



# 2011–2012 Federal Budget Tax Brief

12 May 2011

On Tuesday 10 May 2011, the Federal Treasurer Mr Wayne Swan delivered the Government's 2011-2012 Federal Budget. Following a year of natural disasters and Government spending to 'beat the global recession' the Government is now focussing on promoting jobs growth and bringing Australia out of budgetary deficit. Mr Swan forecasts a 2011-12 budget deficit of \$22.6 billion (down from an estimated \$49 billion for 2010-11) aiming towards a \$3.5 billion budget surplus in the 2012-13 year.

The budget focuses on jobs growth by spending in key areas such as infrastructure, health and training. The plan to trim the deficit comes from significant budget cuts in other areas and further crackdowns on tax cheats and reducing the ability to income split. The Government has also announced many more measures that were promoted in the Henry Review into Australia's tax system.

This report summarises the key aspects of the Budget that we expect will affect our client base comprising mainly small to medium enterprises and associated individual taxpayers. The recorded date in brackets is the anticipated start date of the various measures. This report has been prepared based on our understanding of the budget papers and associated press releases. Please note that the announced measures are not law and cannot be relied upon until enacted.

The key superannuation changes will be highlighted in our separate 2011-12 Special Superannuation Budget Report attached.

Should you have any queries in relation to how the Budget announcements will affect you or your business, please contact your Allan Hall Business Advisor.

## Individuals and Families

### No Tax Increase or Decrease, but Flood Levy

While no new taxes have been introduced, and no taxes reduced, a one year only levy (applying similarly to the Medicare Levy) will apply to help Australia recover from the natural disasters that struck earlier this year. The 'flood levy' will apply to the 2011/12 financial year and has already been legislated as follows:

<b>Taxable Income</b>	<b>Levy</b>
< \$50,000	0%
\$50,000 - \$99,999	0.5% of income above \$50,000
\$100,000 -	\$250 + 1% of income above \$100,000

The levy will not apply to people who were affected by the natural disasters and received some form of Government disaster subsidy payment or would have met the criteria to receive a payment. (1/7/2011)

### Disaster Income Recovery Subsidy payments – exempt from tax

Government financial assistance in the form of 'Disaster Income Recovery Subsidy' and 'Category C clean up and recovery grants' provided to individuals, small businesses and farmers in relation to the 2010-11 floods or Cyclone Yasi has been made exempt from income tax.



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### Low Income Tax Offset (LITO) Removed for Minors

The LITO provides an effective increase in the tax free threshold. It currently provides the ability for minors to receive up to \$3,300 of trust distributions or investment income. This will be removed for minors receiving passive income but will still apply to any income earned from work. Going forward, minors will only be able to receive \$416 of passive income without paying tax at penal rates. (1/7/2011)

### Cash flow effect of LITO brought forward

The Government will amend its PAYG withholding tax tables so that more of the LITO will apply to weekly pay packets (70% up from 50%) and the balance available upon lodgement of an individual's income tax return. (1/7/2011)

### No self education expense deductions allowed against Government assistance payments

The tax law will be amended to specifically disallow a tax deduction for self education expenses against the receipt of Government assistance payments. This follows on from the High Court case in Anstis where a (well connected) university student took the Australian Taxation Office (ATO) all the way to the High Court and won to claim a \$900 tax deduction for self education expenses against the receipt of Youth Allowance. (1/7/2011)

### Dependent Spouse Rebate axed for spouses under 40

The dependent spouse tax offset (currently up to \$2,243) will cease to apply to spouses who are younger than 40 years old. Certain exceptions will apply to spouses eligible for other tax offsets and for those who are carers. Dependent spouses with children will continue to receive Family Tax Benefit Part B. (1/7/2011)

### Reduction in HECS / HELP discount for up-front and voluntary payments

The discount received for up-front and voluntary payments of HECS debts and voluntary payments of HELP loans will be reduced as follows from 1/7/2012:

<b>Payment</b>	<b>Current</b>	<b>Proposed</b>
Up-front	20%	10%
Voluntary (>\$500)	10%	5%

(Tip: Trustees should consider paying HECS for minors at university before 1/7/2011 to take advantage of the LITO and additional payment discount)

### Special Disability Trusts

The Government proposes to provide concessional tax treatment to encourage contributions to special disability trusts (SDT). A SDT is a trust established solely for the care and accommodation of a family member with a severe disability. The Government proposes to disregard any capital gains or losses that may arise on the transfer of an asset to a SDT for no consideration and, if under a will, the SDT will receive a market value cost base on the asset as at the date of death. Further, a main residence exemption (announced in 2009-10 budget) will now apply back to CGT events occurring after 1 July 2006.

