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Gadens' view of the Federal Budget

2021/22

The good, the bad and the ugly of pandemic budgeting

The Government's second pandemic era Budget continues the theme of massive deficits being used in part to accelerate investment in productive assets and fund other targeted relief. Amongst the "good" news however lurk several "bad" and "ugly" measures which will result in varied impacts across our client base.

Unfortunately, the continued simplistic focus on asset write-offs leaves intact Australia's headline tax rates and a complex system in need of systemic reform. The need for a patent box regime, whilst in itself welcome, is also testament to the inherent uncompetitiveness of our tax system.

In our critique of the Federal Budget, the Gadens Tax Team highlight below the key implications of the Budget measures for you and your business.

The Good – asset write off

The full expensing of new depreciable assets has been extended by an extra year, the acquired assets now have until 30 June 2023 to be used or be installed ready for use. This will particularly assist larger scale projects with long lead times, but also assists recurrent purchasers of new assets.

When the write off was first announced we described it as effectively abolishing tax depreciation for groups with less than $5b turnover, and replacing it with a simple expense deduction. The Government continues to label it as "temporary" expensing but it seems to be addicted to some form of instant write-off so it won't surprise to see an ongoing use of it in some form, given the apparent aversion to more systemic tax reform.

The measure has obvious short term benefits for taxpayers but will result in higher effective tax rates going forward as it replaces tax depreciation that would have otherwise been available in later years.

The Good – M&A

The current boom in small to mid-market M&A will be further fuelled by the parallel one year extension in the full expensing of acquisitions of existing assets.

This is an incentive which is limited to asset deals, and to acquirers with less than $50m turnover. It is not typically available in share deals or larger transactions as this would likely require an unsuitable level of deal structuring.

The Good – tax loss carry back regime

The Government has also extended this regime to company tax losses incurred in FY 2023, which can be carried back and offset against profits going back to FY 2019. It is only available if there are sufficient franking credits to absorb the prior year tax refund, but it's a very sensible measure and would be a worthwhile systemic reform if made permanent.

The Good – employee share schemes

A welcome development is the removal of cessation of employment from being an automatic trigger for taxing employees on employee shares and options that are subject to deferred taxation.

The change will only be of practical benefit where the employee is entitled to keep their shares or options when they cease employment, which is often not the reality. A much more effective change to encourage employee share ownership would be the application of the CGT discount concession to the deferred gain, similar to the treatment available for start-ups.

The Good – new opportunities to top up your super

Two new measures will allow many Australians to ensure that their superannuation balances are as healthy as possible before commencing to draw a tax free income stream.

The eligibility age to make downsizer contributions has been reduced from 65 to 60, likely with effect from 1 July 2022. The 60+ group will be able to make a one-off, post-tax superannuation contribution of up to $300,000 from the proceeds of selling their home ($600,000 per couple). Importantly, contributions do not count towards non-concessional contribution caps.

In addition, the 'work test' requirement has been partially removed for the 67 to 74 age group, meaning that likely from 1 July 2022 they will no longer have to work at least 40 hours over a 30 day period in order to make some voluntary contributions. Unfortunately this opportunity applies only to non-concessional and salary sacrifice contributions, the work test will still apply to deductible contributions.

The Bad – not-for-profits

The Australian not-for-profit sector is set for a shake-up, with not-for-profits that are not charities required to lodge an annual substantiation with the Australian Taxation Office from 1 July 2023 to support the self-assessment of their tax exempt status.

Historically it was intended that all not-for-profits would come under the regulation of the Australian Charities and Not-for-profits Commission (ACNC), however at this stage only not-for-profits that are also charities remain being regulated by the ACNC numbering some 60,000 or so registered charities. Not-for-profits that do not fall within a charitable category have been left alone to continue self-assessing their eligibility for income tax exempt status without an obligation to report to the ATO.

This budget measure will mean a dramatic change for non-charitable not-for-profits who have an active ABN (which is compulsory where turnover exceeds $150,000). The change will result in a significant compliance burden across this segment of the not-for-profit sector, with many participants potentially set to lose their tax exempt status.

The Ugly – tax residency for individuals

The Government has embarked on a complete replacement of the rules which govern individuals becoming and ceasing to be residents for Australian tax purposes, likely effective from 1 July 2022. This has the potential to affect countless prospective individuals planning to arrive or depart Australia and requires careful planning consideration.

The redesign is so pervasive it will result in many winners and losers from the reforms. Australian citizens who populate the tax havens of the world in vast numbers appear set to reconnect substantially with Australia without jeopardising their prized non-resident status.

On the other hand prospective departees from Australia appear to have a minimum 2 year gap from departure before they can achieve non-resident status. This would disadvantage those who can currently qualify for non-resident status immediately on departure, potentially leading to a perverse acceleration of the outward migration of Australia's entrepreneurial talent in the lead up to the new regime.

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