MOORE

# FEDERAL BUDGET REPORT
# 2022-2023

October 2022

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# OVERVIEW

The Treasurer, the Honourable Dr Jim Chalmers MP, handed down the 2022-23 October Budget at 7:30 pm (AEDT) on 25 October 2022.

The continuing impacts of the global economic environment led to a budget deficit of $36.9 billion or 1.5% of GDP. Regarding inflation, the Treasurer stated that inflation is expected to peak at 7.75% in the December 2022 quarter, before moderating over time, to 3.5% through 2023–24, and returning to the Reserve Bank's target range in 2024–25. The unemployment rate is forecast to rise to 4.5% by the June quarter of 2024.

The Government announced a five-point plan for cost of living relief which includes:

1. Cheaper child care;
2. Expanding Paid Parental Leave;
3. Cheaper medicines;
4. More affordable housing;
5. Getting wages moving again.

From a tax perspective, for individuals, the Government has not announced any changes to the Stage 3 tax cuts which have been legislated to commence from 1 July 2024. As part of Stage 3, the 37% tax rate will be removed, and the 32.5% tax rate will be reduced to 30%. Individuals will be taxed at a marginal tax rate of 30% for income earned between $45,000 and $200,000. No substantial changes have been announced for individuals from a tax point of view and as a reminder, the temporary low and middle income tax offset no longer applies from the 2022-23 income year onwards. The Budget does include changes for parental leave and child care subsidies for parents.

For businesses, there were a couple of measures in relation to changes impacting multinational businesses and significant global entities (those with global revenue in excess of $1 billion) which are important to note for impacted taxpayers. However, there is nothing in it for small and medium businesses.

The new Government has confirmed some unlegislated measures from prior budgets will not proceed. These include:

- measures that proposed to amend the debt/equity tax rules (from 2013-14)
- changes to the taxation of financial arrangements (TOFA) rules
- proposed changes to the taxation of asset-backed financing arrangements
- new tax and regulatory framework for limited partnership collective investment vehicles
- proposed changes to the annual audit requirement for certain self-managed superannuation funds
- the proposed introduction of a $10,000 limit for cash payments made to businesses for goods and services.

As anticipated, there are no significant announcements from a tax point of view. We still await further clarity on some of the major announcements from prior Budgets which include:

- the proposed changes to Division 7A;
- individual and corporate tax residency rules.

This Budget gives no indication of reform to the current rules, and we continue to wait on guidance on these issues which are a major concern for business.

We have provided a summary of what was contained in this year's Budget from a tax perspective.

## AUSTRALIA'S FOREIGN INVESTMENT FRAMEWORK – INCREASE TO FEES AND PENALTIES

Foreign investment fees have been doubled for all applications from 29 July 2022. In addition, the maximum financial penalties that can be applied for breaches in relation to residential land will be doubled from 1 January 2023.

## MULTINATIONAL TAX INTEGRITY PACKAGE – CHANGES TO THIN CAPITALISATION RULES

The Government will amend Australia's existing thin capitalisation rules to limit interest deductions in Australia. The current thin capitalisation rules apply to limit debt deductions where the taxpayer is a foreign entity operating in Australia, an Australian subsidiary of a foreign parent, or an Australian resident with foreign investments. The Government will remove the safe harbour and worldwide gearing tests which can be used to calculate the allowable debt deductions and replace it with earnings-based tests.

Broadly, from 1 July 2023:

- Debt related deductions will be capped at 30% of EBITDA (earnings before interest, taxes, depreciation and amortisation).
- Entities with denied debt deductions will be able to carry the denied deductions forward to future income years and be able to claim them within 15 years.
- Entities within a group will be allowed to claim debt-related 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). This new earnings-based group ratio will replace the worldwide gearing 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.

## SIGNIFICANT GLOBAL ENTITIES – DENIAL OF DEDUCTIONS RELATED TO INTANGIBLES

Significant Global Entities (SGEs) with annual global revenue in excess of $1 billion will be prevented from claiming tax deductions for payments made in relation to intangibles held in low or no tax jurisdictions. This will apply to payments made directly or indirectly to related parties where the jurisdiction has a tax rate of below 15% or a tax preferential patent box regime without sufficient economic substance. This measure will apply from 1 July 2023.

