Federal Budget 2023-24

Summary of tax and superannuation measures

Contents

Further information is available on CPA Australia's **Federal Budget site**.

The full Budget papers are available at **budget.gov.au.** More information on the tax and related announcements is also contained in a number of Budget press releases on the **Treasurer's website** and the **Assistant Treasurer's website**.

SUMMARY

2023-24 Federal Budget

On Tuesday, 9 May 2023, Treasurer Jim Chalmers handed down the 2023-24 Federal Budget, his second Budget, which follows the October 2022 Budget.

The Treasurer announced a package of cost of living measures, including up to $3 billion in energy bill relief (expected to reduce power bills by up to $500 for 5 million households) and $1.3 billion for home energy upgrades. These measures have been designed to provide relief without adding inflationary pressures to avoid making the Reserve Bank's job even harder. Access to the Parenting Payment (Single) will also be extended along with increased payments for JobSeeker, Youth Allowance and rent assistance. Small businesses will also benefit from a temporary increase in the instant asset write-off threshold to $20,000 for 2023-24.

A Budget surplus of $4.2 billion is forecast in 2022-23, but an underlying cash deficit of $13.9 billion is expected in 2023-24 (and a $35.1 billion deficit for 2024-25). The Budget papers note that the global economic outlook has deteriorated and is highly uncertain with persistent inflation and rising interest rates expected to slow real GDP growth from 3.25% in 2022-23 to 1.5% in 2023-24, before rising to 2.25% in 2024-25.

While inflation remains elevated at 6% for this year, it is expected to fall to 3.25% in 2023-24 and return to the RBA's target band of 2-3% in 2024-25. The Government also believes that its cost of living measures will take 0.75 of a percentage point off inflation in 2023-24.

On the revenue side, the Government said it is taking action to improve the sustainability of the tax system. This includes measures to reduce the tax concessions for superannuation balances above $3 million, more timely payments of tax and superannuation, and reforms to the tax settings for offshore liquefied natural gas projects.

Key takeaways

Budget surplus expected

A $4.2 billion surplus is predicted for the 2022-2023 financial year.

Small business asset write-off

One-year small business instant asset write-off for assets up to $20k.

Small Business Energy Incentive

One-year Small Business Energy Incentive to switch to efficient energy sources.

Household Energy Upgrade Fund

$1.3 billion Household Energy Upgrade Fund for home upgrades that save energy.

Boost to cyber skills

$23.4 million "Cyber Wardens" program to boost cyber skills in small businesses.

Minimum tax for multinationals

15 per cent global minimum tax and a domestic minimum tax from 1 January 2024 for multinational groups with global turnover of $1.2 billion or more.

Superannuation tax

Future earnings on super balances over $3 million will be taxed at an additional 15 per cent from 1 July 2025.

Change to super guarantee contributions

Employers will be required to pay compulsory super guarantee contributions on payday rather than quarterly (from 1 July 2026).

Push towards net zero

Establishment of a national Net Zero Authority.

Increased bulk-billing incentive

$3.5 billion over five years to increase the bulk-billing incentive for general practitioners.

Aged care workers wage increase

$11.3 billion wage increase for aged care workers.

More welfare support

Targeted relief for vulnerable members of the community – including JobSeeker recipients and Commonwealth Rent Assistance.

Tax measures

The major tax-related measures announced in the Budget included:

- **Small businesses instant asset write-off threshold:** to be increased to $20,000 for 2023-24 for businesses with aggregated annual turnover of less than $10 million. The $20,000 threshold will apply on a per asset basis
- **Small Business Energy Incentive:** businesses with annual turnover of less than $50 million will be able to claim an additional 20% deduction on spending that supports electrification and more efficient use of energy. Eligible assets or upgrades will need to be first used or installed ready for use between 1 July 2023 and 30 June 2024
- **Small business lodgment penalty amnesty:** will be provided for small businesses with aggregate turnover of less than $10 million to encourage them to re-engage with the tax system. The amnesty will remit failure-to-lodge penalties for outstanding tax statements lodged in the period from 1 June 2023 to 31 December 2023 that were originally due between 1 December 2019 to 29 February 2022
- **Small business unpaid tax and super:** additional funding from 1 July 2023 to assist the ATO to engage with taxpayers who have high-value debts over $100,000 and aged debts older than 2 years where those taxpayers are either public and multinational groups with an aggregated turnover of greater than $10 million, or privately owned groups or individuals controlling over $5 million of net wealth
- **PAYG and GST instalment uplift factor:** 6% for 2022-23 (being lower than the 12% rate that would otherwise have applied under the statutory formula)
- **Part IVA:** scope of the general anti-avoidance rules to be expanded to catch two additional types of schemes from 1 July 2024, regardless of whether the scheme was entered into before that date
- **FBT rules for electric vehicles (EVs):** the eligibility of plug-in hybrid electric cars will sunset from 1 April 2025 from the FBT exemption for eligible electric cars
- **Managed investment trust (MIT) withholding tax concession for data centres and warehouses:** the "clean building" managed investment trust withholding tax concession will be extended to data centres and warehouses that meet the relevant energy efficiency standard, where construction commences after 7:30 pm AEST on 9 May 2023
- **Build-to-rent properties:** for eligible new build-to-rent projects where construction commences after 7:30 PM AEST on 9 May 2023, the Government will:

  (i.) increase the rate for the capital works tax deduction (depreciation) to 4% per year

  (ii.) reduce the final withholding tax rate on eligible fund payments from managed investment trust (MIT) investments from 30% to 15%
- **Base Erosion and Profit Shifting (BEPS) Two Pillar Solution:** announced start dates are:

  (i.) 15% global minimum tax for large multinational enterprises with the Income Inclusion Rule (IIR) will apply to income years starting on or after 1 January 2024 and the Undertaxed Profits Rule (UTPR) applying to income years starting on or after 1 January 2025

  (ii.) 15% domestic minimum tax will apply to income years starting on or after 1 January 2024
- **Petroleum Resource Rent Tax (PRRT):** LNG and gas transfer pricing - the Government has proposed to cap the use of deductions from 1 July 2023 to the value of 90% of each taxpayer's PRRT assessable receipts in respect of each project interest in the relevant income year and apply after mandatory transfers of exploration expenditure. Projects would not be subject to the cap until

seven years after the year of first production or from 1 July 2023, whichever is later. The cap will not apply to certain classes of deductible expenditure in the PRRT

- **PRRT - meaning of "exploration" and "mining, quarrying and prospecting rights":** to be amended in response to Shell Energy Holdings Australia case, applicable to all expenditure incurred from 21 August 2013. Will also restore the policy intent of the law and apply in respect of all mining, quarrying and prospecting rights (MQPRs) acquired or started to be used after 7:30 pm AEST on 9 May 2023.

Superannuation measures

The superannuation measures include:

- **Non-arm's length income (NALI):** the amount of non-arm's length expenses (NALE) taxed at 45% as NALI will be limited to twice the level of a general expense from 1 July 2023 for SMSFs and small APRA funds. In addition, fund income taxable as NALI will exclude contributions to effectively exempt large APRA regulated funds from the NALI provisions for both general and specific expenses of the fund
- **Super account balances above $3 million:** the Budget confirmed the Government's intention to apply an additional 15% tax on total superannuation balances above $3 million from 1 July 2025
- **Payday super:** employers will be required to pay their employees' super guarantee at the same time as their salary and wages from 1 July 2026
- **Pension drawdowns:** no reduction in minimum - the Budget did not announce a further extension to 2023-24 of the temporary 50% reduction in the minimum annual payment amounts for superannuation pensions and annuities.

Parliamentary sittings

Both Houses of Parliament will sit during the Budget week 9-11 May. The House of Reps (only) will sit 22 May to 1 June, while both Houses will sit for the two-week period 13-22 June 2023.

PERSONAL TAXATION

Personal tax rates unchanged for 2023-24; Stage 3 start from 2024-25 unchanged

In the 2023-24 Budget, the Government did not announce any personal tax rates changes. The Stage 3 tax changes commence from 1 July 2024, as previously legislated.

Resident rates and thresholds for 2023-24

The 2023-24 tax rates and income thresholds for residents (unchanged since 2021-22) are:

Taxable income ($)	Tax payable ($)
0 - 18,200	Nil
18,201 - 45,000	Nil + 19% of excess over 18,200
45,001 - 120,000	5,092 + 32.5% of excess over 45,000
120,001 - 180,000	29,467 + 37% of excess over 120,000
180,001+	51,667 + 45% of excess over 180,000

Stage 3: rates and thresholds from 2024-25 onwards

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

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

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

Resident rates and thresholds - from 2024-25 onwards

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

Taxable income ($)	Tax payable ($)
0 - 18,200	Nil
18,201 - 45,000	Nil + 19% of excess over 18,200
45,001 - 200,000	5,092 + 30% of excess over 45,000
200,001+	51,592 + 45% of excess over 200,000

Rates and thresholds - summary

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

Foreign residents

For 2023-24, the tax rates for foreign residents (unchanged) are:

- $0 - $120,000 - 32.5%
- $120,001 - $180,000 - 37%
- $180,001+ - 45%.

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

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

Working holidaymakers

For 2023-24, the rates of tax for working holiday makers (unchanged) are:

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

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

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

Low income tax offsets - LMITO not extended beyond 2021-22

The 2023-24 Budget did not announce any extension of the low and middle income tax offset (LMITO) beyond the 2021-22 income year. The LMITO has now ceased and been fully replaced by the low income tax offset (LITO) - see below.

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

Low income tax offset for 2023-24 (unchanged)

For completeness, and as a reminder, while the LMITO has now ceased, low and middle income taxpayers remain entitled to the low income tax offset (LITO). No changes were made to the LITO in the 2023-24 Budget.

The LITO will continue to apply for the 2023-24 income year and beyond. The LITO was intended to replace the former low income and low and middle income tax offsets from 2022-23, but the new LITO was brought forward in the 2020 Budget to apply from the 2020-21 income year.

The low income tax offsets for 2023-24 (unchanged) are:

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

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

Medicare levy low-income thresholds for 2022-23

For the 2022-23 income year, the Medicare levy low-income threshold for singles will be increased to $24,276 (up from $23,365 for 2021-22). For couples with no children, the family income threshold will be increased to $40,939 (up from $39,402 for 2021-22). The additional amount of threshold for each dependent child or student will be increased to $3,760 (up from $3,619).

