

Kaplan Taxation Materials

Budget Tax Summary

2009/10 Federal Budget

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Table of Contents

FEDERAL BUDGET SUMMARY 2009/10	1
■ Individuals.....	1
■ Personal income tax	1
□ Income tax rates - residents.....	1
□ Low income tax offset	2
□ Tax thresholds for senior Australians.....	2
■ Medicare levy threshold increase	3
■ Exemption of income recovery subsidy payments for Australian disaster victims	3
■ First home owner's boost extended.....	3
■ Private health insurance rebate changes	4
■ Employee share schemes	5
■ 'Adjusted taxable income'	5
■ Fringe Benefits Tax (FBT)	5
■ Non-commercial Losses.....	6
■ Current operation of non-commercial loss rules.....	6
■ Announced Non-Commercial Loss Changes	6
■ Superannuation.....	7
■ Concessional Contributions Cap reduced to \$25,000 p.a. (indexed).....	7
■ Payment of small and insoluble lost superannuation accounts to unclaimed monies	9
■ Trans-Tasman retirement savings portability scheme.....	10
■ Halved Minimum annual superannuation pension drawdown to be extended to 2009/10.....	10
■ Depreciation	11
■ Expanded Business Tax Break Deduction - 50% of Cost claimable.....	11
□ Original Tax Break Bill Treatment.....	11
□ Federal Budget Expanded Tax Break Deduction Treatment.....	11
■ Companies	12
■ Division 7A and licences/rights to private company assets.....	12
■ Off-market share buy-backs	13
■ R&D tax concession	14
■ Small business concessions	14

■ Entrepreneurs Tax Offset (ETO)	14
■ Exempt Business Grants	15
■ Tax exemption for certain grants to small businesses and primary producers affected by the Victorian bushfires	15
■ PAYG	15
■ Pay As You Go (PAYG) Instalments - cash flow relief for small business	15
■ International issues	16
■ Review of the foreign source income anti-tax-deferral (attribution) regimes.....	16
■ Restriction of section 23AG exemption for overseas employment income.....	17
■ Approved authorised deposit taking institutions (ADI) - changes to the thin capitalisation regime	18
■ Trusts	18
■ Closely held trusts - extending the tax file number (TFN) withholding arrangements.....	18
■ Special Disability Trusts - changes to the taxation of unexpended income and the CGT main residence exemption	19
■ Capital Gains Tax (CGT)	19
■ Fixed trusts - limited roll-over	19
■ Managed Investment Trusts (MITs)	20
■ Managed investment trusts - election to allow CGT to be primary code for taxing shares, units and real property.....	20
■ GST measures	20
■ Cross-border transport supplies	20
■ Review of GST Financial Supply provisions.....	21
■ Review of GST Margin Scheme	22
■ GST administration - response to Board of Taxation report.....	23
■ Tax Administration	23
■ Review of potential Extra-Statutory concession power for the Commissioner of Taxation.....	23
■ Numerous unlimited amendment periods to be amended	24
■ Life insurance - annuity business	24
■ Carbon pollution reduction scheme	24
■ Income tax treatment of units	24
■ GST treatment of units	25
■ Deductible Gift Recipients	25

- Disaster relief funds 25
- Tax exempt entities - 'in Australia' requirement to be amended 25

FEDERAL BUDGET SUMMARY 2009/10

Individuals

Personal income tax

The **Government will deliver in full** the **tax cuts** it **announced during the 2007 election** campaign. The Budget confirms the proposed amendments contained in the *Tax Laws Amendment (Personal Income Tax Reduction) Act 2008*.

Income tax rates - residents

As previously announced, the amendments raise the 30% threshold for residents and non-residents:

- from \$34,001 to \$35,001 from 1 July 2009; and
- to \$37,001 from 1 July 2010.

The amendments also reduce the second highest marginal tax rate for residents and non-residents:

- from 40% to 38% from 1 July 2009; and
- to 37% from 1 July 2010.

Tax thresholds from 1 July 2009 (Income range)	Tax rate (%)	Tax thresholds from 1 July 2010 (Income range)	Tax rate (%)
\$0 - \$6,000	0	\$0 - \$6,000	0
\$6,001 - \$35,000	15	\$6,001 - \$37,000	15
\$35,001 - \$80,000	30	\$37,001 - \$80,000	30
\$80,001 - \$180,000	38	\$80,001 - \$180,000	37
\$180,001+	45	\$180,001+	45

Date of effect: **1 July 2009**

Low income tax offset

Previously announced amendments to the *ITAA 1936* provide for an increase in the low income tax offset:

Low Income Offset	Effective Tax Free Threshold
<ul style="list-style-type: none"> ■ to \$1,350 for the 2010 income tax year 	\$15,000
<ul style="list-style-type: none"> ■ to \$1,500 for the 2011 and later income tax years 	\$16,000

New PAYG schedules will be introduced so that low and average income earners will receive 50% of the cuts through lower PAYG withholding, rather than the full off-set as a lump-sum on assessment of their income tax return.

Date of effect: **1 July 2009**

Tax thresholds for senior Australians

As a result of the **previously announced** phased-in increases in the low income tax offset from \$1,350 to \$1,500 by the 2010/11 income tax year, the taxable income level above which Australians eligible for the senior Australians tax offset (**SATO**) begin to pay tax will increase.

This means that eligible single, senior Australians will have no tax liability until their rebate income reaches:

- \$29,867 for the 2009/10 income tax year; and
- \$30,685 for the 2010/11 income tax year.

Eligible senior Australian couples will have no tax liability until their rebate income reaches:

- \$25,680 in the 2010 income tax year; and
- \$26,680 in the 2011 income tax year.

The amount of SATO will be determined by reference to a taxpayer's '**rebate income**'. The offset entitlement reduces by 12.5 cents for every \$1 of rebate income above the relevant threshold. The thresholds are:

- Single - \$2,230
- Couple (each) - \$1,602; and
- Couple (separated by reason of illness) - \$2,040



Important:

On 12 February 2009, the *Tax Laws Amendment (2009 Measures No. 1) Bill 2009 (Bill)* was introduced into the House of Representatives. The *Bill* will replace thresholds based on '**taxable income**' with '**rebate income**' from **1 July 2009**.

