



HALL CHADWICK 

PERSPECTIVE

FEDERAL BUDGET

2022-23

# Contents

BUDGET HIGHLIGHTS .....	3
BUSINESS .....	6
FBT and Tariff Exemptions for Electrical Vehicles .....	6
More Business Grants to be given non-assessable non-exempt income status .....	7
Energy Efficiency grants for SME's .....	7
Tax Treatment for off-market share buy-back of Listed Public Companies.....	7
Intangible asset depreciation measure - not proceeding .....	7
Fuel Tax Credits - Heavy vehicle road user charge increased.....	7
Limit on cash payments to businesses - not proceeding .....	7
INDIVIDUALS .....	8
Incentivising pensioners into the workforce .....	8
Incentivising pensioners to downsize.....	8
Child care subsidy rate increased .....	8
Income threshold for the commonwealth seniors health card increased.....	8
Paid parental leave flexibility reforms.....	8
Higher child care subsidy rates for families with multiple children maintained.....	9
Digital currency will not be taxed as foreign currency .....	9
SUPERANNUATION .....	10
Minimum age to make downsizer superannuation contribution reduced .....	10
Proposed changes to SMSF residency requirements - deferred .....	10
Proposed changes to Audit requirements for certain SMSF's - not proceeding .....	10
MULTINATIONALS .....	11
Thin capitalisation - earnings -based tests to replace ratio tests for non-ADI's .....	11
No deduction for related party payments for intangibles in low or no-tax jurisdictions .....	12
More disclosure of tax information for significant global entities and public companies.....	12
TAX ADMINISTRATION .....	13
Summary of the changes announced.....	13

# Budget Highlights

The Federal Treasurer, Dr Jim Chalmers handed down the Labor government's first Federal Budget at 7:30 pm (AEDT) on 25 October 2022.

Despite an uncertain global economic environment, the Treasurer has lauded Australia's low unemployment and strong export prices as reason for a 3.5% growth in the current financial year, slowing to 1.5% in 2023–24. The Budget projects a deficit of \$36.9 billion, lower than the forecast earlier this year of \$78 billion.

Described as a sensible Budget for the current conditions, it contains various cost of living relief measures including cheaper child care, expanding paid parental leave and encouraging downsizing to free up housing stock. Key tax measures are targeted at multinationals, particularly changes to the thin capitalisation rules, and changes to deduction rules for intangibles.

Importantly, no amendments have been proposed to the already legislated Stage-3 individual tax rate cuts. Additional funding for a range of tax administration and compliance programs have also been announced. Finally, the fate of a suite of announced but unenacted tax measures, including a few that have been around for at least 10 years, has been confirmed.

The full Budget papers are available at [www.budget.gov.au](http://www.budget.gov.au) and the Treasury ministers' media releases are available at [www.ministers.treasury.gov.au](http://www.ministers.treasury.gov.au). The tax, superannuation and social security highlights are set out as follows.

## BUSINESSES

- » Electric vehicles under the luxury car tax threshold will be exempt from fringe benefits tax and import tariffs.
- » A number of Victorian and ACT based business grants relating to the COVID-19 pandemic will be non-assessable non-exempt income for tax purposes.
- » Grants will be provided to small and medium-sized businesses to fund energy efficient equipment upgrades.
- » The tax treatment for off-market share buy-backs undertaken by listed public companies will be aligned with the treatment of on-market share buy-backs.
- » The 2021-22 Budget measure to allow taxpayers to self-assess the effective life of intangible depreciating assets will not proceed.
- » Heavy Vehicle Road User Charge rate increased from 26.4 to 27.2 cents per litre of diesel fuel, effective from 29 September 2022.
- » The proposed measure from the 2018-19 Budget to impose a limit of \$10,000 for cash payments will not proceed.

## INDIVIDUALS

- » The amount pensioners can earn in 2022-23 will increase by \$4,000 before their pension is reduced, supporting pensioners who want to work or work more hours to do so without losing their pension.
- » To incentivise pensioners to downsize their homes, the assets test exemption for principal home sale proceeds will be extended and the income test changed.
- » The income threshold for the Commonwealth Seniors Health Card will be increased from \$61,284 to \$90,000 for singles and from \$98,054 to \$144,000 (combined) for couples.
- » The Paid Parental Leave Scheme will be amended so that either parent is able to claim the payment from 1 July 2023. The scheme will also be expanded by 2 additional weeks a year from 1 July 2024 until it reaches 26 weeks from 1 July 2026.
- » The maximum Child Care Subsidy (CCS) rate and the CCS rate for all families earning less than \$530,000 in household income will be increased.
- » The current higher Child Care Subsidy (CCS) rates for families with multiple children aged 5 or under in child care will be maintained.
- » Legislation will be introduced to clarify that digital currency (or crypto currencies) will not be treated as foreign currency for income tax purposes.





