

2022-23 Pre-Budget Submission - OrcaStraya

- I currently work as a chartered accountant, and am currently a partner in a professional practice firm
 - These suggestions are as a direct result of my interacting with many clients in small and medium businesses as well as individual taxpayers
 - My other thoughts and recommendations on tax policy can be found here: <https://www.orcastraya.com>
 - A copy of this specific submission can also be found here: <https://www.orcastraya.com/2022/01/27/2022-23-pre-budget-submission/>
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The Australian tax system should be designed such that it:

- Attracts the smartest and most successful entrepreneurs & innovators in the world to operate their businesses in and from Australia
- Attracts the smartest, most talented and hard working employees in the world to live and work in Australia, whether for Australian businesses or remotely for Non-Australian businesses

Cryptocurrency

In response to the recommendations contained in the Bragg Report

https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024747/toc_pdf/Finalreport.pdf;fileType=application%2Fpdf

Recommendation 1

- I agree that there should be a Digital Asset Regulator. Having one will give certainty to businesses and consumers within Australia so they can be secure when investing their time and energy creating great businesses without the risk of hasty government changes rug-pulling their businesses or forcing them or their customers to move offshore.

Recommendation 2

- I do not agree that Australian Exchanges should be required to custody assets in Australia, enforcing this creates needless inefficiencies.
- What should be required is that the custody of assets is done within a secure framework and to an acceptable standard, such that customer's assets are protected to this standard, required by the Australian Regulator. If there happens to be a custody provider based in Singapore that meets these standards then that should be allowed, if there is a custody provider in the USA who meets these standards then that provider should also be allowed.
- We want to encourage Australian based cryptocurrency exchanges to use the best custody service providers in the world, and this will often mean that the best provider of those services is not an Australian business.

- We also want to encourage those same world leading crypto currency custody businesses to operate in Australia. Demanding Australian exchanges to self custody within Australia is one way to make certain that Australians have suboptimal services because it guarantees they will not be utilising world leading custody providers, they will instead be using the inhouse custody provided by the exchanges themselves which do not specialise in this service.

Recommendation 3

- I agree, not all tokens are the same, BTC is very different to ETH which is very different to an NFT of a piece of art, which is very different to a token in a DAO. It is the equivalent of saying every business with a website is in the same industry, it's obviously false.
- I agree that the government needs to engage people in the industry with the specialist knowledge to assist them in determining the different types of token assets and correctly break them down into their functions and use cases to adequately be able to regulate them in such a way that does not stifle innovation but also gives regulatory certainty and protections to Australian Consumers.
- This would ideally be the first item of business for the newly created Digital Asset Regulator (mentioned at Recommendation 1)

Recommendation 4

- I agree, DAOs should be added as a new type of entity recognised by ASIC.
- There should be a specific carve out in the Tax Act and with ASIC for DAOs exempting them from paying tax in their own right in Australia, knowing that the tax will be paid by the customers/users and token holders anyway (if those customers and token holders are AU tax residents). This will give greater clarity to people wanting to setup DAOs globally and make Australia a place where technologists on the cutting edge of these entities would want to be based

Recommendation 5

- I disagree, this rule will only push people into using offshore providers outside the scope of the Australian regulatory regime and will stifle the growth of the Australian based exchanges.

Recommendation 6

- I agree, There are a number of cases where the rules in their current form create unintended undesirable consequences. This should be something that the regulator (from Recommendation 1) in conjunction with the ATO should be constantly monitoring and if there are mismatches the ATO should release statements as to how people can treat these transactions in the interim while legislation is updated to be fit for purpose.
- For example, one specific know inconsistency has been discovered where a taxpayer deposits cryptocurrency into the Celsius Network (equivalent to transferring money from one bank account to another) to earn staking rewards (equivalent to interest income) But instead of this platform giving you an account and it being managed like a bank account

you transfer your tokens to them, say for example BTC and they take custody over them they own then, and in exchange give you CEL tokens that represent your share of the pooled funds being lent out to customers on the other end borrowing your funds and paying interest to the pool. When you want your BTC back you can just trade in your CEL tokens and are paid all your BTC plus the interest earned on it. The unintended consequence here is that when you transfer your funds to the Celsius Network it is technically a sale event for CGT purposes, not just a transfer event (because you no longer have custody or beneficial ownership over your contributed tokens, in this example BTC) the same issue happens when you convert your CEL back to BTC. You are essentially paying 2 rounds of CGT in a situation where you should not have to pay any CGT at all.

