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Tax Brief

13 May 2008

2008-09 Federal Budget

1. Introduction

Few expected the new Government's first Budget would contain many tax surprises. On the one hand, the Government has been keen to re-assure voters that it would implement all the promises made during last year's election campaign (see our Tax Brief http://www.gf.com.au/477_607.htm for details). On the other, during the last 3 weeks we have seen the carefully staged release of various Budget proposals that the Government wanted to accelerate.

So we already knew many of the headline items in the Budget: the new tax rate scale, means testing the baby bonus, the increase to the private health insurance threshold, luxury car tax rate and the excise on 'alcopops,' the changes to employee share plans and the next review of the tax system. Indeed, some of the personal tax cuts are already before Parliament.

As far as business tax was concerned, the Budget contained only a few new measures. The Government followed the example of its predecessor and took the opportunity to re-announce many business tax measures. Indeed, it even decided to re-announce measures which the previous Government had released. Consequently, many of the measures outlined below will look quite familiar. One very welcome innovation was the declaration by the Government of its position on the long list of measures that the previous Government had announced but not enacted.

2. Personal Tax Changes

2.1 New tax rates and income thresholds

The changes to the tax rates and income thresholds announced by the Treasurer gave effect to the election promise made last year. A Bill to enact these measures has been passed by the House and has been supported by the Senate Economics Committee.

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The new rates and thresholds will be:

Current 2007-08		2008-09		2009-2010		2010-2011	
Income (\$)	Rate (%)	Income (\$)	Rate (%)	Income (\$)	Rate (%)	Income (\$)	Rate (%)
0 – 6,000	0	0 – 6,000	0	0 – 6,000	0	0 – 6,000	0
6,001 – 30,000	15	6,001 – 34,000	15	6,001 – 35,000	15	6,001 – 37,000	15
30,001 – 75,000	30	34,001 – 80,000	30	35,001 – 80,000	30	37,001 – 80,000	30
75,001 – 150,000	40	80,001 – 180,000	40	80,001 – 180,000	38	80,001 – 180,000	37
150,000 +	45	180,001 +	45	180,001 +	45	180,001 +	45

The Budget also repeats the ‘aspiration’ of having only 3 tax rates – 15%, 30% and 40% – with an effective tax-free threshold (because of the low income tax offset) of \$20,000 by 1 July 2012.

Consequential amendments are being made to the tax rates and thresholds for non-residents. In addition, the Bill increases the low income tax offset each year for the next 3 years. The Government had already announced a tax rebate for some education costs and increasing the Senior Australians Tax Offset as part of its election promises.

The rate for the fringe benefits tax remains unchanged at 45% and the Medicare levy remains at 1.5% (after phase-in and without the private health insurance surcharge)

2.2 Defining income for means tests

It appears that the Government is concerned that various tax offsets and government support programs which are intended to benefit low income earners, are being accessed by high income earners whose “income”, as currently defined, is artificially low as a result of

- “salary sacrifice” arrangements which substitute superannuation and fringe benefits for income; or
- activities that make losses, particularly the negative gearing of rental properties or “financial investment” activities.

Definitions of “income” (or similar terms) used to define eligibility for certain tax offsets and government support programs are to be expanded to include reportable fringe benefits, certain “salary sacrificed” superannuation contributions, and to reverse the effect of rental property losses and net investment losses.

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3. Corporate tax measures

3.1 Consolidation

The Government has confirmed that it will proceed with modifications to the income tax consolidation provisions announced by the former Government in 2005, 2006 and 2007. The vast majority of these modifications are technical amendments to the entry and exit tax cost setting rules.

Amending legislation is expected to be introduced when Parliament sits in Spring. It appears that all previously announced measures will be enacted, although with some modifications.

Set out below is a summary of the more significant proposed modifications which have been confirmed tonight:

Allocable cost amount (“ACA”) allocated to certain assets: Currently, the law does not deem a taxpayer to have incurred an outgoing equal to an asset’s tax cost setting amount. This gives rise to a potential anomaly as acquiring the shares in a joining entity does not allow the taxpayer a deduction, where the outgoing to directly acquire this asset would normally give rise to a tax deduction (either immediately, or on expiry or disposal of the asset).

The law will be modified to ensure that the tax cost allocated to an asset is used to work out the amount that is assessable income or allowed as a deduction under other parts of the Act.

Rights to future income: The Budget states that the law will be amended to treat rights to future income as retained cost base assets. The previous version of this announcement in December 2005, indicated that this treatment was confined to rights that accrued to the head company of the consolidated group. The Budget does not contain this restriction, which, if indicating a change in policy from 1 December 2005, may impact the way in which taxpayers have treated ACA allocated to rights to future income that have been acquired. Some examples of such assets include rights to collect deferred management fees in retirement villages and land management development rights.

Conversion from a consolidated group to MEC group and vice versa: Under the consolidation regime, when a group restructures, for example by way of a de-merger, it can result in a consolidated group converting to a MEC group, or a MEC group converting to a consolidated group. In October 2007, the then Assistant Treasurer announced that the law would be amended so that consolidated groups could convert to MEC groups, and vice versa, with minimal tax consequences. It is intended that, when a change in the type of consolidated group occurs on or after 27 October 2007:

- the tax cost setting rules will not apply to the assets of the ongoing group members (and therefore certain capital gains and losses will not arise);
- tax losses of the ongoing group will not be tested;
- the entering group’s history will be transferred to the new group; and

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- certain notifications currently required to be given to the Commissioner of Taxation will be removed.

Removal of capital gain arising from discharging liabilities: A capital gain arises where a liability that was taken into account in the ACA calculation for a joining entity at the joining time is realised for a different amount at a later time. The difference between the amount recognised in the accounts and the realised amount would give rise to a capital gain or loss. This rule caused a significant compliance burden for taxpayers as all accounting provisions had to be monitored. The rule which necessitates monitoring liabilities has been removed. The changes apply from 8 May 2007.

Doubtful Debts: Currently, a capital gain arises when an entity joins a consolidated group if the ACA for the joining entity is less than the sum of the tax cost setting amounts (generally the face value) of the entity's retained cost base assets (including doubtful debts). For example, assume a joining entity's only asset is a receivable which with a face value of \$100 and a market value of \$80. If the shares in the joining entity are acquired for \$80, a capital gain of \$20 arises.

A modification will be made to reduce the capital gain by the difference between the market value and the face value of doubtful debts held at the joining time, but not beyond nil. The tax cost setting amount for the doubtful debt will be reduced by an equivalent amount. This change will apply to entities that join a consolidated group or MEC group after 8 May 2007.

