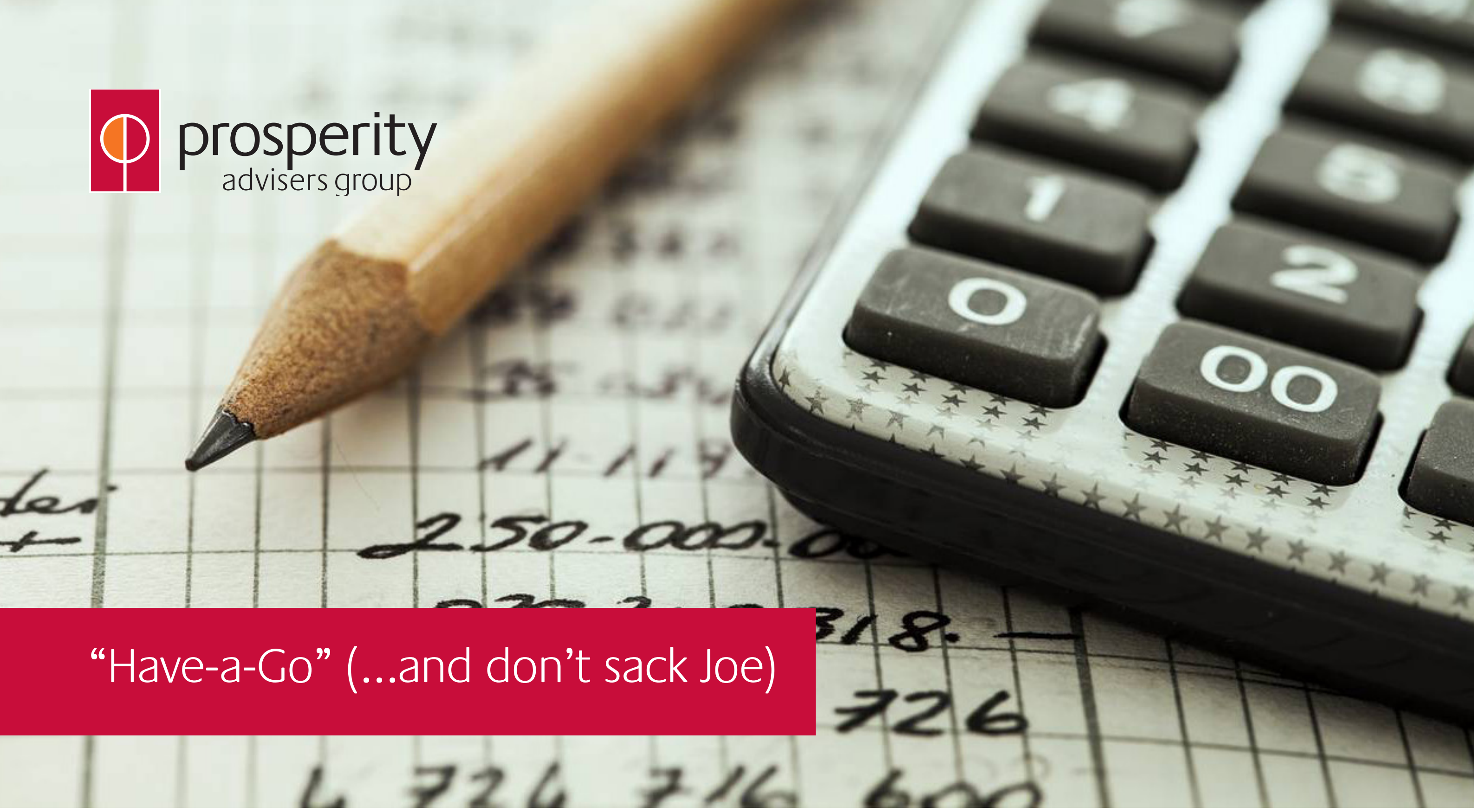

“Have-a-Go” (...and don’t sack Joe)

2015 Federal Budget Overview

The Federal Treasurer wants mums and dads, small business owners, farmers and the young to “get out there and have a go” in a budget targeted at stimulating activity at the grass roots. It is a carrot and stick affair, incentivising people in the heartland but penalising the “dirty thirty” multinationals at the “top end of town” who the Government does not believe are playing the tax game fairly. This budget is not a sequel to last year’s budget. This is a completely new plot with a new script. Families, particularly on lower incomes, were already winners with pre-budget expansions of childcare concessions examined below.

But the heartland should celebrate the fact that – finally! – we have a budget that provides targeted measures and incentives for micro and small businesses. Small businesses with a turnover of less than $2 million benefit from a range of measures. The company tax rate will drop to 28.5% (but the franking rate will remain at 30%!) There is also the “hire a hubbie” 5% tax discount for unincorporated small businesses that get a tax discount of up to $1,000. But the signature measure must be the immediate deduction for fixed asset purchases of less than $20,000.

