Federal Budget 2021-22

TaxBanter

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Enquiries — 03 9660 3500

Email — enquiries@taxbanter.com.au

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Introduction

The topography of the economy

Fiscal cliff or slope

It is only seven months since the Treasurer, Josh Frydenberg, handed down the 2020–21 Federal Budget on 6 October 2020. This was after an injection of some $299 billion into the economy in the preceding seven months to provide economic support to people affected by the 'once-in-a-century shock' that is the COVID-19 pandemic.[1] This massive injection into the economy meant that, despite the sharp decline and falling employment in Australia in the first half of the year when the health and economic situation around the world was dire, households in Australia enjoyed an increase in overall household income as a result of the large stimulus payments under the JobKeeper and JobSeeker Schemes and indeed greatly increased their savings.[2]

Many businesses prospered — some even boomed — during the pandemic. A number of large corporates that are finding that their profits for the year of the pandemic were not so badly affected after all, and may even be better than pre-COVID-19, have chosen to return JobKeeper payments, in some cases amounting to millions, to the Government. This too is unprecedented at least insofar as the Tax law is concerned because there is no simple solution — the amounts are assessable and a deduction for repayment is available only in very specific circumstances. The Commissioner has issued a fact sheet to guide good business citizens in dealing with this unusual situation.[3]

The after-shocks continue but by all accounts in the media, the economy is surging ahead — the Reserve Bank of Australia (RBA) recently gave an upbeat assessment of domestic recovery and the Australian sharemarket came within 100 points of a record high[4]; the housing market is going gangbusters[5] and even though house prices continue on their upward trajectory some economists think that houses are still affordable because interest rates are so low.[6]

The 'fiscal cliff' that was September 2020 became a fiscal slope[7], when the Government extended JobKeeper and JobSeeker and announced some new measures such as the HomeBuilder Scheme which was to drive jobs though residential construction. The JobMaker Scheme which provides payments for a 12-month period to help with the cost of hiring additional employees has been less successful, although it may have generated more work for the accounting profession trying to understand the eligibility criteria for employers.

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1 This was the initial Government response which included health measures, the JobKeeper Payment, Boosting Cash Flow for Employers and the Coronavirus Supplement.

2 Reserve Bank of Australia *Financial Stability Review*, October 2020.

3 See ATO fact sheet QC 65035 JobKeeper voluntary repayments

4 William McInnes in the *Australian Financial Review* 'ASX firms 0.6 9pc to within 100 points of record high' 4 May 2021.

5 It seems that home loan commitments to investor buyers has increased at a rate not seen since 2003 bringing the loan commitments to a level not seen since mid-2017. Article by Michael Bleby in the *Australian Financial Review* Investor surge brings macroprudential clouds back over housing market 4 May 2021.

6 Opinion piece by Christopher Joye Why housing is very affordable in the *Australian Financial Review.* 9 April 2021. The job rate may have improved since 2020 but wages have been resistant to growth, even stagnant.

7 Many economists and media commentators have used these topographical metaphors to highlight the severity of the economic impact.

Creating jobs — a plateau?

HomeBuilder and JobMaker were measures implementing the first of the Government's two-phase strategy in the last Budget — a COVID-19 Economic Recovery Plan that targets job creation to get unemployment below six per cent; and a medium term phase focused on stabilising and then reducing debt as a share of the economy.[8]

JobMaker has not created anywhere near the number of jobs Treasury had anticipated and business appears not to have taken up the incentive or to have just dismissed it.[9] The Treasurer is reported to have foreshadowed a review of the criteria and settings of the incentive (other than the employee age criteria) in the Budget.

The JobMaker Scheme will be closed on 7 October 2021 to new employees.[10]

The HomeBuilder Scheme closed on 14 April 2021, but in recognition of the supply constraints, existing applicants will have an additional 12 months to commence construction.

The mountains of cash injected into the economy were only emergency stopgap measures which in hindsight — i.e. in the light of the increased savings, the voluntary repayment of JobKeeper payments and the buoyant profit figures being released by the big corporates (in sectors other than tourism, entertainment and hospitality) — could have been more and/or better targeted.[11]

The gloom that some commentators, including the Prime Minister himself and the Governor of the RBA, were predicting earlier last year — e.g. the biggest economic contraction since the Great Depression[12] — has not materialised, yet. On the contrary, the financial press now is much more optimistic. The miners of the 'lucky country' can get record prices of around US$200 a tonne (AUD$260) for iron ore and world demand is set to increase and there is sure to be a trickle down effect to the rest of the country.[13] How to equitably distribute the wealth of a nation is a difficult question facing many governments.

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8 The 2020–21 Budget Overview reported that gross debt was expected to be 44.8 per cent of GDP at the end of 2020–21, increasing to 51.6 per cent of GDP by the end of the forward estimates. Gross debt was projected to stabilise at around 55 per cent of GDP in the medium term. https://budget.gov.au/2020-21/content/overview.htm#top

9 Matthew Cranston in Companies shun $4b JobMaker, force changes in the *Australian Financial Review* reported on 22 March 2021 that the JobMaker Scheme has been largely ignored; only 521 new jobs were created in its first six weeks well short of Treasury's projected figure of 10,000 out of a total projected figure of 450,000 during the two and a half year life of the Scheme. It seems that the age criteria for new employees (under 29 years to qualify for the $200 per week subsidy and between 30 and 35 to qualify for the $100 per week subsidy) makes the scheme too narrowly focussed.

10 Payments under the Scheme are made quarterly to eligible employers for eligible employees for a period of up to 12 months.

11 This observation made in hindsight is not intended to denigrate the foresight of the Government in implementing such a massive program in a very short time.

12 Prime Minister of Australia Press Conference - Australian Parliament House, ACT 23 April 2020; Philip Lowe, Governor of the Reserve Bank of Australia, An Economic and Financial Update, 21 April 2020.

13 William McInnes Iron ore windfall at $US 200 fuels supercycle profits in the *Australian Financial Review* 7 May 2021. McInnes reports that the spot [price of $260 a tonne is according to NAB, 30 per cent higher than the previous Australian dollar high of May 2010.

Other stimulus measures

The other stimulus measures around capital allowances were designed to encourage businesses to spend and invest in capital.

The expansion of the instant asset write-off or the temporary full expensing and extending its availability to businesses with a turnover of up to $5 billion means that a large number of businesses will be able to bring forward deductions for amounts they would have otherwise written off over the effective life of the depreciating assets.

The accelerated depreciation concessions together with the loss carry back tax offset means that eligible companies with a turnover of less that $5 billion may be able to claim back some of the tax they paid in the 2018–19 and 2019–20 income years.

Peaks and troughs — where are we?

The willingness of business and indeed consumers to spend now will depend on their view about Australia's prospects for economic growth. The Treasurer reported that 'consumer confidence has recovered beyond its pre-pandemic level and sits at an 11-year high. Business conditions are at their highest on record. Capital investment intentions for the next 12 months are at their strongest since 1994.'[14] The Treasurer also recently noted that 'investment in machinery and equipment, like vehicles and harvesters, was up 8.1 per cent in the most recent December quarter data — the largest quarterly increase in nearly seven years.[14]

The Government's direct economic support of $250 billion has meant that Australia's employment levels have returned to normal[14] and, except for the fact that some of our biggest markets are overseas, Australia would seem to be well on the road to recovery. But, times are still uncertain and definitely without precedent.[15]

The most recent snapshots of the Australian economy produced by the RBA — see below for some relevant snapshots based on the latest available data as at 8 April 2021[16] — indicate that Australia is responding well.

[14] In his speech to the Australian Chamber of Commerce and Industry Delivering more jobs and a stronger budget on 29 April 2021, the Treasurer observed that 'we are the first major advanced economy to see both hours worked and employment return to pre-pandemic levels'.

[15] As we now know, things can change very quickly — at the start of 2020, the Government was reflecting on what was to be the first balanced Budget in 11 years, the largest legislated tax cuts in more than 20 years and welfare dependency at a 30-year low; by 23 July 2020, the Economic and Fiscal Update (the EFU) showed figures that had not parallel since the Great Depression. Now we are on the verge of a commodities boom and the stock market is at a record high.

[16] This does not mean that the data is as at 8 April 2021.

RBA snapshots of the economic landscape

Snapshots of the Australian economy from the Reserve Bank of Australia — April 2021[17]

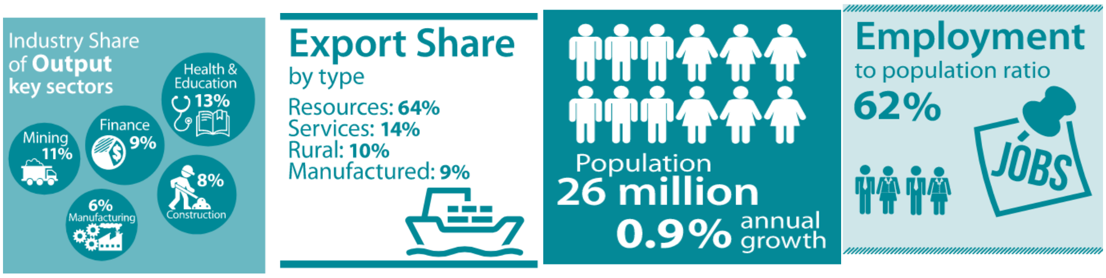
Economic indicators

April 2019 1.5% **April 2019** 1.6% **April 2019** 1.5% **April 2019** US$0.71

April 2019 5.2%[18] **April 2019** 2.3% **April 2019** $1,237.90[19] / 3.6%

Sept 2020 (6.3%)

Composition of the Australian economy



June 2019

Mining 10.6%

Manufacture 6%

Construction 7.9%

Finance 9.0%

Health & Education 12.6%

June 2019

Resources 59.4%

Services 20.3%

Rural 9.4%

Manufactured 9.1%

June 2019

Population 25.4 million

Growth 1.5%

April 2019

62.4%

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[17] Reserve Bank of Australia. Snapshots: Economic Indicators and Composition of the Australia Economy. latest available as at 8 April 2021. Retrieved 5 May 2021 which is available here: www.rba.gov.au/snapshots/economy-composition-snapshot/ and www.rba.gov.au/snapshots/economy-indicators-snapshot/

[18] The Australian Bureau of Statistics reports the unemployment rate to be 5.6% (March 2021).

[19] As at September 2020, the average weekly earnings were $1,305 and the household savings ratio was 19.8%. The Australian Bureau of Statistics reports the average weekly earnings to be $1,711.60 (November 2020).

The road to recovery

The plans for recovery have already been laid out and fortuitously for the Government, it is not saddled with any pre-COVID-19 economic or taxation reform agenda.

Obviously, a health strategy that delivers the vaccine is paramount.

The economic and fiscal strategy will continue 'to prioritise job creation as Australia's pathway to a stronger economy and a stronger budget position.'[20]

Clues to the way forward

The Prime Minister has said that 'Australia's approach will be technology driven, not taxes driven, not higher electricity prices, not an electricity tax. None of that.'[21] A careful stewardship of the economy recovery and getting people back on their feet.

He has dismissed putting on a carbon tax or putting up the GST. The big changes he has foreshadowed as the changes that we need to grow the economy are personal tax cuts — these have already been legislated to commence on 1 July 2024 when the income bracket between $90,000 and $180,000 (to which the marginal rates of 32.5% and 37% applied) will disappear and the top marginal rate of 45% will apply to income greater than $200,000.[22]

Echoing Malcolm Turnbull's ambitions to make the lucky country into an 'agile and smart' country through an innovation agenda, the Prime Minister said[23]:

> If you don't get there by technology, if that's not what actually gets an economy to net zero, there's only one other way that that's achieved and that is a tax. That's the only other way you get there. So my commitment to Australians that I will not tax our way to net zero by 2050 is a very, very important one and I will hold my faith with the Australian people on those issues.

Announced in the lead up to the Budget

Unlike in previous years where there were strategic leaks before Budget night about some of its contents, this year in the lead up to the Budget we have had a steady stream of official media releases about the initiatives.

Innovation for the digital future

The *Digital Economy Strategy* was announced on 6 May 2021 as a strategy involving a spend of about $2 billion which will lift our competitiveness and productivity and drive job creation and higher wages. The digital economy (e.g. contactless purchase, e-invoicing, small businesses going online etc.[24]) will no doubt deliver better service and maybe even provide a better experience to digital savvy people. It suggests that highly skilled workers will be in demand and retraining and reskilling may be necessary for the not-so-highly skilled.

The main features of the strategy include:

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[20] The Treasurer, Josh Frydenberg in his speech to the Australian Chamber of Commerce and Industry Delivering more jobs and a stronger budget on 29 April 2021.

[21] Prime Minister of Australia, Scott Morrison. Q&A, National Press Club - Barton, ACT, 1 February 2021.

[22] From 1 July 2024: the tax-free threshold continues to be $18,200; for amounts between $18,201 and $45,000 the rate will be 19%; for amounts between $45,001 to $200,000 the marginal rate will be 30%.

[23] Prime Minister of Australia, Scott Morrison. Q&A, National Press Club - Barton, ACT, 1 February 2021.

[24] People will be familiar with big data and cloud computing, robotics and 3D printing.

- Building Australia's capability in Artificial Intelligence (AI) — a drive to adopt AI across the economy[25] with a National Artificial Intelligence Centre led by CSIRO and a network of AI and Digital Capability Centres.
- Overhauling myGov, the My Health Record and expanding the digital identity system.
- Enhancing investment incentives to support business growth, including:
  - a Digital Games Tax Offset of 30 per cent to support Australia taking a greater share of the $250 billion global game development market;
  - changes to the depreciation rules for intangible assets like intellectual property and in-house software to allow self assessment of effective life.
- Expanding the Digital Solutions — Australian Small Business Advisory Service to help small and medium businesses build their digital capacity and to drive business uptake of e-Invoicing.
- Funding to support emerging aviation technologies — e.g. drones.
- Setting standards for the next generation of data management.
- Enhancing cyber security in government, data centres and future telecommunication networks.