Straddle contracts: The capital gains tax ("CGT") timing rule in relation to disposals of assets under a contract currently applies to the disposal of a CGT asset where the period between the date of contract and settlement straddles the joining or leaving time of that subsidiary. That rule gives rise to the following issues:

- where a subsidiary contracts to sell a CGT asset while a member of the group, but the contract does not settle until after the subsidiary leaves the group (referred to as an exit-sell case), a capital gain would be recognised by the head company even though the head company would not own the subsidiary at the time the sale was completed; and
- where, in a takeover situation, a purchaser did not want to acquire a particular asset of the target and the purchaser contracts, prior to effecting the takeover, for the asset to be sold to a third party, it was unclear whether the cost base of the asset would be reset, as the CGT event would be taken to occur prior to the target's joining time and the application of the cost-setting rules.

These issues were addressed by the modifications announced in the 2007 Budget, which have been confirmed. The CGT rules will be modified so that, where an entity enters into a contract to sell a CGT asset prior to joining or leaving a consolidated group, the CGT event will be taken to occur at settlement.

In the exit-sell case, this will mean that the subsidiary, and not the head company, will make the capital gain or loss. This will remove the need for the concession allowed by the Australian Taxation Office ("ATO") to permit a head company to ignore the duplication of the capital gain made on the sale of the leaving entity's asset that could arise on the sale of the shares in

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the leaving entity via the application of the cost setting rules on exit. In the takeover case, this will ensure that the asset will be treated as being owned by the target when it joins the purchaser's group, as the group will not be treated as selling the asset until the contract with the third party purchaser settles. The changes will only apply to disposals of CGT assets under contracts entered into after 8 May 2007.

Extension of single entity rule and entry history rule: Currently, the single entity rule and the entry history rule only apply for the specified "core purposes". Broadly, these core purposes are calculating the income tax liability and tax losses of the head company and the subsidiary members of the consolidated group.

The single entity rule and the entry history rule will be extended to the shareholders of the head company for the purpose of applying:

- the CGT discount rule – the amendment will modify the current rule which removes the CGT discount on a disposal of membership interests in an entity if a majority of the underlying assets of the entity have not been held for 12 months; and
- pre-CGT membership interests – the amendment will modify the current rule which treats pre-CGT membership interests in an entity as acquired post-CGT if the entity owns predominantly post-CGT assets.

The change will apply from 8 May 2007.

Trusts entering and leaving groups: Under current law, there are no rules to apportion the net income of a trust where the trust joins or leaves a consolidated group during an income year. Therefore, it is possible for the head company of a consolidated group to be taxed on the entire net income of a trust for an income year even though the trust has only been in the head company's consolidated group for part of the year.

The consolidation rules will be amended so that the proportion of the trust's net income that the head company of a consolidated group will be taxed on will reflect an appropriate share of that trust income. These changes will apply from the commencement of the 2007-08 income year.

Blackhole expenditure of MEC groups: CGT rules currently include in the cost base of an asset certain expenditure incurred by the head company of a consolidated group arising from disregarded intra-group transactions. This rule will be extended to apply to expenditure incurred by a head company of a MEC group. This change will apply to CGT events which happen on or after 1 July 2005, which is the commencement of the revised blackhole rules.

Entry history rule and determining depreciation rates: Currently, the tax cost setting rules deem the head company of a consolidated group to acquire the depreciating assets of a joining entity at the joining time. By being treated the asset as acquired at the joining date, the head company could apply the 200% diminishing value uplift to assets that were acquired by the joining entity prior to 10 May 2006.

The law will be amended to ensure that the entry history rule applies to treat the head company as having acquired the depreciating asset at the time the joining entity did.

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3.2 Scrip for scrip relief

In a related measure, the Budget has brought to an end a significant period of uncertainty created by the previous Government in respect of scrip for scrip rollover and corporate restructures.

The modifications, which will apply to arrangements entered into after 13 May 2008, introduce the concept of a “restructure” to the scrip for scrip provisions. In the event that a “restructure” occurs (and subject to the election noted below) the cost base consequence (including in a consolidation context) is that the target shares acquired in return for the issue of shares by the acquirer will be equal to the existing cost base of the target entity’s assets less the liabilities of that entity.

A “restructure” will occur where the market value of the net assets of the acquiring entity immediately before the arrangement is less than 20% of the market value of its net assets immediately after completion of the arrangement. That is, only where there is what could be referred to as a ‘reverse takeover’ will a “restructure” occur.

In the event that these provisions do apply, there are a myriad of potential adverse tax consequences that may follow, including capital gains on acquisition, reduction of tax cost in trading stock and depreciable assets which give rise to permanent and accelerated tax costs. Consequently, the relevant Press Release also provides that acquiring entities will be able to prevent the target entity’s shareholders from obtaining CGT rollover in which case the cost base of the acquired shares will be equal to the consideration paid.

The Press Release has also sought to clarify the implications in respect of cash/scrip bids, staggered acquisitions and multiple takeovers.

The Press Release has also confirmed that the ‘integrity’ measures will not extend to other CGT rollovers.

3.3 Share cancellations and redemptions

Under current law, when a share or unit is cancelled or redeemed the resulting capital gain is calculated by reference to the market value of the share or unit rather than the amount actually received by the taxpayer. The law will be amended to ensure that this ‘market value substitution rule’ will not apply where the relevant company or trust has at least 300 members or beneficiaries. So for example where a company redeems shares at say a 20 day volume weighted average price, the ATO will not be able to substitute a different price.

Unfortunately the measure does not also extend to genuinely arm’s length cancellations or redemptions by entities with less than 300 members.

This measure was first announced by the previous Government on 16 October 2007 and is currently before Parliament.

3.4 Application of accounting standards to the thin capitalisation regime

The commencement of the Australian Equivalents to the International Financial Reporting Standards (“A-IFRS”) in 2005 created difficulties for the thin capitalisation regime. A-IFRS generally has a more conservative

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approach to net asset value than the pre-existing accounting standards. For example, under A-IFRS, certain assets such as some intangibles are removed from the balance sheet, the book value of some assets may be significantly reduced as a result of write-downs for impairments, and in certain transactions the application of business combination accounting may reduce the book value of goodwill. Consequently, transitional rules were enacted to permit entities to continue using the current accounting standards for recognising and valuing assets, liabilities and equity capital.

Treasury has now determined a long-term position for the impact of A-IFRS on the thin capitalisation regime. The Government has announced that it will amend the thin capitalisation regime to accommodate certain impacts arising from the adoption of A-IFRS. The proposed amendments will allow departures from the A-IFRS accounting treatment of certain intangible assets and will allow the exclusion of deferred tax assets and deferred tax liabilities and deficits in defined benefit superannuation funds (which are required to be treated as liabilities under A-IFRS) from thin capitalisation calculations.

Legislation to implement this measure is expected to be introduced in the Winter 2008 sitting of Parliament, but no start date has been announced.

