

27 January 2023

The Hon Dr Jim Chalmers MP, Treasurer
The Hon Stephen Jones MP, Assistant Treasurer and Minister for Financial Services
C/- Budget Policy Division
Treasury
Langton Cres
Parkes ACT 2600

By email: jim.chalmers.mp@aph.gov.au
stephen.jones.mp@aph.gov.au
PreBudgetSubmissions@treasury.gov.au

Dear Treasurer and Assistant Treasurer,

Federal Budget 2023–24

The Tax Institute welcomes the opportunity to make a submission in response to the call by the Assistant Treasurer and Minister for Financial Services, the Hon Stephen Jones MP, on 5 December 2022 for such submissions regarding priorities for the Federal Budget 2023–24. Consultation, both public and confidential, are crucial to the development of policy and ensuring our tax and transfer systems are fit for purpose, achieving policy outcomes without imposing unnecessary burdens on Australians.

In the development of this submission, we have closely consulted with our National Technical Committees and broader membership to prepare a considered response that outlines the key issues related to the Australian tax, transfer and superannuation systems that should be prioritised by the Government.

The Federal Budget is fundamental for establishing the current and future economic direction of Australia and its wider community. Its importance cannot be understated, particularly following the past few years, where the Australian community has faced a number of significant obstacles. These include the spate of natural disasters, rising cost-of-living pressures, economic volatility and the residual impacts from the COVID-19 pandemic. Given the current economic climate, it is crucial that the Australian community has certainty of tax policies and law to enable them to make decisions that support and grow their businesses, livelihoods and the economy. This can be achieved by the Government addressing the extensive number of announced but unenacted measures (**ABUMs**) and providing its response to outstanding Board of Taxation (**Board**) reviews.



As noted in [Australia's Future Tax System Review Final Report \(the Henry review\)](#) delivered in December 2009, complexities within the tax system place considerable costs on the community. Since the Henry review, there have been additional tax and superannuation measures introduced that have resulted in additional complexity within these systems. The Tax Institute is of the view that the Government should promptly address areas of excessive complexity that apply to a large portion of the taxpayer community. These include resolving the inefficiency of the fringe benefits tax (**FBT**) regime, simplifying superannuation measures and addressing the inherent complexities of the taxation of trusts. Reforming these areas will significantly reduce uncertainty and compliance costs for taxpayers. This will also enable the ATO to allocate resources, previously dedicated to these areas, to other priority areas.

Tax and transfer concessions and incentives can be effective to incentivise consumer behaviour or promote growth in targeted industries. We consider that 2023 is an opportune time to explore how this can be used to encourage investment in environmental sustainability and address the skilled labour shortage. Further, it provides an opportunity to assess how Australia's tax, transfer and superannuation systems can balance current priorities, such as repaying Australia's debt but still support economic growth.

It is important that these measures support future generations and are resilient to unexpected disruption that will inevitably occur. In this respect, we consider it paramount that a longer term outlook is prioritised in developing tax policy, in particular, commencing the consultation on holistic tax reform as noted in detail in our July 2021 [Case for Change](#) discussion paper. We urge the Government to lead this discussion and act on our recommendations with the longer-term objective to achieve efficiency, simplicity and equity in our tax, transfer and superannuation systems.

Our detailed response is contained in **Appendix A**.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix B** for more information about The Tax Institute.

If you would like to discuss any of the above, please contact The Tax Institute's Tax Counsel, Julie Abdalla, on (02) 8223 0058.

Yours faithfully,



Scott Treatt

General Manager,
Tax Policy and Advocacy



Marg Marshall

President

APPENDIX A

Announced but unenacted measures

The Tax Institute is of the view that the Government should address the extensive list of ABUMs to enable taxpayers to have certainty when managing their taxation affairs. There were several disruptions to the legislative schedule in 2022 that resulted in the significant number of ABUMs remaining outstanding. The October Federal Budget 2022–23 addressed some of the outstanding measures, however, there remain several that we consider are of high priority. These are outlined below.

