The Tax Institute

10 October 2025

Mr Andrew Mills, Acting Chair
The Board of Taxation
Langton Crescent
Parkes ACT 2600

By email: rgbts@treasury.gov.au

CC: Mr Paul Korganow, Secretary and Tax Counsel
The Board of Taxation
Paul.Korganow@treasury.gov.au

Dear Mr Mills,

Tax simplification: Cutting through the red tape

The Tax Institute writes to the Board of Taxation (**the Board**) following our discussions at the meeting of our National Large Business and International Technical Committee on 5 August 2025. During that meeting, the Board requested that we provide some recommendations for how to reduce red tape and the compliance burden in respect to the administration of the taxation and superannuation systems.

We also take this opportunity to thank the Board for the opportunity to participate in its stakeholder event on red tape and compliance burden reduction for small business on 25 September 2025.

We welcome the Government's recent announcement that the Board will conduct a review to identify compliance burdens and red tape in the tax system. The Tax Institute looks forward to contributing to this review and working collaboratively with the Board to identify such burdens and opportunities to alleviate them.

In the development of this submission, we closely consulted with our National Large Business and International Technical Committee, National Superannuation Technical Committee and the Fringe Benefits Tax and Employment Taxes Technical Committee to prepare a considered response that represents the views of the broader membership of The Tax Institute.

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Considering the government's current focus on increasing productivity, it is timely that the need to reduce red tape and implement some immediate solutions is being considered by the Board. By reducing bureaucratic hurdles and simplifying compliance processes, we can help create an environment that fosters innovation and efficiency. This is crucial particularly for small businesses, that often face disproportionate challenges in navigating complex regulatory frameworks. While the recommendations outlined in this submission are no substitute for comprehensive tax reform, we consider that our proposals can help ease the burdens experienced by taxpayers until a broader tax overhaul is achieved.

In addition, our members consider that cutting red tape, promoting business certainty, reducing compliance costs, deregulation, and simplification should be core objectives for government agencies such as the Australian Taxation Office (**ATO**) and the Treasury. The ATO, in particular, should adopt these as formal objectives to be considered in both administering the law and consulting on new law.

We have divided this submission into four key themes: Large Business and International, Superannuation, Small Businesses, and Fringe Benefits Tax (**FBT**).

Our detailed observations and recommendations are contained in **Appendix A**.

We note that this paper focuses on small improvements and immediate action items to help reduce red tape. There is a need for broader simplification and reform. In this regard The Tax Institute has published, among other materials, the following key products which may be of further assistance to the Board:

- the Case for Change, our 2021 landmark discussion paper, considers the Australian tax system holistically. It identifies the aspects of the system that are performing well, and those that are lacking, proposing a range of options for reform which remain relevant today. The Case for Change aims to inform policy discussions and drive meaningful changes in Australia's tax framework to bolster business growth and economic resilience;
- Incoming Government Brief: June 2025, which, following the federal election on 3 May 2025, details key tax and superannuation measures announced by previous governments that remain unenacted ahead of the commencement of the 48th Parliament, and certain other aspects of the system in dire need of reform;
- our recent submission to the Productivity Commission in response to its consultation on the interim report on creating a more dynamic and resilient economy;
- our earlier submission to the Productivity Commission in response to its consultation on *Pillar 1: Creating a More Dynamic and Resilient Economy*, which outlines the crucial role of the tax system in shaping the Australian business landscape and key changes that can be made to foster investment and productivity growth; and
- our submission to the federal Treasury consultation ahead of the upcoming Economic Reform Roundtable.

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.

If you would like to discuss any of the above, please contact our Tax Counsel, John Storey, at (03) 9603 2003.

Yours faithfully,

Julie Abdalla
Head of Tax & Legal

Tim Sandow
President

APPENDIX A

We have set out below our detailed comments and observations for your consideration.

Large business and international

Large and international businesses play a crucial role in shaping the economy by attracting foreign investment, driving innovation, creating jobs and facilitating trade. In recent years, the corporate and international tax compliance landscape in Australia for global companies has become increasingly complex. These amendments have introduced new challenges and considerations that companies must navigate to ensure compliance with evolving tax obligations across various jurisdictions.

The compliance burden in this sector has been exacerbated by the fact that some laws have been introduced with retrospective effect. Examples include legislation introducing public country-by-country reporting (**Public CbCR**) (*Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Act 2024*), and the OECD Pillar Two rules (*Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Act 2024),* which became law on 10 December 2024, both of which apply retrospectively from 1 July 2024 and 1 January 2024, respectively. The majority of the recent changes to the thin capitalisation rules also apply retrospectively from 1 July 2023 (the Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Bill 2023 containing these measures received Royal Assent on 8 April 2024).