## SUPERANNUATION

- » Eligibility to make a downsizer contribution to superannuation will be expanded by reducing the minimum age from 60 to 55 years.
- » The 2021–22 Budget measure that proposed relaxing residency requirements for SMSFs and small APRA-regulated funds (SAFs) from 1 July 2022, has been deferred.
- » The 2018–19 Budget measure that proposed changing the annual audit requirement for certain self-managed superannuation funds (SMSFs) will not proceed.

## MULTINATIONALS

- » Thin capitalisation rules for non-ADIs will be amended from 1 July 2023, with tests relating to ratios replaced by earnings-based tests.
- » Significant global entities will be denied a tax deduction for payments to related parties in relation to intangibles held in low- or no-tax jurisdictions.
- » Significant global entities and public companies will have additional reporting requirements for income years commencing from 1 July 2023.

## TAX ADMINISTRATION

- » Penalty unit increase to \$275 from 1 January 2023.
- » Personal Income Taxation Compliance Program extended a further 2 years to 30 June 2025
- » Shadow economy compliance program extended to 30 June 2026.
- » The ATO tax avoidance taskforce will receive additional funding and is being extended to 30 June 2026.
- » Financial penalties for breaches of foreign investment compliance to double from 1 January 2023.
- » The proposed extension of reportable transactions relating to the sharing economy deferred by 12 months to 1 July 2024

# Business

## FBT AND TARIFF EXEMPTIONS FOR ELECTRICAL VEHICLES

Electric vehicles under the luxury car tax threshold (\$84,916 for 2022-23) will be exempt from fringe benefits tax and import tariffs. To qualify for the exemption, the electric vehicle must not have been held or used prior to 1 July 2022. Legislation introducing the FBT exemption is before the Senate.

The FBT exemption ultimately provides an opportunity for individuals to purchase an electric vehicle under a salary sacrifice novated lease arrangement. Without the FBT exemption, any benefit of this type of arrangement can be negligible. This is especially the case when an employee's business use percentage is very low or nil. A salary sacrifice arrangement effectively a saving for the user of an electric vehicle, as the payment of the vehicle will reduce their income tax. Along with the FBT savings, consumers of electric vehicle will also benefit from the removal of a 5% import tariff.

Despite the FBT exemption, an employer will still be required to report their employee's reportable car fringe benefits in the employee's reportable fringe benefits amount. This reportable amount is part of the payment summary reporting requirements and is used to calculate various tax rebates and thresholds.

Source: Budget Paper No 2, p 18.



## MORE BUSINESS GRANTS TO BE GIVEN NON-ASSESSABLE NON-EXEMPT INCOME STATUS

State-based business grants handed out during the COVID-19 pandemic are assessable income to the recipient unless the government places that grant in a special exclusion category. The government has announced the additional Victorian and ACT business grants to be non-assessable non-exempt income for tax purposes.

This announcement is in addition to several other state-based business grants that have been give non-assessable non-exempt status since the beginning of the COVID-19 pandemic.

Source: Budget Paper No 2, p 14.

## ENERGY EFFICIENCY GRANTS FOR SME'S

Grants will be provided to small and medium-sized businesses to fund energy efficient equipment upgrades.

The grants will be available to support studies, planning, equipment and facility upgrade projects that improve energy efficiency, reduce emissions or improve management of power demand.

The government will provide \$62.6 million over 3 years from 2022-23 for this measure.

Source: Budget Paper No 2, p 60; Glossy, "Building a better future", p 39.

## TAX TREATMENT FOR OFF-MARKET SHARE BUY-BACKS OF LISTED PUBLIC COMPANIES

The tax treatment for off-market share buy-backs undertaken by listed public companies will be aligned with the treatment of on-market share buy-backs.

Under the current tax treatment for an off-market buy-back, the difference between the purchase price and the part of the purchase price in respect of the buy-back which is debited against the company's share capital account is taken to be a dividend. Franking credits may be available with respect to such a dividend. In the case of an on-market buy-back, no part of the buy-back price is treated as a dividend and the total amount received by the shareholder is treated as consideration for the share sale. This measure is estimated to increase receipts by \$550 million over the 4 years from 2022-23.

The measure will apply from 7:30pm AEDT on 25 October 2022 (Budget night).

Source: Budget Paper No 2, p 13.