Our [Incoming Government Brief: June 2022 \(Brief\)](#) contains an extensive list of the ABUMs and prioritises them through analysis including among other things, an assessment of what measures would benefit most taxpayers and their importance for the health of Australia's taxation and superannuation systems and the impact on the economy.

Non-arm's length income provisions for superannuation funds

The Tax Institute is of the view that the non-arm's length income (NALI) provisions in section 295-550 of the *Income Tax Assessment Act 1997 (ITAA 1997)* require urgent reform to rectify the unintended and disproportionate consequences inherent in its current drafting. In their current form, the rules are wide reaching and could result in substantial and long-term detriment to the superannuation balances of all Australians through disproportionate and unfair tax outcomes.

We welcome the [announcement](#) by the Assistant Treasurer to consult on the [non-arm's length expense rules for superannuation funds](#). We consider the actions needed to rectify the inequities within the NALI provisions are more broad than the issues raised in the consultation paper. At a minimum, any amendments to the provisions should permit taxpayers to rectify errors arising from honest or inadvertent mistakes. Further details and possible solutions to amend the scope and application of the NALI provisions are contained in the [September 2021](#) and [December 2021](#) submissions by The Tax Institute and a number of other professional bodies.

Corporate tax residency

Australia's corporate tax residency rules play a fundamental role in determining the taxing rights of profits generated in Australia by corporate entities. The current rules are complex and have uncertain outcomes. Restrictions on movements in response to the COVID-19 pandemic further exacerbated challenges in the practical application of these rules, with directors' inability to travel jeopardising the residency of a company.

The Tax Institute considers it imperative that inbound investing entities have certainty of their tax residency. Failing to provide this may disincentivise foreign investment, limiting job opportunities and the growth of the Australian economy.

We recommend the following actions be undertaken:

- adopt the Board's [recommendation](#) to amend the law so that companies incorporated offshore with a 'significant economic connection to Australia' will be treated as Australian residents for tax purposes; and
- progress with the previous government's [announcement](#) to consult on extending this treatment to corporate limited partnerships and trusts.

Our submission in respect of the October Federal Budget 2022–23 ([2022–23 submission](#)) provides further details on this measure.

Division 7A reform

Division 7A of Part III of the *Income Tax Assessment Act 1936* (**ITAA 1936**) was introduced as an anti-avoidance measure to prevent private companies and privately held groups from making distributions to shareholders and associates, without the appropriate amount of tax paid on these distributions. Since its introduction, there have been countless amendments that have resulted in significant complexity and increased compliance costs for a large number of private companies and privately held groups.

The previous government [announced](#) in the Federal Budget 2016–17 that it would implement the recommendations from the Board's [2014 Report](#) to the Assistant Treasurer (detailed in our [2022–23 submission](#)). Since the announcement, the commencement date for these reforms have been deferred several times and taxpayers do not have certainty as to whether these rules will be implemented in their announced form. Further, some aspects of the recommendations are of significant concern for taxpayers, such as the proposal to increase the period of review to 14 years and the removal of the concept of 'distributable surplus'.

The Tax Institute is of the view that the Government should promptly undertake a further detailed consultation with the tax community and that the reforms, with the community's feedback incorporated, are legislated. This will provide certainty for impacted taxpayers and ensure that the appropriate balance between compliance costs, complexity and integrity is achieved.

Residency requirements for self-managed superannuation funds

The Tax Institute welcomes the Government's [announcement](#) in the October Federal Budget 2022–23, to relax the residency requirements for self-managed superannuation funds (**SMSFs**). The announcement proposes to extend the current rules to allow SMSF trustees to relocate overseas for a maximum of five years, in addition to removing the active member test for SMSFs and small APRA-regulated funds. This will provide trustees with greater certainty that their superannuation balances will not be unfairly impacted by circumstances outside of their control.

We consider that the Government should promptly introduce enabling legislation. This will enable individuals to contribute to their superannuation in a wider range of circumstances, mitigate against adverse outcomes in the event that trustees may be required to be outside of Australia beyond the two years, such as during the COVID-19 pandemic, and support the policy objective of self-sufficient retirement.