The full Digital Economy Strategy is dealt with in the Budget summary.

Tax relief for brewers and distillers

Eligible brewers and distillers who are currently entitled to a refund of up to 60 per cent of the excise paid will, from 1 July 2021, be able to receive a full refund of any excise paid, up to an annual cap of $350,000 (up from the current $100,000).

Housing assistance

In a joint media release [Improving opportunities for home ownership] on 8 May 2021, the Treasurer announced the following additional measures to assist taxpayers with owning their own homes:

- The **Family Home Guarantee** will be established to allow single parents with dependants to purchase a home with a deposit of as little as two per cent.[26]
- The **New Home Guarantee** which allows first home buyers seeking to build a new home or purchase a newly built home to do so with a deposit of as little as five per cent.[27]
- Increasing the maximum amount of voluntary contributions that can be released under the **First Home Super Saver Scheme** from $30,000 to $50,000.

Pausing ATO debt recovery action for small business

The Government proposes to amend the Tax law to allow the Small Business Taxation Division of the Administrative Appeals Tribunal (AAT) to pause or modify any ATO debt recovery actions, such as garnishee notices and the recovery of General Interest Charge or related penalties until the underlying dispute is resolved by the AAT. The new powers will be available to the AAT in respect of proceedings commenced on or after the date the enabling legislation receives Royal Assent.

For this purpose, small business entities (including individuals carrying on a business) are those which have an aggregated annual turnover of less than $10 million.[28]

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25 Senator Jane Hume is the Minister for the Digital Economy.

26 Ten thousand guarantees will made be available over four years.

27 The New Home Guarantee is being extended for a second year with an additional 10,000 places in 2021–22.

Some facts about the Australian economy

Understanding the terminology

The following terminology which is used in connection with Federal Budget matters is briefly explained to aid understanding.

Term	Explanation
Budget deficit	The last time Australia had a Budget surplus was in 2006. Every year since the GFC, we have had Budget deficits — i.e. the Federal Government has spent more money than it has collected. The expected Budget surplus of $4.1 billion for 2019–20 was instead a deficit of $85.3 billion as a result of the Government's policy response to the COVID-19 pandemic.[29] Australia also has a structural deficit which means that, all other things being equal, in more ordinary times, the Government's general level of spending exceeds the general levels of taxation. The solution requires either a change in the Government spending level or a change in the level of taxation — but not this year.
Government debt	As a result of spending more than it raises by taxation, the Federal Government must borrow. Government gross debt is expected to be 44.8 per cent of GDP at the end of 2020–21, increasing to 51.6 per cent by the end of the forward estimates[30] eventually stabilising at about 55 per cent in the medium term. The recent increase in the debt ceiling to $850 billion has not diminished Australia's credit rating.[31]
Net debt	Net debt is the sum of selected financial liabilities (including government securities, loans, deposits held, and other borrowings) minus the sum of selected financial assets (including cash and deposits, advances paid, and investments). In the net debt calculation, Australian Government Securities are valued as the price they are currently trading at (their 'market value') rather than their value when the securities were issued (their 'face value'). Net debt imposes a call on future revenue flow to service the debt.

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28 The Treasurer, Josh Frydenberg Making it easier for small business to pause debt recovery action 8 May 2021.

29 See Table 1: fiscal parameter summary, various indicators in Release of the 2018–19 MYEFO which is available here: www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2018/December/MYEFO

30 The *forward estimates* is a system of rolling three-year estimates or budget projections for revenue, expenses and financial position beyond the current budgeted fiscal year.

31 Australian Government. Australian Trade and Investment Commission. Edmund Tang states in 'Resilience underpins Australia's rock-steady investment credentials' "Moody's Investors Services reaffirmed Australia's AAA credit rating on 23 June 2020 and maintained the country's 'stable' outlook. Besides Australia's fiscal strength, this also reflects the economy's strengths and good governance – including health management – that will support the country's resilience in response to the COVID-19 pandemic." www.austrade.gov.au/news/economic-analysis/resilience-underpins-australias-rock-steady-investment-credentials

Key information leading up to the 2021–22 Federal Budget

The Government's 2020–21 Mid-Year Economic and Fiscal Outlook (MYEFO) which was released on 17 December 2020 updated the economic and fiscal outlook from the 2020–21 Federal Budget.[32] It took into account the decisions made since the release of the Federal Budget, and therefore revised the Budget aggregates. The Government's plans to return to surplus of $5.0 billion in 2019-20 had been derailed by the massive stimulus needed to keep the economy afloat during the COVID-19 pandemic. However, total tax and non-tax receipts were higher than expected in the 2020–21 Budget which is reflected in an expected deficit of $197.7 billion compared with a forecast balance of $213.7 billion.

				Forecasts[33]		
	Actual 2018–19	**Actual 2019–20**	**MYEFO 2020–21[34]**	**Budget 2021–22**	**Budget 2022–23**	**Budget 2023–24**
Underlying cash position[35]	($0.7b)	($85.3b)[36]	($197.7b)	($106.6b)	($99.3b)	($79.5b)
Economic growth						
Real GDP	1.9%	(0.2%)	0.75%	4.25%	2.5%	2.25%
Nominal GDP	5.3%	1.7%	1.0%	3.5%	2.0%	4.75%
Unemployment rate	5.2%	6.9%	7.25%	5.0%	4.75%	4.5%
CPI — inflation	1.6%	(0.3%)	2.25%	1.75%	2.25%	2.5%
Net debt	373.5	491.2	703.2	729.0	835.0	920.4

Significant income tax and related measures

Significant income tax and related policy decisions which have been made since the 2020–21 Federal Budget included the following:

[32] The 2020–21 Federal Budget was handed down only eight weeks earlier on 6 October 2021.

[33] 2021–22 Budget paper No. 1 at page 6.

[34] 2020–21 MYEFO at page 3-5.

[35] Underlying cash position — a reduction in the underlying cash balance means that the government must borrow more and as a consequence the interest cost on the higher public debt increases.

[36] At the time of the 2019–20 MYEFO, the forecast surplus was $5 billion.

Tax measure	Details
Temporary full expensing — expansion of eligibility and minor amendments[37]	Extension of eligibility for the *temporary full expensing* concession by providing an alternative eligibility test to allow businesses with less than $5 billion in statutory and ordinary income (excluding NANE income) in either the 2018–19 or 2019–20 income year (provided the income year ends on or before 6 October 2020), and that have invested more than $100 million in tangible depreciating assets in the period 2016–17 to 2018–19, to also qualify. These businesses that qualify under the existing $5 billion aggregated annual turnover test will not be required to apply the alternative test.[38] ▪ Businesses will also be allowed to opt-out of temporary full expensing and the Backing Business Investment incentive on an asset-by-asset basis.
COVID-19 Response Package — Further updates to making Victoria's business support grants NANE for tax purposes[39]	Further to the 2020–21 Budget measure *COVID-19 Response Package — making Victoria's business support grants non-assessable, non-exempt income for tax purposes*, NANE tax treatment will apply to businesses with an annual turnover below $50 million.[40] Eligibility is limited to grant programs directed at supporting businesses that are the subject of a public health directive applying to a geographical area in which the businesses operate and whose operations have been significantly disrupted as a result of the public health directive.
COVID-19 Response Package — HomeBuilder — extension from 1 January 2021 to 31 March 2021.[41]	Eligible contracts signed between 1 January 2021 and 31 March 2021 will receive a $15,000 HomeBuilder grant. For these contracts, the property price caps for new builds in New South Wales and Victoria will be increased to $950,000 and $850,000 respectively. In addition, the construction commencement deadline will be extended from three months to six months for all eligible contracts signed on or after 4 June 2020 and the deadline to lodge applications for HomeBuilder has been extended to 14 April 2021.[42] More recently, the Government has announced that it will provide existing applicants with an additional 12 months within which construction must commence.[43]

37 Source: Commonwealth of Australia, *MYEFO 2020–21*, December 2020 page 135. Allows businesses to deduct the full cost of eligible tangible depreciating assets acquired from 7:30 pm AEDT on 6 October 2020 and first used or installed ready for use by 30 June 2022. Under the original measure, temporary full expensing was available for businesses with aggregated annual turnover of less than $5 billion.

38 The measures were enacted by the *Treasury Laws Amendment (2020 Measures No. 6) Bill 2020* which received Royal Assent on 17 December 2020 as Act No. 141 of 2020.

39 Source: Commonwealth of Australia, *MYEFO 2020–21*, December 2020 page 135.

40 The measure was enacted by the *Treasury Laws Amendment (2020 Measures No. 5) Bill 2020* which received Royal Assent on 11 December 2020 as Act No. 118 of 2020.

41 Source: Commonwealth of Australia, *MYEFO 2020–21*, December 2020 page 175.

42 For further information, refer to the joint press release of 29 November 2020 issued by the Prime Minister, the Treasurer and the Assistant Treasurer and Minister for Housing.

43 See the Joint Media Release HomeBuilder extended to support more jobs 17 April 2021.

Tax measure	Details
COVID-19 Response Package — continuing aviation support[44]	The Government extended the partial waiver of Airservices Australia charges levied on operators of regular passenger transport and aeromedical air services from 1 January to 31 March 2021.
JobMaker Plan — Boosting Apprenticeship Commencements — revised eligibility[45]	The Government revised eligibility for the Boosting Apprenticeship Commencement program to better balance opportunities for upskilling existing workers with the creation of new Australian Apprenticeship places. From 28 October 2020, a 30 worker limit applies for employers who seek to convert an existing casual or part-time worker who is not an apprentice to an Australian Apprenticeship or traineeship, with no limits for signing up to a trades-based Australian Apprenticeship.
Philanthropy — incentivising charities to join the National Redress Scheme for Institutional Child Sexual Abuse[46]	The Government introduced a new ACNC governance standard requiring registered charities to take reasonable steps to become participating non-government institutions in the National Redress Scheme for Institutional Child Sexual Abuse (Redress Scheme) if the charity is, or is likely to be, identified as being involved in the abuse of an applicant for redress under the Redress Scheme.[47] The Government has also amended the eligibility criteria for basic religious charities (BRC) in the *Australian Charities and Not-for-profits Commission Act 2012* so that BRCs which have a claim against them under the Redress Scheme must join the Redress Scheme to retain their BRC status. Relevant BRCs that fail to join the Redress Scheme will no longer be eligible for BRC status and therefore must comply with the ACNC governance standards.[48]

44 Source: Commonwealth of Australia, *MYEFO 2020–21*, December 2020 page 169.

45 Source: Commonwealth of Australia, *MYEFO 2020–21*, December 2020 page 151.

46 Source: Commonwealth of Australia, *MYEFO 2020–21*, December 2020 page 137.

47 The governance standard was issued in draft form in the *Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 1) Regulations 2021*, issued on 7 December 2020.

48 This measure was enacted by the *Treasury Laws Amendment (2020 Measures No. 6) Bill 2020* which received Royal Assent on 17 December 2020 as Act No. 141 of 2020.

Significant superannuation measures

Significant superannuation policy decisions which have been taken since the 2019–20 MYEFO include the following:

Policy decision	Details
Superannuation — amendments to commutation rules for certain income stream products[49]	The Government will amend the law to ensure that retirees who have commuted and restarted certain market-linked pension, life expectancy pension and similar products are treated appropriately under the transfer balance cap. This will enable retirees with these products who have been unable to commute amounts in excess of their transfer balance cap to undertake the necessary partial commutation. It also ensures appropriate tax outcomes for these retirees given their prior inability to comply with the transfer balance cap rules. The amendments will take effect from the date the relevant bill receives Royal Assent.
Superannuation — KiwiSaver accounts[50]	The Government has revised the start date for the ATO to pay lost and unclaimed superannuation amounts directly to New Zealand KiwiSaver accounts from six months after Royal Assent to a day to be fixed by proclamation, or 12 months after Royal Assent if no date is fixed.[51]

49 Source: Commonwealth of Australia, *MYEFO 2020–21*, December 2020 page 138.

50 Source: Commonwealth of Australia, *MYEFO 2020–21*, December 2020 page 177.

51 The measure was enacted by the *Treasury Laws Amendment (2020 Measures No. 5) Bill 2020* which received Royal Assent on 11 December 2020 as Act No. 118 of 2020.

