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Federal Budget 2013/14

The BUDGET for Oz?

Contents

While delivering the Gillard Government's 2013-14 Budget this evening, Treasurer Wayne Swan focussed on three key words, "stronger, smarter, fairer".

In an environment where the change in fortunes has moved from somewhere over the rainbow with a 2013 forecast budget surplus of $1.5 billion to a forecast deficit next year of $18 billion, it is natural to query whether the Australian economy exhibits any of those Emerald City-like attributes.

Certainly in the context of an upcoming Federal election with an expected change in Government, it seems that Mr Swan has promised much which he will not need to deliver.

There is no dispute that many of the measures announced have real merit. These include the investment in disability care and announcements affecting infrastructure and education. The difficulty lies in the financing of such benefits and how the revenue collection measures announced will act as a handbrake to Australian business.

Few in business will be celebrating tonight's Budget announcements. Changes to the thin capitalisation regime will discourage international investment in Australia, as the potential loss in interest deductions will make Australian subsidiaries less profitable and less effective contributors to international groups.

Likewise while many are talking about the steam coming out of the mining industry, the changes to the write off and capital gains tax treatment of mining rights and information will be equally disappointing.

The Government failed to grasp the opportunity to show a genuine commitment to real economic reform needed to underpin long-term economic prosperity. This potentially fails the future generations of Australians who will depend upon a robust structure of Australia's economy. The opportunity has been wasted to rebalance critical Australian institutions. The most notable of these concern genuine and sustainable reforms to Australia's superannuation system, the development of an effective industry policy strategy and any real meaningful reform of Australia's taxation system.

The Government's election prospects are intertwined with the immediate political ramifications of this year's Budget. If the early views are any indication, it may be that this Budget will not increase business confidence, and will do little to increase the Government's standing.

Clicking the heels on the energy & resources industry

As was widely speculated before the budget, the industry has been hit with tax changes that will impact return on investment.

Investors have recently been exiting Australian Energy and Resources stocks due to decreases in commodity prices and the significant tax changes already impacting the sector (i.e. MRRT, Carbon tax and the taxation of LAFHA for expatriates). The industry needs to be supported during these times, but this Budget is instead aimed towards using the sector to fill the gap and has not provided any material support. Matters that were raised in the Budget that have an impact on the industry are highlighted.

Removal of the Immediate Deductibility of Expenditure on Mining Rights/Information

Legislative change to the deductibility of exploration expenditure was widely expected in this year's Budget. The ATO has recently been undertaking a project to review the deductibility of exploration expenditure and the manner in which mining and exploration companies have been treating expenditure of that nature. Their belief is that companies are extending their periods of 'exploration' into what should more appropriately be 'mine development' and thus obtaining an up-front deduction for expenditure that should be claimed over the life of the mine.

It was announced that expenditure on mining rights and information will no longer qualify as an immediate deduction, but will be depreciated over the shorter of 15 years or their effective lives. This measure is a clear indication that the current Government has realised the revenue impact of the concession and has decided to scale it back. It is difficult to contemplate how the effective life of a mine can be determined during the exploration stage and prior to undertaking feasibility studies, perhaps meaning that the 15 year period will be the default amortisation period.

Of some comfort are the stated exclusions that any undeducted costs will be immediately deductible if the exploration is unsuccessful. Mining rights acquired from relevant government agencies and by a farmer under a recognised 'farm-in, farm-out' arrangement as commonly used by 'junior explorers' will also continue to be immediately deductible.

We all know that Dorothy clicked her heels three times… but Mr Swan has found a fourth for the Energy and Resources industry!

The industry was looking for the Government to encourage exploration expenditure through the introduction of a tax credit system that allows companies to voluntarily pass to shareholders a credit for losses created on exploration. Encouraging exploration is critical for the industry at a time when greenfield exploration is at an all-time low due to commodity prices and a lack of new capital injection, combined with a number of larger resource companies abandoning proposed expansion. Unfortunately, no such measures were provided for in this year's Budget.

The forecast impact of this measure is $1.1 billion over the forward estimates.

