batallion legal

keepin' it simple

2016/17 Federal Budget

By Luis Batalha, Director & the batallion legal team

5 May 2016

Perhaps unsurprisingly, the focus of the 2016/17 Federal Budget is on superannuation and its taxation. The budget addresses the perception, or possibly the misconception, that the superannuation system is being abused by high net worth individuals. Thus, various measures designed to curb the extent of contributions made by individuals and reducing or eliminating the tax concessions applicable to the payment of benefits were announced. Balanced against the budget's new superannuation measures, were some sweeteners, such a reduced corporate tax rate, a higher small business threshold for some purposes and a reduced tax rate for middle-income earners.

Below, we set out an overview of the main measures in this year's Federal Budget.

Superannuation

Changes	Start date	Comments
New $500,000 lifetime non-concessional contributions cap	3 May 2016 (7:30pm AEST)	Until the budget was announced, individuals under the age of 65 could make post-tax superannuation contributions (or non-concessional contributions) of up to $540,000 every 3 years or $180,000 per year. After the budget was announced, the Government replaced this with a **lifetime** limit of $500,000.
Lower concessional contributions cap	1 July 2017	At present, individuals can make pre-tax superannuation contributions (or

		concessional contributions) of up to $30,000 each financial year if they are under 50 or $35,000 if they are 50 or over. In the budget, the Government announced that this would be replaced with just 1 limit of $25,000 for all individuals, irrespective of age.
Limit on transfer of balances to pension phase	1 July 2017	To date, there has been no limit on the superannuation balance an individual can transfer into pension phase tax-free. As a result of the budget, however, a limit of $1.6 million will be introduced. Superannuation balances in excess of $1.6 million will need to be kept in accumulation phase accounts. For the purposes of the measures, individuals' superannuation balances will take into account both past and future transfers into the superannuation fund.
Catch-up concessional superannuation contributions	1 July 2017	The budget announced a new measure to allow additional concessional contributions to be made by individuals who have not reached their concessional contributions cap in previous years and with a superannuation balance less than $500,000.
Tax on contributions	1 July 2017	The point at which high income earners will pay additional contributions tax will be lowered from its current $300,000 to $250,000.

Work test abolished for over 65'ers	1 July 2017	As a generous measure, individuals aged 65 to 74, will no longer need to be working in order to be able to make superannuation contributions.
Transition to retirement pensions	1 July 2017	The budget announced the end of the exemption for superannuation funds earning income supporting transition to retirement pensions (ie pensions paid to individuals over preservation age, but not retired).
Limit on tax deduction for superannuation contributions ended	1 July 2017	Again as a generous measure, as a result of the budget, all individuals under 75 will be able to claim an income tax deduction for any personal superannuation contributions they make. At the moment, only individuals who earn at least 10% of their income from salary and wages can claim a tax deduction.
Anti-detriment tax deductions ended	1 July 2017	The budget announced an end to the availability of a tax deduction for anti-detriment payments for death benefits. However, lump sum death benefits to dependants will remain tax-free.

Strangely, the budget states that most of the superannuation measures will start on 1 July 201**7**, rather than, as would usually be expected, on 1 July 201**6**. Perhaps the reason for this delay to the start date is that the Government would like to give individuals and superannuation funds enough time to adjust to the measures.

Companies & small business

Changes	Start date	Comments
Fall in company tax rate to 25% over 10 years	1 July 2016	Over the next 10 years, the company tax rate will fall to 25%. For small businesses, under the new $10 million turnover threshold, however, the tax rate will fall to 27.5% from 2016/17. The budget proposes that the 27.5% tax rate apply to all companies by 2023/24.
New $10 million small business threshold	1 July 2016	The turnover threshold for deciding whether an entity is a small business is planned to rise from $2 million to $10 million. This will apply to, for example, the simplified methods for accounting for GST, PAYG and trading stock and the depreciation rules. Unfortunately, however, the new threshold will **not** apply to accessing the small business CGT concessions. For small business CGT relief purposes, the $2 million turnover threshold will remain.
Non-company small businesses lower tax	1 July 2016	Like businesses operating through a company, businesses operating through other structures (eg as sole traders) will benefit from a fall in the rate of tax applicable to them. This is being introduced as a higher discount to the tax rate applied to income received by non-company entities. Over 10 years, the discount will rise from the current 5% to 16%.
Simpler BAS	1 July 2017	The budget announced a simpler BAS for

