ST. JAMES'S PLACE
WEALTH MANAGEMENT

TAX AND TECHNICAL

2021-22 AUSTRALIAN FEDERAL BUDGET TAX & SUPERANNUATION

A summary provided by the Mazars Group

The 2021-22 Australian Federal Government Budget brings significant further stimulus to promote recovery of an economy devastated by natural disasters and the global Covid-19 pandemic.

While the 2020-21 year Budget deficit is now expected to be some $52 Billion lower than previous forecasts thanks to a fast improving economy and vastly improved mineral prices, rather than bank the savings, the Government has opted to invest these in further stimulating the economy. Indeed, the Government has changed its fiscal policy from prudent conservatism to spending the country's way out of economic trouble.

The Government is now forecasting a deficit of $106 Billion for the 2021-22 budget period and reducing deficits continue over the forward estimates period as the economy recovers.

This Budget Brief summarises the key Budget tax and superannuation stimulus announcements that we expect will most affect Australian individuals and business clients. The dates in square brackets indicate the proposed start date for the announced change.

Please note that as these are just announcements they cannot be regarded as law until legislated.

The full Budget papers are available at www.budget.gov.au and the Treasury ministers' media releases are available at ministers.treasury.gov.au.

Should you wish to discuss how these proposed measures may affect you, please contact your St. James's Place Partner, who will be able to refer you to the right specialist to address your concerns.

INDIVIDUALS

Low and middle income tax offset (LMITO) remains for 2021–22

While there were no new tax cuts per-se, the LMITO which was due to be removed on 30 June 2021 will be extended for another year into 2021–22. This provides up to $1,080 per individual and should be received upon lodging the 2021-22 income tax return.

Consistent with the current income year, the LMITO is calculated as follows:

Taxable income	Low and middle income tax offset
Less than $37,000	$255
Between $37,000 and $48,000	Increase 7.5 cents per $1, capped at $1,080
Between $48,000 and $90,000	$1,080
Between $90,000 and $126,000	Reducing from maximum at 3 cents per $1
Above $126,000	$0

[Extension of existing rules until 30 June 2022]

The resident tax rates remain as follows:

Tax Rates			
2020/21 - 2023/24		2024/25 *	
Income Band	**Tax Rate**	**Income Band**	**Tax Rate**
0 - 18,200	0	0 - 18,200	0
18,201 - 45,000	19%	18,201 - 45,000	19%
45,001 - 120,000	32.50%	45,001 - 200,000	30%
120,001 - 180,000	37%	200,001 +	45%
180,001 +	45%		

*Already registered (or already passed)

Medicare low-income thresholds for 2020–21

The CPI indexed Medicare levy low-income threshold amounts for singles, families, and seniors and pensioners for the 2020–21 year of income have been announced. The new thresholds are:

Medicare levy low income threshold (at or below which no Medicare levy payable) 2020–21 (2019–20)		
Class of people	**Single**	**Family**
Individual	$23,226 ($22,801)	$39,167 ($38,474)
Senior Australians and eligible pensioners	$36,705 ($36,056)	$50,191 ($51,094)
Threshold increment for each additional dependent child/student	$3,597 ($3,533)	

[1 July 2020]

Individual tax residency rules simplified

The individual tax residency rules will be replaced by a new framework with a primary physical presence test. The rules are well overdue for an overhaul as there has been increasing case law around tax residency over the past 10 years indicating the confusion around the current rules.

Under the new primary test, a person who is physically present in Australia for 183 days or more in any income year will be an Australian tax resident for tax purposes. Individuals who do not meet the primary test will be subject to secondary tests that consider a combination of physical presence and other measurable, objective criteria.

Currently, an individual who is physically present in Australia for 183 days or more in an income year will not be an Australian resident if their usual place of abode is overseas and they have no intention to take up residence in Australia. [1 July after Royal Assent]

Removal of $250 threshold for self-education deductions

The current limitation for individuals claiming self-education expenses, where the first $250 of the deduction is denied, will be removed. The removal of the $250 exclusion for prescribed courses of education will make it easier for individuals to work out their allowable deductions in the years they incur these expenses.