Foreign Resident Capital Gains Tax Regime

Generally Australia's capital gains tax system only taxes foreign residents on capital gains on direct interests in real property and interests of 10% or more in a company or unit trust whose assets are principally real property, including land and mining rights. These assets are called Taxable Australian Real Property (TARP).

For the purposes of determining the value of an entity's TARP, mining information will now be included in the value of mining rights.

Previously the value of mining information and goodwill was considered not to be part of the mining rights and therefore included as a non-TARP asset, enabling a significant number of foreign investors to escape the capital gains tax net.

Thin Capitalisation Regime

Whilst the thin capitalisation rules are not specifically for the mining and resources sector, the proposed changes from 1 July 2014, which are discussed elsewhere in this report, will undoubtedly have an impact on many companies within the sector. The rules affect the Australian operations of both inbound and outbound investors and limit the deduction relating to the total debt of the Australian operations of those investors.

Tax consolidations – 'watch your step'

The Energy and Resources sector have been on notice for several years in relation to further reforms to the tax consolidations rules through the Board of Taxation recommendations in July 2012 and more recently April 2013.

In a nutshell, the 2013 Budget measures include targeting the potential duplication of tax benefits and uplift in deductions obtained through the consolidation process. The measures apply from 1 July 2014 and need to be considered when companies consolidate.

International tax changes

Expanding the scope of assets subject to Capital Gains Tax for non-residents

The Treasury has announced several changes in relation to how non-residents will be taxed under Australia's capital gains tax regime.

The first change relates to the definition of Taxable Australian Property under Division 855. Under this change, the definition of Taxable Australian Property will be amended to effectively eliminate inter-entity assets from the definition, such that they would not be double counted. In turn, this is likely to lead to a higher proportion of taxable Australian assets, and more disposals by non-residents being subject to Australia's CGT regime.

A similar change to the definition of Taxable Australian Property will be made to include the value of mining, quarrying or prospecting information and goodwill in the value attributable to the exploration, prospecting or mining right. Again, this is likely to lead to a higher proportion of disposals by non-residents as being subject to Australia's CGT regime.

For any inconsistencies with Australia's double tax treaties, they will still apply in priority to Australia's domestic tax law.

Buyers – beware of the Wicked Witch of the West… and the East and…

Buyers will be forced to withhold tax of 10% on transactions affecting certain Australian property where the vendor is a non-resident. This withholding tax will not be a final tax, but will be creditable against tax payable on eventual assessment by the vendor.

Whilst Treasury have stated that the withholding will not apply to residential properties sales below $2.5m, it has not provided further detail and will seek consultation from industry by the end of 2013.

Collectively, these changes are expected to generate returns to the Treasury of $219m, with the majority of that expected towards the end of the forward estimates ($190m forecast for 2016/17).

Changes to Thin Capitalisation

In order to prevent the over-allocation of interest bearing debt to the Australian operations of international groups, thin capitalisation rules are in place to limit the deductibility of interest and other debt deductions. The level of interest bearing debt is typically capped under a safe harbour ratio.

The proposed measures seek to tighten the thin capitalisation rules by reducing the thin capitalisation ratios with effect from 1 July 2014. Practically, this means that taxpayers will need to have additional equity in Australia to support the same level of debt.

Australia is unique on the international stage, as it adopts both an inbound and an outbound thin capitalisation regime to limit the amount of debt deductions borne by the Australian taxpayer in the group.

The key changes to the thin capitalisation safe harbour ratios are as follows:

- Generally, the debt to equity ratio will be reduced from 3:1 to 1.5:1 representing a reduction of debt to total asset ratio from 75% to 60%; that is, at least $40 of equity will be required to support $60 of interest bearing deductible debt;
- For outbound investors only, the worldwide gearing ratio will be reduced from 120% to 100%, meaning that the Australian taxpayer in the group cannot have proportionally more interest bearing deductible debt than the worldwide group.
- For Authorised Deposit Taking Institutions (e.g. a bank), the safe harbour equity capital limit will be increased from 4% to 6% of their risk weighted assets attributable to the Australian operations.

