

**TECHNICAL ADVANTAGE**  
FEDERAL BUDGET 2015  
**SPECIAL EDITION**





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## EXECUTIVE SUMMARY

**[645] 2015-16 Federal Budget: small business tax cut; accelerated depreciation back; Multi-national Enterprises (MNEs) face revised Pt IVA; FBT concessions for charities tightened; pension assets test tightened; child care payments revamp**

On 12 May 2015, the Treasurer Mr Hockey handed down the 2015-16 Federal Budget, his second Budget. The Budget Papers predict a deficit of \$35bn next year, down to a \$6.9bn deficit in another 3 years' time in 2018-19.

From a taxation point of view, the Budget contained some significant changes, although "big ticket" tax reform measures remain for consideration in the Tax Reform White Paper. A major tax avoidance push was made regarding multi-nationals and profit shifting, with the announcement of major new amendments to Pt IVA - draft legislation was released.

The Budget also contained a \$5.5bn Jobs & Small Business package, containing small business tax cuts, accelerated depreciation for assets valued up to \$20,000, and reducing red tape.

The Inspector-General of Taxation will be given an extra \$14.6m over 5 years to support his operations.

It is noted that several major new spending measures are linked to savings attached to legislation that is currently stalled in the Senate.

A major \$3.5bn "Jobs for Families" child care package was a central feature of the Budget. It seeks to deliver what the Treasurer said is a simpler, more affordable, more flexible, and more accessible child care system. The package includes a new and simpler Child Care Subsidy from 1 July 2017, which includes abolition of the current \$7,500 childcare rebate cap for families with incomes of less than \$185,000 – see para [690] of this *Bulletin*.

The Budget also contained significant changes to tighten the assets test for pensions – see para [693] of this *Bulletin*.

The Finance Minister said the Government was doing everything it could to ensure the Budget was "on a credible path to surplus". He said that since came into Government in September 2013, there had been a range of additional, unexpected challenges in the economy. Significantly, the price for iron ore (which represents more than 21% of Australia's national export income) has gone from \$120 a tonne when the Coalition came into Government, to \$92 a tonne at the time of last year's Budget to about \$60 a tonne at MYEFO before Christmas 2014. And there have been further price falls since then.

Senator Cormann said that between the Budget last year and the half-yearly Budget update before Christmas, the Government had "to write off more than \$30 billion worth of revenue". He said the Budget shows the



Government is continuing with its efforts to get spending under control, to get growth trajectory of spending under control, to bring that spending growth trajectory down to a more affordable level.

An outline of the major revenue-related announcements is given below.

### **Revenue measures announced**

The major revenue measures announced in the Budget included:

- A cut of 1.5% in the company tax rate for small businesses (turnover less than \$2m). This will take the rate for them to 28.5%.
- A 5% tax discount for unincorporated small businesses, capped at \$1,000.
- Small business instant asset write-off threshold increased to \$20,000 per asset.
- Multi-national enterprises face new "integrity" rules via amendments to Pt IVA.
- Significantly, the Government announced that Australia will move ahead of and outside the OECD/G20 Base Erosion Profit Shifting (BEPS) project.
- Government to implement OECD new transfer pricing documentation standards from 1 Jan 2016.
- Stronger penalties for MNE tax avoidance.
- A GST "Netflix" tax will be applied to certain offshore intangible supplies from 1 July 2017.
- Work-related car expenses to be simplified - 2 methods will be discontinued, and only one flat rate of 66c/km will apply.
- FBT concessions for charities and NFPs re meal and entertainment expenses will be capped at \$5,000pa.

The Government also confirmed its earlier announcement that it would not proceed with its Paid Parental Leave scheme from 1 July 2015.

Pre-Budget speculation about a new 0.05% tax to apply to bank deposits of up to \$250,000 proved just that - speculation. Nothing on this was announced.

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

### **Getting Budget measures through the Senate - challenges remain**

Getting Budget measures through the Senate will be no easier than last year, although the composition of the Senate has changed since then, with more independents and the Palmer United Party down to one Senator. And a new leader of the Greens, Victorian Senator Richard Di Natale (following Senator Milne's recent decision to step down as leader).

The composition of the Senate will again have a major bearing on the Government's ability to have its legislation on Budget measures passed. In the 76-seat Senate, the Government will need 39 votes to have its legislation

passed.

The current composition of the Senate is outlined below.

Composition of the Senate	
Party	Numbers
Coalition	33
ALP	25
Greens	10
Palmer United Party (PUP)	1
Liberal Democratic Party (Senator David Leyonhjelm, NSW)	1
Family First (Senator Bob Day, SA)	1
Australian Motoring Enthusiast Party (Senator Ricky Muir, Vic)	1
Independents (Senator Xenophon, Senator Lambie, Senator Madigan, Senator Lazarus)	4

If for example Labor and the Greens were to combine to oppose Government legislation (Budget or otherwise), the Government would need 6 of the 8 cross-bench Senators (eg PUP, Xenophon, independents, etc) to get its required 39 votes. Of course, other permutations exist, depending on how individual Senators vote.

### Where to get Budget documents

#### *On the web*

The 2015-16 Budget Papers are available at any of the following websites:

- [2015-16 Central Budget website](#)
- [Federal Government](#)
- [Department of Finance](#)

Those websites also link to previous years' Federal Budget papers going back to 1996-97.

#### *Print copies*

The 2015-16 Budget Papers are also available for sale from the CanPrint Communications Pty Limited shopfront in Canberra at 16 Nyrang St, Fyshwick (tel: 1300 889 873) from 7:30pm on 12 May 2015.

The Budget documents can also be ordered through CanPrint Communications Pty Ltd to be posted. An [order form](#) can be faxed to (02) 6293 8333; or mailed to: CanPrint Communications Pty Ltd, PO Box 7456, Canberra MC ACT 2610. Full details of purchase options are on the [Federal Budget website](#).





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### [646] Tax reform White Paper lurks behind the scenes

The Budget was not big on major tax reform, presumably to avoid pre-empting any outcomes from the Government's Tax Reform White Paper process. That reform process only recently kicked off on 30 March 2015 with the release of a tax discussion paper, *Re:think*: see 2015 WTB 13 [373]. Among the 66 specific discussion questions, the Government is considering the appropriateness of most aspects of the taxation system in terms of fairness and complexity, and how the system could potentially be improved. At the time, Mr Hockey said the paper "begins a dialogue on how we create a tax system that supports higher economic growth and living standards, improves our international competitiveness and adjusts to a changing economy and new opportunities." He said the "problem we face is that our current tax system, which was designed before the 1950s, is ill-suited to the 2050s."

#### Timeline

Following consultation on the discussion paper, the Government will issue a Green Paper covering tax options in mid-to-late 2015. The Government will then seek further feedback on those reform options before putting forward policy proposals in a Tax White Paper *in 2016 to take to the next election*.

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### [647] Government seeks to restore faith with a no surprises Budget

*- by Reuters News*

In handing down its 2015-16 Budget, the Government followed through on its pledge to deliver a "no surprises" budget, handing down a document light on radical reform but heavy on pledges to return to surplus despite a plunge in commodities prices.

This Budget instead focused on popular items such as tax breaks for small businesses, increased childcare subsidies and legislation allowing for a crackdown on tax evasion by big multi-national companies.

"Today we have taken steps to continue repairing the budget with sensible savings and a prudent approach to spending," Hockey said in an address to Parliament. "We are redirecting funding to areas, such as small business, child care and infrastructure, which will boost growth and create jobs."

Australia's finances have taken a beating as falling prices for iron ore, the country's single biggest export earner, have eaten into company profits and wages. Some \$52 billion in tax receipts were lost over the 4 years to 2017-18 according to the Budget, with \$20 billion of that coming from the plunge in iron ore prices.

The Government is hoping that new free trade agreements with China, Japan and South Korea, together with a weaker Australian dollar and improvement in the terms of trade as major gas projects come on stream, will help offset those losses.



Record low interest rates, together with falling prices for petrol and electricity, are helping drive an uptick in household spending and investment in the country's red hot property and construction markets, it said.

The Government insisted in the Budget that it would be able to ride out the bumpy transition from a resource-dominated economy to a more diverse one focused on services without raising significant new revenues or slashing spending outlays.

Having outperformed most of its developed nation peers since the global financial crisis, Australia is expected to grow a modest 2.5% this year and 2.75% next year, rising to 3.5% by 2017-18.

Some analysts had questioned whether Australia's coveted triple-A credit rating from all 3 major agencies might come under pressure without a credible path to surplus, speculation Treasurer Hockey refuted in an interview with Reuters earlier this month.

Australia's net debt is forecast to rise to 18% of gross domestic product (GDP) by 2016-17, already low by international standards, before falling to just 7.1% of GDP by 2025-26.

The deficit is set to narrow from 2.6% of GDP in 2014-15 down to 0.4% of GDP by 2018-19, placing it on track for a return to surplus before the end of the decade.

*(Written by Matt Siegel; Editing by Lincoln Feast and Terry Hayes.)*

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## MULTI-NATIONAL TAX MEASURES

### **[648] MNEs: no Australian "Google tax", but Pt IVA to be strengthened re avoiding a taxable presence in Australia (PE)**

The Government announced it would take action against multi-national enterprises (MNEs) that it says are avoiding a taxable presence in Australia.

Part IVA is to be amended to introduce what the Government calls a **tax integrity multi-national anti-avoidance law** to deal with the activities of 30 identified multi-national companies who the Government says are artificially avoiding having a taxable presence in Australia. These companies, the Government says, are diverting profits earned in Australia away from Australia to no or low tax jurisdictions.

The Government says the current Pt IVA is not adequate to deal with this type of tax avoidance by multi-national entities. The general rule currently requires that arrangements have been entered into for the purpose of



obtaining an Australian tax benefit. It may be possible for multi-national entities to argue that these global arrangements are entered into for the purpose of avoiding tax in other countries where the Australian tax benefit is relatively small. This would often be the case where the Australian sales of multi-national entities are a relatively small part of their global business, the Government said.

**Date of effect:** The new law will apply to tax benefits obtained from 1 January 2016 (under both new and existing schemes). The Government says the measure is estimated "to have an unquantifiable gain to revenue over the forward estimates period".

The new law will target approximately 30 companies where:

- the activities of an Australian company or other entity are integral to an Australian customer's decision to enter into a contract;
- the contract is formally entered into with a foreign related party to that entity; and
- the profit from the Australian sales is booked overseas and subject to no or low global tax.

The Government says where such arrangements are entered into for a principal purpose of avoiding tax, this measure is designed to ensure that the profits from Australian sales are taxed in Australia. The measure will apply to companies with global revenue of AU\$1 billion or more.

After months of the ATO being embedded in these businesses, the Government says it has a better understanding of how these companies have used contrived or artificial tax arrangements such as the much publicised "Double Irish Dutch Sandwich". These contrived and very complicated arrangements have been used to avoid paying Australian tax, the Government said.

The Treasurer said that after consultation with the United Kingdom, it was clear that Australia did not need to replicate the UK's Diverted Profits Tax. Mr Hockey said if Australia strengthens its anti-avoidance laws to ensure the Tax Office has the powers to see through these contrived arrangements, "then we will be able to recover the tax that should be paid in Australia".

On Budget night, the Treasurer released draft legislation to implement the Pt IVA changes - the *Draft Tax Laws Amendment (Tax Integrity Multi-national Anti-Avoidance Law) Bill 2015*.

### Key features of proposed changes

The strengthened Pt IVA measures will apply to schemes if under or in connection with the scheme:

- a non-resident entity derives income from the making of a supply of goods or services to Australian customers, with an entity in Australia supporting that supply; and
- the non-resident avoids the attribution of the income from the supply to a permanent establishment (PE) in Australia.

For the multi-national anti-avoidance law to apply, it must be reasonable to conclude that the division of activities



between the non-resident entity, the Australian entity, and any other related parties has been designed so as to ensure that the relevant taxpayer is not deriving income from making supplies that would be attributable to the PE in Australia.

Additionally, the relevant taxpayer, who entered into or carried out the scheme, must have done so for the principal purpose or for one of the principal purposes of enabling a taxpayer to obtain a tax benefit, or both to obtain a tax benefit and to reduce other tax liabilities under Australian law (other than income tax) or under a foreign law.

Where a scheme is captured by the multi-national anti-avoidance law, the Commissioner will have the power to look through the scheme and apply the tax rules as if the non-resident entity had been making a supply through an Australian PE. This includes the business profits from the supply that would have been attributable to an Australia PE and obligations arising (for the relevant taxpayer or another taxpayer) under royalty and interest withholding tax.

To reduce compliance costs and provide certainty, the new measure only applies to non-resident entities that have annual global revenue of over AU\$1 billion in the relevant income year in which they sought to obtain a tax benefit under the scheme.

In addition, the multi-national anti-avoidance law will only apply to non-resident entities that are, or have a related entity (or entities) in their corporate structure that are, subject to no corporate tax or a low corporate tax rate (either under the law of a foreign country or through preferential regimes).

**Carve-outs to this condition will apply** where the non-resident can show that:

- the activities of the entity in that jurisdiction (or of each of those entities if there is more than one entity in a no or low tax jurisdiction) are not related directly or indirectly to the Australian supply; or
- the entity (or each of the entities in the no or low tax jurisdiction) has substantial economic activity in the no or low tax jurisdiction in relation to those Australian supplies relative to the profits subject to no or low corporate tax in that jurisdiction.

### **What entities will be subject to the new rules?**

The new anti-avoidance law will only target the largest multi-national entities or groups. Furthermore, it only targets multi-national entities that ultimately return a substantial proportion of the profit from Australian sales to no or low tax jurisdictions (ie jurisdictions where no corporate tax, or a low corporate tax rate, is applied).

The new law will not apply unless BOTH the "**global revenue threshold**" and the "**no or low tax condition**" are satisfied.

- The **global revenue threshold** will be met if the non-resident entity (or the non-resident's global group) has an annual global revenue that exceeds AU\$1 billion in the income year in which they operated the scheme to obtain a tax benefit or reduce their tax liability. The extent of the multi-national entity's



corporate structure is to be determined in accordance with specified recognised accounting principles.

- The **no or low tax condition** will be met if the non-resident (or an entity in their global group) has activities in a no or low corporate tax jurisdiction. That is, if any of the activities of the non-resident (or an entity in their global group) enjoy a zero or low corporate tax rate in a foreign jurisdiction, either under the foreign law or through preferential arrangements with the foreign government, this condition will be met. This condition will also be met where income from activities of the non-resident (or entity in their global group) is stateless and not subject to corporate income tax in any country. However, the no or low tax condition **will not be met** if the non-resident can show that their activities (or the activities of the entity in their global group) in the no or low tax jurisdiction are either unrelated to the Australian supply or that the activity amounts to substantial economic activity relative to the profits that are subject to no or low tax in that jurisdiction.