There is no change to the general provisions for claiming a self-education deduction, such as requiring the expense to come from a prescribed course of education.

[1 July after Royal Assent]

Up to 95% of childcare to be subsidised

The childcare subsidy will be increased up to a maximum of 95% from 1 July 2022.

Under the current arrangements the maximum childcare subsidy payable is 85% of childcare fees. For families with more than one child in childcare, the level of subsidy received will increase by 30% to a maximum subsidy of 95% of fees paid for their second and subsequent children.

From 1 July 2022, the annual $10,560 cap on childcare fee rebates will also be abolished. Currently families with combined incomes above $189,390 are subject to a childcare subsidy cap of $10,560 per child per year.

The government estimates that, under these changes:

- A family earning $110,000 a year will have the subsidy for their second child increase from 72% to 95%, and they would also be $95 per week better off for 4 days of care
- A family earning $80,000, with 3 children, will have the subsidy increase from 82% to 95% for their second and third children and would also be $108 per week better off for 4 days of care.

[1 July 2022]

BUSINESS & COMPANIES

Extension to temporary full expensing

Temporary full expensing of eligible assets will be extended by 12 months to 30 June 2023.

Eligible businesses with aggregated turnover of less than $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. All other aspects of the temporary full expensing rules first introduced in the 2020–21 Budget will remain unchanged.

The temporary full expensing rules supersede the normal depreciation rules under Division 40 of the Tax Act and apply in conjunction with the small business simplified depreciation rules. Entities wishing to calculate depreciation under Division 40 can opt out on an asset-by-asset basis. [Extension of existing rules until 30 June 2023]

Normal depreciation arrangements will apply from 1 July 2023.

Temporary company loss carry back extended

The temporary loss carry back tax offset will be extended by one year to apply for the 2022–23 income year losses.

Eligible corporate tax entities with aggregated turnover less than $5 billion will be able to carry back losses from the 2022–23 income year to offset previously taxed profits made in or after the 2018–19 income year. The loss that can be carried back is limited by the amount of earlier taxed profits and cannot generate a franking account deficit.

Eligible companies can elect to carry back losses under this measure for any or all of the 2019–20 to 2022–23 income years.

[Extension of existing rules until 30 June 2023]

Self-assessed effective life for intangible depreciating assets

Taxpayers who purchase patents, registered designs, copyrights or in-house software will be given the opportunity to self-assess their effective life for decline in value.

These assets are currently set to statutory effective life calculations. Where the taxpayer cannot reasonably estimate an effective useful life, or otherwise chooses not to self-assess, they may continue to use the statutory depreciation rates.

[Intangible assets acquired after 1 July 2023]

Extended powers for AAT to pause or modify ATO debt recovery

Small businesses will be able to apply to the AAT to pause or modify ATO debt recovery actions for debts being disputed in the AAT.

The Small Business Taxation Division of the Administrative Appeals Tribunal (AAT) will be allowed to pause or modify any ATO debt recovery actions, such as garnishee notices and the recovery of general interest charges or related penalties, until the underlying dispute is resolved by the AAT. The AAT will be required to ensure applications are in relation to genuine disputes and to consider the potential effect of an application on the integrity of the tax system.

The measure will apply to 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 in relation to tax matters before the Small Business Taxation Division of the AAT.

[Proceedings commenced after Royal Assent]

Changes to Employee Share Schemes

The cessation of employment taxing point will be removed for tax-deferred employee share schemes (ESS) that are available for all companies. The change will apply to ESS interests issued from the first income year after assent of the amending legislation.

Under existing rules for a tax-deferred ESS, where certain criteria are met employees are not taxed until a later tax year (known as the "deferred taxing point"). By removing the cessation of employment as a critera, the deferred taxing point will be the earliest of:

- In the case of shares, the first time there is no risk of forfeiture and no restrictions on disposal
- In the case of options, the first time prior to exercise when there is no risk of forfeiture and no disposal restriction of the option itself
- 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 of that share, and
- 15 years after acquisition.

