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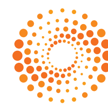
A PLAN FOR AUSTRALIA'S ECONOMIC PROSPERITY



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Federal Budget

Tax Bulletin

2013

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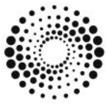 THOMSON REUTERS

THOMSON REUTERS WEEKLY TAX BULLETIN

Issue 20, 14 MAY 2013

SPECIAL ISSUE - 2013 FEDERAL BUDGET REPORT

[With special comments by Reuters News]

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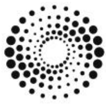 THOMSON REUTERS

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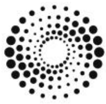
EXECUTIVE SUMMARY

[845] 2013-14 Federal Budget: $18bn deficit; profit shifting targeted; medical expense tax offset and Baby Bonus to go

On 14 May 2013, the Treasurer handed down the 2013-14 Federal Budget, his 6th, and arguably most difficult, Budget. Significant revenue shortfalls over those budgeted for (despite growth in overall revenue collections year-on-year), and Government spending commitments such as the National Disability Insurance Scheme and the Gonski school reforms, placed considerable pressure on framing this year's Budget. A surplus as predicted in last year's Budget did not eventuate, although the Treasurer said the Government was "charting a sensible pathway to surplus over the forward estimates". The Treasurer announced a deficit of $18bn in 2013-14. The Government said it expects the deficit to fall to $10.9bn in 2014-15 and return to a small surplus ($800m) by 2015-16.

Mr Swan said expected tax receipts are down $60bn over the 4 years to 2015-16. Since last year's Budget, he said

 THOMSON REUTERS

expected tax receipts for 2012-13 had been "written down" by $17bn. He said company taxes, CGT, and resource rent taxes "have all been hit". Mr Swan said almost $170bn had been wiped off tax receipts since the GFC.

In last year's Budget, the Treasurer said the Australian economy was expected to grow at 3% in 2013-14. In the 2013-14 Budget, that figure has been revised down to 2.75% and 3% in 2014-15.

An outline of the major announcements is given below.

Revenue measures announced

The major revenue measures announced in the Budget included:

- A significant package of measures targeting multinational profit shifting structures: thin cap ratios reduced; CFC changes; foreign exempt income; non-portfolio dividends; etc.
- Changes to Australia's foreign resident CGT regime.
- Measures to prevent "dividend washing" and doubling up of franking credits.
- Consolidation: loopholes to be closed; new Tax Board recommendations made and Govt responses.
- Restriction on immediate deduction for mining rights and information.
- Changes to OBU regime from 1 July 2013.
- Compliance improvements through third party reporting and data matching.
- Phase-out of medical expense tax offset.
- Baby Bonus to be abolished and replaced from 1 March 2014.

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.

Where to get Budget documents

On the web

The 2013-14 Budget Papers are available at any of the following websites:

- 2013-14 Central Budget website
- Federal Government
- Parliament of Australia
- Department of Finance and Deregulation

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

Print copies

The 2013-14 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 14 May 2013.

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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[846] **Govt updates and outlines its "tax reform roadmap"**

In last year's 2012-13 Budget, the Government released details of what it called its "tax reform roadmap" which it said builds on the work already done by the Henry Review and the Government's response, and the 2011 Tax Forum. In the 2013-14 Budget on 14 May 2013, the Government updated its tax reform road map. It reiterated the principles for tax reform being a stronger, smarter and fairer tax system.

The Government reviewed its record of tax reforms, and foreshadowed tax changes still to come, including:

- the progressive increase in the super guarantee rate;
- reducing interest withholding tax paid by financial institutions on offshore borrowing;
- introducing non-resident CGT non-final withholding tax;
- gradually increasing the Age Pension qualifying age to 67 by 2023;
- in 2015, applying normal Age Pension deeming arrangements to new superannuation account-based income streams.

Source: Tax Reform Road Map booklet, 14 May 2013

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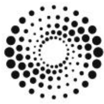
[847] **Australia delays promised Budget surplus as election looms; targets multinationals on tax**

 THOMSON REUTERS

- by Reuters News

In its 2013-14 Budget, the Government used the last budget before national elections to delay a long-promised return to surplus, blaming a stubbornly high Australian dollar and lower commodity prices for a dramatic fall in revenues.

With polls pointing to a solid defeat for Prime Minister Julia Gillard at the upcoming 14 September 2013 election, Treasurer Wayne Swan locked in 10 years of funding for landmark disability and schools education policies aimed at reversing its downward trajectory, and committed more money to roads and suburban rail projects.

But the Budget, with little room for traditional pre-election give-aways and with voters traditionally wary of government borrowing, was unlikely to do much to help revive support.

Instead, Swan has cut a range of benefits to middle-income families, putting off planned tax cuts, increasing the Medicare levy, and scrapping a $5,000 baby bonus popular with voters and which had helped address an aging population.

"This budget keeps our economy strong and head and shoulders ahead of virtually any developed economy," Swan told reporters, adding the budget was designed to with an eye to the economy rather than the looming election.

Swan defended the tough measures by pointing to a $17bn drop in expected revenue since his previous budget, with a total "write down" of $60bn over the next 4 years, and said the measures were needed to support growth and jobs in the face of a flagging global economy.

Australia, a major supplier of coal and iron ore, has enjoyed 21 years of uninterrupted economic growth, surviving the 2008 global financial crisis without dipping into recession thanks to a mining boom fuelled by strong demand from resource hungry China, its biggest trade partner.

But the fall in global commodity prices, coupled with an Australian dollar which has traded above parity with the US dollar for most of the past 2 years, has hammered company profits and tax revenues.

The 2013-14 deficit was forecast at $18bn or 1.1% of GDP, down from a $2.2bn surplus forecast in October 2012.

Swan outlined $43bn worth of savings over 4 years as part of a plan to return a balanced budget by the year to 30 June 2016.

Mining tax

Swan said the Australian dollar had remained stubbornly high despite a steep fall in Australia's terms of trade over the past year.

At the same time, the Treasurer dramatically downgraded the revenue from Australia's controversial 30% profits tax on coal and iron ore mines, which began on 1 July 2012. The budget forecasts the tax, originally expected to raise $13.4bn over its first 4 years, will now raise only $3.3bn in its first 4 years.

Carbon price

The Government has also slashed expected revenue from its price on carbon after revising down the expected carbon price from June 2015, when Australia links its trading scheme to the European carbon scheme. The Government now predicts a carbon price of $12.10 a tonne from June 2015, compared to its previous forecast of $29 a tonne. The price of EU carbon permits hit a 6-day low of around $4.20 late on Monday, 12 May 2013.

