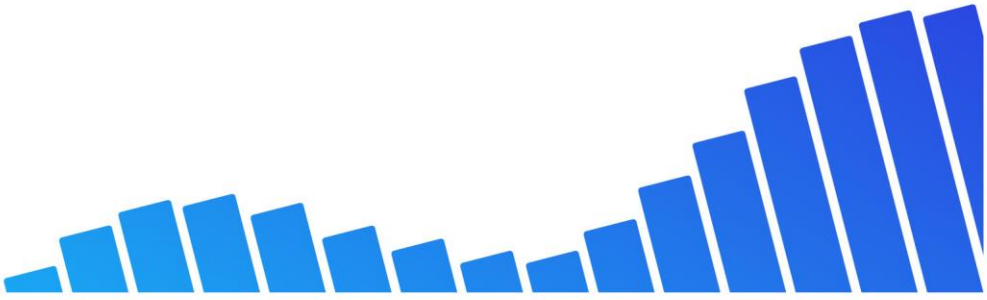
The Tax Institute

Incoming Government Brief: June 2022

Written by The Tax Institute's Tax Policy and Advocacy Team

20 June 2022



Introduction

As the leading forum for the tax community in Australia, The Tax Institute welcomes the incoming Labor Government following the recent Federal election. The economic, fiscal and social responsibilities and challenges facing the Government are immense in an uncertain and globally volatile environment.

Domestically, the Government and taxpayers face numerous challenges at present, including:

- Size of the ATO's debt book, the ATO's ability to recover those debts and the broader economic impact of this recovery — the ATO debt book has increased by almost 78% in the last four years, and there are currently no policies to address the repayment of existing debt and prevention of future debt
- Heightened tax dispute environment
- Increased risk of business collapses with rising business costs (including fuel and utilities) and widespread staff shortages
- Continuing pressure on tax professionals and advisers and their ability to effectively administer significant proposed system changes in the short term
- Taxpayers' willingness to accept more changes in the short term.

The Tax Institute is uniquely placed to properly represent the tax and superannuation system because of the diversity of our membership, comprising not only tax practitioners (primarily, accountants and lawyers) but also those within government (including the ATO) and academia. As an independent body, we consider the whole system without being driven by vested interests, other than seeking to influence tax and revenue policy at the highest level with a view to achieving a better tax system for all.

Our primary function is to educate our members, the community and the government. To that end, we are always available to test matters, engage in confidential consultations with the Government, Treasury and the ATO, and review the detail of potential policies prior to their public release.

We are committed to shaping the future of the tax profession and the continuous improvement of the tax system — tax policy and tax administration — for the benefit of all stakeholders. Please refer to **Appendix B** for more about The Tax Institute.

About this report

This report, **Incoming Government Brief: June 2022** (**the Brief**), sets out the status of the key tax and superannuation legislative measures that have been announced by the former Government and remain unenacted following the prorogation of the 46th Parliament ahead of the Federal election held on 21 May 2022.

The Brief contains a synopsis of the key priorities identified by The Tax Institute's Tax Policy and Advocacy team and our National Technical Committees to assist the incoming Government in focusing on the most important tax and superannuation measures from the extensive list of unenacted measures.

The Brief is categorised into:

- COVID-19 and natural disaster measures — this section sets out those measures associated with the former Government's response to the COVID-19 pandemic and certain natural disasters that should be given immediate priority (from **page 1**)
- Highest, medium and lower priority measures — this section sets out those measures that The Tax Institute considers are important to progress or clarify, ranked in order of their importance to the system and their ability to be implemented (from **page 9**)
- Other issues for consideration — this section sets out various other issues that The Tax Institute considers the Government should be aware of (from **page 67**).
- Measures that should not proceed — this section sets out those measures that The Tax Institute considers should not proceed (from **page 75**)

A full list of acronyms and abbreviations used throughout the Brief is set out from **page 80**.

Yours faithfully,

Jerome Tse

President

Scott Treatt

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COVID-19 and natural disaster measures

C1 | Small business COVID-19 government support payments

Date announced	Unannounced	**Proposed start date**	Varies
Status of measure	TTI initiated	**Priority**	C1
Overview	● The current law is inconsistent in the treatment of various Commonwealth, State and Territory government small business support payments (**business support payments**) made in response to the COVID-19 pandemic as non-assessable non-exempt (**NANE**) income; some have been treated as NANE income and some have not. All such business support payments should be treated as NANE income. ● This measure would ensure that all such payments are not subject to income tax so that the full benefit of the payment is available to recipients. It would also eliminate confusion and the risk of small businesses being inadvertently exposed to penalties.		
Link	Not applicable		

Our recommendation

The Government should consider introducing an enabling bill containing this measure into Parliament, and registering any consequential financial instruments, to ensure small business recipients of these payments are taxed appropriately.

Issue

- The current law does not treat all small business support payments received from the Commonwealth, State and Territory government in a consistent manner for tax purposes.
- Only some of the business support payments paid during 2020–21 and 2021–22 have been declared NANE income by the Minister under section 59-97 and section 59-98 of the ITAA 1997. This means that where a business support payment is not declared to be NANE income, the payment is subject to income tax and the recipient does not receive the full benefit of the payment.

Why is this measure a priority?

During the period from around March 2020 to April 2022, the Australian business community was generously supported by the Commonwealth Government, and by the various State and Territory governments, to provide them with the best possible chance of surviving the economic impact of the COVID-19 pandemic.

Where business support payments have been made to eligible recipients, the full value of those payments is undermined where they are subject to income tax in the hands of the recipient.

Description of measure

- Under section 59-97 and section 59-98 of the ITAA 1997, certain Commonwealth, State and Territory government program support payments received in response to the COVID-19 pandemic may be treated as NANE income if certain conditions are met.
- This includes:
    - a declaration by the Minister, by legislative instrument, that a grant or payment made under a Commonwealth, State or Territory government program is an eligible program
    - that the recipient is a small to medium sized business entity with an aggregated turnover of less than $50 million
    - that the State or Territory government program was first publicly announced on or after 13 September 2020 in response to the economic impacts of COVID-19
    - that the entity received the State or Territory government support payment in the 2020–21 or 2021–22 income year, or received the Commonwealth government support payment in the 2021–22 income year.
- This measure (initiated by The Tax Institute) would ensure that all Commonwealth, State and Territory government small business support payments made in response to the COVID-19 pandemic are treated as NANE income and therefore not subject to income tax.
- It would also eliminate confusion and the risk of small businesses being inadvertently exposed to penalties where, due to confusion, they inadvertently omit the payments from their assessable income.

C2 | Recovery grants for Cyclone Seroja

Date announced	17 February 2022	**Proposed start date**	1 July 2021
Status of measure	Lapsed bill	**Priority**	C2
Overview	● In the MYEFO 2021–22, the former Government committed to assisting taxpayers impacted by Cyclone Seroja (April 2021) through the provision of tax-free grants. ● Impacted taxpayers require certainty on the tax treatment of assistance provided to them to recover from damage resulting from Cyclone Seroja.		
Link	Schedule 5 to the Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022		

Our recommendation

The Government should consider reintroducing an enabling bill containing this measure into Parliament.

Why is this measure a priority?

- Eligible taxpayers who have received grant monies from the former Government following the events of Cyclone Seroja were assured that the grant monies would not be subject to income tax.
- In the absence of this legislative amendment, taxpayers will be required to include the amount of the grant in their assessable income, thereby reducing the benefit of the assistance they have received.
- With 2022 tax returns for impacted taxpayers due to be lodged from 1 July 2022, taxpayers need certainty on the tax treatment of grant monies as soon as possible so they can correctly prepare their tax returns ideally prior to lodgment, and not be required to subsequently amend their tax returns following lodgment.

Description of measure

- Grant payments made to businesses are generally treated as assessable income for income tax purposes. In the MYEFO 2021–22, the former Government committed to treating certain grants related to Cyclone Seroja as NANE income for income tax purposes.
- The lapsed bill would have effectively allowed the full value of these grants to be retained by small businesses and primary producers recovering from the impacts of Cyclone Seroja.

C3 | Government grants relating to the 2022 floods

Date announced	Unannounced	**Proposed start date**	Varies
Status of measure	TTI initiated	**Priority**	C3
Overview	● The current law may not treat Commonwealth payments made to impacted individuals in response to the floods in New South Wales and Queensland during early 2022 (**disaster recovery payments**) as NANE income. ● This measure would ensure that all such payments are not subject to income tax so that the full benefit of the payment is available to impacted individuals.		
Link	Not applicable		

Our recommendation

The Government should consider introducing an enabling bill containing this measure into Parliament, and registering any consequential financial instruments, to ensure that impacted individuals who received these payments are not taxed on these payments.

Issue

The current law does not treat payments received by individuals from the Commonwealth in a consistent and fair manner for tax purposes.

Why is this measure a priority?

The community was supported by the Commonwealth Government through payments to provide impacted individuals with financial support following severe flooding in New South Wales and Queensland in early 2022. These payments may be subject to income tax in the hands of the recipient which means that they do not receive the full benefit of the payment.

Description of measure

- Grant payments made to businesses and certain individuals can be assessable for income tax purposes. However, certain grant payments related to natural disasters have been made exempt income or NANE income under Divisions 51, 52 and 59 of the ITAA 1997. These include payments for disaster recovery assistance in relation to the 2020 bushfires, Cyclone Yasi, the 2019 floods, and the proposed measure regarding Cyclone Seroja.
- Disaster recovery payments made to those impacted by the floods in New South Wales and Queensland in early 2022 have not been made exempt or NANE income. As a result, recipients of these disaster recovery payments may be required to include the amount of the grant in their assessable income, effectively reducing the amount of the benefit received.

C4 | Working Holiday Makers and Seasonal Labour Mobility Program

Date announced	24 September 2021	**Proposed start date**	After Royal Assent
Status of measure	Exposure draft bill	**Priority**	C4
Overview	● The current law does not allow applicable tax concessions to apply to visa extensions relating to the COVID-19 pandemic. ● This measure ensures working holiday makers (**WHM**) and participants in the Seasonal Labour Mobility Program (**SLMP**) receive their respective concessional tax rate when they have extended their visa due to the COVID-19 pandemic.		
Link	An exposure draft of the Treasury Laws Amendment (Measures for Consultation) Bill 2021: Miscellaneous and Technical Amendments No. 2 and associated draft regulations, the Treasury Laws Amendment (Measures for Consultation) Regulations 2021: Miscellaneous and Technical Amendments No. 2, were released on 24 September 2021.		

Our recommendation

The Government should consider introducing an enabling bill containing this measure into Parliament to ensure these individuals are taxed appropriately.

Issue

- WHM and participants in the SLMP who have extended their visa under a COVID-19 Pandemic Event visa (subclass 408 visa) are unable to access the concessional tax rates that would otherwise be available to them.
- The originally legislated provisions did not contemplate unforeseen circumstances such as the COVID-19 pandemic that have prevented these taxpayers from continuing to access the concessional tax rates following the expiry of their original visas.

Why is this measure a priority?

- Certain sectors of the Australian economy are heavily reliant on overseas employees working in Australia under the WHM and SLMP visa programs. Being taxed at a higher rate will reduce the incentives for individuals under the WHM and SLMP visa programs to work in these industries, which will lower workforce availability in these sectors.
- Individuals who have been moved to another temporary visa subclass to manage the impacts of global lockdowns and travel restrictions are being unfairly taxed at a higher rate than intended under the WHM and SLMP visa programs.

Description of measure

The draft Bill and draft regulations propose to amend various laws in the Treasury's portfolio to correct anomalies and ensure that the laws function as intended. This includes proposed amendments to ensure that the WHM and the SLMP tax regimes function properly despite disruptions caused by COVID-19. In particular, the amendments would ensure that affected individuals are not taxed inconsistently with their pre-existing visa subclass due to circumstances that were unforeseen and out of their control.

C5 | SMSFs – relaxing residency requirements

Date announced	11 May 2021	**Proposed start date**	After Royal Assent
Status of measure	Announcement	**Priority**	C5
Overview	● Circumstances such as the COVID-19 pandemic have resulted in some self-managed superannuation funds (**SMSFs**) or small APRA-regulated funds becoming non-residents for tax purposes as the trustees or active members have been unable to return to Australia. ● The changes proposed by this measure would reduce the likelihood of temporary absences from Australia by trustees or active members of SMSFs or small APRA-regulated funds resulting in this outcome.		
Link	Announcement as part of the Federal Budget 2021–22		

Our recommendation

The Government should consider implementing these measures as announced by introducing an enabling bill into Parliament.

Why is this measure a priority?

- The proposed changes would make it less likely that temporary absences by trustees or active members from Australia cause an SMSF or small APRA-regulated fund to become a non-resident for tax purposes due to the trustee or active members being unable to return to Australia due to circumstances such as the COVID-19 pandemic and resulting government restrictions.
- The residency status of some funds has changed due to circumstances beyond the control of the trustee or active members. This is a sensible measure that should be implemented.

Description of measure

- For a superannuation fund to qualify as a 'complying fund', it must satisfy the definition of an 'Australian Superannuation Fund' in section 295–95 of the ITAA 1997. The definition has three limbs that must be satisfied. This measure would address two of these limbs — the requirement for the central management and control of the fund to be in Australia and the active member test.
- Currently, the trustee functions for SMSFs may be performed outside Australia for a maximum of two years where the trustee temporarily relocates overseas. Where a trustee remains overseas due to circumstances outside their control, the fund will breach this condition and become a non-resident for tax purposes. This has significant adverse tax implications for the fund.