## INTANGIBLE ASSET DEPRECIATION MEASURE - NOT PROCEEDING

The 2021-22 Budget measure to allow taxpayers to self-assess the effective life of intangible depreciating assets will not proceed. A Bill introduced to implement the measure lapsed upon the proroguing of parliament.

The statutory effective lives for intangible depreciating assets set out in the table under s 40-95(7) of ITAA 1997 will continue to apply.

The measure was previously proposed to apply to certain intangible depreciating assets first held on or after 1 July 2023.

The measure has been discontinued to avoid potential integrity concerns and contribute to budget repair.

Source: Budget Paper No 2, p 10.

## FUEL TAX CREDITS - HEAVY VEHICLE ROAD USER CHARGE INCREASED

The Heavy Vehicle Road User Charge rate has been increased from 26.4 cents per litre to 27.2 cents per litre of diesel fuel, effective from 29 September 2022.

The previous rate of 26.4 cents per litre was announced in the 2021-22 Budget and commenced on 1 July 2021. The increased rate will reduce expenditure on the Fuel Tax Credit from the 2022-23 income year.

Source: Budget Paper No 2, p 162; Fuel Tax (Road User Charge Determination 2022 [F2022L0119\(2\)](#)).

## LIMIT ON CASH PAYMENTS TO BUSINESSES - NOT PROCEEDING

A proposed measure from the 2018-19 Budget to impose a limit of \$10,000 for cash payments made to businesses for goods and services will not proceed.

A Bill implementing the measure had been previously introduced into parliament in 2019 but was discharged from the Senate notice paper following recommendations from a Senate Economics Legislation Committee in February 2020 that the measure be reviewed.

Source: Budget Paper No 2, p 19.

# Individuals

## INCENTIVISING PENSIONERS INTO THE WORKFORCE

Age and veterans pensioners will be provided with a once off credit of \$4,000 to their Work Bonus income bank. This will increase the amount pensioners can earn in 2022-23 from \$7,800 to \$11,800, before their pension is reduced. The measure will support pensioners who want to work or work more hours to do so without losing their pension.

This measure implements an outcome from the Jobs and Skills Summit in September 2022.

Source: Budget Paper No 2, p 181.

## INCENTIVISING PENSIONERS TO DOWNSIZE

The assets test exemption for principal home sale proceeds will be extended from 12 months to 24 months for income support recipients. The income test will also be changed, 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.

This measure delivers on the Labor government's election commitments as published in the Plan for a Better Future.

Source: Budget Paper No 2, p 180.

## CHILD CARE SUBSIDY RATE INCREASED

The maximum Child Care Subsidy (CCS) rate will be increased from 85% to 90% for families for the first child in care and the CCS rate for all families earning less than \$530,000 in household income will be increased.

Source: Budget Paper No 2, p 93.

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## INCOME THRESHOLD FOR THE COMMONWEALTH SENIORS HEALTH CARD INCREASED

The income threshold for the Commonwealth Seniors Health Card will be increased from \$61,284 to \$90,000 for singles and from \$98,054 to \$144,000 (combined) for couples.

The government will also freeze social security deeming rates at their current levels for a further 2 years until 30 June 2024, to support older Australians who rely on income from deemed financial investments, as well as the pension, to deal with the rising cost of living.

This measure delivers on the Labor government's election commitments as published in the Plan for a Better Future.

Source: Budget Paper No 2, p 181.

## PAID PARENTAL LEAVE FLEXIBILITY REFORMS

The Paid Parental Leave Scheme will be amended 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 scheme will be expanded 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. Sole parents will be able to access the full 26 weeks.



The Women's Economic Equality Taskforce will assist in the finalisation of the changes to the scheme to ensure that the final model supports women's economic participation and gender equality, including the period of concurrence and the most appropriate proportion of "use it or lose it" weeks.

This measure extends the Coalition government's 2022-23 Budget measure titled Women's Economic Security Package.

Source: Budget Paper No 2, p 177.

## HIGHER CHILD CARE SUBSIDY RATES FOR FAMILIES WITH MULTIPLE CHILDREN MAINTAINED

The current higher Child Care Subsidy (CCS) rates for families with multiple children aged 5 or under in child care will be maintained, 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.