'Rebate income' is the **sum of:**

- taxable income;

- adjusted fringe benefits amount (i.e. reportable fringe benefits with the FBT gross-up reversed);
- total net investment losses (i.e. net financial investment losses and net rental property losses); and
- reportable superannuation contributions.

Date of effect: **1 July 2009**

Medicare levy threshold increase

The Government will increase certain **Medicare levy low-income thresholds** for the **2008/09** year to:

- **\$17,794** for individuals (up from \$17,310);
- **\$30,025** for individuals in families (up from \$29,207);
- Incremental **\$2,757** for each dependent child or student (up from \$2,682); and
- **\$25,299** for pensioners below Age Pension (up from \$22,922).



Note:

The *Tax Laws Amendment (Personal Income Tax Reduction) Act 2008* increased the Medicare thresholds to ensure that **Senior Australians** do not pay the Medicare levy when they do not have an income tax liability.

Date of effect: **1 July 2008**

Exemption of income recovery subsidy payments for Australian disaster victims

The Government has made the income recovery subsidy payments for the Victorian bushfires and for the North Queensland floods of January and February 2009 exempt from income tax. These payments will also be excluded from the calculation of separate net income, which is used to determine entitlement to certain tax offsets.

The income recovery subsidy payment will provide financial assistance to employees, small business owners and farmers who can demonstrate they have experienced a loss of income as a direct result of the **2009 Victorian bushfires** or **North Queensland floods**.

Date of effect: **1 July 2008**

First home owner's boost extended

The Government has announced that it will **extend the First Home Owner's Boost (FHOB)** for an **extra six-months** (to 31 December 2009). However, the FHOB will be **reduced by 50%** for the last three-months of the extension period (i.e. 1 October 2009 - 31 December 2009).

For eligible first home buyers entering into **contracts between 1 July 2009 and 30 September 2009** (inclusive), the FHOB will **continue to provide \$7,000** for the purchase of **established homes**, and **\$14,000** for the purchase of **new homes**.

Between **1 October 2009 and 31 December 2009**, the FHOB will provide **\$3,500** for the purchase of **established homes**, and **\$7,000** for the purchase of **new homes**.

Date of effect: **12 May 2009**

Private health insurance rebate changes

From **1 July 2010**, the Government will introduce **three new 'Private Health Insurance Tiers'** - so that higher income earners receive less 'carrot' and more 'stick' to be insured:

Tier 1: for **singles earning > \$75,001 (couples > \$150,001)**, the Private Health Insurance Rebate will be **20%** for those **up to 65 years** (**25%** for those **> 65 years**, and **30%** for those **> 70 years**). The **Surcharge** for avoiding private health insurance will **remain at 1%**.

Tier 2: for **singles earning > \$90,001 (couples > \$180,001)**, the Private Health Insurance Rebate will be **10%**, for those **up to 65 years** (**15%** for those **> 65**, and **20%** for those **> 70 years**). The **Surcharge** for avoiding private health insurance will be **increased to 1.25%**.

Tier 3: for **singles earning > \$120,001 (couples \$240,001)**, **no Private Health Insurance Rebate** will be provided. The **Surcharge** for avoiding private health insurance will be **increased to 1.5%**.

For low and middle-income earners, the existing 30%, 35% or 40% Private Health Insurance rebates will remain in place.

	Current surcharge thresholds	Tier 1	Tier 2	Tier 3
Singles	< \$75,000	\$75,001 - \$90,000	\$90,001 - \$120,000	> \$120,001
Couples	< \$150,000	\$150,000 - \$180,000	\$180,001 - \$240,000	> \$240,001
Surcharge	1%	1%	1.25%	1.5%
PHI Rebate				
Up to 65 years	30	20	10	0
65 - 69 years	35	25	15	0
Over 70 years	40	30	20	0

Date of effect: **1 July 2010**

Employee share schemes

The Government **restrict eligibility** for the **employee share scheme tax concessions** to employees with an **adjusted taxable income of < \$60,000**.

Currently an employee can elect to be assessed on discounts provided on shares or rights in the income year the shares or rights are acquired (**tax upfront election**). If no election is made, the discount (which includes gains on shares or rights) is taxed at a later time (such as when restrictions on the shares or rights are lifted, the **deferred tax option**).

If an employee is eligible and makes the **tax upfront election**, they receive a **tax exemption of up to \$1,000** on the assessable discount.

The **Budget measure will:**

- **remove the existing upfront election and assess all discounts** provided on shares or rights **on the tax upfront basis**; and
- **limit access to the upfront concession** (i.e. the \$1,000 exemption) to **employees** with an **adjusted taxable income < \$60,000**.

'Adjusted taxable income'

'Adjusted taxable income' for an income tax year means an **individual's**:

- taxable income;
- adjusted fringe benefits total;
- target foreign income;
- net rental property losses;
- net investment losses;
- reportable superannuation contributions; and
- tax free pension or benefit,

less the amount of the individual's **deductible child maintenance expenditure**: (refer to definition of 'adjusted taxable income' in **A New Tax System (Family Assistance) Act 1999**).

Date of effect: **7:30pm (AEST) on 12 May 2009**

Fringe Benefits Tax (FBT)

The Government will amend the fringe benefits tax (FBT) law to ensure that **donations to deductible gift recipients (DGRs)** made under **salary sacrifice arrangements** do **not result** in an employer incurring an **FBT liability**.

The changes will align the tax outcome of donations to DGRs made under salary sacrifice arrangements with donations made personally by employees or under Workplace Giving arrangements.

Date of effect: **1 April 2009**

Non-commercial Losses

The Government will **limit the ability of high income earners (adjusted taxable income of > \$250,000) to utilise 'non-commercial losses'**.

Current operation of non-commercial loss rules

The non-commercial loss rules (**Division 35**) operate to prevent the deduction of losses from a 'non-commercial' business activity in the year that the loss arises. Instead, the loss is deferred and offset against profits arising from the business activity in later years.

Currently, the non-commercial loss rules **do not apply** if:

- the taxpayer can satisfy one of four **objective tests** relating to the nature or scale of the business; **and/or**
- the business activity is a **primary production** business, or a **professional arts** business, and the taxpayer's income from other sources (e.g. employment income) is **< \$40,000**.