### ***Determining the threshold for non-residents that are members of a global group***

The global revenue threshold will also determine differently depending on whether the non-resident is part of a global group or not. A "global group" means a group of entities across different jurisdictions that are consolidated in accordance with accounting standards. The Government says the intention is that the concept of "global group" captures groups of corporations where there is a parent entity and a number of subsidiaries (which may be in different jurisdictions) and the parent entity exercises influence or control over the subsidiaries.

If the non-resident is part of a global group, then the annual global revenue of the group in which the non-resident is a member will be determined (with respect to the relevant income year) by either the total revenue of the latest audited consolidated financial statement (that applies to the non-resident) or, in absence of such a statement, what the Commissioner reasonably estimates to be the global revenue of the non-resident's global group.

### **Example**

- A global group has global revenue, as reported in its consolidated accounts for the year ended 31 December 2017, of \$AU800 million.
- This same group makes a global acquisition in the year ended 31 December 2018 and as a result reports global revenue of \$AU1.3 billion in that year.
- For the year ended 31 December 2017, the global group will not meet the revenue threshold test and as such will not be subject to the new measure.
- In the year ended 31 December 2018, the global revenue threshold is met. If the other conditions in relation to the multi-national anti-avoidance law are met, the measure will only apply for tax benefits obtained in connection with the relevant scheme from the year ended 31 December 2018.

### ***Determining the threshold for non-residents that are not members of a global group***

Where the non-resident is not part of any global group, its annual global revenue will be determined (with respect to the relevant income year) by reference to "accounting principles" as defined in subs 995-1(1) of the ITAA 1997





or, if relevant, a comparable standard under the law of a foreign jurisdiction.

If there are no 12-month audited consolidated financial statements that relate to the entity, the total annual global revenue of the non-resident will be as stated in the latest financial statements for the non-resident that relate to a period of 12 months ending no later than the end of that year of income. These statements must be in accordance with the accounting principles (as defined in subs 995-1 of the ITAA 1997), or, if the accounting principles do not apply to the preparation of the financial statements, comparable standards for accounting made under a foreign law that apply to the preparation of the financial statements under a foreign law.

### **The no or low tax condition**

The no or low tax condition is structured as a 2-step rule. It is structured in this way due to the difficulties around tracing income through multiple jurisdictions especially where there is limited information in some jurisdictions regarding the activities of multi-national entities.

#### ***(1) First step of the no or low tax condition***

The first step is that the condition will be met for all non-residents that have activities (or have one or more entities in their global group that have activities) that give rise to income that is either:

- subject to no corporate income tax or a low rate of corporate income tax under a law of a foreign country (or by agreement with a foreign government); or
- stateless income and is not subject to corporate income tax under any Australian or foreign law.

The use of the terms "corporate income tax" and "rate of corporate income tax" in this context are intended to mean the equivalent corporate tax rate of the relevant foreign jurisdiction in which the activities are undertaken. They are not intended to pick up the concepts of Australian corporate income tax or the Australian corporate income tax rate.

### **Examples**

- Australian revenue is returned to an entity incorporated in Country B, which has a corporate income tax rate that is not low or nil. However, another entity that is a member of the same global group is a tax resident of Country C, which does not levy corporate income tax. The first step of the low or no tax condition is met in relation to a non-resident that is a member of the global group.
- Australian revenue is returned to an entity in Country D. Country D has a corporate income tax that is not nil or low. However, it has preferential tax regimes under which the entity is exempt from income tax for up to 15 years. The first step of the low or no tax condition is met in relation to a non-resident that is a member of the same global group as the entity.
- Australian revenue is returned to an entity in Country F. Country F has a standard corporate income tax rate that is not low or nil, but allows for a 3-year exemption from tax in limited circumstances for start-up companies on certain trading profits and capital gains to companies with a total corporate tax liability of



less than \$50,000 per year. The entity falls within this exemption. The first step of the low or no tax condition is met in relation to the entity and other non-residents that are members of the same global group because the entity in Country F is subject to a nil or low rate of corporate income tax.

### ***(2) Second step of the no or low tax condition***

The second step provides a carve-out from the no or low tax condition for non-residents (initially caught in the first step) if they can establish that either:

- all of the activity (or the activities of the entity (or entities) in their global group) in that no or low tax jurisdiction is not related directly or indirectly to the making of the supplies to Australian residents; or
- all of the activity (or the activities of the entity (or entities) in their global group) constitutes substantial economic activity in the no or low tax jurisdiction (or in each of the no or low tax jurisdictions if more than one) in relation to those Australian supplies.

In establishing whether the second step applies, the burden of proof will be on the non-resident. The carve-outs will be taken not to apply in relation to an activity if the Commissioner has not been given information that establishes otherwise.

### **Example**

A global group has one entity in its corporate structure that is subject to a low corporate income tax rate. The global group has a different entity in a jurisdiction that is subject to a corporate income tax rate that is not nil or low, which sells widgets to Australian customers directly.

The taxpayer establishes that the activities of the entity in the low tax jurisdiction are only in relation to providing financial services to local, but unrelated, individuals and businesses, and are not related directly or indirectly to the sale of widgets to Australian customers.

### **What schemes will be captured by the measure?**

The multi-national anti-avoidance law will apply to a scheme if under, or in connection with, the scheme:

- a non-resident makes supplies directly to Australian residents and the income derived from the supply is not attributable to a permanent establishment in Australia; and
- an Australian entity (or Australian PE of any entity) is an associate of or is commercially dependent on the non-resident and they undertake activities in connection with the supply.

**Supply to an Australian resident:** The supply must be made by the non-resident to Australian residents who are not associates of the non-resident. This is intended to cover arm's length customers seeking to engage with the non-resident to purchase goods or services and will exclude intra-group supplies.

**Example:** A non-resident sells goods to its Australian subsidiary. The Australian subsidiary sells the goods to



unrelated Australian customers. The income from Australian customers is recognised by the Australian subsidiary. Because the non-resident is supplying goods to a related Australian subsidiary, the multi-national anti-avoidance law will not apply.

For the anti-avoidance measure to apply, the scheme must involve a non-resident deriving income from making a supply where that income is not attributable to a PE in Australia.

**"Fly-in, fly-out" arrangement - example:** A non-resident entity that sells large highly specialised machinery has no associates in Australia and does not have an Australian PE. In order to sell to Australian customers, the non-resident entity flies one or 2 of its employees to Australia for a week to meet with and understand the Australian customer's needs. The non-resident entity's personnel then fly back to the host country to incorporate the information obtained from the meetings in Australia to develop and tailor their product. The arrangement is such that the 2 employees visiting Australia do not amount to a PE in Australia. The Australian customer purchases the goods directly from the non-resident entity. There is no other connection with Australia in relation to the arrangement. Because there is no Australian PE, associate of the non-resident entity, or Australian resident, assisting with the sale, the multi-national anti-avoidance law will not apply.

### ***The purpose test***

The new anti-avoidance measure applies a purpose test that has 2 components.

- The first component will be satisfied if it would be reasonable to conclude that the scheme is designed to avoid the non-resident deriving income from such supplies that would be attributable to a PE in Australia. In applying this test, the division of activities between the non-resident, the Australian resident and any other parties involved in the scheme will be taken into account. The extent of activities being carried out by the Australian entity, the relevant taxpayer and any other entities that contribute to the value of the supplies being made to Australian consumers will be relevant. The arrangements will only be caught where it appears that activities have been split in such a way so as to deliberately fall short of constituting a PE (in accordance with the definition in the relevant treaty or, for non-treaty countries, in the tax law).
- The second component will be satisfied if it would be concluded that there is a principal purpose, or more than one principal purpose that includes a purpose of, obtaining a tax benefit, or both obtaining a tax benefit and reducing certain Australian and/or foreign tax liabilities. This component will also be satisfied if the principal purpose (or more than one of the principal purposes) was to obtain a tax benefit and reduce liability to foreign tax and/or other Australian taxes.

These components are both objective tests.

### **What will the tax outcome be where the anti-avoidance measure applies?**

Where a scheme is captured by the multi-national anti-avoidance law, it will amount to a scheme to which the rest of Pt IVA of the ITAA 1936 applies. This will trigger the Commissioner's power, as it currently operates under



s 177F, to cancel tax benefits obtained in connection with the scheme.

Section 177F does not require that the tax benefit cancelled is the tax benefit that is mentioned in the purpose test in para 177DA(1)(c). What is required is that the tax benefit was obtained by a taxpayer in connection with the scheme.

The tax benefits that may be cancelled will be determined in accordance with current operation of s 177C, which defines the tax outcomes secured in connection with the scheme that may be cancelled under s 177F.

Source: Budget Paper No 2 [p 14]; [Treasurer's release](#)

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### **[649] No mention of "the ATO ETR formula" re MNE disclosures, but it's coming**

Although the Treasurer has put an Australian version of the UK's Diverted Profits Tax (so-called "Google tax") off the agenda, in lieu of the proposed Pt IVA changes, there are other measures, besides the Pt IVA changes, lurking. One of those includes possible further disclosure requirements via the application of an ATO formula for the Effective Tax Rate (ETR) of a corporation.

Craig Cooper, Director - Taxation Services at RSM Bird Cameron says possible moves to require disclosure of the ETR payable on profits derived from Australian related activities of global multi-national corporate (MNC) groups operating in Australia will capture corporate attention. He said it was anticipated that it will only be the ETR which is to be publicly disclosed – not the underlying calculations.

Cooper says the concept of the ETR has been around for a long time. It is a ratio between tax and a base consisting of income, revenue or profit. There is no single commonly accepted formula for calculating an ETR - there are many different measures of "tax", and there are many different measures of income, revenue or profit.

Recently, before the Senate Economic References Committee enquiry into Corporate Tax Avoidance, testifying corporations quoted ETRs to demonstrate the high level of Australian tax paid. Cooper says there was no consistency in the basis of calculating these ETRs and the ATO was critical of some of the methodologies adopted.

The ATO indicated to the Senate Enquiry it had developed a formula for calculating an ETR (or "effective tax borne") which if applied to the testifying corporations, would permit a comparison on a "like for like" basis. The ATO subsequently [provided the Enquiry with the formula](#) (document 18 from the ATO), and apparently the Enquiry is considering whether or not to recall the testifying corporations to require them to apply the ATO formula and disclose the effective ETR which results. No mention of this formula was made in the 2015-16 Federal Budget.



The ATO said the formula is intended to identify an economic group's total worldwide profit from Australian linked business activities, and the Australian and offshore tax paid on that profit. It said this will provide an indication of total tax borne as well as the proportion of those profits actually taxed in Australia.

The ATO said the development of this formula is continuing, but it considers the formula is at a stage of development that means it can provide useful information on effective tax borne on a "like for like" basis. The ATO cautioned however that it had not yet had the opportunity to consult with taxpayers or other stakeholders during the development of this methodology.

The ATO pointed out that it should also be recognised that views differ as to the appropriate formula to use to calculate ETRs (effective tax rates) and that the response to this methodology is likely to be no different. It considered there was merit, particularly in the context of the debate on multi-national tax, in having a standardised approach to effective tax borne to facilitate like for like comparisons (both domestically and internationally). The ATO formula is an option for how that standardised approach might look and the ATO says it is intended to encourage broader discussion about the need for, and appropriateness of, a standardised approach to calculating effective tax borne.

The **denominator** in the formula is the total economic group profit from business activities which are linked to Australia. There is a variant which excludes some abnormal items from the profit calculation. The ATO says the starting point is the consolidated accounting profit of the Australian group (which may include offshore subsidiaries). To develop the estimate of the total economic group profit from business activities linked to Australia, the ATO says it is necessary to make a range of adjustments to that profit (especially for inbound multinationals, where the Australian accounts will only be a subset of the economic group's activity).

The ATO says there are **2 alternative numerators** under the combined metric:

- the Australian tax (including non-resident withholding taxes) paid on those business activities by the economic group;
- the global tax paid on those business activities by the economic group.

The ATO says the metric deliberately includes profits of the economic group which may not be taxable in Australia under Australia's source, residency and anti-profit shifting rules or the OECD / Double Tax Agreement principles intended to avoid double taxation. The metric seeks to reflect all of the channel profit derived from business activities involving Australia and the Australian and global tax paid on that channel profit.

### The ATO formula - (1) Australian-linked profits

The core objective is to quantify revenue, income or profits which are related to Australian-linked business operations; to quantify taxes paid on that Australian-linked revenue, income or profits; and from those two figures, determine the Australian or global ETR.

Cooper says the formula has nothing to do with existing concepts of tax jurisprudence – source and residence is irrelevant; intermediate company structures are totally disregarded; the focus is on income or revenue which is



generated from Australian-linked business operations, whether earned by Australian companies or by overseas companies.

The actual approach adopted in the formula is to start with the Australian accounting profit (always assuming there is an Australian company involved), and then add back all payments made to international related parties. Also added, would be revenue from Australia derived directly by international related companies. (This would catch the Google and Microsoft business structures, amongst others, Cooper says.)

Cooper says deductions would be allowed for payments made to unrelated third parties for goods and services supplied in the generation of the Australian-linked business income. This would include payments made by the Australian company itself (eg to employees, to contractors, and to other unrelated service providers), and payments made by companies through the international related party value chain to their third party suppliers.

Whilst the formula operates differently, Cooper says the result is very similar to the first step of a Global Formulary Apportionment calculation, although in this case focused only on Australian-linked business revenue. Consider the MNC as a single global taxpayer, deriving gross revenue from its Australian operations. From that gross Australian revenue, deduct only those payments made to third-party service providers - disregard all payments made to related parties within the consolidated group. The result, Cooper says, is the profit attributable to the Australian-linked business operations.

### **The ATO formula - (2) tax paid**

Cooper explains that the second component is the calculation of the relevant tax. The formula focuses on "tax paid" within an income year, and that disregards accounting concepts, tax accrual calculations, or any other measurement of tax.

Where payments subject to Australian withholding tax have been added back and included in the profit calculation above, then Australian withholding taxes paid would be included in the "tax paid" base.

Any foreign taxes paid on the Australian-linked profits as those profits pass through the MNC group, would be included in the Australian "tax paid" base. To the extent foreign taxes along the value chain are low, or non-existent, then no amount would be included in the Australian-linked "tax paid" base.

Cooper provided the following examples.

#### ***Example 1***

If an Australian subsidiary derives Australian-linked profits; makes no international related party payments; pays tax at 30% on its Australian taxable income; and distributes the after-tax profit by way of dividend to its foreign parent, the ETR will be 30%.

