Pitcher Partners

Federal Budget 2021–22

Brave structural moves left on the shelf

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Overview

The Federal Budget 2021-22 was built against the backdrop of an ongoing global pandemic and the faster than expected economic recovery to date. The resilience and resurgence of much of Australia's economy has been supported by a range of temporary Government initiatives designed to help businesses and individuals navigate the unprecedented upheaval in the Australian and global economies.

The short-term support announced in the previous budget has done its job in some ways. Consumer sentiment reached an 11-year high in data released the week following the unwinding of JobKeeper. Similarly, business confidence reached a record high as trading, profitability and employment increased over the first quarter of 2021.

Driven by faster than expected jobs growth, strong consumer sentiment and record high iron ore prices, Treasurer Josh Frydenberg announced an expected deficit of $161 billion, $36.7 billion lower than the $197.7 billion estimated in the Government's December Mid-Year Economic and Fiscal Outlook (MYEFO). Net debt will increase to $617 billion this year and peak at $980.6 billion in June 2025.

It's a better than expected result compared to the economic abyss the country might have faced in 2020, but there's still work to be done if Australia truly wants to compete on the global stage and create an environment that encourages long-term business investment and economic growth. Australia's GDP growth is expected to come in at 1.25 per cent this financial year.

While some sectors such as recreation and personal service businesses have returned to operating at pre-COVID financial levels, other sectors impacted by the continued border closure face ongoing headwinds. Australia's borders aren't expected to re-open until at least mid-2022, which means immigration and international tourism are still off the table, as are most international student arrivals. Immigration and international students are important, not only for the industries and businesses they support through their spending, but are critical for labour supply in many industries if we are to make the most of the expected economic bounce the Budget seeks to support. Much of the spending in this Federal Budget is focused on short-term measures for continued economic recovery to get the unemployment rate below 5 per cent. A strategic long-term and multi-decade approach to genuine reform and economic growth, however, remains to be seen.

While it's fair to say there are some concessions aimed at the middle market, there is not as much support to employ, innovate or export from what we have seen to date, nor genuine long-term structural initiatives announced. This short-term debt-fuelled spending inevitably adds to the deficit that the Australian middle market and future generations will be asked to pay down.

In short, we would like to have seen more substantial and structural measures that look to the decades ahead. Australia prides itself as being a developed economy, but looking at the industries represented by many of the largest businesses in our economy, we are heavily weighted to traditional industries of finance and materials, much more so than our peers in the USA and Europe, where technology, communications services and biotechnology represent much larger parts of the business community than they do here in Australia.

The Government could have looked to:

- lift education outcomes with a view to developing genuinely innovative minds that will help to evolve our economy to build the businesses and jobs of the 21st century.
- enact the long-term tax reform necessary to encourage research and development, innovation and technology that rewards outcomes to assist in attracting and retaining the world's best minds. The patent box is a great start and we would encourage the expansion of this initiative.
- create an economy and culture that supports and encourages new value creating industries by rewarding effort, encouraging participation and celebrating success to encourage our best and brightest to remain in Australia.
- foster import replacement industries by encouraging local content and production through accommodative taxation and regulatory frameworks.

With this Budget, the focus has remained on continuing to support the near-term economic recovery through big ticket spending on infrastructure and targeted support for industries that will continue to suffer while our borders remain closed. Some of the key measures for business and stakeholders from this year's Budget:

- 12-month extension of the temporary full expensing measures (instant asset write off) introduced in the 2020-21 budget to allow a deduction for the full cost of eligible depreciating assets first used or installed ready for use entities with aggregated turnover of less than $5 billion.
- 12-month extension of the loss carry-back offset introduced in the 2020-21 Budget, allowing corporate entities to carry back tax losses for the 2022-23 income year for up to four income years.
- $15 billion in additional infrastructure commitments, including for a new intermodal terminal in Melbourne and a new airport in NSW.
- A range of welfare spending initiatives, including $13.2 billion and $17.7 billion allocated to the National Disability Insurance Scheme and new aged care funding, respectively.
- Consumption stimulus through the extension of the low and middle-income tax offset (LITMO) for a further year
- A $1.7 billion investment in childcare to drive workforce participation and women's economic security

We look to the future with cautious optimism. Continued strong Government support should help to entrench the nascent recovery much of our economy is enjoying. For now, the middle market must focus on harnessing the considerable opportunities the recovery presents and work to re-establish and then future proof themselves.

