2021-22 Federal Budget

If it feels to you like it can't possibly be Budget time again, you're not alone. The Federal Treasurer Josh Frydenberg handed down the 2021-22 Federal Budget last night - a mere seven months after last year's announcement, which was postponed from May to October due to the coronavirus pandemic. This year there's a big focus on employment, infrastructure and spending initiatives in things like essential services and disability support. Taxation and revenue measures for the most part take the form of extensions to existing concessions, although there are a couple of nice tweaks in the superannuation space. Significantly, there are no significant new taxes or revenue raising proposals.

Here's a few of the highlights.

- Extension of full expensing for depreciating assets
- Temporary loss carry-back extension
- Employee Share Scheme adjustments
- Work test changes
- 'Bring forward' option to be made available for under 75s
- Age limit for 'downsizer' contributions to be reduced
- First Home Super Scheme to be extended
- $450 SG contributions threshold to be removed
- Low and Middle Income Tax Offset extended
- Low Income Tax Offset also extended
- Removal of the $250 self-education deduction threshold
- Changes to tax residency rules

Business

- **Extension of full expensing for depreciating assets** - Last year's Budget lifted the lid on what had previously been a gradual increase to the instant asset write-off limit, which allows a business to fully deduct the cost of a depreciating asset in the year of purchase (rather than depreciating it over a number of years). The full cost of any depreciating asset purchased after 7:30pm, 6th October 2020 could be deducted in the year that it was first installed and ready for use (you can read our complete summary here). This applies to businesses with an annual turnover of less than $ 5 billion and was to run until 30th June 2022. The announcement last night extended this cut-off date for another 12 months, which now allows business to access this significant cash-flow benefit until 30th June 2023.

  Although we probably sound like a broken record by now, it would be remiss of us not to include our usual 'word of warning' that goes with every increase to the instant asset write-off threshold. This is only a timing benefit, in that it brings forward into a single year deductions that a business would be otherwise entitled to over a number of years. It's a great cash-flow boost, but business owners should be wary of spending money they don't have to access it, as there is no actual net benefit.

- **Temporary loss carry-back extension** - Another stimulus measure announced in last year's Budget was the re-introduction of the loss carry-back rules. We provided a detailed analysis of this at the time. In a nutshell, 'carrying back' a loss means that where applicable, when a company makes a loss (it's only available to businesses that operate through a company structure), it can offset that loss against certain prior year profits. This is instead of the usual practice of having to carry a loss forward to indefinite future years when/if profits are made. The measure has the effect of creating a tax refund in the loss year, and is particularly good support for otherwise profitable businesses that are under temporary duress due to the pandemic. Under the measures announced last year, losses made in the 2019-20 and 2020-21 and 2021-22 years can be offset against prior year profits from the 2018-19 year onward. This has now been extended for an additional year, to include losses made in the 2022-23 income year.

  There's obviously no immediate benefit in this announcement (and for the instant asset write-off extension), and in a rapidly improving economy, all announcements about future benefits are potentially subject to change prior to coming into effect.

- **Employee Share Scheme adjustments** - The Government will remove the ‘cessation of employment’ taxing point for employee share schemes, which means that an employee will not have to pay tax on shares simply by reason of leaving the employment of the scheme provider. Tax will still become payable at other trigger points as it was previously. There are also a few other tweaks being made to simplify the disclosure requirements of Employee Share Schemes.

Superannuation

- **Work test changes** - In a move that will be welcome news to many planning for retirement, the 'work test' for voluntary super contributions will become much more limited from 1st July 2022. This rule currently applies to those aged between 67 and 74 years who want to make contributions (concessional or non-concessional) to superannuation. To do so, they must demonstrate that they have worked at least 40 hours over a continuous period of no more than 30 days - the 'work test'. This makes it impossible for those who have retired, for example, to put money away into the relatively generous tax environment of super. Removing the work test will open up opportunities like these to older Australians (subject to other existing limits).

  There is a significant caveat to the benefit of this change, however, which is that the work test will only be abolished for concessional contributions (i.e. those made before tax) if they are salary sacrificed. A person making voluntary contributions, that they want to claim a deduction for in their income tax return, will still have to pass the work test. Let's stop to process that for a moment. If a person is aged over 67 and still working, it doesn't matter whether the work test is abolished or not. They're working, and so can make voluntary concessional contributions anyway. The work test is really only relevant where a person has effectively stopped working (or close to it). But if a person has stopped working...how do they salary sacrifice their super contributions?

- **'Bring forward' option to be made available for under 75s** - In addition, the 'bring forward' rule for non-concessional contributions will be made available to those aged up to 74 years. For an explanation of the difference between concessional and non-concessional contributions, and the 'bring forward rule', take a look at our recent article. The opportunity to bring forward three years of non-concessional contributions was previously unavailable to those aged over 67 years, even where they met the work test (and in fact, a previous announcement that this threshold was to be extended from age 65 to 67 is still yet to pass the Senate). This change is also expected to take effect from 1st July 2022.