- Separately, where an active member of an SMSF, or a small APRA-regulated fund, relocates overseas temporarily and remains there for reasons outside their control, they may become a non-resident for tax purposes. There is no temporary absence rule applicable to members, and the active member test is a complex provision that is easily misinterpreted.
- Where a non-resident member contributes to a fund, their member balance must be at least 50% of the total member balances of all active members. Where a fund has no active members other than the non-resident member(s), the test will be failed. The non-resident member has the choice to either not make the contribution or contribute to a large fund. Given the absence is only temporary, this seems to be an adverse outcome for the member.
- The former Government announced that it would relax the residency requirements for SMSFs by extending the central management and control test safe harbour from two to five years in addition to removing the active member test for SMSFs and small APRA-regulated funds.
- The proposed changes to the central management and control criteria would allow SMSF trustees to continue to manage their superannuation funds while temporarily overseas, which is appropriate given the improvements in telecommunication channels.
- The proposed removal of the active member test would allow SMSF and small APRA-regulated fund members to continue to contribute to their superannuation fund while temporarily overseas. This is consistent with the objective of encouraging Australians to contribute to superannuation to fund their retirement.

Highest priority measures

H1 | New small business skills and training boost

Date announced	29 March 2022	**Proposed start date**	29 March 2022
Status of measure	Announcement	**Priority**	H1
Overview	This measure proposes to allow small businesses to claim a deduction equal to 120% of the value of external training provided to their employees to support the growth and development of small businesses, and address skill shortages in the market.		
Link	Announcement as part of the Federal Budget 2022–23		

Our recommendation

- The Government should consider introducing an enabling bill into Parliament giving effect to this measure to provide small businesses with certainty that they can access this temporary concession.
- The Government supported the *Treasury Laws Amendment (Cost of Living Support and Other Measures) Act 2022*, which contained mostly Federal Budget 2022–23 measures. It is hoped that the Government would similarly support this Budget measure.

Why is this measure a priority?

- Ongoing skill and labour shortages in the Australian economy are making it difficult for small businesses to find and hire trained and/or experienced employees. This measure supports small businesses by giving them additional tax deductions for eligible external training provided to their employees. This incentive to increase spending on training would boost the skills and capabilities of their employees and improve the current skill shortages in the market in the short to medium term.
- Without legislative certainty, there is a high risk that small businesses will not commit to expenditure on training their employees, furthering the skill shortages.
- Conversely, some businesses have already incurred expenditure on this basis and not legislating this measure would be difficult for them.

Description of measure

- The former Government announced that it would allow eligible small businesses with an aggregated turnover of less than $50 million to claim an extra 20% (allowing them to claim 120%) of the expenditure incurred on external training courses provided to their employees.

- The external training courses would need to be provided to employees in Australia or online and delivered by entities registered in Australia. Some training would be excluded, including in-house and on-the-job training, and expenditure on external training courses for persons other than employees.
- The increased deduction for eligible expenditure incurred by 30 June 2022 was proposed to be claimed in tax returns for the 2022–23 income year. The extra deduction for eligible expenditure incurred between 1 July 2022 and 30 June 2024 was proposed to be claimed in the income year in which the expenditure is incurred.

H2 | New small business technology investment boost

Date announced	29 March 2022	**Proposed start date**	29 March 2022
Status of measure	Announcement	**Priority**	H2
Overview	• This measure proposes to allow small businesses to claim a deduction equal to 120% of the value of expenses and depreciating assets supporting digital adoption. • This measure would encourage businesses to invest in digital adoption, improving their capabilities and boosting their productivity.		
Link	Announcement as part of the Federal Budget 2022–23		

Our recommendation

- The Government should consider introducing an enabling bill into Parliament giving effect to this measure to provide small businesses with certainty that they can access this temporary concession.
- The Government supported the *Treasury Laws Amendment (Cost of Living Support and Other Measures) Act 2022*, which contained mostly Federal Budget 2022–23 measures. It is hoped that the Government would similarly support this Budget measure.

Why is this measure a priority?

- There are currently no incentives to encourage small businesses to digitise their business. Allowing small businesses to claim greater tax deductions for expenses and depreciating assets supporting digital adoption encourages small businesses to invest in new technology and modernise their operations.
- Improving digital adoption by small businesses allows the Australian economy to keep pace with other developed countries.
- Some businesses have already incurred expenditure on this basis and not legislating this measure would be difficult for them.

Description of measure

- The former Government announced that it would allow eligible small businesses with an aggregated turnover of less than $50 million to claim an extra 20% (allowing them to claim 120%) of the cost of the expenditure incurred on business expenses and depreciating assets that support the business' digital adoption. These include portable payment devices, cyber security systems or subscriptions to cloud based services.

- The increased deduction for eligible expenditure incurred by 30 June 2022 was proposed to be claimed in tax returns for the following income year (in the 2023 income tax return). The extra deduction for eligible expenditure incurred between 1 July 2022 and 30 June 2023 was proposed to be claimed in the income year in which the expenditure is incurred (in the 2023 income tax return).
- An annual expenditure cap of $100,000 was proposed to apply in each qualifying income year.

H3 | Non-arm's length income of superannuation funds

Date announced	22 March 2022	**Proposed start date**	1 July 2022
Status of measure	Announcement	**Priority**	H3
Overview	● Amendments to the non-arm's length income (**NALI**) provisions enacted in 2019 are likely to have a significant and unintended impact on the superannuation balances of many Australians. ● The scope of the rules is likely to affect all superannuation funds, with the potential to target all future earnings of funds at penalty tax rates. ● The NALI provisions need to be amended to ensure that they do not result in these excessive and unintended consequences.		
Link	Announcement on 22 March 2022		

Our recommendation

The Government should consider prioritising legislative amendments to the NALI provisions to ensure they operate as intended, removing the current unintended consequences.

Issue

- The NALI rules can be triggered by ordinary and low-risk activities that are likely to impact superannuation funds of all sizes. Impacted funds would be subject to tax at penalty rates that could potentially be applied to all current and future earnings of the fund, including capital gains.
- As highlighted in joint submissions from the joint bodies to the former Government in September 2021 and December 2021, the current rules and approach by the ATO could result in a disproportionate and unintended consequence for a member's superannuation account.
- The imposition of additional tax at rates of up to 45% on contributions, fund earnings and gains means that every member of every superannuation fund, large and small, is at risk of having their superannuation balances significantly reduced if the potential impact of these rules is not fixed.
- The NALI rules are designed to deter superannuation funds from increasing members' balances through schemes that result in the fund deriving income that is higher than would be under arm's length commercial arrangements or, by not charging expenses at an arm's length rate (or even for no cost). However, under the current provisions, the NALI rules can be breached by superannuation funds performing common activities, such as:
    - in-house bookkeeping or auditing activities performed for low or no fees

- services being provided to funds with little or no mark-up by entities owned by the fund (common for industry funds)
- trustees seeking to act in the best financial interests of their members (a requirement of the law for trustees) by choosing a lower cost option.

- The solution requires amending the NALI rules so that they are appropriately targeted to penalise those who game the superannuation system for their own benefit but do not cause substantial and unnecessary financial harm to ordinary working Australians whose fund unwittingly falls foul of these rules.

Why is this measure a priority?

- If the NALI issue is not addressed, individuals may face significant reductions in their superannuation balances arising from low-risk activities that enliven the NALI provisions.
- Where the NALI rules apply, a superannuation fund's income is taxed at three times the standard 15% rate and sometimes more. At 45%, that means we are taxing the retirement savings of Australian workers at the same rate we tax our highest income earners and a higher rate than for large multinationals.
- The safe harbour provided by the ATO in PCG 2020/5 is merely a temporary measure and does not resolve the problems for funds and their auditors. This issue cannot be addressed by the ATO through administrative practices as it is an inherent feature of the NALI provisions. Accordingly, a legislative amendment is required.

Description of measure

- The NALI rules in section 295-550 of the ITAA 1997 were amended in 2019 (with effect from the 2018–19 income year) to deter superannuation funds from entering into schemes to increase member balances through non-arm's length arrangements that result in excessive income or not charging expenses.
- These rules, as noted in the ATO's approach in Law Companion Ruling LCR 2021/2 and Practical Compliance Guideline PCG 2020/5, have a disproportionate impact on superannuation balances compared to the mischief the rules were intended to target.
- The result of the NALI rules applying is a much higher tax rate being applied to not only the income generated by the activity, but also to all concessional contributions and all future income and profits of a superannuation fund. This goes beyond the intended effect of impacting only the extra benefit from the scheme.
- The former Government announced that it would make legislative changes to ensure the NALI provisions operate as envisaged after consultation with relevant industry stakeholders. Further details of the consultation process were to be provided as soon as practicable.

H4 | Corporate tax residency

Date announced	6 October 2020	**Proposed start date**	After Royal Assent
Status of measure	Announcement	**Priority**	H4
Overview	● The uncertainty over the current corporate tax residency rules has led to high compliance costs for taxpayers and an increased number of disputes with the ATO. ● Different rules govern the residency of trusts and corporate limited partnerships (**CLPs**) compared with companies, which creates additional complexity.		
Links	Announcement on 6 October 2020 – concerning companies Announcement on 11 May 2021 – concerning trusts and CLPs		

Our recommendation

- The Government should consider implementing the proposed changes to corporate tax residency as announced by introducing an enabling bill into Parliament.
- The Government should consult on a unified corporate tax residency definition for companies, trusts and CLPs as previously announced.

Issue

- Australia's corporate tax residency rules are currently in a state of considerable uncertainty, making it difficult for taxpayers to apply the rules and creating additional compliance costs and disputes with the ATO.
- Different rules currently govern the corporate tax residency of trusts and CLPs compared with companies, meaning that guidance relating to companies is not easily applied to trusts and CLPs.

Why is this measure needed?

- Implementing the changes to corporate tax residency recommended by the Board of Taxation (**Board**) would provide greater clarity and certainty to taxpayers and reduce the number of ruling requests and disputes with the ATO.
- Adopting a single definition of corporate tax residency for companies, trusts and CLPs would promote greater consistency in the law and simplify the tax compliance process for international groups consisting of multiple types of entities.

Description of measure

- The former Government announced that it would adopt a recommendation of the Board to amend the law so that a company incorporated offshore will be treated as an Australian resident for tax purposes if it has a 'significant economic connection to Australia'.
- The former Government also announced on 11 May 2021 that it would consult on broadening the proposed amendments to the corporate tax residency rules to include trusts and CLPs which are subject to their own separate, but similar, residency tests.
- There is broad support across the tax profession for the proposed changes as the reforms are expected to benefit taxpayers. After a brief consultation regarding the expansion of the corporate residency rules to include trusts and CLPs, the measure should be readily implemented.

H5 | Division 7A

Date announced	3 May 2016	**Proposed start date**	First 1 July following Royal Assent
Status of measure	Announcement	**Priority**	H5
Overview	● The complexity of Division 7A has made it difficult for taxpayers to understand and comply with their tax obligations, creating uncertainty and misunderstanding in the community. ● The former Government previously proposed various reforms to Division 7A of Part III of the ITAA 1936 to provide greater clarity, simplicity and improve the integrity of the provisions.		
Links	Original announcement as part of the Federal Budget 2016–17 Consultation Paper released on 22 October 2018 Most recent announcement on 30 June 2020 to defer start date		

Our recommendation

- The Government should consider adopting and legislating some of the proposed reforms to Division 7A after undertaking further consultation, seeking community input and incorporating feedback from the consultation process.
- It is our opinion that some of the proposed measures require further consultation before being implemented.

Issue

- Division 7A impacts many private companies and privately held groups. The numerous amendments made to the provisions since their introduction in 1997 to address specific concerns have resulted in significant complexity and increased costs for taxpayers to comply with the rules.
- Announced and unenacted measures create significant uncertainty for taxpayers in managing their tax affairs. Some of the proposed changes to Division 7A are intended to ensure a fairer operation of Division 7A, such as introducing a self-correction mechanism that would allow taxpayers to rectify honest mistakes that result in a breach of the Division 7A rules.
- Court cases since the proposed reforms were announced have resulted in further complexity and uncertainty for taxpayers.
- The ATO's recently released draft guidance (TD 2022/D1) has also increased complexity and uncertainty for taxpayers.

- Sensibly, the ATO's Practical Compliance Guideline, PCG 2017/13, which has been repeatedly extended for a further 12 months in each of the last three income years, has recently been updated to provide a perennial position for certain sub-trust arrangements maturing in or after the 2016–17 income year and unpaid present entitlements (**UPEs**) arising on or before 30 June 2022.

Why is this measure a priority?

- Taxpayers require certainty in the law when managing their tax affairs. Proceeding with the proposed reforms to Division 7A would provide taxpayers and tax advisers with certainty on the treatment of structures and transactions involving private companies that are widely used in the SME sector. The proposed reforms regarding clarifications, simplified methods and the safe harbour would reduce the compliance burden for taxpayers and make it easier to comply with their tax obligations.
- Importantly, there are some aspects of the proposed changes that greatly concern taxpayers and the profession. These include the proposal to replace the current 4-year amendment period with an unreasonable 14-year amendment period and the proposed removal of the distributable surplus concept which will have unintended and adverse tax outcomes for taxpayers. These, and other, aspects of concern should be reconsidered as part of a fresh consultation with industry stakeholders. Such a consultation should be prioritised before proceeding with implementing any legislative changes to Division 7A.

Description of measure

- The former Government originally announced on 3 May 2016, as part of the Federal Budget 2016–17, that it would make legislative reforms to improve the integrity and operation of Division 7A following a consultation process conducted by the Treasury.
- Since then, the proposed reforms to Division 7A have been deferred multiple times, resulting in ongoing uncertainty and significantly higher compliance costs for taxpayers.
- The reforms to Division 7A proposed in the Consultation Paper released on 22 October 2018 are based on recommendations by the Board and include the following:
    - simplified Division 7A loan rules to make it easier for taxpayers to comply with the provisions
    - a self-correction mechanism to assist taxpayers to promptly rectify breaches of Division 7A without having to apply for the Commissioner's discretion
    - safe harbour rules relating to the use of assets that would provide certainty and simplify compliance for taxpayers
    - technical amendments to improve the integrity and operation of Division 7A while providing increased certainty for taxpayers
    - clarification that UPEs of corporate beneficiaries of a trust come within the scope of Division 7A.