Recommendation 7

- While i agree with offering incentives to mining businesses to encourage them to setup in Australia and use green energy, i believe there are much better ways to do this than just a simple tax break like this.
- For starters changing regulations such that nuclear power is allowed to be used would be a better place to start than direct tax breaks to cryptocurrency mining companies, because if nuclear power was allowed in Australia the miners would be investing heavily in it.
- Australia is also tectonically very stable (unlike Japan - Fukushima) and our safety standards are very high (unlike Russia - Chernobyl)

Recommendation 8

- I agree, Australia has become a laughing stock globally because of our stance in this regard. Countries such as China have not only started on this but are almost at completion and about to release their CBDCs. Our RBA has had to be dragged into this kicking and screaming.
- Our institutions should be forward looking and have a positive vision for the future, they should not just be reactionary places filled only with people in their last few years before retirement.

Recommendation 9

- Don't know enough about to comment on

Recommendation 10

- I agree, De-banking of crypto industry businesses is rife within traditional banking. Affected people or businesses should have a regulator they can take their cases to if they believe they have been unfairly de-banked and should be able to be guaranteed services in the same way that electricity providers are required to offer services to all Australians. The significant increase in de-banking has 2 main causes:
 - Insufficient clarity in regulations, leading to banks being needlessly concerned about being non-compliant by offering services to these businesses and in response taking an overzealously cautious approach

- Banks using the currently very murky regulations as a way to attack an industry it is competing with, which if the ACCC was not asleep at the wheel, it would have stepped in and solved many years ago.

Recommendation 11

- I disagree, nationalising payments systems through the RBA is not the way to go. What we should instead be focusing on is creating such a dynamic and diverse industry that consumers have many multiple options to choose from, and not just a few major players.

Recommendation 12

- Don't know enough about to comment on

Other Issues & Recommendations

- Bitcoin & other crypto assets that are determined to be currencies should be treated as a foreign currency and placed under the foreign currency rules (In the same way one would be taxed if they traded AUD for GBP or USD etc) removing them from being treated under the CGT system, which was never designed for such transactions
- The taxation of NFTs should be determined by the underlying asset the NFT relates to:
 - Artwork Profile Pictures (PFPs) are collectables so are fine to be treated as CGT assets under the collectible rules

Employee Share Schemes (ESS)

The complete details on the rationale, reasoning & calculations of the below points can be found here:

<https://www.orcastraya.com/2022/01/27/employee-share-schemes-and-how-they-decrease-wealth-inequality/>

The more a founder gives to their employees the more the founder's holding is diluted and it is shared with those helping to build the company. The cumbersome ESS provisions actually exacerbate the Jeff Bezos effect, if he had given more equity in amazon shares to his employees (through an ESS or any similar arrangement) his equity, and subsequently his net worth would be much less.

The rules need to be simple to be utilised, so as to allow businesses to offer them with minimal administrative overhead (there should be no or very minimal need to engage lawyers and accountants) it should be that simple to offer and provide.

We should:

- Scrap the current ESS tax regime for all companies, including the startup concessions and replace them with a single system applying to all companies, australian and foreign

- If a company has a turnover greater than \$100 Million then it can offer tax free shares and options to employees such that they own less than 5% of the shares in a company after the shares are issued
- If a company has a turnover less than \$100 Million then it can offer tax free shares and options to employees such that they own less than 10% of the shares in a company after the shares are issued
- Employees will pay no tax when the options are granted, vest or exercised, they will pay no tax on shares when they are granted or vested.
- They will still pay CGT on these shares when they ultimately sell them
- Those not eligible for the tax free concessions will pay tax at marginal rates only where the options are exercised or shares vest

Superannuation

The complete details on the rationale, reasoning & calculations of the below points can be found here:

<https://www.orcastraya.com/2021/05/09/the-case-for-superannuation-how-to-make-it-equitable-for-all/>

Here is a summary of the recommendations taken from the above essay:

- Leave the Super Guarantee Rate at 10% indefinitely
- Replace the flat 15% tax rate within superannuation with a tiered system based on Total Superannuation Balance
 - NIL = \$0 - \$1,000,000 = NIL
 - 15% = \$1,000,000 - \$4,000,000
 - 30% = \$4,000,000 - \$10,000,000
 - 45% = \$10,000,000+
- Remove the 0% tax rate for earnings whilst in pension phase, and tax as per the above rates
- Remove all contribution Caps
- Remove the Div 293 tax