The following regulatory changes will also be made for ESS where employers do not charge or lend to employees under the ESS:

- Disclosure requirements will be removed and the offer will be exempted from licensing, anti-hawking and advertising prohibitions, and
- For shares in an unlisted company, the maximum value of shares that can be issued to an employee with the simplified disclosure requirements and above exemptions will be increased from $5,000 to $30,000 per employee per year (no such value cap exists for listed companies).

[3 months after Royal Assent]

30% Digital games tax offset

A digital games tax offset will be introduced to promote the growth of the digital games industry in Australia. This will be a refundable tax offset for a minimum investment of $500,000 in "qualifying Australian games expenditure".

The criteria and definition of qualifying expenditure will be determined following industry consultation. However, games with gambling elements or that cannot obtain a classification rating will be excluded.

[1 July 2022]

2021 storms and floods income tax exemption for grants

An income tax exemption will be provided for qualifying grants made to primary producers and small businesses affected by the storms and floods in Australia.

Qualifying grants are Category D grants provided under the Disaster Recovery Funding Arrangements 2018, where those grants relate to the storms and floods in Australia that occurred due to rainfall events between 19 February 2021 and 31 March 2021.

These include small business recovery grants of up to $50,000 and primary producer recovery grants of up to $75,000. The grants will be made non-assessable non-exempt income for tax purposes.

Concessional 17% corporate tax rate for medical and biotech patent income

Corporate income derived from Australian medical and biotechnology patents in income years starting on or after 1 July 2022 will be taxed at a concessional effective tax rate of 17%.

The mechanism by which this "patent box" concession will be delivered is subject to consultation with industry. The government intends to extend consultation in relation to the patent box with a view to determining its appropriateness for supporting the clean energy sector.

Currently, income the subject of the proposed patent box concession is undifferentiated in the income of a corporate taxpayer and accordingly subject to the rate applicable to the taxpayer, namely 25% for businesses with aggregated turnover of less than $50 million, otherwise 30%.

[1 July 2022]

Corporate collective investment vehicle framework revised start date

The corporate collective investment vehicles (CCIV) component of the *Ten Year Enterprise Tax Plan – implementing a new suite of collective investment vehicles* measure announced in the 2016–17 Budget will be finalised with a revised commencement date of 1 July 2022. The measure proposed introducing a tax and regulatory framework for CCIVs.

[1 July 2022]

Junior minerals exploration incentive extended 4 more years

The junior minerals exploration incentive (JMEI) which was due to end in 2020–21 will be extended 4 more years, from 1 July 2021 to 30 June 2025.

The JMEI is a tax credit arrangement that allows junior mineral exploration companies to pass future tax deductions (losses) to Australian resident investors for greenfields mineral exploration in Australia. Minor legislative amendments will also be made to allow unused exploration credits to be redistributed a year earlier than under current settings.

[extended to 30 June 2025]

Apprenticeship wage subsidy expanded

The Boosting Apprenticeship Commencements wage subsidy will be expanded to support businesses and Group Training Organisations that take on new apprentices and trainees.

This measure will uncap the number of eligible places (currently capped at 100,000 places). The duration of the 50% wage subsidy will be increased to 12 months from the date an apprentice or trainee commences with their employer. The subsidy will now be available from 5 October 2020 to 31 March 2022 and businesses of any size can claim the wage subsidy for new apprentices or trainees who commence during this period.

Eligible businesses will be reimbursed up to 50% of an apprentice or trainee's wages of up to $7,000 per quarter for 12 months.

[Extension of existing measure]

INTERNATIONAL TAX

Changes to offshore banking unit regime

Concessional tax treatment for offshore banking units (OBUs) will be removed.

The concessional 10% effective tax rate applying to income derived from eligible offshore banking activities will be removed. Existing OBUs will have access to the concessional tax rate until the end of the 2022–23 income year. The withholding tax exemption for interest and gold fees paid by OBUs on certain offshore borrowings will be removed from 1 January 2024. The OBU regime will also be closed to new entrants from 26 October 2018.

These changes to the OBU regime have been introduced by the Treasury Laws Amendment (2021 Measures No 2) Bill 2021.

The government will consult on alternative measures to support the industry and ensure activity remains in Australia.