## INCREASED TAX TRANSPARENCY

The Government has already legislated measures to make public the total income, taxable income and tax payable of companies with revenue of $100 million or more. In this Budget, the Government has introduced new reporting requirements from 1 July 2023 to enhance tax information disclosed to the public. The Government will require:

- SGEs to prepare for public release certain 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.
- 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).

## DEPRECIATION - INTANGIBLE DEPRECIATING ASSETS

The previously announced changes which would have allowed taxpayers the choice to self-assess the effective life of intangible depreciating assets (such as software) from 1 July 2023 will not proceed. The Government has cited integrity concerns and the contribution towards the budget repair as the primary reasons for not continuing with the proposed measures announced by the previous Government.

**OUR THOUGHTS:**

The Commissioner has set the effective lives for intangible assets (e.g. certain software must be depreciated over four years). The option to self-assess effective life would have afforded taxpayers more flexibility to determine a shorter effective life for an intangible asset and obtain accelerated tax deductions.

## OUTGOING TAX MEASURES

The Budget has made no mention of extending the Temporary full expensing (TFE) regime. The full cost of assets installed and ready to use can be deducted up to 30 Jun 2023. After this date accelerated depreciation options will be limited to businesses with turnovers below $10 million deductions in full capped to $1,000.

Similarly, the loss carry back measure allowing businesses to offset tax losses against tax paid in prior years and receive a refund will end in the 2023 financial year.

## DIGITAL CURRENCY – TAX TREATMENT

Digital currencies such as Bitcoin will be excluded from the definition of foreign currency for the purposes of Australian tax legislation. Legislation will be introduced and will be backdated to income years that include 1 July 2021.

Broadly, like other assets such as property, there are three main ways digital currencies will continue to be taxed in Australia:

- Under the Capital Gains Tax (CGT) regime as a CGT asset i.e., if it's an investment;
- On revenue account as trading stock if the taxpayer is a trader; or
- On revenue account if a taxpayer has purchased digital currency with a profit making intention - however, we also note that the ATO take a fairly restrictive view on when losses from digital currency transactions may be claimed on revenue account.

**OUR THOUGHTS:**

Bitcoin was made legal tender in El Salvador which may have resulted in it being treated under Australian tax rules as a foreign currency, subject to complex FOREX provisions. This legislation removes that uncertainty.

## COVID-19 GRANTS NON ASSESSABLE

The Government has made grants listed below non-assessable non-exempt for income tax purposes.

- Victoria 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
- Australian Capital Territory HOMEFRONT 3
- Australian Capital Territory Small Business Hardship Scheme.

## EXTENSION OF COMPLIANCE PROGRAMS

The Government has announced further funding for the following Australian Taxation Office (ATO) compliance programs:

- The Personal Income Taxation Compliance Program will be extended for two years from 1 July 2023. This will enable the ATO to continue to deliver a combination of proactive, preventative, and corrective activities in key areas of non-compliance, including overclaiming of deductions and incorrect reporting of income.
- The Shadow Economy Program will be extended for three further years from 1 July 2023 which is aimed at targeting shadow economy activity.
- The Tax Avoidance Taskforce will be extended by for a further year from 1 July 2025.

## INCREASE IN COMMONWEALTH PENALTY UNIT

The Government will increase the amount of the Commonwealth penalty unit from $222 to $275, from 1 January 2023. The amount will continue to be indexed every 3 years in line with CPI, with the next indexation occurring on 1 July 2023.

