Mischel & Co. Advisory Services Pty Ltd
Accountants and Advisors

Federal Budget 2011

A REVIEW OF THE MAJOR ITEMS OF INTEREST

INDIVIDUALS & FAMILIES

- Personal income Tax rates remain unchanged except the Flood Levy
- Low Income Tax Offset bring forward
- Removing minors' eligibility for low income tax offset on unearned income
- Increasing Medicare Levy low-income thresholds
- Dependant Spouse tax offset phase-out
- Reduced HECS discounts
- Education Tax Refund to include school uniforms
- Self-education expenses against Youth allowance payments denied
- Increasing family Tax Benefit Part A for families with teenagers
- Flexible advances for Family Tax Benefit Part A

BUSINESSES

- Lower Company Tax Rate
- Immediate write-off for purchase of motor vehicle from 2012-13
- Reportable taxable payments for the building industry
- Infrastructure tax benefit
- Adjustments to PAYG instalments for 2011-12
- Reform of the Car Fringe Benefit Rules
- Company Loss Measures: Improvements to loss recoupment rules from 2011-12
- Treatment of New Residential Premises
- Minor changes related to Capital Gains Tax

SUPERANNUATION

- Refund of Excess Concessional Contributions
- Superannuation contribution caps - operation of the higher cap for over 50s
- Reduction of 25% in the minimum payment amounts for account-based pensions in 2011-12
- Superannuation co-contribution indexation freeze extended
- Tax compliance - countering fraudulent phoenix activities by company directors
- Superannuation on payslips
- Greater use of tax files numbers
- Limiting the CGT trading stock exemption for superannuation funds

OTHER POINTS OF INTEREST

INDIVIDUALS & FAMILIES

INDIVIDUALS & FAMILIES - GENERAL

- **Personal income Tax rates remain unchanged except the Flood Levy:**
  Individual income tax rates will remain unchanged for the 2011-12 income year
  Flood levy
  The flood levy will apply to individual taxpayers, both resident and non-resident, who have a taxable income over $50,000 in the 2011-12 financial year.
  Under the levy:

Taxable Income during 2011-2012	Additional tax (Flood Levy) on "Ordinary Tax + Medicare Levy"
0-$50,000	Nil
$50,001-$100,000	0.50%
$100,001 & Above	1.00%

- **Low Income Tax Offset bring forward**
  The amount of the low income tax offset (LITO) that is delivered to low and middle income earners through their regular pay during the year will be increased from 50% to 70% of their total entitlements from 1 July 2011. The remaining 30% of their LITO benefit will still be paid as a lump sum on assessment following lodgment of an income tax return. In general words, Lower income earners (less than $67,500 per financial year) will be taxed less during the 2012 financial year, rather than compensated after their tax return is lodged.
- **Removing minors' eligibility for low income tax offset on unearned income**
  Children under the age of 18 will no longer be able to access the **low income tax offset (LITO)** to reduce tax payable on unearned income such as dividends, interest and rent from 1 July 2011. This measure will reduce the attractiveness of investing on behalf of minors or making trust distributions to minors. This is because currently it's possible for a minor to receive a maximum tax-free income of $3,333 pa when the low income tax offset is taken into account
  This measure won't impact income earned by children from work, unearned income of orphaned or disabled children and compensation payments and inheritances received by children.

- **Increasing Medicare Levy low-income thresholds**
  The Medicare low-income thresholds will be increased to $18,839 for individuals and $31,789 for families, with effect from 1 July 2010. The additional amount of the threshold for each dependent child or student will also increase to $2,919. This increase will ensure that individuals and families don't pay the Medicare levy where their income is below the certain level.
- **Dependant Spouse tax offset phase-out**
  The dependant spouse tax offset will no longer be available for spouses born after 30 June 1971 from 1 July 2011. Certain exceptions will apply, including where the spouse is an invalid or permanently disabled. The maximum offset is currently $2,243 pa.
- **Reduced HECS discounts**
  From 1 January 2012, a reduction in the following discounts will apply to payments made under the Higher Education Contribution Scheme (HECS):
  - The discount available to students electing to pay their student contribution up-front will be reduced from 20% to 10%, and
  - The bonus on voluntary payments to the Tax Office of $500 or more will be reduced from 10% to 5%.
- **Education Tax Refund to include school uniforms**
  From 1 July 2011, the Education Tax Refund will also cover expenditure on uniforms (currently parents can claim expenses for computers, stationery and textbooks) which are required or otherwise approved by a school, including optional school uniforms, and sports or physical education uniforms.