A final cautionary observation – the Budget forecasts are all predicated on a complex set of assumptions. Invariably, these will be concerned with fundamentals such as growth, core commodity prices and general trading conditions. As we have seen with both the strong rebound in employment and the vaccine rollout, expectations of timelines are changing rapidly, and these will continue to have large impacts on short term budgets and economic conditions. Staying flexible, efficient, and productive will be as important as ever for the middle market in the year ahead.

Key expenditure measures

The Government announced a range of expenditure measures to stimulate growth in key sectors, while also addressing priority policy areas, including the country's digital capabilities and funding to support women.

Infrastructure

The increase in the Government's infrastructure spending commitments by a further $15.2 billion over ten years will create opportunities for the middle market to provide critical inputs that will help to improve the overall productivity of the Australian economy.

A number of the announcements are existing projects and may also rely on funding from State Governments. Attention will need to be paid as the unity of the crisis gives way to traditional political point scoring.

The infrastructure spending aims to boost the economy and, as in Victoria, the Government is looking to have this spending filter through all sectors — not just provide work to large construction companies. This will benefit the middle market, along with the industry's lawyers, architects, engineers amongst others. The additional announcements are expected to create over 30,000 jobs.

NSW topped the list with $3.3 billion for projects, including $2 billion for upgrades to the Great Western Highway between Katoomba and Lithgow and $500 million for Princes Highway Corridor upgrades. Additionally, $548.5 million is being allocated to road safety and community infrastructure projects.

South Australia followed with $3.2 billion for projects, including $2.6 billion for the North-South Corridor – Darlington to Anzac Highway and $148 million for Stage 2 of the Augusta Highway Duplication. A further $173.9 million is being allocated to road safety.

Victoria received $3 billion for projects, which included $2 billion for the Melbourne Intermodal Terminal, $380 million for the Pakenham Roads Upgrade and $250 million for Monash Roads Upgrades. An additional $373.5 million is being allocated to road safety and community infrastructure projects.

Queensland received $1.6 billion, followed by Western Australia with $1.3 billion, while the Northern Territory, ACT and Tasmania made up the balance.

Housing

As expected, additional measures to make home ownership a reality for more Australians were announced.

The Family Home Guarantee will provide 10,000 guarantees over four years to single parents, allowing property purchases with just a 2% deposit. Similarly, the New Home Guarantee will run for a second year, providing a further 10,000 guarantees in 2021–22. This allows first home buyers to buy a new build home or build a new property with a deposit of 5%. Finally, the Government has increased the amount that can be released under the First Home Super Saver Scheme from $30,000 to $50,000.

These initiatives, along with an extension to the HomeBuilder construction commencement period, will also support the residential construction sector, which is set to benefit from over $30 billion in construction activity, increased house approvals and improved construction activity through 2021 and into 2022.

States and Territories will also benefit from an additional $124.7 million of funding to increase public housing stock and help in the delivery of provider's obligations under the 2011 Fair Work decision on Social and Community Services wages.

Manufacturing

The business sector, including manufacturers, will benefit from the extension of accelerated depreciation allowances for a further twelve months, along with an extension of the loss carry back provisions to June 2023.

For businesses that are innovative and developing patentable technologies, the Government has introduced a 'patent box' that will ring fence earnings from patented medical and biotechnology innovation to be concessionally taxed at 17%.

The manufacturing sector will also continue to benefit from the extension of the Boosting Apprenticeship Commencements wage subsidy and short courses to ensure younger workers are job ready.

Digital technology

Middle market businesses have embraced digital technologies to evolve and adapt during the COVID-19 pandemic and the Budget recognises that more needs to be done. A $1.2 billion Digital Economy Strategy has been announced and will include funding to support small to medium businesses to digitise their processes.

Around $200 million of this funding will be committed to overhauling the myGov system, and a further $301 million will go towards enhancement of the My Health Record system.

Businesses are being encouraged to continue to invest in this area, with a change to the way in which intangible assets can be depreciated. Intangible assets can now be prescribed a useful life by the asset owner, in line with depreciation of tangible assets.

