

2011-12 Federal Budget

Changes to Superannuation

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Whilst the 2011-12 Federal Budget did not provide significant change for the superannuation industry, there was the usual tinkering around the edges. The main changes announced which will have an impact on superannuation industry included:

Refund of excess concessional contributions

From 1 July 2011, individuals who breach concessional contribution caps by up to \$10,000 can request the excess amount be refunded on a once only basis. Personal tax rates will apply to the refunded amount in lieu of the higher excess contributions tax rate.

The Government will consult with the superannuation industry on the implementation of this measure, and that will be an opportunity for sensible refinement of a regime which is seen by many as being unfair.

The lack of retrospectivity of this measure and the fact it only applies once per person is disappointing. Hence, the golden rule continues to be "make sure you understand your contribution caps and track your superannuation regularly". That will not always be easy and members will need to work with employer as the timing of contributions is critical, particularly around year end.

Infrastructure investment

The Government announced measures which are stated to remove impediments in the tax system to invest in infrastructure projects of national significance. Broadly, these measures will:

- uplift project losses associated with "designated infrastructure projects" at the Government bond rate, and
- exempt project losses from the continuity of ownership test and the same business test.

Due to the nature of infrastructure projects, there is often a significant gap between the commencement of the relevant infrastructure project and the recoupment of losses generated in the early years. Under the current tax rules, changes in ownership of the project vehicle can result in tax losses being lost. The proposed changes are aimed at ensuring that tax losses maintain their value over time, and are able to be recouped even where there is a change in ownership of the project vehicle.

What is not clear, is whether this proposal will be restricted to companies. If this is the case, the removal of the same business test may not be of much assistance as most project companies are special purpose companies. In the event that the proposal extends to include trusts, the measure will be of more assistance.

The proposal to index early year losses may be of benefit to project economics as it may defer the taxing point of the project and allow for more borrowings.

A decision maker will be empowered to confer "designated infrastructure project" status to privately financed public infrastructure

projects of national significance based on a range of criteria. These criteria are yet to be determined, but will include a global expenditure cap of \$25 billion over the period from the date of enactment of the enabling legislation to 30 June 2017.

While this is a step in the right direction for privately funded infrastructure projects in Australia, much of the detail is still to come. We expect further consultation in relation to design features of this measure, including criteria for “designated infrastructure projects”, in the coming months.

Capital gains tax – limiting the trading stock exception for superannuation funds

With effect from 7.30 pm (AEST) 10 May 2011, the Government will amend the income tax law to remove the trading stock exception to the CGT 'primary code rule' applicable to complying superannuation entities for specified assets. The measure will ensure gains or losses on specified assets (including shares, units in a trust and land) held by complying superannuation entities are subject to CGT. According to Government a small number of complying superannuation entities are seeking to treat shares as trading stock, so as to deduct losses on their shares against income other than capital gains. Transitional rules will apply to ensure that assets held or accounted for as trading stock before the time of announcement are unaffected.

Changes to scrip for scrip rollover relief

For CGT events occurring after 7.30pm (AEST) on 10 May 2011, the Government has announced that it will ensure that the CGT scrip for scrip rollover integrity provisions that apply to individuals and companies will also apply to interests held by trusts, superannuation funds and life insurance companies.

These integrity provisions apply to transactions where stakeholders in the target and acquiring entities have the potential to influence both entities. Since some trusts, superannuation funds and life insurance companies have considered that these provisions do not apply to them because, as the stakeholders, they own the interests for the benefit of others, rather than for their own benefit. The Government proposal is to amend the law so that this unintended interpretation of the provisions will no longer be available, and that the provisions will unarguably apply to all stakeholders.

Reduction in the minimum payment amounts for account-based pensions in 2011-12

During the global financial crises, the Government provided pension drawdown relief by halving the minimum payment amounts for the 2008-2011 income years. The Government intends to phase out the relief by the end of the 2012 income year. For the 2011-12 income year, the minimum payment amounts for account-based, allocated and market linked (term allocated) pensions will be reduced by 25 per cent.

Tax compliance — countering fraudulent phoenix activities by company directors

The Government has indicated its intention to strengthen the tax law to counter fraudulent phoenix activity. Essentially, phoenix activities involve companies accumulating debts and then liquidating to avoid paying the debt. Subsequently, the business continues as another corporate entity, controlled by the same person(s).

In addition, from 1 July 2011 (amongst other measures) the director penalty regime will be extended to include superannuation guarantee amounts and directors become personally liable for their company's failure to pay employee superannuation.

Stronger super – SMSF reforms

The Government will provide funding to the ATO (\$40.2m) and ASIC (8.4m) to implement the Stronger Super self managed superannuation fund reforms, announced on 16 December 2010. The funding will come from an increase of \$30 to the self managed superannuation fund levy, from \$150 to \$180 from the 2010-11 income year, and from fund auditor registration fees.

The measures include the introduction of a new administrative penalty framework, registration of fund auditors subject to competency and independence standards, improved data collection and improvements to the self managed superannuation fund registration process.

Previously announced measures

Many of the other measures contained in the budget were previously announced and include:

- A higher concessional superannuation contributions cap for eligible individuals aged 50 and over with total superannuation balances of less than \$500,000. The additional concessional superannuation contributions are \$25,000 above the general contribution cap and will apply from 1 July 2012.
- An extension to the end date of the temporary loss relief for complying superannuation funds that merge. The date has been extended by three months, from 30 June 2011 until 30 September 2011.
- The ability for funds to use TFNs for the identification and location of accounts, which should assist with the consolidation of multiple member accounts.
- The requirement for employees to be provided on their payslips, information about the amount of super paid on behalf of the employee. Super funds will also be required to provide employees and employers will quarterly notification if regular payments cease with effect from 1 July 2012.

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