Further, to assist with managing compliance obligations, it is proposed that the thin capitalisation rules will only apply when taxpayers exceed a de minimis threshold of $2m of debt deductions (currently only $250,000). This is a big win for inbound and outbound SME taxpayers who may now be permitted to carry relatively a much larger level of cross border debt than before, but with terms still being subject to transfer pricing requirements.

In summary, the table below highlights the changes

Current thin capitalisation rules	Proposed thin capitalisation measures
De minimis threshold of $250,000 in debt deductions	Proposed de minimis threshold of $2 million in debt deductions
Debt to asset ratio at 3:1 for general entities	New debt to asset ratio at 1.5:1 for general entities
Worldwide gearing limit at 120% for outward investors	New worldwide gearing limit at 100% for outward investors
Equity capital limit at 4% for ADIs	New equity capital limit at 6% for ADIs
No worldwide gearing test not applicable to inward investors	Worldwide gearing test now applicable to inward investors

Also a potential positive for inbound investors into Australia is the inclusion of the worldwide gearing test for inbound investors to Australia. This may allow further scope for deductions in Australia if worldwide gearing exceeds the proposed safe harbour ratio.

The initiatives announced today reflect the ongoing work of the Australian Government to address tax revenue erosion, minimize overseas profit shifting and ensure that international tax standards keep pace with the changing nature of global commerce.

Expansion from Kansas to the Emerald City

Business Restructures

In a continuation of the transfer pricing crackdown of recent years, Treasury will provide a further $109m to the ATO to investigate business restructures, including the creation of marketing hubs, which may facilitate the shifting of profits offshore.

The expected return on this $109m compliance crackdown is expected to be $576.5m, so clearly Treasury is of the view that this is an area for concern amongst corporate taxpayers. Taxpayers that are contemplating any business restructure with international elements should be wary of the impact that these measures will have on any perceived benefits of restructuring going forward.

Access to Exchange of Information under International Tax Treaties

Although not part of the Budget, the Treasury has continued with the theme of recent years relating to Project Wickenby, by including comment regarding the signing of the revised Double Taxation Agreement with Switzerland.

The strengthening of the exchange of information with Switzerland follows recent examples around the world where international tax authorities have been able to break down the secrecy of the Swiss banking regime to identify taxpayers with foreign bank accounts. The entering into this treaty continues this international trend.

Other Corporate changes

Dividend Washing changes

The government has identified a loophole in relation to the potential double claiming from franking credits by sophisticated investors.

They will commence consultation late May in relation to how to effectively close this loophole, but will focus on share trading transactions which occur in the 2-days after a share goes ex-dividend, and tightening the holding period rules that an investor must hold the shares for to be able to claim franking credits.

new potholes along the yellow brick road

Income tax consolidation

Outlined in the 2014 Budget are measures that purportedly will improve the integrity of the corporate tax system by addressing a number of key issues relating to income tax consolidated groups as identified by the Board of Taxation.

The major integrity measures proposed provide an expected gain to government revenue of $540.0 million by 30 June 2017 and creates a number of potholes to keep watch for along Australia's yellow brick road including:

- **Consolidated groups will no longer be able to access double deductions by shifting the value of assets between entities ie "value shifting between subsidiaries".** In particular, the tax cost setting rules will be amended so that an asset that has been created by transferring the value of an existing asset to a subsidiary is given a cost base that reflects the notional cost base of creating the asset, rather than the market value of the newly created asset.
- **Foreign residents will no longer be able to transfer assets between consolidated groups to allow the same ultimate owner to claim double deductions.** In particular, when membership interests in an entity that are transferred to a consolidated group or a MEC group are not regarded as 'taxable Australian property' under the CGT rules, the consolidation tax cost setting rules will only apply when (i) there has been a change in the underlying majority beneficial ownership of the membership interests in the entity, or (ii) the membership interests in the entity were recently (less than 12 months) acquired by the foreign entity or group.
- **The current legislative treatment of certain deductible liabilities are not taken into account twice.** In this regard (i) consolidated groups that purchase entities with deductible liabilities will be deemed to have received or paid an amount that equals the value of the joining entity's non-TOFA deductible liabilities that were taken into account for tax cost setting purposes, and (ii) the amount increases (to the extent the liability will give rise to a deduction) or decreases (to the extent the liability will give rise to an assessable amount) the purchasing entity's assessable income over 12 months in relation to current liabilities and over 48 months in relation to non-current liabilities.
- The tax treatment of intra-group liabilities and assets between a continuing member of a consolidated group and a departing member of a consolidated group which becomes subject to the TOFA regime upon exit, will be amended to ensure that only net gains and losses are recognised for tax purposes. For example, this will prevent a lender from being assessed on the return of the principal of a loan and prevent a borrower from claiming a deduction for the repayment of the principal.