Temporary full expensing amendment

Currently, eligible businesses with an aggregated turnover of less than \$5 billion are able to immediately deduct the full cost of eligible depreciating assets. This measure was introduced by Schedule 1 to the [Coronavirus Economic Response Package Omnibus Act 2020](#) and extended until 30 June 2023 by Schedule 6 to the [Treasury Laws Amendment \(Enhancing Superannuation Outcomes For Australians and Helping Australian Businesses Invest\) Act 2021](#).

The policy intent was to support Australian businesses and encourage investment, growth and job opportunities through a temporary increased deduction for eligible assets. As a result of disruptions to global supply chains, many businesses have encountered significant delays in the delivery and installation of their assets. These businesses may be unable to utilise the increased deductions as they are unable to have the eligible assets installed and ready for use by 30 June 2023.

The Tax Institute is of the view that the Government should consider extending this measure to:

- apply to contracts for depreciating assets entered into on or before 30 June 2023 irrespective of whether the asset was first used or first installed ready for use by 30 June 2023; or
- require the depreciating asset to be used, or installed ready for use, by 30 June 2024.

This will support the Australian businesses who have committed to investing in these assets and ensure that these businesses are not unfairly impacted due to circumstances beyond their control. Our [2022–23 submission](#) contains further information on this measure.

Administration and design of taxation and superannuation system

Funding of Australian Taxation Office

As outlined in our [2022–23 submission](#), additional funding for the ATO has generally been allocated for specific compliance program taskforces that focus on high-risk taxpayer behaviours. These specific compliance programs are relevant to a small portion of the taxpayer community. Key areas, such as the ATO's Law Design and Practice branch, technology teams and other support teams are crucial for the ATO's administration of the taxation and superannuation systems, but are often overlooked for additional funding.

The Tax Institute considers it paramount that the Government should consult on the allocation of additional permanent funding for ATO support teams. A considered approach will enable the ATO to apply this funding to provide services to a wider portion of the population. This will more effectively help taxpayers comply with their tax obligations, improve rapport with the community, and positively impact revenue collection.

Funding of the Treasury

The Treasury plays a central role in the design and drafting of taxation and superannuation measures, ensuring that Government policy is accurately and effectively conveyed in legislation. Taxation and superannuation laws are complex to draft, and this complexity can be exacerbated when amendments are required.

The Tax Institute is of the view that increasing the funding of the Treasury will better enable it to address the long list of ABUMs (some of which are outlined above) as well as other measures that will arise in the upcoming Federal Budget and in the future.

Additional funding will allow for increased resources and enable training of staff to encourage the development of expertise in these complex areas. This will promote efficiency in delivery and drafting of legislation.

Funding of National Tax Clinic program

The National Tax Clinic program is an initiative designed to help vulnerable and disadvantaged taxpayers who are unable to afford professional tax advice. The funding and grants for participating clinics is currently overseen and administered by the ATO on a clinic-by-clinic basis. There is no funding allocated for other services that the clinics may require, such as for the promotion of the program external to the webpage contained on the ATO's website.

Given the increased cost-of-living pressures, spate of natural disasters, and fallout from the COVID-19 pandemic, the number of taxpayers experiencing financial distress is predicted to increase over the next 12 months. This will result in increased demand for the services provided by the National Tax Clinic program.

We consider that the National Tax Clinic program would benefit from increased funding to allow the clinics to better promote themselves and respond to greater demand for their services in the coming year. Increasing funding of the National Tax Clinic program will better enable the clinics to broaden their outreach and ensure that taxpayers remain engaged with the ATO and continue to meet their tax obligations.

Responding to Board of Taxation reviews

The Board has undertaken a number of reviews that are awaiting a response from the Government. We consider the following reviews of high priority:

- [Review of the tax treatment of digital assets and transactions in Australia](#)
- [Review of capital gains tax \(CGT\) rollovers](#)
- [Report introducing an asset merger rollover relief](#)
- [Review of the income tax treatment of certain forms of deferred consideration.](#)

The Australian community would benefit from having certainty of how the Government intends to proceed with the recommendations proposed by the reviews as this will determine the future direction of tax policies and legislation in these areas. Furthermore, additional consultation will be required once the recommendations have been accepted by the Government. This can be a timely process and should be promptly initiated.