Agriculture

In striving for a more resilient and secure Australia, the Budget aims to increase farm gate output to $100 billion by 2030. Initiatives to drive this include building new water infrastructure under the $3.5 billion National Water Grid Fund, opening up new irrigated areas, providing more water to farmers and creating more jobs in the industry.

Women's safety and childcare

Women are key to a thriving middle market sector and the Budget recognises that having women in visible positions of leadership is central to the changes required. The Government announced $1.1 billion to support women feeling safe at work and online. These initiatives include addressing violence against women and children, ensuring Australian workplaces are free from sexual harassment and improving the accessibility and quality of women's health services. A further $1.7 billion was announced to strengthening women's economic security by improving the affordability of childcare, as well as supporting women's financial security and employment.

Aged care

Respecting and providing dignified care to older Australians is at the heart of many of our client's business and personal beliefs.

Responding to the limitations and flaws of the aged care sector revealed in the Royal Commission, the Government has announced a $17.7 billion aged-care reform package. This package will spearhead a major funding program for Government services, including improved workforce training and education for the sector.

By 2024-25, aged care programs will cost $31 billion, almost 5% of all federal expenditure. The two pillars of the policies announced are 80,000 Home Care Packages over the next two years and $7.8 billion to support the planned changes to the funding model, plus a daily fee supplement of $10 per resident per day.

Recognising the challenge of executing this increased effort in the sector, the Government is supporting talent pool growth by creating 33,800 training places through the JobTrainer program. These initiatives will allow operators to support more aging Australians at a higher level of care. While this appears to meet the initial expectations of the Royal Commission, much of the structural change and mechanisms to ensure effective operations and oversight remains to be designed and implemented.

Health and disability

The continued protection of the Australian economy from COVID-19 disruption remained a central part of the Budget's health initiatives, with the provision of 170 million doses of the vaccine and other associated protective health initiatives costing $3.4 billion.

The Government also recognised the need for increased mental health support across society, allocating additional funding of $2.3 billion to create new services and support existing programs. Disability spending also continues to grow, with NDIS expenditure expected to reach $28.5 billion in 2021-22. The Government has also committed to a further $13.2 billion in disability spending over the coming 4 years. This increase in funding could drive growth and M&A opportunities for many businesses in the broader health sector.

Education

While the Government has made much of the record school funding planned for 2021, the $23.4 billion allocated for education is on trend from prior years and includes no significant new initiatives.

English-language and non-university higher education providers will receive a $53.6 million funding package, which includes funding for 5,000 short course places for domestic students. Grants to help with the improvement of online course delivery will also be available.

The existing Boosting Apprenticeship Commencements wage subsidy will grow by a further $2.7 billion to support on-the-job training of apprentices and trainees. At the other end of the education journey, the Budget provides an additional $2 billion for pre-school education over the coming four years.

$94.7B stimulus over four years

Jobs: creation and protection

$20.7B	$7.8B	$16.0B	$14.0B	$33.0B	$1.2B
Temporary loss carry-back and immediate asset write off extension	Personal tax cuts to promote consumption	Tax cuts to SMEs by 2023–24	Infrastructure projects	Care services	Digital Economy Strategy

Federal Budget analysis 2021–22

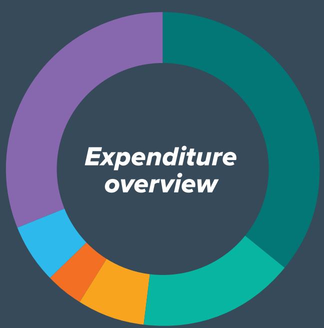
↓ 10.6% *Government spend*

↑ 6.7% *Government receipts*

Maintaining the status quo

	2021	2022	2023	2024
Deficit	-$161.0B	↓ -$106.6B	↓ -$99.3B	↓ -$79.5B
Gross debt	$829B	↑ $963B	↑ $1,058B	↑ $1,134B
Real GDP	1.25%	↑ 4.50%	↓ 2.50%	↓ 2.25%
Unemployment	5.50%	↓ 5.00%	↓ 4.75%	↓ 4.50%
CPI	3.50%	↓ 1.75%	↑ 2.25%	↑ 2.50%

Social security 36%
Health 16%
Education 7%
General public services 4%
Defence 6%
Other 31%



46% Individual income tax
17% Company tax
15% GST
9% Excise and customs
8% Non-tax revenue
3% Superannuation
3% Other

Personal income tax

The Government will maintain changes to reduce personal income tax. This measure is designed to continue to stimulate the economy by increasing the disposable income available to individuals.