Luxury Car Tax, GST cost limit, Depreciation cost limit

- Should all be revised back to be the same threshold and exact same criteria
- Having a different threshold (as they are all separate now and are indexed differently with inflation so are not the same number) is an administrative nightmare coming from an accountant that has to deal with it regularly

There should include a full 100% exemption from LCT, GST cost limit and depreciation limit for 100% BEVs (Battery Electric Vehicles) and a 0% exemption for partially electric vehicles

Company and trust formations

- There should be no stamp duty payable or stamping requirement for any trust in any Australian jurisdiction
- Should all be able to be done via electronic signature (eg docusign)
- The audit trail of docusigned (or equivalent) documents is far superior to those of any wet signed document. Wet Signed documents are easily forged, or back dated and signed at a later date, this is not possible on a docusigned document, as the audit trail lists the exact details of when and who did what.
- No ASIC document (or any other government document) should ever be required to be "Wet Signed"
- No ASIC document should ever be required to be lodged as a hard copy. Every single ASIC form should be available to be lodged electronically via the registered agent portal (for agents), or directly with ASIC (for businesses self preparing)

GST

- Remove all the exemptions on GST instead of raising the rate (remove the exemption on food, insurance, gov fees, medical expenses)
- There should only be 3 GST tax codes (GST, GST Free, BAS Excluded) the requirement to report different delininations such as GST on exports, GST on capital acquisitions, Input Taxed are all entirely unnecessary
- The transaction either has GST on it, or it doesn't. Creating a multitude of sub categories only creates confusion and an increased admin burden for everyone involved, with no benefit to anyone, even the government collecting all the information.

Education

- Remove the job - education nexus rule so that people in our society can retrain when they need to for any job/career change at any time
- If a truck driver wants to learn to code because his industry is disappearing due to automation then he should be able to deduct the cost of his coding course against his truck driving salary so he is incentivised to do so
- If the government is worried about this costing too much in tax deductions they should instead spend more time in trying to figure out ways to make the providers of education courses offer their services for a lower cost, rather than trying to avoid subsidising 30% of the bill
- Not allowing this tax deduction just acts as a disincentive for people to retrain into high demand industries when they are needed and have the desire and will to do so
- The cost of University courses is skyrocketing where as innovative online education providers such as Udemy offer courses that are 100x - 1,000x cheaper
- Encourage innovation to make education cheaper, and be happy to fund those innovative cheaper alternatives, instead of trying to line the pockets of universities with taxpayer's money while avoiding contributing anything of value to the people actually trying to learn

Entertainment

- Make the rules clearer
- It is a murky grey zone mess and intertwined with the FBT system
- Remove the Entertainment provisions from the FBT legislation and encode it in its own section of the Income Tax Assessment Act
- Clearly give guidance on when meeting costs are deductible and when they are not
- Non-alcoholic beverages should always be a yes (Coffee, tea, etc) even when consumed at a cafe. It's deductible when the business provides via a coffee machine in the office for clients and staff so it should be also deductible if the employee goes to meet a client out of the office at a cafe too
- Meals are admittedly more difficult to determine, but there should be more concrete guidance instead of the endless shades of grey.

Depreciable Items

- The immediate write off rules for business assets should also apply to individuals
- It makes no sense that a business can get an immediate write off for a depreciable asset of any value and an individual can't (If for example they buy a laptop for work purposes where they are a salaried employee)

Financial Advice fees

- Make the rules clearer
- It is currently also a murky grey zone mess
- They should be 100% deductible. A specific section should be added to the tax act stating this.
- This should also include the cost of obtaining advice around:
 - Personal budgeting
 - Superannuation
 - Insurance
 - Financial Plans

We should want a financially savvy and literate population so we should incentivise those taxpayers who are seeking out this advice when they need it to continue to do so and not avoid it because it is not tax deductible.

Div 293

- The default should be for this amount to be paid from the taxpayers super fund and a submission required to elect to pay it personally, if the taxpayer so wishes. Not the other way around (As it currently is).

Tax Forms

INDIVIDUAL INCOME TAX RETURN

Cover page

- Remove the 'has your address changed' tick box. It is entirely unnecessary with computing the way it is today (we know your data matching has the capacity to do this already without our input) It is an unnecessary waste of everyone's time having this extra box on the form

Income

- Job descriptions and titles should be decided by employers and put on payment summaries and be a per job line item that prefills, this should not one that needs to be manually entered and can only apply currently to one job if a taxpayer has multiple employers
- The salary and wage occupation codes should be completely overhauled, it is full of loads of old inapplicable jobs, but lack almost all new tech and crypto jobs
- Schedules for each and every interest income line item and dividend income line item is a complete waste of time and adds needless hours of waste to the return preparation process for no gain, it can be done entirely on the line item itself. Requiring software providers to do this is entirely unnecessary.