Tax loopholes

To help make up for falling revenues, Swan said the Government would use its leadership of the G20 wealthy nations next year to drive a crackdown on tax loopholes and evasion by multinational companies, helping recoup as much as $4.2bn.

Economic outlook

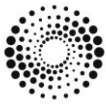
Amid a shaky world economy and sovereign debt woes ailing Europe, Australia's economic outlook remained positive, with growth forecast to slow to 2.75% in 2013-14 from 3% this year, before climbing back to 3% for the following 3 years. That compares to forecast growth in 2013 of 1.25% in Japan, 2% in the United States and -0.5% in the Euro area.

In a nation wary of government debt, Swan has long promised to deliver surplus budgets. But he has delivered 6 straight deficits, in part due to hefty stimulus spending in 2008 and 2009 to help buffer the country from the global slowdown.

He forecast a deficit of $19.4bn in 2012-13, or about 1.3% of GDP, largely in line with economist expectations.

Net debt is expected to peak at $191.6bn, or 11.4% of GDP, in 2014-15 - still less than one eighth of the debt levels of major advanced economies. (*Written by James Grubel; Editing by Lincoln Feast and Terry Hayes*.)

CORPORATE TAX "INTEGRITY" MEASURES



[848]Package of measures targets multinational profit shifting structures: thin cap ratios reduced; CFCs; foreign exempt income; non-portfolio dividends; etc

The Government announced that it would address profit shifting by multinationals through the disproportionate allocation of debt to Australia by tightening and improving the integrity of several aspects of Australia's international tax arrangements, ***with effect for income years commencing on or after 1 July 2014***. The Government expects this to have an estimated gain to revenue of $1.5bn over the forward estimates period.

The Government said its action in announcing the measures was consistent with the OECD's approach on base erosion and profit shifting and the Government's role in the G20's multilateral action to address base erosion and profit shifting.

The Treasurer said the Government will release a Treasury Scoping Paper in June 2013 to examine the risks to the sustainability of Australia's corporate tax base from base erosion and profit shifting.

In particular, the changes announced in the Budget will involve:

- tightening and improving the effectiveness of the thin capitalisation rules including changing all safe harbour limits;
- extending a worldwide gearing test to inbound investors;
- increasing the de minimis threshold from $250,000 to $2m of debt deductions which is designed to reduce compliance costs for small business;
- better targeting the exemption for foreign non-portfolio dividends received by Australian companies; and
- removing the provision allowing a tax deduction for interest expenses incurred in deriving certain exempt foreign income.

Thin cap changes

The Assistant Treasurer said the thin cap rules would be changed by tightening all safe harbour limits as follows:

- ***for general entities***, the limit will be reduced from 3:1 to 1.5:1 on a debt to equity basis (or 75% to 60% on a debt to total asset basis);
- ***for non-bank financial entities***, the limit will be reduced from 20:1 to 15:1 on a debt to equity basis (or 95.24% to 93.75% on a debt to total asset basis);
- ***for banks***, the capital limit will be increased from 4% to 6% of their risk weighted assets of the Australian operations;

- ***for outbound investors***, the worldwide gearing ratio will be reduced from 120% to 100% (with an equivalent change to the worldwide capital ratio for banks.

The Government said it will consult with industry on the implementation of these proposed changes. In addition, the Board of Taxation will conduct a review of the thin capitalisation arm's length test. The ATO will also commence consultation with taxpayers and industry to progress any guidance material in relation to these changes.

Background to the thin cap rules

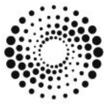
The thin capitalisation regime aims to limit the capacity of multinational firms to move profits out of Australia by assigning an excessive amount of debt to their Australian operations. When the Australian subsidiary's borrowing exceeds a defined threshold, its interest expenses can no longer be deducted from its income. The regime applies to all of the debt of a relevant multinational and not just to the debt borrowed from foreign related parties. Australian subsidiaries can apply one of a number of thresholds under the rules, including the "safe harbour" limit, the "arm's length" debt limit and (for outward investors) a worldwide gearing ratio limit – see below. Different safe harbour limits apply to "general entities", non-bank financial entities and banks.

In its August 2012 discussion paper looking at ways of making "revenue neutral" cuts to the company tax rate, the Business Tax Working Group (BTWG) noted that, "when assessed against other countries' thin capitalisation regimes, the Australian rules could be seen as overly generous". It noted there were flaws with particular rules, including the arm's length test (particularly when it does not have a firm-specific element), which in its current form could allow significant profit shifting to occur. As a discretionary test, moreover, it is difficult for the ATO to administer, the BTWG said. The large information asymmetry that third parties face when auditing (or potentially auditing) tax calculations that can be based on subjective market and firm-specific information and assumptions raises integrity concerns, the Group also pointed out.

According to the BTWG: "It should also be kept in mind that the gearing levels these rules allow are higher than the levels employed by those firms that have little capacity/incentive to shift profits out of Australia (that is, purely domestic firms or firms that rely on truly independent financing arrangements). This gives multinationals a tax advantage over their Australian market competitors."

Thin capitalisation describes circumstances in which a taxpayer has cross-border investments and the taxpayer's allowable interest deductions are limited by a specified statutory ratio or formula. This limit is imposed with the aim of countering the strategy of using debt over equity funding so as to obtain the more favourable tax treatment of debt. The thin cap rules are contained in Div 820 of the ITAA 1997. Interest deductions denied under the thin cap rules cannot be added to the cost base of a CGT asset.

Under the current Div 820:



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- both *inward* and *outward* investors are covered. Division 820 can have serious potential consequences for a foreigner operating a business within Australia and an Australian operating a business offshore if interest is claimed against Australian assessable income;
- deductions are limited by reference to the total debt of the Australian operations of those investors, rather than foreign debt only; and
- a de minimis rule can apply. Where an entity's debt deductions (and those of its associates) do not exceed A$250,000, Div 820 will have no impact.

Where Div 820 applies, the result is that if the thin capitalisation trigger is been activated, some of the debt deductions which would otherwise be available will be denied.

For a non-authorised deposit taking institution, debt deductions will be denied if the amount of debt used to fund the entity's Australian operations exceeds the allowed maximum amount of debt. For an authorised deposit taking institution (eg a recognised bank), debt deductions will be denied if the equity capital used to fund its Australian operations is less than the minimum equity requirement.