Income tax offset

The Treasurer confirmed that the low and middle income tax offset (LMITO) will be retained for the 2021–22 income year. It provides a reduction in tax of up to $255 for taxpayers with a taxable income of $37,000 or less. The LMITO will increase at a rate of 7.5 cents for every dollar of taxable income between $37,000 and $48,000, and taxpayers with taxable incomes between $48,000 and $90,000 will receive the full $1,080. For taxpayers with a taxable income over $90,000, the LMITO will phase out at a rate of 3 cents for every additional dollar of taxable income. It will phase out completely at a taxable income of $126,000.

The low income tax offset (LITO) will also continue to apply for the 2021–22 income year. For taxpayers with taxable incomes of less than $37,500, the offset is $700. The offset then reduces at a rate of 5 cents for each dollar of taxable income to $45,000 and at a rate of 1.5 cents for each subsequent dollar of taxable income, completely phasing out for taxable incomes above $66,668.

Personal tax rates

There have been no changes to the personal income tax rates for the 2021-22 income year. Stage 3 of the Government's personal income tax plan remains unchanged and should commence from 1 July 2024.

The table below summarises the resident personal tax rate and thresholds (excluding the 2% Medicare levy).

Tax rates, thresholds			
Rate	**Tax payable**	**2021–22** Announced in 2020–21 Budget	**2024–25** Previously announced
0%	Nil	$0 – $18,200	$0 – $18,200
19%	Nil	$18,201 – $45,000	$18,201 – $45,000
30%	N/A	N/A	$45,001 – $200,000
32.5%	5,092	$45,001 – $120,000	N/A
37%	29,467	$120,001 – $180,000	N/A
45%	51,667	$180,001+	$200,001+

Medicare levy low-income thresholds

For the 2020-21 income year, the Medicare levy low income threshold for singles will be increased to $23,226 (up from $22,801). For couples with no children, the family income threshold will be increased to $39,167 (up from $38,474). For each dependent child or student, the family income threshold will increase by $3,597 (up from $3,533).

For single seniors and pensioners eligible for the seniors and pensioners tax offset, the Medicare levy low income threshold will be increased to $36,705 (up from $36,056). The family threshold for seniors and pensioners will be increased to $51,094 (up from $50,191).

Simplifying deductions for self-education expenses

Currently, individuals undertaking a prescribed course of education are only entitled to deduct the excess of the expenses incurred over $250. This exclusion of the first $250 of eligible self-education expenses is to be removed. This measure will take effect from the first income year after the date the amending legislation receives Royal Assent.

Employee share schemes

The Government has proposed improvements to the tax and regulatory regime applying to employee share schemes (ESS). These measures are designed to make ESS arrangements more attractive and accessible to businesses when seeking to attract and retain talent.

Removing termination of employment as a taxing point

Under the current tax ESS rules, the time at which the value of shares in or rights acquired by an employee can be deferred, provided certain criteria are satisfied, and by reference to various trigger events. The Government has proposed to remove the “cessation of employment” as one of the potential trigger events. Removing this trigger event should make it more attractive for businesses to offer share incentives to employees, without those employees being taxed on ESS arrangements should they later cease employment.

This change will take effect from the first income year after the date of Royal Assent of the amending legislation.

Regulatory changes

The Government also put forward a number of regulatory changes aimed at reducing red tape and making it easier for companies to offer ESS to their employees.

For those schemes where employers do not charge or lend to the employees to whom they offer ESS, it is proposed that there be a removal of disclosure requirements and that the offer be exempt from licensing, anti-hawking and advertising prohibitions for ESS.

Where employers charge or lend for issuing employees shares in an unlisted company, it is proposed that the value of shares that can be issued to an employee with simplified disclosure requirements, and exemptions from licensing, anti-hawking and advertising requirements, be increased from $5,000 to $30,000 per employee per year.

These changes are set to take effect three months after the date of Royal Assent of the amending legislation.

Business tax

The Government has provided further support for capital investment by businesses and assistance with cash flows by extending the "temporary full expensing" measure as well as the loss carry-back offset for an additional income year. Important changes to the minimum threshold for the superannuation guarantee charge (SGC) have also been announced.