#### ***Example 2***

If an Irish or Singaporean group company generates (untaxed) revenue from within Australia by way of the remote (from Australia) provision of intangibles or services; a related Australian subsidiary provides limited



'routine' services within Australia for a service fee from the related international sales companies; then the sales revenue generated from Australia by the Irish/Singaporean sales companies will be added to the accounting profit of the Australian subsidiary. (Presumably the Australian subsidiary's group revenue would be excluded.) If little or no tax was paid through the value chain, other than the Australian tax paid by the Australian subsidiary, then the formula ETR would be very low, notwithstanding that the ETR for the Australian subsidiary, calculated on a stand-alone basis may be 30%.

### **Some details not yet known**

Cooper says that whilst we have the outline of a formula for the ETR proposal, there is nothing whatsoever to indicate how this information is to be acquired, nor at this point when the reporting may commence. And crucially there is no indication of any de minimis turnover level for the application of the new regime.

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### **[650] Global fight against MNE tax avoidance – Australia not waiting for BEPS finalisation**

As the G20 President in 2014, Australia led progress on the OECD's Base Erosion Profit Shifting (BEPS) Action Plan.

The Government said "Australia is not waiting for the rest of the world to agree to all 15 items of the Action Plan" and is now taking the next step, consistent with the directions of the G20 and OECD dialogue.

The Government said Australia is acting now to commence implementation of 4 of the key actions it delivered as G20 President to stop multi-national tax avoidance.

#### **1 Country-by-Country reporting**

Australia will implement the OECD's Country-by-Country (CbC) reporting from 1 January 2016. It believes this measure will be a "game changer" in helping expose multi-national tax avoiders.

For the first time, multi-nationals will be required to provide tax authorities with a global picture of their operations including income and tax paid in every country they operate in. This information will be shared between tax authorities.

#### **2 Treaty Abuse rules**

Countries enter into tax treaties with each other to facilitate trade and investment. Tax treaties aim to avoid double taxation, but some taxpayers exploit treaty rules to avoid taxation altogether.

The OECD has developed a plan to tackle this problem. While Australia already includes anti-abuse rules in its tax treaties, the Government says it will act now to incorporate the OECD's recommendations into Australian treaty practice.



### 3 Anti-Hybrids rules

Different tax rules in different countries can allow multi-nationals to claim a tax deduction in one country but not pay tax in the other. The OECD has developed a draft plan to tackle this. Australia will be one of the first countries to act on these draft rules.

The Government has asked the Board of Taxation to consult on the implementation of these rules.

### 4 Harmful Tax Practices and Exchange of Rulings

Some countries provide secret or preferential tax deals to multi-nationals to attract their business, which can be harmful to other countries. The OECD has found Australia does not engage in any harmful tax practices.

The ATO has commenced exchange of information on secret tax deals provided to multi-nationals by other countries that may contribute to tax avoidance in Australia.

### Public tax transparency code

To complement CbC reporting, which will provide enhanced information to tax authorities, the Government said it will also work with businesses to develop a code on the public disclosure of greater tax information by large corporates.

The Government believes the code will provide support and confidence in Australia's tax system by large corporates taking the lead and being more transparent to help educate the public.

The Government has asked the Board of Taxation to lead the development of this transparency code. Progress will be monitored and the Government will consider further changes to the law if required.

*Source: "Fairness in Tax and Benefits" Budget document, 12 May 2015*

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### **[651] MNE tax avoidance - Government to implement OECD new transfer pricing documentation standards from 1 Jan 2016**

In the Budget, the Government announced it will implement the OECD's new transfer pricing documentation standards from 1 January 2016. The Government said it will provide the ATO with \$11.3m over the forward estimates period to implement the new standards. This measure "is estimated to have an unquantifiable gain to revenue over the forward estimates period", the Government said.

Under the new documentation standards, the ATO will receive the following information on large companies that

operate in Australia:

- a Country-by-Country Report showing information on the global activities of the multinational, including the location of its income and taxes paid;
- a master file containing an overview of the multinational's global business, its organisational structure and its transfer pricing policies; and
- a local file that provides detailed information about the local taxpayer's intercompany transactions.

Together, these reports are intended to provide the ATO with a global picture of how multi-national entities operate, assisting it to identify multi-national tax avoidance.

This measure will apply to companies with global revenue of AU\$1 billion or more.

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

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### **[652] MNE tax avoidance – stronger penalties**

The Government announced that it will double the maximum administrative penalties that can be applied by the Commissioner to large companies that enter into tax avoidance and profit shifting schemes. The increased penalties, under Sch 1 to the *Taxation Administration Act 1953*, are designed to help deter tax avoidance and will apply for income years commencing on or after 1 July 2015. This measure is estimated to have an unquantifiable gain to revenue over the forward estimates period, the Government said.

Penalties will not change for taxpayers who have a "reasonably arguable" tax position, as defined under Sch 1.

This measure will apply to companies with global revenue of AU\$1 billion or more.

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

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### **[653] Public tax transparency code - disclosures**

To complement Country by Country reporting, which will provide enhanced information to tax authorities, the Government said it will also work with businesses to develop a code on the public disclosure of greater tax



information by large corporates.

The Government believes the code will provide support and confidence in Australia's tax system by large corporates taking the lead and being more transparent to help educate the public.

The Government has asked the Board of Taxation to lead the development of this transparency code. Progress will be monitored and the Government will consider further changes to the law if required.

The Government says it would like more companies, particularly large multi-nationals operating in Australia, to publicly disclose their tax affairs. In developing the code, the Government says MNEs will need to consider what information is disclosed and how it is disclosed.

### Reaction

The Australian Chamber of Commerce and Industry said businesses were willing to subject themselves to greater scrutiny in this regard, but need assurances that commercially sensitive information will be treated with care. ACCI said any new compliance measures also need careful assessment for the red tape they will generate.

*Source: "Fairness in Tax and Benefits" Budget document, 12 May 2015*

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## SMALL BUSINESS

### **[654] Small business tax rate cut to 28.5%; tax discount for unincorporated small businesses**

The Government announced, with effect from the 2015-16 income year (ie from 1 July 2015), a 1.5% cut in the company tax rate applying to small businesses (turnover less than \$2m). That would reduce the tax rate applying to those businesses to 28.5%. This is expected to benefit some 780,000 incorporated small businesses, 90% of incorporated businesses with annual turnover under \$2m. Companies with an aggregated annual turnover of \$2m or above will continue to be subject to the current 30% rate on all their taxable income.

As the tax cut will apply from 1 July 2015, companies with PAYG instalments can benefit from their first payment after 1 July 2015.

The current maximum franking credit rate for a distribution will remain unchanged at 30% for all companies, maintaining the existing arrangements for investors, such as self-funded retirees.

### **Example**





A business has an annual turnover of \$1.3m and has a taxable income of \$200,000. Under the current law, the business faces a company tax rate of 30% and would pay \$60,000 income tax. Under the proposed new law, the company tax rate falls to 28.5%, meaning the business pays \$57,000 in income tax.

### Small business tax discount

Only around 30% of small businesses are incorporated (ie around 70% are sole traders, trusts and partnerships), so the reduced 28.5% rate will have limited effect. Accordingly, in a surprise but welcome announcement, the Government said that, also with effect from 1 July 2015, individual taxpayers with business income from an unincorporated business that has an aggregated annual turnover of less than \$2m will be eligible for a small business tax discount. The discount will be 5% of the income tax payable on the business income received from an unincorporated small business entity. The discount will be capped at \$1,000 per individual for each income year, and delivered as a tax offset through their end of year tax return.

### Example

A person running a business as a sole trader has an annual turnover of \$300,000 and taxable income of \$75,000. Under the current law, the business would pay tax at the owner's marginal tax rate and would pay around \$16,000 in total. Under the proposed new law, the \$16,000 tax bill on the business income would be reduced by 5%, or \$800. While there is no change in the owner's tax rate, under the new law the owner would pay only \$15,200 tax.

Source: Budget Paper No 2 [p 19]

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### **[655] Small business asset accelerated depreciation write-off up to \$20,000 per year**

With some sense of déjà vu, the Budget announced that small businesses (aggregate annual turnover less than \$2m) would be able to immediately write off assets they start to use or install ready for use, provided the asset costs less than \$20,000. [The existing write-off threshold is \$1,000 after being reduced from the previous \$6,500.] Eligible assets could include things like cars, vans, kitchens, machinery, etc.

**Date of effect:** This will apply for assets acquired and installed ready for use between 7:30pm (AEST) 12 May 2015 and 30 June 2017.

**It should also be remembered that the threshold applies on a per asset basis**, so several assets each costing up to \$20,000 would qualify for the write-off if installed ready for use before 30 June 2017.

Assets valued at \$20,000 or more (which cannot be immediately deducted) can continue to be placed in the small business simplified depreciation pool and depreciated at 15% in the first income year and 30% each income year thereafter. The pool can also be immediately deducted if the balance is less than \$20,000 over this period



(including existing pools).

The Government will also suspend the current "lock out" laws for the simplified depreciation rules (these prevent small businesses from re-entering the simplified depreciation regime for 5 years if they opt out) until 30 June 2017.

These changes are expected to improve cash flow for small businesses and provide a boost to small business activity and investment.

Small businesses can access accelerated depreciation for the majority of capital asset types. Only a small number of assets are not eligible (such as horticultural plants and in-house software). In most cases, specific depreciation rules apply to these assets.

From 1 July 2017, the thresholds for the immediate depreciation of assets and the value of the pool will revert back to existing arrangements.

The measure is estimated to have a cost to revenue of \$1.8bn over the forward estimates period.

### Example

A bakery is run as a company. The business purchases a new oven for \$13,750 and a new proofing cabinet for \$3,500 to replace its old, worn-out equipment. Under current law, because these assets each exceed the current \$1,000 threshold, they would be included in the accelerated depreciation pool. Of their combined \$17,250 cost, only 15%, or \$2,588, would be depreciated in the first year. With a company tax rate of 30%, this means that the company would only get \$776 back on its tax in the first year.

Under the new \$20,000 threshold, the company will be able to claim an immediate deduction for both the new oven and the new proofing cabinet, giving an immediate deduction of \$17,250. With the new small business company tax rate of 28.5% from 1 July 2015, the company will get \$4,916 back on its tax. So, under the new \$20,000 threshold for accelerated depreciation, the company would receive an additional cash flow benefit of \$4,140.

### Reaction

The Australian Chamber of Commerce and Industry (ACCI) welcomed the move, saying accelerated depreciation of up to \$20,000 a year will help small businesses invest in important equipment, from things like a laser printer for a home office or business to a coffee maker for a café, or a set of tools for a tradie.

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

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A potential problem with having a lower tax rate for small companies than the standard corporate tax rate is the disincentive to grow that potentially may arise when companies are close to breaching the \$2m small company threshold.

Of course, growth itself should be its own reward, as it increases the value of the business and, although the transitional tax rate may be comparatively high, there is still more profit left in the owner's pocket.

Nevertheless, taxpayers would no doubt seek planning opportunities to avoid breaching the small company threshold.

The problem with applying a turnover test as the criteria for accessing a lower tax rate is that profit may actually fall, at least initially, in order to produce higher sales, as a result of additional salaries and marketing costs needed to produce the increase in turnover.

The attraction of 2 tax rates for all companies ie a lower rate for the first band of profits and the standard company rate for the balance, is that it reduces the disincentive to grow since the lower tax rate would continue to apply to the first band of profits. However, allowing all companies to access the lower tax rate is vastly more expensive and adds complexity.

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### **[657] Immediate deductibility for professional expenses re start-ups**

The Government has confirmed that it will allow businesses to immediately deduct a range of professional expenses associated with starting a new business, such as professional, legal and accounting advice. For example, legal expenses with establishing a company, trust or partnership.

Currently, some professional costs associated with a new business start-up are deducted over a 5-year period (as "blackhole expenditure"). Allowing start-ups to immediately deduct these expenses will provide much needed cash flow for these new businesses.

The measure is part of the Government's Growing Jobs and Small Business package and aims to encourage business start-ups and entrepreneurship.

#### **Date of effect**

The measure will be available to businesses from the 2015-16 income year.

*Source: Budget Paper No 2 [p 17]; Prime Minister, Treasurer and Small Business Minister's joint press release, 12 May 2015*

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### **[658] CGT roll-over relief for change to entity structure**

The Government has confirmed that it will allow small businesses with an aggregated annual turnover of less than \$2m to change legal structure without attracting a CGT liability at that point.

CGT roll-over relief is currently available for individuals who incorporate but all other entity type changes have the potential to trigger a CGT liability. The measure recognises that new small businesses might choose an initial legal structure that they later find does not suit them when the business is more established. The Government gives the example of a sole trader changing their business structure to a trust - CGT roll-over relief will be available.

The measure is part of the Government's Jobs and Small Business package and aims to reduce red tape that hinder small business growth.

#### **Date of effect**

The measure will be available for businesses that change entity type from the 2016-17 income year.

*Source: Budget Paper No 2 [p 18]; Prime Minister, Treasurer and Small Business Minister's joint press release, 12 May 2015*

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### **[659] No FBT on work-related electronic devices**

The Government will allow an FBT exemption for small businesses with an aggregated annual turnover of less than \$2m that provide employees with more than one qualifying work-related portable electronic device, even where the items have substantially similar functions.

Currently, an FBT exemption (under s 58X FBTA) can apply to more than one portable electronic device used primarily for work purposes, provided the devices perform substantially different functions (or, if the items perform substantially the same function, the second item is a replacement for the first item).

The Government stated that removing the restriction that the FBT exemption applies only to one work-related portable electronic device of each type will remove confusion where there is a function overlap between different products (such as between a tablet and a laptop).

#### **Date of effect**

These changes will take effect from 1 April 2016, ie the start of the 2016-17 FBT year.

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

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## GST MEASURES

### [\[660\]](#) GST measures in 2015-16 Federal Budget

There were some GST important measures announced in the Federal Budget on 12 May 2015. The measure concerning the imposition of GST on intangible supplies is arguably among the most important changes to GST since its introduction: see [661] of this *Bulletin*.

Other measures affecting GST announced in the Budget include:

- the previously announced (but unenacted) measure to replace the current GST-free treatment of supplies of going concerns and farm land with a reverse charge will not proceed: see [662] of this *Bulletin*; and
- the GST compliance programme will be extended for 3 years: see [663] of this *Bulletin*.

There was no announcement concerning the treatment of low-value imported goods: see [664] of this *Bulletin*.

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### [\[661\]](#) "Netflix tax" to start 1 July 2017

The Government has announced that it will impose GST on offshore intangible supplies to Australian consumers with effect from 1 July 2017. The measure has been cited in the media as the "Netflix" tax. The Government released draft legislation which contains the details of the changes.