The four **objective tests** are:

1. **Assessable income test**: the amount of assessable income from the business activity for the year is at least \$20,000 (s 35-30);
2. **Profits test**: for each of at least three of the past five income years (including the current year), the business has generated a profit (s 35-35);
3. **Real property test**: the total reduced cost bases of real property or interests in real property, or their market values, used on a continuing basis in carrying on the activity in that year is at least \$500,000 (s 35-40); **or**
4. **'Other assets' test**: the total values of assets (listed below) that are used on a continuing basis in carrying on the activity in that year is at least \$100,000 (e.g. depreciable assets, trading stock, leased assets etc.) (s 35-45).

Alternatively, the Commissioner has **discretion** to allow a loss as a deduction in certain circumstances (s 35-55).

An employee may consider entering into a salary sacrifice arrangement to either:

- **reduce** the employee's **salary or wages below the \$40,000 threshold** applicable to a **primary production** business or **professional arts** business; **and/or**
- in respect of any type of business carried on by the employee, **reduce expenses** that would **otherwise be deferred** by having the **expenses paid or reimbursed** the employer (the fringe benefit could also be provided by way of a property benefit, residual benefit etc.).

Announced Non-Commercial Loss Changes

The Budget announcement states that taxpayers having an '**adjusted taxable income**' of **> \$250,000** will have **excess deductions quarantined to the business activity**. Presumably, the **four objective tests listed above will not apply** and losses will generally be deductible only against future income from the non-commercial business.



Query:

The Budget measures **presumably** also **restrict** the ability of an **employee with > \$250,000 adjusted taxable income** to **salary sacrifice** deductible expenses connected with the non-commercial loss activities.

**Note:**

The existing rules will continue to apply to taxpayers with an adjusted taxable income ≤ \$250,000. The meaning of '**adjusted taxable income**' is discussed at page 5.

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

Date of effect: **1 July 2009**

Superannuation

Concessional Contributions Cap reduced to \$25,000 p.a. (indexed)

Concessional contributions are generally **tax deductible to the contributor** and **taxed in the fund** and include the following types of contributions (s 295-25(2)):

- **employer contributions**, being;
 - **SG (i.e. 9%) contributions**;
 - **mandatory contributions** made under an **award**;
 - **additional voluntary contributions** made **by the employer**; or
 - voluntary **employee salary sacrifice** contributions.
- **personal contributions** claimed as a tax deduction by a self-employed person, or substantially self-employed person under the **10 percent rule**;
- **personal contributions** claimed as a **tax deduction** by a person who is **not working**, and is **< 65 years old**; and
- a transfer from a foreign superannuation fund that is **taxed in the Australian fund**.

Non-concessional contributions are other contributions generally non-deductible and untaxed in most superannuation funds.

Both types of contributions are subject to the **maximum annual thresholds** under **current legislation** with **proposed changes** in the 2009/10 Budget announcement to apply **from the 2009/10 income year** as follows:

Superannuation Contribution Caps (per person)			
Contribution Type	Taxpayer Age	Annual Cap (current rules to 2008/09)	Proposed Annual Cap (2009/10 onwards)
Concessional	< 50 years old at 30/6	\$50,000	\$25,000
Concessional	≥ 50 years old at 30/6	\$100,000	\$50,000
Non-concessional	< 65 years at 1/7	\$150,000 (or \$450,000 across a 3 year period)	\$150,000 (or \$450,000 across a 3 year period)
Non-concessional	≥ 65 years at 1/7	\$150,000	\$150,000

**Warning:**

A **breach** of the above **contributions caps** will result in **excess contributions tax** being levied at **31.5%** for **concessional cap breaches** and **46.5%** for **non-concessional cap breaches**.

**Note:**

The above **concessional cap** for individuals who are **≥ 50 years old at 30 June** of a particular year (proposed to be \$50,000 per annum from 2009/10) is transitional in nature (**transitional cap**) and **will cease to apply after 30 June 2012**.

**Implications:**

The concessional contributions cap for < 50 year old individuals is indexed annually on 1 July to AWOTE. However, no increase to the threshold occurs until the accumulated indexation increase exceeds \$5,000. The **lower the concessional contributions cap, the less often \$5,000 increase will occur**. The Budget announcement provides that the above **non-concessional cap** (which will remain at \$150,000) will be **6 times the concessional cap (i.e. 6 x \$25,000 = \$150,000)** (3 times the concessional cap under existing legislation). Consequently, the slower indexation increases to the concessional cap will cause similar delays regarding the **\$150,000 non-concessional cap**.

**Implications:**

The announced changes mean the **maximum possible total annual contribution** (comprising both concessional and non-concessional contributions) for **2009/10** will be:

- **\$475,000** for a **< 50 year old** individual as at **30 June 2010** (comprising \$450,000 non-concessional and \$25,000 concessional);
- **\$500,000** for an individual between **50 and 64 years old** on **30 June and 1 July 2010** (comprising \$450,000 non-concessional and \$50,000 concessional); and
- **\$200,000** for a **≥ 65 year old** individual as at **1 July 2010**.

The above maximum amounts represent **significant decreases to overall amounts which may be contributed** to superannuation from the **2009/10** income year **onwards** as well as amounts which may be deducted as concessional contributions.

**Warning:**

The **above maximum** amounts **presume** that the **\$450,000 (3 year) non-concessional contributions rule** is available **and** that **eligibility requirements** for a **concessional contribution** have been **satisfied**. Both presumptions will be dependant upon individual circumstances.

**Tip:**

The **\$1 Million CGT Cap** may permit further **non-concessional contributions** up to a lifetime limit of \$1 Million per person where specific Division 152 Small Business CGT conditions have been satisfied, including the 15 year exemption. Where the 15 year exemption is not available (i.e. most cases) the CGT cap is in fact an additional \$500,000 lifetime limit per person based on eligibility for the Small Business retirement exemption.

Date of effect: **1 July 2009**

Payment of small and insoluble lost superannuation accounts to unclaimed monies

Lost account superannuation balances are currently only paid to **unclaimed monies** when:

- the member has reached the **eligibility age** (currently 65);
- the superannuation **provider has not received an amount in respect of the member for at least 2 years; and**
- **after the end of a period of 5 years since the superannuation provider last had contact with the member, the provider has been unable to contact the member again after making reasonable efforts; or**
- when a **member dies** and the **trustee cannot ensure the benefit is received by a person entitled** to receive the benefit.