3.5 Completion of the Simplified Imputation System

The Government has announced that it will enact the long-awaited final instalment of the Simplified Imputation System (“SIS”), which commenced from 1 July 2002. The amending legislation will:

- re-enact the franking credit trading rules (ie, the 45-day holding period and related payment rules). Currently, the SIS indirectly relies on repealed imputation provisions to give effect to these rules. This somewhat oblique approach will be replaced so that the relevant provisions are contained in the current Act;
- modify the franking credit trading rules to ensure that income beneficiaries of testamentary trusts are not prevented from accessing franking credits; and
- make minor technical amendments to the SIS rules.

Business and professional groups will be consulted during the development of the amending legislation, which is not expected to be introduced before 2009. No start date has been announced for these amendments, although it would be reasonable to expect that they should operate retrospectively from 1 July 2002.

3.6 Changes to the company loss recoupment rules

The Government has re-announced 3 proposed changes – announced by the former Government as part of its May 2007 Budget – to refine the company loss recoupment rules and to remove uncertainty:

- With effect from 1 July 2002, companies will not fail the continuity of ownership test (“COT”) because of having multiple classes of shares on issue, or because of having special arrangements in place to make distributions of dividends and capital returns. Whether this amendment will ultimately make COT easier to pass will depend on the detail of the amending legislation. Given that the amendment will operate

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retrospectively from 1 July 2002, some companies may revisit the availability of tax losses (and other tax attributes) in the intervening income years, provided they are not out of time to amend.

- With effect from 1 July 2007, there will be clarification on the meaning of “voting power” in the context of COT where the company’s shares have differential voting rights in relation to particular matters affecting the company. In these circumstances, it would otherwise be difficult to assign a single percentage to a shareholder’s voting rights in the company. The proposed amendment will clarify that the meaning of voting power will look to the power of the shareholder to vote on a poll for the election of a director to the company and, failing that, the shareholder’s power to change the company’s constitution.
- With effect from 1 July 2002, the “entry history rule” of the tax consolidation regime will be switched off in applying the same business test (“SBT”) to the head company of a tax-consolidated group. This will mean that the activities carried on by a joining entity before joining the group will not, of themselves, cause the head company to fail the SBT.

Business and professional groups will be consulted during the development of the amending legislation, which is not expected to be introduced before 2009.

4. Finance industry

4.1 Debt / equity measures – Upper Tier 2 instruments of banks

The financial sector will welcome the confirmation in the Budget that the long-mooted Upper Tier 2 regulations will proceed. The previous Government announced in 2003 that regulations will ensure that certain Upper Tier 2 and similar capital instruments issued by banks and some other APRA regulated institutions will be treated as debt for tax purposes.

The regulations will be finalised after further consultation and will be effective from 1 July 2001. “Transitional” arrangements will be extended to 1 July 2008, with the ambitious expectation that the regulations will be completed in mid 2008.

4.2 Debt / equity measures – Subordinated debt with solvency clauses

The news is less positive with regard to term subordinated notes with so-called “solvency” clauses. Due to ATO concerns as to whether some such notes were in fact debt for tax purposes, the previous Government announced in October 2005 that regulations would be introduced to ensure debt treatment. Such notes include the most common types of Lower Tier 2 capital instruments issued by banks, to the tune of many billions of dollars.

Disturbingly, this announcement by the previous Government is listed in a Budget Press Release as being a measure for which a final decision has not yet been reached – with no indication as to when the decision will be made.

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4.3 Capital protected borrowings

Several years ago, concerns emerged that borrowers under certain financial products (such as protected loans and instalment warrants) were not paying separately for the cost of capital protection. Instead, the cost of capital protection was being priced into higher interest rates under those products – resulting in what was considered to be inappropriately high interest deductions for borrowers.

From 1 July 2007, the “capital protected borrowing” provisions addressed these concerns by re-characterising amounts incurred by borrowers under capital protected borrowing products in certain circumstances. Broadly, re-characterisation occurs where the total amount incurred by the borrower for both interest and capital protection in the income year exceeds the notional amount arrived at by applying a particular Reserve Bank of Australia (“RBA”) benchmark rate to the relevant principal amount under the capital protected borrowing.

The current benchmark rate is the “Indicator Rate for Personal Unsecured Loans - Variable Rate” – which for March 2008 was 14.55%. The excess is deemed for tax purposes to be incurred by the borrower for a put option – even if no explicit put option premium is payable under the capital protected borrowing. This excess is not generally deductible to the borrower, but will be recognised under the CGT regime.

The Government has announced that it will change the applicable benchmark rate to the – much lower – indicator variable rate for standard housing loans. This rate will apply for arrangements entered into from 7.30 pm on 13 May 2008. For March 2008 that rate was 9.35%.

Clearly, the lower the benchmark rate, the greater the amount of interest that will be deemed under the “capital protected borrowing” provisions to be incurred for a put option. As a result of adopting the lower benchmark rate – and the consequent greater denial of deductions – \$70m in additional revenue has been projected. However, the current benchmark rate will continue to apply to existing arrangements for five years or the life of the product, whichever is the shorter.

4.4 TOFA

The Government has decided to proceed with the remaining stages of the long running Taxation of Financial Arrangements (“TOFA”) reform project. In fact, TOFA has been in gestation so long that it was originally an announcement by a previous Labor Government in 1992. The so-called Stages 3 and 4 of TOFA address the tax timing treatment for a wide range of financial transactions (including a number of elective rules) as well as a comprehensive tax hedging regime.

The TOFA measures, in a Bill which lapsed with the calling of last year’s election, will be amended and are scheduled to be reintroduced into Parliament in the Spring sittings this year. A Press Release issued on Budget night indicates that the legislation will be finalised in consultation with interested parties, although no indication was given as to whether another public Exposure Draft will be released.

The Budget announcement hints at some of the amendments to be made to last year’s bill, including further interactions with other provisions in tax law,

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and even goes as far as saying that the new rules will be “extensive and complex”.

The new regime will apply to income years starting on or after 1 July 2009. That is, the previous proposal to allow an elective start date of 1 July 2008 has been scrapped.

The Budget papers are sticking to the line that the TOFA measures have an “unquantifiable revenue impact”.

The Government also announced that amendments will be made to the existing foreign currency rules in tax law, so as to extend compliance saving measures and make technical amendments, with effect from the start of the regime on 1 July 2003. The amendments will presumably, or at least hopefully, cover the proposals announced by the previous Government in August 2004. It is not clear if any additional amendments will also be made.

5. Managed funds

5.1 Final Withholding Tax Regime for Managed Investment Trusts (“MIT”)

In line with the Government’s objectives to establish Australia as a financial services centre in the Asia Pacific region, the Government has announced that it will replace the 30% non-final withholding tax currently applying to distributions of Australian sourced net income (other than dividends, interest and royalties) of Australian MITs to foreign residents with a final withholding tax regime.