Further, a lack of effective consultation regarding such sweeping changes is a barrier to creating a more coherent and business-friendly regulatory environment. For example, the recent changes to the thin capitalisation regime, effective 1 July 2023, have raised concerns regarding their influence on debt-funded investments and the nation's competitive standing in the global market. These changes have fundamentally altered how businesses can claim interest deductions and may influence a significant shift in commercial practices. Our understanding from our members is that some businesses are looking to reduce their reliance on debt to mitigate the complexities and potential rejection of deductions under the new rules. This can have significant commercial implications for the viability of these businesses.

Significant technical gaps in the thin capitalisation legislation remain despite stakeholder feedback provided through consultation. The ATO's thin capitalisation public advice and guidance webpage outlines a high-level summary of the topics raised by stakeholders in consultation as matters that, in their view, would benefit from public advice and guidance. It is clear that legislative amendments and clarity are still needed in some areas. As outlined in our submissions dated 3 November 2023 and 5 January 2024, the legislation requires further amendments to provide certainty to taxpayers and reduce the burden of compliance.

From 1 July 2023, public companies that are required to prepare consolidated financial statements in accordance with accounting standards must include a Consolidated Entity Disclosure Statement (**CEDS**). This includes identifying whether each entity within the consolidated group is classified as an Australian or foreign resident, which can be misclassified given existing ambiguities in this area. We note that the Board in its 2020 Corporate Tax Residency Review – Final report recommended amending the law such that a company incorporated offshore would be treated as an Australian resident for tax purposes only where it has a 'significant economic connection to Australia.

Separately, the number of disclosures as part of the International Dealings Schedule (**IDS**) has increased, and companies are now required to complete even more complex reporting obligations, including for example, hybrid mismatch information disclosures even when exemptions apply. This burden is exacerbated by the duplication of tax disclosures, such as those required for public CbCR and the voluntary tax transparency code (**VTTC**), acknowledging the Board's efforts to streamline VTTC. This complexity extends to corporate tax filings in general, as the return and schedules have grown to approximately 60 pages, according to the latest count.

Further adding to the complexity of the system is the ever-growing list of integrity measures. We have provided below a non-exhaustive list of highly complex integrity measures, including:

- anti-avoidance rules such as the Part IVA general anti-avoidance rules, multinational anti-avoidance law and the diverted profits tax;
- thin capitalisation and debt deduction creation rules;
- franking credit schemes;
- benchmark franking rules; franking account return; franking deficit tax;
- debt/equity rules;
- 'exempting entity' and 'former exempting entity' rules;
- holding period and related payment rules; and
- share capital tainting rules.

We acknowledge and support the need for integrity provisions to preserve Australia's revenue base and ensure a level playing field for taxpayers. However, the complexity of these rules results in increased compliance costs, anomalies, errors and disputes with the ATO.

Finally, as businesses increasingly rely on intangible assets to drive growth and innovation, the complexities surrounding their taxation have become more pronounced. The issue of royalty has garnered significant interest among our members, particularly in light of the recent High Court decision in *Commissioner of Taxation v. Pepsico Inc. and Commissioner of Taxation v. Stokely-Van Camp Inc.* [2025] HCA 30. The fact that Australia's High Court was split four justices to three as to whether the transaction involved a royalty or whether an anti-avoidance provision should apply is indicative of the complexity of Australia's tax laws especially as they relate to valuing and taxing intangibles.

Recommendations

We recommend the following:

- assessing the compliance burden on large business and international taxpayers, and implementing measures to reduce duplication or unnecessary disclosures to ease taxpayer compliance;
- evaluating the effectiveness of existing integrity measures and considering opportunities to streamline them to ease taxpayer compliance;
- addressing the misalignment in deadlines and submission methods (either via tax returns or separate forms) of various notifications and elections, which necessitates harmonisation within income tax rules to improve overall efficiency;

- commencing the post implementation review of the thin capitalisation rules prior to the legislative start date of 1 February 2026 and ending well before the statutory 17-month review period;
- examining the scope, purpose, and benefits of disclosures, such as the IDS particularly concerning controlled foreign corporations (**CFCs**), hybrids, thin capitalisation, and debt deduction creation rules;
- implementing the changes to the corporate tax residency rules announced by the former government on 6 October 2020 and recommended by the Board;
- improving the effectiveness of regulators by streamlining processes, such that regulators adopt a more consistent approach, including in relation to CEDS;
- providing clarity on the status of announced but unenacted measures, and developing a process for ongoing maintenance of such announcements, to ensure greater certainty for taxpayer;
- releasing the Board's final report on the capital gains tax roll-over review and undertaking stakeholder consultation based on the findings; and
- examining the taxation of intangibles due to significant challenges associated with their valuation and taxation.