Multiple entry consolidated (MEC) groups

It is proposed to address concerns raised by the Board of Taxation about inconsistencies in the tax treatment of multiple entry consolidated (MEC) groups used by multinationals and ordinary consolidated groups. Specifically, this announcement is designed to ensure that MEC groups cannot access tax benefits not available to domestic consolidated groups and is intended to be effective from 1 July 2014.

Personal taxation

What's in it for Dorothy?

Income tax rates

The legislated increase in the tax-free threshold to $19,400 which was to take effect from 1 July 2015, has been deferred. Climate Change Minister Greg Combet says the tax-free threshold increase will be deferred "until such time as the carbon price exceeds $25.40 [a tonne], whenever that may be".

Personal income tax rates are otherwise unchanged from previous announcements, as follows:

Resident individuals from 1 July 2012

Taxable income	Tax payable
0 – 18,200	Nil
18,201 – 37,000	19c for each dollar over $18,200
37,001 – 80,000	$3,572 + 32.5% for each $1 over $37,000
80,001 – 180,000	$17,547 + 37% for each $1 over $80,000
180,000+	$54,547 + 45% for each $1 over $180,000

Non-resident individuals

	From 1 July 2012 to 30 June 2015	From 1 July 2015 onwards
Taxable income	Tax payable	Tax payable
0 – 80,000	32.5c for each $1	33c for each $1
80,001 – 180,000	$26,000 + 37% for each $1 over $80,000	$26,400 + 37% for each $1 over $80,000
180,000+	$63,000 + 45% for each $1 over $180,000	$63,400 + 45% for each $1 over $180,000

Low income tax offset (LITO)

The LITO is also unchanged from previous announcements, as follows:

	From 1 July 2012 to 30 June 2015	From 1 July 2015 onwards
Maximum offset	$445	$300
Lower income threshold	$37,000	$37,000
Upper income threshold	$66,667	$67,000
Effective tax-free threshold	$20,542 ($32,279 if receiving Senior Australians & Pensioners Tax Offset)	$20,979 ($32,716 if receiving SAPTO)

NB – the LITO is a non-refundable tax offset

Medicare Levy

As reported in the lead up to the Budget, the Medicare levy will increase to 2% from 1 July 2014 to fund the Government's DisabilityCare Australia reforms. Revenue raised from this measure will be paid into a dedicated fund administered solely for the purpose of meeting DisabilityCare funding needs.

In addition to the Medicare Levy, higher income earners without sufficient private health cover will continue to be assessed to a further 1% surcharge.

The increase in the Medicare Levy brings the effective top marginal tax rate to 47%. A number of tax laws apply the top effective rate as a penalty rate of tax. As a consequence, the following items will also be subject to tax of 47% (currently 46.5%):

- Fringe Benefits Tax (FBT)
- TFN and ABN Withholding Tax
- Family Trust Distributions Tax
- Trusts, where Section 99A applies to retained income
- Excess non-concessional contributions to super (with tax on excess concessional contributions to increase to 32%)
- And numerous others – a total of 11 bills have already been released to introduce the increase to the various tax Acts.

Presumably, any funds raised from these consequential increases would contribute to the general revenue, and not be earmarked for the DisabilityCare Australia Fund.

