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New government's likely tax and super changes

With a new Coalition government in Canberra, several aspects of the economic environment, both for businesses big and small as well as for individuals, look likely to change in the near future.

While specific details are still to be formulated and released, there are several known policies that the Coalition have outlined and that are likely to become a part of our collective tax and super landscape.

Taxation changes

Company tax rate reduction

One of the key planks of the Coalition tax platform is the promise of a 1.5% cut to the company tax rate, bringing it down to 28.5%, which will be effective from July 1, 2015.

The pledge also has a follow-on effect for small businesses however, as under the Coalition's paid parental leave scheme bigger businesses would be required to pay a 1.5% levy to cover the cost. This leaves smaller concerns with the cut, but not the levy — although larger businesses will not pay any more tax than at present.

The new government's paid parental leave scheme plans to offer 26 weeks at existing pay (up to a salary cap of $150,000) along with superannuation, and will be funded by the levy. Unlike the incumbent scheme, the Coalition aims to relieve businesses from acting as paymasters. Instead, every payment will be made through the government.

Car fringe benefits

The Coalition also pledged to ditch Labor's proposed toughening of the FBT treatment of salary packaged cars which are leased for personal use. With the election result confirmed, this won't go ahead.

Removal of certain tax concessions

There are some plans that may have an adverse impact on small businesses.

The Coalition has pledged to wind back the increased asset write-off threshold, and get rid of the accelerated car depreciation rules as well. The rise in the instant asset write-off to $6,500 allowed a small business to immediately reduce its tax bill instead of spreading the write-off out over three years in a depreciation pool. This is likely to be wound back to $5,000 under Coalition plans.

The loss carry-back scheme is also on the Coalition's chopping block. This was only legislated days before the end of the last financial year, and allows small businesses to "carry back" losses to offset past profits, giving them a tax refund up to a cap of $300,000 each year from tax previously paid.

Discontinuing the loss carry-back will give the Coalition $900 million over the four-year forward

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About this newsletter

Welcome to our client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us via the details below.

T: 02 9686 3130 | E: glenn@gjbarnett.com.au
W: www.gjbarnett.com.au

Also in this issue:

estimates, while discontinuing the instant asset tax write-off will give it $2.9 billion over the same period.

Other new government tax policies include the following:

- rescind the carbon tax, without changing the current income tax thresholds and the current pension and benefit fortnightly rates
- rescind the Minerals Resource Rent Tax (mining tax)
- publish a white paper on tax reform (while ruling out any increase to the GST, although the consumption tax will still be part of the proposed review).

Superannuation

Superannuation guarantee

The major tweak regarding superannuation policy from the Coalition is a slower phase-in of the increase to the superannuation guarantee. From the 9.25% at present (it was 9% until July 1 this year), the previous government's plan was to increase the compulsory super rate annually until it reached 12% by July 2019. This will now be delayed until July 2021.

Other new government superannuation policies include the following:

- develop an appropriate process to address all inadvertent breaches of the contribution caps where the taxpayer can show that their mistake was genuine and the error would result in a disproportionate penalty
- revisit concessional contributions caps and incentives for low income earners, such as super co-contributions, once the government's budget is back in a strong surplus
- review the minimum payment rules relating to account based pensions to assess their adequacy and appropriateness
- shift the job of administering superannuation from employers through having compulsory superannuation payments remitted directly to the Tax Office at the same time as employers remit their pay-as-you-go (PAYG) payments.

Will proposed super measures from the previous government be kept?

The new government's plans for certain inherited superannuation measures that are yet to take effect are not yet known — although the Coalition has stated that it intends to make no unexpected detrimental changes to either taxation arrangements on super or other related regulatory arrangements.

Pension earnings over $100,000: It is as yet unclear what the new government plans for Labor's proposal, announced last April, to tax at 15% from next July the now tax-exempt investment earnings of superannuation assets from which a pension is being paid to an individual where earnings attributable to the pension exceeds $100,000 for the year.

Income deeming rules: Another initiative from the previous government that is yet to take effect, and is not yet clear if it will, is a proposal to extend the "deeming rules" that currently apply to the Age Pension income test so they apply to new superannuation fund-based pensions.