12-month extension of temporary full expensing

The temporary full expensing measures introduced in the 2020-21 budget provided a deduction for the full cost of eligible depreciating assets first used or installed ready for use before 30 June 2022 to entities with aggregated turnover of less than $5 billion. The measure will now be extended until 30 June 2023 providing additional time for eligible entities to make capital investments and benefit from accelerated tax depreciation.

All other features of the measure should remain unchanged including the alternative test for entities that have aggregated turnover of $5 billion or more, the ability to opt-out on an asset-by-asset basis, availability of full expensing on capital improvements to existing depreciating assets and the ability to write off the entire balance of a general small business pool for small business entities using simplified depreciation.

Pitcher Partners welcomes the extension of these measures that apply to all but the largest businesses in Australia. While the Government announced that "old" tax depreciation rules will apply again from 1 July 2023, the past few years have seen continual extensions of these accelerated depreciation measures resulting in a set of complex and inconsistent rules for business to navigate.

Care needs to be taken for those taxpayers operating through unit trusts. The temporary full expensing measures can give rise to significant tax timing differences which, if distributed through a unit trust as either income or capital, could result in taxable capital gains to the unit holders. As noted above, an option to elect out of temporary full expensing may help to assist this issue in certain cases.

12-month extension of loss carry-back

The loss carry-back offset introduced in the 2020-21 budget will also be extended by a further 12 months, allowing corporate entities to carry back tax losses for the 2022-23 income year for up to four income years, as far back as the 2018-19 income year.

The loss carry-back offset is available to corporate tax entities with aggregated turnover of less than $5 billion and is intended to complement the temporary full expensing measure where tax losses are generated through significant capital investments that give rise to immediate deductions. The measure allows for cash refunds with the lodgement of the tax return rather than future tax savings from carrying forward tax losses to later years and can provide additional cash flow to support working capital for companies who make tax losses after previously being in a taxable position.

Pitcher Partners also welcomes the extension of these measures, which provides additional funding to businesses to assist in business capital investment. We note the loss carry-back offset is limited to a company's franking account balance. This limitation may prevent entities from accessing the measure where they have paid out franked dividends during the year. From a middle market perspective, there will not be any change to expand the measure to businesses which operate through trusts and distribute to corporate beneficiaries. This is because trust losses cannot be carried back to enable the corporate beneficiary to obtain a cash refund.

Pitcher Partners advocated for a lower corporate tax rate for the middle market in our Pre-Budget submission as an additional means to providing businesses with cash to fund investment and working capital. It is disappointing that the Government has not considered adopting this measure which, together with the temporary full expensing measure, would have provided a significant incentive for investment into Australian businesses into the foreseeable future.

Removal of minimum income threshold for superannuation guarantee

Currently, employers are not required to make superannuation contributions under the superannuation guarantee legislation for employees in receipt of salary and wages of less than $450 in any calendar month. Many employers have configured their payroll systems to accommodate this threshold.

The Government has announced that this threshold is to be removed with effect, most likely from 1 July 2022. This measure will mean that superannuation support must be provided to all employees regardless of the level of income in any one month and is designed to ensure low income earners are not disadvantaged. The proposed changes will primarily impact employers with casual and part-time employees such as those in the retail and hospitality industries.

Employers will need to keep track of this change to ensure their payroll systems are correctly set up to meet their obligations once the measures take effect.

Digital and intangibles

The Government outlined a number of significant measures in the Budget as part of a Digital Economy Strategy. As a part of that strategy, three tax incentives were announced, all proposing to reduce the overall tax paid by businesses conducting certain digital activities and investing in the development of intangible assets.

Digital Games Tax Offset

During his budget speech, the Treasurer confirmed that a 30% Digital Games Tax Offset will be introduced for eligible businesses that spend a minimum of $500,000 on qualifying Australian games expenditure. The provisions will seek to exclude games that have gambling elements, or that cannot obtain a classification rating.

The Digital Games Tax Offset will be available from 1 July 2022 and will apply to both Australian resident companies and foreign resident companies with a permanent establishment in Australia. Consultation will commence in mid-2021 and will be used to determine what will constitute qualifying expenditure.

Patent box regime for medical and biotechnology innovations

With effect from 1 July 2022, a concessional company tax rate of 17% will apply to income from Australian owned and developed medical and biotechnology patents. To qualify, the patent must be applied for after the Budget announcement (7.30pm AEST on 11 May 2021).