INDIVIDUALS & FAMILIES – SOCIAL SECURITY CHANGES

- **Self-education expenses against Youth allowance payments denied**
  The tax law will be amended to disallow self-education expenses against all government assistance payments. From 1 July 2011, individuals who receive Youth Allowance (Student) will not be able to claim a deduction for expenses incurred in gaining their payment.
- **Increasing family Tax Benefit Part A for families with teenagers**
  From 1 January 2012, the annual rate of Family Tax Benefit (FTB) Part A for families with dependants aged 16 to 19 years who are enrolled in full time secondary school study to the rates for 13 to 15 years old dependants. This measure will increase the level of support provided by the FTB by up to $4,208 a year for 16 and 17 year olds, and up to $3,741 a year for 18 and 19 year olds.
- **Flexible advances for Family Tax Benefit Part A**
  From 1 July 2011, families will be eligible for an advance payment of up to 7.5 per cent, up to a maximum of $1,000, of their annual FTB Part A entitlement, at any time throughout the year. Advances will be repaid over six months by direct deductions from future FTB payments.

There are few other minor changes with the Family Tax Benefit eligibilities and indexation rules, Please contact us if you wish to know.

BUSINESSES

- **Lower Company Tax Rate**
  Small businesses will be able to access a reduced 29% tax rate in 2012-13.
- **Immediate write-off for purchase of motor vehicle from 2012-13**
  Small businesses will be able to claim up to $5,000 as an immediate deduction for the purchase of motor vehicles for vehicles acquired from 2012-13. This measure follows other small business reforms which apply from 2012-13, including:
  - An immediate deduction of all depreciating assets acquired with a cost under $5,000 (currently $1,000),
  - Use of a single general business pool at a rate of 30% (currently, small business entities are able to allocate to a general pool with a 30% rate and a long-life pool with 5% rate).

  The new small business instant write-off for the first $5,000 of any motor vehicle will effectively replace the Entrepreneurs Tax Offset (ETO), which will be abolished with effect from the 2012-13 income year. The abolition of the ETO was expected widely because of its poor targeting and high compliance costs.
- **Reportable taxable payments for the building industry**
  A proportion of businesses in the building and construction industry will be required to report annually on payments made to contractors. The reporting regime will require these businesses to report information that they should already be currently collecting under existing tax arrangements.
- **Infrastructure tax benefit**
  A new tax incentive will be introduced that's designed to remove hurdles in the current tax system that discourages private investment in infrastructure. These new tax provisions will be introduced for designated infrastructure projects that are to be of a national significance. Losses generated by designated infrastructure projects will be exempt from the tax loss integrity measures and will be uplifted at the government bond rate. The measure is capped at $25b for approved infrastructure projects until 30 June 2017.
- **Adjustments to PAYG instalments for 2011-12**
  The government will reduce income tax instalments paid under the Pay As You Go (PAYG) system by using the gross domestic product method (GDP) adjustment method for one year. PAYG instalments in 2011-12 will be set at 4% above the small business's taxable income for the previous year, half the statutory rate which would otherwise have applied.
  This is a one year benefit and the statutory rate will apply as normal from 2012-13.

- **Reform of the Car Fringe Benefit Rules**
  The statutory formula method for valuing car fringe benefits will be reformed by replacing existing statutory rates with a single 20 per cent rate that will apply regardless of the distance that the vehicle has travelled. The measure will thus remove the unintended tax incentive for people to drive more to access higher concessions.