The Treasurer wants to trigger a 2015 year end small business spend-a-thon as SME’s lower their tax this year by upgrading their businesses before year end. This is the only measure to commence from budget night. You can commence the spending frenzy from now (subject to Senate approval).

Also on offer is tax free rollover relief for a change of business structure – removing obstacles for selecting the most appropriate operating structure for business. Next FBT year go crazy with FBT free gadgets. You can have as many tax free iPhones as you like in a year (– look after mum, dad and the kids). Whereas your mates at the top end of town can only have 1 gadget with a distinct function per year (their kids will have to put up with hand-me-downs!).

Start ups will be able to write off professional fees related to commencing business as an outright tax deduction in the year incurred. This reverses a manifest injustice which required such costs to be written off over 5 years when the cash outflow occurred in year 1.

Health and PBI organisations will need to rethink salary packages with a new FBT exempt meal entertainment expenditure cap of $5,000 to apply from 1 April 2016 (doctors, you have just under 1 year to hammer that credit card hard).

From 1 July, start up businesses will enjoy the improvement of tax rules for employee share schemes – extending access to the CGT discount where share options are converted to shares and the total ownership period is 12 months. Previously, the acquisition date was argued by the ATO to “reset” when the options converted to shares creating perverse outcomes. Farmers get a 3 year write-off for drought proofing measures for fodder and grain storage.

The 30-odd multinationals that have displeased the Government by not paying enough tax get a punch kick approach with a significant tightening of tax avoidance rules while at the same time raising the standard of documentation that must be maintained to substantiate transfer prices that shift profits out of the country. The most practical effect of this targeted approach on the rest of us is the so called “netflix” tax that will impose GST on supplies of digital content by 1 July 2017. Fly-in/ Fly-out workers are also penalised with the zone tax rebate being removed where the worker does not genuinely live in a remote area but flies to the remote area for work and then returns to their inner city apartment at Barangaroo.

Alas, the next generation of working holiday seekers will not be able to claim the tax free threshold from 1 July 2016 by extending their visa to spend more than 1/2 the year in Australia, thereby “tipping” themselves into local “tax residency”. The Government is going to hunt down and recover HELP debt repayments for debtors residing overseas. KaPOW – take that foreign baddies.

Perhaps this is the best budget one could hope for from a Government so hopelessly blocked by a hostile Senate. Let us hope common sense prevails and that petty politics does not block a much needed boost to a small business community that has long been ignored by successive Governments.

Individuals and Family

The key focus of the Government in relation to individuals and families is two-fold. The first is about saving money where possible, and secondly getting greater numbers of people to participate in the workforce. This involves proposed changes to the child care rules.

Child Care Changes and Family Tax Benefit

In a pre-budget announcement the Government has highlighted that it proposes to replace the child care rebate and child care benefit, with a new single means tested child care subsidy. The subsidy would commence on 1 July 2017 and is proposed to work as follows:

- Families earning up to $65,000 will receive 85 per cent of the childcare cost per child, or a designated benchmark price, whichever is lower. That will reduce to 50 per cent for families with incomes of $165,000 and above.
- Hourly benchmark prices will be $11.55 (long day care), $10.70 (family day care), $10.10 (out-of-school hours care) and $7.00 (in-home care nanny pilot program due to begin in January 2016).
- There will be no cap on subsidies for families with an income below $180,000, while those who earn beyond that will receive an increased cap of $10,000 per child, up from $7,500.
- If the family income is more than $65,000 and both parents are not working, then the child care subsidy will not be available. This will prevent stay at home mothers from accessing the subsidy.

The above changes are very generous for families on lower incomes, and are therefore expected to cost $3.2 billion over 5 years. These changes have therefore been linked by the Government to previously proposed changes to the family tax benefit. These changes will be necessary to pay for this increased cost. These previously proposed changes have been noted below.

Family tax benefits (“FTB”) Part B changes

As previously flagged by the Government, from 1 July 2015, the FTB Part B primary earner income limit will be reduced from the current $150,000 p.a. to $100,000 p.a.

Additionally, the income threshold for the Dependent (Invalid and Carer) Tax Offset (**"DICTO"**) will also be reduced to $100,000. The reduced limits will apply from 1 July 2015.

From 1 July 2015, the FTB Part B payments will be limited to families whose youngest child is younger than six years of age to encourage workforce participation amongst parents. A transitional arrangement will be in place to ensure that families with a youngest child aged six and over on 30 June 2015 will remain eligible for the payments for two years.

In the 2014-15 year the maximum benefit payable under the FTB Part B was $4,274.15.

Family tax benefits Part A changes

From 1 July 2015, the FTB Part A per child add-on to the higher income free threshold for each additional child will be removed.