Announced action:

The superannuation **providers** will be **required** to **transfer lost accounts to unclaimed monies which:**

- **have balances < \$200; or**
- have been **inactive for five years** and for which there are **insufficient records to identify the owner** of the account.

**Implications:**

The measure **will reduce** the **number of small or inactive accounts** that superannuation funds are required to administer and apply the protection rules to. It will also improve equity where costs are currently apportioned across other fund members in applying the member protection rules.

Former holders of lost accounts will still be **able to reclaim** their money **from the ATO** at any time.

Date of effect: **From the 2010/11 income year**

Trans-Tasman retirement savings portability scheme

Currently, members of Australian superannuation funds may only transfer their retirement savings within the Australian superannuation system.

The Government has agreed to establish a **trans-Tasman retirement savings portability scheme** which will permit **transfers of superannuation savings** between certain Australian superannuation funds and New Zealand KiwiSaver funds. The final details of the scheme are currently being settled with New Zealand.



Implications:

The scheme will facilitate free movement of workers, and remove an impediment to trans-Tasman labour market mobility. It will also enable individuals to streamline and consolidate their personal retirement savings by reducing their exposure to multiple sets of fees and charges.

Date of effect: **From a date set in accordance with the memorandum of understanding**

Halved Minimum annual superannuation pension drawdown to be extended to 2009/10

On 16 March 2009, the **Retirement Savings Accounts Amendment Regulations 2009 (No 2) (RSA Regulations)** (SLI No 45 of 2009) (amending the *Retirement Savings Accounts Regulations 1997*) and **Superannuation Industry (Supervision) Amendment Regulations 2009 (No 2) (SIS Regulations)** (SLI No 46 of 2009) (amending the *Superannuation Industry (Supervision) Regulations 1994*) (**Regulations**) were gazetted to **halve the usual minimum pension drawdown** applying to:

- **Post-1 July 2007 account based** annuities and pensions;
- **Pre-1 July 2007 allocated** annuities and pensions;
- **Retirement Savings Accounts allocated Annuities and Pensions;** and
- **Market-linked annuities and pensions.**

The measures were introduced due to the current level of losses in superannuation entities as a result of the global financial crisis.

The Budget announcement proposes to extend this interim measure by an **additional 12 months** from the measures in the above Regulations.



Note:

For **most of the above pensions** (with the exception of transition to retirement pension) there is **no maximum drawdown limit**, so the actual drawdown will be a matter of taxpayer choice provided that the halved minimum threshold for their age has been satisfied.

Date of effect: **1 July 2009**

Depreciation

Expanded Business Tax Break Deduction - 50% of Cost claimable

The Business Tax Break deduction for eligible business depreciating assets proposed in the *Tax Laws Amendment (Small Business and General Business Tax Break) Bill 2009 (Tax Break Bill)* will be expanded to allow a deduction of 50% of the cost of an eligible business depreciating asset acquired within specified time periods.

Original Tax Break Bill Treatment

Rules prior to 2009/10 Federal Budget Announcement	Original 30% Bonus Deduction	Original 10% Bonus Deduction	
Commitment Time (e.g. contract entry)	13 December 2008 to <u>30 June 2009</u>	13 December 2008 to <u>30 June 2009</u>	1 July 2009 to <u>31 December 2009</u>
AND	AND	AND	AND
First Use Time (e.g. first use/ installation)	13 December 2008 to <u>30 June 2010</u>	1 July 2010 to <u>31 December 2010</u>	1 July 2009 to <u>31 December 2010</u>
Year of Bonus Deduction (subject to meeting all eligibility requirements and s 41-15(4) carry forward rules)	2008/09 or 2009/10 depending on First Use Time	2010/11	2009/10 or 2010/11 depending on First Use Time

Becomes...

Federal Budget Expanded Tax Break Deduction Treatment

Expanded Bonus Deduction announced in 2009/10 Federal Budget	50% Bonus Deduction in all of the above cases
Commitment Time (e.g. contract entry)	13 December 2008 to <u>31 December 2009</u>
AND	AND
First Use Time (e.g. first use/ installation)	13 December 2008 to <u>31 December 2010</u>
Year of Bonus Deduction (subject to meeting all eligibility requirements and s 41-15(4) carry forward rules)	2008/09 to 2010/11 depending on First Use Time

**Tip:**

The above **first use time deadline** is **12 months** after the **commitment time deadline**.

**Tip:**

The bonus deduction will remain based upon **50% of element 1 and/or element 2** of the **cost base** of the **eligible depreciating asset** and **claimable by the asset's holder** provided Tax Break Bill eligibility conditions are met.

**Note:**

In limited circumstances, **some investments** in new depreciating assets **may not satisfy the above Expanded 50% Bonus Deduction** rules above but **may remain eligible for a 30% or 10% deduction in accordance** with the original *Business Tax Break Bill*. Such taxpayers would, in limited circumstances, use the carry forward rules in proposed **ss 41-15(2) to (4)** of the *Tax Break Bill* which may include some taxpayers with **substituted accounting periods** and/or some taxpayers who did **not originally satisfy their cost threshold** (\geq \$1,000 for Small Business Entities and \geq \$10,000 for other businesses) but may later become eligible claim a deduction during **2011/12** as permitted under the Tax Break Bill.

**Warning:**

There is **no apparent change to the original extensive eligibility requirements** in the *Business Tax Break Bill* and a number of **important issues remain subject to confirmation** by the Tax Office after Royal Assent including, but not limited to:

- The meaning of '**principal purpose of carrying on a business**';
- Treatment of **non-business entities** holding depreciating assets; and
- Treatment of '**demonstrator**' vehicles as new assets or otherwise.

**Reference:**

For full details regarding the original Tax Break Bill please refer to the Kaplan Summary at www.kaplan.edu.au under **Tax and Accounting** and **Recent Tax Updates**.