A so-called "outward investor (general)" is essentially an Australian resident entity (that is not a financial entity) which either controls a foreign resident entity or carries on a business at or through a permanent establishment (PE) overseas. Such an entity is required to calculate its "adjusted average debt" and compare it to its "maximum allowable debt". If its adjusted average debt exceeds the maximum allowable debt, there is a proportionate denial of the debt deductions otherwise available to the entity. If not, there are no thin capitalisation adjustments. Under the current rules, the maximum allowable debt is the *greatest* of the following 3 debt amounts:

- the safe harbour debt amount, ie 75% of the average net value of the assets of the entity plus any surplus value in associated entities – giving a 3:1 debt/equity ratio;
- the arm's length debt amount (ie the amount of debt that would have been borne by an independent party operating under the same conditions and terms); and
- the worldwide gearing debt amount (up to 120% of the gearing of an outward investor's Australian investments and foreign investments that it controls).

Board of Taxation reviews

The Treasurer said the Board of Taxation will undertake 2 reviews:

1. The Board will examine the arm's length test as it applies to the thin capitalisation rules to make it easier to comply with and administer, and to clarify in what circumstances the test should apply.
2. The Board will also combine a post-implementation review of the debt and equity rules with a review of

whether there can be improved arrangements within the Australian tax system to address any inconsistencies between Australia's and other jurisdictions' debt and equity rules that could give rise to tax arbitrage opportunities.

The Government said the terms of reference for these reviews will be released in the coming weeks.

Exemption re foreign non-portfolio dividend income

The Assistant Treasurer said the reforms to the exemption available to Australian companies for their foreign non-portfolio dividend income (ie returns to Australian entities on the equity interests greater than 10% that they hold in foreign entities) announced in the 2009-10 Budget would be implemented as part of its corporate tax base protection package.

- The exemption is intended to apply to returns on foreign non-portfolio equity interests. The proposed amendments are designed to ensure that the exemption operates as intended and is not available to returns on debt interests or interests that are truly portfolio in nature.
- The exemption will also be expanded so that it applies where an Australian company receives foreign non-portfolio dividend income through an investment in a trust or partnership.

Deduction re foreign exempt income

The Government announced that the concession that allows a tax deduction for interest expenses incurred in deriving certain foreign exempt income will be removed. The Assistant Treasurer said "it is now clear that this concession is being abused".

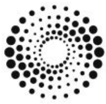
CFC measures

The Assistant Treasurer said the OECD recognised CFC rules as a key "pressure area" in its work on base erosion and profit shifting. He said the CFC rules reduce the incentive for businesses to adopt aggressive restructuring arrangements to shift profits. Therefore, the Government announced that the remaining reforms to the CFC rules and foreign source income attribution rules announced in the 2009-10 Budget would "be reconsidered after the OECD's analysis is completed".

Treasury paper released

A Treasury proposals paper outlining these changes was released on Budget night and is available on the Treasury website.

Source: Budget Paper No 2 [p 33]; Treasurer's press release, 14 May 2013

 THOMSON REUTERS

[849] **Changes to Australia's foreign resident CGT regime**

The Government will make 2 changes to Australia's foreign resident CGT regime.

Principal asset test

The first change involves changes to the ''principal asset'' test in Subdiv 855-A of the ITAA 1997 to ensure that indirect Australian real property interests are taxable if disposed of by a foreign resident. This change consists of 2 components.

First, intercompany dealings between entities in the same tax consolidated group will not form part of the principal asset test calculations, ensuring that assets cannot in effect be counted multiple times (thereby diluting the true asset value of the group). The Assistant Treasurer's press release states that currently a foreign investor can pay no CGT where it disposes of an interest in a consolidated group that has significant interests in taxable Australian real property (TARP). The foreign resident investor who controls the group can use inter-company dealings between entities in the group (such as loans) to generate non-TARP assets, thereby diluting the proportionate value of the TARP assets of the group.

Second, in determining the value of the TARP assets of the entity in which the interest is held, intangible assets connected to the rights to mine, quarry or prospect for natural resources (notably mining, quarrying or prospecting information, rights to such information and goodwill) will be treated as part of the rights to which they relate. The Assistant Treasurer's press release states that there have been a number of cases in the mining industry where a foreign investor disposed of an interest in an Australian mining operation without being subject to CGT. In these cases, it was argued that the majority of the value of the mining industry was attributable to "mining information" (ie the knowledge of the minerals in the ground, which is not a TARP asset) - as opposed to the right to extract those resources (which is). This resulted in the foreign resident paying no CGT, even on gains that are attributable to the appreciation in the value of the mining right.

Foreign resident CGT withholding tax

The other change will apply a 10% non-final withholding tax to the disposal by foreign residents of certain taxable Australian property. In such cases, the purchaser will be required to withhold and remit 10% of the proceeds from the sale. Although to be implemented in the context of CGT, it will apply equally where the disposal of the Australian real property asset by the foreign resident is likely to produce gains on revenue account - and so be taxable as ordinary income rather than as a capital gain.

This measure will not apply to residential property transactions under $2.5m or to disposals by Australian residents.

The Government will consult publicly on the design and implementation of the regime to minimise compliance costs. This will include exploring options to provide certainty about:

- when obligations arise;
- pre-payment of tax liabilities by the seller;
- removing the withholding obligation where it can be shown that no gain will arise; and
- streamlining any payments required, including through the use of intermediaries.

A more detailed discussion paper outlining the proposed design of the withholding regime will be released by the end of 2013.

The Assistant Treasurer's press release states that a number of countries with similar CGT regimes to Australia (such as the US and Canada) have a withholding mechanism to overcome difficulties in collecting tax on gains from foreign residents who may have little connection to the Australian tax system and who can transfer proceeds offshore before compliance action can be instigated.

Date of effect

The changes to the principal asset test will apply to CGT events with effect from 7.30pm (AEST) 14 May 2013.

The new withholding system for the disposal by foreign residents of certain taxable Australian property will apply from 1 July 2016.

Source: Budget Paper No 2 [p 35]; Assistant Treasurer's press release, 14 May 2013

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[850] Preventing "dividend washing" and doubling up of franking credits

In the Budget, the Government announced it would close a loophole that enables sophisticated investors to engage in "dividend washing" (although known as dividend double-dipping). Currently, sophisticated investors can engage in "dividend washing" to, in effect, trade franking credits. This can result in some shareholders receiving two sets of franking credits for the same parcel of shares. This is outside the intent of the dividend imputation system.

The Government will consult on the development of the legislation.

Key features

- The Government said it will seek to ensure that when an investor engages in "dividend washing" by selling shares ex-dividend and then immediately buys equivalent shares which still carry the right to a dividend (known as cum-dividend shares), they will only be entitled to claim one set of franking credits. The changes will be targeted to the 2-day period after a share goes ex-dividend.
- The Government said it intends to close this "loophole" by making changes to the holding period rules, which generally require stakeholders to hold a share at risk for 45 days in order to gain access to franking credits attached to dividends paid on the share.
- In particular, the Government said it would consider modifying the "last-in-first-out" rules, to ensure that shares bought in the above circumstances are treated as one parcel of shares. "The amendments will be targeted at the identified abuse", the Assistant Treasurer said.
- The proposed changes would only apply to investors that have franking credit tax offset entitlements in excess of $5,000.

