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Business and finance tax measures up in the air

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In the fanfare of media lockups and glossy brochures, it is easy to forget that Budget announcements have no effect until they are enacted by legislation.

This article outlines the status of announcements relating to businesses and financial arrangements that have not yet been introduced into parliament. With the federal election imminent on 21 May 2022, these measures will be subject to consideration by the next government.

Small business “boost” for skills training and technology investment

An additional 20% deduction on eligible training and technology investment expenditure was

External training course expenditure would be eligible if provided by an entity registered in Australia to employees in Australia or online. In-house or on-the-job training, as well as training for persons other than employees would be excluded. The measure was proposed to apply for eligible training expenditure incurred between 7:30pm (AEDT) on 29 March 2022 (2022–23 Budget time) and 30 June 2024.

Technology investment would be eligible where incurred to support digital adoption. The measure would apply to costs of businesses expenses and depreciating assets, such as on portable payment devices, cyber security systems or subscriptions to cloud-based services. Eligible expenditure would be capped at $100,000 for each qualifying income year. The measure was proposed to apply for eligible technology investment expenditure incurred between 7:30pm (AEDT) on 29 March 2022 (2022–23 Budget time) and 30 June 2023.

Legislation had not been introduced to implement these measures before the proroguing of parliament. When announced in the 2022–23 Budget, the government had anticipated that the additional deduction for eligible expenditure incurred by 30 June 2022 would not be available until the next year's tax return.

Digital games tax offset

A digital games tax offset was proposed to be introduced from 1 July 2022.

The 30% refundable tax offset for qualifying Australian digital games expenditure was first announced in the 2021–22 Budget. The offset would only be available where a minimum of $500,000 qualifying expenditure had been spent on a game. The maximum offset available to a developer would be capped at $20 million in each income year. The proposed offset was expanded to include qualifying expenditure on developing games after their official release in the 2021–22 Mid-Year Economic and Fiscal Outlook.

Exposure draft legislation released on 21 March 2022 proposed to introduce the new offset by creating a new Div 378 in ITAA 1997. The draft Bill set out the eligibility criteria applicable for

offset. The application form, type of information to be provided by developers and methods for verifying information would be subject to a legislative instrument made by the Arts Minister. The explanatory statement also noted that the Arts Minister would issue guidance on how the exclusion of games with gambling elements in relation to loot boxes would apply in practice.

Consultation on the exposure draft legislation closed on 18 April 2022, after the proroguing of parliament on 11 April 2022.

Reduced FBT record keeping requirements

Fringe benefits tax (FBT) record keeping requirements were to be reduced under a 2021–22 Budget announcement.

The measure would empower the Commissioner to allow employers to rely on existing corporate records, rather than employee declarations and other records currently prescribed by FBT legislation. Employers, and in some circumstances employees, are often required to create additional records to meet FBT obligations under the current rules.

The measure was proposed to apply from the first FBT year following assent. The earliest that this measure could have effect if enacted is from 1 April 2023 for the 2023–24 FBT year.

Debt/equity tax rules

An integrity provision of the debt equity rules in Div 974 of ITAA 1997 was to be amended under a 2011–12 Labor Budget announcement.

The announcement related to s 974-80, an integrity provision that reclassifies certain interests from an arrangement that funds a return through connected entities to be an equity interest. The proposed changes were to ensure that the provision would only apply to arrangements where both the purpose and effect were that the ultimate investor had, in substance, an equity interest in the issuer company. The integrity provision would also not apply where the Commissioner considered it unreasonable. The amendments were to apply retrospectively from

The Liberal government announced on 14 December 2013 that the measure would proceed, with the design of the changes to be considered by the Board of Taxation as part of its review of the debt equity rules. The Board recommended that both s 974-80 and existing related scheme rules be repealed and replaced with a new scheme aggregation rule in its 2014 report *Review of the Debt and Equity Tax Rules – the Related Scheme and Equity Override Integrity Provisions*. On 2 April 2015, the government announced that it would proceed with the Board's recommendations. Although the new rules were envisioned to operate prospectively, taxpayers who self-assessed in accordance with the 2011 announcement would be protected.

Exposure draft legislation to implement the Board's recommendations was released for consultation on 9 October 2016. The draft legislation proposes to introduce a new scheme aggregation rule to ensure multiple schemes are only treated as a single scheme where this accurately reflects the economic substance of the schemes. The new rule would replace the existing related scheme rules under s 974-15(2) and 974-70(2), and the integrity provision in s 974-80.

Despite the Board's observations of significant difficulties arising from the existing related scheme provisions and integrity provision in s 974-80 for taxpayers and the ATO, the proposed changes have not yet been introduced into parliament.

This article was originally written for CCH iKnow ahead of the 2022 Australian federal election on 21 May 2022.

Find out more about these announcements on CCH iKnow:

- *CCH iQ: Small business skills and training boost*
- *CCH iQ: Small business technology investment boost*
- *Australian Federal Tax Reporter: Digital games tax offset to be introduced*
- *Australian FBT Commentary: Reduced FBT record keeping requirements*
- *Australian Federal Tax Reporter: Exposure draft: debt/equity tax rules.*