Old Schedule


10 **Gross interest** Income L

Description	Tax	Gross	Percentage (%)
New row placeholder			

+ New item

New Schedule

Interest Worksheet

Financial institution	<input type="text"/>
Account number	<input type="text"/>
Number of account holders	<input type="text"/>
Percentage	<input type="text"/>
Country of residence for tax purposes when interest was paid or credited	<input type="text"/>
Treaty country	<input type="button" value="Yes"/> <input type="button" value="No"/>
Non-resident withholding tax (NRWT) rate (%) 	<input type="text"/>
Estimated non-resident withholding tax (NRWT)	

	Gross	My Share
Interest	<input type="text"/>	<input type="text"/>
TFN amounts withheld	0.00	0.00

- Managed fund distribution schedules should pre-populate all the necessary fields (interest, dividends, trust distributions, CGT & foreign income) requiring these schedules and then also requiring that the info be double entered into the CGT and foreign income sections creates double handling that will result in unnecessary mistakes stemming from human error, as well as wasting precious time. Requiring software providers to do this when the technology is more than capable of automating this is mind bogglingly backward.
- PSI should only be at one item, not 2 separate items of the return (Item 9 & Item 14) please consider consolidating into one item, at item 9
- Item 16 is a complete mess of duplication creating unnecessary confusion, it should only have 4 line items and 2 columns:
 - Rows: Rental, investing, primary production, Other
 - Columns: Sole trader & partnership

Deductions

- S82A reduction should be scrapped as it is entirely pointless
- Should remove D7 & D8 entirely and just have all investment deductions claimed at D15
- D10 other expenses should be the first line item as it is the only one that gets used regularly (for accounting fees) and it is very rare someone has litigation expenses (this

should be the 3rd line item), all ATO GIC should be on the second line item as this is less frequent than accounting fees, but happens more frequently than litigation expenses

Income Tests

- There are so many different income types it is difficult to keep up with, there should only be 2:
 - Taxable Income
 - Rebate Income = INCOME FOR EVERY OTHER ASSESSMENT PURPOSE (Taxable income plus FBT, super, etc, etc) Pick whatever things you wish to include in this, but keep it to just one measure that applies to all government handout eligibility criteria

It is absolute stupidity that every new government handout has its own type of "taxable income for this purpose" It makes no sense and makes the system unnecessarily complex

- A2 this line item should be completely auto generated (in the way IT5 and IT6 are) based on the dates entered on the cover page under "are you an Australian resident, or did you become or cease to be a resident and the applicable dates". Needing to manually calculate this is completely unnecessary

Spouse section

- See above re Taxable income & rebate income, the fact that there are 23 line items of different "Income Types" shows how ridiculous this has become. There should only be 2:
- Taxable Income & Rebate Income

Business Schedule

- There does not need to be PP & non-PP columns, it can be determined by the business activity code used at P2
- The ABN at P5 should prefill from cover page and not need to be double entered into the form
- Label Z should not need to be split into Rental, investing or other, this should be automatically determined based on the business activity code used at P2

BAS

- BAS forms should clearly state on them what type they are, so that if it is manually required to be prepared in a software product, or an amendment is needed to be done the correct form can be determined and generated quickly and easily
- (<https://www.ato.gov.au/forms/consolidated-list-of-approved-forms-by-tax-topic/?page=2>)
- (<https://www.ato.gov.au/Tax-professionals/Digital-services/In-detail/Practitioner-lodgment-service-user-guide/?page=9>)

TPAR

- The TPAR reporting system was introduced to combat the black/cash economy and Australian tax payers not declaring all their income
- Given this it makes no sense to require businesses to report overseas contractors on the TPAR reports as they are not Australian taxpayers
- There is no benefit to the amount of Australian tax collected for requiring this additional unnecessary administrative burden (reporting overseas contractors)
- The act should be amended to exempt reporting of overseas contractors on TPAR reports
- That being said even with the law as it currently stands requiring overseas contractors to be reported, the TPAR reports as designed by the ATO don't allow overseas contractors to be reported, as the forms are prohibited from being lodged (fail SBR lodgment protocols) when the contractor reported does not have an Australian based address or ABN. Overseas contractors have neither of these, so are unable to be reported on the current TPAR forms.
- So the forms should be updated immediately to enable businesses to report correctly in accordance with the law as it stands currently