The new withholding tax regime will vary depending on whether the foreign investor is resident in a jurisdiction with which Australia has an effective exchange of information arrangement in relation to tax matters. Residents of such jurisdictions will be subject to:

- a 22.5% non-final withholding tax for fund payments of the first income year after the enabling legislation receives Royal Assent, which is expected to be the 2008-09 income year;
- a 15% final withholding tax for fund payments of the second income year; and
- a 7.5% final withholding tax for fund payments of the third and later income years.

Foreign investors resident in other jurisdictions will be subject to a 30% final withholding tax. Regulations will specify the jurisdictions with which Australia has an effective exchange of information arrangement.

Foreign investors will need to consider their own circumstances, however it could be the case that the change to a “final” withholding tax may result in some investors being worse off under the new measures.

It is not clear from the Budget announcements whether the new final withholding tax regime will simply take the form of the current provisions dealing with distributions of MIT income to foreign residents or whether the new regime will be embodied within the provisions which govern withholding taxes on interest, dividends and royalties. Whilst we expect the changes to be made within the former provisions, if the latter approach is adopted this

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could represent a significant change from current practice in that the income from which withholding is required to be made may be the gross distribution by the MIT in the relevant period.

Whilst these Budget announcements sound promising for foreign investors resident in eligible jurisdictions, the devil will be in the detail and therefore affected taxpayers should pay particular attention to the fine print of these announcements when they become available.

5.2 Changes for property trusts

The Government has re-announced that it will modify the eligible investment business rules to reduce compliance costs and uncertainty for managed funds, especially property trusts. When originally announced by the Assistant Treasurer, it appeared that the Government was hopeful that these amendments could be effective from 1 July 2008.

However, the Budget announcement notes that the measures will have effect from the date of Royal Assent of the amending legislation. We understand that Treasury, the ATO and industry bodies remain in discussions regarding the final form of these amendments.

5.3 First home saver accounts

The Government has announced changes to First Home Saver Accounts (“**FHSA**”) originally announced in the 2007 election campaign. The Government has developed its original proposal to deliver a more attractive and marketable product for first home buyers. The accounts provide opportunities for fund managers and financial institutions to develop products to deliver the new concessions.

The refined model has resulted from public consultation on how best to implement and manage the scheme. As a result of consultation, the Government will (amongst other measures):

- provide a co-contribution of 17% per annum on the first \$5,000 (indexed) contributed to the account;
- allow personal contributions to the account until the total balance reaches \$75,000 (indexed) (an increase from the \$10,000 per annum cap previously announced);
- relax the eligibility criteria, by abolishing the \$1,000 up-front contribution requirement and allowing non-residents to open accounts; and
- implement measures to ensure the accounts are easier to provide, including simplifying the product disclosure statement requirements.

The Government has decided not to proceed with the salary sacrifice arrangements put forward in the election proposal; this will provide greater flexibility in the design of the FHSA.

The Government has also clarified some regulatory issues about offering FHSAs:

- public-offer licensees will be required to offer their FHSA products through a separate trust structure from their existing superannuation funds;

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- banks, building societies and credit unions will need to calculate the income earned from the FHSAs separately for tax purposes (the FHSA income is taxed at 15%, collected from the provider); and
- self-managed, non-public-offer and public sector superannuation funds, and managed investment schemes will not be able to offer FHSAs.

6. Employment taxes

6.1 Employee share schemes

The Budget contained two announcements about employee share schemes.

The first concerned elections. Employees can elect to be taxed at the time that employee shares and options are granted to them. Alternatively they can defer tax until a later year (eg until exercise of options). The consequence of making the election to be taxed at the time of grant will typically be that a greater amount will be eligible for CGT discount treatment.

It has not been necessary to file elections with the ATO; rather the employee was simply required to complete their tax return on the basis that he or she had, or had not, made the election and, if an election had been made, retain that election with their records. It seems that some employees have, informed by hindsight, claimed to have made elections at the time of lodging their tax return for the year when the shares or options were granted, when the evidence of that tax return suggests the contrary.

In order to eliminate such disputes, an employee who acquires shares and options after 1 July 2008 will be treated as making (or not making) the election depending on whether or not they included an amount as income in their tax return for the year in which the shares or options were granted.

The second announcement concerned possible double taxation. There is a technical ambiguity in the law as it currently stands. Employee share plan trusts are generally exempt from tax on gains arising on shares while held in trust for employees. The exemption is to prevent double tax because the employees are also taxable on those gains. However, on a narrow reading of the provision, the exemption may not apply to shares held in trust to satisfy vested employee rights and options. This ambiguity will now be eliminated. Hopefully, it will also be eliminated in respect of shares placed in trust on vesting of employee rights and options, for example to administer an ongoing sale restriction.

6.2 FBT measures

The Budget contained a series of minor changes to the fringe benefits tax ("FBT").

There is to be a tightening of the exemption for certain work-related items (including laptop computers, personal digital assistants and tools of trade). The exemption is to be limited to one item of each type per FBT year (as currently applies to laptops) and the exemption is only to apply where the item is used primarily for work purposes (like the requirement that currently applies to mobile phones). These changes are to apply immediately to newly purchased items.

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Further, employees are no longer able to claim depreciation in respect of FBT-exempt items. This change applies immediately to new purchases but in relation to existing FBT exempt items, depreciation can be claimed for the last time in respect of the year ending on 30 June 2008.

'Salary packaging' arrangements whereby an employee effectively pays for meals consumed on an employer's premises from pre-tax salary, will no longer be exempt. However, where an employee currently has an unused balance on a meal card the employee will have until 31 March 2009 to use it. This measure will not affect subsidised staff canteens that are not part of a 'salary sacrifice' arrangement.

Where an asset is jointly held by an employee and an associate, current FBT law permits the 'otherwise deductible' rule to apply to both the employee's and the associate's interest in the asset. The 'otherwise deductible' rule broadly reduces the taxable value of a benefit to the extent that a tax deduction would have been available if the employee had incurred the expenditure that gave rise to the benefit. Currently, in relation to a benefit provided jointly to an employee and an associate, the benefit is taken to have been provided to the employee alone. The 'otherwise deductible' rule can apply to reduce the taxable value arising in respect of the whole benefit. For example, if a jointly-held income producing property were acquired out of an interest free loan provided to the employee, no FBT liability would arise in respect of the loan as, had interest paid been paid, the interest would have been deductible.

The objectionable feature of such an arrangement is said to be that if the employee's marginal tax rate is much higher than that of the associate, by 'salary sacrificing' such an arrangement, all of the interest deduction is effectively taken at the higher tax rate of the employee. The reimbursement or payment of property expenses (e.g. rates, repairs etc) by an employer could also have this effect – allowing the associate's share of the expense to be effectively claimed by the employee.

The law is to be amended to ensure that the 'otherwise deductible' rule only applies to reduce the employee's share of the expense. Existing arrangements in respect of expenses are to be subject to this change after 31 March 2009. Transitional arrangements are to be the subject of consultation.