GST – 'NETFLIX TAX'

After many previous attempts, the Government has introduced GST to digital downloads, commonly referred to as the 'Netflix tax', which is to apply from 1 July 2017.
Currently, digital products and services imported by customers are not subject to GST. The proposed application of GST however does not have a threshold and GST should apply straight away on all Australian purchases of digital goods from overseas suppliers.

Other Changes

Other changes proposed that impact families are as follows:

- If an employer offers a paid parental leave scheme to employees then those employees will not be able to access the taxpayer funded paid parental leave scheme as well.
- Pension eligibility rules are to be tightened.
- The Zone Tax Offset (**"ZTO"**) is concessional tax offset available to people who reside and work in a specified remote area. Changes will be made to exclude fly-in-fly-out and drive-in-drive-out workers from the concession.
- Residency rules will be changed to treat most people who are temporarily in Australia for a working holiday as non-residents for tax purposes irrespective of how long they are in Australia.
- The Medicare low income thresholds will be increased to $20,896 for singles and $35,261 for couples with no kids.
- From 1 July 2015, removal of the 12% of cost method and the one third of the actual expenses method for motor vehicle deductions.
- From 1 July 2015, replace the different cents per KM rates with a single rate of 66 cents per KM.
- The Government has proposed that from the 2016-17 income year, Higher Education Loan Programme (**"HELP"**) debtors residing overseas for six months or more will be required to make repayments on their HELP debt if their worldwide income exceeds the minimum repayment threshold at the same repayment rates as debtors in Australia.

Superannuation

One of the pleasing changes in the budget is that no changes have been made to the superannuation rules. There will however be a root and branch review of superannuation as part of the overall review of the Australian tax system.

Small Business

As expected, the Government has released a number of measures which have been tailored towards Small Businesses with a view to innovate, grow, and create jobs.

Small business tax cuts

The Government has delivered on its promised 1.5% tax cut for incorporated small businesses reducing the company tax rate from 30% to 28.5% for those with an aggregate annual turnover of less than $2 million. For those above $2 million, the current 30% company tax rate will continue to apply on all their taxable income.
Despite the shift in the company tax rate for some, the current maximum franking credit rate will remain unchanged at 30% for all companies.

To extend the tax cut to unincorporated small businesses such as those operating through partnerships or trusts, the Government has delivered a 5% discount (to be delivered as a tax offset) on income tax payable for those with an aggregate annual turnover of less than $2 million up to a cap of $1,000 per individual for each income year.

These tax cuts will be available from the 2015-16 income year.

Increased deductibility

The Government has made two key changes which are intended to increase business expense deductibility and provide cash flow improvements for businesses.

From the 2015-16 income year, the Government will allow businesses to immediately deduct a range of professional expenses incurred in relation to starting a new business rather than write them off over five years. Expenses include those in relation to professional, legal, and accounting advice.

Furthermore, businesses with an aggregate annual turnover of less than $2 million will broadly be able to immediately deduct assets that cost less than $20,000 and are acquired between 12 May 2015 and 30 June 2017. These rules will revert back from 1 July 2017.

Assets costing more than $20,000 can be placed into small business simplified depreciation pool and depreciated at 15% in the first year and 30% in each following year until the balance is less than $20,000 at which time it can also be immediately deducted

The 'lock-out' laws which prevent small businesses from re-entering the simplified depreciation regime will also be suspended until 30 June 2017.

Additionally, small businesses will be able to access accelerated depreciation for the majority of capital asset types with only a small number of assets not eligible.

Employee Share Schemes

Following the Employee Share Scheme (**"ESS"**) Bill introduced to Parliament in March 2015, the Government has announced additional changes to the ESS rules following further consultation.

Minor technical changes that could be made to the Bill include:

- Excluding eligible venture capital investments from the aggregated turnover test and grouping rules (for the start-up concession);
- Providing the capital gains tax discount to ESS interests that are subject to the start-up concession where options are converted into shares and the resulting shares are sold within 12 months of exercise; and
- Allowing the Commissioner to exercise discretion in relation to the minimum three-year holding period where

there are circumstances outside the employee's control that make it impossible for them to meet this criterion.

These changes, along with those announced in March 2015, will make the ESS regime more accessible for all Australian businesses and their employees with an expected effective date from 1 July 2015.

Restructure Opportunities

The Government has recognised that new small businesses may choose an initial legal structure that may not suit them at a later more established stage.

Where a small business has an aggregate annual turnover of less than $2 million, the Government will allow a change of legal structure without exposure to a capital gains tax (**"CGT"**) liability.

This opportunity will be available to small businesses that change their entity type from the 2016-17 income year.