Date of effect: **13 December 2008 onwards**

Companies

Division 7A and licences/rights to private company assets

Subject to some exceptions, **Division 7A Income Tax Assessment Act 1936 (ITAA 1936)** treats the amount of a:

- **Loan;**
- **Payment;** or
- **Debt forgiveness,**

from a **private company to a shareholder** (or shareholder's **associate**) as a **deemed dividend** (generally unfrankable) included in the **assessable income** of the **shareholder** or their **associate**.

Current s 109C(3)(c) ITAA 1936 currently defines a 'payment' for the above purposes as including 'a transfer of property [from the company] to the entity'. However, the following amounts are arguably not 'property' and therefore potentially escape treatment as a Division 7A payment:

- A licence for the shareholder (or their associate) to use company assets; or
- Other (non-property) rights regarding company assets.

Such licences or rights may relate to real property and/or chattels. The Budget announcement proposes to **include such non-property benefits within the Division 7A regime** providing parity with employee rights and licences which would generally be subject to Fringe Benefits Tax.

Other technical changes will also occur to strengthen Division 7A including rules to prevent use of **corporate limited partnerships** to avoid its operation.



Tip:

Loan or payment treatment as an **unfranked dividend may be prevented** provided a s 109N ITAA 1936 **excluded written loan agreement** is in place between the company and shareholder (or their associate) **prior to lodgement** of the **company's tax return** for the year of the loan or payment.

Date of effect: **1 July 2009**

Off-market share buy-backs

The Government will implement the recommendations of the Board of Taxation to improve the taxation treatment of off-market share buy-backs.

Off-market share buy-backs are a mechanism for companies to return surplus capital to shareholders.

To implement the Board's recommendations, the **Government will introduce legislation to:**

- establish a **self-executing specific provision** to **debit the franking account of a company** that undertakes an off-market share buy-back resulting in a tax benefit of **streaming imputation credits from non-resident to resident shareholders**;
- **deny notional losses to shareholders** that participate in **off-market share buy-backs** conducted by **listed companies**;
- modify the income tax law to **specify the basis for determining the capital/dividend split**, **extend the period of lodgement** for a distribution statement for a company conducting an off-market share buy-back, and confirm that certain integrity rules do not apply to tender style off-market share buy-backs; and
- **transfer the share buy-back provisions** from the *ITAA 1936* to the *ITAA 1997*.

The Government also endorses the Board recommendation that the **Tax Office remove the '14% administrative cap'** on the **level of discount for off-market share buy-backs** undertaken by listed companies.

This measure is intended to **increase certainty and flexibility** for companies undertaking off-market share buy-backs and their shareholders.

Date of effect: **Date of Royal Assent of amending legislation**

R&D tax concession

The Government intends to simplify and enhance the Research and Development (R&D) Tax Concession.

From 2010/11, the Government will replace the existing R&D Tax Concession with a simplified R&D Tax Credit. The new R&D Tax Credit provides a **45% refundable credit** for companies with an **annual turnover of < \$20 million** (equivalent to a Tax Concession of 150%). This means that companies will receive a **tax refund of 45% of their R&D spending when they lodge their tax return**.



Important:

The refundable credit will be **available to small companies with tax losses**, with no limit on the level of R&D expenditure they undertake.

Businesses with a turnover of **more than \$20 million** will also benefit from the new scheme, with access to a **40% non-refundable credit** - equivalent to a tax concession of 133%.

Companies undertaking R&D in Australia where the **intellectual property is held offshore** will also be able to access the **40% non-refundable credit**.

As a **transitional measure for 2009/10**, the **R&D expenditure cap** for the existing R&D Tax Offset will be **lifted from \$1 million to \$2 million**. The cap is the maximum amount a firm can spend on R&D to be eligible for the Tax Offset.

Under the new Tax Credit system, **eligibility criteria** will be **tightened**. The Government will consult further on the eligibility criteria in developing legislation for the new Tax Credit with consultation paper to be released.

The **Premium Concession** and **International Premium** will be **abolished**.

Date of effect: **1 July 2009**

Small business concessions

Entrepreneurs Tax Offset (ETO)

A small Business with aggregated annual turnover within specified thresholds below may be eligible for an offset of **25% of its tax liability relating to business income**, provided **business annual turnover is ≤ \$50,000**. Lower percentage ETO's phase out between aggregated turnover of **\$50,000** through to a **0% ETO** at aggregated turnover of **\$75,000**.

The ETO is calculated through a 5 step process under ss 61-505 to 61-520 *Income Tax Assessment Act 1997 (ITAA 1997)*.

In the **2008/09 Federal Budget**, the Federal Government announced that **ETO eligibility would be restricted** if **adjusted taxable income exceeds**:

- **\$75,000** for a single individual; or
- **\$120,000** for a family.

While the measure was initially proposed to commence from 1 July 2008 (i.e. the 2008/09 income year) it **will now commence from 1 July 2009 (i.e. the 2009/10 income year onwards)**, allowing **previous eligibility** rules to apply for an **additional year**.



Query:

The original budget announcement did not specify how '**adjusted taxable income**' would be calculated, although the term is defined in the *A New Tax System (Family Assistance) Act 1999* and will be amended by recent changes in the *Tax Laws Amendment (2009 Measures Measures No. 1) Act 2009* (refer page 5 for further detail). Furthermore some confusion remains regarding the above \$75,000 threshold as a subsequent Treasurer's Media Release (No. 50 of 2008) referred to an amount of \$70,000.

Date of effect: **1 July 2009**

Exempt Business Grants

Tax exemption for certain grants to small businesses and primary producers affected by the Victorian bushfires

In February 2009, the Commonwealth and Victorian governments paid the Clean-up and Restoration Grants of up to \$25,000 to assist small businesses and primary producers affected by the Victorian bushfires.

On 19 March 2009, the *Tax Laws Amendment (2009 Measures No. 2) Bill 2009 (Bill)* was introduced into Federal Parliament, proposing to make a variety of income tax changes, including treating the Clean-up and Restoration Grants as **non-assessable, non-exempt (NANE) income**.

Announced action:

The Government will exempt from tax the Clean-up and Restoration Grants paid to small businesses and primary producers affected by the Victorian bushfires. **Business related expenses** that are funded by using the grant would **generally** be **deductible**.