Under present Age Pension rules, if you own financial investments such as shares and term deposits, and you plan to claim the Age Pension, part of the eligibility considerations includes the income from these investments.

Under the deeming rules, the government assumes financial assets are earning a certain amount of income, regardless of the income they actually earn. Deeming thereby works to reduce the extent that pension, benefit or allowance payments vary.

While nothing is set in concrete regarding the above, which are subject to review by the new government, we will keep you informed as details come to hand.

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Other proposed measures

The Coalition's superannuation policy document indicates however that it does not agree with the following changes that the outgoing government made during its term:

- lowering concessional contribution caps to $25,000 and freezing the indexation of the cap
- reducing the maximum co-contribution to $500 and reducing the eligibility thresholds
- introducing a new tax on superannuation for individuals earning more than $300,000.

The Coalition had also resolved to abandon the low income superannuation contribution (a $500 yearly government payment to the super funds of people earning less that $37,000) but there has been to date no further word on this.

We will let you know further news on these possible changes as information comes to hand.

Other commitments

Many small businesses will welcome the Coalition's commitment for all government departments and agencies to pay small business suppliers on time within 30 days, and if the payment deadline is not met apply interest at the same rate as the "general interest charge" applied by the Tax Office to late tax payments.

Red tape: The Coalition has made regulation and red tape a big part of its pledge to small business. It has set a goal of saving $1 billion every year by eliminating unnecessary expenses, and has even stated that it would set aside two sitting days dedicated to getting rid of unnecessary regulation, and will link red tape reduction targets to government departmental performance.

Part of the red tape reduction push includes; having employers remit the super guarantee directly to the Tax Office with their regular PAYG payments, streamlining superannuation reporting, and encouraging the Tax Office to make greater use of technology to deal with small business queries.

Employer involvement in the new parental leave arrangements will be eliminated. Unlike the incumbent scheme, the Coalition aims to relieve businesses from acting as paymasters, with every payment instead made through the government. Also environmental regulations that are largely duplicated between state and federal levels will be erased.

Broadband network: The Coalition changed its policy on the national broadband network (NBN) earlier this year. Rather than oppose the project, the NBN rollout under the Coalition will continue, but with a significant change. The Coalition version of the NBN does not favour a fibre-to-the-premises option, rather it will be fibre-to-the-node, with final connections made to your business (and your home) via the existing copper network. Businesses and individuals will be able to choose to connect their premises to the node with fibre, but it will cost – and the cost of this connection is still unknown.

Skills and education: A significant Coalition policy in this arena is a new HECS-style apprenticeship support scheme, which will cost $80 million. According to the proposals, apprentices will be able to borrow $20,000 under the scheme for tools and equipment, to be distributed across four years. Finishing the training triggers a discount. Other education policies include creating an infrastructure fund for schools (dependent on a budget surplus), along with appointing the Productivity Commission to conduct a review of the child care system. ■

Can you claim a deduction for home to work travel?

Did you know that you may be entitled to claim some of the expenses you outlay while travelling between your home and your regular workplace, or even to your alternative workplace?

While claiming such work travel tax deductions are certainly possible, such claims can be a minefield that needs to be navigated very carefully so as to not end up in hot water with the taxman.

So what then is generally allowed as a deductible "travel expense"? Individuals are typically able to claim a tax deduction for work-related travel expenses. As a general rule, travel from your home to your workplace is not allowed as a deduction because it constitutes a "private expense". There are however specific situations where this rule does not apply.

We shed some light below on what does and doesn't constitute a travel deduction between home and work and between different workplaces.

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What you can claim

You can generally claim the cost of travelling:

- directly between two separate workplaces; for example, when you have a second job
- from your normal workplace to an alternative workplace: for example, a client's premises while still on duty and back to your normal workplace or directly home
- from your home to an alternative workplace for work purposes and then to your normal workplace or directly home
- if your home was a base of employment – that is, if you started your work at home and travelled to a workplace to continue your work for the same employer (see comments below)
- if you had shifting places of employment – that is, if you regularly worked at more than one site each day before returning home (see comments below), and
- if you need to carry bulky tools or equipment that you used for work and can't leave it at your workplace – like an extension ladder if you're a tradesperson or a cello if you're a musician.