  This reform will apply to new contracts entered into after 7:30pm (AEST) on 10 May 2011 and will be phased in as follows:

Distance travelled during FBT year	From May 10, 2011	From April 1, 2012	From April 1, 2013	From April 1, 2014
0 - 14,999km	20%	20%	20%	20%
15,000 - 24,999km	20%	20%	20%	20%
25,000 - 39,999km	14%	17%	20%	20%
More than 40,000km	10%	13%	17%	20%

- **Company Loss Measures: Improvements to loss recoupment rules from 2011-12**
  A company can deduct prior year losses if it satisfies the continuity of ownership test (COT) or the same business test (SBT). With effect from 2011-12, the government will improve the operation of the company loss recoupment rules by making it easier for companies to satisfy the COT in certain circumstances.
- **Treatment of New Residential Premises**
  The GST Law will be amended to restore the taxation treatment of GST on a new residential premises as following:

  - from 3 October 2007, new residential premises constructed under development lease arrangements are treated as taxable supplies (GST Applicable)
  - from 1 July 2000, the granting of individual strata lot leases over newly constructed residential premises is not sufficient by itself to make future supplies of the premises input taxed, and
  - From 1 July 2000, any change in property title arrangements will not result in the premises once again becoming new residential premises.

  Transitional arrangements will apply to ensure that taxpayers who entered into arrangements prior to the Government's announcement on 27 January 2011, are not disadvantaged.

- **Minor changes related to Capital Gains Tax:**
  - The rules governing access to the small business CGT concessions will be tightened for trusts and broadened for some small businesses.
  - Gains or losses from renewable resource assets or preserving environmental amenity will be CGT exempt.
  - Scrip for scrip rollover integrity provisions are to apply to trusts, superannuation funds and life insurance companies.
  - Various concessions will apply to special disability trusts to make them more beneficial to families.
  - Under the proposed measures, a CGT exemption will apply to any gains or losses arising from:
    1. a right to a financial incentive granted to the taxpayer under an Australian Commonwealth, State or Territory scheme that encourages the acquisition of renewable resource assets (e.g. solar hot water systems), or
    2. For the taxpayer agreeing to preserve a part of Australia's environmental amenity (e.g. for refraining from removing remnant vegetation).

SUPERANNUATION

- **Refund of Excess Concessional Contributions**
  Eligible individuals who breach the concessional contributions cap by up to $10,000 will be provided with a one-off option to request any excess contributions to be refunded to them.
  This new refund option will only apply to first time breaches from 1 July 2011.
  The changes will give individuals the option to take excess concessional contributions out of their Superannuation fund to have assessed as income at their marginal tax rate, rather than the excess concessional contributions tax rate of 31.5% (in addition to the 15% contributions tax for the fund).
- **Superannuation contribution caps - operation of the higher cap for over 50s**
  The Government will set a higher concessional superannuation contributions cap for eligible individuals aged 50 and over with total superannuation balances of less than $500,000 at $25,000 above the general concessional cap. This measure will apply from 1 July 2012.
  The general concessional contribution cap is currently set at $25,000.
- **Reduction of 25% in the minimum payment amounts for account-based pensions in 2011-12**
  The Government will phase out the pension drawdown relief that has been provided over the last three years. Minimum payment amounts for account-based, allocated and market linked (term allocated) pensions will be reduced by 25 per cent for 2011-12 and will return to normal in 2012-13.

- **Superannuation co-contribution indexation freeze extended**
  Under the co-contribution scheme, the Government provides a matching co-contribution for contributions made into superannuation out of after-tax income. The matching Government co-contribution is up to $1,000 for people with incomes of up to $31,920 in 2010-11 (with the amount available phasing down for incomes up to $61,920).

- **Tax compliance - countering fraudulent phoenix activities by company directors**
  The Government will strengthen the tax law to counter fraudulent 'phoenix' activity, which involves a company intentionally accumulating debts to improve cash flow or wealth and then liquidating to avoid paying the debt. The business is then continued as another corporate entity, controlled by the same person or group and free of their previous debts and liabilities.

  As part of these strengthening measures, from 1 July 2011, the director penalty regime will be extended to superannuation guarantee amounts, making directors personally liable for their company's failure to pay employee superannuation.