The broad details of the tax are as follows (and see further under the headings below):

- the tax will be imposed on intangible supplies such as supplies of digital content, games, software – but will also extend to services performed offshore for customers in Australia;





- the liability for the GST will rest either with the supplier or the operator of an electronic distribution service, ie a reverse charge mechanism is not to be utilised;
- GST will be imposed at a rate of 10% on the value of the supply, eg a supply valued at A\$1,367 will attract \$137 of GST (rounded);
- at this stage it would appear all supplies will be caught, regardless of the value of the supply (eg even a \$10 supply will be liable for the tax). However, there is scope for this to be changed by regulation later on;
- only supplies made to consumers who are not registered or required to be registered will be caught, or those entities who are registered but do not acquire the supply for a creditable purpose (ie business-to-business transactions will be exempt); and
- the measures will apply to supplies made on or after 1 July 2017.

The measures amend s 9-25 of the GST Act and insert new Subdiv 84-B and Subdiv 84-C.

### **Supplies subject to the new measures**

The legislation will amend the GST law to make all supplies of things other than goods or real property connected with Australia (or "the indirect tax zone") where they are made to an Australian consumer: proposed s 9-25(5)(d). The issue of registration is to be dealt with later by regulation. This means that supplies which were previously outside the Australian GST net because they were not connected with Australia and were supplied by an unregistered entity will now be a taxable supply.

This change will result in supplies of digital products, such as streaming or downloading of movies, music, apps, games, e-books, as well as other services such as consultancy and professional services, receiving similar GST treatment whether they are supplied by a local or foreign supplier.

It will only apply if a supply is made to an Australian consumer. An "Australian consumer" is an entity which is an Australian resident (below) and either (proposed s 9-25(7)):

- the entity is not registered or required to be registered for GST; or
- the entity does not acquire the supply to any extent for the purpose of an enterprise they carry on (ie not for a creditable purpose).

### **Determining if recipient is an Australian resident**

The key concept in determining if a supply is made to an Australian consumer is determining if the entity is an Australian resident. Australian resident is currently defined in the GST law by reference to the income tax law. Broadly, for individuals, the term takes its ordinary meaning. Similarly, a company will be an Australian resident if the company is incorporated in Australia or if it is effectively owned or controlled by Australian residents. Determining the residency status of other types of entities within the meaning of the GST law is more complex.

However, in this context, the normal scope of Australian resident is restricted. The amendments do not apply to



extend GST to supplies to Australian residents which are Australian residents only because they reside in the external territories of Australia where the GST does not apply.

The test revolves around the tax residency of the consumer, not where that consumer is located at the time of the supply. This means that services performed while an Australian resident is travelling overseas could be caught by the measures, eg a masseuse providing services in Thailand to an Australian tourist could theoretically be connected to Australia for the purposes of the new provisions. Amendments will ensure that such services are not caught by the changes (ie they will ensure that the supplier is not required to register).

### **Determining if Australian resident is a consumer**

The other key concept is determining if an Australian resident entity is a consumer. In general, the amendments will apply to supplies that are **not** acquired by an entity in the course of an enterprise carried on in Australia. However, an entity will also be a consumer if it is carrying on an enterprise but is not registered or required to register for GST because its turnover is less than the GST registration threshold (currently \$75,000).

No GST liability arises under the amendments if the recipient acquires the supply as a business rather than as a final consumer – ie the entity acquires supplies in whole or part in the course of an enterprise and the entity is registered or required to be registered for GST (ie as a creditable acquisition). This reflects that there would be no net GST revenue impact from taxing such supplies as the recipient would be entitled to an input tax credit for any GST on the supplies that are solely for a creditable purpose of the entity.

However, to the extent the recipient of a supply acquires the supply for the purpose of an enterprise for which they are registered or required to be registered for GST, and the supply would not be fully creditable, Div 84 already broadly ensures that the recipient must pay GST on the portion of the acquisition for which an input tax credit would not be available.

### **Safe harbour for Australian consumer status**

In many of the cases where supplies are made to Australian consumers by foreign suppliers, the transaction will be largely automated and the foreign supplier may have only a limited capacity to investigate the residency and GST registration status of the recipient.

Recognising this, the amendments provide a safeguard for suppliers. If an entity that has the GST liability for offshore supplies of services and intangibles to Australian residents:

- takes reasonable steps to obtain information concerning whether the recipient of the supply is an Australian consumer; and
- after taking these steps, reasonably believes that the recipient is not an Australian consumer,

then the entity may treat the supply as if it had been made to a non-resident even if this is later found not to have been the case: proposed s 84-100.

It is expected that the Tax Office will work with affected suppliers to develop an agreed understanding of what



those reasonable steps should be in a range of situations. Interestingly, the draft EM states that the Tax Office "will need to be informed by what information businesses routinely collect from their customers in the course of their normal business activities". (This will make for some interesting interactions between the parties, one imagines.)

### **Imposing obligation on operator of electronic distribution service**

In certain circumstances, the GST consequences of the new measures will be borne by a third party, ie not the supplier or the customer.

The operator of an electronic distribution service (or EDS) allows other entities to make supplies through an electronic store or market to consumers, in effect providing distribution services to these suppliers. In certain circumstances, the GST obligations under the new rules will be imposed on the operator of an EDS, rather than the actual supplier. The rationale is that electronic distribution services typically have greater knowledge about their customer base, are larger in scale and generally are better able to comply with regulatory requirements in the countries in which their distribution services are available. However, this will not occur if the operator has no control of any of the key elements of the supply (below).

While the EDS operator is treated as the supplier, the supply is also treated as having been made through the operator's enterprise and for the same consideration for which the supply was made by the actual supplier.

As a result of being treated as making the supply, the operator will be liable for the GST payable on the supply and the supply will be included in their GST turnover for all purposes, including whether they are registered or required to be registered for GST. The operator will also be entitled to or liable for any adjustments that arise in relation to the supply.

However, in some circumstances, even if an inbound intangible consumer supply is made through an EDS, the supplier will need to pay the GST (ie, rather than the operator). This will occur if the operator has no substantive involvement in making the supply and the documentation for the supply provides that the supplier is responsible for the supply and any GST payable.

To have no substantive involvement in making the supply, the operator must not:

- authorise the payment or delivery of the supply; or
- set the terms or conditions for making the supply.

For the documentation for the supply to provide that the supplier is responsible for the supply and any GST payable:

- the invoice for the supply must identify the actual supplier; and
- the contractual arrangements for both the supply and access to the electronic distribution service must clearly identify that the actual supplier makes the supply and is liable for the GST.



### **Modification of registration and remittance rules**

The general GST rules for registration, tax periods and GST returns, as well as the various turnover thresholds, will be modified to accommodate the new rules for intangible offshore supplies. This is because entities that are only required to be registered because they make inbound intangible consumer supplies are likely to have a more remote link with Australia than other entities that are required to be registered for GST. Similarly, entities that must pay GST as an EDS operator will have additional compliance costs.

These measures will be done by regulation. The draft EM states that issues that will need to be considered as part of the development of any regulations include frequency of remittance and what, if any, registration threshold should apply. It also notes that as there will rarely be input tax credits associated with these supplies, it is intended to create a special registration regime with significantly reduced reporting but under which entities would not be entitled to input tax credits, in order to minimise compliance costs.

To allow for the potential creation of such a scheme, these amendments also provide for a foreign resident entity that makes or intends to make at least one inbound intangible consumer supply in a financial year to elect to have limited registration apply for that year. This election has effect for all of the financial year. It must be made before the end of the entity's first tax period that starts in that financial year. An entity that has elected to apply limited registration cannot make creditable acquisitions in that financial year. This means that the entity will not be entitled to input tax credits for these acquisitions.

### **Date of effect**

The amendments apply to supplies that are made on or after 1 July 2017.

### **Thomson Reuters' comment**

The Treasurer flagged this important change in a press conference on 9 April 2015 and confirmed it in a Press Release dated 11 May 2015. He said that the States "had agreed in principle" to the proposal (and States and Territories must unanimously approve changes to the GST base and rate in order for them to be enacted). He further advised that Treasury had been working on draft legislation, which was released with the Budget papers.

The measures would apply to intangible supplies, such as media services, provided by overseas suppliers into Australia. Matthew Cridland, a partner at DLA Piper, postulated in an article on the announcement (see 2015 WTB 15 [450]) that this could cover things such as:

- digital content (games, software, movies, e-books, etc);
- services performed remotely for customers in Australia; and
- contractual rights granted from outside Australia. This could potentially include intellectual property rights or the right to access software platforms as a part of "Software as a Service" arrangements.

The measure is designed to overcome a competitive disadvantage for domestic suppliers. It has been cited in the media as a "Netflix" tax. Netflix provides online entertainment material from outside Australia and does not charge GST, while local competitors all charge GST. Accordingly, the Treasurer was at pains to point out in the



press conference that this is an integrity measure, which it is. The Treasurer was also at pains to point out that this measure was not a broadening of the GST. However, he indicated that the change could bring in billions in revenue (subsequently reduced to \$350m over the next 4 years in the Press Release), which by any measure is significant and clearly suggests something more than a simple integrity measure.

Undoubtedly, the greatest obstacle to implementing the change is determining how any GST liability would be remitted.

The problem arises because the overseas supplier is generally unregistered (nor is required to be registered). The supply which is received by an Australian consumer is not connected with Australia (as the term is currently defined). Accordingly, any supply that an overseas supplier makes to an Australian customer does not qualify as a taxable supply. This means that there is no requirement for the overseas supplier to charge GST, even though the supply is received and enjoyed by an entity in Australia.

For example, assume there is a 16 year old who is obsessed with online gaming. He borrows his father's credit card and purchases a software program from a Romanian gaming company ("Ro Co") for \$50, to provide an added dimension to his gaming repertoire. The proposed measures will seek to impose GST on the transaction. The question is – who is liable to remit \$5 GST to the Tax Office? It is generally accepted that there are 3 options available.

**Option 1:** make the supplier liable. It would be possible to legislatively require offshore suppliers who make such supplies to register (and so become liable for the GST on the supply and for remitting GST). In the above example, Ro Co would be obliged to register and remit \$5 GST to the Tax Office. However, in such a case, the enforcement of compliance obligations and collection would prove difficult (if not impossible in the case of small scale suppliers). Who is going to educate Ro Co as to its obligations to the Australian revenue authorities, and who will enforce those obligations if they are not met?

**Option 2:** impose a reverse charge. A "reverse charge" refers to the obligation on a recipient entity to charge itself GST on the acquisition of things from an overseas business. The supply is effectively treated for GST purposes as if it had been made by the customer, rather than the entity which actually made the supply.

Currently, Div 84 of the GST Act imposes a reverse charge on offshore supplies other than goods or services, ie intangible supplies such as services or intellectual rights (and the Tax Office considers can extend to bitcoin). However, it only applies where the recipient (ie the customer) is registered, ie it only applies to business-to-business transactions. In terms of a Netflix tax, the reverse charge would be extended to include unregistered entities, eg to include all those people lying around on a Saturday night who decide to download a movie for the first time. This would force potentially thousands of users to remit payment to the Tax Office who might otherwise have no contact with the Tax Office in regards of GST. The compliance issues involved in such a scenario would again prove to be challenging.

In the above example, the 16 year old gamer (as the recipient of the supply) would be liable for the payment of \$5. The ramifications of enforcing this seem quite significant.

**Option 3:** make a third party liable to remit GST on the supply. The basic concept of GST is that tax is borne by



the final consumer. For intangible supplies, the final consumer would be the entity which is purchasing the supply, eg an individual who purchases a right to view an online movie. The fact that the individual is unregistered is not in itself a problem – GST is payable on a taxable importation of goods by anyone who makes it, regardless of whether or not that person is registered. The question of who collects and remits tax on taxable importations is largely resolved through the use of customs agents (apart from the yet-to-be-resolved issue of imported goods with a value of less than \$1,000, which was not addressed in the Budget).

The question of who or what would play the role of custom agent for the collection of tax on intangible supplies is somewhat more complex, as the entry point for such supplies is the customer's modem. Online services would likely be paid for by credit card. It might be theoretically possible to impose the responsibility of remitting a GST liability on the credit card provider. In the above example, this would mean that the provider of the father's credit card used by the 16 year old gamer is liable to remit \$5 for the supply by Ro Co. It is hard to view this as a viable proposition – there would understandably be too much resistance from the providers against the administrative nightmare this would undoubtedly present.

The draft legislation shows that the Government has adopted a hybrid model. Option 1 is to be adopted as a general rule, but if the supply is made through an electronic distribution service then Option 3 applies. Accordingly, Ro Co either registers and pays \$5, or the EDS operator pays it.

It can be seen that there are significant implementation issues involved in both Option 1 and Option 3, which in part explains why the measures will not start until 1 July 2017 (ie they will take time to bed down). In addition, the draft EM states that the OECD is in the process of developing guidelines for the taxation of cross border supplies of services and intangibles. Guidelines concerning the place of taxation rules and collection mechanisms for business to consumer supplies are expected to be finalised by the end of 2015.

The reference to "collection mechanisms" is key, as it explains what may be described as the elephant in the room. The legislative mechanisms for imposing the new measures have been explained, but there is no mention of remittance/collection – other than to say that the measures will be put in place by regulation at a later time. Put crudely, it is not clear how the Tax Office is going to get its money.

*Source: Budget Paper No 2 [p 20]; Tax Laws Amendment (Tax Integrity: GST and Digital Products) Bill 2015 – Exposure draft Bill and Exposure Draft Explanatory Material*

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### **[662] Changes to going concern rules not proceeding**

The Government announced in the 2015-16 Budget that it would not be proceeding with a reverse charge for disposals of going concerns and farm land.

Such supplies are currently treated as GST-free provided the provisions of s 38-325 (going concerns) and Subdiv





38-O of the GST Act (farm land) are satisfied. The Government had previously announced in December 2013 that it would proceed to replace the GST-free treatment with a reverse charge: see 2013 WTB 53 [2270].

The Government decided not to proceed with the changes as it considered that it would have resulted in "adverse consequences for taxpayers". This is not detailed, but it would appear that the compliance burden would have been too great.

The Budget Papers state that the decision not to proceed will have a small but unquantifiable cost to overall GST revenue.

*Source: Budget Paper No 2 [p 22]*

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### **[663] Compliance programme extended for 3 years**

The Government announced in the 2015-16 Budget that it will provide \$265.5m to the Tax Office over 3 years from 2016-17 (ie the next financial year) to "continue a range of activities to promote GST compliance".

The funding will assist in supporting the Tax Office to identify:

- fraudulent GST refunds;
- under-reporting of GST liabilities;
- failure to lodge GST returns; and
- outstanding GST debts.

The Government has attached significant revenue estimates to the programme. It anticipates a net improvement to the Budget of \$445m in fiscal terms over the forward estimates period, but also includes an additional GST component of \$1.8bn which will be paid to the States and Territories. It notes that income tax receipts also increase, as GST compliance activity leads to the increased collection of unpaid debts from income tax.