Mr Bradbury indicated that the Government was "open to alternative approaches" to prevent dividend washing and would consult with business to ensure "that the best legislative response" was implemented.

Treasury will release a discussion paper in late May 2013 on the proposed changes.

Date of effect

The measure will apply from 1 July 2013.

Source: Budget Paper No 2 [p 36]; Assistant Treasurer's press release, 14 May 2013

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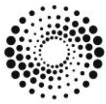
[851] **Consolidation: loopholes to be closed - and further Tax Board recommendations**

The Budget will improve the integrity of the corporate tax system by addressing a number of key issues relating to consolidated groups that were identified by the Board of Taxation in June 2012 and April 2013. In particular, the law



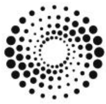
will be amended to ensure that:

- Consolidated groups will no longer be able to access double deductions by shifting the value of assets between entities ie "value shifting between subsidiaries" (recommendation 4.2 of the June 2012 report). In particular, the tax cost setting rules will be amended so that an asset that has been created by transferring the value of an existing asset to a subsidiary is given a cost base that reflects the notional cost base of creating the asset, rather than the market value of the newly created asset.
- Foreign residents will no longer be able to "churn" assets between consolidated groups to allow the same ultimate owner to claim double deductions (recommendation 5.6 of the June 2012 report). In particular, when membership interests in an entity that are transferred to a consolidated group or a MEC group are not regarded as "taxable Australian property" under the CGT rules, the consolidation tax cost setting rules will only apply when (i) there has been a change in the underlying majority beneficial ownership of the membership interests in the entity, or (ii) the membership interests in the entity were recently (less than 12 months) acquired by the foreign entity or group.
- The consolidation's treatment of certain deductible liabilities are not taken into account twice (recommendation 2.1 of the April 2013 report). In this regard, (i) consolidated groups that purchase entities with deductible liabilities will be deemed to have received or paid an amount that equals the value of the joining entity's non-TOFA deductible liabilities that were taken into account for tax cost setting purposes, and (ii) the amount increases (to the extent the liability will give rise to a deduction) or decreases (to the extent the liability will give rise to an assessable amount) the purchasing entity's assessable income over 12 months in relation to current liabilities and over 48 months in relation to non-current liabilities.

In addition, the tax treatment of intra-group liabilities and assets between a continuing member of a consolidated group and a departing member of a consolidated group which becomes subject to the TOFA regime upon exit, will be amended to ensure that only net gains and losses are recognised for tax purposes. For example, this will prevent a lender from being assessed on the return of a principal of a loan and prevent a borrower from claiming a deduction for the repayment of the principal. The Government will consult on the development of the legislation.

The Government will also address concerns raised by the Board of Taxation about inconsistencies in the tax treatment for multiple entry consolidated (MEC) groups used by multinationals and ordinary consolidated groups. The Government will ensure that MEC groups cannot access tax benefits not available to domestic consolidated groups. A tripartite review chaired by the Treasury and involving the Australian Taxation Office and the private sector will consider how best to implement the measure.

Date of effect

 THOMSON REUTERS

These amendments implementing these Board of Taxation recommendations will apply to transactions that take place after that announcement. The amendments to equalise the tax treatment of MEC groups and ordinary consolidated group will apply from 1 July 2014.

Other integrity measures

To protect the integrity of the corporate tax system, the Assistant Treasurer has also announced that the Government reserves the right to take earlier legislative action (including with effect from 14 May 2014), if it becomes aware of any aggressive tax minimisation practices over the course of the tripartite review. Moreover, the Government will consider any evidence of aggressive tax practices to include, but not be limited to, a significant number of:

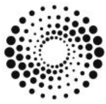
- foreign-owned ordinary consolidated groups transitioning to MEC group structures;
- MEC groups flattening their structures (eg by incorporating new tier-1 companies or by lifting low level subsidiaries up to the tier-1 level); and
- foreign-owned ordinary consolidated groups transferring subsidiaries to MEC groups with the same ultimate owner.

To preserve how taxpayers have complied with the current law, taxpayers will be prevented from changing their previous tax positions to take advantage of the deficiency in the law. This is because the Commissioner will not have the power to alter the treatment of affected amounts in assessments made before the announcement.

New Board Reports and Government responses

In the Budget, the Government announced that it had released 2 Board of Taxation Reports on Budget day [14 May 2013], which are available on the Board's website. The Government also released its response to recommendations contained in those reports, which included the following:

- give formal recognition to the primacy of the business acquisition approach in relation to the treatment of assets transferred to a consolidated group, retain the "entry history rule" (but as an exception to the business acquisition approach), but without changes per se to the operation of the consolidation rules and the current treatment of assets or liabilities - *the Government agreed in principle, but subject to legislative priorities*;
- the "ending/creation" model be applied to ensure that the tax costs of intra-group assets (apart from membership interests) acquired or disposed of by consolidated groups, whether directly or indirectly, are appropriately recognised (subject to some exceptions) - *the Government agreed in principle, but subject to legislative priorities and fiscal constraints*;
- the integrity rules should be designed to address any double benefit which arises when an encumbered

 THOMSON REUTERS

asset, whose market value has been reduced due to the intra-group creation of the rights over the asset, is sold by a consolidated group - *the Government agreed to this recommendation;*

- the effect of the single entity rule should be extended to a transaction between a consolidated group and a shareholder of the head company, a liquidator appointed to a member of the group or a third party that is an associate of the group - *the Government agreed in principle, but subject to legislative priorities and fiscal constraints;*
- issues relating to the determination of a trust's net income that is assessed to each beneficiary and/or trustee when the trust is a member of the consolidated group for part of an income be considered as part of the rewrite of the trust income tax provisions - *the Government agreed with this recommendation;*
- a trustee of a trust that is a member of a consolidated group be treated as a member of the same consolidated group as the trust (and that a change in trustee will not result in a trust joining or leaving) - *the Government agrees in principle, but subject to legislative priorities and fiscal constraints;*
- there should be no change to the foreign hybrid rules (subject to monitoring of integrity risks) - *the Government agreed with this recommendation;*
- the Government should continue to monitor the interaction between Australia's double tax agreements and the consolidation rules - *the Government agreed with this recommendation;*
- the ongoing simplified rules should be available for wholly-owned corporate groups that have an aggregated turnover of less than $50m in the prior income year, a simplified formation rules election should be available for eligible groups form a consolidated group (subject to satisfying defined requirements) and the Government should investigate whether rules should be introduced to enable small to medium sized corporate groups to apply a "stick approach" to long term majority owned subsidiaries when they become wholly-owned by a consolidated group after the formation time - *the Government said it will consider the issue further as legislative priorities and fiscal constraints allow;*
- given the unsuitability of the consolidation regime for groups with less than $2m aggregated turnover, the Government should consider whether alternative tax grouping rules should be introduced for such groups - *the Government said it will consider the issue further as legislative priorities and fiscal constraints allow;*
- the income tax law be amended so that adjustments relating to deferred tax liabilities in the entry and exit tax cost setting rules are removed from those rules - *the Government agreed to this recommendation in principle;*
- the income tax law be amended so that the adjustment which applies if the head company's accounting value of a liability is different to the joining entity's accounting value of the liability is removed from the entry cost setting process - *the Government agreed to this recommendation in principle;*
- the income tax law be amended so that, in principle, where an anomalous outcome arises because an asset

