

# Federal Budget Report

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## EXECUTIVE SUMMARY

### [\[846\]](#) Federal Budget 2022-23: tax integrity measures but no major tax reform; cost-of-living relief

On Tuesday, 25 October 2022, Treasurer Jim Chalmers handed down the 2022-23 October Federal Budget, his 1st Budget.

While a Budget was handed down on 29 March 2022, this second Budget for 2022-23 updates economic forecasts and outlines the new Labor Government's priorities following the May 2022 Federal election.

The Budget estimates an underlying cash deficit of \$36.9 billion for 2022-23 (and \$44bn for 2023-24). While the economy is expected to grow by 3.25% in 2022-23, it is predicted to slow to 1.5% for 2023-24, a full percentage point lower than forecast in March 2022. Inflation is expected to peak at 7.75% later in 2022, but is projected to moderate to 3.5% through 2023-24, and return to the Reserve Bank's target range in 2024-25.

Against this backdrop, the Treasurer has sought to exercise fiscal "restraint" so as not to put more pressure on prices, and make the Reserve Bank's job even harder. Rather, the Budget sets out a 5-point plan for cost-of-living relief in the areas of (i) child care; (ii) expanding paid parental leave; (iii) medicines; (iv) housing; (v) getting wages moving.

While the Budget does not contain major tax changes it does seek to begin some "Budget repair work" via tax integrity measures. "By making sure multinationals pay a fairer share of tax in Australia, by extending successful tax compliance programs, and by giving the ATO the resources they need to crack down on tax dodging. Together, these initiatives save a further \$4.7 billion over four years", Dr Chalmers said.

#### Tax-related measures announced

Tax-related measures announced in the Budget included the following.

- **Intangible assets depreciation** – reversal of previously announced option to self-assess effective life for certain intangible assets (eg intellectual property and in-house software). The effective lives of such assets will continue to be set by statute.
- **Previously announced measures** – the Government has announced that it will abandon 8 measures announced by the previous Government, and defer the start date of 3 others. While most of the measures relate to the heading of "Business Taxation" (and are finance related), note that the proposals include superannuation and personal tax measures.

- **Digital currencies not a foreign currency** – the Budget Papers confirm that the Government is to introduce legislation to clarify that digital currencies (such as Bitcoin) continue to be excluded from the Australian income tax treatment of foreign currency.
- **Off-market share buy-backs** – the Government intends to align the tax treatment of off-market share buy-backs undertaken by listed public companies with the treatment of on-market share buy-backs.
- **COVID grants treated as NANE** – the Budget Papers contain a listing of further State and Territory COVID-19 grant programs eligible for non-assessable, non-exempt treatment.
- **Penalty unit increase** – the Government will increase the amount of the Commonwealth penalty unit from \$222 to \$275 from 1 January 2023.
- **Tax Practitioners Board funding** – the TPB will get increased funding to investigate high-risk tax practitioners and unregistered preparers.

### Superannuation

The superannuation measures include:

- **SMSF residency changes** - the proposal to extend the CM&C test safe harbour from 2 to 5 years, and remove the active member test, will now start from the income year commencing on or after assent to the enabling legislation (previously 1 July 2022).
- **SMSF audits every 3 years** - the Government will not proceed with the former government's proposal to allow a 3-yearly audit cycle for SMSFs with a good compliance history.
- **retirement income products** - the Government will not proceed with the proposal to report standardised metrics in product disclosure statements.

### Other measures

- **Affordable housing measures** – the Government will establish a Regional First Home Buyers Guarantee Scheme and a Housing Australia Future Fund.
- **Housing Accord** - struck between State and Territory governments and investors, including super funds, targeting 1 million new homes over 5 years from 2024. The Government will commit \$350m over 5 years to deliver 10,000 affordable dwellings.
- **Paid Parental Leave (PPL) scheme** - to be expanded from 1 July 2023 so that either parent can claim the payment. From 1 July 2024, the scheme will be expanded by 2 additional weeks a year until it reaches a full 26 weeks from 1 July 2026.
- **Child care subsidy** - maximum CCS rate to be increased from 85% to 90% for families for the first child in care and increase the CCS rate for all families earning less than \$530,000 in household income.

### Where to get Budget documents

The 2022-23 October Budget Papers are available from the following website:

- Budget October 2022-23 - <https://budget.gov.au/>

More information on the tax and related announcements is also contained in a number of Budget press releases on the [Treasurer's website](#).

### Parliamentary sittings

Both Houses of Parliament will sit during the Budget week 25-27 October. The House of Reps (only) will sit 7-10 November, while both Houses will sit for the 2-week period 21 November to 1 December 2022.

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### [\[847\]](#) **Budget highlights: Reuters News**

*- by John Mair, Sam Holmes and Wayne Cole*

Key highlights from the 2022-23 Federal Budget delivered on 25 October 2022 are set out below.

#### Revenue and expenditure

- Total 2022-23 revenues are estimated at \$607.2 billion (24.5% of GDP), compared with pre-election update forecasts of \$548.5 billion (23.8% of GDP).
- Expenses are seen at \$644.1 billion (25.9% of GDP), compared with April forecasts of \$626.5 billion (27.2% of GDP).