### Trusts Generally

Although not a budget announcement, the Government announced recently that it would re-write the tax rules around trusts into the 1997 Tax Act to make them clear. In addition, it would specifically amend the legislation from (1/7/2010) to clarify that trusts could stream dividend and capital gains income to different beneficiaries. The ATO following Bamford's case had previously raised doubts as to whether trusts could stream income.



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### Private Health Insurance

While not specifically noted in the budget, we expect the Government to try to again introduce a bill to 'means test' the 30% private health insurance rebate. These measures were introduced and defeated in March 2010.

### Family Tax Benefit (FTB)

The FTB Part A payment will be increased for teenagers in full time secondary school or vocational equivalent from 1 January 2012 to \$4,200 per year for 16-17 year olds and \$3,741 for other teenagers.

The maximum eligibility age for FTB Part A will be lowered from 24 to 21 years old.

From 1 July 2011 families may be able to apply to receive a maximum of 7.5% of their total yearly rate of FTB Part A as a lump sum of up to \$1,000.

## Businesses

### Small Business Asset Write-off

Small Businesses are those with an aggregated turnover of less than \$2 Million. The Government announced new initiatives for small business including:

- providing an immediate write-off of all assets valued at under \$5,000 (currently \$1,000);
- write-off of the first \$5,000 of the cost of any motor vehicle;
- write-off of other assets (except buildings) in a single depreciation pool at a 30% rate; and
- reduce the company tax rate to 29%;
- scrapping the Entrepreneurs Tax Offset. (1/7/2012)

(Note: While these measures are designed to encourage spending by the small business community, it may delay spending in the short term until after 1/7/2012.)

### Fringe Benefits Tax & Cars

The FBT Statutory Formula Rate will be changed to a single flat rate for any cars purchased or leased in a contract from budget night. This will be phased in over four years as follows:

Distance travelled during the FBT year (1 April – 31 March)	Statutory rate (multiplied by the cost of the car to determine a person's car fringe benefit)				
	Existing contracts	New contracts entered into after 7:30pm (AEST) on 10 May 2011			
		From 10 May 2011	From 1 April 2012	From 1 April 2013	From 1 April 2014
0 – 15,000 km	0.26	<b>0.20</b>	0.20	0.20	0.20
15,000 – 25,000 km	0.20	<b>0.20</b>	0.20	0.20	0.20
25,000 – 40,000 km	0.11	<b>0.14</b>	<b>0.17</b>	<b>0.20</b>	0.20
More than 40,000 km	0.07	<b>0.10</b>	<b>0.13</b>	<b>0.17</b>	<b>0.20</b>

This measure is designed to encourage lower kilometres. However, this proposal will actually work in the favour of taxpayers who drive less than 15,000 kms per year as it will make salary packaging a vehicle a more attractive proposition. (10/5/2011)

### PAYG Instalments Reduction

The Government will reduce the 'inflation factor' of PAYG Instalments to 4% for the 2011/12 year (down from 8%). Where taxpayers elect to pay instalments based on the Commissioner's instalment amount, this amount is calculated on the previous year's taxable income plus an uplift of 8%. This uplift will be reduced to 4% for the next financial year. (1/7/2011)

### Company Tax Losses

The ATO have already announced an education program followed by active compliance monitoring of companies with tax losses. A company must satisfy either a 'continuity of ownership' test or a 'same business test' in order to use tax losses carried forward. The ATO will be closely monitoring these losses over the coming years. The continuity of ownership test will be modified to make it simpler to apply where interposed widely held entities exist and the changes will also provide that the test does not need to trace through certain superannuation funds. (1/7/2011)

Special provisions will be introduced for companies owning infrastructure projects of 'national significance'. These companies will not be required to satisfy the loss tests and the value of the losses will be uplifted at the Government bond rate to ensure the value of the losses are not eroded by inflation. (1/7/2013)

### Farm Management Deposits

Primary Producers affected by natural disasters will be able to access their farm management deposits within 12 months of making a deposit without losing their concessional tax treatment. (1/7/2011)

The law will also be amended to confirm that trust beneficiaries can use primary production averaging and farm management deposits in a loss year. This reinstates the previous treatment following the ATO's change of view after Bamford's case on trusts last year (a win for the tax payer). (1/7/2010).