Date of effect: **From 1 July 2008**

PAYG

Pay As You Go (PAYG) Instalments - cash flow relief for small business

Announced action:

As previously announced in the press release of 28 March 2009, the Government will cut the **PAYG instalments for the 2009-10** income year for taxpayers who pay **quarterly** PAYG instalments that are adjusted for previous years' Gross Domestic Product (**GDP**) growth.

In calculating the tax instalments, the Government will use the **expected increase in the Consumer Price Index (CPI) for 2009-10** and not previous years' GDP growth.

For the 2009-10 income year, the Government has reduced the GDP adjustment from 9% to 2%, aligning it with the expected CPI growth of 2% for 2009 -10, as forecast in the Updated Economic and Fiscal Outlook.



Implications:

This reduction will provide **cash flow benefits to:**

- eligible **small businesses and individuals;**
- self-funded retirees;
- trusts; and
- small superannuation funds, -

by **cutting their PAYG instalments by approximately 6%.**



Note:

This measure may also be beneficial to those business owners who pay their **quarterly GST**. The Commissioner of Taxation has advised that the Tax Office will use the 2% adjustment factor when it calculates GST instalments (refer to press release of 28 March 2009 issued by the Treasurer and the Minister for Small Business, Independent Contractors and the Service Economy).

Date of effect: **From the 2008/09 income year**

International issues

Review of the foreign source income anti-tax-deferral (attribution) regimes

The previous Government announced a review of Australia's anti-tax-deferral (**attribution**) rules, which ensure that residents can not accumulate income offshore and thus defer, or avoid, Australian tax. These rules include:

- the controlled foreign company (**CFC**) rules;
- the foreign investment fund (**FIF**) rules;
- the transferor trust rules; and
- the deemed present entitlement rules.

The review was conducted by the Board of Taxation (**Board**).

The CFC rules effectively treat the **Australian resident** as if it had derived certain income of a foreign company directly. The rules apply where the resident taxpayer has 'control' in relation a foreign company, and that company derives certain types of passive income (s 340 of the *ITAA 1936*). The CFC rules are designed to catch passive income which can be easily moved offshore (e.g. interest income) and accumulated without being subject to Australian tax.

The FIF rules have a broader application and may **apply to a non-resident company or a trust**, regardless of whether or not the Australian resident has 'control' in relation to the foreign entity (s 483 of the *ITAA 1936*). The FIF rules generally tax the Australian resident based on the actual or notional movement in the value of the investment in the foreign entity.

Announced action:

The Government announced that it has agreed to implement all of the recommendations by the Board, except for the listed public company exemption (recommendation 2).

To implement the Board's recommendations, the Government will **redesign of the attribution rules** by:

- **modernising the CFC provisions and rewriting them into the ITAA 1997;**
- **repealing and replacing the FIF provisions** with a specific narrowly defined anti-avoidance rule;
- **repealing the deemed present entitlement rules;** and
- **amending the transferor trust rules.**



Implications:

The reforms will reduce compliance costs for relevant businesses and help ensure that Australia's managed funds remain competitive in global financial markets.

Date of effect: **For income years on or after Royal Assent to the legislation**

Restriction of section 23AG exemption for overseas employment income

Currently, **s 23AG *Income Tax Assessment Act 1936 (ITAA 1936)*** applies to exempt the overseas the overseas employment an **Australian resident individual** is engaged in **foreign service** in an overseas country for **≥ 91 days**, **s 23AG *Income Tax Assessment Act 1936 ITAA 1936*** may **exempt** their **foreign service income** for Australian income tax purposes subject to eligibility requirements.

For **overseas employment income derived** by a resident taxpayer from **1 July 2009 onwards**, **s 23AG will generally not apply unless** the employment income was derived in the following limited circumstances:

- The individual's employment related to the delivery of **Australian official development assistance** by their employer;
- The individual's employer was engaged in **specified relief or public benevolent activities in the overseas country**; or
- The individual was deployed by an Australian Government authority as a **'disciplined force member'** (i.e. **defence force and police**).



Implications:

The changes result in **s 23AG applying only in very limited circumstances for overseas employment income derived** (i.e. salary received) from **1 July 2009 onwards**. The announcement notes that **Foreign Income Tax Offset** (formerly Foreign Tax Credit) treatment should be applied to **other overseas employment income** to the extent it is taxed in Australia and the overseas jurisdiction.

Date of effect: **1 July 2009**

Approved authorised deposit taking institutions (ADI) - changes to the thin capitalisation regime

Division 820 of the *ITAA 1997* (thin capitalisation rules) operates when the amount of debt used to finance the Australian operations exceeds specified limits. The rules disallow a proportion of the otherwise deductible finance expenses (e.g. interest) attributable to the Australian operations of both Australian and foreign multinational investors.

The Government will change the **thin capitalisation regime** for ADI to ensure Australian and foreign owned multi-national entities **do not allocate an excessive amount of debt to their Australian operations**.

The **changes will clarify** how:

- treasury shares;
- the previous insurance asset (excess market value over net assets); and
- capitalised software costs,

will be recognised under the thin capitalisation provisions.

Date of effect: **From 1 January 2009**

Trusts

Closely held trusts - extending the tax file number (TFN) withholding arrangements

To ensure a high level of compliance with existing taxation laws, the Government will **extend the TFN withholding arrangements** to include distributions by **closely held trusts, including discretionary trusts (trusts)** such that tax will be withheld by the trustee at a **46.5% rate** where **no TFN is provided**.

The measure will ensure that assessable distributions to beneficiaries of such trusts correspond with the amounts included by these beneficiaries in their own tax returns.

Special **exemptions** will continue apply to income upon which tax is ordinarily payable by the trustee of the trust (e.g. income assessable to **minors**).

Individuals who have tax withheld by trustees can claim a **credit** for that tax in their tax return.

Date of effect: **From the 2010/11 income year**

Special Disability Trusts - changes to the taxation of unexpended income and the CGT main residence exemption

A Special Disability Trust attracts social security means test concessions for its beneficiary and eligible contributors. The purpose of the trust is to assist immediate family members and carers to make private financial provision for the current and future care and accommodation needs of a family member with severe disability and receive means test concessions.