FBT Concessions

For FBT exemption will be available to small businesses with an aggregate annual turnover of less than $2 million from 1 April 2016 that provide employees with more than one qualifying work-related portable electronic device (even where the items have substantially similar functions).

Under current rules, the FBT exemption can only apply to more than one portable electronic device used primarily for work purposes where the devices perform substantially different functions.

This measure will remove confusion with respect to whether functions overlap between different devices.

Corporates and Business

Unless you're one of thirty global companies that the Government is seeking to target in a bid to protect its tax revenue, this is a "no news" budget.

Fringe Benefits Tax

For hospitals, charities and PBIs an annual grossed up limit of $5,000 for salary sacrificed meal entertainment and entertainment facility leasing expenses for employees (meal entertainment benefits) has been introduced where previously unlimited. This effectively makes all use of meal entertainment benefits reportable.

As such, meal entertainment benefits will constitute as a separate cap however amounts which exceed the grossed-up cap of $5,000 can also be considered when determining whether the employee has exceeded their FBT exemption or rebate cap.

These measures will apply prospectively from 1 April 2016 to coincide with the start of the FBT year.

Example

The below illustration demonstrates that there is still potential for savings ($1,038) under the proposed rules.

	Not Packaged	Packaged
Salary	$100,000	$100,000
Less: Sacrificed Amount	Nil	$2,118
Taxable Income	$100,000	$97,882
Tax Payable	$26,947	$26,121
Less: Meal	$2,330	Nil
Net Remuneration	$70,723	$71,761
	Savings	$1,038

However under the existing rules, it is possible to obtain much more significant tax savings than the nominal savings illustrated above.

R & D Tax Incentive

The Government has introduced a cap of $100 million on the amount of eligible R & D expenditure for which companies can claim a tax offset at a concessional rate under the R & D tax incentive.

The rate of the R&D tax offset will be reduced to the company tax rate for the part of a company's eligible R & D expenditure that exceeds $100 million for an income year.

This means that R&D expenditure above $100 million will provide no greater benefit to an entity than it would receive from a normal deduction. R&D expenditure below $100 million will not be affected by a rate reduction.

Furthermore, the Government has interestingly continued to endorse a reduced refundable (43.5%) and non-refundable (38.5%) offset rate, despite the proposal being rejected by the Senate in March 2015.

GST

The Government has provided additional funding to the ATO to extend the ATO GST Compliance Program.

In addition to the above the Government has also announced that it will not be proceeding with previously proposed changes regarding the replacement of the GST-free treatment of going concerns and farmland with a reverse charge mechanism.

Primary Production Deductions

From 1 July 2016 changes will be implemented to allow primary producers an immediate deduction for capital expenditure related to fencing and water facilities.

Accelerated depreciation will also be available in relation to fodder storage.

Large International Corporates and Business

To deal with the perceived avoidance of Australian tax by 30 large international groups the Government has proposed to strengthen the anti-avoidance provisions. This will include strengthening the Part IVA general anti-avoidance provisions and also strengthening the penalty provisions. The changes to the penalty provisions will enable a maximum penalty of 100% of the tax plus interest to be imposed.

Part IVA Changes

As noted above the Government has proposed changes be made to Part IVA to prevent large international groups avoiding tax in Australia.

In conjunction with the announced changes the Government released an exposure draft Bill.

The Draft Tax Laws Amendment (Tax Integrity Multinational Anti-avoidance Law) Bill 2015 aims to target the reduction of the Australian tax base by multinational entities using artificial or contrived arrangements to avoid the attribution of business profits to a taxable permanent establishment in Australia.

According to the proposed measure, the anti-avoidance rules will apply if in connection with a scheme:

- A non-resident entity derives income from the making of a supply of goods or services to Australian customers, with an entity in Australia supporting that supply, and

- The non-resident avoids the attribution of the income from the supply to a permanent establishment in Australia.

For this anti-avoidance law to apply, it must be reasonable to conclude that the division of activities between the non-resident entity, the Australian entity, and any other related parties has been designed to ensure that the relevant taxpayer is not deriving income from making supplies that would be attributable to an Australian permanent establishment. It will also be necessary that the principal purpose, or one of the principal purposes, was the tax benefit.

These measures will apply from 1 January 2016, and only apply to non-resident entities that have annual global revenue of over AU$1 billion.

Increased Penalties

Following on from the above the Government will also increase the penalties that can be applied to companies with global revenue of greater than $1 billion. These changes will double the penalties that can be applied to these groups from 1 July 2015.

Transfer Pricing Changes

For large corporates with a turnover of greater than $1 billion, the OECD's new transfer pricing documentation standards will come into play from 1 January 2016.

Under the new documentation standards, the ATO will receive the information on large companies that operate in Australia. These reports will provide the ATO with a global picture of how multinational entities operate, assisting it to identify multinational tax avoidance.