Medical expense tax offset to be phased out

Currently, a 20% tax offset can be claimed for eligible out-of-pocket medical expenses in excess of $2,060 per annum. The Government intends to phase out this offset. For general medical expenses, only taxpayers who claim the offset for the 2013 income year will be eligible to claim in future years.

- Taxpayers who claim for the 2013 year will be eligible to claim again for the 2014 year
- Taxpayers who claim for the 2014 year will be eligible to claim again for the 2015 year

A gentler phase out will apply to expenses relating to disability aids, attendant care or aged care, with these continuing to qualify for an offset up to the 2019 year.

Self-education expenses

The Government has announced its intention to limit the allowable deduction for self-education expenses by individual taxpayers to $2,000 per annum from 1 July 2014.

This limit will apply to all related costs, such as travel and accommodation. Clearly the target is self-education that involves significant travel, such as to overseas events. However, the proposal is wide reaching and may catch usual professional development activities and training that is required to maintain vocational qualifications. As a result, it is a measure that runs contrary to the important policy of improving our education and workforce skills.

As announced, it won't apply to employer expenditure, therefore incentivising employers to spend money on staff training. However, any expenditure for an employee that is salary sacrificed – usually on the basis that it would be otherwise deductible had it been incurred by the employee – will also be subject to the limit.

We expect that this measure will be reviewed prior to its implementation following submissions from professional bodies and educational institutions.

Students

HELP discounts removed

Discounts will be abolished for voluntary and up-front payments made on Higher Education Loan Program (HELP) loans. Currently, a 10% discount applies to up-front payments and a 5% discount to voluntary payments of $500 or more. These discounts are proposed to be abolished from 1 January 2014. Taxpayers making mandatory HELP repayments and/or those close to paying off their debt should consider bringing repayments forward to before 1 January 2014 to benefit from the discount.

Social Security Payments

The Baby Bonus will be replaced with changes to the Family Tax Benefit Part A (FTB Part A) and the Paid Parental Leave (PPL) system:

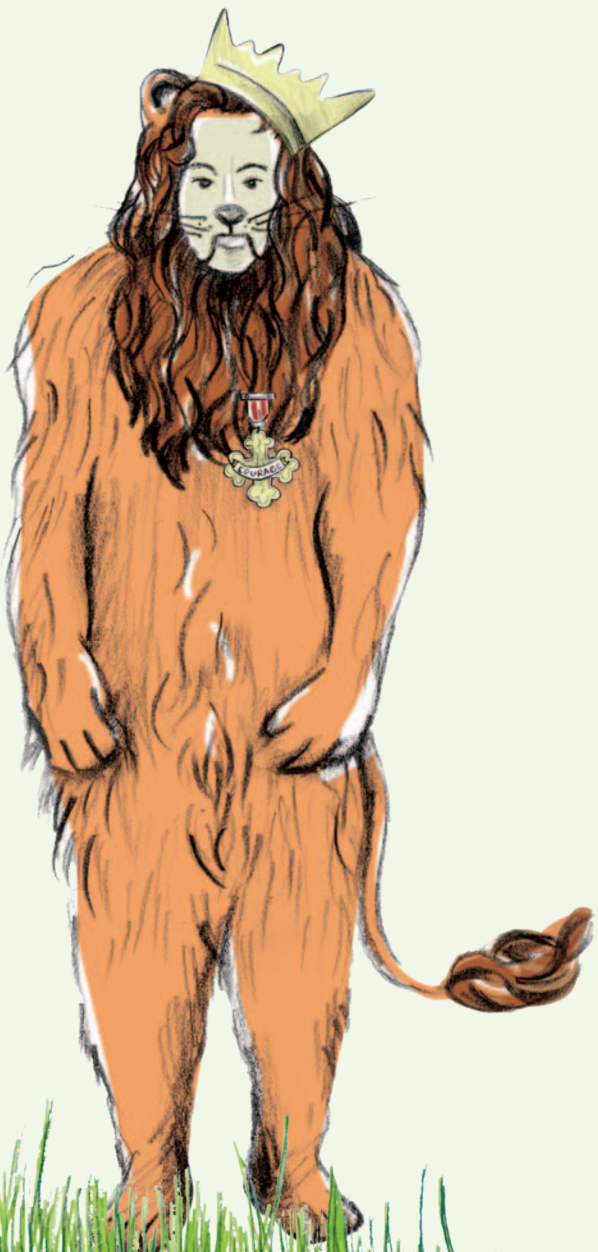
- It will increase FTB Part A payments by $2,000, to be paid in the year following the birth or adoption of a first child or each child in multiple births, and $1,000 for second or subsequent children.
- Parents who take up PPL will not be eligible for the additional FTB Part A component, but will benefit from improved access to PPL as their family expands. As part of this package, parents will be able to count time on Government PPL where it occurs in the work test period for a subsequent child; just like employer funded parental leave can be counted now. This change will mean more women will be able to access Government PPL when they have another baby.