The details of the regime will be the subject of consultation with industry. Offering a lower tax rate will provide additional incentives to businesses looking to reinvest after-tax dollars in medical and biotechnology research (with the reduced tax rate benefit being lost where dividends are paid by the company rather than being reinvested in the business). The announcement is not clear on the interaction of the reduced tax rate with the R&D tax offset measures, which will be an important feature that will need to be clarified during the consultation period.

Effective life of intangible depreciating assets

Taxpayers will be allowed to choose to calculate the decline in value of eligible intangible depreciating assets (such as copyrights, patents registered designs and in-house software) using either a self-assessed effective life or the effective life set by statute. This is designed to allow taxpayers the opportunity to better align the tax outcome with the economic life of such assets and to encourage research and development activities by providing for greater deductions in relation to these types of assets.

This measure will first apply to relevant assets acquired on or after 1 July 2023, after the cessation of the temporary full expensing regime (as extended in another Budget announcement).

Finance and investment

The Government has committed to the introduction of the Corporate Collective Investment Vehicles regime (CCIVs) regime, with a revised start date. There has also been a number of minor technical changes announced to the Taxation of Financial Arrangement (TOFA) rules relating to portfolio hedging and foreign currency.

Corporate Collective Investment Vehicles (CCIVs)

The Government intends to finalise the Corporate Collective Investment Vehicles (CCIV) regime which was first announced in the 2016–17 budget.

Currently, collective investment in Australia is managed through unit trust structures (managed investment trusts). The CCIV regime will allow a similar flow-through treatment for investors utilising a corporate investment vehicle.

There has been significant growth in the funds management space in the middle market. The CCIV regime will provide fund managers with an alternative to using a unit trust structure, whereby a corporate vehicle may be more attractive to non-resident investors who may be more familiar with corporate-type flow through vehicles and not as familiar with trusts. Pitcher Partners welcomes this development and the potential positive impact that this may have for fund managers in the middle market.

The measures are to commence from 1 July 2022. Exposure draft legislation has previously been released to the public and Pitcher Partners has made a number of submissions on the draft legislation. The extended timeframe should therefore provide the Government with sufficient time to consult on many of the issues raised and also allow businesses to familiarise themselves with the new regime before implementation.

While the 2016-17 budget announced a Limited Partnership Collective Investment Vehicle (LPCIV) alongside the CCIV, the current announcement is silent as to whether the LPCIV regime will also be revived to proceed and commence from 1 July 2022.

Review of venture capital tax concessions

The Government will undertake a review of the venture capital tax concession programs. The concessions include the venture Capital Limited Partnerships (VCLPs); the Early Stage Venture Capital Limited Partnerships (ESVCLPs); the Australian Venture Capital Fund of Funds (AFOFs); and Investments made directly by foreign residents registered under Pt 3 of the Venture Capital Act 2002.

Broadly, these measures have been largely unsuccessful in being utilised in the middle market, mainly due to the complexity of meeting the requirements to establish these investment vehicles as compared to operating venture capital through a managed investment trust.

As outlined above, Pitcher Partners welcomes the extension of the collective investment vehicle regime to all forms of LPCIVs. Properly allowing limited partnerships to be used for the purposes of all types of collective investment would greatly enhance the overall use of these vehicles and would likely result in a better transition of fund management businesses to VCLPs and ESVCLPs over time.

Taxation of Financial Arrangements (TOFA)

The Government has also announced minor technical amendments to the TOFA regime, which will facilitate access to the hedging rules for portfolio hedging. These amendments should address technical deficiencies in the current TOFA regime that have not kept up to date with changes in hedging that have occurred since the move from accounting standard AASB 139 to AASB 9. These amendments should therefore allow taxpayers to defer the recognition of unrealised foreign exchange gains and losses in respect of certain hedged portfolios of investments.

We note that many taxpayers in the middle market have generally not sought to access the tax hedging rules, due to the significant cost of complying with the record-keeping requirements for hedging financial arrangements and the requirement to compile appropriate audited financial statements. These costs remain a significant impediment for many taxpayers in accessing the hedging election under TOFA. Pitcher Partners will continue to advocate for simplification of these rules to enable taxpayers the ability to access these provisions.