6.3 Superannuation changes

The Budget contained a few announcements and re-announcements on superannuation.

The previous Government had announced a measure to make superannuation lump sum payments tax free when paid to a person suffering from a terminal medical condition. This measure was to take effect from 12 September 2007. On 13 February 2008, the Government announced the measures would apply to payments made on or after 1 July 2007 and draft legislation to this effect has now been introduced into Parliament.

Secondly, the Government reaffirmed its 6 May 2008 announcement to defer the compulsory payment of current and former temporary residents' superannuation to the Government until expected enacting legislation

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receives Royal Assent later this year, rather than 1 July 2008 as proposed by the previous Government. Subject to the outcome of consultation, employers will be able to make contributions for temporary residents direct to the ATO. Contributions will still be able to be made to superannuation funds, but the ATO will regularly require the balance to be transferred to it, less tax and potentially less amounts applied for insurance premiums.

Upon permanent departure from Australia, a temporary resident will have five years to claim the monies contributed or transferred to the ATO or forfeit the amount. The payout by the ATO will be without interest and reduced by non-resident withholding tax. Separate arrangements will be put in place for temporary residents who become permanent residents.

The third superannuation measure is that the Government will provide \$16 million over three years to set up an optional superannuation clearing house facility. The Press Release advises that the superannuation clearing house will allow an employer to pay contributions to a single location. The clearing house will then distribute those contributions to the nominated superannuation fund and check the paperwork. Relevantly, businesses that use the clearing house facility will discharge their legal obligations when payment of the correct amount is made to the clearing house – presumably such a payment will be held to have been paid to the fund when paid to the clearing house.

7. GST

7.1 GST and property: margin scheme integrity measure

In an unexpected move which will prove expensive for the property development sector, the Budget revives and revises a measure originally announced in the 2005-6 Budget, but subsequently deferred after industry consultation.

The revised announcement is described as being “better targeted” than the original measure which addressed the interaction between the GST-free supply of a going concern provisions and the application of the margin scheme to property sales.

Details are scarce on the newly announced measure, but the Budget states that where the margin scheme is applied to land acquired from a GST registered vendor as either the GST-free supply of a going concern or otherwise as a non-taxable supply (eg of farmland), the “value added” by the GST registered vendor will be included in determining the GST payable by the purchaser for subsequent sales under the margin scheme.

The concept of “value added” is uncertain, but it is likely to mean that the margin scheme cost base of the land for the entity making the non-taxable sale is to be used in determining the margin under the margin scheme. This will influence commercial negotiations on price and require contractual clauses warranting the cost base.

The Government stated that the measures are expected to be introduced in the Winter sittings of Parliament and will take effect from the date of Royal Assent. However, given the development timeframes, while the measure may be prospective in form, it will be retrospective in practice if it applies to all margin scheme sales made after Royal Assent. To be truly prospective it

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will need to be limited to sales of land that were acquired after Royal Assent.

The measure is expected to raise \$620m over 4 years. As a commercial matter, this will be a cost borne by either the property developer purchaser or the vendor to that developer. Further strengthening of integrity measures to address “contrived arrangements” were also announced.

7.2 GST Refunds and the 4 year rule

The Budget confirms measures announced on 6 May 2008. The announcement addresses an anomaly highlighted by a recent decision of the Federal Court.

Under the amendments, the ATO need not refund GST incorrectly paid by an entity unless it has made a corresponding reimbursement, whether or not the overpayment arose from a supply or other transaction. Under the current provisions, that restriction only applied where GST was overpaid in respect of a supply.

The four year limitation on the collection of GST and the payment of refunds will also be tightened.

7.3 Other GST related announcements

The following GST-related items were also contained in the Budget:

- Previously announced legislation to ensure mobile telephone global roaming charges are GST-free (in line with industry practice), is now expected to be introduced in Spring 2008.
- The Government has decided not to amend the Tourist Refund Scheme to enable private providers to facilitate GST refunds for tourists departing Australia.
- The Government had previously announced a review of the GST provisions dealing with representatives of incapacitated entities, typically bankrupts and companies in liquidation. The Budget advises that no final decision has yet been reached.
- The Government has announced that it will not proceed with a package of GST changes for charities announced by the previous Government.
- The Government had proposed aligning the time for remitting PAYG and GST instalments for taxpayers voluntarily registered for GST (that is, whose turnover fell below the mandatory registration threshold). This measure has been delayed and will not be introduced until 2009 or later.

8. Other measures

8.1 Small business CGT relief

Under current law, in order to qualify for the small business CGT concessions, a small business owner must have a capital gain in relation to an asset used in the business. A taxpayer who is a partner in a partnership which is a small business entity can qualify where the asset is used in the partnership business.

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The Budget change will extend access to the CGT small business concessions to enable a taxpayer to access the concessions where they have a capital gain on an asset that is used in a small business carried on by a related entity and not directly by the taxpayer. It will also enable a partner who owns a capital asset that is used in the partnership business to qualify for the concessions, without requiring all partners in the partnership to have an interest in the capital asset.

This extension of the concession had been announced by the previous Government.

8.2 Depreciation of computer software

The write-off period for expenditure on 'in-house computer software' will increase from 2.5 to 4 years. This will reduce the annual deductions from 40% to 25% of the expenditure. In-house computer software is any software acquired or developed by the taxpayer for its own use.

The measure will apply to expenditure incurred on or after 7.30 pm on 13 May 2008.

8.3 Family trust elections

Trusts' ability to use their tax losses is extremely restricted by extensive "anti-avoidance" rules. Certain trusts – in particular, discretionary trusts used by families – can mitigate these restrictions by electing into a regime with more relaxed loss restriction rules, but with a punitive tax on any distributions by that trust outside the "family group" as defined. The election specifies an individual and the "family group" for the relevant trust, defined primarily by reference to other persons sharing defined types of relationship with that individual. Currently, those other persons include, effectively, any lineal descendants of that individual or of the individual's spouse (or of the individual's siblings).

The Government made an election commitment to restrict that aspect of the "family group" criteria to children or grandchildren of the individual or of the individual's spouse. This has been severely criticised as ignoring cultural practices of sharing among widely defined family groups in certain communities, and as ignoring the effect of increasing life expectancy on family arrangements. The lack of any announced transitional measures, to protect those who have arranged their affairs on reliance on the existing rules, has also been criticised. In the Budget, the Government reiterated its intention (and has not announced any transitional measures).

The Government has also confirmed its intention to deny taxpayers their current ability to:

- revoke such an election in some narrowly defined circumstances; and
- vary the identity of the specified individuals in certain cases (subject to certain restrictive criteria);

except in relation to a marriage breakdown.