is recognised under the tax cost setting rules and a related liability is not an accounting liability, the related liability should be recognised for tax cost setting purposes to the extent that it is necessary to address the anomaly - *the Government agreed in principle, but subject to legislative priorities and fiscal constraints;*

- no changes be made to the tax cost setting rules in relation to the treatment of goodwill of a joining entity (and the related 2012 changes be monitored before any further changes are made to the tax cost setting rules in relation to goodwill) - *the Government agreed to this recommendation;*
- further consideration be given to how systematic rules relating to the interaction of the CGT rollover rules and the consolidation regime could be implemented - *the Government said it will consider this issue further as legislative priorities and fiscal constraints allow;*
- the income tax law be amended to rectify the duplication of capital gains and losses made on the disposal of rolled over assets when a subsidiary member that is not an eligible tier-1 entity leaves an MEC group - *the Government agreed in principle to this recommendation*; and
- the Government should continue to monitor situations where a head company of a consolidated group that is owned by a foreign resident leaves the group - *the Government agreed to this recommendation.*

The Government also agreed to evaluate the state of the consolidation regime within 5 years of any implementation of the recommendations to assess their affect and to continue to consult with business community over any issues.

Source: Budget Paper No 2 [pp 33-34]; Assistant Treasurer's press release, 14 May 2014

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[852] **Accessing international tax info: Australia to sign revised DTA with Switzerland**

Although not announced in the Budget, the Government's very recent announcement that it intends to sign a revised tax treaty with Switzerland fits with the theme in the Budget of protecting the corporate tax base. The existing double tax agreement has not been updated since it was signed in 1980 and is now one of Australia's oldest unamended tax treaties. Negotiations for the text of a revised treaty, which the Government announced in February 2011 (see 2011 WTB 6 [173]), were recently concluded. [The existing DTA (and Protocol) was signed on 29 February 1980, although it applied from 1 January 1979. It entered into force on 13 February 1981.]

The Assistant Treasurer said a revised treaty would strengthen administrative assistance between Australian and Swiss revenue authorities, including overcoming long-standing bank secrecy provisions. He said that signing an updated treaty would boost investment and fill a crucial gap in Australia's ability to access international tax

information.

Mr Bradbury said the Australian and Swiss Governments would sign the revised treaty text at the earliest opportunity, subject to the completion of their respective domestic approval processes. Further information on the revised treaty will be made available upon signature.

The Treasurer said that, until now, "we have hit a road block investigating people who are suspected to be hiding their money in Swiss bank accounts to avoid paying their fair share of tax. This [revised] treaty means we'll be able to share information with the Swiss authorities so we can track down those who are hiding money overseas".

Mr Swan said that since Australia signed a similar agreement with Singapore in late 2010, the ATO has been able to track down more than $100m in revenue. He said this is part of a renewed global push to tackle international tax avoidance that is now being advocated in international forums such as the G20.

Thomson Reuters comment

The push for stronger action against international corporate tax avoidance has been building for some time. Countries like the US, UK, Germany, Australia, EU countries and the OECD have been heavily involved. In particular, strong action by the US in dealing with its citizens who hide funds offshore to avoid US tax and resultant action with Swiss banks has been significant. In addition, US prosecutors have recently asked Liechtenstein to hand over data on foundations and other financial vehicles as part of their investigation into tax evasion by wealthy Americans.

Swiss bank secrecy

The battle has been on for some time to break down Swiss bank secrecy in the context of attacking cross-border international tax evasion. The IRS success in the UBS case was an important development. Now, as noted at 2013 WTB 19 [814], the Swiss Bankers Association says it has dropped its opposition to the exchange of bank client data with foreign tax authorities.

Patrick Odier told the *Aargauer Zeitung* daily paper that the banking association's change of heart was largely down to Germany's rejection in December 2012 of a deal to have Swiss banks tax its citizens' assets without naming them. Odier, who is also senior partner of Genevan private bank Lombard Odier, said it was "pure coincidence" that Luxembourg and Austria had both agreed last month to share data on accounts held by foreigners, increasing the heat on Switzerland to do likewise. "We adjusted our position in the first quarter after numerous talks with bank representatives and came to the conclusion at the end of March that we should no longer categorically reject an automatic exchange of information," he said. "But it should be introduced globally."

Swiss Finance Minister Eveline Widmer-Schlumpf has signalled a similar willingness to discuss automatic exchange of information, but the Swiss coalition government remains divided on the issue.

Odier said Switzerland could be ready to discuss automatic information exchange with the European Union if it can settle the problem of existing untaxed assets in its banks, through amnesty programmes or other means. "We are open for talks if we find a solution with the EU that deals with the past and improves market access," he said.

In April 2013, the Group of 20 advanced and emerging economies endorsed automatic exchange of tax data among nations, calling it the expected new standard for how governments can help each other to fight cross-border tax cheating.

Australian action

The Government has for some time been regularly flagging its intention to examine more closely the tax planning activities of multinational companies. In as address earlier this year, the Assistant Treasurer made reference to the Full Federal Court decision in *FCT v Noza Holdings Pty Ltd* (2012) 82 ATR 567 which concerned an arrangement entered into in 2001 by a US multinational group that operated some 600 businesses in 40 countries, principally concerned with the manufacture and sale of consumer and industrial products. The overall arrangement was designed to centralise ownership of the group's worldwide intellectual property. The Full Federal Court unanimously confirmed the decision that the head company of the Australian group of consolidated companies was entitled to a deduction under s 25-90 of the ITAA 1997 for a dividend payment of $170m paid under a range of transactions as part of the group's world-wide project to protect its intellectual property – see 2012 WTB 14 [481].