[1 January 2024]

Taxation of financial arrangements — hedging and foreign exchange deregulation

Technical amendments will be made to the taxation of financial arrangements (TOFA) rules which will include facilitating access to hedging rules on a portfolio hedging basis.

The amendments aim to reduce compliance costs and correct unintended outcomes, so that taxpayers are not subject to taxation on unrealised foreign exchange gains and losses unless this is elected.

[Transactions entered into on or after 1 July 2022]

List of exchange of information jurisdictions to be updated

The list of jurisdictions that have an effective information sharing agreement with Australia will be updated.

The following countries will be added to the existing jurisdictions: Armenia, Cabo Verde, Kenya, Mongolia, Montenegro and Oman.

Residents of listed jurisdictions will be eligible to access the reduced managed investment trust withholding rate of 15% on certain distributions, instead of the default rate of 30%.

[1 January 2022]

NZ to maintain primary taxing right over sporting teams and support staff in Australia

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 fringe benefits tax liabilities that arise from exceeding the 183-day test in the Australia–New Zealand 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 fringe benefits tax years]

ATO early engagement service for foreign investors

From 1 July 2021, a new early engagement service will be implemented to assist foreign investors and give them confidence to invest in Australian businesses. The service will:

- Provide information to investors about how Australian tax laws will apply, as well as federal tax obligations
- Be tailored to the particular needs of each investor
- Be specific in relation to project timeframes
- Integrate tax aspects of the foreign investment review board approval process, as well as assist in the time sensitive aspects of an investment transaction, and
- Facilitate access to an expedited private binding rulings and advance pricing agreements where necessary.

[1 July 2021]

INDIRECT TAXES

Excise and import duties

Excise relief for small distillers and brewers

From 1 July 2021, eligible brewers and distillers will be able to receive a full remission of any excise they pay, up to an annual cap of $350,000. Currently, eligible brewers and distillers are entitled to a refund of 60% of the excise they pay, up to an annual cap of $100,000.

This will align the benefit available under the excise refund scheme for brewers and distillers with the wine equalisation tax producer rebate.

[1 July 2021]

Import duties - automotive R&D tariff concession extended

The automotive research and development tariff concession will be extended for a further four years until 30 June 2025, effective from 1 April 2021.

Companies that are registered under the Automotive Transformation Scheme Act 2009 as at 31 December 2020 will continue to be able to claim a tariff concession of up to 5% on the value of imports used for automotive R&D in Australia.

[Extended until 30 June 2025]

Import duties - anti-dumping reforms

Australia's anti-dumping regime will be reformed to make the system easier for businesses to navigate:

- The Anti-Dumping Commission will be given additional funding to provide importers and local manufacturers with advice on whether goods are subject to anti-dumping duties.
- There will be increased flexibility to apply different rates of duties for particular variants of imported goods.
- Funding will also be provided to support the International Trade Remedies Advisory Service, to assist small and medium enterprises with the anti-dumping merits review process.

Eligible importers will also be allowed to claim a tariff concession order-based exemption from anti-dumping duties at the time they make their import declaration.

Fuel tax credits — heavy vehicle road user charge increased

The heavy vehicle road user charge will be increased from 25.8 cents per litre to 26.4 cents per litre from 1 July 2021. The charge is applied to reduce the fuel tax credit rate per litre available for vehicles with a GVM greater than 4.5 tonnes.

The increase was agreed by Commonwealth and State and Territory Transport Ministers to contribute to the construction and maintenance of roads.

[1 July 2021]

CHARITIES & NOT-FOR-PROFITS

Accessing income tax exemptions by not-for-profits

From 1 July 2023 non-charitable not-for-profits (NFPs) with active ABNs will be required to submit the information used to self-assess their eligibility for income tax exemptions in an online self-review form. This will be an annual requirement.

Currently non-charitable NFPs self-assess their eligibility for income tax exemptions, but there is no obligation to report to the ATO.

The ATO will be provided with $1.9 million capital funding to build an online system to support the measure.

[1 July 2023]

SUPERANNUATION

Despite having a strong focus on job growth and women's security, the 2021/22 Federal Budget handed down by Treasurer Mr Josh Frydenberg also included some welcome surprises for superannuation and SMSF trustees.

