



THE TAX INSTITUTE

29 January 2021

The Hon Josh Frydenberg MP Treasurer
The Hon Michael Sukkar MP Minister for Housing and Assistant Treasurer
C/- Budget Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: josh.frydenberg.mp@aph.gov.au, michael.sukkar.mp@aph.gov.au,
prebudgetsubs@treasury.gov.au

Dear Treasurer and Assistant Treasurer,

Federal Budget 2021–22 Submission

The Tax Institute welcomes the opportunity to make a submission in response to the call by the Minister for Housing and Assistant Treasurer, the Hon Michael Sukkar, on 27 November 2020 for such submissions from individuals, businesses and community groups on their views regarding priorities for the Federal Budget 2021–22.¹

The detail of our submission can be found at **Appendix A**.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix B** for more about The Tax Institute.

Summary

2020 presented many challenges for the Australian people, their businesses and the Government. 2021 provides a unique opportunity to build on the learnings from 2020 to reshape and redefine the Australian tax system. This requires a thorough review and reform of the existing Australian tax system. It is only through significant reforms to the tax system that the Government will be able to generate sufficient revenue in the long-term to support public expenditure.

The Tax Institute has undertaken a major project to engage with our members and other stakeholders on key issues in the tax system and to identify pathways for reform. We are presently preparing our Case for Change Discussion Paper containing our findings and we will present this to the Government in the coming weeks.

¹ <https://ministers.treasury.gov.au/ministers/michael-sukkar-2019/media-releases/2021-22-pre-budget-submissions>

As outlined in our [first](#) and [second](#) submissions in relation to the Federal Budget 2020–21, The Tax Institute recognises that certain trade-offs will have to be made between current features of the tax system, incorporating both Federal and State taxes. Some trade-offs will require the repeal or reform of certain existing measures which may reduce revenues and narrow the tax base. However, others, such as the removal or limitation of certain exemptions and concessions, will broaden the tax base and increase revenue. The Tax Institute considers that key trade-offs across the tax system as a whole will involve reducing the corporate tax rate, broadening the GST base and increasing the GST rate, and overhauling the stamp duties regime.

Further, within the existing tax system, there are several key areas which require the Government's immediate attention, including rectifying the inefficiency of Fringe Benefits Tax, improving the support for the development, commercialisation and retention of intellectual property in Australia and improving how the tax laws are administered. The Board of Taxation has also published reports on a number of issues, such as the reform of individual tax residency rules and its review of the small business tax concessions, on which the Government has yet to respond. There is uncertainty and inefficiency in the application of a number of existing tax measures, such as the alienation of personal services income (**PSI**) rules, and the operation of Division 7A, being a measure subject to prior Government announcements. Additionally, there are a significant number of announced but unenacted measures in relation to which the Government must urgently clarify its intention.

We invite the Government to consider our submission and request with respect that urgent action be taken to improve the tax system for all Australians in this critical time in our history.

Please refer to **Appendix A** for our detailed analysis supporting this submission.

If you would like to discuss any of the above, please contact either myself or Scott Treatt, General Manager, Tax Policy & Advocacy, on (02) 8223 0008.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Peter Godber', with a stylized flourish at the end.

Peter Godber

President

APPENDIX A

Australian tax system — comprehensive review and reform

The Tax Institute calls for an independent review of the Australian tax system and its efficacy in the post-COVID-19 pandemic landscape. Taxpayers and businesses operate at the Federal and State level and across states. The tax system in Australia is not one or the other of these but the whole of the system together across the different levels of government. An approach to reform which considers federal and state taxes separately, overlooks the economic reality that individuals and businesses operate in a commercial environment that crosses borders, domestically and internationally. This requires support from, and cooperation with, the States and Territories, particularly where reforms may reduce revenues historically collected by the States in favour of broadening the Federal tax base.

The current tax system reflects decades of successive governments adding new provisions and ideas on top of existing provisions without properly considering the interrelationship between different parts of the law and how they impact economic activities and behaviours. One can often see that the original provision has been so layered with changes that the rule's reason for existence has been lost. This only adds to the confusion of our complex and overburdening laws. Additionally, court cases continue to reveal deficiencies in our tax law, from capital gains tax anomalies to the international tax area where double taxation often still inappropriately arises.