*Source: Budget Paper No 2 [p 22]; "Fairness in Tax and Benefits" [p 9]*

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### **[664] No changes announced to the low-value threshold for taxable importations**

Currently, there is a GST threshold exemption of \$1,000 that applies to purchases of imported goods (including



online purchases). This has received considerable criticism from domestic "bricks and mortar" retailers and others, as they argue it causes a competitive disadvantage.

The Government has flagged an intention to "explore" lowering the threshold: see 2014 WTB 14 [494]. This has been an ongoing issue, regardless of which party was in power. However, the problem has always been how to enforce the law in a cost effective manner if the threshold is lowered (see, for example, the report of the *Taskforce on Low Value Parcel Processing* discussed at 2012 WTB 38 [1541]).

This issue was not addressed in the Budget.

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## PERSONAL TAXATION

### [665] Personal tax rates: no change; Budget deficit levy not to be extended

The 2015-16 Budget did not make any changes to the current personal tax rates, although in the lead-up to the Budget, the Treasurer indicated that the 2% Budget deficit levy (tax) on incomes over \$180,000 would not be extended beyond its initial 3 years. The levy was announced in last year's Budget, has been legislated and applies for 3 years from 1 July 2014. It is due to cease at the end of the 2016-17 financial year.

#### Personal tax rates

The currently legislated personal tax rates and thresholds (including the 2% temporary budget deficit levy, but excluding the 2% Medicare levy) are as follows:

Personal income tax rates and thresholds				
	2014-15		2015-16 and 2016-17	
	Threshold	Rate	Threshold	Rate
1st rate	\$18,201	19.0%	\$19,401	19.0%
2nd rate	\$37,001	32.5%	\$37,001	33.0%
3rd rate	\$80,001	37.0%	\$80,001	37.0%
4th rate	\$180,001	47.0%	\$180,001	47.0%

With Medicare levy included, the top marginal rate is 49% from 1 July 2014 to 30 June 2017.

### Tax rates and thresholds summarised

The current 2014-15 tax rates (including the 2% temporary budget deficit levy, but excluding the 2% Medicare levy) are as follows:

2014-15 income year	
Taxable income \$	Tax payable \$
0 - 18,200	Nil
18,201 - 37,000	Nil + 19% of excess over 18,200
37,001 - 80,000	3,572 + 32.5% of excess over 37,000
80,001 - 180,000	17,547 + 37% of excess over 80,000
180,001+	54,547 + 47% of excess over \$180,000

The currently legislated rates for the 2015-16 and 2016-17 years (including the 2% temporary budget deficit levy, but excluding the 2% Medicare levy) are:

2015-16 and 2016-17	
Taxable income \$	Tax payable \$
0 - 19,400 <sup>a</sup>	Nil
19,401 - 37,000	Nil + 19% of excess over 19,401
37,001 - 80,000	3,344 + 33% <sup>b</sup> of excess over 37,000
80,001 - 180,000	17,534 + 37% of excess over 80,000
180,001+	54,534 + 47% of excess over \$180,000

### Notes:

a – this figure will remain at \$18,200 if the *Labor 2013-14 Budget Savings (Measures No 1) Bill 2014* noted above is passed (it is currently before the House of Reps).

b – this figure will remain at 32.5% if the *Labor 2013-14 Budget Savings (Measures No 1) Bill 2014* noted above is passed (it is currently before the House of Reps).



### Low income tax offset

As currently legislated, the low income tax offset (LITO) rates are:

Low income tax offset		
	From 1 July 2012 to 30 June 2015	From 1 July 2015
Amount	\$445	\$300
Lower withdrawal limit	\$37,000	\$37,000
Upper withdrawal limit	\$66,667	\$67,000
Withdrawal rate	1.5%	1.0%

As noted above, if the [Labor 2013-14 Budget Savings \(Measures No 1\) Bill 2014](#) (currently before the House of Reps) is passed, then the following changes would apply from 1 July 2015:

- the maximum value of the LITO would remain at \$445 (instead of falling to \$300 from 1 July 2015);
- the withdrawal rate of the LITO would remain at 1.5% (instead of falling to 1%); and
- the threshold below which a person may receive LITO would remain at a taxable income of \$66,667 (instead of increasing to \$67,000 from 1 July 2015).

### Non-residents (foreign residents)

The current rates for non-residents (including the temporary budget deficit levy) for 2014-15 are:

2014-15	
Taxable income \$	Tax payable \$
0 - 80,000	32.5%
80,001 - 180,000	26,000 + 37% of excess over 80,000
180,001+	63,000 + 47% of excess over \$180,000

*Note* that foreign residents who hold a Special Program Visa (subclass 416) and are employed by an approved employer under the Seasonal Labour Mobility Program will be taxed at 15%.

The tax rates for non-residents (including the temporary deficit tax) for the 2015-16 and 2016-17 income years (ie from 1 July 2015 to 30 June 2017) are:

2015-16 and 2016-17	
Taxable income \$	Tax payable \$



0 - 80,000	33% <sup>a</sup>
80,001 - 180,000	26,400 + 37% of excess over 80,000
180,001+	63,400 + 47% of excess over \$180,000

**Note:**

a – this figure will remain at 32.5% if the *Labor 2013-14 Budget Savings (Measures No 1) Bill 2014* noted above is passed (it is currently before the House of Reps).

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### **[666] Work-related car expenses simplified: 2 methods discontinued; only one flat rate**

The Government says that nearly 4 million Australians claim a work-related car expense deduction each year. Currently, there are 4 different methods by which taxpayers can claim the tax deduction for work-related car expenses based on cents per kilometre, logbook method, the 12% of original value method, and one-third of actual expenses incurred. The Assistant Treasurer said the last 2 methods are used in less than 2% of cases, and the Budget confirmed that **they would be discontinued** as a means of streamlining the system and reducing compliance costs.

#### **That means only 2 methods will remain: cents per km and logbook method.**

Over 80% of people use the cents per kilometre method by which they receive a deduction according to the size of the car's engine. For small cars (up to 1,600cc), it is 65 cents, medium cars (1,601 - 2,600cc) 76 cents and large cars (2,601cc and over) 77 cents per kilometre, up to a cap of 5,000km each year.

The Assistant Treasurer said motoring association data shows that the average running cost for the top 5 selling motor vehicles is 66 cents per kilometre. So the Government will set 66c/km as the rate for using the cents/km method, irrespective of a car's engine size. Based on 2012-13 figures, this would see those who drive smaller vehicles getting a slight increase in deductible expenses and those who drive larger cars having a decrease in their deduction. For example, a person with an eligible 2.5 litre sedan would currently be able to claim at 76c/km compared to only 66c/km under the new rules. On a 1,000km journey, this would mean a \$760 deduction under the current rules, but only \$660 under the proposed rules.

The average impact overall for those driving medium and larger cars would be a loss of \$85 a year. This measure is expected to result in a budget saving of \$845m over the forward estimates.

Those drivers who believe their car related costs are greater than the 66 cents average, or those who drive more



than 5,000km per year, will still be able to claim the deduction for the full amount based on keeping a logbook.

The change being proposed is about expenses claimed for cars people own, not salary packaged cars taxed under fringe benefits rules.

### **Date of effect**

The changes will apply from the 2015-16 income year.

Source: Budget Paper No 2 [p 27]; [\*Assistant Treasurer's release\*](#)

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### **[667] Medicare levy low-income thresholds for 2014-15**

From the 2014-15 income year, the Medicare levy low-income threshold for singles will be increased to \$20,896 (up from \$20,542 for 2013-14). For couples with no children, the threshold will be increased to \$35,261 (up from \$34,367 for 2013-14). The additional amount of threshold for each dependent child or student will be increased to \$3,238 (up from \$3,156).

For single seniors and pensioners, the Medicare levy low-income threshold will be increased to \$33,044 (up from \$32,279). This threshold applies to those entitled to the seniors and pensioners tax offset (SAPTO).

### **Date of effect**

The measure will apply from 1 July 2014.

Source: Budget Paper No 2 [p 26]

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### **[668] Government employees delivering overseas assistance – tax exemption to be removed**

The Government will remove an income tax exemption that is currently available to government employees who earn income while delivering Official Development Assistance overseas for more than 90 continuous days.

This measure will remove the inconsistent taxation of government employees delivering Official Development Assistance overseas by ensuring that their foreign earnings are treated as assessable income in Australia.

Australian Defence Force and Australian Federal Police personnel and individuals delivering Official Development Assistance for a charity or private sector contracting firm will maintain eligibility for the exemption.





### Date of effect

The measure will take effect from 1 July 2016.

*Source: Budget Paper No 2 [p 27]*

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### **[669] Deductible gift recipients – updates**

Since the Mid-Year Economic and Fiscal Outlook 2014-15, the following organisations have been approved as specifically listed deductible gift recipients (DGRs) from 1 January 2015:

- International Jewish Relief Limited; and
- National Apology Foundation.

The following organisations, which are currently listed as DGRs, have had their listings extended, to expire on 31 December 2017:

- National Boer War Memorial Association; and
- Australian Peacekeeping Memorial Project.

*Source: Budget Paper No 2 [p 28]*

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### **[670] Australian Defence Force personnel deployed overseas - income tax relief**

The Government will provide income tax relief for Australian Defence Force personnel deployed on Operations AUGURY and HAWICK. A full income tax exemption will be provided to personnel on Operation AUGURY, and the overseas forces tax offset will be available to personnel on Operation HAWICK.

*Source: Budget Paper No 2 [p 22]*

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### **[671] Eligibility for zone tax offset restricted**

"Fly-in fly-out" and "drive-in drive-out" (FIFO) workers will cease to be eligible for the zone tax offset where their normal residence is not within a "zone".

Currently, to be eligible for the zone offset, a taxpayer must reside or work in a specified remote area for more than 183 days in an income year. It is estimated that around 20% of all claimants do not actually live full-time in the zones. The Government said that many of these are FIFO workers who do not face the same challenges of remote living that the zone offset was designed to address. This measure will therefore better target the zone offset to taxpayers who have taken up genuine residence within the zones.

For those FIFO workers whose normal residence is in one zone, but who work in a different zone, they will retain the zone offset entitlement associated with their normal place of residence.

#### **Date of effect**

This measure will apply from 1 July 2015.

*Source: Budget Paper No 2 [p 25]*

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### **[672] Temporary working holiday makers - tax residency rules to change**

The Government will change the tax residency rules to treat most people who are temporarily in Australia for a working holiday as non-residents for tax purposes, regardless of how long they are here. This means they will be taxed at 32.5% from their first dollar of income.

Currently, a working holiday maker can be treated as a resident for tax purposes if they satisfy the tax residency rules, typically that they are in Australia for more than six months. This means they are able to access resident tax treatment, including the tax-free threshold, the low income tax offset and the lower tax rate of 19% (for taxable income above the tax free threshold up to \$37,000).

#### **Date of effect**

This measure will apply from 1 July 2016.

*Source: Budget Paper No 2 [p 26]*

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### **[673] Extension of ADF exemptions**

The pay and allowances of an ADF member are exempt from income tax under s 23AD of the ITAA 1936 if the ADF member is on eligible duty in a specified area overseas. The Income Tax Regulations specify which military operations qualify for these purposes (see reg 7A). The Budget Papers indicate that the exemption for service with the following operations will be extended to cover the 2015-16 income year:

- Operation Accordion (activities to support the ADF's broader activities in the Middle East Region and Australia's continuing military contribution to international stabilisation and counter-terrorism efforts);
- Operation OKRA (international effort to disrupt and degrade the ISIL threat in Iraq);
- Operation Highroad (NATO's train, advise and assist mission in Afghanistan); and
- Operation Manitou (countering terrorism, piracy and related illegal activities in the maritime Middle Eastern region).

*Source: Budget Paper No 2 [p 72]*

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### **[674] HELP debt - overseas student repayment obligations**

The Budget confirmed that the Government will introduce arrangements to ensure a fairer Higher Education Loan Programme (HELP) by requiring Australians residing overseas to repay their HELP debts.

Only those graduates living overseas and earning incomes above the minimum HELP repayment threshold (AUD\$53,345 in 2014-15) will be required to make repayments towards their HELP debts.

#### **Date of effect**

The new arrangements will apply from 1 January 2016 to both new and existing debts. From this date, debtors going overseas for more than 6 months will be required to register with the ATO, while those already overseas will have until 1 July 2017 to register. Repayment obligations will commence from 1 July 2017 (for income earned in the 2016-17 financial year).

*Source: Budget Paper No 2 [p 9]; Budget 2015 "Fairness in Tax and Benefits"*

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## BROADER BUSINESS TAXATION

### [675] Tax and regulatory changes to ease burdens on start-ups

The Budget confirmed the Treasurer's announcement of 6 May 2015 of a number of [proposed tax and regulatory changes](#) to support start-ups and entrepreneurship. Key measures, which form part of the Government's Jobs and Small Business package, include:

- ***Deduction for professional costs re starting business*** - From July 2016, new start-ups will be able to immediately deduct professional costs associated with starting a business rather than writing them off over 5 years. Mr Hockey said many people need the advice of lawyers and accountants when they start a business and that this "can be expensive and drag on cash flow". He said allowing these costs to be deducted immediately will allow more money to be invested in growing the new business. See also para [657] of this *Bulletin*.
- ***Legal structure change without CGT liability*** - Small business owners will also be able to change the legal structure of their business without incurring a CGT liability. Mr Hockey said this will reduce some of the complexity of starting a new business and provide business owners with more flexibility to determine how they grow. See also para [658] of this *Bulletin*.
- ***Crowd-sourced equity funding*** - The Treasurer said the Government is making it easier for small businesses to access the capital they need to grow and thrive by removing obstacles to crowd-sourced equity funding. He said this change compliments the expanded tax concessions for Employee Share Schemes currently before Parliament. The Government noted the current regulatory framework makes it difficult for proprietary companies to undertake crowd-source equity funding. The Government indicates an option would be to transition to a public company (but that would increase red tape with disclosure obligations). The Government proposes to remove the costly elements of transitioning to a public company, enabling businesses to more easily raise funds from a large number of small investors. The Government said the proposed new law would balance supporting investment, reducing compliance costs for small business and maintaining an appropriate level of investor protection.
- ***Streamlined business registration*** - Business registration will be streamlined with a single online registration site. This will fix the current fragmented and complex process, saving time and money, Mr Hockey said. Businesses will be able to log onto business.gov.au and enter their details just once to take care of required business registration requirements. Under the streamlined business registration model proposed by the Government, an individual planning to start a business can log onto business.gov.au and access (among other things): ABN registration; Company registration; Business name registration; GST registration; PAYG withholding registration; FBT registration; an Australian



Business Account to provide an integrated business account with government; and online payment for registration costs. The model proposed will be implemented by mid-2016.