Federal Budget summary 2021–22

Measures and start dates at a glance

Budget measure	
Individuals	**Application date**
Modernising the individual tax residency rules	First income year after Royal Assent of enabling legislation
Private health insurance — building sustainability of the sector and improving affordability	1 July 2021
Reducing compliance costs for self-education expense deductions	First income year after Royal Assent of enabling legislation
Retaining the low and middle income tax offset for 2021–22	For the 2021–22 income year
Increasing the Medicare levy low income thresholds	From 1 July 2020
Exemption of income and allowances for Operation Paladin	1 July 2020
Newly Arrived Residents Waiting Period	1 January 2022
Deductions	
Temporary full expensing extension — for eligible depreciating assets acquired from 7.30 pm AEDT 6 October 2020	first installed or installed ready for use by 30 June 2023
Allowing taxpayer to self-assess the effective life of intangible assets	For eligible intangible assets acquired on or after 1 July 2023
Reform of the TOFA hedging and foreign exchange rules	For transactions entered into on or after 1 July 2022
Income — Grants and subsidies	
Boosting Apprenticeship Commencement wage subsidy — expansion	From 5 October 2020 to 11 March 2022

Budget measure	
Companies	**Application date**
Temporary loss carry back extension — losses incurred from 2019–20	Extended to the 2022–23 income year
Removal of the cessation of employment taxing point for tax-deferred Employee Share Schemes (ESS) and reduction in red tape associated with offering ESS.	Interests issued from first income year after the date of Royal Assent of the enabling legislation
Corporate collective investment vehicle — revised start date	1 July 2022
Patent Box — tax concession for Australian medical and biotechnology innovations	1 July 2022
Junior Minerals Exploration Incentive extended to 30 June 2025	Continuing to 30 June 2025
Review of venture capital tax concessions	To be advised
Small business	
SME Recovery Loan Scheme	Loans available from 1 April 2021 until 31 December 2021
Increased powers for the AAT to pause ATO debt recovery in disputed small business tax decisions	On or after the date of Royal Assent of enabling legislation
Residence	
Government consultation on extending new corporate tax residency test to trusts and corporate limited partnerships	To be advised
International	
Ensuring New Zealand maintains primary taxing right over its sporting teams and support staff	2020–21 and 2021–22 income and FBT years
Including Armenia, Cabo Verde, Kenya, Mongolia, Montenegro and Oman in list of exchange of information jurisdictions	1 January 2022
Removing the preferential tax treatment for offshore banking units	Various
Tax exempt entities	
Tax exempt NFPs with active ABN to report information relied on to self assess eligibility for exemption to ATO	From 2022–23 income year
Including Australian Associated Press Ltd, Virtual War Memorial Limited and Scripture Union Queensland in list of DGRs	1 July 2021

Budget measure	
Related laws	**Application date**
Increasing childcare subsidies and removing the $10,560 cap	Increase to rate from 11 July 2022 Removal of cap from 1 July 2022
Housing package — extending the HomeBuilder construction commencement requirement; establishing 10,000 places for the Family Home Guarantee and extending the First Home Loan Deposit Scheme	2021–22 income year
Insolvency reform — treatment of trusts with corporate trustee and increasing statutory demand threshold	To be advised
Initiatives under the Women's Budget Statement	Various
Superannuation	
Relaxing residency requirements for SMSFs	First income year after Royal Assent of enabling legislation
Allowing a two-year window to allow individuals to exit certain legacy retirement products	First financial year after Royal Assent of enabling legislation
Removing the $450 per month threshold for superannuation guarantee contributions	First income year after Royal Assent of enabling legislation
Repealing work test for individuals aged 67 to 74 (inclusive) for making voluntary superannuation contributions	First income year after Royal Assent of enabling legislation
Maximum release under the First Home Super Saver Scheme increased to $50,000	From start of the first financial year after Royal Assent of enabling legislation
Tax offsets	
Introduction of a 30 per cent Digital Games Tax Offset	1 July 2022
Other taxes	
Increase to heavy vehicle road user charge	1 July 2021
Tax relief for small brewers and distillers	1 July 2021

Budget measures

Individuals

2021-22 Federal Budget - Modernising the individual tax residency rules

KEY POINTS
▪ The Government has announced that the individual tax residency rules will be simplified and modernised by replacing the current rules with: ▪ a primary 'bright line' test — under which a person who is physically present in Australia for 183 days or more in an income year will be an Australian resident for tax purposes; ▪ secondary tests depending on a combination of physical presence and measurable, objective criteria — for individuals who do not meet the primary test. ▪ Proposed to commence from the first income year after Royal Assent of the enabling legislation.

As part of the 2021–22 Federal Budget, the Government announced that it will replace the individual tax residency rules with new primary and secondary tests to determine residency.

START DATE

First income year after Royal Assent of enabling legislation

Background

Australia's current tax residency rules for individuals are difficult to apply in practice, creating uncertainty and resulting in high compliance costs for individuals and their employers — including the need to seek third-party advice, despite having otherwise simple tax affairs.

In May 2016, the Board of Taxation commenced a self-initiated review of the current individual tax residency. After consultation, the Board submitted its final report to Government titled *Reforming individual tax residency rules — a model for modernisation* in 2019 (final report) in which it concluded that the current individual tax residency rules are no longer appropriate and require modernisation and simplification.

Proposed new individual tax residency rules

The Government's proposed framework for determining residency of an individual is based on recommendations made by the Board of Taxation in its final report.

The primary test will be a simple 'bright line' test under which a person who is physically present in Australia for 183 days or more in any income year will be an Australian tax resident.

Individuals who do not meet the primary test will be subject to secondary tests that will depend on a combination of physical presence and measurable, objective criteria.

The new tests are proposed to commence from the first income year after Royal Assent of the enabling legislation.

Source: Budget Paper No. 2 pages 21-22;
Budget 2021–22 Tax incentives to support the recovery fact sheet page 8

2021-22 Federal Budget - Private Health Insurance - Building sustainability of the sector and improving affordability for patients

KEY POINTS
■ The Government has announced that, from 1 July 2021, it will implement initiatives to support the sustainability of private health insurance and improve affordability for patients. This will include funding: ▪ the current policy settings for the income thresholds for Medicare Levy Surcharge and Private Health Insurance Rebate; ▪ to modernise and improve the administration of the Prostheses List; ▪ to support the introduction of an improved certification process when admitting patients to hospital; ▪ an independent study to investigate private hospital default benefit arrangements; ▪ to improve Private Health Insurance program modelling capabilities.

START DATE
From 1 July 2021

As part of the 2021–22 Federal Budget, the Government announced that it will implement initiatives to support the sustainability of private health insurance and improve affordability for patients.

This includes:

- continuing the current policy settings for the income thresholds for the Medicare Levy Surcharge (MLS) and Private Health Insurance Rebate for a further two years from 1 July 2021, whilst a review of the MLS policy settings is undertaken;
- funding from the 2021–22 income year of:
  - $23.1 million over four years (and $2.1 million per year ongoing) to modernise and improve the administration of the Prostheses List;
  - $5.1 million over four years to support the introduction of an improved certification process when admitting patients to hospital;
  - $1.1 million over two years for an independent study to investigate private hospital default benefit arrangements;
  - $0.9 million over two years to improve Private Health Insurance program modelling capabilities.

Source: Budget Paper No. 2 page 124

2021-22 Federal Budget - Reducing compliance costs for self-education expense deductions

KEY POINTS
▪ The Government has announced that it will remove the exclusion of the first $250 of deductions for prescribed courses of education.
▪ Currently, under s 82A of the *ITAA 1936*, the first $250 of a prescribed course of education expense is not deductible. However, the $250 reduction can be offset by expenses that are not deductible under s. 8-1, often resulting in no reduction to the self-education deduction.
▪ Removing s. 82A will therefore reduce compliance costs.
▪ The measure will apply for the first income year after Royal Assent of enabling legislation.

As part of the 2021–22 Federal Budget, the Government announced that it will remove the exclusion of the first $250 of deductions for prescribed courses of education.

START DATE

First income year after Royal Assent of enabling legislation

Background

Section 82A of the *ITAA 1936* (about deductions for expenses of self-education) operates to limit the amount of education expenses that are otherwise allowable under s. 8-1 of the *ITAA 1997* if the expenses also fall within the definition of 'expenses of self-education'.

Where s. 82A applies, the total allowable deduction under s. 8-1 cannot be greater than the amount by which the *net amount of expenses* of self-education exceeds $250 — i.e. only the excess of the self-education expenses over $250 may be considered for deduction under s. 8-1.

In performing this calculation:[52]

- it is not necessary that the expenses of self-education be deductible (provided they are 'necessarily incurred' in connection with a prescribed course of education) e.g. non-deductible child care or travel;
- expenses that are deductible under provisions other than s. 8-1 are also taken into account in the s. 82A calculation e.g. repairs to items of equipment used for self-education under s. 25-10; and
- deductions for the decline in value of depreciating assets used for self-education are not taken into account as they are not an 'expense'[53], although the capital cost of acquisition in an income year will be taken into account.

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[52] **See TR 98/9.**

[53] In contrast, although there is a question whether 'car expenses' calculated under the cents per kilometre and former 12 per cent of original value methods are in the nature of an 'expense', the Commissioner accepts that these expenses are taken into account when calculating the $250 reduction: para. 142 of TR 98/9.

Example
Anna is a part-time social worker and is undertaking additional training related to her employment. Anna is eligible to deduct expenses associated with this training, including tuition fees and textbooks, which total $5,000 for the income year. Anna has also incurred $150 in occasional childcare expenses and $150 in travel expenses between study, work and home while attending her training activities. These childcare and travel expenses are not deductible. Currently, Anna is required to reduce the amount of her deduction by $250. However, she is able to offset the $250 reduction with certain non-deductible expenses, including expenses for childcare while attending the training and travel. In this case, Anna's non-deductible expenses fully offset the $250 reduction and she is able to claim a deduction of $5,000. However, Anna has had to calculate and keep records of her non-deductible expenses in order to complete her income tax return. Under the new arrangements, Anna will still be eligible to claim a deduction of $5,000 for her self-education expense deduction but will no longer need to keep records of her non-deductible expenses for tax purposes. *Source: Tax incentives to support the recovery, 11 May 2021*

Announcement

The Government will remove the exclusion of the first $250 of deductions for prescribed courses of education. Removing the $250 exclusion for prescribed courses of education will reduce compliance costs for individuals claiming self-education expense deductions.

Source: Budget Paper No. 2 page 26; and
Media Release: Tax incentives to support the recovery, dated 11 May 2021

2021-22 Federal Budget - Retaining the low and middle income tax offset for the 2021-22 income year

KEY POINTS
■ The Government has announced that the Low and Middle Income Tax Offset — capped at $1,080 — will be retained for the 2021–22 income year.

As part of the 2021–22 Federal Budget, the Government announced that it will retain the low and middle income tax offset (LMITO) for the 2021–22 income year.[54]

START DATE
The 2021–22 income year

The amount of the offset depends on the taxpayer's relevant income level:

Relevant income[55] for the income year	LMITO amount
$37,000 or less	$255

[54] The LMITO was due to end in the 2019–20 income year, however, as part of the 2020–21 Federal Budget it was announced that the LMITO would be retained for the 2020–21 income year.

[55] *Relevant income* of the entity is the taxable income of an individual or the share of the net income of the trust in respect of which a trustee is taxed on behalf of a beneficiary — s. 61-107(1) of the *ITAA 1997*.

Relevant income[55] for the income year	LMITO amount
$37,001 to $48,000	$255, plus 7.5 per cent of the amount of relevant income exceeding $37,000 (to a maximum benefit of $1,080)
$48,001 to $90,000	$1,080 (maximum)
$90,001 to $126,000	$1,080, less three per cent of the amount of relevant income exceeding $90,000

Consistent with current arrangements, the LMITO will be received on assessment after the individual lodges their tax return for the 2021–22 income year.

Source: Budget Paper No. 2 page 27; and
Fact sheet: Tax incentives to support the recovery, dated 11 May 2021

2021-22 Federal Budget - Increasing the Medicare levy low-income thresholds

KEY POINTS
▪ The Government has announced that the Medicare levy low-income thresholds will be increased for singles, families, and seniors and pensioners from 1 July 2020. ▪ The effect of this change is to take account of recent CPI movements so that low-income taxpayers generally continue to be exempt from paying the Medicare levy.

START DATE

From 1 July 2020

As part of the 2021–22 Federal Budget, the Government announced that the Medicare levy low-income thresholds will be increased for singles, families, and seniors and pensioners from 1 July 2020. Individual or families will not have to pay the Medicare levy if their individual or family taxable income is below the low-income threshold.

Medicare low income threshold changes

The changes to the Medicare low income thresholds are as follows:

Medicare low-income threshold	Threshold as at 30 June 2020	Threshold from 1 July 2020
Singles	$22,801	$23,226
Families	$38,474	$39,167
Single – seniors and pensioners	$36,056	$36,705
Family — seniors and pensioners	$50,191	$51,094
Family — for each dependent child or student[56]	$3,533	$3,597

The increases to the thresholds take account of recent movements in the CPI so that low-income taxpayers generally continue to be exempt from paying the Medicare levy.

Source: Budget Paper No. 2 page 24

2021-22 Federal Budget - Personal Income Tax - exemption for pay and allowances for Operation Paladin

KEY POINTS
▪ The Government has announced that from 1 July 2020 it will provide a full income tax exemption for the pay and allowances of Australian Defence Force (ADF) personnel deployed to Operation Paladin from 1 July 2020.

START DATE

1 July 2020

As part of the 2021–22 Federal Budget, the Government announced that it will provide a full income tax exemption for the pay and allowances of Australian Defence Force (ADF) personnel deployed to Operation Paladin from 1 July 2020.

Operation Paladin is the Government's contribution to the United Nations Truce Supervision Organisation, with ADF personnel deployed in Israel, Jordan, Syria, Lebanon and Egypt.

This measure ensures that personnel are subject to consistent tax treatment regardless of the operational area of Operation Paladin to which they are deployed.

Source: Budget Paper No. 2 page 24

56 For each dependent child or student, the family income threshold increases by the stated amount.

2021-22 Federal Budget - Newly Arrived Residents Waiting Period

KEY POINTS
▪ The Government has announced that it will apply a consistent four-year Newly Arrived Resident's Waiting Period across most welfare payments from 1 January 2022.

START DATE

1 January 2022

As part of the 2021–22 Federal Budget, the Government announced that it will apply a four-year Newly Arrived Resident's Waiting Period across most welfare payments from 1 January 2022.

Source: Budget Paper No. 2 page 179

Companies

2021-22 Federal Budget - Temporary loss carry-back extension

KEY POINTS
▪ The Government has announced that it will extend for one year the temporary loss carry-back measure that was implemented following the 2020–21 Federal Budget.
▪ This will allow companies with aggregated turnover of up to $5 billion to carry back (utilise) tax losses from the 2022–23 income year to offset previously taxed profits as far back as the 2018–19 income year when they lodge their 2022–23 tax return.

APPLICATION

Losses incurred from 2019–20

Election available when lodging 2020–21, 2021–22 and 2022–23 tax returns

As part of the 2021–22 Federal Budget, the Government announced that it will extend for one year the temporary loss carry-back measure that was implemented following the 2020–21 Federal Budget.