This has resulted in the well-recognised high annual cost of tax compliance which impedes the Government's ability to achieve its objectives. Red tape hinders economic growth and limits opportunities for job creation and investment; two critical areas for development in the post-pandemic landscape. Simplifying the Australian tax system, for example, through the repeal of certain ineffective taxes, will free up some resources currently allocated to compliance activities that can be redistributed to other areas of need. Some previous announcements should also be reconsidered as they work against an efficient tax system that contributes to economic growth and the import of capital. We would be pleased to work through these with the Government. By taking a holistic approach to reviewing the Australian tax system, the Government can ensure the system helps Australian individuals and businesses to recover from the detrimental impact of the COVID-19 pandemic and supports the growth of the economy in the years ahead.

Historically, there have been a number of reviews of the Australian tax system and particular aspects thereof, that have been conducted at the Federal or State level. The Tax Institute considers that a new comprehensive review can leverage the findings from previous reviews in an assessment of the current system. Key recurring themes that have emerged from these reviews at the Federal level relate to the personal marginal tax rate system, the deductibility of work-related expenses, the corporate tax rate, and the GST rate and base. The Tax Institute has undertaken a major project to engage with our members and other stakeholders on key issues in the tax system and to identify pathways for reform. We are presently preparing our Case for Change Discussion Paper containing our findings and we will present this to the Government in the coming weeks to assist with the scope and conduct of a more comprehensive review.

Reassessing and rebalancing the Australian tax mix

Australia is facing unprecedented economic challenges. The emerging and lasting implications of the 2019–20 bushfires, floods and the COVID-19 pandemic have placed greater pressure on budgets at all levels of government to sustain the economy. Further, these events have challenged the capability and durability of the tax system to support the recovery, and further growth, of Australia's economy.

In its commendable efforts to provide support to Australian individuals and businesses during these difficult times, the Government has incurred extraordinary levels of debt. Even taking into account the current record low interest rates, at a minimum, the principal on these debts must eventually be paid. The youth of today and future generations will bear the brunt of these debts, the economic impact of the COVID-19 pandemic and the shortcomings of our system, for decades to come. We have a duty to those future generations to provide a sustainable framework that will support them to overcome these challenges.

A viable tax system is a critical underpinning of our economy. For the tax system to support economic growth, revenue must be raised from efficient and sustainable tax bases. Australia's current tax system relies heavily on income tax bases (personal and corporate) for the majority of the revenue collection. Personal income tax and corporate tax alone comprises over 60% of total tax revenue, with personal income tax comprising the majority, contributing revenue of around 41.1%, and corporate tax contributing around 19.1%.

This is out-of-step with Australia's counterparts in the Organisation for Economic Co-operation and Development (**OECD**), where, on average personal income taxes and corporate taxes amount to only 23.9% and 9.3%, respectively.

The tax systems of those countries tend to rely more heavily on broad-based consumption taxes. In Australia, the GST accounts for approximately 12.8% of total taxation revenue whereas the OECD average is around 20%. This is unsurprising given that the GST rate of 10% is significantly lower than the OECD average VAT rate of 19.3%.

Increasing reliance on the GST as a source of revenue is an important strategy to rectify some of the fundamental issues associated with Australia's current tax mix. It is unsustainable to continue to so heavily rely on personal income tax if increased productivity and workforce participation are to be pursued, particularly bearing in mind Australia's ageing population moving into retirement. Moreover, an over reliance on corporate tax is less conducive to economic growth.

The Tax Institute considers that genuine reform of the entire tax system delivered through a holistic, considered package is vital and must begin now so that we can implement the right structures to drive Australia forward, towards economic prosperity.

GST base and rate reform

The Tax Institute is of the view that, as part of a broader review of our entire tax system, a comprehensive review of the GST regime is critical, particularly at this time of economic uncertainty. As outlined above, expansion of the GST is necessary to reposition Australia's current tax mix and ensure greater sustainability. A number of past reviews of our tax system noted that consumption is one of the most efficient tax bases available to governments. This is, in part, because taxing consumption does not distort economic growth, but rather encourages investment and saving since it does not tax the normal return to capital.