H6 | Addressing superannuation guarantee non-compliance

Date announced	Unannounced	**Proposed start date**	To be advised
Status of measure	TTI initiated	**Priority**	H6
Overview	● Employers who are late in paying their superannuation guarantee (**SG**) charge obligations are penalised with Part 7 penalties at the rate of 200% (subject to full or partial remission by the ATO) and nominal interest charges. ● The impost of this penalty and interest is disproportionate to the level of non-compliance and inconsistent with the *Fair Work Act 2009.* ● This measure would provide more equitable treatment to employers while retaining the integrity of the SG charge regime.		
Link	Page 6 of The Tax Institute's Federal Budget 2022–23 Submission		

Our recommendation

The Government should consider undertaking legislative reform by introducing an enabling bill to amend:

- section 59(1) of the SGAA to reduce the maximum Part 7 penalty so it aligns with penalties imposed under the *Fair Work Act 2009*; and
- section 31 of the SGAA to calculate nominal interest from the first day of the quarter in question until the date the contribution is received in the employee's superannuation account.

Issue

- Employers who are late by just one day in lodging or failing to lodge an SG statement are imposed with a penalty equal to 200% of the SG charge under Part 7 of the SGAA. The ATO has the discretion to remit the Part 7 penalty in full or in part (although this may be limited in some cases) as part of the assessment of the penalty (the original assessment stage) or after the penalty is assessed (through an objection decision). Employers who pay SG contributions one day late and fail to report this to the ATO are treated the same as an employer who deliberately evades their obligations to their employees.

- The nominal interest is intended to compensate the employee's superannuation account for the lost earnings while the contribution remained unpaid. However, the nominal interest is calculated from the beginning of the quarter until the later of the date on which the SG statement is due for lodgment and the actual date of lodgment, rather than the date of payment of the contribution. The Part 7 penalty operates to penalise the employer for not lodging an SG statement, so the combination of the Part 7 penalty and the nominal interest component operates as a double penalty for employers that disincentivises them from rectifying historical SG shortfalls.
- The current rules have the opposite effect of what is intended — they discourage employers who have made a mistake or an oversight from coming forward to rectify the error and do nothing to change the behaviour of an employer who is intent on disregarding or ignoring their SG obligations.

Why is this measure a priority?

- The SG charge regime should encourage employers to comply with their obligations and disclose historical non-compliance. The integrity of the tax system would be enhanced by a fairer penalty system that reduces barriers for employers to comply with their current, and rectify outstanding historical, SG obligations.
- This measure upholds the overarching need for the law to protect workers' entitlements, while acting as a disincentive for employers who fail to meet their SG obligations. Industrial law and tax law have changed since the SG regime was introduced in 1992. That directors are now personally liable for amounts of unpaid SG charge ensures there are appropriate pathways for the recovery of unpaid superannuation without the draconian consequences needing to arise for employers due to the current design of the Part 7 penalty and the nominal interest component.

Description of measure

This measure (initiated by The Tax Institute) proposes to:

- align the impost of the Part 7 penalty with those penalties levelled at employers for non-compliance by the *Fair Work Act 2009*; and
- ensure the nominal interest component is consistent with the policy intention to recompense the employee for lost earnings in their superannuation account due to the late payment of the SG contribution by changing the end of the period for which the nominal interest component is charged to the date on which the contribution is received by the employee's superannuation account.

Medium priority measures

M1 | Australian patent box regime and proposed expansion of regime

Date announced	11 May 2021 and 29 March 2022	**Proposed start date**	1 July 2022
Status of measure	Lapsed bill and Announcement	**Priority**	M1
Overview	● This measure proposes to tax income derived by corporate taxpayers from medical and biotechnology patents at a concessional tax rate of 17%. ● It is also proposed that the new patent box regime be expanded to include the agricultural and low emissions technology sectors. ● This measure would encourage corporate taxpayers to keep their intellectual property in Australia which creates more jobs and generates economic activity.		
Links	Medical and biotechnology patents – Treasury Laws Amendment (Tax Concession for Australian Medical Innovations) Bill 2022 Agricultural and low emissions technology sectors – announced as part of the Federal Budget 2022–23		

Our recommendation

- The Government should consider reintroducing an enabling bill containing this measure (relating to medical and biotechnology patents) into Parliament.
- The Government should promptly undertake a consultation process on the proposed expansion to include the agricultural and low emissions technology sectors so that the necessary amendments can be included in the enabling bill giving effect to the introduction of the patent box regime.

Why is this measure needed?

- This measure would promote Australia's competitiveness as an innovation hub by encouraging medical and biotechnology companies to undertake their research and development (**R&D**) in Australia.
- This measure would ensure that innovations in the agricultural and low emissions technology sectors also benefit from the patent box regime, encouraging further investment and growth in these sectors.

- By keeping their intellectual property and patents in Australia, these companies will create jobs, innovative products and economic activity that may otherwise move overseas.
- Recognising patents granted in the United States (**US**) or Europe allows eligible entities to benefit from the patent box regime where substantial R&D is undertaken in Australia, albeit that the patent itself is registered overseas.

Description of measure

- Announced in the Federal Budget 2021–22, this measure proposes to tax income derived by corporate taxpayers (R&D entities) that exploit a medical or biotechnology patent at a concessional tax rate of 17%.
- The R&D activities relating to the patent must be undertaken in Australia to be eligible for the concession.
- The lapsed bill only allows patents registered after 1 July 2022 that are registered with IP Australia to be eligible for the patent box regime, excluding innovations that may have predominantly been developed in Australia.
- The former Government announced it would expand the patent box regime to cover the agricultural sector and low emissions technology innovations. In the case of agricultural patents, the regime would apply to corporate taxpayers that commercialise their eligible patents linked to certain listed agricultural and veterinary chemical products.
- The former Government also announced that it would allow patents granted after 11 May 2021 in the medical and biotechnology sectors to also be eligible for the regime, and recognise patents granted under the US and European regimes as well as those granted by IP Australia.
- The former Government proposed to consult with industry on the detailed design of the patent box expansion.

M2 | Full expensing of depreciating assets

Date announced	Unannounced	**Proposed start date**	To be confirmed
Status of measure	TTI initiated	**Priority**	M2
Overview	● This measure would permanently increase the threshold for the instant asset write-off (**IAWO**) threshold to $30,000 and expand the business eligibility to include businesses with an aggregated turnover of less than $50 million. ● This measure would reduce the compliance costs for a significant number of businesses and promote business expenditure on assets.		
Link	Page 6 of The Tax Institute's Federal Budget 2022–23 Submission		

Our recommendation

The Government should consider permanently amending the ITAA 1997 to make the temporary increase in the IAWO threshold and the temporary full expensing measure introduced during the COVID-19 pandemic a permanent concession for eligible businesses.

Why is this measure needed?

- The temporary increase in the IAWO threshold and introduction of the temporary full expensing measure assisted in stimulating the economy during the COVID-19 pandemic. The currently legislated reversion from 1 July 2023 to a significantly smaller threshold ($1,000) and smaller pool of eligible businesses (only those with an aggregated turnover of less than $10 million) may have a contractionary impact on business investment during a period of economic difficulty.
- This measure would increase efficiency and reduces the compliance cost for many small to medium business taxpayers, encouraging the potential further investment in assets and potentially boosting productivity and employment.
- The IAWO threshold was raised from $1,000 to $20,000 from 12 May 2015, then to $25,000 from 29 January 2019, then to $30,000 from 2 April 2019, then to $150,000 from 12 March 2020, then removed altogether from 6 October 2020 under the temporary full expensing measure (a similar but different set of provisions).
- Meanwhile, the aggregated turnover threshold to determine the eligibility of a business was increased from $10 million to $50 million from 2 April 2019, then to $500 million from 12 March 2020, then to $5 billion from 6 October 2020 under the temporary full expensing measure.

- These nearly annual legislative changes to the rules that determine whether a business can immediately expense depreciating assets that it purchases are inefficient, complex and unnecessary. A permanent amendment to the legislation, rather than annual changes, will allow the Government to focus on other key initiatives and provide certainty on the law to business taxpayers.

Description of measure

- Schedule 1 to the *Coronavirus Economic Response Package Omnibus Act 2020* introduced a temporary measure to assist businesses through the economic difficulties resulting from the COVID-19 pandemic. The measure was extended by Schedule 6 to the *Treasury Laws Amendment (Enhancing Superannuation Outcomes For Australians and Helping Australian Businesses Invest) Act 2021*.
- Our article on the regime explains the complex interaction of the various capital allowance rules.
- Currently, businesses with an aggregated turnover of less than $5 billion can immediately deduct the full cost of eligible depreciating assets until 30 June 2023. The full expensing of depreciating assets will revert to assets costing less than $1,000 after 30 June 2023 for eligible small business entities with an aggregated turnover of less than $10 million.
- A form of this measure should be permanently retained by:
    - replacing the $1,000 instant asset write-off threshold in section 328-180 of the ITAA 1997 with $30,000; and
    - enabling business entities with an aggregated turnover of less than $50 million to choose[1] to apply permanently full expensing.
- Consideration should also be given to the operation of section 328-210 of the ITAA 1997 that requires small business entities to fully expense the low pool value of their general small business pools (if any). This provision would require a consequential amendment to reflect the above proposed amendments but claiming a deduction under section 328-210 should be a choice, not a mandated requirement.

[1] Some businesses may not want to fully expense their depreciating assets; for example, where doing so would result in a tax loss.

M3 | FBT on car parking

Date announced	29 March 2022	**Proposed start date**	1 April 2022
Status of measure	Announcement	**Priority**	M3
Overview	• FBT on car parking benefits is an unnecessarily complex area of the law that imposes significant compliance costs and record-keeping obligations on employers. • The former Government announced a consultation on making proposed minor changes to the FBT treatment of car parking benefits.		
Link	Announcement on 29 March 2022		

Our recommendation

The Government should commence the relevant consultation process. However, it should also consider broadening the scope of the announced consultation to consider the design of a new system that is simpler and more efficiently determines tax liabilities on the provision of not only car parking benefits but benefits more broadly.

Why is this measure needed?

- FBT is an inefficient, complex and onerous regime that places disproportionally high compliance costs on impacted taxpayers. FBT has one of the highest tax gaps which is largely a result of the underlying complexity in understanding, calculating, reporting and paying FBT on relevant benefits.
- The current FBT regime for car parking is arduous and requires employers to incur significant compliance costs.
- The proposed changes resulting from the consultation will not remove the significant compliance burden placed on employers by the rules relating to FBT on car parking benefits.
- Employers need a simpler and more efficient method to determine their FBT liability on car parking benefits. In its current form, the announcement will not address the underlying compliance costs and complexity of the FBT rules on car parking benefits, let alone other benefits.
- Recent case law has changed the long-standing view that the penalty rates charged at commercial all-day parking facilities were previously not considered to be a 'commercial parking station.' Accordingly, greater numbers of employers in the suburbs and regional areas across Australia may be subject to FBT on car parking benefits as they will be treated as being within a one-kilometre radius of a 'commercial parking station' that charges a fee above the car parking threshold. This includes short-term parking at hospitals, shopping centres, hotels, universities and airports.

Description of measure

- Employers are required to keep extensive and detailed records including how long each employee used each car parking spot, the times of the day at which each employee entered and exited the employer's parking facilities, and where the employee was coming from/going to the parking spot.
- Further, employers may also be required to undertake an analysis of the nature of another entity's business to determine whether a car parking benefit has been provided to any of their employees. Specifically, the FBT rules require employers to understand the business model and pricing structure of all car parking facilities within a one-kilometre radius of their car parking facility (as travelled by road) to determine if any are a 'commercial parking station' and charge above the car parking threshold.
- If these requirements are met, the employer is required to calculate the number of car parking benefits provided using one of three methods, and the amount of FBT payable on the benefits provided, for which there are a further three methods. Each valuation method has its own evidentiary requirements.
- The former Government announced that it would undertake a public consultation to identify appropriate modifications to the definition of 'commercial parking station' with a view to restoring the previously-understood interpretation.
- Amending the legislation to restore the previous understanding of a 'commercial parking station' would be welcomed but still require employers to adhere to complex valuation rules, resulting in increased compliance costs and time.

M4 | Reducing the compliance burden of FBT record-keeping

Date announced	6 October 2020	**Proposed start date**	After Royal Assent
Status of measure	Announcement	**Priority**	M4
Overview	This measure would allow employers to rely on existing corporate records to finalise their FBT returns and reduce compliance costs for employers while maintaining the integrity of the FBT system.		
Link	Announcement as part of the Federal Budget 2020–21		

Our recommendation

The Government should consider implementing this measure as announced by introducing an enabling bill into Parliament.

Why is this measure needed?

FBT places a disproportionate compliance burden on employers compared to the revenue it raises. Employers need a more efficient, simpler and equitable FBT system. This measure will reduce some of the compliance burden and cost of FBT for employers.

Description of measure

- Currently, the FBT legislation prescribes the form that certain records must take and forces employers, and in some cases employees, to create additional records to comply with their FBT obligations.
- The archaic FBT regime imposes a burdensome, inefficient set of record-keeping and reporting obligations on employers. Declarations are only a part of the problem; even where an FBT exemption applies, employers still need to trawl through their corporate records to claim these exemptions and substantiate that they meet the required conditions.
- This measure would allow employers to rely on existing corporate records, rather than create separate employee declarations and other prescribed records, to finalise their FBT returns. This would go some way to reducing compliance costs for employers while maintaining the integrity of the FBT system.
- The FBT system would benefit from a formal review and major overhaul, replacing it with a more modern system that does not impose excessive compliance costs and unnecessary burdens on employers and employees.

M5 | Intangible asset depreciation

Date announced	6 May 2021	**Proposed start date**	1 July 2023
Status of measure	Lapsed bill	**Priority**	M5
Overview	This measure would allow taxpayers to choose whether to self-assess the effective life of certain depreciating intangible assets or use the statutory effective lives specified in the law.		
Link	Schedule 3 to the Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022		

Our recommendation

The Government should consider reintroducing an enabling bill containing this measure into Parliament.

Why is this measure needed?

- This measure would reduce compliance costs for taxpayers and provide greater flexibility that would allow them to depreciate intangible assets more accurately according to their circumstances.
- The reduced compliance burdens created by this measure may also encourage further investment into such assets and create additional jobs in research and development.

