2022/23 October Federal Budget

On 25 October 2022, Treasurer Jim Chalmers handed down an updated 2022/23 Federal Budget, the first for the Albanese Labor Government.

1. Providing certainty for unlegislated taxation and superannuation measures

The Government has announced it **will not proceed** with certain legacy tax and super measures that were announced but not legislated by the previous Government, including the following:

1. The 2018/19 Budget measure that proposed changing the annual audit requirement for certain self-managed superannuation funds ('SMSFs'). The previous Government announced it would change the annual audit requirement to a three-yearly requirement for SMSFs with a history of good record-keeping and compliance.
2. The 2018/19 Budget measure that proposed introducing a limit of $10,000 for cash payments made to businesses for goods and services. The previous Government announced that it would require transactions over a threshold to be made through an electronic payment system or by cheque.

The Government **will defer** the start dates of certain legacy tax and superannuation measures to allow sufficient time for policies to be legislated and implemented including the following:

1. The 2019/20 MYEFO measure that proposed introducing a sharing economy reporting regime for transactions relating to the supply of ride sourcing and short-term accommodation from 1 July 2022 will be deferred to **1 July 2023**. All other reportable transactions (including asset sharing, food delivery and tasking-based services) will be deferred from 1 July 2023 to **1 July 2024**.
2. The 2021/22 Federal Budget measure that proposed relaxing residency requirements for SMSFs, from 1 July 2022 to the income year commencing on or after the date of Royal Assent of the enabling legislation.

   The previous Government announced that it would relax residency requirements for SMSFs by extending the 'central control and management test' safe harbour from two years to five years and removing the 'active member test'.

   This measure is intended to allow SMSF members to continue to contribute to their superannuation fund whilst temporarily overseas.

2. Digital Currency – Clarifying that digital currencies are not taxed as foreign currency

The Government will introduce legislation to clarify that digital currencies (such as Bitcoin) continue to be excluded from the Australian income tax treatment of foreign currency.

This maintains the current tax treatment of digital currencies, including the capital gains tax treatment where they are held as an investment. This measure removes uncertainty following the decision of the Government of El Salvador to adopt Bitcoin as legal tender and will be backdated to income years that include 1 July 2021.

The exclusion does not apply to digital currencies issued by, or under the authority of, a government agency, which continue to be taxed as foreign currency.

3. Depreciation – Reverse the self-assessment of the effective life of intangible assets

The Government **will not proceed** with the measure to allow taxpayers to self-assess the effective life of intangible depreciating assets, which was announced in the 2021/22 Budget.

The previous Government announced it would allow taxpayers to self-assess the tax effective lives of eligible intangible depreciating assets, such as patents, registered designs, copyrights and in-house software. This measure was proposed to apply to assets acquired from 1 July 2023.

Reversing this decision will maintain the status quo (i.e., effective lives of intangible depreciating assets will continue to be set by statute).

4. Increase in Commonwealth penalty unit

The Government will increase the amount of the Commonwealth penalty unit from $222 to **$275**, **from 1 January 2023**. The amount will continue to be indexed every three years in line with the CPI as per the pre-existing schedule, with the next indexation occurring on 1 July 2023.

Penalty units are used to describe the amount payable for fines under Commonwealth laws, including in relation to tax offences. Fines are calculated by multiplying the value of one penalty unit by the number of penalty units prescribed for the offence.

5. Superannuation – Expanding the eligibility for downsizer contributions

The Government will allow more people to make downsizer contributions to their superannuation, by reducing the minimum eligibility age from 60 to 55 years of age. The measure will have effect from the start of the first quarter after Royal Assent of the enabling legislation.

The downsizer contribution allows people to make a one-off post-tax contribution to their superannuation of up to $300,000 per person from the proceeds of selling their home. Both members of a couple can contribute and contributions do not count towards non-concessional contribution caps.

Further to this announcement, the Government has also announced further (non-tax) measures to reduce the financial impact on pensioners looking to downsize their homes in an effort to minimise the burden on older Australians and free up housing stock for younger families, as follows:

- Extending the assets test exemption for principal home sale proceeds from 12 months to 24 months for income support recipients.
- Changing the income test to apply only the lower deeming rate (0.25%) to principal home sale proceeds when calculating deemed income for 24 months after the sale of the principal home.

6. FBT – Electric cars

From 1 July 2022, the measure will exempt battery, hydrogen fuel cell and plug-in hybrid electric cars from fringe benefits tax and import tariffs if they have a first retail price below the luxury car tax threshold for fuel-efficient cars. The car must not have been held or used before 1 July 2022.

Employers will need to include exempt electric car fringe benefits in an employee's reportable fringe benefits amount.

7. COVID-19 business grants – Making COVID-19 business grants non-assessable non-exempt

In response to COVID-19, payments from certain state and territory business grants, made prior to 30 June 2022, can be made non-assessable non-exempt ('NANE') for income tax purposes, subject to eligibility. This tax treatment is only provided in exceptional circumstances, such as the severe economic consequences facing businesses during the COVID-19 pandemic.

The Government has made the following state and territory COVID-19 grant programs eligible for NANE treatment, which will exempt eligible businesses from paying tax on the following grants:

- Victoria Business Costs Assistance Program Four – Construction.
- Victoria Licenced Hospitality Venue Fund 2021 – July Extension.
- Victoria Licenced Hospitality Venue Fund 2021 – Top Up Payments.
- Victoria Business Costs Assistance Program (Round Two Top Up, Round Three, Round Four, Round Five).
- Victoria Impacted Public Events Support Program Round Two.
- Victoria Live Performance Support Program (Presenters) Round Two.
- Victoria Live Performance Support Program (Suppliers) Round Two.
- Victoria Commercial Landlord Hardship Fund 3.
- Australian Capital Territory HOMEFRONT 3.
- Australian Capital Territory Small Business Hardship Scheme.