GST revenue increased from \$28.5 billion in 2000–01 to \$64.6 billion in 2018–19, being a 130% increase. During the same period, the size of the economy, as measured by GDP, increased by 180%. This demonstrates that the GST-to-GDP ratio has declined from its peak at 4% in 2003–04 to 3.3% in 2018–19.²

Factors which have contributed to this decline include, unequal price growth in items subject to GST compared to GST-free items, a decline in household spending and increases in spending on GST free items such as health services and education and the significant impact of the exchange rates. If these trends continue, the Parliamentary Budget Office has estimated that the GST-to-GDP will likely decline to 3.2% in 2030–31, which is equivalent to a shortfall of up to \$24 billion compared to the early 2000s.³

In 2018–19, the GST collected was \$65.1 billion and GST concessions cost \$26.4 billion.⁴ According to the ATO, the GST Tax Gap for that year amounted to \$5.8 billion.⁵ These figures indicate that almost half the potential revenue from the GST as it currently applies, is not being collected, predominantly due to the availability of broad concessions and exemptions.

² Parliamentary Budget Office, (2020). Structural trends in GST, Report No. 02/2020, p 2.

³ Parliamentary Budget Office, (2020). Structural trends in GST, Report No. 02/2020, p 32.

⁴ Federal Financial Relations (GST Revenue for 2018–19) Determination 2019.

⁵ www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Tax-gap/Goods-and-services-tax-gap/

Broadening the GST base or increasing the GST rate carries potential equitable and social consequences, and in particular, the risk of an increased regressive effect on the income of low to middle income earners. This is heightened by the operation of current concessions and reliefs in respect of GST which are poorly targeted and do not provide genuine relief to those who are in most need.

It is therefore critical to address inequities arising from potential reforms by instilling community confidence in mechanisms of redress. One option would be increasing income support payments for low to middle income earners. This may be achieved by providing direct annual transfer support payments to households with lower income tax earnings. Alternatively, different tax rates may be applied to different classes of goods and services. However, this may introduce complexity and challenges in administration.

Broadening the GST base and increasing the rate could further support reductions in other tax rates such as corporate and income taxes, and a shift away from less efficient taxes such as the 115 taxes that were identified in the Henry Review as contributing very little to overall revenue. This can be the case even after appropriate compensation for lower income earners.

For the reasons outlined above, reforms to the GST must not be considered or implemented in isolation. Rather, they must be considered as part of a holistic package of measures, in conjunction with other mechanisms that will address such undesirable outcomes.

Reduction of the corporate tax rate

The Tax Institute is of the view that a single corporate tax rate across all companies should apply in Australia. Currently, Australia operates a dual corporate tax rate system: a headline rate of 30% that applies to all companies, other than 'base rate entities' with a lower aggregated turnover and income that is not predominantly passive, to which a lower rate applies.

The dual system has added a range of complexities to an already complex system. It produces anomalous outcomes, particularly because a company can oscillate between the two rates from one year to the next. A significant area in which this issue manifests is in determining a company's franking rate. The imputation rules can cause a company's tax rate to differ from its franking rate, and the franking rate can also change from one year to the next. The current system of companies franking dividends at different tax rates depending on their turnover and income year is complicated. It can encourage or discourage the payment of dividends based on the tax outcome of the dividend rather than underlying economic or commercial reasons. The identification of different franking rates also leads to a greater risk of errors in the preparation of tax returns and year end affairs, thereby increasing the compliance burden and potential for disputes. Anomalous outcomes also arise in relation to the operation of the rules as they apply to non-portfolio dividends and shares held by trusts interposed between trading companies and corporate beneficiaries.

Australia's headline corporate tax rate is the second highest in the OECD. The corporate tax rate in any jurisdiction is an important consideration for potential investors. Australia's current rate is uncompetitive when benchmarked against other OECD countries and indeed when compared to other countries in the Asia-Pacific region. This is a disincentive to foreign investment on which Australia is heavily reliant. Further, it unfairly disadvantages Australian businesses and hinders their ability to expand both nationally and across borders.