Superannuation

Superannuation plays a fundamental role in supporting self-sufficient retirement and assists to reduce the financial burden for the government in funding retirement benefits. Despite its importance, the current superannuation rules contain significant complexity for employers, trustees and members. While there are numerous issues within the superannuation system that require reform, we have limited our comments in this submission to include the most pertinent issues. A comprehensive review of these issues and potential solutions is contained in our [Case for Change](#) discussion paper.

Addressing superannuation guarantee non-compliance

As detailed in our [2022–23 submission](#), The Tax Institute is of the view that the penalty imposed under Part 7 of the *Superannuation Guarantee (Administration) Act 1992 (SGAA)* requires urgent reform. Part 7 of the SGAA imposes a penalty rate of 200% for the late lodgment of, or failure to provide, a superannuation guarantee (**SG**) statement. The penalty rate imposed is disproportionate to the action that resulted in the penalty, and is not aligned with other penalties imposed on employers for failing to meet their employment obligations on time such as the late payment of wages. Further, the penalties act as a deterrent for employers to disclose historical SG shortfalls.

We recommend that the Government consult on the SG reform aspects contained in the [Treasury Legislation Amendment \(Repeal Day 2015\) Bill 2016](#) (Cth) and implement the reforms incorporating the recommendations from consultation.

Simplification of superannuation thresholds and indexation

The current superannuation rules contain several thresholds that have no apparent alignment to other rates, thresholds or indexation methods. These thresholds are further complicated by an indexation calculation that varies according to the specific cap or threshold.

As detailed in our [2022–23 submission](#), the Transfer Balance Cap (**TBC**) was introduced to limit the amount of earnings on the superannuation balance supporting a retirement income stream that was tax-free. This cap was initially \$1.6 million but was increased to \$1.7 million from 1 July 2021. Individuals that had not utilised their general TBC at 1 July 2021, had their TBC increased by a proportionate indexation calculation, resulting in many individuals having a personal TBC that is different from the rest of the population. This calculation and limited real-time information available for TBC data makes it difficult for taxpayers and their advisers to comply. We recommend that the proportionate TBC be removed, as it significantly increases the complexity and cost for taxpayers to comply and the ATO to administer.

An example of inconsistency is evident in the indexation that is used to determine if the maximum superannuation contribution base and maximum concessional contribution (**CC**) cap should be increased. The maximum superannuation contribution base restricts the amount of SG contributions that employers are obliged to provide for an employee under the SG scheme. In contrast the maximum CC cap is the threshold to which the concessional tax rate of superannuation (generally 15%) can be applied. Although, the maximum superannuation contribution base, acts as a proxy of the maximum CC cap from an employer's perspective, these caps and the indexation applied to them are different. These rules are unnecessarily complex for the community to understand, the ATO to administer and are costly for taxpayers to apply, for no benefit.

The Tax Institute is of the view that alignment and simplification of superannuation rates, thresholds and indexation would improve the superannuation system by making it easier for taxpayers to understand. This would significantly reduce compliance costs and encourage taxpayers to utilise additional superannuation contribution strategies to support them in their retirement. Simplification of the superannuation system will also reduce ATO compliance resources required to dedicate to this area, freeing them up to focus on other important areas of compliance.

New rollover for product rationalisation

The Tax Institute is of the view that the Government should consult on introducing a CGT rollover where products are rationalised within the same fund. Currently, where members change products within the same superannuation fund, the fund will become liable for CGT. As funds respond to changes in consumer preferences and the investment landscape, it is likely that new products will be provided to take advantage of these changes. Taxpayers are disincentivised from changing their investment options, as any gain made from owning the product will be subject to CGT. We consider that by introducing this CGT rollover, members and fund managers will have added flexibility to maximise superannuation growth and better support members for their retirement. Further detail on this recommendation is included in our [2022–23 submission](#).