The *Noza Holdings* case involved 2 Australian resident companies (Noza Holdings Pty Ltd and ITW AFC Pty Limited) that were part of the ITW Group of which a US listed company (Illinois Tool Works Inc) was the ultimate holding company. Noza Holdings Pty Ltd, the head company of an Australian group of consolidated companies, paid a dividend under a range of transactions undertaken by the ITW Group (of which it was a member) as part of the group's world-wide project to protect its intellectual property. The relevant transactions took place between Australian and US subsidiaries of the group and arose out of a transfer of royalty rights in 2001 from a US member of the group to an Australian member of the group. A related Australian resident taxpayer ("ITW AFC Pty Limited") was also similarly part of the arrangements.

Broadly, the transactions involved the payment (by the issuing of a promissory note) of dividends on preferred stock issued by another company in the group to an Australian member, the payment of dividends on preference shares issued by one Australian member of the group to another by way of endorsement of the promissory note, and the payment of dividends on preference shares issued by the Australian member to the US member by way of endorsement of the same promissory note. The main issues to be decided were:

- whether Noza Holdings Pty Ltd was entitled to a deduction under s 25-90 of the ITAA 1997 (deductions for foreign non-assessable non-exempt income) for all or part of the dividends of over $220m declared and paid by way of endorsement of the promissory note;
- alternatively, whether Noza was entitled to a deduction under s 25-90 for the amounts that accrued as

liabilities owing under the preference shares, but limited to that part of the dividend which did not comprise a return of capital; and

- whether ITW AFC Pty Limited was entitled to a deduction of $83m in the 2002 income year pursuant to s 25-90?

At first instance, the Federal Court found the company was entitled to a deduction under s 25-90, but only to the extent of $170m, and it also found that Pt IVA did not apply. The Full Federal Court confirmed that Noza was entitled to a deduction for $170m.

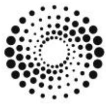
Mr Bradbury said his point in recounting this case was not to single out this particular taxpayer or their advisers, but rather "to illustrate the flexibility that a multinational group has in arranging their capital structure, and the ability this provides to exploit tax arbitrage opportunities". While he acknowledged that tax advisers would say they are just doing their job of minimising their client's tax according to the law, Mr Bradbury said he was "making a fundamentally different point - if this is the kind of behaviour the international tax system encourages, then it needs to be changed".

More recently, we've seen the release by the Government of its *Issues Paper on Implications of the Modern Global Economy for the Taxation of Multinational Enterprises* seeking comments on the risks to the sustainability of Australia's revenue base from multinational profit shifting and aggressive tax minimisation – see 2013 WTB 18 [748]. In particular, the paper is seeking views on:

- the extent to which another country not exercising its right to tax should be a matter of concern to Australia;
- whether there is evidence of Base Erosion and Profit Shifting (BEPS) in Australia. Where it is considered that insufficient data exists to reach a definitive conclusion on the extent and nature of the problem in Australia, comments are sought on how to identify and/or develop such data, including the benefits and costs of requiring companies to provide more detailed information to the Tax Office;
- whether the key pressure areas identified by the OECD represent the main priorities for action in the short term. If so, what should be the shape of measures to address these pressure areas. If not, what areas should be the focus of action?

And most recently, the ATO advised that along with Tax Commissioners from the US and UK, it had obtained substantial data which reveals the extensive use of complex offshore structures to conceal assets by wealthy individuals and companies – see 2013 WTB 19 [793]. It says preliminary analysis of the data indicates that the offshore structures are located in a number of jurisdictions including Singapore, British Virgin Islands, the Cayman Islands, and the Cook Islands. The ATO says these Australian cases involve "tens of millions of dollars" in suspected tax avoidance through the use of "shell companies" and "trusts" around the world, including in the above jurisdictions.

According to the ATO, the data, while still being analysed, identifies more than 100 individuals who own the assets as



well as accountants, lawyers and other professional advisers who represent them. It says the roles of these advisors who promote, design, implement, and maintain the offshore structures on behalf of others will also be subject to scrutiny. *The Australian Financial Review* has reported that ATO Assistant Commissioner Paul Cheetham has indicated the ATO has shared much of the information with Australia's Asia-Pacific treaty partners.

With Australia and other countries signing increased numbers of tax information exchange agreements, the global tax world is becoming a very "sharing" place! Of course, accessing the information to be shared might be another question!

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[853] **Restructuring activity - ATO compliance checks**

The Government will provide $109.1m over 4 years to the ATO to increase compliance activity targeted at restructuring activity that facilitates profit shifting opportunities. This measure is estimated to increase revenue by $576.5m over the forward estimates period.

Source: Budget Paper No 2 [p 36]

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[854] **Restriction on immediate deduction for mining rights and information**

Expenditure on mining rights and information will no longer qualify for an immediate deduction. According to the Government, this change will address situations where an immediate deduction is being claimed for the costs of acquiring an interest in natural resources that have effectively already been discovered.

Mining rights and information first used for exploration will be depreciated over 15 years, or their effective lives, whichever is shorter. The effective life of a mining right and associated exploration information will be the life of the mine that it leads to. The Government will consult on options to make it easier to identify the life of a future mine.

If the exploration is unsuccessful, any remaining undepreciated value will be immediately deductible.

The following will continue to be immediately deductible (ie the measure will *not* apply to):

- the costs of mining rights from a relevant government issuing authority;
- the costs of mining information from a relevant government authority;
- the costs incurred by a taxpayer itself in generating new information or improving existing information; and
- the mining rights acquired by a farmer under a recognised "farm-in, farm-out" arrangement (these are often used by small explorers and do not represent a base erosion concern).

Date of effect: This measure applies to taxpayers who start to hold the mining right or information after 7.30pm (AEST) on 14 May 2013 unless:

- the taxpayer has committed to the acquisition of the right or information (either directly or through the acquisition of an entity holding the asset) before that time; or
- they are taken by tax law to already hold the right or information before that time.

Any commitment will need to be objectively verifiable.

The Government understands that there is an industry practice to swap exploration or retention lease tenements with other companies to consolidate holdings and facilitate better infrastructure development. The Government said that it will consult further with the industry to identify any circumstances in which an interest acquired through an exchange of mining rights should receive concessional tax treatment because the transaction does not give rise to integrity concerns.

Source: Budget Paper No 2 [pp 36-37]; Assistant Treasurer's press release, 14 May 2013

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[855] Changes to OBU regime from 1 July 2013

The Government will amend the Offshore Banking Unit (OBU) regime ''to better target genuine mobile financial sector activities and address integrity issues with the current regime''. The regime taxes banking activity in an OBU at 10%, rather than at the corporate rate (ie 30%).