International tax

The Government has announced a significant change to Australia's individual tax residency rules, as well as some other cross-border proposals of note.

Simplification of individual tax residency rules

The Government has announced the well overdue overhaul of Australia's individual tax residency rules. While little detail was included in the budget announcement itself, it has been proposed that the new residency framework would be based around the recommendations made by the Board of Taxation in its 2019 report titled "Reforming individual tax residency rules – a model of modernisation".

Under the proposed rules, individuals who are physically present in Australia for 183 days or more will be Australian tax resident under the 'primary test'. Those who don't meet this criterion will be subject to a secondary test which will be made up of several measurable objective factors. While this sounds like simplification, the devil will likely be in the detail, particularly around the setting of the relevant 'factors'. Complications are also expected to arise in the context of treaty interactions and transitional provisions.

The measures are to come into effect from the first income year after enabling legislation receives Royal Assent.

Consultation on amending trust and corporate limited partnership residency rules

In the October 2020 budget, the Government announced changes to the residency test for companies to address uncertainty for foreign incorporated entities following guidance issued by the Australian Taxation Office in the wake of the High Court's decision in *Bywater*.

The Government has now announced its intent to broaden consultation on the changes, so as to include the residency test for trusts and corporate limited partnerships.

Relaxing residency requirements for self-managed superannuation funds

Failing the 'residency' requirement can render self-managed superannuation funds (SMSFs) and small APRA-regulated funds (SAFs) non-complying, which can have serious financial consequences. In a positive development, the Government proposes to relax residency requirements for SMSFs and SAFs by extending the safe harbour for the central management and control test from two to five years for SMSFs and removing the active member test for both fund types. These changes will make it easier for members to retain and contribute to such funds whilst they are temporarily overseas for work or educational opportunities.

The measure is to have effect from the start of the first financial year after the amending legislation receives Royal Assent, with an expected start date of 1 July 2022.

Maintaining New Zealand's primary taxing rights over its sporting teams and support staff

The Government will ensure that New Zealand maintains its primary taxing rights over members of relevant sporting teams and support staff even where such individuals exceed the 183-day test in Australia's tax treaty with New Zealand, because of circumstances arising from the COVID-19 pandemic. This measure will apply to the 2020-21 and 2021-22 income and fringe benefits tax years.

Updating list of exchange of information countries

The Government will update the list of countries with effective information sharing agreements with Australia to include Armenia, Cabo Verde, Kenya, Mongolia, Montenegro and Oman. Residents of listed countries are eligible to access the reduced Managed Investment Trust (MIT) withholding tax rate of 15% (rather than 30%) on certain distributions. The updated list will be effective from 1 January 2022.

Superannuation

Superannuation changes announced in the Budget are beneficial in nature and mainly target increasing flexibility and contribution opportunities for individuals over age 60.

Removal of work test for non-concessional superannuation contributions

The Government announced it proposes to permit individuals aged 67 to 74 to make non-concessional (after-tax) contributions to superannuation on the same terms as those currently applying to individuals under age 67 by removing the work test for contributions made from 1 July 2022.

Currently, individuals aged 67 and over are subject to a work test, which requires the individual to have worked a minimum of 40 hours over a consecutive 30-day period in the financial year in order to make a voluntary superannuation contribution that year (either concessional or non-concessional). Although the work test will be removed for non-concessional contributions from 1 July 2022, the test will be retained for personal deductible (i.e. concessional) contributions.

The removal of the work test for older Australians also includes increasing access to the bring-forward rule for non-concessional contributions. The bring-forward rule can allow an individual to make three years of non-concessional contributions in one year (e.g. up to $330,000 from 1 July 2021). However, the ability to make non-concessional contributions will continue to be subject to an individual's total superannuation balance being less than the transfer balance cap (currently $1.6m increasing to $1.7m from 1 July 2021) at 30 June of the prior year.

Extending voluntary contribution opportunities to individuals who may otherwise miss out because they are no longer working is a welcome initiative. However, the failure to remove the work test in its entirety adds complexity due to the difference in treatment of non-concessional contributions compared to concessional contributions from age 67.