For single seniors and pensioners eligible for the SAPTO, the Medicare levy low-income threshold will be increased to $38,365 (up from $36,925 for 2021-22). The family threshold for seniors and pensioners will be increased to $53,406 (up from $51,401), plus $3,760 for each dependent child or student.

The increased thresholds will apply to the 2022-23 and later income years. Note that legislation is required to amend the thresholds and a Bill will be introduced shortly.

Medicare levy exemption for lump sum payments in arrears from 1 July 2024

The Government will exempt eligible lump sum payments in arrears from the Medicare levy from 1 July 2024. The measure seeks to ensure low-income taxpayers do not pay higher amounts of the Medicare levy as a result of receiving an eligible lump sum payment, for example as compensation for underpaid wages.

Eligibility requirements will ensure that relief is targeted to taxpayers who are genuinely low-income and should be eligible for a reduced Medicare levy. To qualify, taxpayers must be eligible for a reduction in the Medicare levy in the 2 most recent years to which the lump sum accrues. Taxpayers must also satisfy the existing eligibility requirements of the existing lump sum payment in arrears tax offset, including that a lump sum accounts for at least 10 per cent of the taxpayer's income in the year of receipt.

The measure is estimated to only cost the Budget $2 million over the 5 years from 2022-23.

Date of effect is 1 July 2024.

Deductible gift recipients: new organisations announced, updated dates for others

The Government will amend the tax law to specifically list the following organisations as deductible gift recipients (DGRs) for the following dates:

- The Voice No Case Committee from the day after the entity is registered with the ACNC to 30 June 2024
- Justice Reform Initiative Limited from 1 July 2023 to 30 June 2028
- Susan McKinnon Charitable Foundation Ltd from 1 July 2023 to 30 June 2028 (below)
- Transparency International Australia from 1 July 2023.

The listing of the Susan McKinnon Charitable Foundation Ltd is subject to the condition that DGR funds can only be used for purposes consistent with existing DGR categories in the tax law and it will maintain minimum annual distributions, consistent with the current requirements for ancillary funds.

The Government will also extend the following organisations' DGR endorsement for the following dates:

- Victorian Pride Centre Ltd from 9 March 2023 to 8 March 2028
- Australian Sports Foundation Charitable Fund from 1 July 2023.

The start date for the previously announced listing of 28 entities related to community foundations affiliated with the peak body Community Foundations Australia will be deferred from 1 July 2022 to the date of assent of relevant amendments to the tax law. The 30 June 2027 end date for the listing is removed. DGR status for these foundations will be subject to ongoing endorsement by the Commissioner under new Ministerial guidelines.

The listings of Lord Mayor's Charitable Foundation and Foundation Broken Hill Limited will be made consistent with that for other community foundations, including removal of end dates where applicable.

This measure is estimated to decrease receipts by $7.3 million over the 5 years from 2022-23.

SMALL BUSINESS

Instant asset write-off for small businesses: $20K threshold for 2023-24

The Government will temporarily increase the instant asset write-off threshold to $20,000 from 1 July 2023 to 30 June 2024.

Small businesses, i.e., those with aggregated annual turnover of less than $10 million, will be able to immediately deduct the full cost of eligible assets costing less than $20,000 that are first used or installed ready for use between 1 July 2023 and 30 June 2024. The $20,000 threshold will apply on a per asset basis, so small businesses can instantly write off multiple assets.

Assets valued at $20,000 or more (which cannot be immediately deducted) can continue to be placed into the small business simplified depreciation pool and depreciated at 15% in the first income year and 30% each income year thereafter.

The provisions that prevent small businesses from re-entering the simplified depreciation regime for five years if they opt-out will continue to be suspended until 30 June 2024.

Context

The instant asset write-off rules allow for the immediate deduction for the cost of a depreciating asset for small business entities. However, those rules were effectively replaced by temporary full expensing in relation to depreciating assets first held, and used or installed ready for use for a taxable purpose, between the 2020 Budget time (6 October 2020) and 30 June 2022, then extended to 30 June 2023.

Given the temporary full expensing will not be available in 2023-24, the instant asset write-off rules come back into play. The threshold is currently $1,000 (but note again, this was not relevant while temporary full expensing allowed the cost of any qualifying asset to be written off immediately – which of course was available to other categories of taxpayers, not just small business entities).

By way of reminder, small business entities that use the simplified depreciation rules in Subdiv 328-D are entitled to an outright deduction for the "taxable purpose proportion" of the "adjustable value" of a depreciating asset if (s 328-180(1)):

- the asset is a "low cost asset" (and is not an excluded depreciating asset), and
- the taxpayer starts to hold the asset when the taxpayer is a small business entity (and, for a limited period, if the taxpayer also qualifies as a medium sized business).

The deduction is available in the income year in which the taxpayer first uses the asset, or first installs it ready for use, for a taxable purpose.

A depreciating asset is a low cost asset if its cost as at the end of the income year in which the taxpayer starts to use it, or installs it ready for use, for a taxable purpose is less than the relevant threshold: s 328-180.

This measure is estimated to decrease receipts by $290.0 million over the 5 years from 2022-23.

Small Business Energy Incentive: 20% bonus deduction

The Budget papers confirmed that the Small Business Energy Incentive will provide businesses with annual turnover of less than $50 million an additional 20% deduction on spending that supports electrification and more efficient use of energy. This measure was originally announced by the Treasurer on 30 April 2023.