Can you count your home as a workplace?

You cannot count your home as a workplace unless you carry out "itinerant work"; that is, work that requires you to go from place to place. If you do itinerant work or have shifting places of work, you can claim the cost of driving between workplaces and your home.

The following factors may indicate that you do itinerant work:

- travel is a fundamental part of your work, as the very nature of your work, not just because it is convenient to you or your employer
- you have a "web" of workplaces you travel to, throughout the day
- you continually travel from one work site to another
- your home is your base of operations – you start work at home and cannot complete it until you attend at your work site
- you are often uncertain of the location of your work site
- your employer provides an allowance in recognition of your need to travel continually between different work sites and you use this allowance to pay for your travel.

Common examples of such workers would include commercial travellers and government inspectors whose homes are the base of their operations from which they travel to one of a number of locations throughout the day over a continuing period.

Typically in these cases, the employee will show up at the employer's office periodically (like once a week) to complete or file reports, pick up supplies or organise future trips.

Travel from home to the office and back made in these limited circumstances will be treated as business travel, and as a result are tax deductible.

What you can't claim

You generally can't claim the cost of travelling between work and home just because:

- you do minor work-related tasks – like picking up the mail on the way to work or home
- you have to drive between your home and your workplace more than once a day
- you are on call – for example, you are on standby duty as a locum and your employer contacts you at home to come into work
- there is no public transport near where you work
- you work outside normal business hours – for instance, shift work or overtime
- your home is a place where you run your own business and you travel directly to a place of work where you work for somebody else, and
- you do some work at home.

We have provided three examples below adapted from the Tax Office to elucidate what can and cannot be claimed when it comes to home to work travel.

Example 1: Travel between jobs

Bhakti works as a clerk at a large departmental store in a suburban shopping centre, but she also has

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employment at a second job. She drives her car from her primary workplace to her second job as a waiter. After finishing work as a waiter, she goes directly home.

Yes, Bhakti can claim the car expenses from her normal workplace to her second job. However, she can't claim the cost of going home from her second job.

Example 2: Travel to an alternative workplace

Jana, a dental assistant in the city, is required to attend meetings at her employer's other clinic in the suburbs. She drives her car to the suburban clinic. As the meetings finish late, she drives straight home.

Yes, Jana can claim the cost of each journey.

Example 3: Work from home

Benjamin's employer has an office in the city but is happy for him to work from home three days a week. On these days, Benjamin sometimes has to drive into the office for a meeting before returning home to work.

No, Benjamin cannot claim the expense of driving between his home and work as it is a private expense.

The above are only straightforward examples though. There will be cases where taxpayers find claiming a deduction is less clear.

Consult this office for more information on what home to work travel deductions you may be able, or may not be able, to claim. ■

Did you know your footy hero has more tax deductions than you do?

No one's exempt from having to pay taxes – not even your favourite sports stars who may play in the rugby league, rugby union, soccer or Australian Rules football.

Players in our great football codes may have hung up their boots for this season, and many may finally be catching up with their tax returns. A recent guide released by the Tax Office for such footballers reveals some interesting things about their tax affairs.

What unusual deductions are available?

Broadly speaking, individuals are allowed to claim a tax deduction for their expenses if they are able to demonstrate that such costs are directly related to their income earning activities (eg. salary income).

In a Tax Office guide developed for footballers, there are some unusual deductions that professional sportspeople may be entitled to claim in their tax return.

These include:

- protective headgear and mouthguards
- upgrade costs for accommodation and travel, where the club has paid the basic cost and the sportsperson has opted for an upgrade at their own expense
- luggage if it is used for work-related purposes, such as transporting gear used to play an interstate game
- club emblems or embellishments, standard matching shorts or tracksuits, hats or caps with club emblems, jerseys and jumpers with club emblems, and suits that are similarly emblazoned with club emblems
- sunglasses, sunscreens, hats and sunscreen lotions
- gym fees, and gym and training equipment that cost $300 or less, and
- fines, penalties and legal expenses for "on-field" conduct and tribunal decisions.