#### Debt

- Gross debt for 2022-23 is estimated at \$927 billion (37.3% of GDP). Net debt is \$572.2 billion (23% of GDP).
- Gross debt for 2025-26 is estimated at \$1,159 billion (43.1% of GDP). Net debt is \$766.8 billion (28.5% of GDP).

Interest payments are the fastest growing payment in the Budget, increasing on average by 14.4% per year over the next decade.

#### Commodity prices

- Key commodity prices are assumed to decline from current elevated levels by the end of the March quarter 2023.

#### Savings measures

- \$22.0 billion in spending reductions or reprioritisations.
- \$3.7 billion from extending the Tax Avoidance Taskforce, Shadow Economy, and Personal Income Taxation Compliance programs to improve the integrity of the tax system.
- \$952.8 million through action to enforce tax payment by multinationals.

#### Families

- \$4.6 billion to increase Child Care Subsidy rates to make early childhood education and care more affordable for

eligible families.

- \$531.6 million to expand the Paid Parental Leave Scheme, part of changes to increase the number of weeks available to families to 26 weeks in 2026.
- \$1.7 billion to support implementation of the new National Plan to End Violence Against Women and Children.

### **Housing**

- \$350 million over 5 years towards Housing Accord setting aspirational goal of 1 million new homes.
- Establishing \$10 billion Housing Australia Future Fund to provide new social housing and affordable housing.

### **Defence/aid**

- Defence funding will increase by 8% in 2022-23 and rise to more than 2% of GDP over the forward estimates.
- \$1.4 billion in additional Official Development Assistance over 4 years, including \$900 million to increase support to the Pacific region and \$470.0 million to increase support to Southeast Asia.

### **Education**

- 480,000 fee-free TAFE and community-based vocational education places.

### **Health**

- \$235 million to commence the rollout of Urgent Care Clinics.
- Maximum co-payment under the Pharmaceutical Benefits Scheme (PBS) will decrease from \$42.50 to \$30 per script from 1 January.
- \$1.4 billion for new and amended listings, including treatments for various types of cancer and growth hormone deficiency in children.

### **First Nations Peoples**

- \$75.1 million to prepare for referendum to enshrine a First Nations Voice to Parliament in the Constitution.
- \$314.8 million to support First Nations peoples' health and well-being outcomes.
- \$100 million for housing and essential infrastructure in Northern Territory homelands and \$99 million to support improved justice outcomes.

### **Infrastructure**

- \$8.1 billion to deliver on key infrastructure projects including the Suburban Rail Loop East in Melbourne, the Bruce Highway and other important freight highways such as the Tanami Road and Dukes Highway.
- \$2.4 billion to extend full-fibre access to 1.5 million additional premises, including to over 660,000 in regional Australia.
- \$250 million will be provided to expand the Local Roads and Community Infrastructure Program.

- \$150 million to upgrade regional airports and their precincts.
- \$1.9 billion Powering the Regions Fund to support transition of regional industries to net zero.
- \$1.2 billion to advance regional telecommunications.

#### Climate/Environment

- \$345 million to exempt eligible electric cars from fringe benefits tax and the 5% import tariff.
- \$204 million to lift total government investment in the Great Barrier Reef to \$1.2 billion by 2030.
- \$1.1 billion for the next phase of Natural Heritage Trust funding.
- \$224.5 million to establish the Saving Native Species Program.
- \$117.1 million to restore funding for environmental assessments.

#### Biosecurity

- \$75.6 million to bolster biosecurity system against escalating animal disease risks and \$11.7 million to increase detector dog capability.

#### Disaster support

- Provision of \$3 billion in the contingency reserve to meet disaster recovery costs from this year's floods.
- Invest up to \$200 million per year on disaster prevention and resilience through the Disaster Ready Fund.
- \$22.6 million to address insurance affordability and availability issues driven by natural disaster risk.

#### Federal Integrity Commissioner

- \$262.6 million to establish and support the Commission, which will focus on detecting and investigating serious or systemic federal corruption.

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## PERSONAL TAXATION

### [\[848\]](#) Personal tax rates unchanged for 2022-23; Stage 3 start from 2024-25 unchanged

In the Budget, the Government did not announce any personal tax rates changes. The Stage 3 tax changes commence from 1 July 2024, as previously legislated.

#### Resident rates and thresholds for 2022-23

The 2022-23 tax rates and income thresholds for residents (unchanged from 2021-22) are:

Tax rates and income thresholds for 2022-23	
Taxable income (\$)	Tax payable (\$)

0 - 18,200	Nil
18,201 - 45,000	Nil + 19% of excess over 18,200
45,001 - 120,000	5,092 + 32.5% of excess over 45,000
120,001 - 180,000	29,467 + 37% of excess over 120,000
180,001+	51,667 + 45% of excess over 180,000

### Stage 3: rates and thresholds from 2024-25 onwards

The Budget did not announce any changes to the Stage 3 personal income tax cuts that are set to commence from 1 July 2024.

Under the Stage 3 tax changes from 1 July 2024, as previously legislated, the 32.5% marginal tax rate will be cut to 30% for one big tax bracket between \$45,000 and \$200,000. This will more closely align the middle tax bracket of the personal income tax system with corporate tax rates. The 37% tax bracket will be entirely abolished at this time.

