the financial services sector faced a Royal Commission for inappropriate advice pertaining to self-managed superannuation funds now is not the time to be moving away from annual, independent audits.

THE REFUNDING OF IMPUTATION CREDITS

Our survey to Members requested their comments they would like to make on the budget. The most popular response referred to retaining the rules for the refunding of imputation credits. Reasoning behind this is likely due to the severe impact loss of refundable imputation credits will have on self-funded retirees and reductions in living standards for those affected (likely retired persons on lower incomes) where the refunds form a not an insignificant amount of annual income. There would also likely be a concern on the process of calculating the taxable income on the franked dividend in the event of the rules being changed. i.e., currently the imputation credit is grossed up with the dividend to calculate the taxable income on the dividend. If the refund was removed, tax may be payable on income that isn't received.

Improving whole-of-government use of technology and the digital rollout

We support the Government's "digital by default" initiative to enhance the digital service delivery and information technology on a whole-of-government basis.

However, in recent times there have been a number of very serious, well-publicised technological problems at government agencies. These are the Census website crash and security breach in August 2016; the Centrelink debt letter debacle from December 2016; and the widespread ATO systems outage in December 2016.

The ATO technological breakdown has caused a lot of disruption and uncertainty for practitioners who could not complete their work as intended and for taxpayers waiting for transactions to be processed accurately. While the other two examples are not directly tax related, they nevertheless impact taxpayers and advisers. Centrelink debts and entitlements affect tax returns and liabilities. The Census website problems cause doubt over the security of people' s data hosted on government servers as well as the government's ability to provide adequate online services and capacity.

The cited examples all had serious consequences and cannot merely be put down to regular operational glitches or errors. We strongly urge the Government to prioritise resourcing for its existing reviews of these issues and ensure that any systemic problem, whether they be technological inadequacies or human errors, are fixed as soon as possible.

Consider the competitiveness of the Australian tax system in light of legislated changes abroad

In light of recent developments overseas, many countries are reducing their corporate tax rates - most notably the United States, which has seen a cut of 14 percentage points to 21%.

The worldwide average corporate tax rate is 23.03%[39]. With Australia's rate remaining at 30% for larger businesses and 27.5% for base rate entities (reducing to 25% by mid-2021), a recent OECD report comparing business tax rates across more than 100 countries, listed only Costa Rica and Chile having a higher effective company rate than Australia. The report showed that Australia has the third highest effective corporate tax rate in the world [40].

In order to maintain a competitive edge and encourage foreign investment, the Government should investigate and consider a total review of the tax system from top to bottom.

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[39] Corporate Income Tax Rate s around the World, 2018. Tax Foundation, Pg. 1.
40 The Sydney Morning Herald 15 January 2019 Business The Economy Company Tax