The Small Business Energy Incentive will apply to a range of depreciating assets, as well as upgrades to existing assets. These will include assets that upgrade to more efficient electrical goods such as energy-efficient fridges, assets that support electrification such as heat pumps and electric heating or cooling systems, and demand management assets such as batteries or thermal energy storage.

However, certain exclusions will apply, such as:

- electric vehicles
- renewable electricity generation assets
- capital works, and
- assets that are not connected to the electricity grid and use fossil fuels.

Up to $100,000 of total expenditure will be eligible for the incentive, with the maximum bonus tax deduction being $20,000 per business.

Eligible assets or upgrades will need to be first used or installed ready for use between 1 July 2023 and 30 June 2024.

Full details of eligibility criteria will be finalised following consultation.

This measure is estimated to decrease receipts by $310.0 million and increase payments by $4.2 million over the 5 years from 2022-23.

Small business lodgment penalty amnesty; integrity measure to target unpaid tax and super

The Government announced that a lodgment penalty amnesty program will be provided for small businesses with aggregate turnover of less than $10 million to encourage them to re-engage with the tax system.

The amnesty will remit failure-to-lodge penalties for outstanding tax statements lodged in the period from 1 June 2023 to 31 December 2023 that were originally due during the period from 1 December 2019 to 29 February 2022.

Integrity measure to target unpaid tax and super

The Government will also provide funding from 1 July 2023 over 4 years to assist the ATO to engage more effectively with businesses to address the growth of tax and superannuation liabilities.

The additional funding will facilitate ATO engagement with taxpayers who have high-value debts over $100,000 and aged debts older than 2 years where those taxpayers are either public and multinational groups with an aggregated turnover of greater than $10 million, or privately owned groups or individuals controlling over $5 million of net wealth.

This measure is estimated to increase receipts by $718m and increase payments by $275.4m over 5 years from 2022-23. In addition to the $82.1m in funding for the ATO, the increase in payments also includes $12.3m in unpaid superannuation to be disbursed to employees, and $181m in GST payments to the States and Territories.

PAYG and GST instalment uplift factor: 6% for 2022-23

The Budget papers state that the GDP uplift factor for PAYG and GST instalments will be set at 6% for the 2023-24 income year. The papers state that this uplift factor is lower than the 12% that would have applied under the statutory formula.

The 6% GDP uplift rate will apply to small to medium enterprises eligible to use the relevant instalment methods (up to $10 million annual aggregated turnover for GST instalments and $50 million annual aggregated turnover for PAYG instalments) in respect of instalments that relate to the 2023-24 income year and fall due after the enabling legislation receives assent.

This measure is estimated to have no net impact on receipts.

BUSINESS TAXATION

Start dates for global minimum tax and domestic minimum tax under Two Pillar Solution

The Government will implement 2 key aspects of Pillar Two of the OECD/G20 Two-Pillar Solution to address the tax challenges arising from digitalisation of the global economy:

- a 15% global minimum tax for large multinational enterprises with the Income Inclusion Rule (IIR) applying to income years starting on or after 1 January 2024 and the Undertaxed Profits Rule (UTPR) applying to income years starting on or after 1 January 2025.
  The IIR imposes top-up tax on a parent entity in respect of the low taxed income of a constituent entity, while the UTPR denies deductions or requires an equivalent adjustment to the extent the low tax income of a constituent entity is not subject to tax under the IIR
- a 15% domestic minimum tax applying to income years starting on or after 1 January 2024.

The global minimum tax and domestic minimum tax will be based on the OECD Global Anti-Base Erosion Model Rules, which are designed to ensure large multinationals (annual global revenue of $1.2 billion or more) pay an effective minimum level of tax on the income arising in each jurisdiction in which they operate.

The global minimum tax rules allow Australia to apply a top up tax on a resident multinational parent or subsidiary company where the group's income is taxed below 15% overseas.

A domestic minimum tax will give Australia first claim on top-up tax for any low-taxed domestic income. In a small number of instances, a large multinational company's effective Australian tax rate may fall below 15%. In these instances, the domestic minimum tax applies so that Australia collects the revenue that would otherwise have been collected by another country's global minimum tax.

Meaning of "exploration" and "mining, quarrying and prospecting rights"

The Government will amend the Petroleum Resource Rent Tax ("PRRT") legislation to ensure the PRRT and income tax legislation operate as intended following the Full Federal Court's decision in FCT v Shell Energy Holdings Australia Limited [2022] FCAFC 2.

The amendments will clarify that "exploration for petroleum" is limited to the "discovery and identification of the existence, extent and nature of the petroleum resource" and does not extend to activities and feasibility studies directed at evaluating whether the resource is commercially recoverable. The Budget Paper states that this is consistent with the Government's policy intent and the ATO's position as expressed in TR 2014/9, which applies from 21 August 2013. Note that the amendments will apply to all expenditure incurred from 21 August 2013.

The amendments will also clarify that mining, quarrying and prospecting rights ("MQPRs") cannot be depreciated for income tax purposes until they are used (not merely held) and will limit the circumstances in which the issue of new rights over areas covered by existing rights lead to tax adjustments. These amendments will restore the policy intent of the law and apply in respect of all MQPRs acquired or started to be used after 7:30 pm AEST on 9 May 2023.