This measure also reflects a pre-election commitment. It seems that these denials will operate to some extent retrospectively, though the Government has stated that the denials will not apply to actions taken in 2007 to effect variations as a consequence of marriage breakdown or death or revocations

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under certain rules applicable where the election had no practical effect on tax liabilities.

9. The unfinished agenda

One of the more surprising, and very welcome, innovations in the Budget was the declaration by the Government of its position on the long list of measures that the previous Government had announced but not yet enacted.

The list, along with the Government's comments on each measure, is reproduced verbatim as an Appendix to this Tax Brief.

10. The next tax review

The 2020 Summit had recommended a 'root and branch' review of Australia's tax system and the Treasurer confirmed on Sunday that a new committee would be formed and start work soon. The small committee comprises 2 department heads, one former Treasury official and 2 external members – a representative of business and a University economist.

The remit of the committee extends to State and local taxes, but the Treasurer has already ruled out any increase to the rate of the GST, any expansion of the base of the GST, or removing the tax exemption of superannuation benefits. The Committee is expected to report by the end of next year.

For further information, please contact:

Sydney

Tony Frost

tony.frost@gf.com.au

61 2 9225 5982

Melbourne

Adrian O'Shannessy

adrian.oshannessy@gf.com.au

61 3 9288 1723

Greenwoods & Freehills

www.gf.com.au

These notes are in summary form designed to alert clients to tax developments of general interest. They are not comprehensive, they are not offered as advice and should not be used to formulate business or other fiscal decisions.

Greenwoods & Freehills Pty Limited

ABN 60 003 146 852

Level 39 MLC Centre Martin Place Sydney NSW 2000 Australia

Facsimile (02) 9221 6516 Telephone (02) 9225 5955

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APPENDIX

ANNOUNCED BUT UNENACTED MEASURES OF THE PREVIOUS GOVERNMENT

Category 1: Measures the Rudd Government has decided to proceed with and which have been introduced in the Autumn Sittings 2008

	Measure	Description	Implementation details
1.	Farm Management Deposits – early withdrawal Treasury contact: Matt Flavel 02 6263 4382	Ensure that primary producers in an area declared to be in exceptional circumstances can access early withdrawal provisions.	Introduced in Tax Laws Amendment (2008 Measures No. 1) Bill 2008.
2.	Tax-free grants under the Tobacco Growers Adjustment Assistance Package 2006 Treasury contact: Matt Flavel 02 6263 4382	Provide tax-free grants paid to tobacco growers who undertake to exit all agricultural enterprises for at least five years.	Introduced in Tax Laws Amendment (2008 Measures No. 1) Bill 2008.
3.	Deductible gift recipients Treasury contact: Tony Coles 02 6263 3357	Provide income tax deductions for certain gifts of \$2 or more made to these organisations: <ul style="list-style-type: none"> • Council for Jewish Community Security • Australia for UNHCR • Amy Gillett Foundation • Dunn and Lewis Youth Development Foundation • The Spirit of Australia Foundation • World Youth Day 2008 Trust • Ian Thorpe’s Fountain for Youth Limited • Wheelchairs for Kids Inc. Finding Sydney Foundation Memorials Development Committee • Playgroup Australia Incorporated • AE2 Commemorative Foundation Ltd. • Xanana Vocational Education Trust. 	Introduced in Tax Laws Amendment (2008 Measures No. 2) Bill 2008.
4.	Personal income tax exemption for scholarships under the Endeavour Awards Treasury contact: Alix Gallo 02 6263 4496	Exempt from income tax, the Endeavour Research Fellowships and the Endeavour Executive Awards.	Introduced in Tax Laws Amendment (2008 Measures No. 2) Bill 2008.

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	Measure	Description	Implementation details
5.	Beneficiary Tax Offset - extend to Equine Workers Hardship Wage Supplement Payment Treasury contact: Alix Gallo 02 6263 4496	Extend eligibility for the beneficiary tax offset to taxpayers in receipt of the Equine Workers Hardship Wage Supplement Payment.	Introduced in Tax Laws Amendment (2008 Measures No. 1) Bill 2008.
6.	Personal income tax exemption for the Queensland Government's \$1,000 Early Completion Bonus for apprentices Treasury contact: Alix Gallo 02 6263 4496	Exempt the Queensland Government's \$1,000 Early Completion Bonus for apprentices from income tax.	Introduced in Tax Laws Amendment (2008 Measures No. 2) Bill 2008.
7.	Revise the determination of GST exempt taxes, fees and charges Treasury contact: Michael Harms 02 6263 3308	Under the <i>Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations</i> , certain compulsory taxes and regulatory charges are not subject to GST. A complete revised determination setting out the exclusions is issued semi-annually.	A new determination was registered on 16 January 2008 — <i>A New Tax System (Goods and Services Tax)(Exempt Taxes Fees and Charges) Determination 2008 (No. 1)</i>
8.	Tax free treatment of superannuation lump sums for the terminally ill Treasury contact: Mick Dalton 02 6263 3713	Allow terminally ill persons to access their superannuation benefits tax-free where paid as a lump sum.	Introduced in Tax Laws Amendment (2008 Measures No. 1) Bill 2008.
9.	Extending the superannuation guarantee (SG) late payment offset Treasury contact: Nigel Murray 02 6263 4426	Extend the late payment offset so that employers who have made a late contribution and incur the SG charge will not have to pay the same contribution twice for a quarter.	Introduced in Tax Laws Amendment (2008 Measures No. 2) Bill 2008.
10.	Income tax treatment of misappropriations by an agent Treasury contact: Raphael Cicchini 02 6263 3188	Amend the uniform capital allowance and capital gains tax provisions to account for amounts misappropriated by an agent.	Introduced in Tax Laws Amendment (2008 Measures No. 2) Bill 2008.
11.	Carbon sink forests – deduction for establishment costs Treasury contact: Matt Flavel 02 6263 4382	Provide a deduction for the establishment cost for carbon sinks incurred between the 2007-08 and 2011-12 income years and thereafter depreciate in line with the horticultural plant provisions.	Introduced in Tax Laws Amendment (2008 Measures No. 1) Bill 2008.
12.	Changes to the market value substitution rule for widely held entities. Treasury contact: Paul McMahon 02 6263 3385	Amend the market value substitution rule so that it no longer applies to cancellations of interests in widely held entities.	Introduced in Tax Laws Amendment (2008 Measures No. 2) Bill 2008.