Work test abolished for voluntary contributions

Individuals aged 67 to 74 (inclusive) will no longer need to meet the work test from 1 July 2022 to be able to make voluntary contributions to superannuation. These include non-concessional and salary sacrifice contributions but are still subject to existing contribution caps and total superannuation balance limits. The ability to make personal concessional contributions will still be subject to the work test.

Furthermore, they will also have the ability to utilise the bring-forward rule and contribute up to three years' worth of non-concessional contributions in a single financial year. This is currently only available for those aged under 65.

Downsizer eligibility age reduced

The eligibility age to make downsizer contributions into superannuation will be reduced from 65 to 60 from 1 July 2022. All other eligibility criteria remain unchanged.

Downsizer contributions allow individuals to make a one-off, post-tax contribution of up to $300,000 per person from the proceeds of selling their home if they have owned it for a period of 10 years or longer. These contributions do not count towards non-concessional contribution caps and are not impacted by total superannuation balance restrictions.

Superannuation guarantee eligibility threshold removed

The current $450 per month minimum income threshold, under which employees do not have to be paid the superannuation guarantee (SG) by their employer will be removed. This will ensure that an estimated 300,000 lower income earners will receive the benefit of superannuation accruing for their retirement.

This will begin from the first financial year after the proposed legislation receives Royal Assent which is likely to be from 1 July 2022.

Relaxing residency requirements for SMSFs

The safe harbour test for SMSF members/trustees who are absent from Australia will be extended from 2 years to 5 years. The active member test which requires at least 50% of the market value of a SMSF to be held on behalf of an Australian resident will also be removed.

This change removes a long-standing disadvantage that SMSFs had when members were not in Australia and provides them with a similar outcome to if they were in a large superannuation fund. This measure will take effect from the first financial year following it receiving Royal Assent.

Legacy retirement product conversions

A 2-year window will be created in which a member of a SMSF with a market-linked, life expectancy or lifetime pension can commute their pension with the potential option to commence an account-based pension.

On conversion, a pensioner may have amounts allocated to their account-based pension from a reserve account. In this instance, the commuted reserve will be taxed in the fund as an assessable contribution. The assessable contribution will not count towards the individual's concessional contributions cap and will not trigger excess contributions.

The government has announced that there will be no grandfathering of social security treatments on conversion of a legacy pension account. Importantly, it will not be compulsory for individuals to convert these products.

The 2-year window will commence from the first financial year following assent of the enabling legislation. However, the conversion will not be available for pensioners with a flexi-pension product, or a lifetime defined benefit product with an APRA-regulated or public sector fund.

First home super saver scheme increased

The maximum amount of contributions that can be released from superannuation under the first home super saver scheme (FHSSS) will be increased from $30,000 to $50,000.

The FHSSS applies to voluntary contributions made into superannuation on or after 1 July 2017 which will count towards the total amount able to be released. These voluntary contributions remain restricted to $15,000 per year.

Superannuation summary

It is refreshing to see some good, common-sense measures being introduced to provide people further flexibility around their contributions and access to their retirement savings. While the downsizer contributions may not result in the Government's desired effect to ease housing affordability, this along with the abolishment of the work test for non-concessional contributions provide opportunities for people to maximise their retirement savings. The removal of the SG threshold is obviously intended to assist reducing the gender gap in retirement benefits but it will also result in a further administrative burden on employers.

It would have been good to see some announcements to simplify the burgeoning complexity around the number of thresholds impacting superannuation, but the measures announced are a step in the right direction and provide some beneficial planning opportunities.

If you have any questions please speak to your St. James's Place Partner or contact us using this form, or the contact details below:

Hong Kong

Tel: +852 2824 1083
Email: hongkong.info@sjp.asia

1/F Henley Building
5 Queen's Road Central
Hong Kong

Singapore

Tel: +65 6536 0121
Email: singapore.info@sjp.asia

1 Raffles Place
#15-61 One Raffles Place (Tower 2)
Singapore 048616

Mainland China

Tel: +86 021 6065 0515
Email: china.info@sjp.asia

Unit 101-102, Building 9
Yuejie Shankangli, 358 Kangding Road
Shanghai, China 200041

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