Reducing the age of eligibility from 65 to 60 years for downsizer superannuation contributions

The Government announced that it will reduce the eligibility age where downsizer contributions can be made into superannuation from 65 to 60 years of age, with the changes expected to come into effect from 1 July 2022. These measures will allow a person aged 60 or over to make a one-off non-concessional contribution to their superannuation of up to $300,000 from the proceeds of selling their principal residence owned for ten years or more prior to the sale.

Downsizer contributions do not count towards superannuation contribution caps and are permitted irrespective of a total superannuation balance. Contributions under the measure are available to an individual and their spouse even if only one of them was the owner of the property (i.e. both may contribute up to $300,000 each from the sale if they each satisfy the conditions).

The measure is a targeted reduction in super restrictions that should provide increased incentive for older individuals to downsize sooner, thereby increasing the supply side of available family homes.

Increase in maximum releasable amount for First Home Superannuation Saver Scheme

The Government announced an increase in the amount of superannuation savings a first home buyer can access to purchase a first home.

Under the current scheme, up to $15,000 of voluntary superannuation contributions a year can be accessed early for the purchase of a first home, with a total withdrawal amount of up to $30,000 permitted. Under the revised scheme, the annual $15,000 voluntary contributions amount remains, but eligible individuals will be able to withdraw up to $50,000 in total of eligible super savings for a first home purchase. This revised scheme is expected to commence from 1 July 2022.

Contributions and associated earnings that are withdrawn under the scheme are taxed at the individual's marginal tax rate, less a 30 per cent tax offset. In most circumstances, the net tax paid on contributions and earnings withdrawn under the scheme would be in the order of 15%. As such, this is likely to be a better outcome compared to the first home deposit being saved personally where ordinary marginal tax rates would apply on earnings.

Most first home buyers would benefit from using the scheme and the Government announced some further technical changes to reduce complexity and unintended outcomes which should make the scheme more accessible to first home savers.

Self-managed superannuation funds and legacy pension conversion

The Government stated it will permit individuals to exit legacy pension products, together with any associated reserves, for a limited period of two years.

The measure is stated to apply to market-linked pensions, lifetime pensions and life-expectancy pensions in self-managed superannuation funds. Currently, these pensions can only be converted into another pension where access to the underlying capital is generally restricted, with significant tax and estate planning issues arising on such a restructure.

The Government also stated that the social security and tax treatment will not be grandfathered for new pensions commenced with commuted funds and that commuted reserves will be taxed as an assessable contribution. Accordingly, the detailed rules and individual circumstances will need to be examined before deciding whether conversion of a legacy pension under this measure is optimal for those who may become eligible to do so.

The measure is stated to apply from the first financial year after the date of Royal Assent of the enabling legislation.

Appendix 1: The Scorecard

Feedback gathered from surveying middle-market businesses, along with our experience working with business owners and leaders every day, highlight the key measures the Federal Government can implement to stimulate business growth and job creation now and into the future.

The rapid recovery of Australia's economy shouldn't be a missed opportunity. It's critical that the Government acts now to foster an environment in which the businesses that employ most of Australia's workforce are encouraged to spend and invest in technology, innovation and new industries to achieve sustainable long-term economy-wide growth.

Here, we look at the potential short, medium- and long-term measures that will encourage business investment and sustainable long-term growth and the differences between measures included in the previous and current Federal Budget.

We note that last year's Federal Budget required unprecedented measures to support the economy, but this doesn't negate the need for policy development to address the country's long-term economic and financial challenges.

Proposed measures	2020–21 Federal Budget	2021–22 Federal Budget
	Short-term	
Measures to address domestic unemployment and underemployment rates		
Bring forward personal income tax cuts	✓	X
Temporarily suspend or significantly reduce HELP loan repayments	X	X
Further corporate tax rate cuts for base rate entities	X	X
Reducing employment on-costs	X	X
	Short-to-medium-term	
Measures to stimulate growth of domestic product		
Extend general capital allowance extensions on a longer-term or permanent basis	✓✓	✓✓
Introduce targeted capital allowance measures for specific industries (e.g. agriculture, import replacement, education and construction)	X	X
	Long-term	
Measures to improve the sustainability of our tax system		
Reform of the GST	X	X
Land tax and stamp duty reform in conjunction with changing the rate of GST	X	X
Review the CGT framework e.g. rate of concessions and availability of exemptions	X	X
Introduce a universal investment allowance that provides depreciation claims over a 5-year period to simplify the capital allowance regime	X	X

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