

3 March 2022

The Honourable Scott Morrison MP
Prime Minister
Parliament House
CANBERRA
ACT 2600

Dear Prime Minister,

Pre-Election Tax Submission

Tax and Super Australia (TSA) is a not-for-profit member organisation that has assisted tax and superannuation professionals for over 100 years. With a subscriber base of approximately 13,000, including 4,000 members, the organisation has evolved to meet the challenges of Australia's modern tax and superannuation system and remains at the forefront of educating and empowering today's tax and superannuation professionals.

The last 12-month period has continued to be a year of challenge and change for the majority of Australians. In meeting the personal and economic challenges that Australians have faced, the Government has provided much needed economic support which is unparalleled in recent times and has been the significant contributing factor in balancing the Australian economy and maintaining the businesses and workplaces of Australians to continue their economic well-being and health.

In doing so, the macro-economic position of the Government's fiscal balances has deteriorated and the repair of such will require the Government to consider implementing material reform of taxation policy, in order to meet both existing and future challenges.

We acknowledge the political and social challenges the Government will need to consider in reforming tax legislation that is a fundamental part of the economic and financial position of Australians.

To that end, our submission's objective is to provide you, in the process of the formation of the next Government, with practical reform options which in the current circumstances will enhance the key pillars of sound taxation policy, including equity, administrative efficiency and transparency.

Please find the detail of our submission at **Appendix A**.

A copy of the submission is also being forwarded to the Treasurer, while a separate letter is being forwarded to the Leader of the Opposition.

If you have any questions in relation to this submission, please contact Phillip London on 0400 819 698 or p.london@taxandsuperaustralia.com.au

Yours Faithfully,

A handwritten signature in black ink, appearing to be 'P. London', written in a cursive style.

Phillip London
Senior Tax Counsel

Appendix A

Fringe Benefits Tax

The Fringe Benefits Tax (FBT) system was introduced in 1986, in part to protect PAYG revenue and was implemented at a time when salary structures were generally provided in separate classifications (e.g. wages and salary plus the provision of a car plus separate benefits).

In current economic times, the increased prevalence of salary structuring of employee remuneration almost invariably provides for 'all up' remuneration to be the key parameter of reward and performance, including the salary sacrificing of certain non-cash benefits.

We understand that the benefits which provide the highest level of revenue to the Government are as follows:

1. Car Fringe Benefits.
2. Car Parking Fringe Benefits.
3. Entertainment Fringe Benefits.

The FBT compliance requirements placed on employers are burdensome. This arises due to the following:

1. The FBT year ends 31 March. This requires an additional compliance burden for an employer over that of income tax, GST and other tax imposts. The obtaining of financial data in a year of income that does not align with the employer's financial year, can be, and often is, problematic.
2. The FBT legislation is highly prescriptive and the preparation of an FBT return requires the consideration of every benefit that may be provided by an employer (including ad-hoc expense reimbursements, residual and property benefits). Whilst many such benefits are not taxable (as they are either 'otherwise deductible' for FBT purposes, or, are considered below certain non-taxable thresholds (the less than \$300 rule)), the process of compliance requires the employer to consider and determine each of the benefits provided for FBT purposes. Research shows that the compliance burden of the FBT falls disproportionately on smaller businesses.

A fundamental change in the administrative process of managing FBT since its introduction, is for employers/employees to enter salary sacrifice arrangements. Under these arrangements, it is generally the case that an employee will meet the liability of the FBT from their overall remuneration package, notwithstanding that the legal obligation for FBT is the employer's.

We therefore submit that the next Government consider a full and complete review of the FBT system with the object to:

1. Reducing the number of benefits that are subject to FBT. We are of the opinion that FBT should only be an impost with regard to the material benefits provided to employees (cars, car parking and entertainment).
2. Transfer the FBT liability to employees. By doing so, the employee potentially optimises the tax cost of the benefit provided as most employees do not pay the top marginal rate of tax, on which FBT is currently calculated on.

We would welcome the opportunity to work with the next Government in respect of any proposal to review and reform the FBT system.

Taxation of Trusts

The taxation of trusts in accordance with respective provisions contained at Division 6 and Division 6E of the Income Tax Assessment Act 1936 and Section 115C of the Income Tax Assessment Act 1997, has been a particularly difficult and challenging part of the taxation regime for tax professionals, the Australian Taxation Office (ATO) and for taxpayers.

A further example of the complexity of trusts, is the draft ruling recently issued by the ATO in relation to the application of reimbursement agreements under section 100A of the Income Tax Assessment Act 1936 with respect to the meaning and interpretation of "ordinary commercial and family dealing".

We consider that the difficulties and challenges in administering the taxation of trusts arises, in general, due to the complexity of interpreting the 'flow through' concepts inherent in the legislative framework (e.g. the concept of present entitlement, the differences in understanding trust law concepts and tax concepts, the economic differences that arise where distributable income does not flow to a beneficiary in receipt of the taxation distribution).

In light of the foregoing, we recommend that the next Government re-consider the proposal as raised by Treasury and as provided in its reform paper: *Modernising the Taxation of Trust Income – Options for reform November 2011*.

In that Paper Treasury proposed three alternative models for reform as follows:

- The Patch Model
- The Proportionate within class model, and
- The Trustee Tax and Deduction Model.

Whilst each of the foregoing have their merits in respect of the reform of taxation policy, we consider that the proposal contained at Section 8.3 in respect of a 'Trustee Tax and Deduction' model, if adopted, could overcome the many difficulties for tax professionals and taxpayers in administering their compliance obligations under the trust taxation regime.