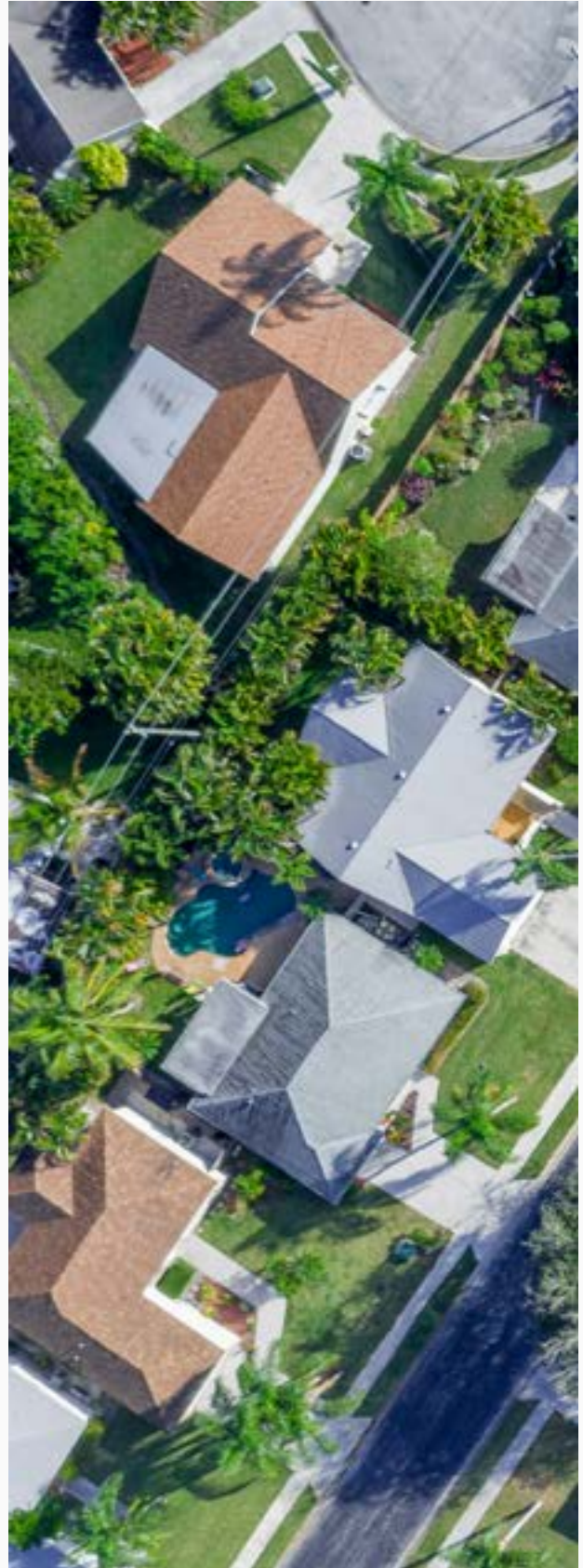
Source: Budget Paper No 2, p 93.

## DIGITAL CURRENCY WILL NOT BE TAXED AS FOREIGN CURRENCY

Legislation will be introduced to clarify that digital currency (or crypto currencies) will continue to not be treated as foreign currency for income tax purposes. The treatment does not apply to digital currencies issued by, or under the authority of, a government agency, which continue to be taxed as foreign currency.

This tax treatment for digital currency will be backdated to apply to income years that include 1 July 2021. The position was announced on 22 June 2022 following the decision of the government of El Salvador to adopt Bitcoin as legal tender, and draft legislation was released by Treasury on 6 September 2022 for consultation.

Source: Budget Paper No 2, p 11.



# Superannuation

## MINIMUM AGE TO MAKE DOWNSIZER SUPERANNUATION CONTRIBUTION REDUCED

Eligibility to make a downsizer contribution to superannuation will be expanded by reducing the minimum age from 60 to 55 years.

The downsizer contribution allows an individual 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.

Both members of a couple can contribute and the contributions do not count towards non-concessional contribution caps.

The measure will take effect from the start of the first quarter after Royal Assent of the enabling legislation.

Source: Budget Paper No 2, p 20.

## PROPOSED CHANGES TO SMSF RESIDENCY REQUIREMENTS - DEFERRED

The 2021-22 Budget measure that proposed relaxing residency requirements for SMSFs and small APRA-regulated funds (SAFs) from 1 July 2022, has been deferred.

The proposed measure relaxes the residency requirements for SMSFs by extending the central control and management test safe harbour from two to five years for SMSFs. In addition, the active member test will also be removed for both SMSFs and SAFs.

The change will allow members to continue to contribute to their superannuation fund whilst temporarily overseas, ensuring parity with members of large APRA-regulated funds.

This measure will now take effect on or after the date of Royal Assent of the enabling legislation.

Source: Budget Paper No 2, p 18.