Description of measure

- The lapsed bill proposed to allow taxpayers to choose whether to self-assess the effective life of certain depreciating intangible assets or use the tax effective lives currently specified in the law.
- Eligible depreciating intangible assets include patents, registered designs, copyrights and in-house software.
- This measure has been included in various bills dating back to 2017 but has never been passed into law.[2]

[2] The measure was originally contained in Schedule 2 to the Treasury Laws Amendment (2017 Enterprise Incentives No. 1) Bill 2017. It was removed from the bill on 5 December 2018 because the proposed start date of 1 July 2016 had long since passed. The Senate Hansard on 5 December 2018 records when Schedule 2 was removed from the bill:

> By omitting Schedule 2 the bill will no longer allow taxpayers to avail themselves of this option. Given the application date of 1 July 2016 and the likely further delay in the passage of the bill, the government decided not to proceed with the measure, in order to eliminate the current uncertainty for taxpayers. The amendment will ensure the remaining measure in the bill will be legislated without further delay.

M6 | Tax treatment of digital assets and transactions in Australia

Date announced	8 December 2021	**Proposed start date**	To be advised
Status of measure	Review	**Priority**	M6
Overview	● The CGT regime has not evolved with the changes in digital assets and transactions, resulting in a system that increases compliance costs for taxpayers and the ATO. ● This measure would align Australia's tax regime for digital assets and transactions with countries following the OECD's recommendations, encouraging development of economic opportunities.		
Link	Announcement on 8 December 2021 Terms of Reference of the Board's review released on 21 March 2022		

Our recommendation

The Government should consider supporting the Board's review seeking to make amendments to the CGT regime that are consistent with the OECD's recommendations and structured to encourage innovation.

Issue

- Australia's tax regime has not evolved to cater for the array of digital assets and associated transactions. This results in a lack of clarity for taxpayers investing in digital assets and anomalous tax outcomes.
- Taxpayers engaging in the digital assets economy and their tax advisers lack clarity and certainty on their tax obligations. This leads to differing positions and compliance approaches in the community.

Why is this measure needed?

- As the use of digital assets continues its upwards trajectory, a dedicated framework should be created to govern digital assets and transactions so that taxpayers and the ATO have certainty and clarity.
- Creating a clear framework to govern the taxation of digital assets and transactions would improve tax compliance as taxpayers would be aware of their tax obligations and would be able to comply with them.

Description of measure

- The former Government announced broad reforms to Australia's regulation of payments system, including regulatory frameworks to govern the licensing of digital currency exchanges and the conduct of business that hold digital currencies on behalf of other entities.
- The ambiguity of the CGT treatment of digital assets has widespread community impact with 25% of Australians holding, or previously having held, digital assets (according to the Final Report of the Senate's *Select Committee on Australia as a Technology and Finance Centre* released in October 2021).
- The Board is currently undertaking a review of the policy framework for the taxation of digital transactions and assets in Australia. The Board's Final Report is due in December 2022, as recommended by the Senate Select Committee's Final Report.
- This measure would:
    - provide clarity for taxpayers and the ATO in administering the tax treatment of digital assets and encourage the development of economic opportunities in the digital assets space for Australian businesses
    - preserve the integrity of the tax system by preventing anomalous outcomes arising from digital asset transactions
    - align Australia's tax regime with other countries by addressing the issues raised by the OECD's Forum on Harmful Tax Practices.

M7 | Education and training expense deductions for individuals

Date announced	2 October 2020	**Proposed start date**	2 October 2020
Status of measure	Discussion Paper	**Priority**	M7
Overview	● This measure would allow taxpayers to claim deductions for training and education expenses undertaken in relation to future employment. ● Taxpayers need certainty of tax outcomes before undertaking training at their own expense. ● In the current economic environment, individuals would benefit from lower barriers to obtain new skills that can assist them in obtaining a new role.		
Link	Discussion Paper released on 11 December 2020		

Our recommendation

- The Government should confirm whether this measure is intended to be enacted.
- If the Government proceeds with this measure, exposure draft legislation should be released for public consultation to ensure the measure is effective and does not create integrity or compliance cost concerns.

Why is this measure needed?

- Allowing individuals to deduct training and education expenses relating to future employment encourages more people to undertake courses that assist them to respond to changes in technology and in the employment and economic environment to change careers, particularly those who are unemployed or earn low incomes.
- Taxpayers require certainty on the deductibility of future expenses so they can make informed decisions before seeking additional training that may assist them in acquiring a new role. This is especially important in the current economic environment.

Description of measure

- Individuals are currently unable to deduct expenses for training and education expenses undertaken in relation to future employment. This means that unemployed individuals cannot claim deductions for training or education to gain employment or change careers.
- The Discussion Paper sets out a proposal to allow individuals to deduct education and training expenses they incur, where the expense is not related to their current employment.

- The following issues raised during consultation still need to be addressed:
    - Clarify the policy intent of the measure, as providing deductions through the tax system will ultimately benefit individuals on higher incomes wishing to re-skill to change careers rather than individuals who are unemployed or lower income earners.
    - Include integrity measures to prevent individuals from claiming deductions for lifestyle or personal development courses that are not related to their current or future employment.
    - Ensure any changes are inserted in a new provision to cover amounts that are not deductible under existing provisions in order not to interfere with the existing law.

M8 | Removing the self-education expenses threshold

Date announced	17 February 2022	**Proposed start date**	1 July 2022
Status of measure	Lapsed bill	**Priority**	M8
Overview	Removing the $250 non-deductible threshold would notably reduce compliance costs for individual taxpayers claiming self-education expenses by reducing unnecessary complexity.		
Link	Schedule 3 to the Treasury Laws Amendment (2021 Measures No. 7) Bill 2021		

Our recommendation

The Government should consider reintroducing an enabling bill containing this measure into Parliament to provide taxpayers with certainty on claiming their self-education expenses.

Why is this measure needed?

- The current rules generally require the first $250 of expenses relating to an individual's self-education to be reduced. This $250 amount can consist of both deductible and non-deductible expenses, with most taxpayers utilising non-deductible expenses for this purpose. Accordingly, the $250 threshold is practically redundant, yet its legacy existence creates an unnecessary compliance and record-keeping burden.
- Removing the $250 non-deductible threshold would reduce compliance costs and complexity for individuals claiming deductions for self-education expenses.

Description of measure

- The lapsed bill proposed to remove the $250 non-deductible threshold for work-related self-education expenses by repealing section 82A of the ITAA 1936.
- The $250 non-deductible threshold was introduced in 1975[3] alongside a concessional tax rebate of $250 for self-education expenses. The $250 non-deductible threshold was intended to act as a mechanism that effectively prevented the double claiming of expenses under both the rebate and general self-education deductions.
- The $250 rebate was removed in 1985[4]; however, the $250 non-deductible threshold remains in place.

[3] By the *Income Tax Assessment Act (No. 2) 1975*.

[4] By the *Taxation Laws Amendment Act (No. 2) 1985*.

M9 | Sharing economy reporting regime

Date announced	25 August 2021	**Proposed start date**	1 July 2022
Status of measure	Lapsed bill	**Priority**	M9
Overview	● This measure would require operators of sharing economy platforms to provide information about transactions made through the platform to the ATO. ● This measure would ensure that the ATO has the information to identify tax revenue owed by users of sharing economy platforms and ensure users comply with their tax obligations.		
Link	Schedule 1 to the Treasury Laws Amendment (2021 Measures No. 7) Bill 2021		

Our recommendation

- The Government should consider reintroducing an enabling bill containing this measure into Parliament.
- The Government should ensure that the ATO conducts an effective consultation to implement the laws without imposing an unnecessary burden on affected taxpayers.

Why is this measure needed?

- The measure addresses concerns raised by the Black Economy Taskforce regarding the impact to tax revenue and higher risk of non-compliance posed by the gig economy and sharing economy platforms. Due to the high level of digitisation and access to the data required to operate such businesses, the additional costs imposed from this measure would be relatively low when compared to other business reporting obligations.
- Information collected by the ATO can be used as part of its compliance activities to ensure that the correct amount of tax is being paid and to address non-compliance by taxpayers.
- This measure could also assist taxpayers in meeting their obligations by enabling the ATO to pre-populate income tax returns with the relevant information received from the sharing economy platforms on the basis that the pre-filled data is accurate.

Description of measure

- The lapsed bill proposed to implement a recommendation of the report of the Black Economy Taskforce relating to tax revenue being lost to the gig economy, by proposing electronic sharing platform operators be required to provide information on transactions made through the platform to the ATO.
- The lapsed bill proposed to improve the transparency and efficiency of the tax system, as the ATO would receive information about income received by users of these platforms.

M10 | Digitalising trust income reporting

Date announced	29 March 2022	**Proposed start date**	1 July 2024
Status of measure	Announcement	**Priority**	M10
Overview	• The measure would allow trust income tax returns to be lodged electronically, resulting in a modern and more efficient lodgment system. • This measure would reduce the compliance burdens on taxpayers, reduce processing times and enhance ATO processes such as pre-filling and data-matching.		
Link	Announcement as part of the Federal Budget 2022–23		

Our recommendation

- The Government should consider supporting this measure as announced by providing the necessary funding to the ATO as proposed by the former Government and introduce an enabling bill containing this measure into Parliament.
- The Government should ensure consultation with affected stakeholders is undertaken to ensure the measure is effectively designed and implemented.

Why is this measure a priority?

- This measure would reduce the compliance burden on taxpayers by reducing processing times and streamlining the trust tax return lodgment. This measure would allow trust tax returns to benefit from features such as the pre-filling of information.
- The measure would also reduce administration costs for the ATO. Obtaining trust returns in a digital form would assist ATO strategies such as data-matching and information retention.

Description of measure

- Currently, trust income reporting and assessment calculation processes are not automated to the same extent as individual or company tax returns. While tax agent lodgment systems have catered for trust tax returns, trustees have not been able to lodge tax returns themselves electronically. This has resulted in longer processing times and limited pre-filling opportunities.
- Consultation with affected stakeholders including tax practitioners, software providers and professional bodies should be undertaken to ensure that the final policy scope, design and practical implementation is efficient and effective.

M11 | Assisting businesses to meet their record-keeping obligations

Date announced	16 December 2020	**Proposed start date**	After Royal Assent
Status of measure	Lapsed bill	**Priority**	M11
Overview	● The measure would allow the ATO to adopt a discretion to direct taxpayers to undertake an approved record-keeping course instead of applying financial penalties. ● This would support businesses who are struggling with their reporting obligations.		
Link	Schedule 1 to the Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022		

Our recommendation

The Government should consider reintroducing an enabling bill containing this measure into Parliament.

Why is this measure needed?

- This measure would support businesses who are struggling with their reporting obligations and would benefit from assistance in the form of a more customised approach to record-keeping.
- Assisting taxpayers by providing them with a pathway to be more tax compliant would encourage taxpayers to come forward with mistakes and foster an environment of voluntary self-compliance.

Description of measure

- The lapsed bill proposed to amend Schedule 1 to the TAA to empower the Commissioner to direct an entity to complete an approved record-keeping course where the Commissioner reasonably believes the entity has failed to comply with its tax-related record-keeping obligations as an alternative to existing financial penalties.
- The lapsed bill proposed to implement a recommendation made in the *Black Economy – Assisting businesses to meet their reporting obligations* measure that was announced as part of the MYEFO 2019–20.

M12 | R&D Tax Incentive – Review of the dual-agency administration model

Date announced	11 May 2021	**Proposed start date**	After Royal Assent
Status of measure	Final Report with Government	**Priority**	M12
Overview	This measure would increase efficiencies for businesses seeking to claim the R&D Tax Incentive (**R&DTI**), the ATO and the Department of Industry, Science, Energy and Resources (**DISER**), reducing compliance costs for businesses undertaking innovation projects and enabling businesses to potentially invest in additional innovation.		
Link	Final Report released on 29 March 2022		

Our recommendation

- The Government should support the findings in the Board's Final Report, ensuring that the measure is supported through adequate funding and legislative amendments to make the R&DTI regime more efficient and transparent.
- The Government should consider limiting the scope of the ATO's involvement with greater up-front resources applied by DISER, and reconsider whether the funding should be by way of tax subsidies or direct subsidies to the entity, or a combination of both.

Why is this measure needed?

The R&DTI is an integral part of innovation and development in Australia. The existing dual-agency administration system creates significant compliance costs, inefficiencies and a lack of certainty in outcomes for businesses, reducing the incentive to innovate.

Description of measure

- All businesses receiving R&DTI benefits are subject to a dual-agency administration system that broadly requires DISER to manage the registration process while the ATO oversees the right to claim the R&DTI through the tax system. The dual-agency approach results in widespread inefficiencies and contains low levels of certainty as decisions are often reviewable after significant resources have been spent.
- The Board's Final Report made several recommendations aimed at increasing the efficiency and effectiveness of the R&DTI regime. These include:
    - Legislative changes enabling increased information sharing between DISER and the ATO to reduce duplication between the two administrators.
    - The creation of an administrative dispute resolution process involving both administrators, allowing for a time and cost-effective mechanism to resolve disputes.
    - Requiring clear and transparent timeframes for reviews undertaken by DISER and the ATO.

M13 | Access to superannuation for crime victims

Date announced	27 December 2018	**Proposed start date**	After Royal Assent
Status of measure	Discussion paper	**Priority**	M13
Overview	This measure would allow victims of serious violent crimes to access their perpetrator's superannuation as compensation so perpetrators cannot use superannuation to shield assets from their victims.		
Link	Consultation Paper released on 27 May 2018		

Our recommendation

The Government should consider proceeding with implementing this measure as described in the Consultation Paper, incorporating community feedback and input received from industry stakeholders during the consultation process.

Why is this measure a priority?

- This measure aims to support and protect victims of serious, violent crime and ensure that criminals cannot circumvent the law to impede the payment of compensation to their victims.
- Measures such as these that seek to support and protect vulnerable members of our community should be addressed on equitable grounds.