Simplification of fringe benefits tax

FBT was introduced as an integrity measure to ensure that tax was paid on non-cash benefits provided to employees in respect of their employment. However, it places a disproportionately high compliance cost on businesses, due to the underlying complexity in understanding, calculating, reporting, and paying FBT on relevant benefits. In 2019–20 the [FBT tax gap](#) was one of the highest, estimated at 20.3% of its potential revenue or \$991 million, generating less than 1% of the [ATO's net cash collections](#) in 2021–22. These trends are consistent with previous years and illustrate the inefficiency of this tax.

The Tax Institute's longstanding view is that the current FBT regime should be abolished and replaced with a principle-based approach that better aligns with its policy objective. As recommended by the Henry review (recommendation 112) and noted in our [Case for Change](#) discussion paper, a principles-based approach would ensure the laws governing the regime were aligned with the policy objectives and encompass sufficient flexibility to allow for inevitable changes over time. By adopting this approach, it will reduce the arduous record keeping requirements and mitigate against the excessive compliance costs that are associated with the current regime.

If the FBT regime is not abolished, we recommend that the Government consult on reforming key areas of complexity within the existing regime. As outlined in our [2022–23 submission](#), the current FBT regime for car parking is onerous and costly for businesses. The previous government [announced](#) a public consultation to amend the definition of a 'commercial parking station' in the *Fringe Benefits Tax Assessment Act 1986*. We welcome this consultation and consider it opportune to expand its scope to undertake a comprehensive review of the rules for FBT on car parking benefits.

Reviewing the taxation of trusts

Trusts are commonly used in Australia for holding investments and for conducting business, particularly by individuals and the small to medium enterprise sector. The current taxation of trusts regime is complex, resulting in uncertainties in its application and significant compliance costs for taxpayers. To assist taxpayers with understanding the regime and the ongoing changes to case law impacting trusts, the ATO is regularly required to issue detailed guidance.

The Tax Institute is of the view that the Government should consult with key stakeholders on reforming the taxation of trusts. We consider that this review should involve consideration of the reform options that were identified in the past reviews conducted by Treasury and the Board, and be undertaken as a comprehensive consultation process with key stakeholders. This will ensure that an appropriate balance is achieved between upholding integrity of the existing regime and minimising compliance costs. Further information on this issue is included in our [2022–23 submission](#).

Tax incentives to minimise impacts of climate change

Tax incentives and concessions are effective in influencing certain behaviours of individuals and businesses, such as to encourage activities that promote environmental sustainability. As detailed in our [2022–23 submission](#), the following tax measures could be expanded to greater encourage green energy:

- Expansion of the [Treasury Laws Amendment \(Electric Car Discount\) Bill 2022](#) to incorporate a wider range of zero or low emission vehicles and ancillary charging infrastructure.
- Accelerated depreciation or an instant asset write-off for investments in ‘green’ technologies and improvements to make existing technologies more environmentally sustainable.
- Extension of the current green (clean) building managed investment trust tax concession reducing the withholding tax rate from its current rate of 30% to 10% for non-resident investors.

The Tax Institute is of the view that the Government should consult with the public on an environmental policy that utilises tax incentives or concessions to encourage the use of sustainable technology, such as the measures listed above.

Establishing a pathway to reform

The Tax Institute is of the longstanding view that Australia’s taxation and superannuation systems require comprehensive reform to ensure they can support Australia’s economic growth and are resilient to external disruptions, such as economic instability, international volatility and the impact from disasters. As detailed in our [Case for Change](#) discussion paper, a healthy tax system must be simple, equitable and efficient to support growth in the economy and meet the demands of its community. The issues in our submission highlight the significant complexity, uncertainty, and inefficiency that is prevalent in Australia’s current taxation and superannuation systems, and which is not conducive to creating a healthy tax system. 2023 is an opportune time to start to address these issues and we urge the Government to lead this discussion by undertaking a holistic review of Australia’s taxation and superannuation systems.

APPENDIX B

About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.