Therefore, from 1 July 2024, there will only be 3 personal income tax rates - 19%, 30% and 45%. From 1 July 2024, taxpayers earning between \$45,000 and \$200,000 will face a marginal tax rate of 30%. With these changes, around 94% of Australian taxpayers are projected to face a marginal tax rate of 30% or less.

### Resident rates and thresholds - from 2024-25 onwards

The tax rates and income thresholds from the 2024-25 for residents (as already legislated) are:

Tax rates and income thresholds - from 2024-25 onwards	
Taxable income (\$)	Tax payable (\$)
0 - 18,200	Nil
18,201 - 45,000	Nil + 19% of excess over 18,200
45,001 - 200,000	5,092 + 30% of excess over 45,000
200,001+	51,592 + 45% of excess over 200,000

### Rates and thresholds - summary

Rate	2022-23 to 2023-24	From 1.7.2024 (unchanged)
Nil	\$0 - \$18,200	\$0 - \$18,200
19%	\$18,201 - \$45,000	\$18,201 - \$45,000
30%	N/A	\$45,001 - \$200,000
32.5%	\$45,001 - \$120,000	N/A
37%	\$120,001 - \$180,000	N/A
45%	\$180,001 +	\$200,001 +
Low and middle income tax offset (LMITO)	N/A	N/A
Low income tax offset (LITO)	Up to \$700	Up to \$700

### Foreign residents

For 2022-23, the tax rates for foreign residents (unchanged) are:

- \$0 - \$120,000 - 32.5%;
- \$120,001 - \$180,000 - 37%;



- \$180,001+ - 45%.

For 2024-25 and later income years, the tax rates for foreign residents are:

- \$0 - 200,000 – 30%;
- \$200,001+ - 45%.

### **Working holidaymakers**

For 2022-23, the rates of tax for working holiday makers (unchanged) are:

- \$0 - \$45,000 – 15%;
- \$45,001 - \$120,000 - 32.5%;
- \$120,001 - \$180,000 - 37%;
- \$180,001+ - 45%.

For 2024-25 and later income years, the rates of tax for working holiday makers are:

- \$0 - \$45,000 - 15%;
- \$45,001 - \$200,000 - 30%;
- \$200,001+ - 45%.

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### **[849] Low income tax offsets - LMITO not extended to 2022-23**

The 2022-23 October Budget did not announce any extension of the low and middle income tax offset (LMITO) to the 2022-23 income year. The LMITO has now ceased and been fully replaced by the low income tax offset (LITO).

The March 2022-23 Budget had increased the LMITO by \$420 for the 2021-22 income year so that eligible individuals (with taxable incomes below \$126,000) received a maximum LMITO up to \$1,500 for 2021-22 (instead of \$1,080).

With no extension of the LMITO announced in the October Budget, 2021-22 was the last income year for which the offset was available. As a result, low-to-middle income earners may see their tax refunds from July 2023 reduced by between \$675 and \$1,500 (for incomes up to \$90,000 but phasing out up to \$126,000), all other things being equal.

### **Low income tax offset for 2022-23 (unchanged)**

For completeness, and as a reminder, low and middle income taxpayers are entitled to one or 2 offsets: LMITO (until the 2021-22 income year) and the low income tax offset (LITO). No changes were made to the LITO in the 2022-23 October Budget. The LITO will continue to apply for the 2022-23 income years and beyond. The LITO was intended to replace the former low income and low and middle income tax offsets from 2022-23, but the new LITO was brought forward in the 2020 Budget to apply from the 2020-21 income year.

**Low income tax offset for 2022-23 (unchanged)**

Taxable income (TI)	Amount of offset
\$0 - \$37,500	\$700
\$37,501 - \$45,000	$\$700 - ([TI - \$37,500] \times 5\%)$
\$45,001 - \$66,667	$\$325 - ([TI - \$45,000] \times 1.5\%)$
\$66,668 +	Nil

The maximum amount of the LITO is \$700. The LITO is withdrawn at a rate of 5 cents per dollar between taxable incomes of \$37,500 and \$45,000 and then at a rate of 1.5 cents per dollar between taxable incomes of \$45,000 and \$66,667.

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### **[850] Deductible gift recipients: two new entities added**

The Budget Papers state the following entities will be listed as deductible gift recipients (DGRs) for donations:

- Australians for Indigenous Constitutional Recognition for donations made from 1 July 2022 to 30 June 2025;
- Australian Women Donors Network for gifts made from 9 March 2023 to 8 March 2028.

Taxpayers may claim an income tax deduction for donations of \$2 or more to DGRs.

Source: *Budget Paper No 2 [p 17]*

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## **BUSINESS TAXATION**

### **[851] Thin cap: new earnings-based tests for limiting debt deductions**

Under the current thin capitalisation rules, a non-financial entity's allowable debt (interest) deductions in relation to its cross-border investments are limited by the application of a number of statutory tests under which its maximum allowable debt is the greatest of:

- the safe harbour debt amount (60% of the average value of the entity's Australian assets);
- the arm's length debt amount; or
- the worldwide gearing debt amount which allows the entity to gear its Australian operations up to 100% of the actual gearing of its worldwide group.