We note that the advantages provided by Treasury in respect of the 'Trustee Tax and Deduction' model, as proposed, were as follows:

A TAD model has a number of potential benefits as it:

- reduces complexity and compliance costs by avoiding the need to apply detailed trust concepts such as 'income of the trust estate' and 'present entitlement' in order to determine the tax liabilities of the beneficiaries and trustees of the trust;*
 - reduces the reliance on individual trust deeds. Currently, the 'income of a trust estate' can be as varied as trust deeds themselves;*
 - defines key concepts and reduces the need to apply trust concepts; and*
 - reduces the scope for beneficiaries to be taxed on amounts that they are not entitled to under trust law.*
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We therefore recommend that the next Government consider the foregoing in relation to the taxation of trusts to improve the taxation and economic outcomes for taxpayers and the improved administrative efficiency of tax professionals.

Instant Asset Write Off

The TSA endorses the decision to extend the Temporary Full Expensing incentive to 30 June 2023. The question is what sort of tax depreciation regime will apply once that date is reached.

It is our opinion that the Instant Asset Write-off should be maintained at the option of the taxpayer and limited to assets costing less than \$150,000 for entities with an aggregated turnover of less than \$500 million.

This would replace the existing \$1,000 instant asset write-off in section 328-180 of the Income Tax Assessment Act 1997 (ITAA 1997), available only to small business entities with an aggregated turnover of less than \$10 million.

Employee/Contractor/ Consultant

Recently the High Court (CFMMEU v Personnel Contracting Pty Ltd [2022] HCA 1 (9 February 2022) (ZG Operations Australia Pty Ltd v Jamsek [2022] HCA 2 (9 February 2022)) determined that a builder's labourer engaged under a Labour Hire Arrangement was an employee under the Fair Work Act 2009, while two truck drivers that provided their services as partnerships were held to be 'contractors' for the purposes of the relevant industrial law.

Whilst not a tax case, there will likely be implications for the interpretation of what constitutes an employee for the purposes of the PAYG and superannuation provisions. There may also be implications for payroll tax and workers compensation levy.

The interpretation of an employee/contractor has been a long running issue for Courts and employers.

It is generally unclear with regard to the application of the respective legislation, whether the services of an individual are subject to any or all of the various imposts.

We submit that the next Government, together with State legislators, consider the adoption of a single uniform definition of a person who will qualify as subject to PAYG obligations, superannuation, payroll tax and workers compensation levy.

We further suggest that a definition based on contract and referable to the labour content provided under that contract would be a preferred outcome. For example, we consider that the definition in section 12(3) of the Superannuation Guarantee Administration Act under which the concept of employee is extended to those persons who hold a contract primarily for the provision of labour, would be a positive recommendation.

This approach, because it is based on the **fact** of a person's labour, and is determined under contract, should provide for a conclusive outcome in respect of employee/contractor matters.

This is in contrast to the current multi-factorial approach which considers such factors as the control exercised by a principal to a contract over an individual or other integrated factors as required by common law in assessing and determining such questions.

The adoption of a 'labour content' model, based on contract, would avoid the interpretation of facts and matters that, whilst they are holistic in their approach to the question of whether a person is a contractor or an employee, generally results in undue complexity and uncertainty with respect to the outcome.

GST

The current and future demands on Australia's taxation system to generate sufficient revenue, together with our projected Government debt levels, require a recalibration of the basic structure of the tax system.

The GST is a highly efficient tax that should generate more revenue than it does. Broadening the base by including expenditure on food as well as health and education services would improve simplicity and reduce compliance costs. Wealthy Australians benefit much more from these exclusions in absolute dollar terms than disadvantaged Australians do. Combined with a well-designed compensation package for lower income families, broadening the base and/or increasing the GST rate would strengthen the overall equity of the tax and transfer system.

Luxury Car Tax

The luxury car tax is the only tax that is imposed on perceived luxury items. The tax was introduced on 1 July 2000 and currently applies at the rate of 33% on cars with a GST inclusive price of \$69,152, and for fuel efficient vehicles with a GST inclusive price of \$79,659.

There are material equity issues involved in applying such a tax. The Henry Review noted as follows:

'... taxes on luxury goods violate the principle of horizontal equity. People with the same economic means will pay different amounts of tax depending on their tastes.

Wealthy people with modest tastes pay less than wealthy people with a preference for luxury goods. Australia's current luxury tax, the luxury car tax (LCT), is particularly arbitrary in its impact. It falls on people with a preference for relatively expensive cars, but not on those with a preference for diamonds, fur coats or yachts.

Luxury taxes are also flawed in their impact on vertical equity. Very few luxury goods are the exclusive preserve of the wealthy. Some of the burden of the LCT falls on people of average means with a preference for relatively expensive cars. In some cases, this reflects the fact that price is an arbitrary proxy for luxury within a given product category. Many people would feel that a small sports car is luxurious at \$60,000 but a 7-seater minivan is not luxurious at the same price.'

Over time the LCT threshold has fallen well behind movements in the CPI, the price of new vehicles and Average Weekly Earnings, so that a much higher proportion of new vehicles is now subject to this impost that was the case when it was first introduced. At the very least, the

threshold should be recalibrated so that it only applies to cars that can reasonably be regarded as luxury vehicles.

Vertical equity issues are best addressed by way of Australia's strongly progressive personal income tax system. The application of the Luxury Car tax is inefficient and creates distortions within the economy in general.

We therefore call for its repeal.

Reduce the company tax rate

The corporate rate has come down to 25% for Base Rate Entities. In furtherance of this reform, there should also be a staged reduction in the tax rate that applies to other companies, regardless of turn-over. **TSA** would suggest moving to 28%, 27% and 25% in three steps over five years. Such a policy would help make Australia more competitive in terms of attracting international investment, and also help reduce the current complexity with regard to franking credits.