As outlined in our pre-Federal Budget 2020-21 submission, The Tax Institute considers that a single, lower rate, no higher than 25%, should apply to all companies, irrespective of their aggregated turnover or proportion of passive income. Even with a flat corporate tax rate of 25%, Australia would remain in the top one-third of OECD countries' highest corporate income tax rates. In the Asia-Pacific region, such a rate would remain substantially higher than the headline corporate tax rate of neighbouring countries. While this still leaves Australia in a relatively uncompetitive position in the Asia-Pacific region, given the contentious debate surrounding the reduction of the rate, it is viewed as a step in the right direction.

Personal marginal tax rate system

The Tax Institute reiterates our recommendation in our pre-Federal Budget 2020-21 submission that there should be a fully transparent personal marginal tax rate system which simplifies the system and allows individual taxpayers to clearly identify their marginal tax bracket and tax rate. Additional levies and income tax offsets unnecessarily complicate the personal tax rate system and distort the real impost of tax by managing social security matters through the tax system.

In light of the impact that the COVID-19 pandemic has had on all Australians, we see merit in conducting a holistic review to determine whether all current levies and tax offsets should be varied, retained or removed, and whether the marginal tax rates should be further adjusted to allow for much needed financial relief.

One of the starkest issues that has failed to be addressed by successive governments is the high cost to individual taxpayers that arises because the tax and social security systems are not properly integrated. To address the inequity arising from the high effective marginal tax rate on secondary income earners in working families, the current design of the tax and transfer systems should be reconsidered and reformed.

The effective marginal tax rate for secondary income earners is calculated on personal income tax, childcare costs and loss of family tax benefits. This design flaw penalises the secondary income earner (typically female workers) which deters and disincentivises workforce participation. It is our view that these disincentives should be removed to widen the tax base through improved workforce participation rates, improve productivity and economic efficiency, provide fiscal sustainability, and promote gender equality.

Boost the Child Care Subsidy

The Tax Institute supports increasing the Child Care Subsidy and improving its design as a practical plan to boost workforce participation and further assist the COVID-19 economic recovery by providing an immediate increase in family income. Specifically, we recommend that the Federal Government boost the Child Care Subsidy for low-income families from 85% to 95%, flatten and gradually taper the subsidy, remove the annual cap, and review the hourly rate cap.

This reform would reduce workforce participation disincentives for secondary income earners and simplify the system. Studies conducted by the Grattan Institute have shown that these changes could lead to a 13% increase in hours worked by secondary income earners with young children and has the potential to boost GDP by \$11 billion per year.⁶

Deductibility of work-related expenses

Related to the individual tax system is the issue of the deductibility of work-related expenses. The Tax Institute considers that, in the short term, a standard deduction for work-related expenses should be introduced together with the option to claim actual expenses properly substantiated for employees with expenses above the standard deduction threshold. This would make it much simpler for individuals/employees to comply with their personal tax obligations. It would also provide opportunities to further simplify the administration of the tax system and reduce the cost to both taxpayers and government of that administration.

Fringe Benefits Tax

In dealing with personal tax, attention must also be given to Fringe Benefits Tax (FBT). The Tax Institute supports substantial reform of the FBT system. FBT is highly inefficient, administratively cumbersome and its operation is misaligned to its policy intent. Accounting for less than 1% of Australia's total annual revenue collections, FBT imposes a significantly disproportionate compliance cost on employers.

⁶ Wood, D., Griffiths, K., & Emslie, O. (2020). *Cheaper Childcare: A practical plan to boost female workforce participation*. Grattan Institute. Retrieved from <https://grattan.edu.au/wp-content/uploads/2020/08/Cheaper-Childcare-Grattan-Institute-Report.pdf>

The Board of Taxation has been undertaking a Fringe Benefits Tax Compliance Cost Review involving several research initiatives to estimate and identify the basis for FBT compliance costs and opportunities to reduce such costs.

The Tax Institute supports this review and recommends that the Government take this opportunity to fundamentally reconsider the FBT in light of its disproportionately high compliance costs and, importantly, to work towards reducing the regulatory red tape. The FBT rules have become antiquated and need reforming to reflect contemporary work practices and behaviours. A tax that must specifically provide an exemption for the provision of toilet facilities to employees is a badly designed and poorly targeted tax. This is but one of many examples that cause FBT to be the subject of ridicule which thereby undermines the tax.