The Government will replace the safe harbour and worldwide gearing tests with earnings-based tests to limit debt deductions in line with an entity's profits. More specifically, the thin cap rules will be amended to:

- replace the safe harbour test with a new earnings-based test which under which an entity's debt-related deductions will be limited to 30% of profits (using EBITDA as the measure of profit);
- allow deductions denied under the EBITDA test to be carried forward and claimed in a subsequent income year (up to 15 years);

- replace the worldwide gearing test and allow an entity in a group to claim debt deductions up to the level of the worldwide group's net interest expense as a share of earnings (which may exceed the 30% EBITDA ratio).

The arm's length debt test will be retained as a substitute test which will apply only to an entity's external (third party) debt, disallowing deductions for related party debt under this test.

A Treasury Consultation Paper released on 5 August 2022 suggests that the arm's length test may need to be strengthened to prevent entities from opting into arrangements that potentially take advantage of greater debt deductions than would be available under the earnings-based test.

The changes will apply to multinational entities operating in Australia and any inward or outward investor. Financial entities and ADIs will continue to be subject to the existing thin capitalisation rules.

#### **Date of effect**

The new tests will apply to income years commencing on or after 1 July 2023.

*Source: Budget Paper No 2 [p 15]*

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#### **[852] Intangible assets depreciation: option to self-assess effective life dropped**

The Government will not proceed with the proposal to allow taxpayers to self-assess the effective life of intangible depreciating assets.

The measure was announced in the 2021-22 Budget and was to apply to assets acquired from 1 July 2023: see 2021 WTB 19 [407]. This means that effective lives of intangible depreciating assets will continue to be set by statute, ie reversing this decision will maintain the status quo.

The change is estimated to increase receipts by \$550 million over the 4 years from 2022-23.

*Source: Budget Paper No 2 [p 10]*

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#### **[853] Anti-avoidance: denial of SGE deductions for payments for intangibles**

The Government will introduce an anti-avoidance rule to prevent significant global entities (entities with global revenue of at least \$1 billion) from claiming tax deductions for payments made directly or indirectly to related parties in relation to intangibles held in low- or no-tax jurisdictions. For the purposes of this measure, a low- or no-tax jurisdiction is a jurisdiction with:

- a tax rate of less than 15%; or
- a tax preferential patent box regime without sufficient economic substance.

#### **Date of effect**

The measure will apply to payments made on or after 1 July 2023.

Source: *Budget Paper No 2* [p 16]

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### **[854] Off-market share buy-backs: proposed integrity rules**

The Government intends to align the tax treatment of off-market share buy-backs undertaken by listed public companies with the treatment of on-market share buy-backs.

There is no detail in the Budget Papers nor in any associated media releases on the night as to what precisely is intended.

#### **Current law**

By way of background, the share buyback provisions are found in Div 16K of Pt III of the ITAA 1936. A distinction is drawn between buybacks made in the ordinary course of trading on an official stock exchange ("on-market purchases") and all other buybacks ("off-market purchases").

For CGT purposes the buyback is to be ignored when determining whether a capital gain or loss accrues to or is incurred by a company in respect of the buyback (or on the subsequent cancellation of the shares).

From the shareholder's point of view, an off-market purchase needs to be distinguished from an on-market purchase. Where the buyback is an on-market purchase, the whole of the purchase price is taken into account as the capital proceeds for the disposal.

For off-market share buybacks, the full buyback price is treated as capital proceeds for CGT purposes if debited against amounts standing to the credit of the purchaser's "share capital account". Otherwise, any relief from double taxation is provided by reducing the amount of the capital gain that is a dividend.

If the amount of the purchase price exceeds the part of the purchase price that is debited to the share capital account, then the excess is taken to be a dividend paid to the seller as a shareholder out of profits of the company. This causes it to be assessable under s 44. The remainder of the purchase price (ie the amount debited to the share capital account) is not taken to be a dividend.

#### **Date of effect**

This measure will take effect from Budget night, ie 7:30pm AEDT, 25 October 2022. It is expected to increase receipts by \$550 million over the 4 years from 2022-23.

Source: *Budget Paper No 2* [p 13]

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### **[855] Previously announced measures: 8 abandoned, 3 deferred**

The Government has reviewed a number of tax and superannuation related measures that had been announced by the previous Government, but not enacted. It states in the Budget papers that it will abandon 8 of these, while 3 will have deferred start dates.

While most of the measures relate to the heading of "Business Taxation", note that the proposals listed below include superannuation and personal tax measures.

### **Finance-related proposals**

The following finance-related proposed changes have been **abandoned**.

- The 2013-14 MYEFO measure that proposed to amend the debt/equity tax rules.
- The 2016-17 Budget measure that proposed changes to the taxation of financial arrangements (TOFA) rules: see 2016 WTB 18 [563]. (A delayed start date was announced in 2018-19 Budget.)
- The 2016-17 Budget measure that proposed changes to the taxation of asset-backed financing arrangements: see 2016 WTB 18 [560].
- The 2016-17 Budget measure that proposed introducing a new tax and regulatory framework for limited partnership collective investment vehicles: see 2016 WTB 18 [562].

### ***TOFA technical amendments: start date deferred***

The 2021-22 Budget measure that proposed making technical amendments to the TOFA rules has deferred from 1 July 2022 to the income year commencing on or after the date of assent of the enabling legislation: see 2021 WTB 19 [410].