Scope of Pt IVA to expand to catch two additional types of scheme

The Government will expand the scope of the general anti-avoidance provisions in Pt IVA of the ITAA 1936 so that they can apply to:

- schemes that reduce tax paid in Australia by accessing a lower withholding tax rate on income paid to foreign residents. Part IVA already applies to schemes that produce a tax benefit by not having any withholding tax liability in respect of an amount paid to a foreign resident
- schemes that achieve an Australian income tax benefit, even where the dominant purpose was to reduce foreign income tax.

This measure will apply to income years commencing on or after 1 July 2024, regardless of whether the scheme was entered into before that date.

Previously announced measures: patent box measures abandoned; other changes

Patent box measures

The Government states that it will not proceed with 3 separate patent box measures announced in the 2021-22 and 2022-23 Budgets (by the former Government).

In the 2021-22 Budget, the former Government announced the introduction of concessional tax treatment for eligible corporate income associated with new patents in the medical and biotechnology sectors (referred to "patent box" income): see 2021 WTB 19 [405]. Such income was to be taxed at a concessional rate of 17%, with effect for income years starting on or after 1 July 2022. In the March 2022 Budget (see 2022 WTB 13 [267]), the former Government announced the extension of the patent box income measures to provide the same concessional tax treatment for corporate taxpayers who:

- commercialise their eligible patents linked to certain agricultural and veterinary chemical products, or
- commercialise their patented technologies which have the potential to lower emissions.

Capital raisings and franked distributions

The Budget papers confirm that the start date for the measure to make certain distributions funded by capital raisings unfrankable has been changed from the original 19 December 2016 to 15 September 2022. This change is encapsulated in the *Treasury Laws Amendment (2023 Measures No 1) Bill 2023* currently before Parliament.

Excise administration for fuel and alcohol

The 2022-23 March Budget contained a number of changes intended to streamline the administration of the fuel and alcohol excise and excise-equivalent customs goods: see 2022 WTB 13 [283]. The measures were means to start on 1 July 2023 but will now take effect from 1 July 2024.

The changed start date applies to the measures that:

- remove overlapping Australian Border Force and ATO systems (Uniform Business Experience)
- streamline license application and renewal requirements
- remove regulatory barriers for excise and excise equivalent customs goods (including lubricants, bunker fuels for commercial shipping industries, and vapour recovery units)
- publication by the ATO on its website a public register of entities that hold excise licences to store or manufacture excise and excise equivalent customs goods, from 1 July 2024.

Build-to-rent properties: building allowance up, MIT withholding rate down

The Budget Papers confirm the earlier announcement by the PM to implement the following measures designed to increase the supply of housing: see 2023 WTB 17 [228].

For eligible new build-to-rent projects where construction commences after 7:30 PM AEST on 9 May 2023, the Government will:

- increase the rate for the capital works tax deduction (depreciation) to 4% per year
- reduce the final withholding tax rate on eligible fund payments from managed investment trust (MIT) investments from 30% to 15%.

Building allowance

This measure will apply to build-to-rent projects consisting of 50 or more apartments or dwellings made available for rent to the general public. The dwellings must be retained under single ownership for at least 10 years before being able to be sold and landlords must offer a lease term of at least three years for each dwelling.

Currently, Div 43 of the ITAA 1997 allows for a deduction of capital expenditure incurred in constructing income producing buildings (and certain structural improvements). The rate for income-producing buildings constructed after 27 February 1992 is 2.5%, other than short-term traveller accommodation and industrial buildings (which are eligible for a 4% rate).

MIT withholding tax

The reduced managed investment trust withholding tax rate for residential build-to-rent will apply from 1 July 2024.

The MIT withholding tax regime is similar in structure to the withholding tax regime for dividends, interest and royalties: i.e., one set of rules imposes the tax on the person who receives the income or is entitled to receive the income and another set of rules requires a payer to withhold and remit the tax to the ATO.

Significant changes were made to the MIT withholding tax arrangements in 2019. The changes ensure that a 30% MIT withholding tax rate (rather than the otherwise standard 15% rate) applies to MIT fund payments to the extent they are attributable to non-concessional MIT income (NCMI). Among other things, the 30% rate applies to payments originating from income and gains from investments in residential housing – other than affordable housing or premises used primarily for the provision of disability accommodation. Presumably the changes will seek to expand the exceptions to include certain "build-to-rent projects" and so fall within qualification for a rate of 15%.

Consultation will be undertaken on implementation details, including any minimum proportion of dwellings being offered as affordable tenancies and the length of time dwellings must be retained under single ownership.

FBT rules for Electric Vehicles: rules for plug-in hybrids to sunset

The Budget papers state that the Government will sunset the eligibility of plug-in hybrid electric cars from the FBT exemption for eligible electric cars. This change will apply from 1 April 2025.

Arrangements involving plug-in hybrid electric cars entered into between 1 July 2022 and 31 March 2025 remain eligible for the Electric Car Discount.

It can be noted that while the Government seems to be stating that it will implement the sunset, this measure is already enacted by the Treasury Laws Amendment (Electric Car Discount) Act 2022. The was the result of a Senate amendment put forward by Senator Pocock and the Greens.

The other amendment that made it to the amending Act was that a review must be undertaken in 2025 to determine the effectiveness of the measures it contains.