It remains our view that FBT should be abolished and re-designed with simpler valuation principles which provide definitions or categories to account for non-cash payments. The valuation principles could be incorporated into the income tax law for individual employees (subjecting the benefits to PAYG withholding), rather than continuing to impose FBT on employers at what often represents a penal rate of tax. This is particularly apparent now that the vast majority of Australian individual taxpayers are taxed at a rate below the top marginal tax rate and, based on Government projections, in 2024-25 around 95 per cent of taxpayers will face a marginal tax rate of no more than 30 per cent.⁷

We acknowledge that the immediate repeal of FBT may not be appropriate in the short-term but a pathway towards eventual repeal could be initiated. The Tax Institute is ready to work with the Government to identify such workable transition pathways.

Introduce an all-encompassing concept of a ‘worker’

The rapidly changing nature of employment and the labour market has seen the emergence of new work relationships such as the sharing or ‘gig’ economy. In the context of tax compliance, non-traditional ways of working have introduced a new level of complexity to be carefully considered alongside the traditional dichotomy between an employee and a contractor.

The OECD recently reported that across OECD countries, there is a growing share of workers earning income outside of the traditional employee-employer relationship.⁸ This trend is driven by various factors, for example, demographic changes, labour market regulation and the relevant tax system.

The Tax Institute is supportive of reform to ensure that tax policy keeps pace with changes in the labour market. We recommend adoption of a broad and inclusive concept of a ‘worker’ to encompass the various classifications (i.e. employee, contractor and non-traditional work relationships resulting from the growing gig economy). Such a term should be defined in legislation and should apply consistently across all Australian taxes and the superannuation system.

Most notably this would simplify the suite of employment taxes, both at a State and Federal level. It would also simplify certain aspects of the superannuation system, particularly in determining whether superannuation contributions must be made by an employer in respect of that individual. Importantly, it would cut red tape associated with the classification of an individual as an employee or contractor (which can be subject to inconsistent interpretation across the various regimes) and reduce potential opportunities for arbitrage by businesses in their selection of the type of labour contract offered to an individual, or for individuals in their decision to operate as an employee, or an incorporated or unincorporated contractor.⁹

⁷ The Commonwealth of Australia (2020). Budget Strategy and Outlook. Budget Paper No. 1 2020-21, https://budget.gov.au/2020-21/content/bp1/download/bp1_w.pdf, p 1-17.

⁸ OECD (2020). Taxing Wages 2020. OECD Publishing, <https://doi.org/10.1787/8625f8e5-en>, p 17.

⁹ OECD (2020). Taxing Wages 2020. OECD Publishing, <https://doi.org/10.1787/8625f8e5-en>, p 16.

Reduce red-tape

Further, The Tax Institute supports centralising the collection and administration of employment taxes into one body, for example, the ATO. This would result in greater consistency and efficiency in the administration and enforcement of these taxes.

Improve equality in retirement

Based on figures derived from a 2017 report by The Association of Superannuation Funds in Australia, the average superannuation balance of a woman at retirement is estimated to be around only \$157,050. This is just over half that of a man who, on average, has a balance of around \$270,710.¹⁰

The gap is driven by a number of factors which include, in particular: the lower workforce participation of women compared to men; a disproportionate representation of women in part-time and casual employment; the gender pay gap (currently 14% according to the Workplace Gender Equality Agency)¹¹; interrupted work, due to child rearing among other matters; and the disproportionate amount of unpaid care work undertaken by women.

The problem is most acute for single women who are far behind the superannuation required for a decent retirement and, worst still, for those single women who are currently in their early 50s with no realistic prospect of improving their superannuation balance in the near term. For many of these women, the prospect in the near future for a reasonable retirement is bleak.

To add insult to injury, the age at which such women will be able to access the age pension has been increasing from around 65 to 67 years of age. The consequence is that a woman now aged 60 without work will need to rely on the Newstart Allowance until she reaches the age of 67, when she may be entitled to the age pension.

