Federal budget 2019/20

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Back in the Black....

The Federal Treasurer, Mr Josh Frydenberg, handed down the 2019/20 Federal Budget on 2 April 2019.

Mr Frydenberg said the Budget is "back in the black", announcing an expected budget surplus of $7.1b for 2019/2020, and forecasting a surplus of $11b in 2020/21.

We take this opportunity to highlight some key business issues that were announced in the budget. In the second part of this Tax Alert, we highlight some key tax policies of the Labor Party.

All proposals in this Tax Alert are subject to legislation being passed by Parliament.

Federal Budget – Business Tax Issues

Instant Asset Write off
The instant asset write-off will be expanded. The threshold will be increased to $30,000 and the concession expanded to include businesses with aggregated turnover of less than $50 million.

As is generally the case with tax laws, there will be some complexity in analysing eligibility. In brief, the proposed measures are summarised as follows.

Asset first used or installed ready for use between:	Small business (turnover less than $10m)	Medium business (turnover less than $50m)
1 July 2018 to 28 January 2019	< $20,000	n/a
29 January 2019 to Budget night	< $25,000	n/a
Budget night to 30 June 2020	< $30,000	< $30,000

Division 7A
Division 7A is a tax anti-avoidance division. The division's purpose is to broadly limit opportunities for profits to be taxed at the corporate tax rate only to have those profits extracted from the entity via a loan to a shareholder that is not intended to be re-paid in the short term.

The government has previously announced amendments to Division 7A.

The start date of the amendments will be delayed by 12 months to 1 July 2020. The proposed amendments will undergo further consultation with stakeholders following feedback to a consultation paper issued in October 2018. The amendments in the consultation paper included replacing the existing seven-year and 25-year model with a single 10-year model without a requirement for a formal written loan agreement and clarification as to when unpaid present entitlements come within the scope of the Division.

Other Tax Integrity measures
Firstly, Australian Business Number (ABN) holders will have the following additional requirements to maintain an ABN:

– If an Income Tax Return obligation exists, will be required to lodge their income tax return, from 1 July 2021, and
– will be required to confirm the accuracy of their details on the Australian Business Register annually, from 1 July 2022.

It is also noted that the ATO's Tax Avoidance Taskforce will extend its operations and expand its activities, including increasing its scrutiny of specialist tax advisors and intermediaries that promote tax avoidance schemes.

Superannuation
Key superannuation measures announced included the following:-

– Members of regulated superannuation funds will not have to meet the work test after 1 July 2020 if they are 65 or 66 years of age.

– The restrictions on claiming the spouse contribution tax offset will be eased from 1 July 2020, giving 70 to 74 year old spouses eligibility.

– The calculation of exempt current pension income will be simplified for superannuation funds from 1 July 2020, allowing a preferred method of calculation and removal of some actuarial certificates.

International Tax
The government will update the list of countries whose residents are eligible to access a reduced withholding tax rate of 15%, instead of the default rate of 30%, on certain distributions from Australian managed investment trusts (MITs). To be listed, countries must have established the legal relationship enabling them to share taxpayer information with Australia.

This update will add Curaçao, Lebanon, Nauru, Pakistan, Panama, Peru, Qatar and the United Arab Emirates to join 114 other jurisdictions already on the list. These new jurisdictions have entered into information sharing agreements since the previous update in 2018.

The updated list will be effective from 1 January 2020.

In addition, minor amendments will be made to the hybrid mismatch rules to clarify their operation.

The hybrid mismatch rules are intended to prevent multinational corporations from exploiting differences in the tax treatment of an entity or instrument under the laws of two or more tax jurisdictions.

Other Tax Measures
Other tax measures announced included:-

– The legislated Personal Income Tax Plan will be changed to further lower taxes for individuals, including changes to the low and middle income tax offset (LMITO), the low income tax offset (LITO) and the personal income tax (PIT) rates and thresholds.

– The Medicare levy low-income thresholds for singles, families, seniors and pensioners will be increased from the 2018/19 income year.

– Payments to primary producers in the Fassifern Valley, Queensland affected by storm damage in October 2018 will be treated as exempt income.

– An income tax exemption will be provided for qualifying grants made to primary producers, small businesses and non-profit organisations affected by the North Queensland floods.

– The ATO will receive funding to increase activities to recover unpaid tax and superannuation liabilities with a focus on large businesses and high wealth individuals.

– A dedicated sham contracting unit will be established within the Fair Work Ombudsman to address sham contracting by some employers.

– For vehicles acquired on or after 1 July 2019, eligible primary producers and tourism operators will be able to apply for a refund of any luxury car tax paid, up to a maximum of $10,000.

