

Tax and Accounting Federal Budget Report 2021-22

12 May 2021

HIGHLIGHTS

Individuals

Low and middle income tax offset remains for 2021–22

The low and middle income tax offset (LMITO) will be extended for another year into 2021–22. The LMITO was due to be removed on 30 June 2021.

Consistent with the current income year, the low and middle income tax offset is calculated as follows:

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

Individual tax residency rules simplified

The individual tax residency rules will be replaced by a new framework with a primary physical presence test.

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

Currently, an individual who is physically present in Australia for 183 days or more in an income year will not be an Australian resident if their usual place of abode is overseas and they have no intention to take up residence in Australia. The new framework is based on recommendations made by the Board of Taxation in the 2019 report *Reforming individual tax residency rules — a model for modernisation*.

The measure will have effect from the 1 July following assent of the enabling legislation.

\$250 exclusion on self-education deductions to be removed

The current limitation for individuals claiming self-education expenses, where the first \$250 of the deduction is denied, will be removed. The change will come into effect from the income year following the date of assent of the relevant legislation.

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

Medicare low-income thresholds for 2020–21

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

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

Extension to temporary loss carry back offset

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

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

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

Extended powers for AAT to pause or modify ATO debt recovery

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

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

The measure will apply to small business entities (including individuals carrying on a business) with an aggregated turnover of less than \$10 million per year that have filed an application in relation to tax matters before the Small Business Taxation Division of the AAT.

These new powers for the AAT will be available in respect of proceedings commenced on or after the date of assent of the legislation.

Removing the \$450 per month superannuation guarantee threshold

The employer exemption from superannuation guarantee payments for individuals earning less than \$450 in salary or wages in a calendar month will be removed.

The measure will take effect from the 1 July following legislation receiving assent.

Tax-deferred employee share schemes — ceasing employment no longer a taxing point

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

Under existing rules for a tax-deferred ESS, where certain criteria are met employees may defer tax until a later tax year (known as the deferred taxing point). By removing the cessation of employment taxing point, the deferred taxing point will be the earliest of:

- in the case of shares, when there is no risk of forfeiture and no restrictions on disposal
- in the case of options, when the employee exercises the option and there is no risk of forfeiting the resulting share and no restriction on disposal, and
- the maximum period of deferral of 15 years.

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

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

The regulatory changes will apply 3 months after assent of the amending legislation.

Digital games tax offset to be introduced to promote growth of gaming industry

A digital games tax offset will be introduced to promote the growth of the digital games industry in Australia. This will be a refundable tax offset for a minimum investment of \$500,000 from 1 July 2022 in “qualifying Australian games expenditure”.

The criteria and definition of qualifying expenditure will be determined following industry consultation. However, games with gambling elements will be excluded.

Self-assessment of intangible depreciating assets to be allowed

Taxpayers who purchase patents, registered designs, copyrights or in-house software, will be given the opportunity to self-assess their effective life for decline in value. The measure comes into effect for specified intangible assets acquired after 1 July 2023.

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

Concessional taxation of corporate income derived from certain patents

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

The mechanism by which this “patent box” concession will be delivered is, subject to consultation with industry, to determining its appropriateness for supporting the clean energy sector.

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

2021 storms and floods — income tax exemption for qualifying grants

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

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

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

ATO early engagement service for foreign investors

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

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

Superannuation

Work test for superannuation contributions to be part-abolished

From 1 July 2022, individuals aged 67 to 74 will no longer be required to meet the work test when making or receiving non-concessional superannuation contributions or salary sacrificed contributions.

These individuals will also be able to access the non-concessional bring-forward arrangement, subject to meeting the relevant eligibility criteria.

The existing \$1.6 million cap on lifetime superannuation contributions will continue to apply (increasing to \$1.7 million from 1 July 2021). The annual concessional and non-concessional caps will also continue to apply.

Access to concessional personal deductible contributions for individuals aged 67 to 74 will **still** be subject to meeting the work test.

Eligible age for downsizer contributions lowered to 60 years

From 1 July 2022, the eligibility age to make downsizer contributions into superannuation will be reduced from 65 to 60 years of age.

The downsizer contribution will allow individuals to make a one-off, post-tax contribution to their superannuation of up to \$300,000 per person (or \$600,000 per couple) from the proceeds of selling their home, provided that the home has been held for at least 10 years. Both members of a couple can contribute in respect of the same home, and contributions do not count towards non-concessional contribution caps.

Individuals with balances over the transfer balance cap (\$1.7 million from 1 July 2021) are also able to make a downsizer contribution, however the downsizer amount will count towards that cap when savings are converted to the retirement phase.

Maximum releasable amount under first home super saver scheme increased to \$50,000

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

The FHSSS applies to voluntary contributions made into superannuation on or after 1 July 2017. Voluntary contributions made from that date will count towards the total amount able to be released.

First home super saver scheme — technical amendments

The government will make 4 technical changes to the first home super saver scheme (FHSSS) legislation to improve its operation and assist FHSSS applicants who make errors on their release applications by:

- increasing the discretion of the Commissioner of Taxation to amend and revoke FHSSS applications
 - allowing individuals to withdraw or amend their applications prior to receiving an FHSSS amount, and allowing those who withdraw to re-apply for FHSSS releases in the future
 - allowing the Commissioner of Taxation to return any released FHSSS money to superannuation funds, provided that the money has not yet been released to the individual
 - clarifying that the money returned by the Commissioner of Taxation to superannuation funds is treated as funds' non-assessable non-exempt income and does not count towards the individual's contribution caps.
-

Central management and control safe harbour test extended for SMSFs

Currently, an SMSF will remain an Australian superannuation fund where the members/trustees of the SMSF are overseas temporarily for a period not exceeding 2 years. The government has announced a proposal to extend this safe harbour test to 5 years.

This extension will allow an individual who is overseas to continue active control of their SMSF, as opposed to appointing a legal personal representative as the trustee of the SMSF under an enduring power of attorney.

Also, the government intends to remove the active member test when determining whether an Australian superannuation fund is a complying fund. Currently, at least 50% of the total market value of an SMSF or small APRA fund is required to be held on behalf of active members who are Australian residents.

The new safe harbour test will be in effect on the 1 July following assent of the enabling legislation. The government has announced in the budget that it expects the enactment of legislation to be prior to 1 July 2022.