Background

As part of the 2020–21 Federal Budget, the Treasurer announced the Government would amend the tax law to allow eligible companies to elect to carry back tax losses from the 2019–20, 2020–21, 2021-22 income years to offset previously taxed profits in the 2018–19 or later income years.

The corporate loss carry back tax offset provisions were inserted as Div 160 of the *ITAA 1997* by Schedule 2 to the *Treasury Laws Amendment (A Tax Plan for the COVID-19 Economic Recovery) Act 2020*, which received Royal Assent on 14 October 2020.

The effect of the election is to generate a refundable tax offset first available when lodging the 2020-21 tax return, subject to the amount carried back not being more than the earlier taxed profits and not generating a franking account deficit. Companies that do not elect to carry back losses under this measure can still carry losses forward as normal

Announcement — Temporary loss carry-back — One year extension

The Government will amend the Tax law to extend the temporary loss carry-back measure for one year so that companies with turnover up to $5 billion are able to offset losses for the 2019–20, 2020–21, 2021–22 and now 2022–23 income years against previously taxed profits from 2018–19 or subsequent years to generate a refund.

Source: Budget Paper No. 2 page 30;
Budget fact sheet: Tax incentives to support the recovery, page 2
Treasurer's Media Release: Securing Australia's recovery, 11 May 2021

2021-22 Federal Budget - Corporate collective investment vehicle revised start date

KEY POINTS
▪ The Government has announced the revised start date of 1 July 2022 for the introduction of the new corporate collective investment vehicle which was first announced in the 2016–17 Federal Budget and was originally proposed to start on 1 July 2017.
▪ The new corporate collective investment vehicle will allow fund managers to offer investment products using a vehicle that is more familiar to overseas investors.

Background

As part of the 2016–17 Federal Budget, the Government announced a *Ten Year Enterprise Tax Plan — Implementing a new suite of collective investment vehicles*, which included a proposed new corporate collective investment vehicle[57] for income years starting on or after 1 July 2017.[58]

A collective investment vehicle (CIV) allows investors to pool funds and have these funds managed by professional funds managers who can offer investment products via vehicles that are commonly used overseas. The aim of this measure was to enhance the international competitiveness of the Australian managed funds industry.

It was proposed that:

- the new CIVs would be required to satisfy eligibility criteria similar to those applicable to managed investment trusts, such as being widely held and engaging in primarily passive investment; and
- investors would generally be taxed as if they had invested directly in the relevant entity.

Announcement — Revised start date for corporate CIVs

The Government will finalise the corporate CIV component of the measure announced in the 2016-17 Federal Budget, with a revised commencement date of 1 July 2022.

START DATE
1 July 2022

This investment vehicle will enhance the international competitiveness of the Australian managed funds industry by allowing fund managers to offer investment products using vehicles that are more familiar to overseas investors.

Source: Budget Paper No. 2 page 13

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[57] A corporate CIV is an investment vehicle with a corporate structure that provides flow-through tax treatment.

[58] The measure also included a proposal for limited partnership CIVs — from income years starting on or after 1 July 2018.

2021-22 Federal Budget - Employee Share Schemes - Removing cessation of employment as a taxing point

KEY POINTS
■ The Government has announced that it will remove the cessation of employment taxing point for tax-deferred Employee Share Schemes (ESS) that are available for all companies, as well as reduce red tape associated with offering ESS.
■ It is intended that the amendments will make it easier for businesses to offer employee share schemes help Australian companies to engage and retain the talent they need to compete on a global stage.
■ Proposed to apply to ESS interests issued from the first income year after the date of Royal Assent of the enabling legislation.

As part of the 2021–22 Federal Budget, the Government announced that it would remove cessation of employment as a taxing point for tax-deferred Employee Share Schemes (ESS). It will also reduce red tape associated with offering ESS.

APPLICATION

ESS interests issued from the first income year after the date of Royal Assent of the enabling legislation

Background

Employers use ESS to attract, retain and motivate staff by issuing interests such as shares, rights (including options) or other financial products to their employees, usually at a discount.

Under the current law, under a tax-deferred ESS, employees may, where certain criteria are met, defer tax until a later tax year (the deferred taxing point). The deferred taxing point is the earliest of:

- cessation of employment;
- in the case of shares, when there is no risk of forfeiture and no restrictions on disposal;
- in the case of options, when the employee exercises the option and there is no risk of forfeiting the resulting share and no restriction on disposal;
- the maximum period of deferral of 15 years.[59]

Announcements

Removing the cessation of employment taxing point

The Government will remove the cessation of employment taxing point. This change will result in tax being deferred until the earliest of the remaining taxing points, that is:

- in the case of shares, when there is no risk of forfeiture and no restrictions on disposal;
- in the case of options, when the employee exercises the option and there is no risk of forfeiting the resulting share and no restriction on disposal;
- the maximum period of deferral of 15 years.

It is intended that this amendment will make it easier for businesses to offer employee share schemes.

[59] Sections 83A-115 and 83A-120 of the *ITAA 1997.*

Removing red tape

The Government will also reduce red tape for ESS by:

- removing regulatory requirements for ESS, where employers do not charge or lend to the employees to whom they offer ESS;
- where employers do charge or lend, streamlining requirements for unlisted companies making ESS offers that are valued at up to $30,000 per employee per year.

It is intended that this measure will help Australian companies to engage and retain the talent they need to compete on a global stage, which is consistent with recommendations from the Global Business and Talent Attraction Taskforce.

Source: Budget Paper No. 2 pages 16-17;
Budget Overview: Unlocking business growth page 26

2021-22 Federal Budget - Patent Box - tax concession for Australian medical and biotechnology innovations

KEY POINTS
■ The Government has announced that it will introduce a patent box regime designed to encourage innovation in Australia by taxing corporate income derived from Australian medical and biotechnology patents at a concessional effective corporate tax rate of 17 percent. ■ Proposed to commence from **1 July 2022.**

As part of the 2021–22 Federal Budget, the Government announced that it will introduce a patent box regime to encourage innovation in Australia by taxing corporate income derived from patents at a concessional effective corporate tax rate of 17 per cent.

The patent box will apply to income derived from Australian medical and biotechnology patents. Currently profits generated by patents are taxed at the headline corporate tax rate — 30 per cent for large businesses and 25 per cent for small to medium businesses.

START DATE
1 July 2022

The Government will consult with industry before finalising the detailed design of the patent box.

Source: Budget Paper No. 2 page 23

TaxBanter

2021-22 Federal Budget - Junior Minerals Exploration Incentive extended to 30 June 2025

KEY POINTS
▪ The Government has announced that it will extend the Junior Minerals Exploration Incentive (JMEI) program by four years so that instead of finishing on 30 June 2021, the JMEI program will finish on **30 June 2025**.
▪ The Government will also make minor legislative amendments to allow unused exploration credits to be redistributed a year earlier than under current settings.

APPLICATION

Proposed to be extended by four years to 30 June 2025

In the lead up to the 2021–22 Federal Budget, the Minister for Resources, Water and Northern Australia, Keith Pitt, together with Ken O'Dowd MP, announced on 5 May 2021 that the Government would extend the operation of the Junior Minerals Exploration Incentive (JMEI) program.

Background

The JMEI program provides a tax incentive for investment in junior minerals exploration companies that are raising capital to fund greenfields exploration activity. Broadly, under the law as currently enacted:

- eligible companies are able to create exploration credits by relinquishing a portion of their tax losses relating to exploration expenditure, which can then be distributed to new investors as a refundable tax offset or a franking credit;
- the exploration credits are available to eligible investors over a four-year period from the 2017–18 income year (i.e. currently legislated to expire at the end of the 2020–21 income year) and are subject to annual caps;
- the legislated annual exploration cap for the 2020–21 income year is $35 million.[60]

Announcement

The Government will extend the operation of the JMEI program by four years so that instead of finishing on 30 June 2021, the JMEI program will finish on **30 June 2025**.

The Government will also make minor legislative amendments to allow unused exploration credits to be redistributed a year earlier than under current settings.

Source: Budget Paper No. 2 page 141;
Minister for Resources, Water and Northern Australia's Media Release:
Junior miners get $100 million funding boost, dated 5 May

[60] The JMEI was introduced by the *Treasury Laws Amendment (Junior Minerals Exploration Incentive) Act 2018* which received Royal Assent on 28 March 2018 as Act No. 15 of 2018. The 'annual exploration cap' is defined in s. 418-103 to mean $30 million for the 2020–21 income year, however approved regulation added $5 million in unused exploration credits from the 2017–18 income year to the exploration credits available for the 2020–21 income year — ATO, *Junior Minerals Exploration Incentive* [QC 54868].

2021-22 Federal Budget - Review of venture capital tax concessions

KEY POINTS
▪ The Government has announced that it will undertake a review of the tax incentives designed to attract foreign investment and encourage venture capitalists to invest in early-stage Australian companies.   ▪ The timeframe for the review is yet to be announced.

TIMEFRAME FOR REVIEW
To be advised

In the lead up to the 2021–22 Federal Budget, the Prime Minister, Scott Morrison, together with the Treasurer, Josh Frydenberg and the Minister for Superannuation, Financial Services and the Digital Economy, Jane Hume, jointly announced on 6 May 2021 that the Government would undertake a review of the tax incentives designed to attract foreign investment and encourage venture capitalists to invest in early-stage Australian companies.

The proposed review forms part of the Government's broader *Digital Economy Strategy* which was announced as part of the 2021–22 Federal Budget.

By way of background, from 1 July 2016, investors in a qualifying 'early stage innovation company' can be eligible for the following tax incentives contained in Div 360 of the *ITAA 1997*:

- non-refundable carry forward tax offset equal to 20 per cent of the amount paid for their eligible investments, capped at a maximum tax offset amount of $200,000 for the investor and their affiliates combined in each income year;
- modified CGT treatment, under which capital gains on qualifying shares that are held continuously for at least 12 months and less than 10 years may be disregarded (capital losses on shares held less than 10 years must be disregarded).[61]

The timeframe for the Government's review is yet to be announced.

Source: Digital Economy Strategy — Investment Incentives Fact Sheet; and Joint Media Release by the Prime Minister, the Treasurer and the Minister for Superannuation, Financial Services and the Digital Economy: A modern digital economy to secure Australia's future dated 6 May 2021

[61] ATO, *Tax incentives for early stage investors* [QC 48899], available at: www.ato.gov.au/Business/Tax-incentives-for-innovation/In-detail/Tax-incentives-for-early-stage-investors/. Very broadly, the separate Early Stage Venture Capital Limited Partnerships (ESVLP) program provides flow-through tax treatment and a tax offset for the investment made by a limited partner.

2021-22 Federal Budget - SME Recovery Loan Scheme

KEY POINTS
▪ The SME Recovery Loan Scheme which provides participating lenders with a guarantee for 80 per cent of secured or unsecured loans of up to $5 million for a term of up to 10 years and with interest rates capped at 7.5 per cent will be extended to support SMEs that: ▪ have a turnover of up to $250 million; ▪ either: □ received the JobKeeper Payment for the March 2021 quarter; or □ were located or operated in a disaster declared area in respect of the March 2021 floods in NSW. ▪ Loans will be made available from **1 April 2021** until **31 December 2021**.

START DATE

Loans will be made available from 1 April 2021 until 31 December 2021

As part of the 2021–22 Federal Budget, the Government announced that it will support the economic recovery of, and provide continued assistance through the SME Recovery Loan Scheme (the Scheme) to firms that received JobKeeper or are eligible flood-affected businesses.

In the lead up to the 2021–22 Federal Budget, the Prime Minister announced in a joint Media Release on 11 March 2021, as part of the National Economic Recovery Plan,[62] that the Government would expand and extend the existing Scheme.

The Prime Minister then announced on 27 March 2021, in a joint Media Release[63], that the Scheme would be extended to support flood-affected businesses.

Announcement

The Government will provide participating lenders with a guarantee for **80 per cent** (up from 50 per cent) of secured or unsecured loans of up to **$5 million** (up from $1 million) for a term of up to 10 years (up from five years) and with interest rates capped at 7.5 per cent. There will be some flexibility around variable rate loans where market interest rates rise over time.

Loans can be used by the SME for a broad range of business purposes, including to support investment and refinancing existing loans. Lenders will be able to offer borrowers a repayment pause of up to two years.

Loans can be either unsecured or secured (excluding residential property).

62 With the Deputy Prime Minister, Minister for Infrastructure, Transport and Regional Development, Treasurer, Minister for Trade, Tourism and Investment.

63 With the Treasurer and the Minister for Agriculture Drought and Emergency Management.

Eligibility

SMEs — including self-employed individuals and non-profit organisations — are eligible if they:

- have a turnover of up to **$250 million**;
- have been either:
  - recipients of the JobKeeper Payment between 4 January 2021 and 28 March 2021; or
  - located or operated in a local government area that has been disaster declared as a result of the March 2021 New South Wales floods and were negatively economically impacted.

Source: Budget Paper No. 2 page 191;
Prime Minister's joint Media Release: Tourism and Aviation's Flight Path to Recovery, dated 11 March 2021; and
Prime Minister's joint Media Release: Government extends relief for flood-affected businesses, dated 27 March 2021

2021-22 Federal Budget - Increased powers for the AAT to pause ATO debt recovery in disputed small business tax decisions

KEY POINTS

■ The Government has announced that it will extend the power of the Administrative Appeals Tribunal (AAT) to pause or modify ATO debt recovery action in relation to disputed debts being reviewed by the Small Business Taxation Division of the AAT.
■ Small businesses will have an avenue to ensure that they are not required to start paying a disputed debt until the underlying dispute has been decided by the AAT.
■ ATO debt recovery actions that may be affected include:
  ▪ recovery of the underlying debt;
  ▪ application of garnishee notices;
  ▪ recovery of related penalties and interest.
■ Proposed to apply to small business entities in respect of proceedings commenced before the AAT **on or after the date of Royal Assent** of the enabling legislation.