– Access to refunds of indirect tax, including GST, fuel and alcohol taxes under the Indirect Tax Concession Scheme has been granted or extended.

– There will be a one-off Energy Assistance Payment of $75 for singles and $62.50 for each member of a couple eligible for qualifying payments (e.g. age pension) on 2 April 2019 and who are resident in Australia.

– From 1 July 2019, net income generated from the forced sale of livestock will be exempted from the Farm Household Allowance payment assessment, when that income is invested into a farm management deposit.

– Family Tax Benefit eligibility will be extended to the families of ABSTUDY (secondary) student recipients who are aged 16 years and over, and are required to live away from home to attend secondary school.

– The HELP debt incurred for recognised teaching qualifications after teachers have been placed in very remote locations of Australia for four years (or part time equivalent) will be extinguished. Indexation on HELP debts of all teachers while they are placed in very remote locations will no longer accrue from 14 February 2019.

The full Budget papers are available at www.budget.gov.au and the Treasury ministers' media releases are available at ministers.treasury.gov.au.

Given that a Federal Election is fast approaching, there is a question as to whether the government's budget announcements will ultimately pass as law. As such, it is an opportune time to briefly note some of the key tax measures that the Labor Party would be looking to introduce if successful at the next federal election.

Labor's Business Tax Policy

In the long lead up to the 2019 Federal Election, Labor has announced a number of proposed changes to Tax Laws. As a general proposition, many of these changes would impact business owners.

As always, the ultimate ramifications will depend on the drafting of any legislation – the devil will be in the detail! It is expected that the proposed changes would add an extra layer of complexity to business taxation and will require business owners to give thought to their business structure, the type of entities that should be used to hold assets and the availability of interest deductions.

The proposed start dates of the various changes will be important from a planning perspective and businesses should note that at the time of writing there is some uncertainty as to when the operation of potential new laws will commence.

Some of the key Labor proposals affecting business include:

Taxation of Trusts
In a media release in July 2017, Mr Bill Shorten announced that Labor would change the Taxation of Trusts. Broadly, Labor would introduce a minimum 30% tax rate for discretionary trust distributions made to adult beneficiaries. In the policy announcement, certain trusts would be excluded including testamentary trusts and farm trusts. There is uncertainty as to what would constitute a Farm Trust.

Negative Gearing and CGT Discount
As part of Labor's 'Housing affordability measures' negative gearing will be limited to new housing. The Shadow Treasurer, Mr Chris Bowen, at his address to the Financial Services Council on 29 March 2019 advised that the start date would be 1 January 2020. Investments acquired prior to 1 January 2020 would be grandfathered and hence continue to be taxed under current interest deductibility tax laws.

The Shadow Treasurer also confirmed a 1 January 2020 start date for the proposed changes to the CGT discount. Labor proposes to reduce the current 50% CGT discount available to individuals (where the asset in question has been held for greater than 12 months) to 25%. The party has previously advised that investments made before the commencement date would not be affected by the change. The public has also been advised that superannuation funds will not be affected and will continue to be able to access a 1/3rd discount.

Superannuation
Labor has previously announced under its 'Housing affordability measures' that it would propose to abolish a superannuation fund's ability to borrow under a limited recourse borrowing arrangement.

There is also a proposal to reduce the non-concessional contribution cap from $100,000 to $75,000. This would reduce the bring forward cap from $300,000 to $225,000. In addition, the Coalition's proposal to allow 'catch up' of concessional contributions would be removed by Labor and they would also introduce further restrictions on the tax deductibility of personal contributions.

The Division 293 threshold of $250,000 would be reduced to $200,000.

Franking Credit Refunds
In a widely publicised proposal, Labor plans to deny individuals and superannuation funds cash refunds of excess franking credits. A proposed start date of 1 July 2019 has previously been alluded to.

Self Managed Superannuation Funds (SMSF's) with at least one member who is a government defined pensioner or allowance recipient before 28 March 2018 would be exempt from the changes.

Investment Guarantee
From 1 July 2021, Labor proposes to introduce a new Australian Investment Guarantee whereby eligible depreciable business assets can be immediately expensed at 20% in the year of purchase with normal depreciation rates applied to that asset subsequent to the 1st year of depreciation.

International Tax
Labor proposes to introduce further international tax integrity measures that the party perceives will strengthen

the integrity of international tax dealings.

Included within these proposals is the introduction of a ‘tax transparency package’ with particular focus on international groups and large private companies. New ‘US style’ financial rewards for whistle-blowers are proposed. Various changes are also proposed to be made to the thin capitalisation regime.

The above mentioned proposed tax changes are substantial. If the proposed changes become reality, it will be imperative for business owners to understand the affect that the changes will have on them.