- **Regulation framework review** - Mr Hockey said the Government will also consult "in the coming months" on the current framework that guides the establishment and regulation of corporations. He said the consultation will investigate whether some of the regulatory requirements can be removed or relaxed to reduce compliance costs and make it easier for small businesses to innovate, grow and create jobs. In particular, the Government plans to release a consultation paper on potential changes to the Corporations Act.

*Source: Budget Paper No 2 [p 17]; Budget 2015 "Growing Jobs and Small Business"; Prime Minister, Treasurer and Small Business Minister's joint press release, 12 May 2015*

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### **[676] MIT measures deferred another 12 months**

The start date for the new tax regime for managed investment trusts (MITs) has been put back a further 12 months to 1 July 2016. However, a MIT will have the option of applying the new rules from 1 July 2015.

The Government anticipates that most MITs will apply the new rules from 1 July 2016. The provision of a transition period responds to stakeholder feedback that many MITs require additional time to make amendments to their trust deeds and IT systems.

MITs and other trusts treated as MITs will continue to be allowed to disregard the trust streaming provisions for the 2015-16 income year. This will ensure these interim arrangements for MITs continue to apply until the commencement of the new rules.

Draft legislation containing the new tax regime was released on 10 April 2015: see 2015 WTB 15 [458].

*Source: Budget Paper No 2 [pp 23-24]*

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### **[677] FBT meal and entertainment concessions for NFP employees to be capped**

The Budget confirmed the Assistant Treasurer's recent announcement that the Government would introduce a grossed-up cap of \$5,000 per year on the FBT concessions for salary-sacrificed meal entertainment and entertainment facility leasing expenses (meal entertainment benefits) for employees of certain not-for-profit organisations (ie public and not-for-profit hospitals, public ambulance services, public benevolent institutions



(except hospitals) and health promotion charities).

The FBT cap on exempt benefits provided by these NFPs is currently (as from 1 April 2015) \$17,667 for public and not-for-profit hospitals and public ambulance services and \$31,177 for public benevolent institutions (except hospitals) and health promotion charities. In addition to the capped exemptions, employees of these NFPs can also salary sacrifice meal entertainment benefits with no FBT payable by the employer. These benefits will be subject to a separate grossed-up cap of \$5,000 per year per employee.

All meal entertainment benefits will also become reportable benefits and thus will count towards an employee's "reportable fringe benefits amount" for an income year. An employee has a reportable fringe benefits amount if their individual fringe benefits amount for the relevant FBT year (ie the FBT year ending on the previous 31 March) exceeds \$2,000. At present, meal entertainment fringe benefits are "excluded benefits" and therefore are ignored in working out an employee's reportable fringe benefits amount.

### **Date of effect**

These measures will apply from 1 April 2016.

*Source: Budget Paper No 2 [pp 22-23]*

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### **[678] Dividend imputation - no changes**

Pre-Budget speculation about the dividend imputation system came to nought, as the Budget did not announce any changes.

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### **[679] Tax exemption for Global Infrastructure Hub**

The Global Infrastructure Hub (the Hub) will be made exempt from income tax. This will be achieved by amending Div 50 of the ITAA 1997 to specifically list the Hub as an exempt entity.

The Hub was established following a joint statement from the Prime Minister and the Treasurer at the G20 Leaders' Summit in November 2014. The Hub will work internationally to lift the quality and quantity of public and private investment in infrastructure through information development, knowledge sharing, training and the implementation of leading practices.

### **Date of effect**

The exemption from income tax will apply to amounts that would be included in assessable income from





24 December 2014 to 30 June 2019.

Source: *Budget Paper No 2 [p 28]*

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### **[680] Accelerated depreciation for primary producers re fencing, water facilities, etc**

The Government will allow all primary producers to immediately deduct capital expenditure on fencing and water facilities such as dams, tanks, bores, irrigation channels, pumps, water towers and windmills.

The Government will also allow primary producers to depreciate over 3 years all capital expenditure on fodder storage assets such as silos and tanks used to store grain and other animal feed.

Currently, the effective life for fences is up to 30 years, water facilities is 3 years and fodder storage assets is up to 50 years.

The measure aims to improve resilience for those primary producers who face drought, assist with cash flow and reduce red tape by removing the need for primary producers to track expenditure over time.

The Government noted that further measures to support farmers who are preparing themselves for the damaging effects of drought will be announced in the Government's forthcoming White Paper on Agricultural Competitiveness.

#### **Date of effect**

The changes will be for income years commencing on or after 1 July 2016.

Source: *Budget Paper No 2 [p 14]; Minister for Agriculture's press release, 12 May 2015*

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### **[681] Digital transformation coming for interactions with government**

The Budget announced that the Government would invest \$254.7m in the Digital Transformation Agenda. Of that, some \$95.4m will be used to establish the Digital Transformation Office to ensure that all new and redesigned



government services are simpler and easier to use, and can be completed from start to finish online.

The [Digital Transformation Office](#) (DTO) is designed to transform the way public services are designed and delivered, making them simpler and easier to use. All new and redesigned services will be digital by default. This means that everyone will be able to access public services digitally from start to finish on their mobile device or PC.

The DTO will set digital design standards for all public services, improve the way government information is presented, better link digital, face-to-face and telephone delivery channels, and develop and expand common IT platforms such as myGov.

The DTO will become an Executive Agency on 1 July 2015.

The first phase of the Agenda will also include \$159.3m to:

- implement a Digital Service Standard, modelled on the UK equivalent, to apply to all government agencies to make services simpler and easier to use;
- design and deliver more myGov services for individuals, with an improved digital inbox and "tell us once" services, and new digital identity services, and a new digital account for all Australian businesses, enabling them to access these services using a myGov credential;
- implement a simpler and more efficient grants administration process across government.

*Source: Minister for Communications media release, 12 May 2015*

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### [\[682\]](#) Further ESS changes

The Budget contains further changes to the taxation of the employee share schemes (ESS).

Significant changes to the ESS rules were announced in October 2014 to support start-up companies and boost entrepreneurial activity. Legislation to implement these measures was introduced on 26 March 2015 (the [Tax and Superannuation Laws Amendment \(Employee Share Schemes\) Bill 2015](#)): see 2015 WTB 12 [356]. The additional changes announced in the Budget will:

- exclude eligible venture capital investments from the aggregated turnover test and grouping rules (for the start-up concession);
- provide the CGT discount to employee share scheme interests that are subject to the start-up



concession, where options are converted into shares and the resulting shares are sold within 12 months of exercise; and

- allow the Commissioner to exercise a discretion in relation to the minimum 3-year holding period where there are circumstances outside the employee's control that make it impossible for them to meet this criterion.

### **Date of effect**

These changes will take effect from 1 July 2015, the date of commencement of the other changes proposed by the Employee Shares Schemes Bill.

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

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## **[683] Luxury car tax exemption for public museums and art galleries**

The Government will allow public museums and public art galleries that have been endorsed by the Commissioner of Taxation as a deductible gift recipient to acquire cars free of luxury car tax (LCT).

The measure will only be in respect of cars acquired for the purpose of public display, consigned to the collection and not used for private purposes.

### **Date of effect**

The measure will have effect from the date of Royal Assent of the enabling legislation.

*Source: Budget Paper No 2 [p 23]*

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## **SUPERANNUATION**

### **[684] No major super tax changes - but reform processes loom**

The Government did not announce any major new superannuation measures in the Budget. Instead, the Treasurer pledged that there will be "no new taxes on superannuation" under this Government. "I want to reassure all Australian workers they can have confidence in their retirement plans", Mr Hockey said. This follows recent comments by the Treasurer, in response to the Reserve Bank's decision to reduce interest rates to 2.0%, that now was "not the time to hit superannuants who are facing potentially many years of lower returns on their



savings in bank accounts". (Source: *Treasurer's press conference, 5 May 2015.*)

Despite ruling out new "taxes" on superannuation, the Government has left the door open for any urgent legislation required for "integrity measures" or to provide certainty etc. As such, a range of superannuation-related measures were announced as part of the 2015-16 Budget, including:

- **Age Pension assets test** - the Government confirmed its previous announcement on 7 May 2015 that the Age Pension assets test threshold for a single homeowner will be increased to \$250,000 (up from \$202,000) and \$375,000 for a homeowner couple (up from \$286,500) from 1 January 2017. The assets test threshold (or assets free area) for non-homeowners will be increased to \$200,000 more than homeowner pensioners, ie \$450,000 (single) and \$575,000 (couple). However, the assets test taper rate at which the Age Pension begins to phase out will be increased from \$1.50 of pension per fortnight to \$3.00 of pension for each \$1,000 of assets over the relevant assets test threshold. This means that the maximum value of assets that a homeowner couple can hold to qualify for a part pension will be reduced from \$1.151m to approximately \$823,000 (or \$547,000 for a single homeowner instead of the current \$775,500): see para [693] of this *Bulletin*;
- **Defined benefit super schemes: Government to close loophole on pension income test** - the Government will introduce a 10% cap on the deductible amount of defined benefit income streams for the purposes of the social security income test: see para [685] of this *Bulletin*;
- **supervisory levies** - will be increased to fully recover the cost of superannuation activities undertaken by the Tax Office and the Department of Human Services: see para [688] of this *Bulletin*;
- **lost and unclaimed super** - redundant reporting obligations will be removed to streamline the lost and unclaimed superannuation arrangements: see para [689] of this *Bulletin*;
- **early super access for terminal illness** - the life expectancy "certification period" for people with a terminal medical condition will be extended to 24 months (up from 12 months) to gain tax free access to superannuation: see para [687] of this *Bulletin*.

### Murray Financial System Inquiry

The big ticket reform items for tax, superannuation and financial services have largely been left for consideration as part of the Tax White Paper process (see below) and the Murray Financial System Inquiry (FSI).

In April 2015, the Prime Minister indicated that the Government would "soon be responding to the Murray report into the financial system". While the Murray inquiry found that the regulatory framework was generally sound, it made 44 wide-ranging recommendations relating to the Australian financial system: see 2014 WTB 52 [1721]. To this end, the final report made the following superannuation and financial services recommendations:

- **objectives of superannuation system** - should be enshrined in legislation to avoid ad hoc changes that cannot be sustained over the long-term;
- **SMSF borrowings** - remove the exception in s 67A of the SIS Act on a prospective basis to prohibit



direct borrowings by superannuation funds for limited recourse borrowing arrangements (LRBAs) on a prospective basis: see para [686] of this *Bulletin*;

- **retirement income products** - superannuation trustees should be required to pre-select a comprehensive income product for retirement (CIPR) to manage longevity risk for members. Impediments to retirement income product development (including tax policy settings) should also be removed;
- **choice of fund** - all employees should have the ability to choose the fund into which their superannuation guarantee contributions are paid;
- **independent trustees** - a majority of independent directors should be mandated for the board of corporate trustees of public offer superannuation funds; and
- **financial advisers** - raise the competency standards; rename "general advice" and require advisers and mortgage brokers to disclose ownership structures.

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### **[685] Defined benefit super schemes: Government to close loophole on pension income test**

The Government confirmed that a 10% cap will apply to the "deductible amount" for pension income received from a defined benefit superannuation scheme for the purposes of the social security income test. This measure was previously announced on 7 May 2015 by the Minister for Social Services, Scott Morrison. The proposed 10% cap on the deductible amount for defined benefit superannuation schemes seeks to close an unintended loophole that opened up in 2007 thanks to some legislative changes at that time. Closing this loophole is expected to save around \$465.5m over 5 years.

Mr Morrison said the loophole is currently allowing around 48,000 high-income members from some public sector and large corporate defined benefits superannuation schemes to effectively fly "under the radar" on the income test for the pension. A defined benefit income stream is a pension paid from a public sector or other corporate defined benefit superannuation fund where the pension paid generally reflects years of service and the final salary of the beneficiary. Under current arrangements, some defined benefit superannuants are able to have a large proportion of their superannuation income (ie the "deductible amount") excluded from the pension income test.

For most people with a defined benefit income stream, the Minister said that the gross income they receive from those schemes is subject to the income test for the pension. However, for those who are part of some large State Government public sector schemes, significant portions of their income are disregarded in assessing their eligibility for a pension under the income test. The reason for that is to reflect what is seen as the voluntary after tax contributions made when they were working. However, the amounts being deducted in these cases are in excess of those "notional contributions", Mr Morrison said.



The Minister announced that the Government will move to close this loophole by applying a 10% cap on the amount that can be deducted for these purposes from 1 January 2016. Mr Morrison said that around two-thirds of those who are involved in these defined benefit schemes are already within that 10% cap and they will not be affected.

For example, a couple with a defined benefits scheme income of say \$120,000 a year is currently able to reduce what is assessed by the pension income test by around 50%; treating this portion of their income as a draw down. The remaining \$60,000 is then assessed as income under the income test for the pension which results in them receiving a pension in part of some \$7,500 per year on top of the \$120,000 they were drawing down from the scheme.

### Exclusions

Recipients of Veterans' Affairs pensions and defined benefit income streams paid by military superannuation funds are exempt from this measure. In addition, the measure will not affect the means test treatment of income streams purchased for retail providers of these products. For example, AMP, AXA and funds of that nature, self-managed superannuation funds (SMSFs) and small APRA funds as they don't operate in this way.

### Date of effect

The measure will apply from 1 January 2016.

### Thomson Reuters note

For defined benefit income streams, assessable income for the purposes of the social security income test is calculated by reference to the "deductible amount" (or fixed amount) of the income stream under the *Social Security Act 1991*. See Department of Social Services *Guide to Social Security Law* (Sections [4.9.1.20](#) and [4.9.2.30](#)).

Source: Budget Paper No 2 [pp 170-71 ]; [Minister for Social Services, press conference transcript, Sydney, 7 May 2015](#)

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### [\[686\]](#) SMSFs and limited recourse borrowings - no change

The Government did not make any Budget announcements in relation to the Murray Financial System Inquiry (FSI) recommendation to remove the borrowing exception in s 67A of the SIS Act for limited recourse borrowing arrangements (LRBAs) on a prospective basis. Instead, the Prime Minister indicated in April 2015 that the Government would "soon be responding to the Murray report into the financial system" following consultation with industry and consumers.

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### **[687] Early access to super for terminal illness - Government to extend law**

The Government confirmed that it will extend early access to superannuation for people with a terminal medical condition (TMC).

Under the current early access to superannuation arrangements, a person with a terminal illness is required to get 2 medical practitioners (including a specialist) to certify that they are likely to die within 12 months to gain unrestricted tax free access to their superannuation balance: reg 303-10.01 of the *Income Tax Assessment Regulations 1997*. The Government acknowledged that this has proven difficult for some people who want access to their superannuation to relieve the financial burden associated with treatment costs or want to make the most of their time with their family.