START DATE

On or after the date of Royal Assent of enabling legislation

As part of the 2021–22 Federal Budget the Government announced that it will extend the power of the Administrative Appeals Tribunal (AAT) to pause or modify ATO debt recovery action in relation to disputed debts that are being reviewed by the Small Business Taxation Division of the AAT. Debt recovery actions that may be affected include:

- recovery of the underlying debt;
- application of garnishee notices;
- recovery of related penalties and interest.

Small business entities (including individuals carrying on a business) with an aggregated turnover of less than $10 million per year that have filed an application to the Small Business Taxation Division of the AAT in relation to tax matters will be able to apply to have ATO debt recovery actions paused until their underlying case is decided by the AAT.

When considering applications to pause or modify the ATO's debt recovery actions, the AAT will be required to consider the potential effect on the integrity of the tax system and ensure that applications are in relation to genuine disputes.

Source: Budget Paper No. 2 page 19-20 and Budget Overview: page 15

Deductions

2021-22 Federal Budget - Temporary full expensing extension

KEY POINTS
■ The Government has announced that it will extend the temporary full expensing of depreciating assets measure for 12 months until 30 June 2023.
■ This means that businesses with aggregated annual turnover or total income of up to $5 billion will be able to deduct the full cost of eligible depreciating assets acquired from 7.30pm AEDT on 6 October 2020 and first used or installed ready for use by **30 June 2023**.

As part of the 2021–22 Federal Budget, the Government announced that it will extend the temporary full expensing of depreciating assets measure for 12 months until 30 June 2023.

APPLICATION

Eligible depreciating assets acquired from 7.30pm AEDT on 6 October 2020 and first used or installed ready for use by 30 June 2023

Background

As part of the 2020–21 Federal Budget, the Treasurer announced that entities with aggregated annual turnover of less than $5 billion ('eligible entities')[64] would be temporarily entitled to deduct the full cost of eligible depreciating assets in the year they were first used.

The measures to give effect to this announcement were enacted by the *Treasury Laws Amendment (A Tax Plan for the COVID-19 Economic Recovery) Bill 2020*, which received Royal Assent on 14 October 2020.[65] Broadly, under the currently enacted measures, full expensing is available for eligible entities in relation to:

- eligible depreciating assets that are first held, and first used or installed ready for use for a taxable purpose, at or after 7.30 pm by legal time in the ACT on **6 October 2020** and on or before **30 June 2022**;
- improvements to these assets and to existing eligible depreciating assets made during this period (i.e. second element costs).[66]

The Bill also removed the cost limit for the instant asset write-off in the simplified depreciation provisions in Subdiv 328-D of the *ITAA 1997* so that in practical terms the temporary full expensing measure is available to SBE taxpayers that choose to use Subdiv 328-D.[67]

64 There is also an alternative eligibility test for certain corporate tax entities with substantial investments in Australian depreciating assets which do not satisfy the aggregated turnover test.

65 Act No. 92 of 2020.

66 Pursuant to ss. 40-150(1), 40-160(1) and 40-170(1) of the *IT(TP) Act*.

67 See the provisions in s. 328-181 of the *IT(TP) Act 1997* which modify s. 328-180 of the *ITAA 1997* (the instant asset write-off rules).

Temporary full expensing — One year extension

The Government will amend the Tax law to extend the application of the temporary full expensing measure for 12 months, so that it applies to eligible entities in relation to eligible depreciating assets acquired from 7.30pm AEDT on 6 October 2020 and first used or installed ready for use by **30 June 2023**.

All other elements of temporary full expensing will remain unchanged, including the alternative eligibility test based on total income and a track record of investment, which will continue to be available to businesses.

The extension is intended to provide eligible businesses with more time to access the incentive, including in relation to projects that require longer planning times and those affected by COVID-19 related supply disruptions.

Source: Budget Paper No. 2 page 29;
Budget fact sheet: Tax incentives to support the recovery, page 2
Treasurer's Media Release: Securing Australia's recovery, 11 May 2021

2021-22 Federal Budget - Allowing taxpayers to self-assess the effective life of intangible assets

KEY POINTS
▪ The Government has announced that it will amend the Tax law to allow taxpayers to self-assess the effective life of certain intangible assets, rather than being required to use the effective life currently prescribed by statute.
▪ Proposed to apply to patents, registered designs, copyrights and in-house software acquired on or after **1 July 2023**.

APPLICATION

Eligible intangible assets acquired on or after 1 July 2023

In the lead up to the 2021–22 Federal Budget, the Prime Minister, Scott Morrison, together with the Treasurer, Josh Frydenberg and the Minister for Superannuation, Financial Services and the Digital Economy, Jane Hume, jointly announced on 6 May 2021 that the Government would amend the Tax law to allow taxpayers to self-assess the effective life of certain intangible assets, rather than being required to use the effective life currently prescribed by statute.

The measure forms part of the Government's broader *Digital Economy Strategy* which was announced as part of the 2021–22 Federal Budget.

Background

Under the law as currently enacted, the effective life for items of intangible assets covered by the announcement is prescribed by s. 40-95(7) of the *ITAA 1997* to be:

<table>
<tr><th>For this asset…</th><th colspan="2">The effective life is…</th></tr>
<tr><td>Standard patent</td><td>20 years</td><td rowspan="4">These effective lives broadly correlate to the period for which these assets can be registered (except for registered designs).[68]</td></tr>
<tr><td>Innovation patent</td><td>8 years</td></tr>
<tr><td>Petty patent[69]</td><td>6 years</td></tr>
<tr><td>Registered design</td><td>15 years</td></tr>
<tr><td>Copyright (except copyright in a film)</td><td colspan="2">The shorter of:
(a) 25 years from when the taxpayer acquired the copyright; or
(b) the period until the copyright ends.</td></tr>
<tr><td>In-house software[70]</td><td colspan="2">5 years (unless allocated to a software development pool[71])</td></tr>
</table>

Previous proposal

Amendments to allow taxpayers to self-assess the effective life of intangible depreciating assets which started to be held on or after 1 July 2016 was included in the *Treasury Laws Amendment (2017 Enterprise Incentives No. 1) Bill 2019*[72] as originally introduced[73] but the proposed amendments were removed from the Bill in the Senate.[74]

Announcement

The Government will amend the Tax law to allow taxpayers to choose to self-assess the effective life of certain intangible assets, rather than being required to use the effective life currently prescribed by statute.

The choice will apply to the following eligible intangible assets:

- patents
- registered designs
- copyrights, and

68 A design right can be registered under Australian law for a maximum period of 10 years. For further information in relation to the registration of patents and designs, refer to: www.ipaustralia.gov.au/.

69 In Australia, the petty patent system was replaced in 2001 with the innovation patent.

70 Defined in s. 995-1 of the *ITAA 1997* as computer software, or a right to use computer software, that a taxpayer acquires or develops (or has another entity develop) that is mainly for the taxpayer's use in performing the functions for which it was developed for which no amount is deductible outside the capital allowance provisions in Div 40, or the simplified depreciation rules for SBEs in Div 328.

71 If a taxpayer chooses to allocate amounts incurred on developing in-house software to a software development pool, the expenditure is written off in the subsequent four years at the rate of 30 per cent in years 2 to 4 and 10 per cent in year 5 — ss. 40-450 and 40-455 of the *ITAA 1997*.

72 Which received Royal Assent on 1 March 2019 as Act No. 7 of 2019.

73 Originally introduced on 30 March 2017 as *Treasury Laws Amendment (2017 Enterprise Incentives No. 1) Bill 2017*.

74 The Supplementary Explanatory Memorandum to the Bill as passed stated that 'the Government has decided not to proceed to implement this measure'.

- in-house software.[75]

It is intended that allowing taxpayers to self-assess the effective life of an asset for tax purposes will allow for a better alignment of tax outcomes with the underlying economic benefits provided by the asset. It will also align the tax treatment of these assets with that of most tangible assets.

Proposed commencement date

The measure is proposed to apply to eligible intangible assets acquired from **1 July 2023** after the temporary full expensing regime has concluded.

Example
In July 2023, Softly Engineering Pty Ltd acquires a patent for a new engineering process relating to 3D printing worth $1.5 million. Under the current law the effective life of the patent is 20 years. However, as 3D printing is developing so fast, Softly self-assesses the effective life as only 15 years, before the patent will be replaced with new technology. Without being able to self-assess, Softly would be able to deduct only $75,000 a year in depreciation costs (assuming Softly applies the prime cost method of depreciation). Under the new regime, the annual deduction would be $100,000 increasing the deduction by $25,000. The business can now self-assess the effective life of the patent to be more accurate. This change enables Softly to bring forward the depreciation in order to improve cash flow and invest in the next innovation. *Source: Government Fact Sheet titled Digital Economy Strategy — Investment Incentives*

*Source: Budget Paper No. 2 pages 14 to 15;
Digital Economy Strategy — Investment Incentives Fact Sheet; and
Joint Media Release by the Prime Minister, the Treasurer and the Minister for Superannuation, Financial Services and the Digital Economy: A modern digital economy to secure Australia's future dated*

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[75] The measures proposed in the *Treasury Laws Amendment (2017 Enterprise Incentives No. 1) Bill 2019* as originally introduced applied to a broader group of intangible assets than those covered by the 2021–22 Federal Budget announcement. In particular, the Bill proposed that taxpayers would also be able to choose to self-assess the effective life of the following intangible assets: a licence (except one relating to a copyright or in house software); a licence relating to a copyright (except copyright in a film); a spectrum licence; a datacasting transmitter licence; and a telecommunications site access right.

2021-22 Federal Budget - Reform of the TOFA hedging and foreign exchange rules

KEY POINTS
■ The Government has announced that it will make technical amendments to the TOFA provisions which will include: ▪ facilitating access to hedging rules on a portfolio hedging basis; and ▪ reducing compliance costs and correcting unintended outcomes so that taxpayers are not subject to unrealised taxation on foreign exchange gains and losses unless this is elected. ■ Proposed to commence for relevant transactions entered into on or after **1 July 2022**.

APPLICATION DATE

For relevant transactions entered into on or after 1 July 2022

As part of the 2021–22 Federal Budget, the Government announced that it will make technical amendments to the taxation of financial arrangements (TOFA) provisions[76] which will include:

- facilitating access to hedging rules on a portfolio hedging basis; and
- reducing compliance costs and correcting unintended outcomes so that taxpayers are not subject to unrealised taxation on foreign exchange gains and losses unless this is elected.[77]

Source: Budget Paper No. 2 page 29

[76] The TOFA provisions are contained in Div 230 of the *ITAA 1997.*

[77] It is presumed that these measures may relate to the TOFA reforms originally announced as part of the 2016–17 Federal Budget, and deferred as part of the 2018–19 Federal Budget, although insufficient detail is included in the Budget Papers to confirm this.

2021-22 Federal Budget - Boosting Apprenticeship Commencements wage subsidy - expansion

KEY POINTS
■ The Government has announced it will expand the *Boosting Apprenticeship Commencements wage subsidy* by: ▪ uncapping the number of eligible places; and ▪ increasing the duration of the subsidy to 12 months from the date an apprentice or trainee commences with their employer. ■ From 5 October 2020 to 31 March 2022, eligible businesses of any size will be reimbursed up to 50 per cent of an apprentice or trainee's wages of up to $7,000 per quarter for 12 months. ■ An additional 5,000 gateway service places and in-training support services will be provided to encourage and support more women commencing in non-traditional trade occupations.

In the lead up to the 2021–22 Federal Budget, in a joint Media Release the Prime Minister, Scott Morrison and the Minister for Employment, Skills, Small and Family Business, Michaelia Cash, announced on 9 March 2021 that the Government will expand the Boosting Apprenticeship Commencements wage subsidy.

START DATE

From 5 October 2020 to 31 March 2022

Background

This measure builds on the 2020–21 Budget measure titled *JobMaker Plan — boosting apprenticeships wage subsidy*, which introduced a new *Boosting Apprenticeship Commencements wage subsidy*. The *Boosting Apprenticeship Commencements wage subsidy* applies from 5 October 2020 to 30 September 2021 allowing businesses of any size to claim the subsidy for any new, or recommencing, apprentices or trainees that commence during this period. Eligible businesses are reimbursed for 50 per cent of an apprentice or trainee's wages, up to $7,000 per quarter, capped to 100,000 places.

Announcement

The Government will expand the *Boosting Apprenticeship Commencements wage subsidy* by:

- uncapping the number of eligible places; and
- increasing the duration of the subsidy to 12 months from the date an apprentice or trainee commences with their employer.

To encourage and support more women commencing in non-traditional trade occupations, the Government will also provide 5,000 additional gateway service places and in-training support services.

Note

The Government will further delay the commencement of the *Incentives for Australian Apprenticeships Program*, which will now commence 1 October 2021, and the current *Australian Apprenticeships Incentive Program* will be replaced with a simplified Australian Apprenticeships pathway.

Budget Paper No. 2 page 88; and
Prime Minister and Minister for Employment, Skills, Small and Family Business
joint media release: Thousands of New Apprentice and Trainee Jobs, dated 9 March 2021

2021-22 Federal Budget - 2021 Storms and Floods - tax treatment of qualifying grants

KEY POINTS
▪ The Government has announced that qualifying grants made to primary producers and small businesses affected by the storms and floods that occurred due to rainfall events between 19 February 2021 and 31 March 2021 will be non-assessable non-exempt income for tax purposes.
▪ Qualifying grants are Category D grants provided under the *Disaster Recovery Funding Arrangements 2018*.

As part of the 2021–22 Federal Budget, the Government announced that qualifying grants made to primary producers and small businesses affected by the storms and floods in Australia that occurred due to rainfall events between 19 February 2021 and 31 March 2021 will be non-assessable non-exempt income for tax purposes.

START DATE

Qualifying grants received in relation to rainfall events between 19 February 2021 and 31 March 2021

Qualifying grants are Category D grants provided under the Disaster Recovery Funding Arrangements 2018.