**OUR THOUGHTS:**

The increase in penalty unit means that from 1 January 2023, taxpayers will face penalties shown in the table below for late lodgement of documents with the ATO. There may also be a further significant increase from 1 July 2023 when penalty units are indexed for inflation.

| Entity Type | Minimum Penalty | Maximum Penalty |
|---|---|---|
| Small | $275 | $1,375 |
| Medium | $550 | $2,750 |
| Large | $1,375 | $6,875 |
| Significant Global Entity | $137,500 | $687,500 |

## IMPROVING THE INTEGRITY OF OFF-MARKET SHARE BUY BACKS

The tax treatment of off-market share buy backs will be aligned with the tax treatment of on-market share buybacks. This measure is effective from 25 October 2022. No detail has been provided in the Budget Papers or any media releases accompanying the Budget Papers.

## BUSINESS REGISTERS AND DIRECTOR ID

The modernising of Australia's Business Registers announced in the prior Budget will continue with further funding to the ATO and ASIC to progress with the implementation of Director IDs and the delivery of a streamlined registry platform. The new registry system will likely deliver increased transparency of company ownership and involvement.

## AUSTRALIA – ICELAND TAX TREATY

The Government signed a double tax agreement (DTA) with Iceland on 12 October 2022. The purpose of DTAs is to facilitate trade and investment between Australia and Iceland by relieving double taxation, lowering withholding tax rates and improving certainty for taxpayers in both countries.

## FRINGE BENEFITS TAX - ELECTRIC CAR DISCOUNT

From 1 July 2022, the measure will exempt battery, hydrogen fuel cell and plug-in hybrid electric cars from fringe benefits tax (FBT), and import tariffs if they have a first retail price below the luxury car tax threshold for fuel-efficient cars which is currently $84,916 inclusive of GST.

**OUR THOUGHTS:**

The effect of this measure is that employees will be able to salary sacrifice the cost of qualifying vehicles without the employer incurring any FBT liability or requiring an after-tax contribution to be made by the employee. Effectively the cost of a qualifying car together with costs such as registration, insurance and servicing may be fully deductible if set up correctly.

## SUPERANNUATION - DOWNSIZER CONTRIBUTIONS

The eligibility age for downsizer contributions will be reduced from 60 to 55 meaning more individuals will be able 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. These contributions do not count towards the individual's non-concessional contribution caps.

## SUPERANNUATION – RESIDENCY – DEFERRAL OF START DATE

The 2021–22 Budget measure that proposed relaxing residency requirements for SMSFs, from 1 July 2022 will be deferred to the income year commencing on or after the date of Royal Assent of the enabling legislation.

## PERSONAL TAX RATES – STAGE 3 TAX CUTS

As anticipated, the Budget proposes no changes to the already existing individual income tax rates and legislated stage 3 tax cuts commencing after 30 June 2024. From 1 July 2024 resident individual income tax rates will be as follows:

| **Resident Tax Rates not including 2% Medicare Levy** | | |
|---|---|---|
| **Rate** | **Taxable income up to 30 June 2024** | **Taxable income from 1 July 2024** |
| 0% | $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% | $180,000 and over | $200,000 and over |

## PHILANTHROPY – UPDATES TO SPECIFICALLY LISTED DEDUCTIBLE GIFT RECIPIENTS

The Government will amend the tax law to specifically list the following deductible gift recipients (DGRs)

- Australians for Indigenous Constitutional Recognition will be recognised as a DGR for donations made from 1 July 2022 to 30 June 2025.
- The Government will extend the listing of Australian Women Donors Network as a DGR for 5 years, for gifts made from 9 March 2023 to 8 March 2028.

## PARENTAL LEAVE

The Government will introduce reforms from 1 July 2023 to make the Paid Parental Leave Scheme flexible for families 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 two additional weeks a year until it reaches a full 26 weeks from 1 July 2026.

## CHILD CARE

The Government will provide $4.7 billion over four years from 2022–23 (and $1.7 billion per year ongoing) to deliver cheaper child care by:

- Increasing the maximum Child Care Subsidy (CCS) rate from 85% to 90% for families for the first child in care, and increasing the CCS rate for all families earning less than $530,000 in household income. The 90% CCS will apply to families with less than $80,000 of household income, reducing to nil for families with household income of greater than $530,000.
- Maintaining 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.

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