The Government announced that it will maintain the higher income thresholds at their current levels for a further 3 years until 1 July 2017 for certain other family payments and supplement amounts.

In additional FTB changes, eligibility will change for FTB Part A for children aged 16 years and over. From 1 January 2014, FTB Part A will only be paid until the end of the calendar year a child completes school. Further, individuals who no longer qualify for FTB Part A may be eligible to receive Youth Allowance, subject to the usual eligibility requirements.

The means test thresholds for eligible income support (eg Newstart Allowance, Sickness Allowance and Partner Allowance Pension) recipients will increase from $62 per fortnight to $100 per fortnight from 20 March 2014 before their income support is reduced. The threshold will also be indexed annually from 1 July 2015.

Superannuation



Frightened? Child, you're talking to a man who's laughed in the face of death, sneered at doom, and chuckled at catastrophe... I was petrified.

Many were concerned about Super changes but the Government stayed true to its promise post its 5 April "Super Reform" announcements that there would be no further proposed changes for superannuation in the 2013-14 Budget. The tornado arising from the 5 April announcements seems to have resulted in sufficient disruption.

Whilst there was tinkering (e.g. the CPI indexing of $100,000 limit on tax free pension account earnings) and Oz like conjuring (e.g. the temporariness of $35,000 concessional limit increase for older Australians) in the 2013-14 budget, there was little substance to show the government has a heart when it comes to the superannuation system.

Increasing concessional contribution caps

The new concessional caps announced are:

Limit	$25,000 p.a.	$35,000 p.a.
1 July 2013 – 30 June 2014	< 59 y.o. as at 30 June 2013	>= 59 y.o. as at 30 June 2013
1 July 2014 onwards	<49 y.o. as at 30 June 2014	>= 49 y.o. as at 30 June of the previous year (i.e. 30 June 2014 for the 2015 year)

Unfortunately, the wicked witch is in the detail, with this reform providing only a short term benefit.

The proposed $35,000 cap is not subject to CPI indexation, whereas the $25,000 cap that will apply to those under 60 is. This cap is expected to catch up to $35,000 (for all ages) due to CPI adjustment by 2018.

Tax on pension fund earnings

Currently all earnings (income and capital gains) on pension accounts are tax-free. From 1 July 2014, this reform will impose a tax of 15% on investment earnings of pension accounts in excess of $100,000 for each individual indexed to CPI in $10,000 increments. The first $100,000 will remain tax-free.

The level of capital gains included will be subject to special transitional rules:

- Capital gains on assets already owned by the fund (as at 5 April 2013) will not be included until 1 July 2024, and thereafter will only include the gain that accrues after that date.
- For assets purchased between 5 April 2013 and 30 June 2014, the trustee will have a choice to apply the reform to the entire gain, or only the part that accrues from 1 July 2014.
- For assets acquired after 1 July 2014, the entire capital gain will be included.

The Budget announcements have not cleared up the storm created by this measure. Only once the finer details are known in how this change is to be administered will it be possible to determine the true impact. For example there is no clarity around how the 'per individual' test will work or who will bear the cost of the additional tax; how will the transitional arrangement work?