Source: Budget Paper No. 2 page 12

Residence

2021-22 Federal Budget - Government to consult on extending new corporate tax residency test to trusts and corporate limited partnerships

KEY POINTS
▪ The Government has announced that it will consult on broadening the previously announced amendment to the corporate residency test — under which a company that is incorporated offshore will be an Australian tax resident if it has a 'significant economic connection to Australia' — to trusts and corporate limited partnerships.
▪ The timeframe for the consultation is yet to be announced.

Background

In the 2020-21 Federal Budget, the Government announced that it would make technical amendments to clarify the corporate tax residency test.

The law will be amended to provide that a company that is incorporated offshore will be treated as an Australian tax resident if it has a 'significant economic connection to Australia', which will be satisfied where both the company's core commercial activities are undertaken in Australia and its central management and control is in Australia.

The amendment is proposed to apply to the first income year after the date of Royal Assent of the enabling legislation, with an option to apply the new law from 15 March 2017.[78] At the time of writing, legislation to give effect to the measure was yet to be introduced.

2021–22 Budget announcement

As part of the 2021–22 Federal Budget, the Government announced it would consult on broadening the amendment to the corporate residency test to trusts and corporate limited partnerships.

The Government will seek industry's views as part of the consultation on the original corporate residency amendment.

The timeframe for the consultation is yet to be announced.

Source: Budget 2021–22 Fact Sheet, Tax incentives to support the recovery page 8

International

2021-22 Federal Budget - COVID-19 Response Package - Ensuring New Zealand maintains primary taxing right over its sporting teams and support staff

KEY POINTS
■ The Government has announced that it will ensure New Zealand maintains its primary taxing right over members of its sporting teams and support staff in respect of Australian income tax and FBT liabilities that arise from exceeding the 183-day test in the double tax agreement as a result of being located in Australia for league competitions because of COVID-19.
■ The measure will apply to the 2020–21 and 2021–22 income and FBT years.

APPLICATION DATE

2020–21 and 2021–22 income and FBT years

As part of the 2021–22 Federal Budget, the Government announced that it will ensure that New Zealand maintains is primary taxing right over members of its sporting teams and support staff in respect of Australian income tax and FBT liabilities that arise from exceeding the 183-day test in the *Convention between Australia and New Zealand for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion* (the Convention) as a result of being located in Australia for league competitions because of COVID-19.

[78] This was the date on which the ATO withdrew ruling TR 2004/15: *Income Tax: residence of companies not incorporated in Australia — carrying on a business in Australia and central management and control*.

The measure ensures that the Convention operates as intended in relation to New Zealand sporting teams that compete in Australia for extended periods as a result of circumstances that have eventuated from the COVID-19 pandemic.

Source: Budget Paper No. 2 page 13

2021-22 Federal Budget - Updating the list of exchange of information jurisdictions

KEY POINTS
■ The Government has announced that it will update the list of countries whose residents are eligible to access a reduced withholding tax rate of 15 per cent on certain distributions from Australian Managed Investment Trusts.
■ Countries which have entered into information sharing agreements and are to be listed from 1 January 2022 are Armenia, Cabo Verde, Kenya, Mongolia, Montenegro and Oman.

START DATE

Effective from 1 January 2022

As part of the 2021–22 Federal Budget, the Government announced that it will update the list of countries whose residents are eligible to access a reduced withholding tax rate of 15 per cent, instead of the default rate of 30 per cent, on certain distributions from Australian Managed Investment Trusts (MITs).

To be on this list, a country must have established the legal relationship enabling it to share taxpayer information with Australia.

The list will be updated to include the following countries:

- Armenia
- Cabo Verde
- Kenya
- Mongolia
- Montenegro
- Oman.

The above changes will increase the number of countries on the list from 131 to 137.

This measure supports the operation of the MIT withholding tax system by providing the reduced withholding tax rate only to residents of countries that enter into effective information sharing agreements with Australia.

Source: Budget Paper No. 2 page 21

2021-22 Federal Budget - Removing the preferential tax treatment for offshore banking units

KEY POINTS
▪ The Government has announced that it will close the offshore banking unit (OBU) regime to new entrants by removing the Minister's ability to declare or determine an entity to be an OBU — effective from 26 October 2018; and ▪ remove the concessional 10 per cent effective tax treatment for OBUs from the 2023–24 income year; ▪ remove the interest withholding tax exemption from 1 January 2024.

START DATE

Various

Background

The Offshore Banking Units (OBU) regime was introduced in 1987 to assist the Australian financial services sector compete with financial services providers located in low tax jurisdictions in the Asia Pacific region. This was initially done by providing a withholding tax exemption on interest paid on eligible foreign borrowings by an OBU. In 1992, the regime was expanded to introduce an effective concessional tax rate of 10 per cent in respect of taxable income derived by an OBU from eligible OBU activities.

In October 2018, the OECD Forum for Harmful Tax Practices determined Australia's OBU regime to be a harmful preferential tax regime, so the Government has decided to remove the preferential tax treatment and close the regime to new entrants.

The *Treasury Laws Amendment (2021 Measures No. 2) Bill* which will give effect to the proposals was introduced into Parliament on 17 March 2021.

Proposed amendments to OBU regime

The Government proposes to amend Australia's OBU regime in Div 9A of Part III of the *ITAA 1936* to:

- remove the concessional 10 per cent effective tax treatment for OBUs;
- remove the interest withholding tax exemption;
- close the regime to new entrants — effective from 26 October 2018 — by removing the Minister's ability to declare or determine an entity to be an OBU.

Removing concessional tax treatment for OBUs

Schedule 2 of the Bill proposes to repeal s. 121EG of the *ITAA 1936*, which provides for a reduction of an OBU's assessable offshore banking income, allowable deductions and foreign income tax paid. The effect is that OBUs will not receive any special taxation arrangements and will be subject to the applicable corporate tax rate.

APPLICATION DATE

Assessments for the 2023–24 and later income years

Withholding tax exemption

Schedule 2 of the Bill proposes amendments to provide that interest payments paid on or after 1 January 2024 on offshore borrowings by OBUs will no longer be exempt from withholding tax.

APPLICATION DATE

1 January 2024

This means that for interest paid on or after 1 January 2024, OBUs will be subject to withholding tax on eligible income.

Closing the OBU regime to new entrants

APPLICATION DATE
Day after Royal Assent

Schedule 2 of the Bill proposes to remove the ability for the Minister to make a declaration or determination that a person or company is an OBU.

The regime has effectively been closed since October 2018 — no new applications have been approved since that time, and the Government does not intend that the Minister will grant any applications before commencement of the amendments. Any applications made to the Minister before commencement of the amendments and which are outstanding will effectively lapse.

Source: Budget Paper No. 2 page 20; and
Treasury Laws Amendment (2021 Measures No. 2) Bill introduced into Parliament 17 March 2021

Tax-exempt entities

2021-22 Federal Budget - Not-for-profits - enhancing the transparency of income tax exemptions

KEY POINTS
▪ The Government has announced that it will enhance the transparency of income tax exemptions claimed by not-for-profit entities (NFPs) by: ▪ providing $1.9 million in capital funding to the ATO in the 2022–23 income year to build an online system to enhance the transparency of income tax exemptions claimed by NFPs; ▪ requiring income tax exempt NFPs with an active ABN to submit an online annual self-review form reporting information they would ordinarily use to self-assess their eligibility for exemption.

Currently, non-charitable NFPs can self-assess their eligibility for income tax exemptions and do not have to report to the ATO.

START DATE
From 2022–23 income year

As part of the 2021–22 Federal Budget, the Government announced that it will provide $1.9 million in capital funding in the 2022–23 income year to the ATO to build an online system to enhance the transparency of income tax exemptions claimed by NFPs.

From 1 July 2023, income tax exempt NFPs with an active ABN will be required to submit online annual self-review forms reporting information they ordinarily use to self-assess their eligibility for the exemption.

Source: Budget Paper No. 2 page 22

2021-22 Federal Budget - Philanthropy - Updates to the list of specifically listed deductible gift recipients

KEY POINTS
■ The Government has announced that from 1 July 2021 the list of deductible gift recipients (DGRs) has been expanded to include the following organisations: ▪ Australian Associated Press Ltd ▪ Virtual War Memorial Limited ▪ Scripture Union Queensland ■ Two organisations have received an extension of their DGR status: ▪ Cambridge Australia Scholarships Limited — to 30 June 2026 ▪ Foundation 1901 Limited — to 31 August 2026

As part of the 2021–22 Federal Budget, the Government announced that[79] from 1 July 2021 the list of deductible gift recipients (DGRs) has been expanded to include:

- Australian Associated Press Ltd from 1 July 2021 to 30 June 2026
- Virtual War Memorial Limited from 1 July 2021 to 30 June 2026
- Scripture Union Queensland from 1 July 2021 to 30 June 2023.

START DATE
1 July 2021

The following organisations have received approval for a five-year extension of their DGR status:

- Cambridge Australia Scholarships Limited from 1 July 2021 to 30 June 2026
- Foundation 1901 Limited from 1 September 2021 to 31 August 2026.

Taxpayers can claim an income tax deduction for gifts of money of $2 or more to these organisations.

At the request of the organisation the East African Fund Limited has been removed from specific listing.

Source: Budget Paper No. 2 page 25

[79] Since the 2020–21 MYEFO.

2021-22 Federal Budget - Making child care more affordable

KEY POINTS

▪ The Government has announced that it will invest an additional $1.7 billion into child care to encourage greater workforce participation and to reduce the cost of child care for approximately 250,000 families.
▪ The Government proposes to amend the child care subsidy as follows:
  ▪ increase the child care subsidies available to families with more than one child **aged five and under** in child care — for a second child and subsequent children, the level of subsidy received will increase by 30 percentage points to a maximum subsidy of 95 per cent — from **11 July 2022**;
  ▪ remove the $10,560 cap on the child care subsidy for families with family income of $189,391 to $353,679 — from **1 July 2022**.

In the lead up to the Federal Budget, the Treasurer, Josh Frydenberg, the Minister for Women, Marise Payne, the Minister for Education and Youth, Alan Tudge, and the Minister for Women's Economic Security, Jane Hume, jointly announced on 2 May 2021 in a Media Release titled *Making child care more affordable and boosting workforce participation* that the Government would encourage greater workforce participation by increasing the child care subsidy available to eligible parents.

Background — current law

The Government's child care subsidy partially subsidises the daily fees payable by eligible families to approved child care providers. The rules are set out in Part 4A of the *A New Tax System (Family Assistance) Act 1999*.

Child care subsidy percentage

The child care subsidy received in relation to an income year is calculated based on the individual's 'family income'. This is the individual and their partner's combined adjusted taxable incomes for the year.

The child care subsidy percentage will apply to the lowest of either the hourly:

- rate cap; or
- fee charged by the child care service.

The following subsidy percentages[80] apply at the same rate per child, no matter how many children a family may have in child care:

Family income	Child care subsidy percentage
$0 to $69,390	85%
More than $69,390 to below $174,390	Between 85% and 50% The percentage goes down by 1% for every $3,000 of income
$174,390 to below $253,680	50%
$253,680 to below $343,680	Between 50% and 20% The percentage goes down by 1% for every $3,000 of income
$343,680 to below $353,680	20%
$353,680 or more	0%

Annual child care subsidy cap

Family income	Annual cap on subsidy
$0 to $189,390	No cap
$189,391 to $353,679	**$10,560**
$353,680 or more	No entitlement to subsidy

As a result, families subject to the $10,560 cap start paying full fees towards the end of the year which reduces their incentive to participate in the workforce.

Announcement

START DATE

Increase in subsidy rate — from 11 July 2022

Removal of subsidy cap — from 1 July 2022

As part of the Women's Economic Security Package, the Government will make an additional $1.7 billion investment in child care, over five years from 2020–21 and $671.2 million per year ongoing, to cut the cost of living for around a quarter of a million families and to help boost workforce participation.

The Government anticipates that the investment will add up to 300,000 hours of work per week which would allow the equivalent of around 40,000 individuals to work an extra day per week and boost the level of GDP by up to $1.5 billion per year.

It is estimated that around half of the families set to benefit have a household income of less than $130,000.

The measure includes the following two proposed changes to the child care subsidy:

1. Increase in child care subsidy rate for second and subsequent children

The Government proposes to increase the child care subsidies available to families with more than one child **aged five and under** in child care, benefitting around 250,000 families.

80 The child care subsidy percentage will apply to the lowest of either the hourly: rate cap; or fee charged by the child care service.

From **11 July 2022**, for a second child and subsequent children, the level of subsidy will increase by 30 percent to a maximum subsidy of 95 per cent of fees paid.

Note

The joint Media release stated that the increase in the subsidy rate was proposed to commence on 1 July 2022.

2. Removing the child care subsidy cap

From **1 July 2022**, the Government proposes to remove the $10,560 cap on the child care subsidy, benefitting around 18,000 families.

Benefit for families with two children in child care four days per week

Family income	Current out of pocket child care cost per week	Current subsidy	New 2nd child subsidy	Future out of pocket child care cost per week	Total better off per week
$40,000	$124.60	85%	95%	$83.20	**$41.60**
$80,000	$149.18	82%	95%	$95.39	**$53.79**
$110,000	$232.38	72%	95%	$136.99	**$95.39**
$140,000	$315.58	62%	92%	$190.78	**$124.80**
$180,000	$416.00	50%	80%	$291.20	**$124.80**

**Based on: average hourly centre-based day care rate of $10.40 per hour for a 10-hour session*

The joint Media Release also contains the following examples of outcomes. Note that all of the examples provided in the Media Release are based on low and middle income earners.