reporting		small businesses. The simpler BAS will allow for easier classification of transactions. The system will be trialled from 1 July 2016, with a view to its formal introduction from 1 July 2017.
Div 7A changes	1 July 2018	Changes are on the agenda to the operation and administration of the private company deemed dividend rules. These are designed to simplify the application of the provisions.

It is rather unfortunate that the Government did not introduce the same threshold for the assessment of whether a business is a small business across the board. In particular, it is rather unusual that the Government did not introduce the same standard for CGT purposes. The small business CGT concessions are overly complex and many small businesses struggle with their application. The Government should consider introducing just one uniform threshold test to be used across all the different tax concessions and exemptions.

Individuals

Changes	Start date	Comments
Tax cut for middle income earners	1 July 2016	The threshold for the 32.5% tax rate is to rise from $80,000 to $87,000.
Fall in Medicare low income thresholds	1 July 2015	The low income thresholds for the Medicare Levy and the surcharge have already started increasing since 1 July 2015.
No change to negative gearing	N/A	Despite the rumours, the budget made no announcement regarding negative gearing concessions.
No change to general	N/A	Despite the rumours, the budget made no

discount from CGT		announcement to end or reduce the 50% general discount from CGT available to individuals.

Rather than increasing the tax rate threshold for so called "middle income earners", it may have been more equitable for the Government to have introduced indexation to the tax brackets. For years, this measure has been contemplated without any consideration. The tax law could easily have an indexation component to prevent bracket creep. The indexation of the tax brackets would more equitably and fairly guarantee tax cuts for all income earners.

Other measures

Changes	**Start date**	**Comments**
GST extended to low-value imports	1 July 2017	The budget announced that GST is going to apply to low value goods imported into Australia. The budget achieves this by requiring overseas suppliers, with an Australian turnover of $75,000 or more, to register for GST and collect and remit GST on sales.
New 40% tax on multinationals' profits	1 July 2017	Multinationals will be required to pay a new 40% tax on profits transferred offshore through related party transactions, without economic substance, that lower the tax paid on their Australian profits by 20% or more.
Transfer pricing	1 July 2016	Transfer pricing rules will be amended to adopt new OECD Guidelines.
Increase in penalties for non-disclosure by global	1 July 2017	Entities part of a group with a global turnover of $1 billion or more, will be

entities		subject to a maximum penalty of $450,000 for failing to disclose certain information to the ATO.
Start-up innovation incentives	1 July 2017	New tax incentives will be introduced for investors who support innovative start-ups.
TOFA	1 January 2018	The TOFA rules will be simplified, including removing the majority of taxpayers from the rules.
Collective Investment Vehicles (CIVs)	1 July 2017	A new tax regime will be introduced for 2 new types of collective investment vehicles. Investors in these vehicles will be taxed as if investing in the underlying assets directly.

Conclusion

The superannuation measures in this year's Federal Budget are rather unfortunate. The measures appear to have been introduced by a Government, out of fear of its opponents. The measures are ill-considered and have been rushed, due to the negative publicity surrounding the (supposed) accumulation of superannuation by the wealthy. While in the short term, the superannuation measures introduced may serve to weaken public opposition to superannuation and its abuse, ultimately they will only hamper the growth of private savings in Australia. By discouraging individuals from saving for their own retirement the Government is only providing a greater incentive for individuals to rely on the age pension from the Government. With an increasingly ageing population, one can only question the efficacy of such measures. Public debt will only continue to rise further, in the future if the Government introduces any perceived or actual disincentives for private saving. Private saving, particularly for retirement, ought to be encouraged, not dampened.