Superannuation

Australia's superannuation system is highly complex, and some aspects of the system are inefficient. The superannuation rules have been tinkered with in virtually every parliamentary term since the 1980s. This has resulted in the core objectives of the system being unnecessarily overlaid with complex legislative amendments, policy changes, and voluminous provisions, regulations, rulings and legislative instruments.

Superannuation is subject to three separate bodies of legislation – the *Income Tax Assessment Act 1997* (Cth) (**ITAA 199**7), *Superannuation Industry (Supervision) Act 1993* (Cth) (**SISA**) and Superannuation Guarantee (Administration) Act 1992 (Cth) (**SGAA**), (collectively referred to as Acts), making navigation more complex. The legislation includes cross-references between the Acts, which can result in laborious interpretation.

While we anticipate that the SGAA will be reviewed with the implementation of the forthcoming PayDay Super reforms, the SISA is well overdue for review, as it has been over 30 years since it came into force.

Our superannuation system currently has numerous caps and thresholds, some of which are indexed under various methods, including by reference to the Consumer Price Index, Average Weekly Ordinary Time Earnings, or other legislative formulas. This results in unnecessary convolution in an already very complex system.

Notice of intent to claim or vary a deduction for personal superannuation contributions

The current paper-based system for an individual to claim a tax deduction for superannuation contributions, particularly the ATO's Notice of Intent form, is an example of processes that reflect a different era to those that apply today. The current law requires a superannuation fund member to request a deduction for a specific super contribution (section 290-170 of the ITAA 1997), and then have the trustee of the receiving super fund acknowledge it. The ATO form requires the member to request a deduction for a year (rather than for a specific contribution), which complicates the process. The complexities of super fund systems are exacerbated when multiple withdrawals or rollovers occur, leading to challenges in processing valid notices of intent (**NOI**).

Our members consider that the original justification for restricting members from submitting valid notices due to technological limitations is no longer valid, given that the ATO now has comprehensive data from all funds through the Member Account Attribute Service (**MAAS**) or the Member Account Transaction Service (**MATS**). This ongoing restriction is seen as an unnecessary complexity that undermines the principles of portability in superannuation. While some APRA funds have adopted online lodgement and acknowledgment processes, self-managed super funds (**SMSFs**) generally lack this capability, further complicating compliance.

Limited Recourse Borrowing Arrangements

The Treasury Laws Amendment (2018 Superannuation Measures No 1) Act 2019 introduced significant changes that took effect on 1 July 2018 regarding the Total Superannuation Balance (**TSB**) of SMSF members, particularly for those who entered into a Limited Recourse Borrowing Arrangement (**LRBA**) on or after this date. Under the new law, an individual's TSB now encompasses their proportionate share of the outstanding LRBA balance, which is determined by the member's stake in the total superannuation interests linked to the asset under the LRBA. This adjustment can lead to miscalculations, as many taxpayers may struggle to accurately assess the outstanding LRBA amounts. If a member's superannuation interest includes an LRBA, the fund is required to report the outstanding LRBA figure in the SMSF annual return, which may potentially inflate the TSB. Such inflation can adversely affect an individual's eligibility for various superannuation benefits, including the ability to carry-forward concessional contributions and make non-concessional contributions. For instance, if a member's TSB reaches or exceeds the general transfer balance cap (**TBC**) of $2 million by the end of the previous financial year, their non-concessional contributions cap for the current year would be reduced to zero.

The use of debt via an LRBA is a legitimate investment strategy for an SMSF and should not be linked to a member's entitlement. An SMSF manages the investment strategy at the fund level and allocates a proportion of net assets to members. Requiring the debt associated with a specific fund asset to be allocated to a member results in a blurring of the trustee's responsibilities to maintain the fund's investment strategy globally for all fund members.