Description of measure

- Crime victims are currently unable to receive compensation where the perpetrator makes out-of-character contributions to their superannuation to prevent amounts from being paid as compensation to their victims.
- Victims of serious, violent crime currently often cannot be fully compensated by the perpetrator in circumstances where the perpetrator's other assets have been exhausted and there are still amounts of compensation outstanding.
- Announced as part of the MYEFO 2018–19, the Consultation Paper sets out a proposal to allow victims of certain crimes, such as serious violent crimes, with unpaid or partially paid compensation orders to access certain funds held in the perpetrator's superannuation to pay the outstanding compensation where the perpetrator has no other assets from which to compensate them. One model would allow victims to claw back 'out of character' contributions while a second model would allow victims to access a perpetrator's entire superannuation balance (not just particular contributions) where other assets have been exhausted.
- This proposal is based on the principle that the interests of uncompensated or partially compensated victims of crime should be prioritised over the retirement income needs of the perpetrator.

M14 | DGR category for pastoral care services

Date announced	2 March 2022	**Proposed start date**	1 July 2022
Status of measure	Consultation Paper	**Priority**	M14
Overview	● This measure proposes to create a new DGR category for charities funding pastoral care programs at Australian schools. ● This measure would encourage Australians to support such charities by making gifts and donations tax deductible.		
Link	Consultation Paper		

Our recommendation

The Government should consider releasing exposure draft legislation to progress implementing the measures outlined in the Consultation Paper, taking into account community input and feedback received during the consultation process.

Why is this measure needed?

Creating this new DGR category would encourage Australians to donate by making gifts and donations to funds falling within this DGR category tax deductible.

Description of measure

- Funds are not DGRs where their activities include them supporting schools in providing pastoral care services to students.
- This Consultation Paper seeks input on the implementation and design of a new DGR category to enable funds to obtain DGR status where the fund supports pastoral care services delivered to students in Australian primary and secondary schools.
- The proposed new DGR category would be implemented through amendments to the ITAA 1997.

M15 | Distribution guidelines for ancillary funds

Date announced	22 March 2022	**Proposed start date**	To be advised
Status of measure	Consultation Paper	**Priority**	M15
Overview	● The current rules impose a minimum amount that ancillary funds must contribute to type 1 DGR entities and restrict how much can be transferred between ancillary funds. ● This measure seeks to provide ancillary funds with greater flexibility in how they use their funds, while ensuring they continue to use these funds according to their charitable objects.		
Link	Consultation Paper		

Our recommendation

The Government should consider releasing exposure draft legislation to progress the measures outlined in the Consultation Paper, taking into account community feedback and input received during the consultation process.

Why is this measure needed?

This measure would provide greater flexibility to ancillary funds in pursuing their charitable objects, while ensuring that they continue to use these funds appropriately and pursuant to these objects.

Description of measure

- Ancillary funds encourage philanthropy by allowing donors to receive an upfront tax deduction for gifts that are distributed over time to other DGRs.
- The current rules for ancillary funds are restrictive in relation to the proportion of their funds that must be distributed to type 1 DGRs that carry out charitable work and the amount that can be transferred between ancillary funds.
- The Consultation Paper sets out a proposal to provide greater flexibility to ancillary funds while preserving their philanthropic nature.

M16 | Reforming debt-equity integrity rules

Date announced	14 May 2013	**Proposed start date**	Later of 6 months after Royal Assent or the proclamation date
Status of measure	Exposure draft bill	**Priority**	M16
Overview	● The current equity override integrity provisions do not consistently reflect the commercial substance of the arrangements in question. ● The debt-equity reforms, announced as part of the Federal Budget 2011–12, would provide taxpayers with transparency of the tax consequences of their arrangements and reduce the need for taxpayers to obtain private rulings for their funding arrangements.		
Link	Exposure draft of the Tax and Superannuation Laws Amendment (debt and equity scheme integrity rules) Bill and associated draft legislative instrument, the Income Tax Assessment (Debt and Equity Examples) Declaration 2016, released on 10 October 2016		

Our recommendation

- The Government should consider introducing an enabling bill containing this measure into Parliament.
- The Government should consider the Board's recommendation to conduct a review of the interaction between the debt and equity rules and the current and proposed tax law, specifically the thin capitalisation and controlled foreign company (**CFC**) rules.

Why is this measure needed?

- This measure would provide taxpayers with certainty on the tax consequences of their funding arrangements. It would also reduce the administrative burden on the ATO in evaluating private rulings and would enable the ATO to reallocate these resources to alternative support areas.
- This measure would enhance the integrity of the tax system by ensuring the tax treatment of instruments is congruous with their economic substance. Shifting to objective criteria would result in consistent treatment and enable modern arrangements to be adequately captured.

Description of measure

- The debt and equity rules, contained in Division 974 of the ITAA 1997 (**Division 974**), provide criteria for determining the classification of a financial instrument (**instrument**) as either a debt or an equity interest. The subsequent characterisation as either debt or equity determines the tax treatment of the returns from these instruments.
- When introduced in 2001, Division 974 sought to reflect the commercial substance and intention of the parties in the characterisation of the instrument. Where instruments were not clearly either debt or equity, the equity override integrity provision in section 974-80 was introduced to enable taxpayers to determine the classification. It was specifically targeted at schemes entered into that were designed to change the classification of an instrument, generating a beneficial tax outcome.
- On 14 May 2013, the Board was tasked with conducting a post-implementation review of Division 974. The Board's Final Report detailed eight recommendations. Exposure draft legislation was subsequently released for comment together with a draft legislative instrument, proposing to introduce a replacement rule — the new aggregation rule — for determining whether the integrity provisions in Division 974 should be activated.
- This measure proposes to replace section 974-80 with a new equity override integrity provision. This new provision would:
    - provide objective criteria for taxpayers to assess the instruments against
    - introduce carve outs to minimise the number of unintended arrangements impacted by the new rules.

M17 | Expanding Australia's tax treaty network

Date announced	15 September 2021	**Proposed start date**	Various
Status of measure	Announcement	**Priority**	M17
Overview	Establishing new tax treaties, and re-negotiating existing tax treaties, better encourages foreign investment and reduces the chances of double taxation for taxpayers.		
Link	Announcement on 15 September 2021		

Our recommendation

The Government should consider proceeding with planned negotiations and seek to establish tax treaties with other countries that currently do not have an existing treaty with Australia.

Why is this measure needed?

- Expanding Australia's tax treaty network ensures that taxpayers are not taxed twice on their income and have clarity on how their income and gains are taxed.
- Tax treaties also encourage foreign investors to invest in the Australian economy, as their gains and incomes are protected from double taxation.

Description of measure

- There are a number of countries with which Australia has no tax treaty, meaning that income derived by Australian residents from those countries or by residents of those countries from Australia may be subject to double taxation.
- Australia has existing tax treaties with several countries that have not been updated for an extended period. These may be outdated and do not account for recent changes in taxation legislation in both jurisdictions, or potentially provide barriers to foreign capital investment.
- The former Government announced plans to enter into 10 new and updated tax treaties by 2023, building on Australia's existing network of 45 bilateral tax treaties.
- Negotiations with India, Luxembourg and Iceland are occurring this year as part of the first phase of the program. Negotiations with Greece, Portugal and Slovenia are scheduled to occur in 2022 as part of the second phase.

M18 | Taxation of financial arrangements — regulation reforms

Date announced	3 May 2016	**Proposed start date**	1 January 2018
Status of measure	Announcement	**Priority**	M18
Overview	Improving the taxation of financial arrangements (**TOFA**) rules would ensure the rules apply only to large taxpayers as intended and reduce compliance costs and distortions to decision-making under the current implementation of the TOFA rules.		
Link	Announcement as part of the Federal Budget 2016–17		

Our recommendation

The Government should consider proceeding with implementing the TOFA reforms as announced as part of the Federal Budget 2016–17.

Why is this measure needed?

- Although the TOFA rules were originally intended to apply to the largest taxpayers, a considerable number of smaller taxpayers have also been required to apply the TOFA rules to their financial arrangements.
- The current implementation of the TOFA rules has not provided compliance cost savings, simplified the rules or eliminated distortion of decision-making as Parliament originally intended.

Description of measure

- The TOFA rules were intended to align the taxation of gains and losses on financial arrangements with accounting to reduce compliance costs, improve certainty and eliminate distortions in decision-making for large business taxpayers.
- These reforms seek to align the tax treatment of gains and losses from financial arrangements with accounting standards, simplify the spreading of gains and losses from accruals, reduce the scope of taxpayers required to apply the TOFA rules and make a broader range of financial instruments eligible for treatment under the TOFA rules.

Lower priority measures

L1 | Tax treatment for new or revised visa programs

Date announced	16 February 2021	**Proposed start date**	1 March 2022
Status of measure	Lapsed bill	**Priority**	L1
Overview	• This measure proposes to reduce the effective tax rate on certain income received by participants in the Australian Agriculture Worker Program (**AAWP**) and the Pacific Australia Labour Mobility scheme (**PALMS**). • This measure would encourage foreign workers to migrate in Australia to fill ongoing labour shortages.		
Link	Schedule 6 to the Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022 and the Income Tax Amendment (Labour Mobility Program) Bill 2022		

Our recommendation

The Government should consider reintroducing an enabling bill containing this measure into Parliament.

Why is this measure needed?

- Australia is reliant on foreign labour to meet labour shortages in rural and regional Australia, particularly in the agricultural, meat processing, hospitality and tourism sectors.
- This measure would encourage foreign workers to migrate to Australia and participate in labour programs, helping to reduce ongoing labour shortages. Without this measure, foreign residents would be subject to a higher tax rate, disincentivising them from undertaking work in these industries.

Description of measure

- Generally, foreign residents are subject to a tax rate of 32.5% from the first dollar earnt up to $120,000. This will be lowered to 30% from the first dollar earnt up to $200,000 from 1 July 2024.
- The lapsed bill proposed to reduce the effective tax rate on certain types of income earned by foreign resident workers participating in the AAWP or the PALMS.
- Under this measure, workers participating in the AAWP would be eligible for a tax offset that would ensure that a 15% tax rate effectively applies to the first $45,000 of program income, less related deductions.

L2 | Digital games tax offset

Date announced	6 May 2021	**Proposed start date**	1 July 2022
Status of measure	Exposure draft bill	**Priority**	L2
Overview	The Australian, and global, gaming industry is one of the fastest growing and most lucrative industries. A tax incentive for Australian game developers would incentivise them to create new games and jobs in the booming sector.		
Link	Exposure draft of the Treasury Laws Amendment (Measures for Consultation) Bill 2022: Digital games tax offset released on 21 March 2022		

Our recommendation

The Government should consider introducing an enabling bill containing this measure into Parliament, taking into account feedback and input received from the community during the consultation process.

Why is this measure needed?

- This measure would assist the Australian video game industry that has doubled in revenue since 2015–16 to $226.5 million in revenue in 2020–21.[5]
- Providing additional support to the industry through a new digital games tax offset (**DGTO**) would encourage companies to attract further investment and develop new projects, creating further economic activity and new jobs.

Description of measure

- The Australian video games industry is finding it difficult to hire skilled developers, due to an inability to source funding and strong overseas competition.
- The draft Bill proposes to insert new Division 378 into the ITAA 1997 to introduce a 30% refundable DGTO, for eligible businesses that spend a minimum of $500,000 on qualifying Australian games expenditure.
- The maximum DGTO that a developer would be able to claim each year is $20 million.

[5] Interactive Games and Development Association, 'Australian Game Development Survey: 2020—2021 Report', page 4, available at https://igea.net/wp-content/uploads/2021/12/IGEA-AGD-Survey-Report-2021-22-Final.pdf.

L3 | Reforms to reporting and transparency of the charity sector

Date announced	20 September 2021	**Proposed start date**	1 July 2022
Status of measure	Exposure draft regulations	**Priority**	L3
Overview	● Smaller charities face increased reporting obligations due to indexation not reflecting inflationary increases. The associated extra compliance costs hamper the ability of these charities to pursue their objectives and assist the community. ● This measure proposes to reduce red tape and reporting requirements for smaller charities.		
Link	Exposure draft of the Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 3) Regulations 2021 released on 20 September 2021		

Our recommendation

The Government should consider registering enabling regulations to implement the measures contained in the exposure draft regulations.

Why is this measure needed?

As the CPI rises, and general demand on charities' services increases, extra reporting obligations constrain the extent to which charities can pursue their objectives and support the community.

Description of measure

- Due to increases in the CPI over time, smaller charities have been required to comply with reporting obligations historically targeted at larger charities. Some smaller charities are exceeding the thresholds for size and turnover as these settings have not been regularly refreshed to account for inflationary increases.
- The draft regulations propose to implement two reforms to reduce red tape for, and increase transparency of, the charitable sector. The former Government agreed to implement these reforms as recommended in the recommendations in the Australian Charities and Not-for-profits Commission Legislation Review 2018.
- The draft regulations propose to implement the following measures:
    - Increase the revenue thresholds defining small, medium and large registered charities.
    - Require all registered charities to disclose related party transactions with small, registered charities to make a simplified disclosure involving a brief description of related party transactions.

L4 | CGT roll-over rules

Date announced	12 December 2019	**Proposed start date**	TBC
Status of measure	Final Report with Government	**Priority**	L4
Overview	● This measure proposes to reduce the complexity arising from the existing CGT roll-over rules, reducing impediments for businesses from conducting commercial transactions. ● This measure would preserve the integrity of the tax system by minimising escaped taxes from permanent CGT roll-overs.		
Link	Announcement on 12 December 2019 Consultation Paper released in December 2020		

Our recommendation

- The Board's Final Report should be tabled.
- The Government should consider reviewing the Board's recommendations in the Final Report and, based on the Board's findings, we recommend a consultation prior to any further announcement or release of exposure draft legislation for community input and feedback.

Why is this measure needed?

- This measure would reduce barriers for businesses seeking to undertake commercial transactions by providing greater transparency of the cost of transactions and reduced compliance time.
- This measure would preserve integrity in the tax system by mitigating against permanent CGT deferral.