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Category 2: Measures the Rudd Government has decided to proceed with and where legislation is expected to be introduced in the Winter or Spring Sittings 2008

	Measure	Description	Implementation details
13.	Taxation of Financial Arrangements stages 3 and 4 Treasury contact: Graeme Davis 02 6263 2078	Implement tax-timing treatments of financial arrangements. Will apply for income years starting on or after 1 July 2009.	Joint Treasurer/Minister Bowen Press Release of 13 May 2008 Legislation expected to be introduced in Spring 2008.
14.	Taxation of rights Treasury contact: Tony Regan 02 6263 3334	Restore the long standing treatment of rights issues following the High Court's decision in <i>McNeil</i> .	Treasurer's Press Release No. 19 of 8 April 2008. Legislation expected to be introduced in Winter 2008.
15.	Demutualisation of health insurers and capital gains tax Treasury contact: Paul McMahon 02 6263 3385	Provide relief from capital gains tax for policyholders of health insurers who receive shares as part of their health insurer's demutualisation.	Assistant Treasurer and Minister for Competition Policy and Consumer Affairs Press Release No. 13 of 26 February 2008. Legislation expected to be introduced in Winter 2008.
16.	Payment of temporary residents' superannuation to the Australian Government. Treasury contact: Nigel Murray 02 6263 4426	Provide that future superannuation contributions and balances for temporary residents will be paid to the Australian Government.	Minister for Superannuation and Corporate Law's Press Release No. 16 of 6 May 2008. Legislation expected to be introduced in Winter 2008.
17.	New tax treaty with Japan and a Protocol to amend the tax treaty with South Africa. Treasury contact: Martin Jacobs 02 6263 2854	These new agreements will broadly update taxation arrangements between Australia and Japan and Australia and South Africa.	Japan - Assistant Treasurer and Minister for Competition Policy and Consumer Affairs Press Release No. 5 of 1 February 2008. South Africa – Assistant Treasurer and Minister for Competition Policy and Consumer Affairs Press Release No. 20 of 1 April 2008. Legislation to give the force of law to the revised treaty with Japan expected to be introduced in Winter 2008, and the Protocol with South Africa in Spring 2008.
18.	Consolidation Treasury contact: Tony Regan 02 6263 3334	Refine the consolidation regime further by making a range of technical amendments including interactions between the consolidation provisions and other parts of the income tax law.	See attachment for details. Legislation expected to be introduced in Spring 2008.
19.	Consolidation – scrip for scrip roll-over provisions and corporate restructures Treasury contact: Tony Regan 02 6263 3334	Modification to the scrip for scrip CGT roll-over provisions for corporate restructures.	See 2008/09 Budget Paper No. 2 for details.

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	Measure	Description	Implementation details
20.	GST and international telecommunications mobile telephone global roaming. Treasury contact: Laurene Edsor 02 6263 4351	Ensure supplies of mobile telephone global roaming services provided to visitors to Australia remain not subject to GST, consistent with obligations under the International Telecommunication Regulations. (This is a more targeted amendment than that announced in December 2006).	See 2008/09 Budget Paper No. 2 for details. Legislation expected to be introduced in Spring 2008.
21.	Prescribed Private Funds (PPFs) Treasury contact: Tony Coles 02 6263 3357	Amend the regulations to incorporate approvals, removals and name changes to PPFs since the last amendment to the regulations.	Each PPF has been informed of the decision to proceed.
22.	Tax treatment of certain financial instruments issued by certain Upper Tier 2 financial institutions Treasury contact: Graeme Davis 02 6263 2078	Extend, until 1 July 2008, the debt/equity transitional provisions applying to Upper Tier instruments. This is to allow further time for consultation and development of an Upper Tier 2 regulation.	Joint Treasurer/Minister Bowen Press Release of 13 May 2008 Regulations expected to be made in mid 2008.
23.	Foreign currency amendments Treasury contact: Graeme Davis 02 6263 2078	Extend compliance cost saving measures and ensure that the provisions operate as intended.	Joint Treasurer/Minister Bowen Press Release of 13 May 2008 Legislation expected to be introduced in Spring 2008.
24.	Thin capitalisation - application of accounting standards Treasury contact: Josephine Laduzko 02 6263 3264	Adjust the recognition and valuation of assets, liabilities and equity capital under the thin capitalisation rules following the adoption of Australian equivalents to International Financial Reporting Standards.	See attachment for details. Legislation expected to be introduced in Winter 2008.
25.	Regulations for private rulings requiring valuations Treasury contact: Victoria Henry 02 6263 3502	Allow the ATO to charge for valuations required in the course of issuing private rulings.	See attachment for details. The regulations are expected to be made in the second half of 2008. Draft regulations and a draft explanatory statement are released for consultation and are available from the Treasury website at www.treasury.gov.au .
26.	Increase access to small business capital gains tax concessions via the \$2 million aggregated turnover test Treasury contact: Paul McMahon 02 6263 3385	Allow: (1) a taxpayer owning an asset used in a business by an affiliate or connected entity; and (2) a partner who owns an asset used in a partnership business, to access the small business CGT concessions.	See 2008/09 Budget Paper No. 2 for details. Legislation expected to be introduced in Winter or Spring 2008.
27.	Petroleum Resource Rent Taxation – minor policy amendments Treasury contact: John Anderson 02 6263 4411	Minor amendments to improve the functioning of the law from 1 July 2008.	See attachment for details. Legislation expected to be introduced in Winter or Spring 2008.

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Category 3: Measures the Rudd Government has decided to proceed with and where legislation is not expected to be introduced before 2009

	Measure	Description	Implementation details
28.	Pay As You Go instalments paid annually when voluntarily registered for GST Treasury contact: Peter Krizmanits 02 6263 3066	Defer to 1 July 2009 the 2007-08 Budget measure to align the Pay As You Go instalment payment and reporting requirements with the annual payment and reporting requirements for taxpayers who are voluntarily registered for GST.	See 2008/09 Budget Paper No. 2 for details. Legislation is not expected to be introduced before 2009.
29.	Simplified imputation system Treasury contact: Tony Regan 02 6263 3334	Insert further components of the simplified imputation system and make minor amendments to imputation rules.	See attachment for details. Legislation is not expected to be introduced before 2009.
30.	Loss recoupment rules - modifications to the continuity of ownership test Treasury contact: Tony Regan 02 6263 3334	Refine the company loss recoupment rules so that the continuity of ownership test applies appropriately when a company has multiple classes of shares and to make some technical refinements.	See attachment for details. Legislation is not expected to be introduced before 2009.
31.	Verification measures to support new arrangements concerning Liquids, Aerosols and Gels (LAGS) and the sealed bag scheme. Treasury contact: Phil Bignell 02 6263 4372	Allow new procedures for the verification of export of LAGS sold through the sealed bag scheme, in light of recently introduced international security restrictions relating to the carrying of these items on international flights.	See attachment for details. Legislation is not expected to be introduced before 2009.
32.	Deferred settlement of excise and excise-equivalent customs duties Treasury contact: Kym Malycha 02 6263 3394	Allow small business to defer the settlement of excise and excise-equivalent customs duties to a monthly cycle, rather than the existing weekly cycle.	See attachment for details. Legislation is not expected to be introduced before 2009.
33.	Refunds, remissions and drawbacks of excise and excise-equivalent customs duty. Treasury contact: Tony Free 02 6263 3283	Enhance and streamline eligibility for refunds, remissions and drawbacks of excise and excise-equivalent customs duty.	See attachment for details. Legislation is not expected to be introduced before 2009.
34.	Tax concessions for the International Criminal Court Treasury contact: Martin Jacobs 02 6263 2854	To provide the International Criminal Court and certain of its officials with income tax, customs duty, GST and other Commonwealth tax concessions consistent with Australia's obligations under the <i>Agreement on the Privileges and Immunities of the International Criminal Court</i> . The concessions are not available to individuals who are Australian nationals or permanent residents.	Legislation is not expected to be introduced before 2009.