While the measure was introduced as an integrity measure to avoid 'cap manipulation', a strategy that involves gearing for investment is a higher-risk decision and should only be made on solid investment grounds. If an SMSF makes the decision based primarily to assist in 'cap compression', it could be argued that Part IVA of the ITAA 1997 would apply. Overlapping existing integrity measures across various legislative requirements adds to complexity and results in inefficiencies due to red tape.

Foreign investment tax-related compliance

Reporting requirements add to the compliance burden of superannuation funds. Some superannuation funds may be required to comply with CbCR and file Foreign Hybrid Limited Partnership returns despite having no active foreign-controlled operations. As investment entities without foreign operations, superannuation funds lack controlled entities or permanent establishments abroad, rendering CbC reports irrelevant to foreign tax authorities. Our members are of the view that this leads to a misallocation of resources, as the production of such reports serves limited practical purpose and is merely an exercise in redundant documentation.

Additionally, when a superannuation fund is the sole Australian partner in a Foreign Hybrid Limited Partnership (**FHLP**), it is already required to report its share of partnership income on its tax return. The requirement to file a separate FHLP tax return, which merely replicates the same figures adjusted for ownership percentage, adds unnecessary administrative burden. Furthermore, partnership laws in various foreign jurisdictions may restrict the superannuation fund, as a limited partner, from engaging in management activities, including submitting tax returns on behalf of the partnership. This legal limitation underscores the inefficiency and potential legal complications associated with such reporting obligations.

Pension ceasing where there is a shortfall in minimum pension payments

The Superannuation Industry (Supervision) Regulations 1994 (Cth) (**SIS Regulations**) provide that pension terms must include a minimum payment requirement. However, the Regulations do not mandate that the minimum amount be actually paid in order for the pension to remain valid. While APRA's processes are aligned with the SIS Regulations, the ATO's processes are not. The ATO should view any non-compliance by a superannuation fund regarding pension terms as an issue related to the fund's compliance status, which can be rectified through a catch-up payment, rather than its current approach of cancelling or repudiating the pension.

The significant changes to the laws governing superannuation that commenced from 1 July 2017 have added additional complexity to the system with the introduction of caps and thresholds. The ATO oversees compliance with the various caps which is facilitated by the introduction of additional reporting requirements for superannuation funds. The ATO maintains that a pension is considered to cease in the year when a pension shortfall leads to a fund commuting the pension, necessitating the reporting of this commutation and any subsequent re-commencement to the ATO. This serves no genuine purpose and is simply another example of red tape.

Another challenge is determining pension compliance with the requirement to make minimum pension payments during the year of full commutation. There is often ambiguity in member pension instructions regarding whether withdrawals exceeding the pro rata SIS minimum, made prior to full commutation, are classified as additional pension payments or partial commutations. This confusion is particularly prevalent for members over the age of 60, for whom both types of withdrawals are tax-free. All payments from a pension that exceed the SIS minimum, regardless of whether they are taken as lump sums or additional pension payments, should be considered in fulfilling the SIS minimum requirement.

Partial indexation of the TBC

The partial indexation of TBC in some circumstances adds significant complexity to the superannuation pension rules. The calculation of partial indexation is complex, and the result is that there are thousands of personal TBCs, which greatly complicates the role of tax and financial advisers. Taxpayers and their advisers often require external assistance from a Tax Agent and other sources like MyGov simply to identify their personal TBC. This complex system does not appear to be warranted by any public policy goal. The system would be simplified by subjecting everyone to the same TBC when it is indexed.

Alternatively, the conversion of the TBC to the personal transfer cap in the year of commencement of the first retirement phase income stream could set the level of the person's TBC for life. That is, no partial indexation applies.

Lack of CGT rollover

Division 311 of the ITA 1997 has been repealed. This provision was originally introduced to allow CGT rollover relief, facilitating the migration of members and assets to a MySuper compliant product offering. However, there is no such relief afforded to funds that have to move members and assets out of a non-compliant MySuper product, unless it involves a complete successor fund transfer and the winding up of the entire fund. This creates an arguably unjust and unnecessary obstacle for members seeking to exit underperforming MySuper products, effectively penalising them for their desire to move to better performing options.