### **Superannuation and retirement**

The following proposed superannuation and retirement related measures have been **abandoned**.

- The 2018-19 Budget measure that proposed changing the annual audit requirement for certain SMSFs: see 2018 WTB 19 [571].
- The 2018-19 Budget measure that proposed introducing a requirement for retirement income product providers to report standardised metrics in product disclosure statements: see 2018 WTB 19 [577].

### ***Residency requirements for certain SMSFs: start date deferred***

The 2021-22 Budget measure that proposed relaxing residency requirements for SMSFs will be deferred from 1 July 2022 to the income year commencing on or after the date of assent of the enabling legislation: see 2021 WTB 19 [422].

More information and background on these superannuation proposals can be found under the "Superannuation" heading in this *Bulletin*.

### **Tax compliance: third-party reporting rules for EDPs, cash payments**

The Government intends to **defer** the start date for the following proposed third-party reporting rules:

- transactions relating to the supply of ride sourcing and short-term accommodation – from 1 July 2022 to 1 July 2023; and
- all other reportable transactions (including but not limited to asset sharing, food delivery and tasking-based services)

– from 1 July 2023 to 1 July 2024.

The measures implementing these changes are contained in the *Treasury Laws Amendment (2022 Measures No 2) Bill 2022*. It proposes to extend the third-party reporting regime to the operators of electronic distribution platforms that facilitate supplies from one entity to another entity. It will cover platforms operating over the internet, including through applications, websites or other software. However, a service will not be considered to be an electronic distribution platform if it only advertises or creates awareness of possible supplies, operates as a payment platform or serves a communications function.

Transactions will need to be reported to the ATO if they involve the provision of consideration by a buyer to a seller for a supply made through the platform by the seller. Transactions that only involve the sale of goods or real property (the transfer of legal title to the goods or real property) or financial supplies will not be captured. The supply must also be connected to the indirect tax zone (ie Australia).

### **Cash payments proposal abandoned**

In addition, the 2018-19 Budget measure that proposed introducing a limit of \$10,000 for cash payments made to businesses for goods and services (and for which a delayed start date was announced in 2018-19 MYEFO) has been **abandoned**: see 2018 WTB 19 [559].

### **Deductible gifts: pastoral care in schools**

The 2021-22 MYEFO measure that proposed establishing a deductible gift recipient category for providers of pastoral care and analogous well-being services in schools has been **abandoned**.

Source: *Budget Paper No 2* [p 18]

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## **[856] Tax transparency: new reporting requirements**

The Government will introduce reporting requirements to enhance the tax information made available to the public. The Government will require:

- significant global entities to prepare for public release tax information on a country by country (CbC) basis and a statement on their approach to taxation, for disclosure by the ATO;
- Australian public companies (listed and unlisted) to disclose information on the number of subsidiaries and their country of tax domicile; and
- tenderers for Australian Government contracts worth more than \$200,000 to disclose their country of tax domicile (by supplying their ultimate head entity's country of tax residence).

### **Date of effect**

These new reporting requirements will apply for income years commencing from 1 July 2023.

Source: *Budget Paper No 2* [p 17]

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## **[857] Increased funding for ATO compliance programs**

As appears to be standard practice in modern Budgets, the Government will increase funding for the ATO in the following areas. The moral for taxpayers and their advisors is that the ATO will be getting better and better at detecting variances which will require explanation (see further the projected revenues related to this in the Reuters News summary in this *Bulletin*).

### **Personal Income Taxation Compliance Program**

The Government will provide \$80.3 million to the ATO to extend the Personal Income Taxation Compliance Program for 2 years from 1 July 2023. This will focus on key areas of non-compliance, including overclaiming of deductions and incorrect reporting of income (which was the subject of a recent key address by the Second Commissioner). The funding will enable the ATO to modernise its guidance products, engage earlier with taxpayers and tax agents and target its compliance activity.

This measure is estimated to increase receipts by \$674.4 million and increase payments by \$80.3 million over the 4 years from 2022-23.

### **Shadow Economy Program**

The Government will extend the existing ATO Shadow Economy Program for a further 3 years from 1 July 2023 (read "cash payments").

This measure is estimated to increase receipts by \$2.1 billion over the 4 years from 2022-23. This includes an increase in GST payments to the States and Territories of \$442.3 million. The Papers indicate an amount of funding of some \$685 million over the 3 years, in which case receipts of some \$2.1 billion seem a good return.

### **Tax Avoidance Taskforce**

The Government has boosted funding for the ATO Tax Avoidance Taskforce by around \$200 million per year over 4 years from 1 July 2022, in addition to extending this Taskforce for a further year from 1 July 2025.

The boosting and extension of the Tax Avoidance Taskforce will support the ATO to pursue new priority areas of observed business tax risks, complementing the ongoing focus on multinational enterprises and large public and private businesses.

This measure is estimated to increase receipts by \$2.8 billion and increase payments by \$1.1 billion over the 4 years from 2022-23.

### **Modernising Business Registers**

In a slightly different category to the above, the Government will provide additional funding of \$166.2 million over 4 years from 2022-23 to continue delivery of the Modernising Business Registers program that will consolidate over 30 business registers onto a modernised registry platform.