The Government will amend the relevant regulations to change the life expectancy "certification period" from 12 months to 24 months. According to the Government, this will give terminally ill patients earlier access to their superannuation. The measure is estimated to only cost \$0.3m over the forward estimates.

#### **Date of effect**

The measure will apply from 1 July 2015.

#### **Previous announcement**

This measure was previously announced by the Assistant Treasurer on 7 May 2015: see 2015 WTB 19 [624].

*Source: Budget Paper No 2 [p 29]*

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### **[688] Superannuation supervisory levies to be increased**

The Government will increase the supervisory levies paid by financial institutions to fully recover the cost of superannuation activities undertaken by the Tax Office and the Department of Human Services. The measure is expected to raise an additional \$46.9m over 4 years from 2015-16.

#### **Date of effect**

The measure will apply from 1 July 2015.

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

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### **[689] Lost and unclaimed superannuation - streamlined arrangements**

The Government will implement a package of measures seeking to reduce red tape for superannuation funds and individuals by removing redundant reporting obligations and by streamlining lost and unclaimed superannuation administrative arrangements. According to the Government, the changes will make it easier for individuals to be reunited with their lost and unclaimed superannuation. The cost of implementing the measures will be met from within the existing resources of the Tax Office.

#### **Date of effect**

The measures will apply from 1 July 2016.

*Source: Budget Paper No 2 [p 173]*

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## **CHILDCARE MEASURES**

### **[690] Major childcare payments revamp: \$7,500 rebate cap to be abolished under \$185,000 income**

The Budget confirmed the Prime Minister's announcement of 10 May 2015 of a simpler, more affordable, more flexible, and more accessible childcare system. The childcare payments system will be dramatically revamped.

The Government says it will establish a new and simpler Child Care Subsidy from 1 July 2017. Families using child care in 2017, on family incomes of between \$65,000 and \$170,000 will be around \$30 a week better off. Those on higher incomes will, on average, continue to receive the same level of support, the Government said.

Families on incomes of less than \$65,000 per year will receive ongoing access to early childhood learning, and can be eligible for additional financial support through the Child Care Safety Net.

The Government said its objective is to help parents who want to work or work more.

It estimates that the new measures will encourage more than 240,000 families to increase their involvement in paid employment, including almost 38,000 jobless families.

The Productivity Commission Inquiry into Child Care and Early Childhood Learning, initiated by the Government



after the last election, found the current system for delivering support was unnecessarily complex, inflationary and failed to target support where it would have the biggest impact on supporting families to be in jobs, especially for mothers. In response, the Government has made a series of announcements that form part of its Jobs for Families child care package:

- Establishment of a 2-year In Home Care (Nannies) Pilot to support 10,000 children in families who find it difficult to access mainstream child care services such as shift workers, nurses, police and families in remote and rural areas at a cost of \$246m.
- A new Child Care Safety Net, to support families who are vulnerable and disadvantaged, with \$327m in additional funding for 3 new programmes supporting up to 95,000 children and up to 18,000 individual services and centres. See details at para [691] of this *Bulletin*.
- The Government has also announced \$843m over 2 years for preschool programmes across Australia.

### New Child Care Subsidy – key points

In the Budget, the Government announced that from **1 July 2017**, it will introduce a new and simpler mainstream Child Care Subsidy through the following measures:

- **Abolition** of the current Child Care Benefit, Child Care Rebate and Jobs, Education and Training Child Care Fee Assistance programmes.
- **Introduction of a single means tested Child Care Subsidy** for all families, subject to a new activity test for up to 100 hours of subsidised care per child per fortnight, paid directly to approved care service providers to make it easier for families.
- For family incomes of up to approximately \$65,000, the Child Care Subsidy will be 85% per child of the actual fee or a benchmark price, whichever is lower. This will reduce to 50% for family incomes of approximately \$170,000 and above at the time of implementation.
- Families on incomes under \$185,000 will no longer have a cap on the amount of subsidy they receive. [The cap is currently \$7,500.]
- A cap of \$10,000 per child at the time of introduction will be established for the total value of subsidies for family incomes of \$185,000 and above.
- Hourly benchmark prices at the time of introduction will be \$11.55 for Long Day Care, \$10.70 for Family Day Care, \$10.10 for Out of School Hours Care and \$7.00 for the In Home Care (Nannies) Pilot commencing in January 2016.
- The benchmark price has been based on the projected mean price at the time of implementation plus 17.5% for Long Day and Out of School Hours Care and 5.75% for Family Day Care, recognising their lower cost of overheads.
- **A new activity test** will be established as follows:
  - Parents working between 8 and 16 hours per fortnight will eligible for up to 36 hours of childcare.



- Parents working between 17 and 48 hours per fortnight will be eligible for up to 72 hours of childcare.
- Parents working 49 hours or more per fortnight will be eligible for up to 100 hours of childcare.
- Up to 24 hours per fortnight will also be provided to children from families with incomes less than approximately \$65,000 per year who do not meet the activity test to ensure continued access to early childhood learning. The 24 hours is equivalent to two 6-hour sessions, which is the same period provided for K-2 public school education. Service providers will have full flexibility and discretion in how these hours of support are delivered.

All child care subsidies and support will remain linked to immunisation requirements which from 1 January 2016 will be strengthened under the Government's "no jab, no pay" policy. The only exemption to this policy will be on medical grounds.

The Government says the additional cost of the new package, including the earlier announced measures for the In Home Care (Nannies) Pilot and Child Care Safety Net, will be \$3.5bn over the forward estimates. These additional investments are proposed to be funded by the savings measures for Family Tax Benefits announced in last year's Budget [note that many of these measures are in legislation stalled before the Senate eg in the *Social Services and Other Legislation Amendment (2014 Budget Measures No 4) Bill 2014* – the measures include proposals to:

- from 1 July 2015 – maintain at their current levels for 3 years the income free areas for all working age allowances (other than student payments), and the income test free area for parenting payment single;
- from Royal Assent – index Parenting Payment Single to the CPI only, by removing benchmarking to Male Total Average Weekly Earnings;
- from 1 July 2015 – maintain at their current levels several family tax benefit free areas for 3 years;
- from 1 January 2015 – maintain at their current levels for 3 years the income free areas and other means-test thresholds for student payments, including the student income bank limits;
- from 1 July 2015 - maintain the standard FTB child rates for 2 years in the maximum and base rate of family tax benefit Part A and the maximum rate of family tax benefit Part B;
- from 1 July 2015 - revise the family tax benefit end-of-year supplements to their original values and cease indexation;
- from 1 July 2015 - limit family tax benefit Part B to families with children under 6 years of age, with transitional arrangements applying to current recipients with children above the new age limit for 2 years;
- from 1 July 2015 - introduce a new allowance for single parents on the maximum rate of family tax benefit Part A for each child aged 6 to 12 years inclusive, and not receiving Family Tax Benefit Part B;
- extend and simplify the ordinary waiting period for all working age payments from 1 January 2015 - see 2014 WTB 42 [1413]].



Finance Minister Senator Mathias Cormann said the Productivity Commission identified that about 165,000 parents across Australia would like to work more but can't do so because of difficulties with accessing the childcare system. In addition, he said research by the Social Services Department identified that about 26% of parents would work more if only they could get access to better childcare arrangements. The Government said its childcare package is trying to simplify the system and allow better access to the scheme. The Finance Minister said the Government expected "there will be a significant employment dividend" from the revamped arrangements.

Senator Cormann said the Government's package makes an additional investment in providing more flexible, more affordable access to high quality childcare for families looking to get into work, or staying in work. But he warned that, "in order to be able to pay for it, we have got to get equivalent savings through the Parliament, because we can't keep adding to the deficit".

*Source: Families Package Budget document*

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### **[691] New Child Care Safety Net**

The Budget confirmed Social Services Minister [Scott Morrison's announcement](#) of 8 May 2015 that the Government will provide additional funding of \$327.7m over 4 years from 2015-16 to provide targeted support to disadvantaged or vulnerable families through a new Child Care Safety Net.

The Government said it recognised that, in addition to mainstream Child Care Subsidy, additional support was necessary for disadvantaged or vulnerable children, whether they be children with disabilities, children at risk of abuse, children from families on incomes under \$60,000 or families facing financial risk.

The Government considers that existing programs that support disadvantaged and vulnerable families are complex, inefficient, poorly targeted and open to abuse, in particular the Community Support Programme, Special Child Care Benefit, and Jobs Education and Training Child Care Fee Assistance. These schemes will be wound down, along with the current Budget Based Funding programs. They will be replaced by the new Child Care Safety Net which will comprise a more integrated and targeted set of funding programs.

In addition to a new mainstream Child Care Subsidy, there will be 3 new programs – *Inclusion Support Programme*, *Community Child Care Fund* and *Additional Child Care Subsidy*. These programs will combine new funding with the ongoing funding that was provided for the previous programs that will be rolled into these new initiatives.

The new \$409m *Inclusion Support Programme*, beginning in July 2016, will provide more funding for services to get the necessary skilled staff and equipment to support children with special needs.

The *Additional Child Care Subsidy*, starting in July 2017, will supplement the mainstream Child Care Subsidy. Together these 2 subsidies will pick up current support provided by the Special Child Care Benefit and the Jobs



Education and Training Child Care Fee Assistance programme.

The \$304m *Community Child Care Fund*, also starting in July 2017, will support services to reduce current barriers to accessing child care. The focus will be to support:

- disadvantaged communities, including remote Indigenous communities and rural areas to strengthen the integration of child care services with other community services,
- low income families in high child care cost areas to reduce financial barriers,
- services operating in low viability markets, subject to clear requirements on how to improve business practice, and
- a co-contribution towards new buildings, expansions and/or extensions to services in areas of demonstrated high demand and low child care availability.

Source: *Families Package Budget document*

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### **[692] Paid parental leave – double-dipping to be eliminated**

The Treasurer said the Government will stop people from claiming parental leave payments from both the Government and their employers – he said this was effectively double dipping. This would apply from 1 July 2016. Mr Hockey said that would represent a saving of nearly \$1bn in the Budget. The Treasurer said people on the minimum wage (around \$640 per week) will still get \$11,500 for the 18-weeks that they're off on parental leave, but people will not be able to claim it both from their employer and from the Government.

After the changes, access to Parental Leave Pay will then be limited to individuals whose employer does not provide parental leave entitlements.

In cases where individuals get less generous parental leave entitlements from their employer, the Government said it will top up the amount paid to be equal to the full amount available under the existing scheme ie \$11,500.

Source: *Budget Papers; Treasurer's interview with Laurie Oakes, Weekend Today, 10 May 2015*

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## **PENSION/WELFARE MEASURES**



### **[693] Age Pension assets test: threshold to be increased, but taper rate tightened**

The Government confirmed in the Budget that the Age Pension assets test threshold for a single homeowner will be increased to \$250,000 (up from \$202,000) and \$375,000 for a homeowner couple (up from \$286,500) from January 2017. The assets test threshold (or assets free area) for non-homeowners will be increased to \$200,000 more than homeowner pensioners, ie \$450,000 (single) and \$575,000 (couple). This measure was previously flagged on 7 May 2015 by the Minister for Social Services, Scott Morrison: see 2015 WTB 19 [618].

#### **Assets test taper rate**

The assets test taper rate at which the Age Pension begins to phase out will be increased from \$1.50 of pension per fortnight to \$3.00 of pension for each \$1,000 of assets over the relevant assets test threshold. This measure will essentially restore the \$3.00 taper rate that was in place before 20 September 2007 when the then Government reduced it from \$3.00 to \$1.50 as part of the Simplified Superannuation measures (see 2006 WTB 51 [2290]).

The proposed increase in the taper rate to \$3.00 of reduced pension per fortnight for each \$1,000 of assets over the relevant threshold will effectively reduce the maximum value of assets a homeowner couple can hold to qualify for a part pension from \$1.151m to approximately \$823,000 (plus the family home) or \$547,000 (for a single homeowner instead of the current \$775,500). For a non-homeowner couple, the Age Pension will not phase out completely until \$1.023m (down from \$1.298m) or \$747,000 (for a single non-homeowner instead of the current \$922,000).

According to the Minister, more than 90% (or 3.7m pensioners) who receive pension linked payments will either be better off or have no change to their arrangements under these new proposals. More than 170,000 pensioners with modest assets will have their pensions increased by an average of more than \$30 per fortnight when the proposed measure comes into effect from January 2017. This will include around 50,000 part pensioners who will now qualify for a full pension under the new rules. However, 91,000 current part pensioners will no longer qualify for the pension and a further 235,000 will have their part pension reduced, Mr Morrison said.

The Minister said that all couples who own their own home with additional assets of less than \$451,500 will get a higher pension. Couples who don't own their own home and have asset holdings up to \$699,000 in January 2017 will be better off. For singles the maximum threshold point, below which pensioners will be better off, will be \$289,500 for home owners and \$537,000 for non-homeowners.

According to the Government, those impacted by these changes will be able to maintain their current level of income by drawing down less than 1.84% on their additional assets (\$574,000 for a single homeowner) in a worst case scenario. However, there are clear winners and losers under the proposed changes from January 2017 - see impact summary tables for [homeowners](#) and [non-homeowners](#). For example, a homeowner couple who currently have \$823,000 in assessable assets will have their Age Pension reduced by \$14,467 pa from January 2017 (based on projected pension rates at 1 January 2017). Similarly, a single homeowner with \$547,000 in assessable assets will have their Age Pension reduced by \$10,042 pa.



In announcing the proposed changes, the Social Services Minister said: "These are the only [Budget] changes the Government is putting forward for the pension. By reducing eligibility to the pension for those with more assets, they will become fully self-funded retirees. This means though, we must retain the incentives through the tax system for superannuation." (Source: [Minister for Social Services, press conference transcript, Sydney, 7 May 2015](#).)

### Seniors health card guaranteed

Mr Morrison said that all people affected by the scaling back of the maximum asset threshold will be guaranteed eligibility for the Commonwealth Health Seniors Card (CSHC) or Health Care Card. Pensioners who lose pension entitlement on 1 January 2017 as a result of these changes will automatically be issued with a CSHC or a Health Care Card for those under Age Pension age. The CSHC is an important benefit for many seniors (including self-funded retirees who do not qualify for the Age Pension) as it provides discounts (or concessions) on PBS prescription medicines, bulk-billed doctor appointments and cheaper out-of-hospital medical expenses through the Medicare Safety Net.

To qualify for the CSHC a person's annual adjusted taxable income (ATI) is subject to a threshold income test (but there is no asset test). The CSHC income threshold is \$51,500 for singles (and \$82,400 for couples) from 20 September 2014. Note that superannuation account-based pensions are subject to the social security deeming rules for the purposes of determining eligibility for the CSHC from 1 January 2015. However, account-based pensions and annuities in place before 1 January 2015 for existing CSHC cardholders are exempt from the new arrangements provided that such income support continues uninterrupted from 1 January 2015: see 2015 WTB 4 [78].