Description of measure

- The current CGT roll-over rules can be complex to navigate and can have onerous compliance costs.
- Possible permanent CGT deferral can occur, resulting in reduced tax revenue received by the government.
- The Board's Final Report on simplifying CGT roll-overs was provided to the former Government on 22 April 2022. The Final Report is yet to be published for the community to provide their input and feedback.

L5 | Individual tax residency rules

Date announced	11 May 2021	**Proposed start date**	After Royal Assent
Status of measure	Announcement	**Priority**	L5
Overview	• The removal of the wider foreign employment income exemption has forced taxpayers to wade through detailed case law and rulings to determine their tax residency status. • The number of disputes involving individual tax residency with the ATO has significantly increased. • Any legislative changes should have the overarching objective of simplifying these rules, creating greater certainty and clarity for taxpayers and reducing the number of disputes.		
Link	Announcement as part of the Federal Budget 2021–22		

Our recommendation

- The Government should consider consulting with the community and the tax profession on the reforms to the individual tax residency rules before introducing an enabling bill into Parliament. Any reforms should provide certainty and simplicity for affected individuals, employers and the ATO while maintaining the integrity of the system.
- It is also our opinion that any change in the individual tax residency rules would be well supported by reinstating the former breadth of the foreign employment income exemption in section 23AG of the ITAA 1936 to address the unnecessary increase in cases reaching our court system and reduce the number of private ruling requests being dealt with by the ATO.
- The Tax Institute, like many other professional associations, made a submission to the former Treasurer regarding our concerns with the proposed changes. Further consultation would be beneficial before any changes are implemented or announcements are made to ensure that the objective of any reforms are met, and the changes are not overly burdensome or complex for taxpayers.

Issue

- While residency is relatively clear for most taxpayers, the existing individual tax residency rules are complex for those at the margin, leading to uncertainty for taxpayers as they are unable to easily determine their tax residency.
- The number of litigated disputes involving individual tax residency with the ATO in the period 2010–2020 has significantly exceeded the number of cases in the preceding 70 years.

- Many of the concepts relating to individual tax residency are elaborated in case law and apply on a case by case basis, making it difficult for taxpayers to understand the rules without the assistance of (and cost associated with engaging) experienced tax advisers.
- We are of the opinion that the recommendations of the Board, if implemented, would lead to unintended outcomes while unnecessarily increasing the compliance burden for many taxpayers.

Why is this measure needed?

- Simplifying the individual tax residency rules would give taxpayers greater clarity and certainty about their tax obligations and reduce their cost of compliance.
- The complexity of the current rules will continue to result in large numbers of disputes with the ATO and cases being litigated unless the existing framework is simplified and improved.

Description of measure

- The former Government announced it would replace the individual tax residency rules with a new, modernised framework based on the Board's review into reforming the individual tax residency rules.
- The measure proposes to replace the existing rules with a simpler framework comprising:
    - a primary test — under this simple 'bright line' test, a person who is physically present in Australia for 183 days or more in any income year would be an Australian tax resident; and
    - a secondary test (i.e. a four-factor test) — for individuals who do not meet the primary test. A person would be an Australian tax resident if they satisfy any two of the four factors, including physical presence and measurable, objective criteria.
- Consultation is required to ensure that the new individual tax residency rules do not create new complexities and unintended consequences such as unfairly deeming expatriates with low connections to Australia as continuing to be a tax resident for an extended period after they have left Australia. The proposed four-factor test also needs to be refined to ensure it creates a fair outcome for individuals and does not merely replace one set of complexities with a new set of complexities without reducing the compliance burden.

L6 | SMSFs – legacy retirement product conversions

Date announced	11 May 2021	**Proposed start date**	After Royal Assent
Status of measure	Announcement	**Priority**	L6
Overview	● This measure would ensure that individuals holding certain kinds of legacy retirement products are able to convert their products into an account-based pension or lump sum benefit. ● Holders of certain legacy superannuation products are unable to convert their products into modern superannuation products or pensions.		
Link	Announcement as part of the Federal Budget 2021–22		

Our recommendation

The Government should consider implementing this measure as announced by introducing an enabling bill into Parliament.

Why is this measure needed?

This measure would ensure that taxpayers seeking to exit such superannuation products can transfer these amounts into an account-based pension without penalty.

Description of measure

- Individuals who hold certain kinds of superannuation products are unable to exit these types of products and convert them into an account-based pension or lump sum benefit.
- This means that individuals may be unable to flexibly access their superannuation capital should they require to fund the costs of aged care or, in the case of an SMSF member, leave the fund when it becomes unsuitable for them. The succession issues associated with these types of legacy pension products is unnecessarily complex and results in unfair outcomes to beneficiaries of the death benefit.
- With legacy pension holders now aged well into their 70s, the need for reform is urgently required to allow for superannuants to access their superannuation capital in line with holders of account-based pensions.
- The former Government announced that it would allow individuals to exit a specified range of legacy retirement products, together with any associated reserves, for a two-year period. This would enable the conversion of market-linked, life-expectancy and lifetime products into an account-based pension.
- This measure would permit full access to all the product's underlying capital, including any reserves, and allow individuals to potentially:
    - start a new contemporary product, subject to their transfer balance cap; or
    - receive the amount as a lump sum superannuation benefit.

L7 | Review of low value imported goods

Date announced	5 July 2021	**Proposed start date**	To be advised
Status of measure	Final Report	**Priority**	L7
Overview	• This measure proposes that e-commerce platforms should be required to remit GST information to the ATO, enabling the ATO to accurately determine GST compliance. • This measure is consistent with the sharing economy regime and would provide the community with confidence about all businesses meeting their taxation obligations.		
Link	Announcement on 5 July 2021 Final Report published on 4 April 2022		

Our recommendation

The Government should consider consulting on the proposed measure to ensure it is designed and implemented in an effective manner.

Why is this measure needed?

- Leveraging of this existing information would enable the ATO to measure GST compliance more accurately.
- This measure would preserve the integrity of the tax system by ensuring consistency with the sharing economy regime.

Description of measure

- This measure would evaluate the benefits of expanding the Low value imported goods (**LVIG**) regime to include e-commerce platforms.
- E-commerce models are constantly developing and are a popular platform for conducting LVIG transactions. The exclusion of e-commerce platforms from reporting may result in escaped GST from a failure to comply by suppliers.
- It is likely that e-commerce platforms have existing capabilities to collect the relevant GST data to be remitted for the LVIG regime.

L8 | Extension of ATO funding

Date announced	29 March 2022	**Proposed start date**	1 July 2023
Status of measure	Announcement	**Priority**	L8
Overview	● The ATO is under-resourced in key business lines that are necessary to support taxpayers determine their correct liability to taxation. ● A more considered allocation of permanent funding would ensure that the ATO is more efficiently able to assist taxpayers meet their tax obligations.		
Link	Announcement as part of the Federal Budget 2022–23		

Our recommendation

- The Government should consider undertaking consultation to review additional funding for the ATO on a permanent basis in the business areas under the Law Design and Practice branch.
- The Government should also consider additional funding of the ATO's technology teams and other support teams beyond Law Design and Practice, rather than implementing Labor's policy of supporting additional funding to extend and boost the ATO's review and audit programs.

Why is this measure needed?

- The current approach of temporarily funding certain compliance programs supports the ATO only in addressing a small category of high risk behaviours through compliance programs.
- The ATO is currently under-resourced in key areas to provide taxpayers and tax practitioners with the support they need to comply with the taxation system. An increase in permanent funding in these areas would enable the ATO to assist a broader range of taxpayers meet their taxation obligations.

Description of measure

- The former Government announced that it would provide $325.0 million in 2023–24 and $327.6 million in 2024–25 to the ATO to extend the operation of the Tax Avoidance Taskforce by two years to 30 June 2025. The tax avoidance taskforce is currently funded until 30 June 2023. The extra funds would be allocated as part of the independent resourcing review announced in the MYEFO 2021–22.

- The ATO's Law Design and Practice branch — consisting of the Review and Dispute Resolution and Tax Counsel Network business lines — as well as the ATO's technology teams and other support teams are crucial in the administration of the taxation and superannuation systems. These business lines resolve taxpayer disputes, provide guidance and technical advice on issues and provide technological support for the ATO's online systems that a larger portion of taxpayers can utilise when complying with their taxation obligations.
- Greater funding to these business lines would ensure that ATO resources are being applied to assist a greater number of taxpayers, boosting voluntary compliance and revenue collection.

L9 | Performance and integrity of Australia's administrative review system

Date announced	20 October 2021	**Proposed start date**	To be advised
Status of measure	Review	**Priority**	L9
Overview	● The AAT provides a fundamental role in conducting independent merit reviews of Australian government bodies and employees. ● This measure would enhance government decision-making, contributing to administrative improvements.		
Link	Interim Report released in March 2022		

Our recommendation

- The Government should consider continuing with the review and implement the recommendations from the Senate Committee's Final Report.
- The Government should also consider supporting the Senate Committee's findings with an expedited process (**see page 72**) for matters of high precedential value.

Issue

The AAT is not accessible, fair, quick or economic in conducting merit reviews of administrative decisions under Commonwealth laws.

Why is this measure needed?

- A merits review is fundamental to ensure Australian government ministers, departments and agencies are held accountable and are transparent in their decision-making.
- This measure enhances the integrity and performance of the AAT and contributes to good governance and administrative improvements.

Description of measure

- A review into the performance and integrity of Australia's administrative review system is being conducted by the Senate. The Committee's report is due to be delivered to the Government by 30 June 2022.[6]

[6] The Final Report was due to be delivered to the Government by 31 March 2022. On 29 March 2022, the Committee's reporting date was extended to 30 June 2022.

- The Interim Report proposes, among other aspects aimed at improving efficiency and procedural fairness, the re-establishment of the Administration Review Council as an independent body to continuously review and improve the integrity and performance of the AAT.
- These improvements would better allow the AAT to be a low-cost and efficient avenue for taxpayers to resolve their disputes with the ATO.

L10 | Smarter reporting of Taxable Payments Reporting System data

Date announced	29 March 2022	**Proposed start date**	1 January 2024
Status of measure	Announcement	**Priority**	L10
Overview	This measure, which proposes to allow the Taxable Payments Annual Report (**TPAR**) to be lodged electronically on a monthly or quarterly basis, would increase the accuracy and timeliness of reporting while lowering compliance costs for taxpayers.		
Link	Announcement as part of the Federal Budget 2022–23		

Our recommendation

The Government should consider implementing this measure as announced by introducing an enabling bill into Parliament after consultation with affected stakeholders to ensure that:

- the measure is effectively designed and implemented
- the implementation of the measure does not impose an unreasonable burden on taxpayers or their advisers in the present environment.

Why is this measure needed?

- This measure would increase the accuracy and timeliness of reporting while lowering compliance costs for taxpayers by aligning the lodgment requirements of the TPAR with the lodgment requirements for business activity statements (**BASs**).
- Consistent reporting requirements are an essential feature of an efficient taxation system.

Description of measure

- Currently, businesses are required to lodge the TPAR on an annual basis. However, businesses are required to lodge their BASs on either a monthly or quarterly cycle.
- Aligning the reporting requirements of the TPAR and the BAS would allow businesses to utilise their accounting software to report both at the same time. The efficiency gain would reduce the costs, time and complexity of TPAR preparation and lodgment.
- Consultation with affected stakeholders including tax practitioners, software providers and professional bodies would ensure that the final policy scope, design and practical implementation is efficient and effective.

L11 | ABN reforms

Date announced	20 July 2018 2 April 2019	**Proposed start date**	To be advised 1 July 2022 for announcement
Status of measure	Consultation paper Announcement	**Priority**	L11
Overview	This measure proposes to reform the ABN system, so it operates more effectively and efficiently and aligns with public expectations that businesses meet their reporting obligations. A separate measure proposed that ABN holders with an income tax return obligation to lodge their tax return and re-confirm their details on the Australian Business Register (**ABR**).		
Link	Designing a modern ABN system – Consultation Paper Strengthening the ABN system – Announcement on 2 April 2019 as part of the Federal Budget 2019–20, and deferral of commencement date announced as part of the Federal Budget 2022–23		

Our recommendation

- The Government should review community input and feedback received during the consultation process (relating to designing a modern ABN system) and consider releasing exposure draft legislation or a further discussion paper on the implementation of the new ABN system, followed by the introduction of an enabling bill into Parliament.
- The Government should consider implementing this measure as announced (strengthening the ABN system) by introducing an enabling bill into Parliament.
- A fee should not be charged annually to taxpayers to reconfirm their ABN details.

Issue

- The Black Economy Taskforce found that participants in the shadow economy use the ABN system to perpetrate fraud.
- The ABN system has not been updated to keep pace with modern technology and demands, creating inefficiencies and risk areas.

Why is this measure needed?

- Reforming the ABN system ensures that it accurately reflects only genuine businesses and allows the government to easily maintain and monitor business activities and records.

- Requiring ABN holders to comply with their taxation obligations aligns with community expectations of businesses. Further, an annual check-in would create greater public confidence in the accuracy of ABN data for businesses.
- ABN holders need certainty regarding their taxation and ABN registration obligations. The measure should be implemented with sufficient time for the necessary systems to be in place to assist ABN holders to meet their obligations.
- Modernising the ABN system would eliminate inefficiencies and risks in the system, making it more reliable, effective and cost-efficient.

Description of measure

- This Consultation Paper sets out a proposal to strengthen and modernise the ABN system. It proposed a range of reforms, including:
    - adjusting ABN entitlement rules
    - imposing conditions on ABN holders
    - introducing a renewal process including a renewal fee.
- The start date of the announcement on 2 April 2019 was deferred by 12 months in the Federal Budget 2022–23. Under the deferral:
    - ABN holders with an income tax return obligation would be required to lodge their income tax return from 1 July 2022; and
    - ABN holders would be required to re-confirm their details on the ABR from 1 July 2023.
- Consultation to co-design the administrative approach is currently planned.

