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BVH Budget Brief 2011

On 10 May 2011 the Federal Treasurer Wayne Swan handed down the 2011-12 Federal Budget.

Whilst the Federal Budget contained a raft of measures, our brief focuses on the tax aspects that are relevant to high net worth individuals, SMEs and the international tax marketplace.

Personal taxation

For the first time in approximately 9 years the budget did not explicitly seek to cut effective personal tax rates.

However, the government has tinkered at the edges with a series of measures designed to remove some benefits of the personal tax system as they apply to higher income taxpayers and assist with the recovery efforts associated with the recent natural disasters.

Flood Levy

The Flood Levy will come into effect from 1 July 2011 and will be effective only for the 2011-12 financial year.

The Flood Levy will impact taxpayers who have a taxable income over \$50,000 in the 2011-12 financial year.

Individuals with a taxable income of between \$50,001 and \$100,000 will pay a 0.5% levy on their taxable income that exceeds \$50,000.

Individuals with a taxable income of \$100,001 or more will pay a 0.5% levy on the part of their taxable income between \$50,001 and \$100,000 and 1% levy on the part of their taxable income exceeding \$100,001.

This will effectively raise the top marginal tax rate to 47.5% when taking into account the existing Medicare Levy.

Individuals with a taxable income of less than \$50,000 or who are specifically exempt by legislative instrument (for example, an individual affected by the floods that received an Australian Government Natural Disaster Recovery Payment) will not be required to pay the Flood Levy.

Dependent Spouse Tax Offset

The government will phase out the dependent spouse tax offset for taxpayers with a dependent spouse under 40 (i.e. the spouse is born on or after 1 July 1971).



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However, taxpayers with an invalid or disabled spouse, supporting a carer or that are eligible for the zone, overseas forces and overseas civilian tax offsets will not be affected by this change.

Low Income Tax Offset for minors

With effect from 1 July 2011, the government will remove the ability of minors (children under 18 years of age) to access the Low Income Tax Offset to reduce tax payable on their unearned income, such as dividends, interest, rent, royalties and other income from property.

This change will impact the distribution strategy utilised by many discretionary trusts, which seek to distribute a portion of trust income to minors. Trustees should ensure that the removal of the Low Income Tax Offset for minors is taken into account when reviewing distributions for the year ended 30 June 2012.

Superannuation

Excess Contributions Tax

The government has announced a measure to allow eligible individuals to have excess concessional contributions taken out of their superannuation fund and assessed as income at the individual's marginal tax rate rather than incurring excess contributions tax.

Excess contributions tax is incurred where an individual exceeds their concessional contributions tax and is taxed at 31.5% (in addition to the 15% tax within the superannuation fund at the time of contribution).

The measure will apply where an individual has made excess concessional contributions of up to \$10,000 (not indexed) in a particular year and is only available for breaches in respect of the 2011-12 or later years, and only for the first year in which a breach occurs.

This change will allow individuals who have breached the cap for the first time, by \$10,000 or less, to elect to have these excess contributions taxed at their potentially lower marginal tax rate rather than the 46.5% effective excess contributions tax rate.

Higher contributions cap for over 50s

The government has clarified that, from 1 July 2012, where an individual is over age 50 and has a total superannuation balance of less than \$500,000, the contribution cap will be set to \$25,000 above the general concessional cap.

The general concessional cap is currently \$25,000. When the general cap increases due to indexation, the higher cap will also increase by the same dollar amount.

Limitation of trading stock exception for superannuation funds



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Effective from 7.30pm on 10 May 2011, the government has removed the trading stock exception to the primary CGT code rule for complying superannuation entities in respect of specified assets (primarily shares, units in a unit trust and land).

The effective of this measure is to ensure that a complying superannuation entity cannot apply the trading stock rules to treat specified assets (such as shares) as trading stock and then seek to deduct losses from these assets against other income. Instead, the complying superannuation entity will be subject to CGT on any gains and losses arising from the disposal of the specified assets.

International taxation

Interim investment manager regime

In response to uncertainty in respect of the taxation arrangements for certain portfolio investment income of foreign managed funds, the government has announced an interim Investment Manager Regime (IMR).

The government is seeking to make two important changes to existing laws in this regard.

The first amendment is to ensure that where a foreign managed fund has never lodged an Australian tax return, the Australian Taxation Office will generally not seek to raise an assessment in respect of certain portfolio investment

income of the fund for the 2010-11 or prior income years.

The second amendment is to provide that to the extent the relevant investment income of a foreign managed fund is taxed only because the fund is taken to have a 'permanent establishment' in Australia, such income will be exempt from tax. However, any management fees paid for services provided by Australian investment advisors would remain subject to Australian taxation. Importantly, this measure will apply with effect from 1 July 2010 and later income years.

Managed investment trusts

The government has announced the deferral of the start date of the managed investment trust regime to 1 July 2012 to allow the financial services industry sufficient time to make any necessary trust deed changes and implement system changes to operate effectively within the new regime.

Small Business Taxation

Tax write-offs to replace entrepreneur's tax offset

The government will provide small businesses with an immediate write-off of the first \$5,000 of a motor vehicle purchased from 2012-13. The remainder of the purchase price can then be transferred into the general small business depreciation pool and



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depreciated at 15% in the first year and 30% in subsequent years.

In addition to the motor vehicle tax write-off, small businesses are allowed immediate write-offs for all assets valued at under \$5,000. This is up from the current \$1,000 value.

These write-offs will effectively replace the current entrepreneur's tax offset, which will be abolished with effect from 2012-13.

Reduction in company tax rate

Small business corporations will also receive a reduction of the company tax rate to 29%.

FBT and cars

The government has announced a flat 20% valuation rate will replace the current 4-percentage rate scale statutory formula method for valuing car fringe benefits. The flat 20% rate is applied regardless of the number of kilometers travelled.

This change will apply to new vehicles purchased after 7.30pm on 10 May 2011 and will be phased in over 4 years.

Changes to company loss recoupment rules

The company loss recoupment rules will be amended with effect from the 2011-12 income year, to make it easier for

companies to satisfy the continuity of ownership test in certain circumstances.

Trusts

Testamentary trusts

The government has confirmed that it will seek to legislate the current Australian Taxation Office practice of allowing a testamentary trust to distribute an asset of the deceased person without a CGT taxing point occurring.

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