The Government estimates that only 16,000 individuals will be affected by this reform, being only 0.4% of Australia's 4.1m retirees. However, this suggestion is naïve. Due to the complexity of the reform, all superannuation funds will incur significant costs in determining the relevant amounts, and these costs will be passed onto members.

While this reform is a slap in the face of those that have saved or are accumulating for a self-funded retirement and will result in higher levels of tax payable, it is important to remember that the superannuation system remains, in most cases, the best and most tax effective place in which to accumulate retirement wealth.

Arguably, the loss of the tax-free status for pension funds removes the incentive for very wealthy retirees to draw down on superannuation during their lifetime (compulsory cashing having been abolished by the Howard government in 2006). Thus, large pools of wealth can be amassed and only leave the superannuation system on transfer to the next generation. This runs counter to stated policy objectives, and it remains to be seen how future Governments may address this issue.

Excess contributions

Excess contributions have proved to be a much larger problem than anticipated (or a windfall gain for the government) due to many inadvertent breaches of the limit.

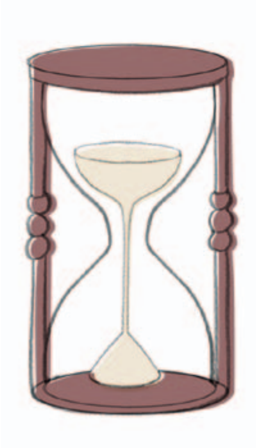
This reform seeks to implement a simple solution to the problem in that it will allow excess contributions to be refunded (from 1 July 2013) and made subject to tax at the individual's marginal tax rate. An interest charge will also be applied to the tax payable to account for any time delays in assessing the excess.

This should put the individual in exactly the same position that they would have been if they had received the contribution as salary.

Extra 15% Contributions tax where Income >$300,000 – for the 2012/13 year

Whilst announced in the 2012-13 Budget, this measure has yet to be legislated. Minor changes announced in the 2013-14 Budget have already been incorporated into the exposure draft legislation (released 1 May 2013):

- Exemption for Federal Judges
- Similar income definition to that used to determine Medicare levy surcharge liability, in particular to ensure excess concessional contributions do not suffer the extra 15% tax, and only contributions that cause the income threshold to exceed $300,000 are counted
- Refunding tax paid to former temporary residents who do not benefit from the concessional tax treatment on their contributions.



More flying monkeys?

The Government has announced a number of measures aimed at improving compliance by taxpayers, increasing scrutiny of business registrations and transactions, and increasing the frequency of payment of tax instalments.

Monthly PAYG Instalments

Following the Government announcement in October 2012 of the introduction of a monthly PAYG instalment system for large corporate tax entities commencing from 1 January 2014, the Government will now extend the proposed monthly PAYG instalment system to all large entities in the PAYG system. The monthly PAYG instalment system will therefore be extended to include trusts, superannuation funds, sole traders and large investors with turnover greater than $20 million.

The monthly PAYG System will now be phased in between 1 January 2014 and 1 January 2017 as follows:

Date	Type of Entity	Turnover
1 January 2014	Corporate Tax Entity	> $1 billion
1 January 2015	Corporate Tax Entity	> $100 million
1 January 2016	Corporate Tax Entity	> $20 million
	Other PAYG entities	> $1 billion
1 January 2017	Other PAYG entities	> $20 million

Whilst the announcement of the extension of the monthly PAYG instalment system does not increase the overall tax paid by entities, the optimistic voices within Government expects this measure alone to raise $900m in revenue in 2015-16, thus returning Australia to surplus. Perhaps the only certainty is an increase in compliance costs for taxpayers.

Other Compliance Measures

Other compliance measures announced include increased funding to the ATO to:

- expand third party data matching, including:
  - Certain government grants and payments;
  - Sales of real property and certain other CGT assets; and
  - Transactions through merchant debit and credit services;
- target the exploitation of trusts by taxpayers to conceal income, mischaracterise transactions, artificially reduce trust income amounts and underpay tax; and
- strengthen up-front checks for issuing Australian Business Numbers, and encourage the use of AUSkey and the online services of the Australian Business Register.

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