L12 | Modernisation of PAYG instalment system

Date announced	29 March 2022	**Proposed start date**	1 January 2024
Status of measure	Announcement	**Priority**	L12
Overview	This measure proposes to allow companies to base their PAYG instalments on current accounting software data to better align their PAYG liability with their current business performance.		
Link	Announcement as part of the Federal Budget 2022–23		

Our recommendation

The Government should consider consulting with key stakeholders regarding the design and implementation of this measure before introducing an enabling bill containing this measure into Parliament.

Why is this measure needed?

- This measure would enable a business' periodic PAYG instalments to be based on their actual performance, meaning that the amount to be refunded or owing to them at the end of each income year is significantly smaller. This would reduce the amount of overpaid cash being held by the ATO and the amount of tax liabilities due by taxpayers at the end of each income year.
- This measure is considered a low priority at present in recognition of the continuing pressure on practitioners following a relentless two years assisting their clients. Consideration should be given to the impact on advisers who would be required to assist businesses determine their performance results. If it is determined that the impact of the implementation of this measure on business taxpayers and their advisers is low, then the priority of this measure could be reconsidered and elevated.

Description of measure

- The existing PAYG instalment system is based on historical performance, meaning that the instalments paid by businesses either overestimate or underrepresent their actual performance and tax liability for the relevant income year.
- This mismatch means that affected businesses have overpaid tax that they can access only when their income tax return is lodged and associated refund is processed, or there is a substantial final tax payment due on the lodgment of their income tax return.
- The former Government proposed to allow companies to choose to have their PAYG instalments calculated based on current financial performance to better align PAYG liabilities with business revenue. The calculation of the PAYG instalments would be extracted from business accounting software, with some tax adjustments.
- The former Government announced that it would consult with affected stakeholders, tax practitioners and digital service providers to finalise the policy scope, design and specifications of the measure.

L13 | Enhanced sharing of Single Touch Payroll data

Date announced	29 March 2022	**Proposed start date**	To be confirmed
Status of measure	Announcement	**Priority**	L13
Overview	This measure proposes to commit funds for the development of the IT infrastructure that would allow Single Touch Payroll (**STP**) data to be shared between the ATO and State and Territory Revenue Offices.		
Link	Announcement as part of the Federal Budget 2022–23		

Our recommendation

The Government should ensure that extensive consultation is undertaken so:

- the design of the information sharing system is effective in assisting taxpayers and State and Territory Revenue Offices; and
- information provided to State and Territory Revenue Offices is fit for purpose and consistent with the different treatment of payroll taxes across states.

Why is this measure needed?

- If the STP sharing system does not provide State and Territory Revenue Offices with the correct information, then it will not be effective at reducing compliance costs for taxpayers.
- There is a serious risk that simply sharing the STP data without accounting for the differences in state taxes would result in increased compliance costs as taxpayers would effectively be required to disprove the validity of the shared data.
- Proper consultation and any expansion in the current scope of the measure would ensure that the measure is effective at reducing taxpayers' compliance costs.

Description of measure

- The former Government announced that it would commit $6.6 million, which has already been provided for, to allow the ATO to share STP data with State and Territory Revenue Offices on an ongoing basis.
- The funding would currently be deployed only following further consideration of which States and Territories are able and willing to make investments in their own systems and administrative processes to pre-fill payroll tax returns with STP data.
- The requirements and conditions for payroll, and other taxes, differ across States and Territories. It is currently unknown whether the data sharing would ensure that the data reflects these differences. Consultation for this measure is integral to ensure that the information collected is useful for State and Territory Revenue Offices by highlighting how the STP data needs to be modified to account for these differences.

L14 | TOFA – hedging and foreign exchange deregulation

Date announced	11 May 2021	**Proposed start date**	1 July 2022
Status of measure	Announcement	**Priority**	L14
Overview	This measure would reduce compliance costs for such taxpayers by simplifying the rules for TOFA hedging rules. This would eliminate unintentional consequences resulting from the taxation of unrealised foreign currency gains and losses.		
Link	Announcement as part of the Federal Budget 2021–22		

Our recommendation

The Government should consider implementing technical amendments to the TOFA rules as announced as part of the Federal Budget 2021–22.

Why is this measure needed?

- Taxpayers who hedge financial instruments at a portfolio level are currently unable to recognise a TOFA hedge at the portfolio level. This means that they must calculate the hedging gains and losses on each instrument separately, creating high compliance costs for such taxpayers.
- Taxpayers who are required to apply the TOFA rules must recognise TOFA gains and losses on unrealised foreign currency movements in certain circumstances, even when they have not made the corresponding election to do so.

Description of measure

- The former Government announced that it would make technical amendments to the TOFA hedging rules to simplify the rules for TOFA hedging and remove unintended consequences relating to the taxation of unrealised foreign currency gains and losses.
- These changes would create rules allowing taxpayers to recognise a TOFA hedge on financial arrangements at a portfolio level and ensure that taxpayers are only taxed on unrealised foreign currency gains and losses when they elect to do so.

L15 | Alternative for offshore banking unit regime

Date announced	12 March 2021	**Proposed start date**	To be confirmed
Status of measure	Announcement	**Priority**	L15
Overview	The Offshore Banking Unit (**OBU**) regime attracts financial service providers to conduct offshore banking activities in Australia, boosting economic activity and investment by these businesses.		
Link	Announcement on 12 March 2021		

Our recommendation

The Government should consider proceeding with a public consultation on a new regime to replace the outgoing OBU regime as announced.

Why is this measure needed?

After the OBU regime's end date on 30 June 2023, there are no other existing measures to attract offshore banking activity in Australia by financial service firms and providers.

Description of measure

- The OBU regime provides concessional tax rates for Australian-registered banks on income derived in Australia from offshore banking activities.
- The OECD's Forum on Harmful Tax Practices found Australia's OBU regime to be harmful due to the low concessional tax rate and the ring-fenced nature of the regime. This has led to plans by the OECD and the European Union (**EU**) to classify Australia's OBU regime as a harmful tax regime.
- The former Government proposed to amend the OBU regime to prevent new entrants and an end date to the regime of 30 June 2023 to prevent Australia's OBU regime from being classified as a harmful tax regime by the OECD and the EU.
- A replacement regime could be designed that would not result in Australia's OBU regime being regarded as a harmful tax regime.

L16 | Petroleum Resource Rent Tax – compliance and administration

Date announced	16 December 2018	**Proposed start date**	1 July 2019
Status of measure	Announcement	**Priority**	L16
Overview	● This measure originated from the outcomes of the Callaghan Review (**Review**) and proposed to align Petroleum Resource Rent Tax (**PRRT**) and income tax reporting, reducing the complexity of the PRRT regime and compliance costs for taxpayers. ● The proposed requirement for taxpayers to report annually on commencement of the project would improve the ATO's oversight of the PRRT regime and enhance opportunities for the ATO to undertake compliance activity		
Link	Announcement as part of the MYEFO 2018–19		

Our recommendation

The Government should consider whether to proceed with implementing these changes as announced as part of the MYEFO 2018–19 in response to the recommendations and outcomes of the Review conducted by Mike Callaghan in 2017.

Why is this measure needed?

- The Review made a number of important compliance saving recommendations that would have the effect of increasing taxpayer and ATO certainty, and reducing unnecessary compliance burdens.
- For example, under the current PRRT administrative rules, taxpayers are required to lodge a PRRT return for a project producing marketable petroleum commodities only when the project begins to produce income, rather than when it first commences.
- As noted in the Review, PRRT projects generally have long lead times that may result in a considerable delay between commencement of the project and the lodgment of the first PRRT return. The requirement for taxpayers to lodge tax returns on commencement of the project, enhances the ATO's opportunity to conduct compliance activity.
- Furthermore, the proposed measures would:
    - reduce the complexity of the PRRT system
    - provide some alignment with the income tax system in the context of accounting periods, anti-avoidance measures and dealing with foreign currency
    - lower compliance costs for PRRT taxpayers.

Description of measure

- The PRRT is imposed on marketable petroleum commodities, including liquefied petroleum gas, stabilised crude oil and sales gas.
- The former Government announced that it would reduce the uplift rates for PRRT deductible expenditure and remove onshore petroleum projects from the scope of the PRRT (measures that have since been enacted).
- However, in response to other recommendations made by the Review, the former Government also announced that it would make a series of administrative and compliance changes to the PRRT. The proposed changes include:
    - Allowing PRRT taxpayers the option to report offshore projects with all interests of a group in a single PRRT return
    - Enabling PRRT taxpayers to align their PRRT return period and income tax substituted accounting period
    - Enabling multiple entry consolidated (**MEC**) groups to align the functional currency for PRRT and income tax reporting
    - Allowing PRRT taxpayers to begin lodging tax returns when they start to hold an exploration permit, retention lease or production licence, rather than when the project first starts to generate income
    - Amending the PRRT anti-avoidance rules in line with those in the income tax rules.

L17 | Minor and technical amendments

Date announced	21 June 2021	**Proposed start date**	After Royal Assent
Status of measure	Lapsed bill	**Priority**	L17
Overview	This measure proposes to make various minor and technical amendments to the tax law to remove anomalies and unintended outcomes.		
Link	Schedule 7 to the Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022		

Our recommendation

The Government should consider reintroducing an enabling bill containing this measure into Parliament.

Why is this measure needed?

- Minor technical amendments are important for the correct and efficient operation of our taxation and superannuation systems. Not addressing the issues raised risks taxpayers being exposed to unintended and inequitable outcomes.
- This measure is a straightforward one that should readily receive bi-partisan support to get the system working properly.

Description of measure

The lapsed bill proposed to make minor and technical amendments to existing measures in the tax law, including:

- Delaying the commencement of changes impacting the Business Registers program until the systems supporting the program are ready.
- Removing the direct link between the eligibility for the FBT rebate and access to elements of the FBT exemption for hospital employees to restore access to the exemption to certain tax exempt not-for-profit societies and associations.
- Ensuring certain commutations do not exceed the transfer balance cap, applying only to market-linked and life expectancy products.

Other issues for consideration

O1 | Independent funding for the Tax Practitioners Board

Date announced	5 March 2019	**Proposed start date**	To be advised
Status of measure	Announcement	**Priority**	O1
Overview	The Government should announce support and funding for a proposal targeted at ensuring the Tax Practitioners Board (**TPB**) operates as an independent regulatory body with separate financing and legislative framework from the ATO.		
Link	Announcement Final Report released on 31 October 2019 Former Government Response released in November 2020		

Our recommendation

- The Government should consider releasing a formal position supporting independent funding for the TPB.
- The Government should consult with the professional associations with a view to implementing the recommendation to ensure full operational independence of the TPB.

Why is this measure needed?

- Tax practitioners play a vital role in assisting all taxpayers navigate the complexities of our taxation and superannuation systems and comply with their obligations.
- It is necessary for registered tax agents and BAS agents to be regulated by a government body that is independent from the ATO, the administrator of our taxation and superannuation systems. This would ensure community confidence by creating a transparent and efficient regulatory system for tax practitioners.

Description of measure

- The former Government announced a review regarding the independence of the TPB from the ATO, following concerns that the legislative framework surrounding the TPB did not meet the underlying policy objectives of ensuring that tax agent services are provided to the public in accordance with appropriate standards of professional and ethical conduct.
- The review sought to ensure the operation of the TPB as being able to:
    - maintain, protect and enhance the integrity of registered tax agents and BAS agents;

- operate as an independent, efficient and effective regulator; and
- protect all consumers of tax practitioner services.

- Broadly, the Final Report recommended a range of legislative, procedural and funding changes that will enable the TPB to become a separate agency and receive its own specific appropriation from the Government rather than as an allocated proportion of a broader ATO budget.

O2 | Boosting the Child Care Subsidy

Date announced	Unannounced	**Proposed start date**	To be advised
Status of measure	TTI initiated	**Priority**	O2
Overview	Increasing the Child Care Subsidy (**CCS**) and improving its design as a practical plan would boost and incentivise workforce participation, and further assist the COVID-19 economic recovery.		
Link	Not applicable		

Our recommendation

The Government should consider:

- providing increased support for low-income families by boosting the CCS to 95%, irrespective of the number of children the family contains;
- reviewing the hourly rate cap in light of the increasing cost of living for families in the current economic environment across Australia; and
- updating the activity test to better reflect the hours of care required to work the respective days in question, without disincentivising working parents considering their options.

Why is this measure needed?

- We acknowledge the former Government's recent measure that, among other changes, removes the annual cap and increases the CCS for families with two or more children under age 5 in care.[7]
- We also note the Government's policy[8] proposes to:
  - lift the maximum CCS rate to 90% for families for the first child in care
  - increase CCS rates for every family with one child in care earning less than $530,000 in household income
  - keep higher CCS rates for the second and additional children in care
  - extend the increased CCS to outside school hours care.
- While this is a step in the right direction, the changes are not adequately targeted at families who need the most assistance.

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7 *Family Assistance Legislation Amendment (Child Care Subsidy) Act 2021* (Cth).

8 See Labor's Plan for Cheaper Childcare at www.alp.org.au/policies/cheaper-child-care

- A fair, efficient and effective CCS would encourage greater workforce participation, increase Australia's productivity and subsequent tax collections, further assist the COVID-19 economic recovery by providing an immediate increase in family income and reduce discrimination against primary carers.

Description of measure

- Eligibility to the CCS is calculated based on three primary factors:
    - total household income;
    - an hourly rate cap that applies to all Australians despite the difference in cost of living standards throughout Australia; and
    - an activity-based test with the objective of ensuring funds are not utilised for some personal reasons.
- The design and underlying assumptions for the CCS have not been updated to reflect modern circumstances and the different situations across Australia. The rules remain unnecessarily complex and do not achieve the stated goals of the CCS of reducing the cost of child care for families and boosting workforce participation.
- We refer you to this article by The Tax Institute that highlights the complex issues within the system.
- A comprehensive update of all aspects of the CCS will be more effective at reducing the cost of child care for all families, and incentivising workforce participation. This includes:
    - greater assistance for lower income families by boosting the CCS to 95%, irrespective of the number of children the family contains;
    - undertaking a comprehensive review of the hourly rate data used for the hourly rate cap for each State and Territory, to better account for the cost of difference in the cost of living across all metropolitan and regional areas in Australia; and
    - updating the activity test to better reflect the hours of care required to work the respective days in question, without disincentivising working parents considering their options.