To address these issues, The Tax Institute supports a possible suite of measures (subject to consultation on appropriate integrity measures), including:

- co-contribution by the Government of \$1,000 provided for all single women on a matched 2:1 basis, where total assets held in superannuation in the name of the woman is less than \$100,000;
- allowing the age pension to be made available to single women who have total superannuation of less than \$100,000 from the age of 60;
- providing a \$1,000 per year contribution to be made to superannuation for an unpaid voluntary carer;
- modest amendments to the anti-discrimination laws to give a clear legal basis to schemes introduced by companies to provide higher superannuation payments in respect of female employees;
- the opportunity to make catch-up concessional contributions for single women who have had interrupted working arrangements; and
- the opportunity to recognise the family unit for superannuation contribution purposes (i.e. utilising dual thresholds) where one spouse is unpaid or partly paid as a consequence of providing primary care to a dependant.

In relation to the age pension, it would also be worth making the means test for age pension qualification more generous for single women who will invariably have a broader and perhaps longer reliance on the pension.

¹⁰ Clare, R. (2017) Superannuation account balances by age and gender, p 5.

¹¹ <https://www.wgea.gov.au/newsroom/media-releases/the-national-gender-pay-gap-is-now-140>.

The Tax Institute acknowledges that the availability of carry-forward superannuation contributions is one opportunity for women to make catch-up concessional contributions where they have experienced interruptions to their work practices. This measure is a step in the right direction but should be supplemented by further targeted measures, such as in the forms outlined above.

Over the years, certain private companies have implemented schemes that are specifically targeted to benefit women. However, such schemes are implemented at the discretion of the business, and are, of course, limited to the women employed by that business. To empower all Australian women to build a reasonable superannuation balance to secure their retirement, change needs to be implemented by the Government.

The nature of the problem for Australian women, and particularly single women, is acute and should be addressed as a matter of urgency. Solutions will not take effect or transform the superannuation landscape for women overnight. This is all the more reason for the Government to act now.

Access to superannuation for downsizers

Many obstacles and challenges present themselves to those approaching or having reached retirement when they seek to change the property in which they reside. These challenges include the personal anxiety and physical stress associated with moving, which can be heightened for those who may have become less resilient as they have aged, as well as the commercial obstacles which include the unfair hurdles that may be imposed by financial institutions in the provision of bridging finance.

Prohibitive financial arrangements may force downsizers into selling their current property before acquiring a new one. No Australian of retirement age should unnecessarily face the prospect of this uncertainty nor the possibility of having to relocate several times temporarily before acquiring a downsized property more appropriate to their needs.

To assist those who have reached retirement age and are seeking to downsize, short-term access to superannuation should be available to alleviate some of the associated financial stress. We suggest that any funds withdrawn for this purpose should be returned into the person's superannuation fund by the end of the income year after the income year in which the funds were withdrawn. This would allow a reasonable period of time for retirees to acquire a downsized property and sell their existing property, without the undue pressure of bank bridging finance.

We note that outside of the benefits outlined above, such a proposal frees up further capital for the retired person to take advantage of the superannuation downsizer contribution and/or assist a self-funded lifestyle which ultimately reduces the burden on the Government.

Superannuation guarantee regime

The penalties imposed on employers for late or underpayment of superannuation guarantee (SG) contributions under the *Superannuation Guarantee (Administration) Act 1992* (**SGAA 1992**) are too harsh and disincentivise employers to come forward and disclose non-compliance. The draconian 200% penalties applied for non-payment or late payment of SG contributions are unjustifiably inconsistent with the treatment of non-payment or late payment of salary or wages under the *Fair Work Act 2009*.

Specifically, the nominal interest imposed under section 31 of the SGAA 1992 should apply only for the period that an SG contribution was not made to the fund. It should not be linked to the date on which the SG charge 'would be payable under [the] Act'. Further, the Commissioner should be provided with discretion to remit the nominal interest or administration component in appropriate circumstances. The current inability for the Commissioner to remit either of these two components is unfairly restrictive.

In light of the challenges facing employers in 2020 as a result of the COVID-19 pandemic which coincided with the former enacted amnesty period, consideration should be given to a further, retrospectively applied amnesty to allow employers with historical shortfalls, who were unable to make the necessary disclosures during 2020, to come forward and make good historical non-compliance.

Facilitate COVID-19 superannuation catch-ups

The economic impact of the COVID-19 pandemic has been far-reaching, not only impacting the long-term position of Australia's economy, but most acutely impacting the financial position of many Australians, their businesses, and their future retirement.