  Right now these two announcements are of the type that make for a great headline, but won't come into effect for some time. That's time to defer, adjust or abandon in future Budgets, particularly where there is a change in Government (which may be possible in the next year) and certainly if the economic outlook changes or Government priorities shift. These changes are important, so we can only hope that the legislation passes as promised.

- **Age limit for 'downsizer' contributions to be reduced** - The so-called 'downsizer' contribution is an initiative that allows eligible individuals to contribute up to $300,000 per person from the proceeds of selling a home. The opportunity is available to those aged 65 years and older. This age limit will be reduced to 60 years, to take effect in the first income year after the relevant legislation receives royal assent (expected to be by 1st July 2022).

- **First Home Super Scheme to be extended** - The amount of voluntary superannuation contributions that can be released to help those eligible buy their first home under the First Home Super Scheme (FHSS) will be increased from $30,000 to $50,000. The date of effect is expected to be 1st July 2022 but will depend on when the relevant legislation receives royal assent.

- **$450 SG contributions threshold to be removed** - An employer is currently only required to pay Superannuation Guarantee (SG) contributions for employees who earn more than $450 per month. This threshold has been in place since SG was introduced in the early 90s, when many more employees would have earned too little per month to qualify. These days most employees earn more than $450 a month, even many uni students working casual jobs. This limit will now be abolished so that all employees will be entitled to the minimum SG contributions from their employer on the first dollar of income earned. The result will be a relatively small impost on most employers, but may result in the creation of some exceptionally small superannuation fund balances. The date of effect will be the first income year after royal assent, which is expected to be the year commencing 1st July 2022.

  It's worth noting here too that although not a Budget announcement, the SG rate will increase from 9.5% to 10% on 1st July 2021. Some had expected this to be deferred but the Budget announcement was effectively silent on it which means the rate increase will proceed as legislated.

Personal Tax

- **Low and Middle Income Tax Offset extended** - The Low and Middle Income Tax Offset (LMITO) will be retained for another year to include the 2021-22 year. Previously the 2020-21 year (i.e. this current financial year) was to be the last year it could be applied. This complex offset provides a rebate of tax for those with taxable income between $37,000 and $126,000 per year, starting at $255 and incrementally increasing to $1,080 for those with taxable income between $48,000 and $90,000 per year, before gradually decreasing to zero for those with more than $126,000 in taxable income.

- **Low Income Tax Offset also extended** - The Low Income Tax Offset (LITO) will also continue into the 2021-22. This is a separate rebate which provides $700 for those with taxable income of less than $37,500 per year, and gradually reduces to nil for those with taxable income of more than $66,668 per year.

- **Removal of the $250 self-education deduction threshold** - For as long as most of us have worked in tax, the first $250 of relevant self-education expenses has been non-deductible. It's an almost timeless, immutable restriction that was nevertheless head-scratchingly arbitrary. The Government has finally announced that the exclusion of the first $250 of any self-education claim will be abolished, such that relevant self-education expenses will now be deductible in full. The date of effect will be the first income tax year after the applicable legislation receives royal assent.

- **Changes to tax residency rules** - The rules that determine whether a person is a 'resident' for income tax purposes are notoriously difficult to apply to the unique circumstances of many individuals. They're one of the most common tax-related matters debated in the courts, and have developed to the point where almost every individual case is different. These rules will be simplified down to a basic 'primary' test - if an individual is physically present in Australia for more than 183 days in an income year, that person will be considered a resident for tax purposes. Where this test is not met, secondary tests will apply, including physical presence and other objectively measurable criteria. Whilst the intent is welcome, it remains to be seen whether this will help simplify things in practice, as residency is often challenged by the ATO in court and is made more complicated as much by subsequent case law, rulings and practice guidelines as it is by the underlying legislation. The new rules will take effect in the first income year after the applicable legislation receives royal assent.

Our take...

Most of the attention-grabbing headlines for this Budget have been about macro-economic spending initiatives, which is generally not our area of expertise. Investment in people and infrastructure, done right, paves the way for a stronger economy into the future. The question is always whether these investments are of the type that will yield significant long-term returns. And is the unprecedented level of debt needed to pay for them worth the cost? Only time will tell. We applaud the Government's increased spending on aged care, women's health & safety, and mental health, but we also note that once again, foreign-aid spending will decrease in this Budget, from the already low levels of the last few years. Australia's contribution is now lower than many other developed nations, at a time when it is perhaps needed more than ever.

For small-medium business owners, the news is a bit light on this year. That's not always a bad thing. A little stability makes a nice change from the perpetually shifting ground of the last few years, and the continuation of some important stimulus measures should provide additional future support for what will still be trying times for many.

One thing that is absent from this year's Budget, however, and that almost certainly underpins long-term, sustainable economic growth, is a tax system that is simple and efficient. This is a tremendous time to fix Australia's burdensome compliance regime and remove administrative disincentives for business, by unshackling business owners and allowing them more freedom to do what they do best. Unfortunately, the great hope of real tax reform is once again absent for the most part from this Budget, and in the current climate, this seems like a lost opportunity.

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