### Pension indexation to CPI dropped

At the same time, the Government announced that it will be dropping its 2014 Budget proposal to index the Age Pension to CPI. Those changes, contained in the *Social Services and Other Legislation Amendment (2014 Budget Measures No 5) Bill 2014* (still before Parliament as at 12 May 2015) **will now not proceed**. Rather, pension and pension equivalent payment rates will continue to be indexed under current arrangements, ie by the higher of the increases in the CPI or the Pensioner and Beneficiary Living Cost Index (PBLCI) and benchmarked against Male Total Average Weekly Earnings (MTAWE).

### Date of effect

The measures will commence from 1 January 2017.

Source: *Budget Paper No 2* [p 169-70]; [Minister for Social Services media release, 7 May 2015](#)

### Background

Currently, the Age Pension for a single homeowner starts phasing out at \$1.50 of pension for each \$1,000 of assets over the threshold of \$202,000 (\$286,500 for a couple). For a single pensioner non-homeowner, the full-rate pension starts phasing out from \$348,500 (\$433,000 for a couple). Under the assets test taper rate of \$1.50 per \$1,000 of assets, the Age Pension does not phase out completely until a single homeowner's assets reach





approximately \$775,500 (\$922,000 for a non-homeowner). A homeowner couple can have around \$1,151,500 (\$1,298,000 for a couple of non-homeowners) before losing all their pension entitlements. See further Thomson Reuters *Australian Financial Planning Handbook*.

Note that indexation of the assets test free area will be paused for 3 years from 1 July 2017 under changes by the *Social Services and Other Legislation Amendment (2014 Budget Measures No 6) Act 2014*.

Social Security assets test - current (20 March 2015 - 31 December 2016)				
	Homeowners		Non-homeowners	
Full pension/part pension	Single	Couple (combined)	Single	Couple (combined)
	\$	\$	\$	\$
Full pension (assets at or below)	202,000	286,500	348,500	433,000
No pension (assets at or above)	775,500	1,151,500	922,000	1,298,000
<b>Notes:</b>				
a. Fortnightly pension reduces by \$1.50 for every \$1,000 of assets above the relevant amount.				
b. Cut-off asset values at which no pension is received may be higher if pensioner qualifies for rent assistance. Cut-off asset values are also higher for illness separated couples (or where one partner eligible).				

Social Security assets test - proposed from January 2017				
	Homeowners		Non-homeowners	
Full pension/part pension	Single	Couple (combined)	Single	Couple (combined)
	\$	\$	\$	\$
Full pension (assets at or below)	250,000	375,000	450,000	575,000
No pension (assets at or above)	547,000	823,000	747,000	1,023,000
<b>Notes:</b>				
a. Fortnightly pension reduces by \$3.00 (up from \$1.50) for every \$1,000 of assets above the relevant amount.				
b. Cut-off asset values at which no pension is received may be higher if pensioner qualifies for rent assistance. Cut-off asset values are also higher for illness separated couples (or where one partner eligible).				



### Industry comment

The Financial Services Council (FSC) welcomed the tightening of the Age Pension, saying it was one step towards developing a national retirement policy.

The FSC said it had long been concerned that the stability of the retirement system was being undermined by what it claimed were "over-generous eligibility rules" that enable couples who own their own home and have over \$1m in assets to continue to receive the Age Pension. It said the Government reforms would improve the integrity and targeting of the retirement system.

Research by Rice Warner Actuaries has recently demonstrated that there are over 850,000 retirees receiving a partial Age Pension, or 36% of the total retiree population. This rate was significantly increased when the Howard Government reduced the taper rates for the asset test for the Age Pension and the FSC considered the Abbott Government's reforms "go some way to putting the pension system on a more sustainable path".

Sally Loane, CEO of the Financial Services Council, said the Council expected the tax reform White Paper process to focus on how to improve the super system to help retirees save to provide for their own retirement.

### Thomson Reuters comment

Restoring the assets test taper rate to \$3.00 per fortnight for each \$1,000 of assets above the threshold means that affected retirees over the proposed assets test threshold (eg \$250,000 for a single homeowner or \$375,000 for a couple) will need to achieve a return of at least 7.8% on their additional savings in order to overcome the effect of a reduction in their pension amount. Near-retirement planning should be addressed at least 5 years before retirement to provide adequate time to plan for the interaction with the social security income and assets test and gifting/deprivation rules.

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### **[694] Social security deeming rate thresholds - reset will not proceed**

The Government **will not proceed** with the 2014-15 Budget measure which had proposed to reset the social security income test deeming rate thresholds. The Government had previously proposed to reset the deeming rate thresholds to \$30,000 for singles and \$50,000 for couples from 20 September 2017. Those proposed changes, contained in the *Social Services and Other Legislation Amendment (2014 Budget Measures No 5) Bill 2014* (still before Parliament as at 12 May 2015) will now not proceed.

The deeming rules assume all financial investments earn a certain rate of income, regardless of the income actually generated. The table below shows the current deeming rates and thresholds applicable from 20 March 2015.

<b>Current deeming thresholds and rates from 20 March 2015</b>
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Single	Rate	Couple
First \$48,000	1.75%	First \$79,600
\$48,001+	3.25%	\$79,600

Source: Budget Paper No 2 [p 168]

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### [695] Income test free areas - pause to thresholds will not proceed

The Government **will not proceed** with elements of the 2014-15 Budget measure which had proposed to maintain for 3 years from 1 July 2017 the current income test free areas for all pensions (other than Parenting Payment single). Those proposed changes, contained in the *Social Services and Other Legislation Amendment (2014 Budget Measures No 5) Bill 2014* (still before Parliament as at 12 May 2015) will now not proceed. Instead, the pension income test free areas and deeming thresholds will continue to be indexed annually by the CPI. Major pension related payments include the Age Pension, Carer Payment, Disability Support Pension, and the Veterans' Service Pension.

Source: Budget Paper No 2 [p 167]

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### [696] Age Pension access while overseas - Australian working life residence (35 years) rule

The Government will achieve savings of \$168.6m over 4 years from 1 January 2017 by reducing from 26 weeks to 6 weeks the period that some recipients of the Age Pension, Wife Pension, Widow B Pension and the Disability Support Pension can be paid their full basic means-tested rate while absent from Australia.

After 6 weeks absence from Australia, pensioners who have lived in Australia for less than 35 years will be paid at a reduced rate proportional to their period of Australian Working Life Residence (AWLR). The AWLR is the period a person has lived in Australia, as a permanent resident, between the age of 16 years and Age Pension age.

#### Exclusions

Pensioners overseas on the date of implementation will not be affected by this change unless they return to Australia and make a subsequent trip overseas. In addition, pensioners with an AWLR of 35 years or more, or who are exempt from proportionality rules, such as recipients of the Disability Support Pension who are terminally ill or severely impaired and certain Widow B Pension and Wife Pension recipients, will not be affected.

#### Date of effect



The measure will apply from 1 January 2017 (except for pensioners overseas on the date of implementation, unless they return to Australia and make a subsequent trip overseas).

Source: Budget Paper No 2 [p 150]

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### **[697] Aged Care - means testing; home care; short-term restorative care; etc**

The Government will align aged care means testing arrangements for residents who pay their accommodation costs by periodic payments with the arrangements that currently apply to those residents who pay via a lump sum. According to the Government, this will remove the rental income exemption under the aged care means test for aged care residents who are renting out their former home and paying their aged care accommodation costs by periodic payments. Existing protections such as annual fee caps and lifetime fee caps will remain.

#### ***Date of effect***

The measure will apply to new residents entering aged care from 1 January 2016.

#### **Home Care Programme**

The Government will increase consumer choice and flexibility for older Australians in receipt of a Commonwealth funded Home Care Package. From 1 February 2017, Home Care Packages will be allocated directly to consumers by the *My Aged Care Gateway* rather than to service providers through the Aged Care Approvals Round.

To be eligible for a package, a consumer would be assessed by an Aged Care Assessment Team to determine the appropriate level of assistance and their care needs. The *My Aged Care Gateway* will be responsible for prioritising clients' access to packages at the regional level within the number of packages allocated through the planning ratio. This will enable aged care recipients to receive services from a provider of their choice, including the ability to change providers.

#### ***Date of effect***

1 February 2017.

#### **Short term restorative care**

The Government will incorporate short term restorative care places into the aged care planning ratio from 1 July 2016. This measure will result in an overall increase in the number of short term restorative aged care places to support older Australians regain mobility and confidence to live safely at home after a period of hospitalisation and reduce the number of premature admissions into permanent residential care. The measure



seeks to ensure that the growth in short term restorative care places matches the growth in the aged population.

### ***Date of effect***

1 July 2016.

### **Aged care complaints**

The Government will transfer responsibility for the administration of the Aged Care Complaints Scheme from the Secretary of the Department of Social Services to the Aged Care Commissioner from 1 January 2016.

### ***Date of effect***

1 January 2016.

### **Workforce development fund**

The Government will redesign the Aged Care Workforce Fund (ACWF) to support more targeted training and skilling opportunities for the aged care workforce to better meet the increasing complexity of older people's care needs. From 1 January 2016, the ACWF will be renamed the Aged Care Workforce Development Fund and will continue to provide \$220.9m over 4 years.

### ***Date of effect***

1 January 2016.

### **Accreditation services**

The Government will expand the scope of cost recovery arrangements for residential aged care accreditation services. A new fee schedule will be introduced from 1 July 2016 to recover the full operating costs of accreditation, education and training activities performed by the Australian Aged Care Quality Agency. Residential aged care providers with less than 25 places or that receive a viability supplement will continue to be eligible for a partial or full exemption of their accreditation fees.

### ***Date of effect***

1 July 2016.

*Source: Budget Paper No 2 [pp 146-49]*

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## **[698] DVA service pensions - indexation**

Consistent with the Government's pre-election commitment to give Defence Force Retirement Benefit (DFRB) and Defence Force Retirement and Death Benefit (DRFDB) military superannuants aged 55 and over access to



the best indexation arrangement from 3 indices (CPI, PBLCI and MTAW), the Minister for Veterans' Affairs said that the Government will continue to index the following pensions and payments against these 3 benchmarks:

- service pensions;
- war widows pensions;
- income support supplement;
- veteran disability pensions (including the special rate or TPI pension);
- wholly dependent partner payment; and
- special rate disability pension.

The Government also confirmed that it will not proceed with elements of the 2014-15 Budget measure which had proposed to maintain eligibility thresholds for certain government payments for 3 years that relate to the pension income test free areas and deeming thresholds. Instead, the pension income test free areas and deeming thresholds will continue to be indexed annually by the CPI: see also para [694] of this *Bulletin*. Major pension related payments include the Age Pension, Carer Payment, Disability Support Pension, and the Veterans' Service Pension.

*Source: Minister for Veterans' Affairs media release, 12 May 2015; Budget Paper No 2 [p 167]*

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### **[699] Family Tax Benefit Part A large family supplement to cease**

The payment of the additional Family Tax Benefit (FTB) Part A Large Family Supplement will cease from 1 July 2016. However, families will continue to receive a per child rate of FTB Part A for each eligible child in their family.

Note that the *Social Services and Other Legislation Amendment (2014 Budget Measures No 6) Act 2014* has already limited the payment of the Family Tax Benefit Part A large family supplement to only families with 4 or more children from 1 July 2015. Under these existing amendments, the Supplement will no longer be paid from 1 July 2015 for the third child but families with 4 or more children would continue to receive the Supplement (at least until the payment ceases from 1 July 2016).

*Source: Budget Paper No 2 [p 151]*

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### **[700] Welfare integrity measures**



The Budget announced that the Government would invest an initial \$60m to kick start the Welfare Payment Infrastructure Transformation (WPIT) to replace the existing welfare payment system and modernise government service delivery. The new welfare payment system is designed to save recipients time and effort by offering smarter and easier online end-to-end services.

For example, currently it can take parents over an hour to fill out 60 pages of paperwork to apply for Family Tax Benefit. If they need to call DHS for assistance, they would have to wait on average 16 minutes. Once their claim has been submitted, they may have to wait several weeks for the claim to be processed.

The new system will allow parents to apply for these benefits online in minutes and can reduce processing time to seconds, without any need or expense to travel or wait in long telephone queues.

### Increasing compliance

From 1 July 2015, the Government will increase DHS's capability to detect, investigate and deter suspected welfare fraud and non-compliance. This initiative includes improved automation of assessment processes, targeted strategies for areas of high risk, and recovery of historical debt from 2010 to 2013. This will enable an additional 200 cases to be investigated each year. The Government estimates this will achieve net savings of around \$1.5bn over 4 years.

Source: "Fairness in Tax and Benefits" Budget document, 12 May 2015

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## OTHER MEASURES

### [701] Value of penalty unit to increase

The value of all Commonwealth penalty units will increase from \$170 to \$180 from 31 July 2015.

The Government will also introduce ongoing indexation of penalty units based on the CPI. Indexation will occur on 1 July every three years, with the first indexation occurring on 1 July 2018.

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### [702] Changes to passport fees

The Government announced a number of reforms to passport fees and charges. The reforms will:





- enable persons aged 16 and 17 to be issued a 10-year validity passport instead of the current 5-year validity passport;
- create a separate fee category for emergency passports;
- increase the priority processing fee and provide an option for eligible individuals to replace lost, stolen or damaged passports instead of purchasing a new full validity passport; and
- remove the additional fee to replace a lost or stolen passport.

In line with existing passport fees and charges, all fees and charges will be indexed annually by the CPI.

### **Date of effect**

The Budget Papers did not specify a commencement date for these measures, but they indicated that it would be 1 July 2015.

*Source: Budget Paper No 2 [p 12]*

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### **[703] Visa and citizenship charges**

The Government will adjust the visa application charge (VAC) for a range of visas from 1 July 2015 and will move to full cost recovery for citizenship costs from 1 January 2016.

VACs for all visa applications made overseas will increase to align them with application charges in Australia, with the exception of Child Visas, for which domestic VACs will be reduced to match overseas VACs. This measure will also increase VACs for a range of visas.

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

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### **[704] Licensing and import processing**

The Government will restructure the Import Processing Charge (IPC) to recover the cost of cargo and trade-related reform activities, remove the differential charges for post, air and sea cargo declarations, and introduce higher charges for manual documentary declarations.

Licence charges will be restructured for brokers, depots and warehouses, including introducing warehouse and broker licence application charges, increasing the broker licence renewal charge and introducing a warehouse licence variation charge.



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The new charges will come into effect on 1 January 2016.

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

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