O3 | Deductibility of work-related expenses

Date announced	Unannounced	**Proposed start date**	To be advised
Status of measure	TTI initiated	**Priority**	O3
Overview	A standard deduction for work-related expenses (**WRE**) should be introduced together with the option to claim actual expenses that are properly substantiated for employees with expenses above the standard deduction threshold.		
Link	Not applicable		

Our recommendation

The Government should consider introducing a new standard deduction for claiming WRE up to a prescribed threshold and allow actual expenses to be claimed where properly substantiated.

Why is this measure needed?

- The idea of a standard deduction for WRE has been considered many times over the years, but never legislated. Given the extent of smaller claims made by individuals/employees in their income tax returns for WRE, a standard deduction would make it much simpler for these taxpayers to comply with their personal tax obligations without denying taxpayers with legitimately higher claims the ability to deduct those WRE.
- It would also provide opportunities to further simplify the administration of the tax system and reduce the cost to both taxpayers and government of that administration.

Description of measure

- Individuals/employees would be able to claim a standard deduction for WRE up to a prescribed threshold (for example, between $1,000 and $2,000) without substantiation (although they must have still incurred the expense that relates to their gaining or producing assessable income and they must not have been reimbursed by their employer for the amount).
- Taxpayers would retain the option to claim actual expenses above the standard deduction threshold where they can properly substantiate the expenses.

O4 | Expediting disputes on precedential issues

Date announced	Unannounced	**Proposed start date**	To be advised
Status of measure	TTI initiated	**Priority**	O4
Overview	Our dispute resolution process should expedite matters of high precedential value or matters of public importance.		
Link	Not applicable		

Our recommendation

The Government should consider making legislative amendments that permit the circumvention of the objections process prior to court appeal in certain cases.

Why is this measure needed?

- Currently, the system does not adequately cater for expediting matters of high precedential value or matters of public importance.
- This can result in taxpayers being left in a state of uncertainty as important cases progress through the ATO objections processes and the courts.

Description of measure

- We note that that the Inspector-General of Taxation and Taxation Ombudsman has called on the use of declaratory proceedings in such circumstances.
- However, given the advice the Commissioner received noting the limitations of such proceedings,[9] we consider that there may be a need for legislative amendments that permit the circumvention of the objections process prior to court appeal in certain cases.
- Alternatively, we consider that the formation of a suitably qualified judicial body to resolve such matters promptly is required.

[9] For further information regarding the Commissioner's views on the limitation of declaratory proceedings, refer to the advice referenced and linked in the Decision Impact Statement for *Commissioner of Taxation v Indooroopilly Children's Services Pty Ltd* under the headings 'Tax Office view of Decision' and 'Declaratory Proceedings'. Further discussion on the ATO's view on the use of Declaratory Proceedings may also be found in PS LA 2009/9 at paragraphs 98–110.

O5 | Multinational measures

Date announced	May 2022	**Proposed start date**	To be advised
Status of measure	Announcement	**Priority**	O5
Overview	Changes to Australia's corporate taxation legislation can have a significant impact on the competitiveness of Australia for foreign investment, on which Australia is heavily reliant.		
Link	Announcement in May 2022		

Our recommendation

The Government should undertake targeted consultation with tax professionals and the professional bodies on the interaction of the potential measure with existing provisions to ensure there are no unintended consequences and excessive compliance burdens.

Why is this measure needed?

Corporate taxation can have a significant impact on Australia's competitiveness compared with other jurisdictions in the Asia-Pacific region. Poorly designed and implemented taxation rules, including but not limited to the underlying rate, can act as a disincentive to foreign investment and the creation of jobs in Australia.

Description of measure

- The Government has announced a range of proposed changes targeted at multinationals. The changes include:
    - implementation of the OECD's Two-Pillar tax plan to reduce corporate tax rates to 15%
    - limiting debt-related deductions for multinationals
    - denying tax deductions for intellectual property stored in tax haven jurisdictions
    - public reporting of tax information on a country-by-country basis
    - targeted transparency measures.
- Tax issues impacting multinationals cover a broad and complex range of provisions. Tax professionals can provide key insights on ensuring the proposed measure is designed and implemented in a manner that is consistent with the OECD's global minimum tax policy and Australia's domestic legislative and administrative requirements.
- Without targeted consultation from the design phase, the law may have unintended consequences and may impose excessive compliance burdens on taxpayers.

O6 | Venture Capital Tax Concessions Program

Date announced	7 July 2021	**Proposed start date**	To be advised
Status of measure	Review	**Priority**	O6
Overview	The venture capital sector is important in supporting innovation in Australia. This measure seeks to evaluate the effectiveness of the concessions in generating venture capital investment.		
Link	Consultation Paper released in July 2021 Terms of Reference released on 7 July 2021		

Our recommendation

The Government should support the completion and publication of the Final Report (yet to be published) of Industry Innovation and Science Australia (**IISA**) and Treasury.

Issue

The venture capital tax concessions provide tax offsets and exemptions for eligible businesses designed to incentivise the generation of venture capital investment in Australia.

Why is this measure needed?

In 2020, a record $1.3 billion of new commitments was secured by venture capital managers.[10] This sector embraced technological developments during the COVID-19 pandemic resulting in this growth, and the Government should continue to support the sector.

Description of measure

- The purpose of this review was to determine if the tax concessions are achieving the policy intent of increasing entrepreneurship and investment in higher-risk businesses.
- The review focused on the Venture Capital Limited Partnership, Early Stage Venture Capital Limited Partnership and the Australian Venture Capital Fund of Funds programs.

[10] See Australian Private Capital Market Overview: A Preqin and Australian Investment Council Yearbook 2021 at page [18].

Measures that should not proceed

N1 | Ending JobKeeper profiteering

Date announced	21 June 2021	**Proposed start date**	After Royal Assent
Status of measure	Lapsed bill	**Priority**	N1
Overview	The measure would prevent entities profiteering from JobKeeper from claiming input tax credits for 10 years until they repay amounts equal to the profits and/or executive bonuses paid during the income years in which they received JobKeeper payments.		
Link	Private Member's Bill: Coronavirus Economic Response Package Amendment (Ending JobKeeper Profiteering) Bill 2021[11]		

Our recommendation

The Government should not proceed with this measure.

Why should this measure be abandoned?

- These entities met the requirements of the law as it applied at the time and were entitled to the JobKeeper payments they received.
- Retrospectively denying JobKeeper payments to these entities by requiring them to effectively repay those amounts through preventing them from claiming input tax credits until profits made and executive bonuses paid are paid back to the ATO is an improper use of the GST system that would give rise to inappropriate outcomes within the tax system (because the revenue collected goes wholly to the States and Territories).

Description of measure

- The lapsed bill proposed to delay the ability of entities profiteering from JobKeeper from claiming input tax credits for 10 years, or until they repay an amount equal to profits made and/or executive bonuses paid during a financial year in which they received JobKeeper payments.
- The lapsed bill also proposed to require the ATO to publish a list of entities in receipt of JobKeeper payments and how much they received.
- The proposed measure would not apply to entities with an annual turnover of less than $50 million.

[11] This Bill was introduced into the Senate by Tasmanian Greens Senator, Nick McKim, on 21 June 2021.

N2 | 3-year audit cycle for some SMSFs

Date announced	6 July 2018	**Proposed start date**	1 July 2019
Status of measure	Consultation paper	**Priority**	N2
Overview	This measure proposes to allow SMSFs with a good compliance history and no prescribed events the option to be audited every 3 years instead of every year.		
Link	Consultation Paper		

Our recommendation

The Government should not proceed with this measure.

Why should this measure be abandoned?

- There is no evidence that allowing SMSFs with a good compliance history to apply a 3-year audit cycle would reduce the administrative and compliance burden for such funds. In fact, anecdotal evidence received from our members, across the profession and SMSF auditors clearly points to higher audit costs and increased administrative burdens for trustees and members of SMSFs.
- This measure would heighten the risk of increased non-compliance as less frequent monitoring of the fund's activities from an audit perspective would provide opportunities for breaches of the superannuation rules to go undetected for longer periods.
- This measure could result in poorer standards of record-keeping by SMSFs and increase the likelihood of trustees being unable to locate necessary records.
- Based on the proposed eligibility criteria, many SMSFs would not be eligible for a 3-year audit cycle, thereby limiting the supposed benefits of the measure to a smaller population.
- This measure would greatly affect the workflow of SMSF auditors, with a consequential impact on the ability to adequately resource their activities when required.

Description of measure

The Consultation Paper sets out a proposal to change the annual audit requirement for SMSFs to a 3-yearly requirement for SMSFs with a good compliance history and no prescribed 'events'.

N3 | Reform of Australia's electronic surveillance framework

Date announced	6 December 2021	**Proposed start date**	To be advised
Status of measure	Discussion paper	**Priority**	N3
Overview	● This measure seeks to expand the ATO's powers to use electronic surveillance in matters of serious fraud and financial crime to protect public revenue. ● Currently, the ATO can access electronic information only once it has been obtained by law enforcement agencies.		
Link	Discussion Paper		

Our recommendation

The Government should not proceed with this measure.

Why should this measure be abandoned?

- It is not appropriate to expand the ATO's powers to access electronic information.
- This measure is an over-reach of the ATO's powers. The ATO should not be allowed greater access to electronic surveillance information to identify fraud and serious crime and respond accordingly.

Description of measure

- Currently, the ATO does not have the authority to access information concerning serious fraud and financial crime to protect public revenue.
- The Discussion Paper released by the Department of Home Affairs provides an overview of how the former Government planned to reform Australia's electronic surveillance legislative framework.
- These reforms include a proposal to expand the ATO's power to access telecommunications data to protect public revenue against serious financial crime.
- There are significant concerns that the approach to electronic surveillance noted in the Discussion Paper may not be suited to modern telecommunications systems, is likely lacking in appropriate safeguards and is not consistent with existing principles for gathering information.

N4 | Licensing an individual's fame or image

Date announced	12 December 2018	**Proposed start date**	1 July 2019
Status of measure	Consultation paper	**Priority**	N4
Overview	● This measure seeks to ensure that all remuneration and non-cash benefits for the commercial exploitation of a person's fame or image are included in an individual's assessable income. ● The stated intention of this measure was to preserve the integrity of the tax system by preventing high-profile individuals from transferring licenses to their fame and image to another entity so that benefits and payments are taxed at a lower rate.		
Link	Consultation Paper		

Our recommendation

The Government should not proceed with this measure and should clarify in an announcement that this is the Government's intention.

Why should this measure be abandoned?

- Taxpayers require certainty on the operation of legislation in relation to their tax affairs. Currently, potentially impacted taxpayers have been required to lodge their income tax returns based on an announced and unenacted measure that is proposed to have taken effect on 1 July 2019.
- Further, the announcement or subsequent Consultation Paper have not provided any guidance to taxpayers on the precise mechanics of the design of the measure or how legislative amendments would give effect to the measure.

Description of measure

- Some consider that high-profile individuals can currently license their fame or image to another entity that enables part of their remuneration to be taxed at lower rates. However, there remains a question around whether high profile individuals can licence their image at all. If this is not possible, then the measure is unnecessary.
- The Consultation paper proposed to amend the tax law to include all remuneration, including payments and non-cash benefits, provided for the commercial exploitation of a person's fame or image in that individual's assessable income.
- Despite being announced in December 2018, the former Government neither enacted this measure nor announced that it would abandon this measure.

- The ATO is currently developing advice in relation to this issue despite no further announcement from the former Government, creating further confusion for taxpayers on how to comply with their taxation obligations in this respect. Before any further advice is developed or legislation implemented, the ATO should seek declaratory orders from the Federal Court on a suitable case to determine whether the purported licencing is possible at all.

Appendix A

Legislative references

Income Tax Assessment Act 1936	ITAA 1936
Income Tax Assessment Act 1997	ITAA 1997
Income Tax Rates Act 1986	ITRA
Income Tax (Transitional Provisions) Act 1997	IT(TP)A
Fringe Benefits Tax Assessment Act 1986	FBTAA
Superannuation Guarantee (Administration) Act 1992	SGAA
Superannuation Industry (Supervision) Act 1993	SISA
Taxation Administration Act 1953	TAA

Acronyms and other abbreviations

AAT	Administrative Appeals Tribunal
AAWP	Australian Agriculture Worker Program
ABN	Australian Business Number
AMIT	Attribution managed investment trust
APRA	Australian Prudential Regulation Authority
ATO	Australian Taxation Office
BAS	Business activity statement
Board	Board of Taxation
CCS	Child Care Subsidy
CGT	Capital gains tax
CLP	Corporate limited partnership

Acronyms and other abbreviations

Commissioner	Commissioner of Taxation
CPI	Consumer price index
DGR	Deductible gift recipient
DGTO	Digital games tax offset
DISER	Department of Industry, Science, Energy and Resources
EU	European Union
FBT	Fringe benefits tax
GST	Goods and Services Tax
IAWO	Instant asset write-off
IISA	Industry Innovation and Science Australia
MEC	Multiple entry consolidated (group)
MIT	Managed investment trust
MYEFO	Mid-Year Economic and Fiscal Outlook
OBU	Offshore banking unit
NALI	Non-arm's length income
OECD	Organisation for Economic Co-operation and Development
PALMS	Pacific Australia Labour Mobility Scheme
PAYG	Pay as you go
PRRT	Petroleum Resource Rent Tax
R&D	Research and development
R&DTI	Research and Development Tax Incentive
SG	Superannuation Guarantee
SLMP	Seasonal Labour Mobility Program

Acronyms and other abbreviations

SMSF	Self-managed superannuation fund
STP	Single Touch Payroll
TFN	Tax File Number
TOFA	Taxation of Financial Arrangements
TPAR	Taxable Payments Annual Report
TPB	Tax Practitioners Board
TPRS	Taxable Payments Reporting System
WHM	Working holiday maker
WRE	Work-related expenses

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.