The Tax Office however considers that footballers generally cannot claim deductions for the following:

- "conventional clothing" such as tracksuits, shorts, tank tops, running shoes, sweat socks, armbands, headbands and t-shirts
- cosmetics, shaving products, deodorant, general hair products, general skincare products and hairdressing
- a program that is specifically designed to manage weight
- normal food substitutes or foods for special dietary purposes
- vitamins, minerals or sports supplements used pre- or post-game, such as protein shakes, and
- fines, penalties and legal expenses for 'off-field' breaches.

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What sort of income do footballers earn?

Just like the typical individual taxpayer, professional footballers need to show all assessable income they received during the income year, but their income may include items that are not found on an average individual's tax return.

The Tax Office guide outlines certain income that may also need to be included in assessable income:

- bonuses – including match payments
- income for services they provide – for instance, private sponsorship or endorsement contracts
- income from running a business – for instance, commercial activities surrounding their public fame, celebrity or image outside of the terms of their playing contract
- income-protection insurance payments received due to injury
- payments from sponsors topping up their playing contracts
- retirement fund payments
- prizes and awards – for instance, "player of the match" awards
- public appearances, product promotions and endorsement payments
- representative player payments
- sign-on fees, and
- sponsorship payments – for instance, from footwear sponsorship.

In some situations, footballers may even need to show in their tax return non-cash benefits that they, their spouse or children received because of their sporting activities or their profile. A benefit could be:

- the use of something – such as a car, house or equipment
- ownership of something – such as items of clothing or a mobile phone, and the
- enjoyment of a privilege or facility – such as staying at a holiday house.

This is particularly so from sponsorship or business arrangements. Where these benefits are provided by their employers, these may instead be included as a "reportable fringe benefit" in the payment summary of the sports person under certain conditions. ■

Foreign and temporary residents — there's no longer any CGT 50% discount

Individuals are generally entitled to a 50% discount on a capital gain where a CGT asset (such as a property) is disposed, provided that the asset is held for at least 12 months. However a recent change has altered the tax treatment for some taxpayers.

By way of background, foreign and temporary residents are required to pay CGT on "taxable Australian property" (TAP) only.

This term has a wide definition – including Australian land holdings held directly or indirectly (eg. via units in a unit trust), but certain other assets may also constitute TAP — consult this office for more examples.

The government has changed the rules so that restrictions to the 50% discount now apply to foreign and temporary resident individuals. The measure was originally announced in last year's Federal Budget on May 8, 2012 and became law on June 29, 2013. It applies from the Budget announcement date.

What were the previous rules, and who is affected?

This discount was previously available to all individual taxpayers irrespective of residency status. Specifically, the change affects individuals (including a beneficiary of a trust and partner in a partnership) who are:

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- a foreign or temporary resident (*important*: if you are unsure about your residency status, consult this office)
- an Australian resident with a period of foreign residency after May 8, 2012, and
- in receipt of a discount capital gain from a CGT event (eg. disposal of the asset) that occurred after May 8, 2012.

Bear in mind that you are not affected by this change and the full 50% CGT discount is available if:

- the CGT event occurred before May 9, 2012, and
- you have been an Australian resident at all times on or after May 8, 2012.

How do the changes affect foreign or temporary residents?

Temporary and foreign residents will still be entitled to a CGT discount on capital gains accrued before May 9, 2012 provided they choose to obtain a market valuation for their assets as of that date (ie. a "market value approach").

This will apportion the CGT discount to take into account the capital gain that they have accrued before May 9, 2012.

Key differences are summarised in the table below.

- the residency of the individual during the period the asset was held after May 8, 2012.

For assets acquired after May 8, 2012 by an individual who was a foreign or temporary resident for the entire period the asset was held, the discount percentage will be zero because such individuals are no longer eligible for the CGT discount.

How do the changes affect Australian residents?

You must calculate the CGT discount you can apply to the capital gain you have if you are an Australian resident and, after May 8, 2012, you have:

- a capital gain from a CGT event, and
- a period of foreign or temporary residency.