### Extension of look through treatment for instalment warrants

Previously, the Government had announced that instalment warrants being single exchange traded securities would not realise a capital gain upon payment of the final instalment. This treatment will now apply to all instalment warrants over direct and indirect interests in listed and unlisted securities. (1/7/2007)

### Other minor amendments:

- Amendments to debt/equity rules to improve integrity provisions
- Minor amendments to securities lending arrangements where the borrower becomes insolvent
- Improving scrip for scrip roll-over and small business integrity rules applying to trusts
- Managed Investment Trusts regime deferred until 1/7/2012
- Tax breaks for green buildings deferred until 1/7/2012
- Increase to Medicare Levy thresholds

## GST Measures

### Taxable Supplies of residential premises under development leases

Following a decision in the Federal Court in the Gloxina Investments case, the GST law is to be amended to confirm that the sale of new residential premises constructed under a development lease will be treated as a taxable supply. (3/10/2007)

Granting of individual strata lot leases over newly constructed residential premises is not sufficient to make future supplies of the premises input taxed. Change in property title arrangements will not result in the premises once again becoming new residential premises. (1/7/2000)

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### Businesses in a net refund position can access the GST instalment system

Currently, only small businesses with a net payable position can choose to pay GST by quarterly instalments. Businesses in a net refund position cannot currently access the instalment system.

The Government will amend the law to provide access to businesses in a 'net refund position' such that the business will have zero quarterly instalments and can access any refund (or make any payment) at the time of the annual reconciliation. This will reduce the amount of compliance for businesses throughout the year, and will apply from date of royal assent.

### Delay of 2009-10 Budget measures

A number of previously announced administrative measures around administration of GST were to commence from 1 July 2011. These have now been delayed until the date of royal assent of the legislation (when introduced).

These measures include:

- Adopting the income tax self assessment regime for indirect taxes
- Reforming the 'change of use' adjustment rules
- Clarifying tax treatment of tax law partnerships; and
- Simplifying grouping rules



## Tax Compliance

### Contractors

Certain businesses will be made to report payments to all contractors in the building and construction industry. This may also be extended to contractors in the cleaning industry. Currently, businesses are required to withhold PAYG from contractors who do not supply ABNs and report at year's end, but do not report payments to contractors with ABNs. These measures are designed to improve compliance from contractors who are unaware of their obligations or deliberately under report their tax. (1/7/2012)

### Government Grants

The ATO will monitor recipients of Government Grants to ensure they are correctly reporting the income received.

### Tax refund fraud

The ATO will increase its focus on tax refund fraud by monitoring refunds before they issue. This will no doubt lead to further delays in large refunds.

### Phoenix Activities

The director penalty regime will be extended so that directors become personally liable for their company's failure to pay employee superannuation contributions. The director penalty rules will be further amended to provide the ATO with additional recovery powers in relation to certain liabilities that remain unreported after three months of becoming due. Further, in certain circumstances, directors will be prevented from claiming their personal tax credits where the company has failed to pay withheld amounts to the ATO. (1/7/2011)

This last point could have significant impact on employee directors. We will provide further correspondence on this in coming months.



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# Charities

### New Government Body to administer Charities

A new statutory agency, the 'Australian Charities and Not for Profits Commission' (ACNC) will be introduced to determine the status of groups seeking charitable benefits. The ACNC will be the sole agency for determining charitable and not for profit status of a group for the purpose of all Government agencies. (1/7/2012).

### New definition of 'Charity'

A statutory definition of 'charity' for all Commonwealth laws will be introduced. This may impact on some existing not for profit organisations who may not meet the new definition. (1/7/2013)

### Tax concessions of charities and not for profit organisations

The Government provides income tax exempt status, GST and FBT concessions to various charities and not for profit organisations. Often, these organisations will run an unrelated 'commercial activity' to raise funds for the organisation.

Where the profits raised are not directed back to the charity's altruistic purposes, the Government proposes that the charity will now pay income tax on those profits and will not be able to claim GST and FBT concessions in relation to the commercial activities. These rules will initially only apply to new unrelated commercial activities commencing after 10 May 2011, but existing activities will be transitioned into these rules. An activity that is 'commercial', but is directly related to the altruistic aims of the organisation should not be adversely affected by these rules (eg a not for profit hospital charging for services provided, not for profit child care centres etc). (1/7/2011)

### Final Comment:

*While many of the budget measures were previously foreshadowed, either in 'press leaks' or in the Henry Review, it is disappointing that the commencement date of some measures is still a couple of years away. Conversely, this will hopefully provide the Government with sufficient time to pass legislation to provide taxpayers with certainty about the law. As an example, at the time of writing, legislation to change Australia's Research and Development (R & D) tax rules is still before Parliament and is due to apply from 1 July 2010. This legislation was initially announced in the 2009/10 budget, some three years ago.*