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Category 4: Measures the Rudd Government has decided not to proceed with

	Measure	Description	Details of Government decision
35.	GST and the sale of real property - interaction of the margin scheme and GST-free going concern and GST-free farmland provisions	Amend the application of the margin scheme to supplies of real property that were initially acquired as a GST-free going concern or GST-free farmland. The Government has decided to proceed with a better targeted measure	See 2008/09 Budget Paper No. 2 for details. Legislation for the better targeted measure is expected to be introduced in Winter 2008.
36.	GST relief for charities	Amend the application of the GST law to charities.	See 2008/09 Budget Paper No. 2 for details.
37.	Tourist Refund Scheme – introducing private providers and enhancements to tourist shopping.	The Government has decided not to amend the Tourist Refund Scheme so that private providers would provide GST and wine equalisation tax refunds to travellers departing Australia. The Government will proceed with various minor proposals to enhance the Tourist Refund Scheme.	See 2008/09 Budget Paper No. 2 for details. Legislation for the Government's proposals is not expected to be introduced before 2009.

Category 5: Measures for which final decisions have not yet been reached

	Measure	Description	Background
38.	Repeal of the deemed present entitlement rules.	Remove overlap and increase simplicity by subjecting fixed interests in foreign trusts to accruals taxation under the foreign investment fund (FIF) rules.	This proposal is currently being examined by the Board of Taxation in the course of the Board's wider review of the foreign source income anti-tax deferral rules, including the deemed present entitlement and FIF rules.
39.	Amendment of the transferor trust rules.	Strengthen the transferor trust rules by removing the requirement that transferors control the trust for accruals taxation to apply.	This proposal is currently being examined by the Board of Taxation in the course of the Board's wider review of the foreign source income anti-tax deferral rules, including the transferor trust rules.

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	Measure	Description	Background
40.	Consistent taxation treatment of foreign dividends and amendments to the definition of non-portfolio dividend	To ensure consistent tax treatment of foreign dividends received by Australian companies, whether the dividends are received directly or indirectly through a controlled foreign company. Consequential changes to the definition of non-portfolio dividend will also be made to align it more closely with economic ownership concepts.	This proposal is currently being examined by the Board of Taxation in the course of the Board's wider review of the foreign source income anti-tax-deferral rules, including the controlled foreign company rules.
41.	Review of Taxation Secrecy and Disclosure Provisions	Standardise the various secrecy and disclosure provisions in the tax law into a single legislative framework.	A discussion paper was released by the previous government for public comment in 2006.
42.	Review of elections in the income tax laws	Review the design of elections in the law and establish guidelines for framing those elections in the future.	This arose from the Report on Aspects of Income Tax Self Assessment (2004).
43.	Review of unlimited amendment periods	Review unlimited amendment periods in the income tax laws and, wherever practical, recommend finite periods during which the ATO and the taxpayer can amend the assessment.	This arose from the Report on Aspects of Income Tax Self Assessment (2004). Public consultation on a discussion paper was conducted in August-October 2007.
44.	Review of discretions in the income tax laws	Review discretions in the income tax law that go to the determination of a taxpayer's liability and, wherever practical, recommend replacement tests that a taxpayer can apply at the time of lodgement.	This arose from the Report on Aspects of Income Tax Self Assessment (2004). Public consultation on a discussion paper was conducted in July-August 2007.
45.	Review of anti-avoidance provisions in the income tax laws	Review specific anti-avoidance rules in the income tax law and review whether changes to the general anti-avoidance rule are necessary.	This arose from ANTS (1998) and the Review of Business Taxation (1999).
46.	Native title withholding tax	Establish a system of withholding tax from payments made to native title holders for acts which impair, but do not extinguish, their native title rights.	This was announced in February 1998. The proposed approach has met with legal and practical problems which are currently being examined.

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	Measure	Description	Background
47.	Native title and capital gains tax issues	<p>Allow:</p> <ul style="list-style-type: none"> • native title to retain its pre-CGT status when acquired by a registered body corporate upon obtaining a native title determination; • a transfer of native title within a group of native title holders and succession from one group of native title holders to another to be CGT exempt; and • compensation payments received for the extinguishment or voluntary surrender of native title rights to be exempt from CGT and income tax; and <p>expenses for extinguishment of native title to form part of the cost base of a CGT asset.</p>	This was announced by the previous government in February 1998 and was to be implemented with the native title withholding tax measure (see item 46).
48.	GST and representatives of incapacitated entities	Clarify the GST obligations for representatives that are appointed over entities that have become incapacitated.	
49.	Tax treatment of term subordinated notes with solvency clauses	Ensure that the presence of a solvency clause in certain term subordinated notes does not preclude the instrument qualifying as a debt interest for tax purposes.	
50.	Taxation exemptions for foreign governments	Codify the tax exemptions that are currently provided to foreign governments and their investment bodies.	
51.	Company residence rules	Amend the company residence rules so that companies that are residents under domestic income tax law, but are non-residents for the purposes of a tax treaty, are treated as non-resident for all purposes of the income tax law.	This arose from the Review of International Tax Arrangements (2003).
52.	Energy Grants (Cleaner Fuels) Scheme	Refine and clarify the Energy Grants (Cleaner Fuels) Scheme including the provision of additional arrangements for renewable diesel.	
53.	Phasing down of the land transport facilities borrowings tax offset scheme	Phase down the land transport facilities borrowings tax offset scheme.	The decision to phase down the scheme was announced in the 2004-05 Budget.
54.	Tax information exchange agreement (TIEA) with tax havens.	Continue negotiation of TIEAs as a response to the OECD's Harmful Tax Practices Initiative.	
55.	Modification of the transfer pricing provisions	Review the administration of the transfer pricing rules.	
56.	New legislative regime for tax agent services	To create an improved environment for the provision of tax agent services by defining the role of tax agents in a legislated code of professional conduct to be administered by a national Tax Practitioners Board.	Public consultation on draft legislation was conducted in May-August 2007.

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	Measure	Description	Background
57.	Fuel tax reforms	Effective fuel tax on alternative fuels capable of use in an internal combustion engine is scheduled to be introduced from 1 July 2011 and phased in over five years to the final rates from 1 July 2015.	