Announced action:

The unexpended income of a Special Disability Trust will be taxed at the **relevant beneficiary's personal income tax rates** and not at the top personal tax rate plus Medicare Levy.

In addition, the Government will **extend the CGT main residence exemption** to include a residence that is owned by a Special Disability Trust and used by the relevant beneficiary as their main residence.



Implications:

The measure will assist people with severe disability, their immediate family members and carers. It will further assist them to make private financial provision for the care and accommodation needs of people with severe disability.

Date of effect: **From the 2008/09 income year**

Capital Gains Tax (CGT)

Fixed trusts - limited roll-over

Usually, a transfer of assets between trusts would trigger a CGT taxing point.

Under **fixed trusts**, the rights of beneficiaries to the income and/or corpus of the trust are pre-determined (fixed) so the beneficiaries in such trust have **fixed entitlements** to **all** of the **income and capital of the trust** (s 272-65 of the *ITAA 1936*).

The Government will provide a **limited CGT roll-over** for **assets transferred between fixed trusts**.



Implications:

As a result, trustees of eligible trusts will be able to **defer the CGT consequences** of the **asset transfer until the receiving trust deals with the asset in the future**. This measure will allow the trusts to restructure without immediate CGT consequences.

**Important:**

The announced measure is **not** a reversal of the **general removal of Trust Cloning** from 31 October 2010

Date of effect: **From 1 November 2008**

Managed Investment Trusts (MITs)

Managed investment trusts - election to allow CGT to be primary code for taxing shares, units and real property

The Government will allow Australian managed investment trusts (**MITs**) (except those taxed as companies) to make an **irrevocable election** to apply the capital gains tax (**CGT**) regime as the primary code for taxing certain disposals of assets. This measure implements the interim advice of the Board of Taxation review of taxation of MITs.

A trust is a MIT where, broadly speaking:

- the trustee is resident in Australia, or management and control is in Australia;
- the trust is a '**managed investment scheme**' (as defined in the *Corporations Act 2001*) operated by a financial services licensee;
- **units** in the trust are **quoted on an approved stock exchange** in Australia, **or** the trust has **at least 50 members**, **or** one of members is a **life insurance company**, **or** **complying superannuation fund** having at least 50 members etc.

Distributions from an MIT are subject to special withholding requirements under Subdivision 12-H of the *Tax Administration Act 1953*.

This measure is intended to ensure that the taxation treatment of disposals of assets (primarily shares and real property investments) by MITs is **consistent with the taxation treatment of disposals of similar investments by complying superannuation funds**, subject to appropriate integrity rules (including that the investments meet the eligible investment business rules in Division 6C of the *ITAA 1936*).

MITs that elect into the regime will be required to make an **irrevocable election** to apply the CGT regime to **all disposals of eligible investments in the first income year** that commences on or after the 2008/09 income year. Currently, gains and losses on disposal of investments by MITs may be on capital or revenue account, depending upon the characterisation of the investment activities concerned.

Date of effect: **1 July 2008**

GST measures

Cross-border transport supplies

The Government will amend the GST law to reduce GST compliance costs for businesses involved in the **domestic transport of exported and imported goods**.

The changes are intended to:

- **ease compliance costs** for domestic transporters and non-residents;
- **improve consistency** in the GST treatment of postal and non-postal containerised goods; and
- **assist sub-contracted transport suppliers** with GST compliance.

This measure is **subject to** the unanimous agreement of the States and Territories.

Date of effect: **1 July 2010**

Review of GST Financial Supply provisions

A **financial supply** is often made by a **financial institution** but can also occur **more generally** regarding enterprises which:

- Provide credit (e.g. **trade credit** for a charge); or
- **Buy or sell shares, units or partnership interests.**

Financial supplies may occur regarding **both financial supply sales and acquisitions** (known as 'acquisition supplies') with the following **general treatment** applicable to a **financial supplier**:

- The supply is **not taxable** (i.e. not subject to GST); and
- **No input tax credits** are **generally claimable** regarding **related costs**.

There are, however, a number of **special rules** which impact the above treatment including:

- **Reduced credit acquisition** rules (**RCA**) which allow **75% of the usual input tax credit claim** for specified related costs;
- A **Financial Acquisitions Threshold (FAT)** which **may allow all input tax credits to be claimed without apportionment** by entities for which **financial supplies represent a very small proportion of overall supplies** (e.g. a sole trader accountant buying into a partnership).

Treasury proposes to review the current financial supply system, with reviewed issues to include:

- Potential for **reduced complexity and difficulty in apportioning** financial supply related **costs**;
- **Improving RCA** operation and **possibly changing** the current **75% RCA** rate; and
- Potentially implement 'principle approach' legislation in place of existing provisions.



Implications:

Enterprises commonly affected by the financial supply provisions include **entities which buy and sell shares and similar interests** including:

- **businesses undertaking restructures**; and
- **superannuation funds.**

In practice, **businesses undertaking restructures** are **often eligible for the FAT**, although its application is often complex. Superannuation funds may only use the FAT in circumstances where their financial supply activities (e.g. share investments) are a small proportion of overall activity. **Many** such **superannuation funds choose not to register for GST** where they have a substantial level of substantial supplies. Depending on the nature of future changes, the application of the GST rules to such entities may change.

Review of GST Margin Scheme

The **GST margin scheme** is an **elective GST approach** (subject to written agreement by both parties to a supply) which **applies GST only to the increase in value of taxable real property** (i.e. land, commercial property and/or new residential premises) generally **between the date of its supply and one of:**

- **1 July 2000;** or
- a later date when the **property was acquired or otherwise entered the GST system after 1 July 2000.**

However, due to past unintended application of the margin scheme (e.g. where the property was acquired under the going concern exemption or from a member of the taxpayer's GST group) numerous **complex integrity changes** have been required. **Adverse consequences to taxpayers** can also arise where real property was acquired under the margin scheme (i.e. no input tax credit claim was available) but the property was later sold under a taxable supply requiring GST to be paid upon sale.