Old law	New law
The 50% discount applicable to a discount capital gain of an individual was available irrespective of the residency of the individual	The 50% discount applicable to a discount capital gain of an individual will be reduced if: • the CGT event from which the capital gain arises occurs after May 8, 2012, and • the individual was a foreign or temporary resident at any time in the period after May 8, 2012 and the time of the CGT event.

Timing is critical

Where a CGT event (eg. disposal) does occur after May 8, 2012, access to the CGT 50% discount depends on:

- whether the asset was held on, or was acquired after, May 8, 2012
- if the asset was held on May 8, 2012, whether or not the individual was a resident on that date
- whether a choice is made by an individual who was a foreign or temporary resident on May 8, 2012 to use the market value approach to determine the part of the discount capital gain that accrued on and prior to that date, and

The period of foreign or temporary residency after May 8, 2012 is taken into account when calculating the CGT discount.

It is worth noting that where an Australian individual becomes a foreign resident, the amendments will only apply in circumstances where the assets involved are TAP (see above), including where the individual has chosen to disregard the CGT event triggered by their change in residency status (in tax talk, referred to as a CGT event I1).

The calculations under the new law are complex. Consult this office to determine your eligibility and to calculate the amount of any CGT discount available. ■

SMSF estate planning and death benefit nominations

Establishing an SMSF is a clear sign that you know the importance of planning for the future. But one other central consideration is to make sure you also plan for the time beyond your own lifetime.

One misconception many people have is that their normal "last will and testament" can be relied upon to distribute their estate, including money tied up in their SMSF. But the payment of such benefits upon the death of a member is done so in accordance to the governing rules of the fund, not according to the terms of a will.

This is why it is important for every member of an SMSF to direct how benefits are to be paid upon their death – and the death benefit nomination is the vehicle to make sure this is done.

A death benefit nomination is a written direction to the SMSF trustee that instructs the trustee to pay a member's entitlements to certain dependants and/or legal personal representatives (their estate) in the proportions the member wishes in the event of their death.

Binding or non-binding?

The nomination can be binding – that is, it leaves no discretion to the trustee about how or to whom benefits are paid – or non-binding. The latter notifies the trustee of the member's preferred beneficiaries and the division of benefits, but leaves the final decision to the trustee (unless the governing rules of the fund provide otherwise).

A fund without a valid binding nomination will end up having benefits paid out according to:

- the trust deed (if provisions are included), or
- see the trustee being guided, as appropriate, by any non-binding nomination, the late member's will or just simply exercising their own discretion.

The reasons some SMSF members may opt for a non-binding nomination can include their not having made their mind up about dividing up assets after death, or because they know that superannuation law dictates that benefits can only be directed to dependants or legal personal representatives anyway, or because as fellow SMSF members are family, the member assumes their benefits will end up in appropriate hands.

Also, leaving some discretion to the trustee allows for changed circumstances to be taken into account, particularly where a nomination was made some time ago and relationships or dependencies have changed in the intervening period. The trustee can also consider the tax implications of any particular benefit distribution when the time comes.

A binding death benefit nomination, as noted above, leaves no discretion to the trustee. Benefits must be paid out in strict accordance to the nomination, which can be used to ensure no disputes arise between feuding relatives, or to exclude wayward children or estranged children's spouses.

Also a binding nomination made for an SMSF does not have to be renewed or reconfirmed every three years (which is a legal requirement for other types of super funds). They are sometimes referred to as "non-lapsing binding nominations". However it has become accepted wisdom among superannuation industry circles that an SMSF member/trustee should consider refreshing a death benefit nomination every three years anyway, whether it is binding or non-binding – just to be certain and for further peace of mind, but also so that no future beneficiaries will have any reason to dispute or call into question a member's intentions.

Making a death benefit nomination binding potentially adds another ongoing requirement for members – to make sure the nomination is updated and continues to reflect your wishes should there be a change in family circumstances. Such changes can include the death of a dependant, the birth of a new dependant or the end of a relationship. Otherwise a binding nomination for an SMSF will remain in force until the member changes or revokes it.

Changing a death benefit nomination can be done at any time by completing a new nomination expressing the changed or new intentions of the member, and giving this to the trustee. The written notice needs to be signed and dated in the presence of two witnesses who are at least age 18, neither of whom is a nominee. Ask this office for help or guidance. ■