## PROPOSED CHANGES TO AUDIT REQUIREMENTS FOR CERTAIN SMSFs - NOT PROCEEDING

The 2018-19 Budget measure that proposed changing the annual audit requirement for certain self-managed superannuation funds (SMSFs) will not proceed. The measure had proposed to change the annual SMSF audit requirement to a 3 yearly requirement for SMSFs with a history of good record-keeping and compliance.

Source: Budget Paper No 2, p 19.



# Multinationals

## THIN CAPITALISATION - EARNINGS-BASED TESTS TO REPLACE RATIO TESTS FOR NON-ADIs

Thin capitalisation rules will be amended for non authorised deposit-taking institutions (non ADIs) with the replacement of the safe harbour test (debt to asset ratio) and the worldwide gearing test (debt to equity ratio) with earnings-based tests, to limit debt deductions in line with an entity's activities (profits). ADIs will continue to apply the current thin capitalisation rules.

The safe harbour test is being replaced with an earnings-based test, which will limit the entities' interest expense to 30% of profit. Profit will be defined as EBITDA, or earnings before interest, taxes, depreciation and amortisation. If a multinational entity wishes to use this entity-level EBITDA earnings-based test (interest expense amounts exceeding the 30% EBITDA ratio), any debt deductions denied may be carried forward and claimed in a subsequent year (up to 15 years).

A second option for a multinational entity would be to claim a debt deduction up to the level of their worldwide group's net income expense as a percentage of earnings. This earnings-based group ratio will replace the worldwide gearing ratio.

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

Multinational entities operating in Australia, and any inward or outward investor, must pass thin capitalisation rules in order to claim a deduction for interest expenses above \$2 million. This measure is estimated to increase receipts by \$720 million over the 4 years from 2022-23.

This measure will apply to income years commencing on or after 1 July 2023.

Source: Budget Paper No 2, pp 15-16.



## NO DEDUCTION FOR RELATED PARTY PAYMENTS FOR INTANGIBLES IN LOW OR NO-TAX JURISDICTIONS

A significant global entity will be denied a deduction for payments to related parties in relation to intangibles held in low- or no-tax jurisdictions. This anti-avoidance rule will apply to payments made on or after 1 July 2023.

Payments or fees are commonly made by multinational entities to a head company for their use of the head company's intangibles. These payments can be made either directly or indirectly to a related entity. These payments reduce net profit from the Australian tax system, which has a corporate tax rate of 30% for large companies. The denial of a deduction reduces the effectiveness of utilising low taxing countries to hold intangible assets.

A significant global entity is defined as an entity with annual global revenue of at least \$1 billion.

For the purposes of the new anti-avoidance 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.

This measure is estimated to increase receipts by \$250 million over the 4 years from 2022-23.

This measure delivers on the Labor government's election commitment as published in the Plan for a Better Future.

Source: Budget Paper No 2, p 16..

## MORE DISCLOSURE OF TAX INFORMATION FOR SIGNIFICANT GLOBAL ENTITIES AND PUBLIC COMPANIES

Certain tax information of significant global entities will be publicly disclosed by the ATO on a country by country basis. Significant global entities are currently required to lodge additional reports with the ATO, which includes a country by country report. The public disclosure may include new types of information not currently reported on, including a statement on their approach to taxation.

Public companies will be required to disclose to the public the number of subsidiaries they have and their tax domicile. This disclosure will apply to both listed and unlisted public companies.

To further improve tax transparency, government contract tenderers will be required to disclose their ultimate head entity's country of tax residence for tenders above \$200,000.

Source: Budget Paper No 2, p 17.



# Tax Administration

## SUMMARY OF THE CHANGES ANNOUNCED:

- Penalty units are used to calculate the penalties for various tax offences including making false statements and failing to lodge documents on time will be increased to \$275 from 1 January 2023. The increased penalty unit will apply to offences committed after the increase is given legislative effect.
- Funding of \$80.3 million will be provided to extend the Personal Income Taxation Compliance Program a further 2 years to 30 June 2025. This measure is estimated to increase receipts by \$674.4 million over the 4 years from 2022-23.
- The ATO Shadow Economy Program will be extended for a further 3 years from 1 July 2023. Measures to address the shadow economy were first announced as part of the 2018-19 Budget and in response to the Black Economy Taskforce's Final Report. This measure is estimated to increase receipts by \$2.1 billion million over the 4 years from 2022-23.
- The ATO Tax Avoidance Taskforce will receive additional funding and be extended to 30 June 2026 supporting a broadening of 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 over the 4 years from 2022-23.
- Financial penalties for breaches that relate to foreign investment in residential land will double from 1 January 2023.



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