- A single parent on $65,500 with two children in four days of long day care who chooses to work a fifth day will be $71 a week better off (based on the child care rates assumed in the Government fact sheet — see the table above).
- A family earning $110,000 a year will have the subsidy for their second child increase from 72 to 95 per cent, and would be $95 per week better off for four days of care (based on the child care rates assumed in the Government fact sheet — see the table above).
- A family on $80,000 with three children would have the subsidy increase from 82 to 95 per cent for their second and third child and be $108 per week better off for four days of care (based on the child care rates assumed in the Government fact sheet — see the table above).

Source: Budget Paper No. 1 page 119;
Budget Paper No. 2 page 81;
Women's Budget Statement page 43; and
Treasurer's Media Release: Making child care more affordable and boosting workforce participation

2021-22 Federal Budget – Housing Package

KEY POINTS
■ The Government has announced that it will provide $782.1 million over four years from **2021–22** to increase home ownership, support jobs in the residential construction sector and enhance housing data. ■ The various initiatives which will be funded include the following: ▪ extending the HomeBuilder construction commencement requirement from six months to 18 months; ▪ a Family Home Guarantee with 10,000 places to support single parents to enter the housing market with a deposit of as little as two per cent; ▪ extending the First Home Loan Deposit Scheme to provide an additional 10,000 New Home Guarantees to allow eligible first home buyers to build a newly home or purchase a newly built home.

START DATE
The 2021–22 income year

As part of the 2021–22 Federal Budget, the Government announced that it will provide $782.1 million over four years from 2021–22 to increase home ownership, support jobs in the residential construction sector and enhance housing data.

The initiatives which will receive the funding include the following:

- the construction commencement requirement under the HomeBuilder program will be extended from six months to 18 months for all existing applicants — i.e. those who signed contracts during the eligibility period between 4 June 2020 and 31 March 2021 — $774.8 million over two years from 2021–22;
- the Australian Housing and Urban Research Institute will continue to be supported to deliver the National Housing and Urban Research Program — $5.8 million over three years from 2021–22;
- the Australian Institute of Health and Welfare to maintain and enhance the Housing Data Dashboard website, with costs partially offset by National Housing Finance and Investment Corporation research funding — $1.2 million over four years from 2021–22;
- Establishment of the Family Home Guarantee with 10,000 places to be made available from 1 July 2021 over four years to support single parents with dependants to enter, or re-enter, the housing market with a deposit of as little as two per cent, subject to ability to service a loan;
- Extension of the First Home Loan Deposit Scheme to provide an additional 10,000 New Home Guarantees in 2021–22 to allow eligible first home buyers to build a new home or purchase a newly constructed home sooner with a deposit of as little as five per cent.

The Treasurer, Josh Frydenberg, together with other Ministers, previously announced the HomeBuilder extension and the Family Home Guarantee and New Home Guarantee initiatives in joint Media Releases dated 17 April 2021[81] and 8 May 2021.[82]

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[81] With the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing, Michael Sukkar.

Source: Budget Paper No. 2 page 187-188;
Budget Overview: Supporting construction jobs and home ownership pages 18-19;
Treasurer's joint Media Release: HomeBuilder extended to support more jobs, dated 17 April 2021; and
Treasurer's joint Media Release: Improving opportunities for home ownership, dated 8 May 2021

2021-22 Federal Budget – Insolvency Reform

KEY POINTS

▪ The Government has announced that it will continue to examine ways to improve Australia's insolvency laws.
▪ The Government will:
  ▪ consult on options to:
    □ clarify the treatment of trusts with corporate trustees;
    □ improve schemes of arrangement processes, including introducing a moratorium on creditor enforcement during negotiation;
  ▪ increase the statutory demand threshold from \$2,000 to \$4,000;
  ▪ commence an independent review of the insolvent trading safe harbour.

In the lead up to the 2021–22 Federal Budget, the Treasurer, Josh Frydenberg and Assistant Treasurer, Michael Sukkar, announced on 3 May 2021 that the Government will pursue further measures[83] to improve Australia's insolvency laws, including consulting on options to:

- clarify the treatment of trusts with corporate trustees under Australia's insolvency law;
- improve schemes of arrangement[84] processes to better support businesses, including by introducing a moratorium on creditor enforcement while schemes are being negotiated.

The Government will also:

- increase the minimum threshold at which creditors can issue a statutory demand[85] on a company from \$2,000 to \$4,000 to help prevent distressed but viable companies from being pushed into liquidation over small debts;
- commence an independent review on whether the insolvent trading safe harbour[86] provisions — which were introduced in 2017 and designed to promote a culture of entrepreneurship and innovation by providing breathing space for distressed businesses — remain fit for purpose.

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[82] With the Minister for Families and Social Services and Minister for Women's Safety, Anne Ruston, the Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing, Michael Sukkar, and the Minister for Superannuation, Financial Services and the Digital Economy and Minister for Women's Economic Security, Jane Hume.

[83] The *Corporations Amendment (Corporate Insolvency Reforms) Act 2020*, which received Royal Assent on 15 December 2020 as Act No. 130 of 2020, amended the *Corporations Act 2001* to introduce various reforms to the insolvency framework. These include a new restructuring process for small companies, a new simplified liquidation process for companies with simple affairs and initiatives to increase the availability of insolvency practitioners.

[84] A scheme of arrangement is a binding, court-approved agreement that allows the reorganisation of the rights and liabilities of members and creditors of a company.

[85] A statutory demand is a formal, written demand given to the company by its creditor in relation to one or more debts owed by the company the total of which is at least the statutory minimum — currently \$2,000. The company must comply with the statutory demand within the statutory period, which is 21 days.

Source: Budget Paper No. 2 page 188
Joint Media Release: Further insolvency reforms to support business dynamism, dated 3 May 2021

2021-22 Federal Budget - Women's Budget Statement

KEY POINTS

▪ The Government has announced that it will invest $3.4 billion towards promoting the values of respect, dignity, choice, equality of opportunity and justice for the benefit of women.
▪ The Women's Budget Statement focuses on three priorities:
  ▪ women's safety;
  ▪ women's economic security;
  ▪ women's health and wellbeing.
▪ Some of the key initiatives include:
  ▪ various measures to address workplace sexual harassment and gender equality;
  ▪ a $1.7 billion investment in child care affordability;
  ▪ removal of the $450 per month superannuation guarantee threshold;
  ▪ investment in women's education, training and employment;
  ▪ funding for various aspects of women's health.

As part of the 2021–22 Federal Budget, the Women's Budget Statement provides a $3.4 billion investment towards promoting the values of respect, dignity, choice, equality of opportunity and justice so that women can be safe from violence, economically secure, realise their potential and enjoy good health.

The Women's Budget Statement focuses on three priorities:

1. women's safety;
2. women's economic security;
3. women's health and wellbeing.

The 2021–22 Federal Budget also includes specific measures to support Aboriginal and Torres Strait Islander women, women with disability, women living in regional and remote Australia, culturally and linguistically diverse women, and those in the LGBTIQA+ community.

Some of the key initiatives include the following:

Women's safety

The Government will provide $1.1 billion in relation to measures to:

- support women leaving a violent relationship, understand the issues through data collection and monitoring, and expand responses through the justice system;
- improve the online environment for women and children;

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[86] The *Corporations Act 2001* provides several safe harbours which can relieve a director from their statutory duty to prevent their company from insolvent trading.

- address workplace sexual harassment, including the implementation of the 2020 *Respect@Work: Sexual Harassment National Inquiry Report*. The Government's response, *A Roadmap for Respect: Preventing and Addressing Sexual Harassment in Australian Workplaces*, outlines long-term commitments aimed at creating a new culture of respectful behaviour in Australian workplaces.

Women's economic security

The Budget includes $1.9 billion for measures to:

- improve the affordability of child care for Australian families — including an increase to the child care subsidy for second and subsequent children and the removal of the annual subsidy cap ($1.7 billion investment);
- invest in women's participation in education and training, and employment, in various sectors including aged care, and science, technology, engineering and mathematics (STEM);
- remove the $450 per month threshold under which employers do not have to pay superannuation guarantee;
- provide access to a streamlined court process and lawyer-assisted mediation services to support resolution of small claim property disputes between separated couples;
- establish the Family Home Guarantee to assist single parents to enter the housing market with a deposit of as little as two per cent;
- expand the Women's Leadership and Development Program;
- promote workplace gender equality, including a review of the *Workplace Gender Equality Act 2012*;
- support women's sporting events and increase opportunities for women in sport.

Women's health and wellbeing

The Government will invest $351.5 million to deliver initiatives that cover maternal health, sexual and reproductive health, ageing, chronic conditions, preventative health, and mental health.

Source: Women's Budget Statement; and
Budget Overview: Women's safety, Women's economic security,
Women's health and wellbeing chapters

Other taxes

2021-22 Federal Budget - Heavy Vehicle Road User Charge to increase

KEY POINTS
▪ The Government has announced that it will increase the heavy vehicle road user charge from 25.8 cents per litre to **26.4 cents per litre** from **1 July 2021**.

START DATE
From 1 July 2021

As part of the 2021–22 Federal Budget, the Government announced that it will increase the Heavy Vehicle Road User Charge from 25.8 cents per litre to **26.4 cents per litre** from **1 July 2021**.

The increase will have the effect of decreasing expenditure on the Fuel Tax Credit by $73 million over four years from 2021–22.

Source: Budget Paper No. 2 page 150

2021-22 Federal Budget - Tax relief for small brewers and distillers

KEY POINTS
▪ The Government has announced that, from 1 July 2021, eligible brewers and distillers will receive full remission (up from 60 per cent) of excise up to an annual cap of $350,000 (up from $100,000).
▪ This will align the excise scheme for alcohol manufacturers with the wine equalisation tax producer rebate.

START DATE
1 July 2021

In the lead up to the 2021–22 Federal Budget, the Treasurer, Josh Frydenberg and the Assistant Treasurer, Michael Sukkar, jointly announced on 1 May 2021 that small brewers and distillers will benefit from a tripling of the excise refund cap from $100,000 to $350,000 per year.

The measure is intended to support jobs in this growing sector in which two-thirds of businesses operate in rural and regional areas.

Background

Under the current excise refund scheme, eligible brewers and distillers[87] are entitled to a refund of 60 per cent of the excise they pay, up to an annual cap of $100,000.[88]

There are around 600 brewers and 400 distillers across Australia, with around two-thirds operating in

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[87] Broadly, these are entities which hold a manufacturer licence, have manufactured an alcoholic beverage and paid excise duty on it, have fermented or distilled at least 70 per cent of the alcohol content by volume, and are legally and economically independent of any other entity that has received a refund under the scheme. Additional requirements apply in relation to distilled beverages. See the ATO fact sheet QC 63608 for further information about the scheme.

[88] Prior to 1 July 2019, eligible domestic alcohol producers were allowed a refund of 60 per cent of excise paid up to a cap of $30,000 per financial year.

rural and regional areas.

Announcement

The Government will amend the excise refund scheme from 1 July 2021 so that eligible brewers and distillers will be able to receive a full remission of any excise they pay, up to a cap of $350,000 in each financial year.[89]

This amounts to a total of $255 million in tax relief to assist brewers and distillers to grow and support around 15,000 jobs in the sector. It will also align the benefit available under the excise refund scheme with the wine equalisation tax (WET) producer rebate.

The measure builds on the 2020–21 MYEFO measure[90] to allow alcohol manufacturers to automatically receive their excise remission upon lodgment of their excise returns.

Source: Budget Paper No. 2 page 12;
Budget Fact sheet: Tax incentives to support the recovery page 6 and
Joint Media Release: Tax relief for small brewers and distillers to support more jobs, dated 1 May 2021

Superannuation

2021-22 Federal Budget - SMSFs - relaxing residency requirements

KEY POINTS

■ The Government has announced that it will ease the residency tests for self-managed superannuation funds (SMSFs) and small APRA-regulated funds (SAFs) by:
  ■ extending the central control and management test safe harbour from two to five years for SMSFs; and
  ■ removing the active member test for both fund types.

■ This will allow members of SMSFs and SAFs to continue to contribute to their superannuation fund whilst temporarily overseas, ensuring parity with members of large APRA-regulated funds.
■ This measure will have effect from the start of the first income year after Royal Assent to the enabling legislation, which the Government expects to have occurred prior to 1 July 2022.

As part of the 2021–22 Federal Budget, the Government announced that it will relax residency requirements for self-managed superannuation funds (SMSFs) and small APRA-regulated funds (SAFs).

START DATE
First income year after Royal Assent of enabling legislation

Background

Section 295-95(2) of the *ITAA 1997* sets out the requirements for a superannuation fund to be an 'Australian superannuation fund'. Broadly, this is the case if:

- the fund was established in Australia or any asset of the fund is situated in Australia;
- the central management and control of the fund is ordinarily in Australia; and

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[89] Refunds received under the scheme are assessable income for income tax purposes.

[90] Titled *Alcohol taxation — automatic remission of excise duty for alcohol manufacturers.*

- the fund satisfies the 'active member test', which is satisfied at the relevant time if the fund:
  - has no active member, or
  - at least 50 per cent of the following are attributable to superannuation interests held by active members who are Australian residents:
    - total market value of the fund's assets attributable to superannuation interests held by active members is, or
    - the sum of the amounts that would be payable to or in respect of active members if they voluntarily ceased to be members.

Announcement

The Government proposes to ease the residency test by:

- extending the central control and management test safe harbour[91] from two to five years for SMSFs; and
- removing the active member test[92] for both fund types.

This will allow members of SMSFs and SAFs to continue to contribute to their superannuation fund whilst temporarily overseas, ensuring parity with members of large APRA-regulated funds.

This measure will have effect from the start of the first income year after Royal Assent of the enabling legislation, which the Government expects to have occurred prior to 1 July 2022.