Changes to PRRT: LNG and Gas Transfer Pricing arrangements

The Budget confirms the major changes to the Petroleum Resource Rent Tax as it applies to the LNG industry, as **announced** by the Treasurer on 7 May 2023.

The Government is proposing a cap on the use of deductions from 1 July 2023.

The cap will limit deductible expenditure to the value of 90% of each taxpayer's PRRT assessable receipts in respect of each project interest in the relevant income year and apply after mandatory transfers of exploration expenditure. The amounts that are unable to be deducted because of the cap will be carried forward and uplifted at the Government long-term bond rate.

The cap will only apply to PRRT projects that produce LNG. Projects would not be subject to the cap until 7 years after the year of first production or from 1 July 2023, whichever is later. The cap will not apply to certain classes of deductible expenditure in the PRRT – closing-down expenditure, starting base expenditure and resource tax expenditure.

The intention is to bring forward PRRT revenue from LNG projects. Under the current rules, most LNG projects are not expected to pay any significant amounts of PRRT until the 2030s.

Changes to PRRT Gas Transfer Pricing (GTP) arrangements

The Government will also make a number of supporting changes to the GTP arrangements. From 1 July 2023, the Government will update the PRRT general anti-avoidance rule and the arm's length rule to clarify their application to the Petroleum Resource Rent Tax Assessment Regulation 2015.

From 1 July 2024, the Government will "modernise the PRRT for emerging developments in LNG project structures, better reflect the contributions and risks of the notional entities that comprise the LNG value chain, align the regulations with current transfer pricing practices and provide appropriate integrity rules for the regime".

The changes were prompted by the Treasury review entitled **Petroleum Resource Rent Tax: Review of Gas Transfer Pricing Arrangements** (the GTP Review), released by the Treasurer on 7 May 2023. The GTP Review highlighted "other shortcomings" in the PRRT as it applies to the LNG industry, with the Treasurer stating that the Government will proceed with eight of the 11 recommendations.

The Government will consult on all the changes later in the year and early 2024. The Petroleum Resource Rent Tax Assessment Regulation 2015 will not be remade until the legislation implementing the deductions cap has been enacted.

The package of changes is expected to increase tax receipts by $2.4 billion over the 5 years from 2022-23.

Extension of MIT withholding tax concession to data centres and warehouses

The Government will extend the "clean building" managed investment trust withholding tax concession to data centres and warehouses that meet the relevant energy efficiency standard, where construction commences after 7:30 pm AEST on 9 May 2023.

This measure will apply from 1 July 2025.

This measure will also raise the minimum energy efficiency requirements for existing and new clean buildings to a 6-star rating from the Green Building Council Australia or a 6-star rating under the National Australian Built Environment Rating System. The Government will consult on transitional arrangements for existing buildings.

GST compliance program extended by 4 years

The Government will provide $588.8 million to the ATO over 4 years from 1 July 2023 to continue a range of activities that promote GST compliance.

These activities will ensure businesses meet their tax obligations, including accurately accounting for and remitting GST, and correctly claiming GST refunds. Funding through this extension will also help the ATO develop more sophisticated analytical tools to combat emerging risks to the GST system.

This measure is estimated to increase GST receipts by $3.8 billion, and other tax receipts by $3.8 billion, over the 5 years from 2022-23.

Amendment for general insurers to account for AASB17

The Government will introduce legislation to amend the tax law to minimise the regulatory burden facing the general insurance industry.

The introduction of the new accounting standard, AASB17 Insurance Contracts, has meant that the tax law is no longer aligned with accounting standards.

The amendment will allow general insurers to continue to use audited financial reporting information, which is calculated according to the new standard, as the basis for their tax returns.

The measure will have effect for income years commencing on or after 1 January 2023.

SUPERANNUATION

Super fund NALI to be capped at twice general expense under NALE rules

The non-arm's length income (NALI) provisions in s 295-550 of the ITAA 1997, as they apply to non-arm's length expenses (NALE), will be amended to limit the income taxable as NALI to twice the level of a general expense for SMSFs and small APRA funds.

In addition, fund income taxable as NALI will exclude contributions to effectively exempt large APRA regulated funds from the NALI provisions for both general and specific expenses of the fund. Expenditure that occurred prior to the 2018-19 income year will also be exempted.

These proposed changes follow industry concerns regarding the ATO's interpretation of the NALE provisions in Law Companion Ruling LCR 2021/2, and the implications of the ruling for both APRA-regulated funds and SMSFs.

The date of effect is not specified. However, a Government consultation paper, previously released on 23 January 2023, indicated that any proposed legislative amendments in relation to the NALE rules would apply from 1 July 2023 (following the expiry of the ATO's transitional compliance approach for general expenses (PCG 2020/5) for the period 2018-19 to 2022-23).

Currently, under LCR 2021/2, NALE of a "general nature" (eg accounting fees, actuarial costs, audit fees, investment adviser fees and compliance costs) may still have a sufficient nexus to all of the income of a fund. As a result, if an SMSF incurs a small fund expense that is not on arm's length terms, all of the income derived by the fund (including taxable contributions and capital gains) could be taxable at 45%. The Budget changes propose to limit the income taxable at 45% as NALI to twice the level of a such general expenses.