Funding includes:

- \$80.0 million in 2022-23 for the ATO and ASIC to continue design and delivery of the modernised registry platform;
- \$86.2 million over 4 years from 2022-23 (\$119.5 million over 6 years from 2022-23 and \$15.9 million per year ongoing) for ATO and ASIC to operate and regulate the Director Identification Numbers regime, and maintain ASIC's

registry systems.

Source: *Budget Paper No 2* [p 11 - 16; 190]

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### **[858] Tax Practitioners Board: increased funding for investigations**

The Government will provide \$30.4 million to the Tax Practitioners Board (TPB) to increase compliance investigations into high-risk tax practitioners and unregistered preparers over 4 years from 1 July 2023.

The TPB will use new risk engines to better identify tax practitioners "who engage in poor and unlawful tax advice", to improve tax compliance and raise industry standards.

This measure is estimated to increase receipts by \$81.9 million over the 4 years from 2022-23.

Source: *Budget Paper No 2* [p 20]

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### **[859] Penalty unit to increase 1 January 2023**

The Government will increase the amount of the Commonwealth penalty unit from \$222 to \$275, from 1 January 2023. The increase will apply to offences committed after the relevant legislative amendment comes into force.

Interestingly, the amount will continue to be indexed every 3 years in line with the CPI as per the pre-existing schedule, with the next indexation occurring on 1 July 2023. Presumably the next CPI increase will be based on the mandated amount (which arguably means it is not strictly a CPI-related increase).

This means that there could be 2 increases to the value of a penalty unit in 2023.

Source: *Budget Paper No 2* [p 6]

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### **[860] COVID grants declared as NANE**

The Government has made the following State and Territory COVID-19 grant programs eligible for non-assessable, non-exempt (NANE) treatment, which will exempt eligible businesses from paying tax on these grants.

- Business Costs Assistance Program Four – Construction (Victoria);
- Licenced Hospitality Venue Fund 2021 – July Extension (Victoria);
- License, Hospitality Venue Fund 2021 – Top Up Payments (Victoria);
- Business Costs Assistance Program Round Two – Top Up (Victoria);
- Business Costs Assistance Program Round Three (Victoria);
- Business Costs Assistance Program Round Four (Victoria);
- Business Costs Assistance Program Round Five (Victoria);



- Impacted Public Events Support Program Round Two (Victoria);
- Live Performance Support Program (Presenters) Round Two (Victoria);
- Live Performance Support Program (Suppliers) Round Two (Victoria);
- Commercial Landlord Hardship Fund 3 (Victoria);
- HOMEFRONT 3 (ACT); and
- Small Business Hardship Scheme (ACT).

Source: Budget Paper No 2 [p 14]

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### **[861] Digital currencies not foreign currency**

The Budget Papers confirm that the Government is to introduce legislation to clarify that digital currencies (such as Bitcoin) continue to be excluded from the Australian income tax treatment of foreign currency. The measure has already been released in draft legislation.

By way of background and as a reminder, this will maintain the current tax treatment of digital currencies, including the CGT treatment where they are held as an investment. This measure removes uncertainty following the decision of the Government of El Salvador to adopt Bitcoin as legal tender and will be backdated to income years that include 1 July 2021.

The exclusion does not apply to digital currencies issued by, or under the authority of, a government agency, which continue to be taxed as foreign currency.

Sadly for the Government, this measure is estimated to have no impact on receipts over the 4 years from 2022-23.

Source: Budget Paper No 2 [p 11]

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## **SUPERANNUATION**

### **[862] Unlegislated super measures: SMSF residency changes deferred; 3-year cycle for SMSF audits abandoned; other**

#### **SMSF residency changes delayed**

The Government confirmed that the changes to the SMSF residency rules, previously announced in the 2021-22 Budget to commence from 1 July 2022, will now start from the income year commencing on or after the date of assent of the enabling legislation (yet to be introduced).

These measures propose to relax the SMSF residency rules by extending the central management and control test safe harbour from 2 to 5 years (ss 295-95(2)(b) and 295-95(4) of the ITAA 1997), and removing the active member test for both SMSFs and small APRA funds (ss 295-95(2)(c) and 295-95(3)). Until this 2021-22 Budget measure is enacted, SMSF trustees need to ensure that they satisfy the current requirements. Even if the CM&C safe harbour is extended to 5 years from the date of assent, an SMSF trustee still needs to establish (before they leave) that their planned absence from Australia will be

"temporary".

### **3-year cycle for SMSF audits will not proceed**

The Government **will not proceed with** the former government's proposal to change the annual audit requirement for certain self-managed superannuation funds (SMSFs) to allow a 3-yearly cycle for funds with a history of good record-keeping and compliance.

The measure, previously announced in the 2018-19 Budget, was proposed to apply to SMSF trustees that have a history of 3 consecutive years of clear audit reports and that have lodged the fund's annual returns in a timely manner.

While the Government did not provide any reasons in the Budget papers for abandoning this proposal, the SMSF audit industry has previously flagged concerns that moving to a 3-yearly audit cycle could result in increased non-compliance. The SMSF audit industry had also expressed concern that altering its workflow (and reducing profitability) could potentially lead to a reduction in the number of businesses specialising in SMSF audits and lower quality audits.