Media reports have indicated that more than half a million Australians have been left with nil superannuation balances following the early release of their superannuation under the temporary COVID-19 measure. In light of depleted superannuation balances as a result of the economic impact of the COVID-19 pandemic and the temporary early access to superannuation arrangements, reform is needed to encourage Australians to contribute to superannuation.

While it is our opinion that the superannuation system contains overly generous concessions which could be wound back to provide funding for other pertinent and enduring reforms to the tax system¹², a temporary reprieve to existing contributions caps is required to facilitate the repair of the damage to superannuation caused by the above. A possible option could be the provision of a cap, over and above the existing caps, to a maximum total contribution of, say, \$50,000 open for a period of up to 5 years to allow for the financial recovery of those adversely impacted by the economic impacts of COVID-19.

Full expensing of depreciating assets

The Tax Institute considers that amendments should be introduced to make the ability to fully expense a depreciating asset a permanent feature of the tax system. This would bring about efficiencies and reduce the compliance burden for a vast number of business taxpayers.

It is our opinion that the measure should be limited to assets costing less than \$30,000 for entities with an aggregated turnover of less than \$50 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)*.

In making this submission, we note that taxpayers should have the choice whether an asset is depreciated utilising common methodologies or is fully expensed, including whether the low pool value of a general small business pool (where it is less than \$50,000) is required to be fully deducted under section 328-210 of the ITAA 1997.

Support and protect Australia's intellectual property (IP)

Over the years, Australia's Research and Development (R&D) regime has been plagued by challenges, uncertainty, constant amendments and continued disputes, resulting in a system falling short of the necessary certainty and support required to properly harness the potential of Australian business. The reforms announced in the 2020-21 Federal Budget, and given effect by *Treasury Laws Amendment (A Tax Plan for the COVID 19 Economic Recovery) Act 2020* were a step in the right direction.¹³ Australia is at the forefront of IP development and we have many leading, brilliant minds across many industries. However, difficulties in raising capital and a lack of support for commercialisation activities often result in Australian IP being sold offshore, otherwise limiting Australia's long-term growth and prosperity.

We consider that the Government should review the current R&D regime and implement systems to make it easier and advantageous to develop and retain IP in Australia so as to attract both domestic and foreign investment. This would protect revenue streams on which our future can be built, and minimise disputes regarding eligibility for the incentive.

¹² More information will be provided to the Government in our Case for Change Discussion Paper.

¹³ The Commonwealth of Australia (2020). Budget Measures Budget Paper No. 2 2020–21, p 19. Retrieved from: https://budget.gov.au/2020-21/content/bp2/download/bp2_complete.pdf

Australia must improve incentives for angel and venture capital investors to encourage the required risk-taking and backing of Australian businesses to develop and commercialise their IP. We must consider OECD Base Erosion and Profit Shifting (**BEPS**) compliant patent box regimes, such as those successfully implemented in other countries, or other alternatives, to support the commercialisation and retention of IP in Australia. We have the opportunity at our fingertips to secure Australia's future by retaining and protecting what is developed here; now is the time for us to take a hold of it.

Reduce administrative burdens

The administration of our tax system continues to be plagued by issues of our own making. The present design of the self-assessment system and accompanying dispute resolution processes lead to time consuming, inefficient and costly experiences for administrators and taxpayers alike. We encourage the Government to conduct a thorough review of the self-assessment system and dispute resolution processes to identify opportunities and implement improvements for the benefit of the system as a whole.

The design of our system gives rise to unnecessary administrative and inequitable outcomes from the technical difference between an objection and a self-amendment. By way of example, in our self-assessment system, a taxpayer may self-assess on one basis (Basis A) and object against that assessment to achieve an assessment on a different basis (Basis B), free of the risk of penalty; whereas another taxpayer who self-assesses on Basis B or otherwise self-amends on that same issue, without lodging an objection, remains exposed to penalties and interest should Basis A be more appropriate. This incentive to self-object within our self-assessment system should be removed, ensuring an equal and level playing field for all taxpayers.

The Government should also improve the disputes processes, building on learnings from 2020. The case of *Apted and Federal Commissioner of Taxation* [2020] AATA 5139 highlights the problems inherent in the design of our dispute processes. Our system should facilitate the prompt resolution of matters of public importance and precedential value. It should not permit the delay of the resolution of precedential issues after the original expiration date of the programs to which they relate.