- **Superannuation on payslips**
  The Government will ensure that employees receive information on their payslips about the amount of superannuation actually paid into their account. Employees and employers will also receive quarterly notification from their superannuation fund if regular payments cease, with effect from 1 July 2012;
- **Greater use of tax files numbers**
  The government will allow superannuation fund trustees to make greater use of tax file numbers (TFNs) to locate member accounts and to facilitate the consolidation of multiple member accounts.
- **Limiting the CGT trading stock exemption for superannuation funds**
  The government will remove the trading stock CGT exception for complying superannuation entities for specified assets, with effect from 7.30 pm (AEST) 10 May 2011. This will ensure gains or losses on those assets (primarily shares, units in a trust and land) are subject to Capital Gains Tax. This will prevent complying superannuation entities treating shares as trading stock, so as to deduct losses on their shares against income other than capital gains.
  This measure also provides transitional rules to ensure that assets held or accounted for as trading stock before the time of announcement are unaffected.

Other Points of Interest

The ATO increases directors' liabilities for tax arrears.

When a Director Penalty Notice (DPN) is issued, directors become liable to pay an amount equal to the company's unpaid PAYG. The only way this personal liability can be removed is by the directors complying with one of the three alternatives set out in the DPN within 21 days.

Recent changes in legislation and provides an example of a Notice of Intended Legal Action and a DPN to assist you in recognising these documents.

A Director Penalty Notice (DPN) is often issued shortly after a repayment plan has been breached. In the past, the ATO would frequently negotiate multiple repayment plans before resorting to a DPN. The ATO is now much less likely to agree to an alternative payment plan.

Changes to the legislation that came into effect on 1 July 2010

- The previous 14 day notice period was extended to 21 days.
- The option to enter into a repayment arrangement to avoid personal liability was removed.

To avoid personal liability, directors issued with a DPN must ensure that the outstanding debt described in the DPN is paid in full, or a liquidator or voluntary administrator must be appointed within 21 days.

The ATO also issues Notices of Intended Legal Action / Garnishees (warning notices) as a debt collection tool prior to issuing a DPN.

New legislation increases ATO powers

New legislation dramatically increases the Australian Tax Office (ATO)'s powers and limits its exposure to debt by requiring certain tax payers to lodge security deposits. While the changes are driven by a desire to counteract Phoenix activity, there is no requirement to prove a history of improper behaviour, so the affects of the legislation are likely to be wide reaching, with implications for all tax payers.

The Tax Laws Amendment Act (Transfer Provisions) 2010 became law on 1 July 2010. Key changes as follows:

Security deposits (Section 255-D)

- The ATO can now require tax payers to lodge a security deposit. The amount payable is at the sole discretion of the ATO, based on what it regards as "reasonable".
- Borrowers and lenders may need to factor in additional funding or security in case they are required to provide a security deposit which may take the form of cash, bank guarantee, property mortgage, debenture charge etc.
- The ATO has flagged that it is most likely to require the security deposits from companies in high risk industries or companies engaged in unscrupulous/phoenix activities. However, the ATO can require any tax payer to lodge a security deposit, regardless of its business practices.

Removal of instalment agreement under Director Penalty Notice (DPN)

- Prior to 1 July 2010, under a DPN a director became personally liable for unremitted PAYG debt unless one of the following occurred within 14 days of the date of the DPN: the debt was paid in full; the company entered into an instalment agreement with the ATO; the company entered into Voluntary Administration; or the company was being wound up. The option to satisfy a DPN via an instalment agreement has been removed. If PAYG taxes remain outstanding for more than 21 days after a DPN is issued, the directors become personally liable for the outstanding debt.
- Removal of the instalment agreement option means that it is now simpler for directors' personal liability to be triggered should PAYG debts remain unpaid. It applies to any directors appointed prior to a DPN being issued, regardless of when they resign their directorship. This means that it's critical for current and prospective directors (and their advisors) to be fully aware of their company's taxation position.
- While it is no longer possible for a director to avoid personal liability 21 days after a DPN is issued, if an instalment agreement with the ATO is still sought by a director, he/she should ensure that the ATO agrees not to enforce the personal liability while the delayed payments are being made and the agreed terms are not breached.