The Government's consultation paper (noted above) was released as part of a review to consider amendments to ensure the NALE provisions operate as intended. Although the consultation paper did not represent a settled position of the Government at that time, it proposed a factor-based approach whereby the maximum amount of fund income taxable as NALI at the highest marginal rate (45%) would be 5 times the level of the general expenditure breach. This would be calculated as the difference between the amount that would have been charged as an arm's length expense and the amount that was actually charged to the fund. Where the product of 5 times the breach is greater than all fund income, all fund income will be taxed at the highest marginal rate.

A Treasury official confirmed in the Budget Lock-up that the Government will proceed with the factor-based approach set out in the consultation paper but it will now adopt a 2 times factor (instead of a 5 times factor). At the current highest marginal tax rate of 45%, a maximum effective tax rate of 90% (2 times 45%) will be applied to a general expenditure breach (down from the 225% originally proposed). It is expected that trustees would self-assess an arm's length price (based on objective and supportable data) when applying this calculation method.

Super tax changes for account balances above $3m confirmed, but no further details

The Government confirmed its intention to implement superannuation tax changes for individuals with account balances above $3 million from 1 July 2025, including in relation to defined benefit schemes.

However, the Budget Papers did not reveal any further details other than to note its estimate that the measure will increase receipts by $950 million, and increase payments by $47.6 million, over the 5 years from 2022-23. This includes $50 million in receipts associated with updating the notional contribution calculation methodology, applicable to all defined benefit members. In 2027-28, the first full year of receipts collection, the measure is expected to increase receipts by $2.3 billion.

Under the proposed changes, announced on 28 February 2023, individuals with total superannuation balances (TSBs) over $3 million at the end of a financial year will be subject to an additional tax of 15% on earnings from 1 July 2025. Earnings will be calculated with reference to the difference in TSB at the start and end of the financial year, adjusting for withdrawals and contributions. This means that the proposed additional 15% earnings tax on an individual's balance above $3 million will operate on an accruals basis and include any notional (unrealised) gains and losses.

Currently, fund earnings from superannuation in the accumulation phase are taxed at up to 15%. This 15% tax rate will continue for total superannuation balances below $3m but individuals will pay an extra 15% for balances above that amount (around 80,000 people). The measure is expected to improve the Budget position by $900 million over the forward estimates, $2 billion in its first full year and $3.2 billion over five years.

Super to be paid on employees' payday from 1 July 2026; more funding to catch non-payers

The Budget papers confirmed the Government's intention to require all employers to pay their employees' super guarantee at the same time as their salary and wages from 1 July 2026. This payday super measure was originally announced by the Treasurer on 2 May 2023.

While there are scant details in the Budget papers, Treasury and the ATO are expected to consult closely with industry and stakeholders on these changes in the second half of 2023. The final design will be considered as part of the 2024-25 Budget.

More funding to recover unpaid super; ATO to be set enhanced targets

The Papers also state that the ATO will receive additional resourcing of $40.2 million to help it detect unpaid super payments earlier. It is estimated that $3.4 billion worth of super went unpaid in 2019-20.

The Government will also set enhanced targets for the ATO for the recovery of payments.

The Budget estimates that the package will increase receipts by $835 million and decrease payments by $243.1 million over the 5 years from 2022-23.

However, this effect will be immediately offset by the associated company tax deductions of superannuation guarantee (SG) payments in 2027-28. Over the medium-term from 2022-23 to 2033-34 the proposal is estimated to reduce the underlying cash balance by $256.6 million as there will be less SG charge debt raised due to increased compliance.

The proposed 1 July 2026 start date for payday super is intended to provide sufficient time for employers, superannuation funds, payroll providers and other parts of the superannuation system to prepare for the change.

Super pensions: No reduction in minimum drawdowns for 2023-24

The Budget did not announce a further extension to 2023-24 of the temporary 50% reduction in the minimum annual payment amounts for superannuation pensions and annuities. As a result, the 50% reduction in the minimum pension drawdowns, which has applied for the 2019-20 to 2022-23 income years, is set to end on 30 June 2023.

Accordingly, superannuation trustees and members will need to start planning for the additional cash flow requirements to satisfy the minimum annual payment amounts for 2023-24 in relation to account-based, allocated and market linked pensions.

Minimum drawdowns for 2023-24

Minimum payments are determined by the age of the beneficiary and the value of the account balance as at 1 July each year under Sch 7 of the SIS Regs. The relevant percentage factor is based on the age of the beneficiary on 1 July in the financial year in which the payment is made (or on the commencement day if the pension commenced in that year).

Age of beneficiary (years)	Standard percentage factor (%) 2023-24
0-64	4
65-74	5
75-79	6
80-84	7
85-89	9
90-94	11
95+	14

No maximum annual payments apply, except for transition to retirement pensions which have a maximum annual payment limit of 10% of the account balance at the start of each financial year.

Super consumer advocate funding; ACCC super complaints mechanism; FRAA reviews reduced

The Government will provide $5 million over 5 years from 2023-24 to continue a superannuation consumer advocate to improve members' outcomes. This funding will be offset by an increase in the Superannuation Supervisory Levy administered by APRA.

In addition, the Australian Competition and Consumer Commission (ACC) will establish the first phase of a complaints’ mechanism for designated consumer and small business advocacy groups to raise systemic issues under consumer law (super complaints) within existing resourcing.