### **Standardised disclosure for retirement income products**

The Government also announced that it will not proceed with the proposal to report standardised metrics in product disclosure statements (PDS) for retirement income products.

The former Government had proposed to mandate a simplified disclosure document to support the development of the comprehensive income product for retirement (CIPR) framework : see Treasury, *Retirement income disclosure consultation paper*, December 2018. The paper proposed a simplified disclosure document with a range of standardised metrics to assist retirees to assess how a retirement income product aligns with their own preferences in relation to potential income, variations in income, access to capital, death benefits and risk management. The proposed metrics would be presented as fact sheets to supplement existing disclosure documents.

*Source: Budget Paper No 2 [p 19]*

### **Other outstanding super measures**

While not mentioned in the Budget papers, it is worth noting that the Labor Government is yet to provide an update on the status of a number of other superannuation measures announced by the former Government, including:

- **Legacy income streams** - individuals will be permitted to exit certain legacy retirement income stream products (excluding flexi-pensions or lifetime products in APRA-funds or public sector schemes), together with any associated reserves, for a 2-year period. Any commuted reserves will not be counted towards an individual's concessional contribution cap. Instead, they will be taxed as an assessable contribution for the fund. Previously announced in the 2021-22 Budget.
- **Non-arm's length expenses (NALE)** - law to be amended to ensure the non-arm's length income (NALI) and NALE provisions in s 295-550 of the ITAA 1997 operate as intended for superannuation funds. This followed industry concerns regarding the ATO's interpretation of the NALE provisions in Law Companion Ruling LCR 2021/2. Note that the ATO has updated Practical Compliance Guideline PCG 2020/5 to extend to the 2022-23 income year its transitional compliance approach for NALE of a general nature.
- **SMSF accounts and statements** - a draft regulation proposed to require SMSFs to prepare their accounts and

statements at least 45 days before the due date to lodge the fund's return for that year of income.

- **Comprehensive income product for retirement (CIPR)** - to be known as MyRetirement products - will facilitate superannuation trustees pre-selecting these products for members.
- **Victims of crime access to superannuation** - law to be amended to enable victims of serious crimes to access the superannuation assets of their perpetrators to pay restitution or meet unpaid victims of crime compensation orders. To this end, the former Government released a consultation paper containing draft proposals to enable victims of crime to access to a perpetrator's superannuation in certain circumstances. Note that the former Government announced in the 2021-22 Budget that it would not proceed with its proposal to extend the early release of superannuation to victims of family and domestic violence.

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### **[863] Super downsizer contributions eligibility age reduction to 55 confirmed**

The Government confirmed its election commitment that the minimum eligibility age for making superannuation downsizer contributions will be lowered to age 55 (from age 60). This measure will have effect from the start of the first quarter after assent to the enabling legislation - the *Treasury Laws Amendment (2022 Measures No 2) Bill 2022* (introduced in the House of Reps on 3 August 2022).

The proposed reduction in the eligibility age will allow individuals aged 55 or over to make an additional non-concessional contribution of up to \$300,000 from the proceeds of selling their main residence outside of the existing contribution caps. Either the individual or their spouse must have owned the home for 10 years.

As under the current rules, the maximum downsizer contribution is \$300,000 per contributor (ie \$600,000 for a couple), although the entire contribution must come from the capital proceeds of the sale price. A downsizer contribution must also be made within 90 days after the home changes ownership (generally the date of settlement).

#### **Assets test exemption for 2 years; deeming rates frozen**

The Government also confirmed its election commitments that seek to assist pensioners looking to downsize their homes, by:

- extending the social security assets test exemption for principal home sale proceeds from 12 months to 24 months;
- changing the income test to apply only the lower deeming rate (0.25%) to principal home sale proceeds when calculating deemed income for 24 months after the sale of the principal home.

These measures are contained in the *Social Services and Other Legislation Amendment (Incentivising Pensioners to Downsize) Bill 2022* (introduced in the House of Reps on 7 September 2022). The Bill will commence on 1 January 2023 (or 1 month after the day the Bill receives the assent).

Source: *Budget Paper No 2 [pp 20, 180, 181]*

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### **[864] Military super benefits: funding for impact of Douglas case**

The Government will provide \$31.4m over 4 years from 2022-23 (and \$1.1m per year ongoing) to remediate child support debts raised as a result of the decision in *FCT v Douglas* [2020] FCAFC 220. In that case, a lump sum payment in arrears of certain military invalidity benefits was held to be a super lump sum and subject to concessional tax.

Note that the Government has released exposure draft legislation proposing to introduce a non-refundable tax offset to prevent any adverse income tax outcomes for certain veterans adversely impacted by the decision in *FCT v Douglas*.

Source: *Budget Paper No 2* [p 178]

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## OTHER MEASURES

### **[865] Regional First Home Buyers Guarantee Scheme; Housing Australia Future Fund; other housing measures**

The Government has announced that it will establish the "Regional First Home Buyers Guarantee". Its aim will be to encourage home ownership in regional locations.

It will apply to eligible citizens and permanent residents who have lived in a regional location for more than 12 months to purchase their first home in that location with a minimum 5% deposit. It aims to reach 10,000 places per year to 30 June 2026. It will fund this by redirecting funding from the Regional Home Guarantee component of the 2022-23 March Budget measure titled Affordable Housing and Home Ownership.