The Inspector-General of Taxation and Taxation Ombudsman has called for the use of declaratory proceedings in pertinent matters. However, the Commissioner has received advice noting the limitations of such proceedings.¹⁴ We call on the Government to promptly institute a process through which precedential matters can be swiftly resolved. If declaratory proceedings are deemed to be unsatisfactory, legislative amendment to permit the circumvention of the objections process prior to court appeal, or otherwise the inception of a suitably qualified judicial body to resolve such matters promptly, is required.

Responses to Board of Taxation reports and unenacted announced tax measures

The Tax Institute submits that there are additional areas which merit the Government's immediate attention. There have been a number of reviews conducted by the Board of Taxation to which the Government has not yet provided a response. Recent examples include:

- *Reforming Individual Tax Residency Rules: A Model for Modernisation* — completed March 2019;
- *Introducing Asset Merger Rollover Relief* — completed February 2017; and
- *Review of the Income Tax Treatment of Certain Forms of Deferred Consideration* — completed September 2018.

¹⁴ This advice is referenced and linked in the Decision Impact Statement for Commissioner of Taxation v Indooroopilly Childrens Services Pty Ltd under the headings 'Tax Office view of Decision' and 'Declaratory Proceedings' www.ato.gov.au/law/view/view.htm?docid=LIT/ICD/QUD253OF2006/00001&PiT=99991231235958; further discussion on the ATO's view on the use of Declaratory Proceedings may also be found in PSLA 2009/9, paragraphs 98 – 110 www.ato.gov.au/law/view/view.htm?docid=PSR/PS20099/NAT/ATO/00001&PiT=99991231235958.

On 12 December 2019, the Minister for Housing and Assistant Treasurer, the Hon Michael Sukkar, stated in a media release that the Government will consider the implications of the Board's findings in these reports, among others.¹⁵ The Tax Institute calls on the Government to:

- (a) provide a response to these reviews and others undertaken by the Board of Taxation; and
- (b) clarify the recommendations that the Government accepts, and the steps that will be taken to implement them.

We also wish to bring to the Government's attention ongoing concerns in relation to the taxation of PSI, which were raised in a report published by the Board of Taxation in 2009.¹⁶ In consultation with the tax profession and other stakeholders, the Board of Taxation found that the alienation of PSI regime had only in part achieved the underlying policy objective of improving integrity and equity in the tax system. In December 2009, the then Assistant Treasurer indicated that the Government would await the final report of the Henry Review before taking action.

Over a decade since the publication of the Board of Taxation's report and the Henry Review, the PSI rules continue to cause confusion among taxpayers and their advisers, and questions arise as to the level of compliance with, and enforcement of, the PSI rules. The case of *Commissioner of Taxation v Fortunatow* [2020] FCAFC 139, highlights the continuing complexity of the rules. There should be a reconsideration of the effectiveness of the current regime given the extent to which it is not achieving its policy objective.

Further, we request the Government to state its intentions in relation to announced, but as yet unenacted, tax measures. There are currently over 80 tax measures which have been announced but remain without legal effect. Many of these changes have already been the subject of consultation and are designed to cut red tape and make the system easier for businesses to operate. Such proposals cover a wide range of matters including improvements to the Taxation of Financial Arrangements regime, and measures to make Australia a more attractive destination for investment. Taxpayers require certainty in carrying on business and managing their tax affairs. The Tax Institute requests that the Government clarify which announced measures will proceed to legislation and the timeline and effective date for such measures. The Tax Institute welcomes the opportunity to further engage with the Government and consult on such measures.

¹⁵ The Hon Michael Sukkar MP (2019). *Board of Taxation to review CGT rollover provisions* [Media Release]. Retrieved from: <https://ministers.treasury.gov.au/ministers/michael-sukkar-2019/media-releases/board-taxation-review-cgt-rollover-provisions>

¹⁶ Commonwealth of Australia (2009), 'Post-Implementation Review into the Alienation of Personal Services Income Rules: A report to the Assistant Treasurer', Retrieved from: https://taxboard.gov.au/sites/taxboard.gov.au/files/migrated/2015/07/PIR_Alienation_PSI_Rules.pdf

APPENDIX B

About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.