The frequency of Financial Regulator Assessment Authority (FRAA) reviews will also be reduced from every two years to every five years.

OTHER MEASURES

Govt to waive student loans impacted by delay in transfer of records

The Government will forgo $5.4 million in receipts over 5 years from 2022-23 (and $15.5 million over 2 years to 2033-34) to support students affected by a delay in the transfer of some historical tertiary education loan records to the ATO. This will mean waiving the following debts for affected loans, as determined at the date of transfer to the ATO:

- historical indexation, as well as indexation that will be applied on 1 June 2023 on loans issued prior to 1 July 2022 under the Higher Education Loan Program, the VET Student Loans program, the Trade Support Loans program and on loans issued in 2017 and 2018 under the VET FEE-HELP program; and
- outstanding debt for VET FEE-HELP loans issued from 2009 to 2016.

Foreign Investment – interfunding exemption

The Government will exempt passive or low risk interfunding transactions from mandatory notification requirements and fees under the Foreign Acquisitions and Takeovers Act 1975 ("FATA"). This change will apply from the date of commencement of the amendments to the legislation.

An interfunding exemption will mean qualifying interfunding investments will not require prior approval or attract fees. This will significantly decrease the regulatory burden and financial costs for investors who undertake interfunding activities. Interfunding transactions will remain reviewable national security actions under the FATA 1975, which ensures the Treasurer's national security powers will remain available if a national security risk arises.

This measure is estimated to decrease receipts by $20.0 million over the five years from 2022-23.

Replacement of AAT: additional funding

The Budget papers contain details of the funding required to facilitate the replacement of the AAT by a new Federal administrative review body.

Funding includes:

- $63.4 million over two years from 2023-24 to appoint additional full-time members to address the backlog of AAT cases
- $14.4 million over five years from 2022-23 (and $1.5 million per year ongoing) for the Attorney-General's Department to manage the transition to the new administrative review body, and
- $11.7 million over two years from 2022-23 to develop a modern case-management system for the new administrative review body.

Extension and merger of anti-crime bodies

The Government will extend funding for the Serious Financial Crime Taskforce (SFCT) and Serious Organised Crime program (SOC) over 4 years to 30 June 2027 and merge the programs, with a merged SFCT to commence from 1 July 2023. Funding for both programs currently terminates on 30 June 2023.

The SFCT and SOC are currently separately funded ATO-led cross-agency collaborations between the ATO, national policing and other law enforcement and regulatory agencies, targeting serious and organised crime groups and serious financial crime and tax evasion.

This measure is estimated to increase receipts by $279.5 million and increase payments by $256.6 million, including an increase in GST payments to the states and territories of $32.7 million over the 5 years from 2022-23.

Excise on tobacco to increase sharply

The Government will increase tobacco excise and excise-equivalent customs duty by 5% per year for three years from 1 September 2023, in addition to ordinary indexation.

The Government will also align the tax treatment of tobacco products subject to the per kilogram excise and excise-equivalent customs duty (such as roll-your-own tobacco) with the manufactured per-stick rate, by progressively lowering the "equivalisation weight" from 0.7 to 0.6 grams. These progressive decreases will occur on 1 September each year from 2023, with the new weight coming fully into effect from 1 September 2026. This will raise the per kilogram duty accordingly.

The Government will expand compliance activity to address illicit tobacco and work with relevant agencies and State and Territory governments to develop an appropriate multi-jurisdictional approach.

This measure is estimated to increase receipts by $3.3 billion and increase GST payments to the States and Territories by $290.0 million over the 5 years from 2022-23.

Anti-money laundering agencies to receive additional funding

The Government will provide $14.3 million over 4 years from 2023-24 to support policy and legislative reforms to harden Australia against illicit financing and evaluation of Australia's anti-money laundering framework. Funding includes:

- $8.6 million over 3 years from 2023-24 to the Australian Transaction Reports and Analysis Centre (AUSTRAC) to develop and consult stakeholders on legislative reforms to modernise Australia's anti-money laundering and counter-terrorism financing regime and support preparation for, and participation in, the evaluation of Australia's regime against global standards by the Financial Action Task Force
- $5.6 million over four years from 2023-24 in additional departmental resourcing for the Attorney-General's Department.

Energy Price Relief Plan

The Government will provide $1.5 billion over 5 years from 2022-23 (and $2.7 million per year ongoing) to reduce the impact of rising energy prices on Australian households and businesses by providing targeted energy bill relief and progressing gas market reforms.

Funding includes:

- $1.5 billion over 2 years from 2023-24 to establish the Energy Bill Relief Fund to support targeted energy bill relief to eligible households and small business customers, which includes pensioners, Commonwealth Seniors Health Card holders, Family Tax Benefit A and B recipients and small business customers of electricity retailers
- $14.7 million over 5 years from 2022-23 (and $2.7 million per year ongoing) to the ACCC to administer and enforce compliance with a temporary cap of $12 per gigajoule on the price of gas and to develop and implement a mandatory gas code of conduct

- $9.5 million over 3 years from 2022-23 for the Australian Energy Regulator to monitor coal and gas markets across the National Electricity Market.

The Government will also provide funding to support the NSW and Queensland governments to implement a cap of $125 per tonne on the price of coal used for electricity generation.