Source: Budget Paper No. 2 page 28

2021-22 Federal Budget - SMSF - legacy retirement product conversions

KEY POINTS
▪ The Government has announced that it will allow individuals a two-year period to exit a specified range of legacy retirement products, namely market linked, life-expectancy and lifetime products which were first commenced prior to 20 September 2007 from any provider, including SMSFs.
▪ The measure will not apply to flexi-pension products or a lifetime product in a large APRA-regulated or public sector defined benefit scheme.
▪ Commuted reserves will not be counted towards an individual's concessional contribution cap, therefore will not trigger excess contributions. Instead, the commuted funds and reserves will be taxed as an assessable contribution of the fund (with a 15 per cent tax rate).
▪ Social security and taxation treatment will not be grandfathered for any new products commenced with commuted funds.
▪ This measure will apply from the first financial year after Royal Assent to enabling legislation

START DATE

First financial year after Royal Assent to enabling legislation

As part of the 2021–22 Federal Budget, the Government announced that it will allow individuals to exit a specified range of legacy retirement products, together with any associated reserves, for a

91 In s. 295-95(4) of the *ITAA 1997.*

92 In s. 295-95(2)(c) of the *ITAA 1997.*

two-year period.

Background

Prior to 20 September 2007 an individual may have commenced a retirement product from a superannuation fund which may restrict access to capital and flexibility of drawdowns, preventing them from effectively using their retirement savings for health, aged care, and other large expenses in retirement.

Currently, these products can only be converted into another like product and limits apply to the allocation of any associated reserves without counting towards an individual's contribution caps.

Announcement

The Government will amend the relevant legislation to allow a two-year window to allow individuals to exit a specified range of legacy retirement products, together with any associated reserves, and transition to more flexible and contemporary retirement products. Retirees with the relevant products will be able to choose to completely exit these products by fully commuting the product and transferring the underlying capital, including any reserves, back into a superannuation fund account in the accumulation phase.

Commuted reserves will not be counted towards an individual's concessional contribution cap, therefore will not trigger excess contributions. Instead, the commuted funds and reserves will be taxed as an assessable contribution of the fund (with a 15 per cent tax rate).

Products covered

The products covered by this announcement are market linked, life-expectancy and lifetime products which were first commenced prior to 20 September 2007 from any provider, including self-managed superannuation funds (SMSFs).

The measure will not apply to flexi-pension products or a lifetime product in a large APRA-regulated or public sector defined benefit scheme.

Important

Social security and taxation treatment will not be grandfathered for any new products commenced with commuted funds.

Source: Budget Paper No. 2 page 27; and
Fact Sheet: Superannuation More flexibility for older Australians, dated 11 May 2021

2021-22 Federal Budget - Removing the $450 per month threshold for superannuation guarantee

KEY POINTS
▪ The Government has announced that it will remove the current $450 per month minimum income threshold, under which employees do not have to be paid the superannuation guarantee by their employer. ▪ The effect of this change is that around 300,000 individuals will receive additional superannuation guarantee payments each month. ▪ This measure will have effect from the first income year after Royal Assent of enabling legislation

START DATE

First income year after Royal Assent of enabling legislation

As part of the 2021–22 Federal Budget, the Government announced that it will remove the current $450 per month minimum income threshold, under which employees do not have to be paid the superannuation guarantee by their employer.

Background

Under the *Superannuation Guarantee (Administration) Act 1992 (SGA Act)*, a charge called the superannuation guarantee charge (SG charge) is imposed on any superannuation guarantee shortfall of an employer for a quarter. In calculating the shortfall certain amounts of salary and wages are disregarded, including where an employee's salary or wages for the month are less than $450 (s. 27(2)).

Announcement

The Government will amend the *SGA Act* to remove the current $450 per month minimum income threshold under which employees do not have to be paid the superannuation guarantee by their employer.

The *Retirement Income Review* estimated that this change would result in around 300,000 individuals — 63 per cent of whom are women — receiving additional superannuation guarantee payments each month.

The Government expects Royal Assent of the enabling legislation to have occurred prior to 1 July 2022.

Source: Budget Paper No. 2 page 26

TaxBanter

2021-22 Federal Budget - Repealing work test for voluntary superannuation contributions

KEY POINTS
▪ The Government has announced that it will allow individuals aged 67 to 74 years (inclusive) to make or receive non-concessional (including under the bring-forward rule) or salary sacrifice superannuation contributions without needing to meet the **work test**.
▪ Proposed to commence from the start of the first income year after Royal Assent of the enabling legislation — the Government expects this to be **1 July 2022**.

START DATE

First income year after Royal Assent of enabling legislation

Background

Currently, individuals aged 67 to 74 years can only make voluntary contributions (concessional and non-concessional) to their superannuation, or receive contributions from their spouse, if they satisfy the **work test** — i.e. they are working at least **40 hours** over a **30-day period** in the relevant income year.

Announcement

As part of the Flexible Super initiatives in the 2021–22 Federal Budget, the Government announced that it will allow individuals aged 67 to 74 years (inclusive) to make or receive non-concessional (including under the bring-forward rule) or salary sacrifice superannuation contributions without needing to meet the work test.

The Government expects that the enabling legislation will receive Royal Assent prior to 1 July 2022 — that is, the measure is expected to commence on **1 July 2022**.

The $1.6 million cap on lifetime contributions (increasing to $1.7 million from 1 July 2021) and the annual concessional and non-concessional contributions caps will continue to apply.

Individuals aged 67 to 74 years will still have to meet the work test to make personal deductible contributions.

The proposed measure:

- is intended to simplify the contributions rules and to increase flexibility for older Australians to save for retirement through superannuation;
- recognises that retirees aged 70 potentially had 20 years or more in the workforce before compulsory superannuation was introduced in 1992 and that many retirees have accumulated savings outside of superannuation.

Source: Budget Paper No. 2 page 19;
Budget Overview: Supporting older Australians page 42; and
Budget Fact Sheet: Superannuation — More flexibility for older Australians page 1

2021-22 Federal Budget - Reducing eligibility age for downsizer contributions

KEY POINTS
▪ The Government has announced that it will reduce the eligibility age for individuals making downsizer contributions from 65 to **60 years of age**. ▪ Proposed to commence from the start of the first income year after Royal Assent of the enabling legislation — the Government expects this to be **1 July 2022**.

Background

The downsizer contribution allows eligible individuals to make a one-off, post-tax contribution to their superannuation of up to **$300,000** per person from the proceeds of selling their home.[93]

START DATE

First income year after Royal Assent of enabling legislation

Both members of a couple can contribute in respect of the same home (i.e. up to $600,000 per couple), and contributions do not count towards non-concessional contributions caps.

Currently, the eligibility requirements include that the individual is 65 years or older at the time they make the downsizer contribution. The measure applies where the contract of sale is exchanged on or after 1 July 2018.[94]

Announcement

As part of the Flexible Super initiatives in the 2021–22 Federal Budget, the Government announced that it will reduce the eligibility age to make downsizer contributions into superannuation from 65 to **60 years of age**. It is intended that the measure will improve the flexibility for Australians to contribute to their superannuation savings and may encourage people to downsize sooner and increase the supply of family homes.

The Government expects that the enabling legislation will receive Royal Assent prior to 1 July 2022 — that is, the measure is expected to commence on **1 July 2022**.

Note

Individuals with superannuation balances over the transfer balance cap ($1.7 million from 1 July 2021) are able to make a downsizer contribution, however the downsizer amount will count towards that cap when savings are converted to the retirement phase.

Source: Budget Paper No. 2 page 18;
Budget Overview — Supporting older Australians page 42; and
Budget Fact Sheet: Superannuation — More flexibility for older Australians page 3

93 The home must be the person's principal place of residence, held for a minimum of 10 years.

94 The downsizer contribution provisions were enacted by the *Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No.1) Act 2017* which received Royal Assent on 13 December 2017 as Act No. 132 of 2017.

2021-22 Federal Budget - Maximum release under First Home Super Saver Scheme increased to $50,000

KEY POINTS
▪ The Government has announced that it will increase the maximum amount of voluntary contributions that can be released from superannuation under the First Home Super Saver (FHSS) Scheme from $30,000 to **$50,000**. ▪ It is intended that the measure will ensure the FHSS Scheme continues to help first home buyers in raising a deposit more quickly. ▪ Proposed to commence from the **start of the first financial year after Royal Assent** of the enabling legislation. ▪ The Government will also make technical changes to the legislation underpinning the FHSS Scheme to assist applicants who make errors on their release applications — to apply retrospectively from **1 July 2018**.

START DATE

Increase in maximum release amount — from the start of the first financial year after Royal Assent of the enabling legislation

Technical changes to FHSS Scheme legislation — from 1 July 2018

In the lead up to the 2021–22 Federal Budget, the Treasurer, Josh Frydenberg, together with the Minister for Families and Social Services, Anne Ruston, announced on 8 May 2021 that the Government would increase the maximum amount of voluntary contributions that can be released under the First Home Super Saver (FHSS) Scheme from $30,000 to **$50,000**.

The Government will also make technical changes to the legislation underpinning the FHSS Scheme to assist applicants who make errors on their release applications.

Background

Under the current law, individuals saving for their first home who have made voluntary contributions into the superannuation system on or after 1 July 2017 can withdraw those contributions and an amount of associated earnings, up to a maximum amount of $30,000 ($15,000 per income year)[95] for use in purchasing or constructing their first home.

The FHSS Scheme released amount is income in the hands of the individual, and released amounts sourced from an individual's FHSS Scheme eligible concessional contributions are taxed at their marginal rates, with a tax offset of 30 per cent.[96]

If an individual does not enter into a contract for the purchase or construction of residential premises within the requisite period (generally 12 months) — or recontribute the required amount into superannuation within the same period — they are liable to FHSS tax at the rate of 20 per cent on the assessable component of the amounts released.[97]

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95 The FHSS Scheme was introduced by the *Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No.1) Act 2017* which received Royal Assent on 13 December 2017 as Act No. 132 of 2017.

96 The Commissioner must withhold an amount from the taxable FHSS Scheme released amounts, at the following rates: the amount of tax that the Commissioner estimates will be payable by the individual in relation to the individual's assessable FHSS Scheme released amount; or if the Commissioner is unable to make an estimate, 17 per cent of the individual's assessable FHSS released amount.

97 Pursuant to the *First Home Super Saver Tax Act 2017* which received Royal Assent on 13 December 2017 as Act No. 133 of 2017.

Announcements

Maximum release under FHSS Scheme increased

The Government will amend the Tax law to increase the maximum amount of voluntary contributions that can be released under the FHSS Scheme from $30,000 to **$50,000.**

The proposal forms part of the Government's 2021–22 Federal Budget measures to improve opportunities for home ownership[98] and is intended to ensure the FHSS Scheme continues to help first home buyers in raising a deposit more quickly.

The increase in the maximum releasable amount will apply from the **start of the first financial year after Royal Assent** of the enabling legislation, which the Government expects will have occurred by 1 July 2022.

Technical changes to the FHSS Scheme legislative provisions

The Government will also make four technical changes to the legislation underpinning the FHSS Scheme to improve its operation.

The changes will assist FHSS Scheme applicants who make errors on their release applications by:

1. increasing the discretion of the Commissioner to amend and revoke FHSS Scheme applications;
2. allowing individuals to withdraw or amend their applications prior to their receiving an FHSS Scheme amount, and allow those who withdraw to re-apply for FHSS Scheme releases in the future;
3. allowing the Commissioner to return any released FHSS Scheme money to superannuation funds, provided that the money has not yet been released to the individual;
4. clarifying that the money returned by the Commissioner to superannuation funds is treated as non-assessable non-exempt (NANE) income to the fund and does not count towards the individual's contribution caps.

The technical changes will apply retrospectively from **1 July 2018**.

Source: Budget Paper No. 2 pages 17 to 18;
Treasurer's Media Release: Improving opportunities for home ownership dated 8 May 2021

[98] The Government will also establish the 'Family Home Guarantee' for single parents with dependants (allowing a home to be purchased with a deposit of as little as two per cent) and expand the New Home Guarantee for a second year, under which first home buyers seeking to build a new home or purchase a newly built home can do so with a deposit of as little as five per cent.

2021-22 Federal Budget - Digital Games Tax Offset

KEY POINTS
■ The Government has announced that it will introduce a 30 per cent refundable **'Digital Games Tax Offset'** for eligible businesses that spend a minimum of $500,000 on qualifying games expenditure to support the development of digital games.
■ It is intended that the proposed offset will make Australia an attractive destination for digital talent and will create transferable digital capabilities that Australia could apply to a range of other sectors.
■ The Government will consult with industry to develop the criteria and definition of 'qualifying games expenditure'.
■ Proposed to be available for Australian resident companies, or foreign resident companies with a permanent establishment in Australia, from **1 July 2022**.

START DATE

1 July 2022

In the lead up to the 2021–22 Federal Budget, the Prime Minister, Scott Morrison, together with the Treasurer, Josh Frydenberg and the Minister for Superannuation, Financial Services and the Digital Economy, Jane Hume, jointly announced on 6 May 2021 that the Government would introduce a 30 per cent refundable **'Digital Games Tax Offset'**.

The Digital Games Tax Offset — which forms part of the Government's 2021–22 Federal Budget *Digital Economy Strategy* — will be available to Australian resident companies, or foreign resident companies with a permanent establishment in Australia, that spend a minimum of **$500,000** on 'qualifying games expenditure' to support the development of digital games.

The Government intends that the offset will:

- make Australia an attractive destination for digital talent;
- create transferable digital capabilities that Australia could apply to a range of other sectors — including defence innovation, medical technology, education technology, emergency planning, construction, agtech and modern manufacturing;
- not be available for games with gambling elements or that cannot obtain a classification rating.

The Government will consult with industry in mid-2021 to develop the criteria and definition of 'qualifying games expenditure'.

The Digital Games Tax Offset is proposed to commence from **1 July 2022**.

Source: Budget Paper No. 2 page 73;
Digital Economy Strategy — Investment Incentives Fact Sheet; and
Joint Media Release by the Prime Minister, the Treasurer and the Minister for Superannuation, Financial Services and the Digital Economy: A modern digital economy to secure Australia's future dated 6 May 2021