Treasury proposes to review the current operation of the margin scheme and investigate future options regarding its application. **Current problematic issues** subject to review will **include:**

- difficulties in applying the margin scheme to dealings in General and Tax Law **partnerships;**
- current **lack of decreasing adjustment** where a taxpayer was unable to claim an input tax credit when acquiring the property under the margin scheme, but **later sells the property as a taxable supply;** and
- current inequities whereby:
 - a **previously unregistered taxpayer which buys a property after 1 July 2000** (but prior to GST registration) is required to **apply GST to its entire increase in value since acquisition** (not since the taxpayer registered for GST); but
 - a **previously unregistered taxpayer which buys a property before 1 July 2000** (but prior to GST registration) is only required to **apply GST to the increase in value since GST registration** (not acquisition).



Implications:

It is **often not possible to apply the Margin Scheme** to a taxable supply of real property, for example where:

- a **GST registered purchaser does not agree in writing to apply the margin scheme** (because it will deny their input tax credit claim); or
- **Recent changes** to supplies from 9 December 2006 in the *Tax Laws Amendment (2008 Measures No. 6) Bill 2008* whereby the **margin scheme may not apply, or may have reduced effect, if the property was previously acquired under the Going Concern or GST- Free Farmland exemption or acquired from a GST registered associate.**

The review is likely to make further alterations to the current effect of the margin scheme and may also impact the recent GST ruling **GSTR 2009/1** regarding general law partnerships and the margin scheme.

GST administration - response to Board of Taxation report

On 11 June 2008 the Assistant Treasurer announced that he had asked the Board of Taxation to undertake a review of the legal framework for the administration of the GST.

The focus of the review were:

- Streamlining and improving the operation of the GST;
- Reducing compliance costs; and
- Removing anomalies.

The Government will implement most of the Board of Taxation's (**Board's**) recommendations, with **most significant changes taking effect from 1 July 2010**.

The key components of the package announced by the Government include:

- harmonising the GST law and the income tax self assessment regime and rulings;
- adopting more principled and flexible GST grouping rules;
- simplifying the GST adjustment provisions; and
- reforming the GST treatment of sales of going concerns and farmland.

The package of reforms will reduce the compliance costs of the GST, achieve greater standardisation between the GST and income tax regimes, reduce anomalies and streamline the GST administrative framework.

In addition, the Treasury will review the 'margin scheme' GST provisions affecting property transactions and the GST financial services provisions to determine if reforms can be made to simplify the provisions whilst maintaining the intended effect of current policy.

The Government has also asked the Board to review the cross-border provisions of the GST law with a view to simplifying the current law and reducing the number of non-residents required to register for GST.

Those components of the package that are a change to the GST base are subject to the unanimous agreement of the States and Territories.

Date of effect: **1 July 2010**

Tax Administration

Review of potential Extra-Statutory concession power for the Commissioner of Taxation

Due to current practical difficulties caused by delays to new legislation required to correct minor anomalies or unintended outcomes in the tax law, Treasury has released a discussion paper regarding the potential for the Commissioner of Taxation to be granted an extra-statutory concession power whereby the Commissioner could modify the tax law in appropriate cases, rather than simply administer or interpret existing law. Subject to the outcome of the review, the granting of such a power and its nature if granted have not yet been decided. If granted the power would be likely to incorporate a number of limitations.

Numerous unlimited amendment periods to be amended

In the absence of fraud or evasion, the amendment period available to the Commissioner is generally four years (or two years for some taxpayers with simple tax affairs).

However, s 170 (10AA) identifies a number of situations (the majority relating to CGT events) where an amendment may be made 'at any time'. It is proposed to repeal many such provisions such that the above general review periods will apply.

Life insurance - annuity business

The Government will introduce legislation to confirm that the non-assessable non-exempt income (**NANE**) of life insurance companies includes income from assets supporting immediate annuity policies that satisfy the pre-July 2000 immediate annuity conditions. The immediate annuity conditions will **not apply** to immediate annuity policies that are **superannuation income streams**, with effect from the 2007-08 income year.

This measure will reduce compliance costs for life insurance companies by confirming that the immediate annuity conditions did not change when they were transferred to the *ITAA 1997*, and is intended to ensure that all providers of superannuation income streams are taxed consistently.

Date of effect: **1 July 2002**

Carbon pollution reduction scheme

Income tax treatment of units

The Government will make technical amendments to the proposed tax treatment of units under the Carbon Pollution Reduction Scheme (**CPRS**), with effect from its introduction.

Any **income** that is **derived from units registered in Australia** will be treated as having an **Australian source** and, therefore, as **assessable in Australia** (subject to Australia's Double Tax Treaties). Units held by a taxpayer will be valued at historical cost unless they elect the alternative market value method.

All Kyoto units registered in Australia will be subject to the Scheme's proposed tax treatment, whether or not a unit can be surrendered to meet an Australian emissions liability.

Further details can be found in the commentary to the exposure draft of the CPRS legislation released on 10 March 2009; and in the White Paper titled 'Carbon Pollution Reduction Scheme: Australia's Low Pollution Future' released on 15 December 2008.

Date of effect: **Introduction of the CPRS**

GST treatment of units

The Government will amend the GST law to further clarify the GST treatment of the CPRS, with effect from its introduction.

The changes are intended to ensure consistent GST treatment for all units recognised under the CPRS by treating eligible international units and all Kyoto units as personal property rights, **and not rights within the meaning of real property** in the GST law.

Further details can be found in the commentary to the exposure draft of the CPRS legislation, and the White Paper (see above).

Date of effect: **Introduction of the CPRS**

Deductible Gift Recipients

Disaster relief funds

The Government has extended the general deductible gift recipient (**DGR**) category for Australian disaster relief funds to allow a Treasury minister to **declare an event to be a disaster** for tax purposes.

Further, public benevolent institutions (**PBI**), which must normally operate for **direct relief** efforts, will also be able to establish Australian disaster relief funds for longer-term recovery and community reconstruction efforts.

Tax exempt entities - 'in Australia' requirement to be amended

Announced action:

The Government will amend the requirement 'in Australia' in Division 50 of the *ITAA 1997* to fully scrutinise organisations that seek transfer money to overseas charities and other entities.

The measure will reverse High Court decision in *Word Investments* that charities and other income tax exempt entities can in certain circumstances direct funds to overseas projects. The measure will reinstate the principles underlying the current integrity rules in the legislation.

Date of effect: **From the date of Royal Assent of the amending legislation**