The changes will:

- treat dealings with related parties, including the transfer of transactions between an OBU and a related domestic bank, as ineligible for OBU treatment;

- treat transactions between OBUs, including between unrelated OBUs, as ineligible for OBU treatment;
- ensure that other provisions of the income tax law interact appropriately with the OBU provisions; and
- tighten the current list of eligible OBU activity.

The Assistant Treasurer's Press Release states that the changes are necessary because some banks have used complex arrangements to shift ineligible income into the OBU to attract the 10% rate, while at the same time seeking to ensure any losses or deductions remain in the domestic operations to be deducted at the company rate. In other words, the measures are designed to prevent banks from shifting their domestic banking activities and profits into OBUs.

The Government will consult with industry to develop recommendations to address concerns with the allocation of expenses between OBU and non-OBU activities and on issues raised by the *Johnson Report*.

Date of effect

The measures will apply from 1 July 2013.

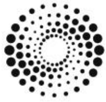
Source: Budget Paper No 2 [pp 34-35]; Assistant Treasurer's press release, 14 May 2013

PERSONAL TAXATION

[856] **Personal tax rates - 2015 tax-free threshold increase "deferred", otherwise no changes**

The Budget papers confirmed the Government announcement (reported at 2013 WTB 19 [792]) that the already legislated increase in the tax-free threshold to $19,400 from 1 July 2015 will not proceed – it will be "deferred" (*Budget Paper No 2 [p 24]*). The deferral of the so-called Clean Energy Future personal tax cuts came about due to the lower than originally anticipated carbon price after 1 July 2015 [the Government had budgeted on $29 a tonne in 2015-16]. Climate Change Minister Greg Combet said the change was a deferral [and not an abolition] because "when the carbon price rises again in the future, ... there will be regular reviews ... [and] those tax cuts will still be implemented at that point in time". He said the tax-free threshold change would be deferred "until such time as the carbon price exceeds $25.40 [a tonne], whenever that may be".

Legislation will be required to implement this tax-free threshold change. [Note that the already legislated increase in



the second marginal tax rate from 32.5% to 33% from 1 July 2015 will however go ahead.]

Thomson Reuters note

The Government's carbon price mechanism was implemented with a structure of a 3-year fixed price then transitioning to an emissions trading scheme from 1 July 2015 after which time the price would be set by international markets. The Government had budgeted that price to be $29 a tonne, but it is now clear it will be much less than that with the Budget documents forecasting a price of around $12.10 a tonne after 1 July 2015. When it introduced carbon pricing, the Government introduced a package of assistance for families and households. That included a change to the tax-free threshold as noted below ie an effective tax cut. In commenting on the tax-free threshold change, the PM said "once we get beyond the period of the carbon tax into the emissions trading scheme [from 1 July 2015]", based on the current figures coming out of Europe, the carbon price "will be less than was originally anticipated". Because the price would be less, there would not the need for that new stream of assistance, she said. "When the carbon price does get to the stage that that stream of assistance, those tax cuts are required, then they will be given", the PM said.

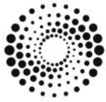
Tax rates and thresholds summarised

The existing rates, including the increases in the tax-free threshold, were legislated in the package of carbon tax Bills that were passed and received Royal Assent in 2011. The ***Clean Energy (Income Tax Rates Amendments) Act 2011*** amended the *Income Tax Rates Act 1986* to deliver 2 rounds of tax cuts through increases in the tax-free threshold and corresponding adjustments to statutory tax rates and thresholds - the first, from 1 July 2012 and, the second, from 1 July 2015:

- from 1 July 2012, the tax-free threshold increased to $18,200, and the first 2 marginal tax rates increased from 15% to 19% and from 30% to 32.5%, respectively, while the low income tax offset was reduced from $1,500 to $445 (see below); and
- from 1 July 2015, the tax-free threshold will be $19,400, and the second marginal tax rate will be increased from 32.5% to 33%, but the low income tax offset will be reduced from $445 to $300.

In light of the Government's announcement that it would not proceed with the 1 July 2015 increase in the tax-free threshold, the personal income tax rates and thresholds are summarised for resident taxpayers in the table below:

Personal income tax rates and thresholds						
	2011-12		***2012-13 to 2014-15***		***2015-16+***	
	Threshold	***Rate***	***Threshold***	***Rate***	***Threshold***	***Rate***
1st rate	$6,001	15.0%	$18,201	19.0%	$18,201	19.0%
2nd rate	$37,001	30.0%	$37,001	32.5%	$37,001	33.0%
3rd rate	$80,001	37.0%	$80,001	37.0%	$80,001	37.0%
4th rate	$180,001	45.0%	$180,001	45.0%	$180,001	45.0%



For the 2012-13, 2013-14 and 2014-15 years, the taxable income ranges and tax payable for resident individuals (excluding the 1.5% Medicare levy; to be 2% from 1 July 2014) are as follows:

2012-13, 2013-14 and 2014-15 income years	
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 + 45% of excess over $180,000

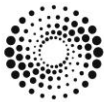
Low income tax offset

The ***Clean Energy (Tax Laws Amendments) Act 2011*** amended the ITAA 1936 to adjust the operation of the low-income tax offset (LITO):

- from 1 July 2012, individuals have been entitled to receive the LITO if their taxable income is below $66,667. The maximum value of the LITO was reduced from $1,500 to $445 and will be phased out at the rate of 1.5 cents for every dollar of taxable income over $37,000. Together with the other changes, this means low-income earners will have an effective tax-free threshold of $20,542 (or $32,279 for qualifying seniors and pensioners); and
- from 1 July 2015, individuals will be entitled to receive the LITO if their taxable income is below $67,000. The maximum value of the LITO will be reduced to $300 and will be phased out at the rate of 1 cent for every dollar of taxable income over $37,000. Together with the other changes, this will mean low-income earners will have an effective tax-free threshold of $20,979 (or $32,716 for qualifying seniors and pensioners).

The changes to the LITO are summarised in the table below:

Low income tax offset			
	2011-12	***From 1 July 2012 to 30 June 2015***	***From 1 July 2015***
Amount	$1,500	$445	$300
Lower withdrawal limit	$30,000	$37,000	$37,000

 THOMSON REUTERS

Upper withdrawal limit	$67,500	$66,667	$67,000
Withdrawal rate	4.0%	1.5%	1.0%

Non-residents (foreign residents)

The tax rates applying to non-residents were not changed by the Budget. From 1 July 2012, the first 2 marginal tax rate thresholds were merged into a single threshold. The marginal rate for this threshold aligned with the second marginal tax rate for residents (32.5%) and applies to all taxable income below $80,000. From 1 July 2015, the same marginal rate will again rise from 32.5% to 33%.