Recommendations

We recommend the following:

- reforming and simplifying the superannuation system by rationalising the myriad caps, thresholds, and indexation measures so they are more consistent and simpler;
- allowing superannuation members to submit their NOI directly to the ATO via MyGov, allowing the ATO to assess whether members meet the requirements for claiming deductions. This would streamline the process, reduce the burden on members, and eliminate the need for variations in notices when deductions are denied. Other potential options include:
    - members including their declaration within their personal tax returns. Upon receiving the return, the ATO could notify the superannuation fund, enabling the application of a 15% tax on the member's account; or
    - the ATO could directly charge this tax to the individual during their tax assessment, thereby removing the superannuation fund from the NOI processing entirely. In this scenario, the ATO could issue a release authority to the member, similar to the process for Division 293 tax, should they wish to withdraw funds to cover the tax; or
    - allowing superannuation funds to classify contributions at the time of payment, enhancing the overall efficiency of the system;
- conducting a post-implementation review of the changes to the TSB of SMSF members, particularly in relation to LRBA arrangements, and considering whether eliminating the LRBA from TSB calculations could mitigate errors, prevent unintentional breaches of contribution limits;

- assessing the effectiveness of the reporting requirements of superannuation funds and identifying opportunities to streamline reporting;
- making legislative changes to allow SMSFs the autonomy to select whether to use the proportionate method or segregated method for the calculation of the ECPI;
- harmonising the TBC would aid in reducing the complexity associated with it, and result in a single TBC that applies equally; and
- introducing CGT rollover relief for funds that transition members and assets out of a non-compliant MySuper product;

Small and medium enterprises

Small businesses are the backbone of the Australian economy, making significant contributions to employment and economic development nationwide. They account for a substantial portion of the workforce, providing jobs to millions of Australians and fostering growth in local communities. However, despite their vital contributions, small businesses frequently face challenges that can hinder their potential. One of the most pressing issues is the complexity and cost of the tax regimes they must navigate.

Recommendations

To ease the compliance burden of small businesses, we make the following recommendations:

- making the instant asset write-off (**IAWO**) a permanent feature of Australia's tax system. The IAWO threshold should be increased to $30,000, and business eligibility should be expanded to include businesses with an aggregated annual turnover of less than $50 million;
- increasing the turnover threshold requiring businesses to register for GST (for example, to $150,000 per annum) and indexing the threshold in line with inflation so GST compliance is not a disproportionate impediment to starting or growing a small business;
- simplifying the definition of small business for income tax, GST, capital gains tax (**CGT**) and other laws. For example, for the purposes of small business CGT concessions ($2 million), small business income tax offset ($5 million), research and development tax incentive (**R&DTI**) and GST reporting (both $20 million, but calculated in different ways), income tax concessions (such as the prepayment rules, the simplified depreciation and trading stock rules and the base rate entity rules) ($50 million) and thin capitalisation (less than $2 million of debt deductions); and
- streamlining tax legislation concerning small businesses to facilitate easier compliance and support growth, including, for example, the small business CGT concessions in Division 152 of the ITAA 1997, Division 7A of the *Income Tax Assessment Act 1936* (Cth), the family trust election rules in the trust loss provisions in Schedule 2F to the ITAA 1936; and the personal services income rules in Part 2-42 of the ITAA 1997.

Fringe benefits tax

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 imposes a disproportionately high compliance cost on businesses, due to the underlying complexity in understanding, calculating, reporting, and paying FBT on relevant benefits.

FBT accounts for less than 1% of Australia's net cash collections. The FBT tax gap is consistently one of the highest tax gaps, highlighting the inefficiency and complexity of the regime. For the 2021–22 income year, the estimated net FBT tax gap increased to 34.2% or $1.882 billion from a net gap of 31.2% in 2019–20.

As recommended by the Henry review (Recommendation 112) and noted in our Case for Change discussion paper, a principle-based approach would ensure that the laws governing the regime are aligned with its policy objectives, and encompass sufficient flexibility to allow for inevitable changes over time.

Until a comprehensive assessment of the FBT regime is undertaken and completed, we recommend the following measures to enhance taxpayer compliance with the existing framework.

Recommendations

We recommend the following:

- reviewing the definition of 'foreign super funds' so that it can be applied more practically for FBT purposes;
- removing the 'maintaining a home' requirement for the Living Away from Home Allowance to better support inbound expatriates and workforce mobility;
- introducing zone-based car parking valuation rules and providing clear taxable values to reduce disputes;
- clarifying the interpretation of 'minor benefits' to provide certainty to taxpayers;
- legislating to resolve ambiguities in the timing of recipient payments and contributions;
- reviewing the onerous nature of FBT return lodgement timing in general, and exploring available options for simplification; and
- harmonising the definition of 'employee' and 'employer' across employment taxes to reduce the cost of duplicative requirements and to improve consistency.