In other measures, the Government will invest \$10 billion in the newly created "Housing Australia Future Fund", to be managed by the Future Fund Management Agency. Its aim will be to generate returns to fund the delivery of 30,000 social and affordable homes over 5 years and allocate \$330 million for acute housing needs.

The Government will also "broaden the remit" of the National Housing Infrastructure Facility to directly support new social and affordable housing in addition to financing critical housing infrastructure.

Source: *Budget Paper No 2* [p 191]

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### **[866] New Housing Accord endorsed by super funds: \$350m in Government funding**

The Government announced that it has struck a new national Housing Accord between State and Territory governments, investors and other key stakeholders. The new Housing Accord sets an initial, aspirational target of 1 million new homes over 5 years from 2024.

Under the Accord, the Government will commit \$350 million over 5 years to deliver 10,000 affordable dwellings at an energy efficiency rating of 7 stars or greater (or a State or Territory's minimum standard). This commitment is in addition to the 30,000 new social and affordable dwellings delivered through the Housing Australia Future Fund. The States and Territories will also build on this commitment by providing in-kind or financial contributions that enable delivery of up to an additional 20,000 homes in total.

By delivering an ongoing funding stream to help cover the gap between market rents and subsidised rents, the Government

believes it will make more projects commercially viable to attract much-needed investor capital to the sector.

The Government said it has secured endorsement from institutional investors, including superannuation funds, for the Accord. Investors will work constructively with Accord parties to optimise policy settings that facilitate institutional investment in affordable housing.

Source: *Budget Paper No 2 [p 189]; Budget October 2022-23 Factsheet, "Improving housing supply and affordability"*

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### **[867] Paid parental leave to be expanded**

The Government will expand the Paid Parental Leave (PPL) scheme from 1 July 2023 so that either parent is able to claim the payment and both birth parents and non-birth parents are allowed to receive the payment if they meet the eligibility criteria. Parents will also be able to claim weeks of the payment concurrently so they can take leave at the same time.

From 1 July 2024, the Government will start expanding the scheme by 2 additional weeks a year until it reaches a full 26 weeks from 1 July 2026. Both parents will be able to share the leave entitlement, with a proportion maintained on a "use it or lose it" basis, to encourage and facilitate both parents to access the scheme and to share the caring responsibilities more equally. Sole parents will be able to access the full 26 weeks.

The amount of PPL available for families will increase up to a total of 26 weeks from July 2026, benefiting over 180,000 families each year. An additional 2 weeks will be added each year from July 2024 to July 2026, increasing the overall length of PPL by 6 weeks.

To further increase flexibility, from July 2023 parents will be able to take Government-paid leave in blocks as small as a day at a time, with periods of work in between, so parents can use their weeks in a way that works best for them.

Further changes to legislation will also support more parents to access the PPL scheme. Eligibility will be expanded through the introduction of a \$350,000 family income test, which families can be assessed under if they do not meet the individual income test. Single parents will be able to access the full entitlement each year. This will increase support to help single parents juggle care and work.

Source: *Budget Paper No 2 [p 177]; Budget October 2022-23 Factsheet, "Expanding paid parental leave"*

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### **[868] Child care measures: increased CCS rate for household income up to \$530,000**

The Government will provide \$4.7bn over 4 years from 2022-23 (and \$1.7bn per year ongoing) to deliver cheaper child care and reduce barriers to workforce participation. This includes \$4.6bn over 4 years from 2022-23 to:

- increase the maximum Child Care Subsidy (CCS) rate from 85% to 90% for families for the first child in care and increase the CCS rate for all families earning less than \$530,000 in household income. From July 2023, CCS rates will lift from 85% to 90% for families earning less than \$80,000. Subsidy rates will then taper down one percentage point for each additional \$5,000 in income until it reaches 0% for families earning \$530,000. Families will continue to receive existing higher subsidy rates for their second and subsequent children aged five and under in care, up to

95%;

- maintain current higher CCS rates for families with multiple children aged 5 or under in child care, with higher CCS rates to cease 26 weeks after the older child's last session of care, or when the child turns 6 years old;
- task the ACCC to undertake a 12 month inquiry into the cost of child care and the Productivity Commission to conduct a comprehensive review of the child care sector to improve the transparency of the child care sector by requiring large providers to publicly report CCS-related revenue and profits.

The Government will also provide \$43.9m over 4 years from 2022-23 for measures to improve early childhood outcomes for First Nations children.

### Example

Gita and Matt have a combined income of \$120,000. Their 2-year-old child attends centre-based day care 3 days a week, costing \$4,700 a year in out-of-pocket child care fees. From July 2023, Gita and Matt will receive a Child Care Subsidy of 82%, an increase from the current 71%. This will save them \$1,780 in out-of-pocket child care fees in 2023-24.

Source: *Budget Paper No 2 [p 93]; Budget October 2022-23 Factsheet, "Cheaper child care"*

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### **[869] Pension supplement changes for departures overseas will not proceed**

The Government will not proceed with the Pension Supplement changes announced by the previous Government in the 2016-17 MYEFO to the payment of the Pension Supplement for permanent departures overseas and temporary absences.

Source: *Budget Paper No 2 [p 80]*

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