8. Energy Efficiency Grants for small and medium sized enterprises

The Government will provide funding to support small to medium enterprises to fund energy efficient equipment upgrades. The funding will support studies, planning, equipment and facility upgrade projects that will improve energy efficiency, reduce emissions or improve the management of power demand.

9. Boosting Paid Parental Leave

The Government has announced it will introduce reforms from 1 July 2023 to make the Paid Parental Leave Scheme flexible for families so that either parent is able to claim the payment and both birth parents and non-birth parents are allowed to receive the payment if they meet the eligibility criteria.

Parents will also be able to claim weeks of the payment concurrently so they can take leave at the same time.

From 1 July 2024, the Government will start expanding the scheme by two additional weeks a year until it reaches a full 26 weeks from 1 July 2026.

Both parents will be able to share the leave entitlement, with a proportion maintained on a 'use it or lose it' basis, to encourage and facilitate both parents to access the scheme and to share the caring responsibilities more equally. Sole parents will be able to access the full 26 weeks.

10. Extending ATO Compliance Programs

The Government has announced it will extend the following ATO compliance programs:

(a) **Personal Income Taxation Compliance Program**

The Government will provide funding to the ATO to extend its Personal Income Taxation Compliance Program for two years from 1 July 2023. This extension will enable the ATO to continue to deliver a combination of proactive, preventative and corrective activities in key areas of non-compliance, including overclaiming deductions and incorrect reporting of income.

(b) **Shadow Economy Program**

The Government will extend the existing ATO Shadow Economy Program for a further three years from 1 July 2023. The extension of the Shadow Economy Program will enable the ATO to continue a strong and co-ordinated response to target shadow economy activity, protect revenue and level the playing field for those businesses that are following the rules.

(c) **Tax Avoidance Taskforce**

The Government has boosted funding for the ATO Tax Avoidance Taskforce by around $200 million per year over four years from 1 July 2022, in addition to extending this Taskforce for a further year from 1 July 2025. The boosting and extension of the Tax Avoidance Taskforce will support the ATO to pursue new priority areas of observed business tax risks, complementing the ongoing focus on multinational enterprises and large public and private businesses.

11. Tax Practitioners Board – Compliance program to enhance tax system integrity

The Government will provide $30.4 million to the Tax Practitioners Board ('TPB') to increase compliance investigations into high-risk tax practitioners and unregistered preparers over four years from 1 July 2023.

The TPB will use new risk engines to better identify tax practitioners who engage in poor and unlawful tax advice, to improve tax compliance and raise industry standards.

12. Supporting Small Business Owners

The Government will provide $15.1 million over two calendar years from 1 January 2023 until 31 December 2024 to extend the Small Business Debt Helpline and the NewAccess for Small Business Owners programs to support the financial and mental wellbeing of small business owners.

13. Off-market share buy-backs

The Government will improve the integrity of the tax system by aligning the tax treatment of off-market share buy-backs undertaken by listed public companies with the treatment of on-market share buy-backs.

This measure is proposed to apply from 7:30pm AEDT, 25 October 2022 (i.e., Budget night).

14. Australia’s Foreign Investment Framework – Increase to fees and penalties

The Government has increased foreign investment fees and will increase financial penalties for breaches that relate to residential land.

Fees doubled on 29 July 2022 for all applications made under the foreign investment framework. The maximum financial penalties that can be applied for breaches in relation to residential land will also double on 1 January 2023.

Fees ensure Australians do not bear the cost of administering the foreign investment framework, and penalties encourage compliance with these rules.

15. Multinational Tax Integrity Package

The Government has announced the following changes in relation to its Multinational Tax Integrity Package:

(a) **Amending Australia’s interest limitation (thin capitalisation) rules**

The Government will strengthen Australia’s thin capitalisation rules to address risks to the corporate tax base arising from the use of excessive debt deductions. This measure will apply to income years commencing on or after 1 July 2023.

The current thin capitalisation regime limits debt deductions up to the maximum of three different tests: a safe harbour (debt to asset ratio) test; an arm’s length debt test; and a worldwide gearing (debt to equity ratio) test.

The Government will replace the safe harbour and worldwide gearing tests with earnings-based tests to limit debt deductions in line with an entity’s activities (profits).

The changes will apply to multinational entities operating in Australia and any inward or outward investor, in line with the existing thin capitalisation regime. Financial entities will continue to be subject to the existing thin capitalisation rules.

(b) **Denying deductions for payments relating to intangibles held in low or no tax jurisdictions**

The Government will introduce an anti-avoidance rule to prevent significant global entities (entities with global revenue of at least $1 billion) from claiming tax deductions for payments made directly or indirectly to related parties in relation to intangibles held in ‘low-or no-tax’ jurisdictions. The measure will apply to payments made on or after 1 July 2023.

(c) **Improved tax transparency**

The Government will introduce reporting requirements for relevant companies to enhance the tax information they disclose to the public, for income years commencing from 1 July 2023.

The Government will require:

- large multinationals to prepare for public release of tax information on a country-by-country basis and a statement on their approach to taxation, for disclosure by the ATO;
- Australian public companies (listed and unlisted) to disclose information on the number of subsidiaries and their country of tax domicile; and
- tenderers for Australian Government contracts worth more than $200,000 to disclose their country of tax domicile.