The tax rates for non-residents that apply for the 2012-13, 2013-14 and 2014-15 years are:

2012-13, 2013-14 and 2014-15 income years	
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 + 45% of excess over $180,000

The tax rates for non-residents that will apply for the 2015-16 income year (ie from 1 July 2015) are:

2015-16 and later income years	
Taxable income $	**Tax payable $**
0 - 80,000	33%
80,001 - 180,000	26,400 + 37% of excess over 80,000
180,001+	63,400 + 45% of excess over $180,000

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[857] **Medicare levy increase to 2% confirmed to fund Disability Care; legislation imminent**

The Budget Papers confirmed that the Medicare levy would be increased by 0.50% to 2% with effect from 1 July 2014, to help fund the Government's proposed National Disability Insurance Scheme (NDIS), now renamed DisabilityCare Australia (*Budget Paper No 2 [p 28]*). This would also mean the effective top marginal tax rate would become 47% from that date. The PM had announced the increase almost 2 weeks before the Budget on 1 May 2013

– see 2013 WTB 18 [747].

In making her announcement, the PM said that "every dollar raised by the [0.5%] levy would go directly to fund DisabilityCare Australia". To ensure this, she said the Government would create in legislation a special DisabilityCare Australia Fund, through a dedicated special account. Revenue from the additional levy will be paid into the fund, which would only be drawn down to meet expenditure directly related to DisabilityCare.

Ms Gillard said low income earners would continue to receive relief from the Medicare levy through the low income thresholds for singles, families, seniors and pensioners. The current exemptions from the Medicare levy would also remain in place, including for blind pensioners and sickness allowance recipients.

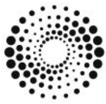
In the Budget, the Government said the increased levy is estimated to have a gain to tax revenue of $11.4bn over the forward estimates period and $20.4bn to 2018-19. The States and Territories will be able to draw down from the Fund when they meet key conditions, including agreement to the full scheme, and once at least 50% of their eligible population are covered by the scheme. The Government said the States and Territories will receive an estimated $262.4m over the forward estimates period and $9.7bn over the life of the Fund, once they have agreed to implement fully DisabilityCare Australia and key conditions are met.

In the Budget, the Government said it would provide $14.3bn in additional funding over 7 years from 2012-13 to move to full implementation of DisabilityCare Australia by 1 July 2019. This includes the launch funding of $2.4bn, and new funding of $1.9bn for transition to full scheme through to 1 July 2017, $3.8bn in 2017-18 and $6.2bn in 2018-19. This would be the cost to the Commonwealth of all States and Territories accepting the funding offer based on the agreement reached with New South Wales on 6 December 2012.

It might be a small percentage increase by 0.5%, but the Treasurer said the Government would introduce a package of 11 Bills on Wednesday, 15 May 2013 to provide for the increase in the Medicare levy from 1.5 to 2% of taxable income from 1 July 2014. In an unusual move, the Government released all 11 Bills in Draft form on Budget eve, 13 May 2013, "so that [the legislation] can be considered by Members and Senators ahead of its introduction so as to facilitate prompt passage through the Parliament". The legislation will also establish the DisabilityCare Australia Fund in which the additional Medicare levy proceeds will be invested. The DisabilityCare Australia Fund will be managed by the Future Fund Board of Guardians, so that funding can only be used to meet the costs of delivering DisabilityCare Australia.

Specifically, the ***Medicare Levy Amendment (DisabilityCare Australia) Bill 2013*** will amend the *Medicare Levy Act 1986* to increase the Medicare levy rate from 1.5 to 2% of taxable income for the 2014-15 income year and later income years.

Increasing the Medicare levy also requires a number of consequential amendments to other tax rates that are linked to the top marginal rate and the Medicare levy. Consequential amendments include changes to FBT, excess

 THOMSON REUTERS

contributions tax and the tax withheld on bank accounts when the account holder has not provided their tax file number. Therefore, some 10 additional Bills will be introduced:

- the ***Fringe Benefits Tax Amendment (DisabilityCare Australia) Bill 2013*** - Section 5 of the *Fringe Benefits Tax Act 1986* imposes tax on the fringe benefits taxable amount of an employer for each year of tax, and sets the rate of that tax. The ***Fringe Benefits Tax Amendment (DisabilityCare Australia) Bill 2013*** would increase the rate of tax in respect of the fringe benefits taxable amount of an employer for a year of tax from 46.5 to 47% (which is the sum of the maximum income tax rate under Part I of Sch 7 to the *Income Tax Rates Act 1986* (currently 45%) and the increased rate of the Medicare levy (2%)),
- the ***Income Tax Rates Amendment (DisabilityCare Australia) Bill 2013*** - Section 29 of the *Income Tax Rates Act 1986* specifies the rate of tax payable by trustees of complying and non-complying super funds, and retirement savings account providers in respect of no-TFN contributions income. The rate of tax is calculated in accordance with s 29(2) of the *Income Tax Rates Act 1986*. The ***Income Tax Rates Amendment (DisabilityCare Australia) Bill 2013*** would increase the component of the rate of tax calculation, which incorporates the Medicare levy rate, from 1.5 to 2%,
- the ***Superannuation (Excess Concessional Contributions Tax) Amendment (DisabilityCare Australia) Bill 2013***,
- the ***Superannuation (Excess Non-concessional Contributions Tax) Amendment (DisabilityCare Australia) Bill 2013***,
- the ***Superannuation (Excess Untaxed Roll-over Amounts Tax) Amendment (DisabilityCare Australia) Bill 2013***,
- the ***Income Tax (TFN Withholding Tax (ESS)) Amendment (DisabilityCare Australia) Bill 2013***,
- the ***Income Tax (First Home Saver Accounts Misuse Tax) Amendment (DisabilityCare Australia) Bill 2013***,
- the ***Family Trust Distribution Tax (Primary Liability) Amendment (DisabilityCare Australia) Bill 2013***,
- the ***Taxation (Trustee Beneficiary Non-disclosure Tax) (No 1) Amendment (DisabilityCare Australia) Bill 2013***, and
- the ***Taxation (Trustee Beneficiary Non-disclosure Tax) (No 2) Amendment (DisabilityCare Australia) Bill 2013***.

These Bills would incorporate the rate change into other Acts.

The Bills are expected to be passed quickly, even though the increase won't apply until 1 July 2014.

Coalition agrees, but says levy increase would be temporary

Following the PM's announcement, Federal Opposition Leader Tony Abbott said the Coalition supported the NDIS. Mr Abbott said that while the Productivity Commission did not recommend funding the NDIS through a new tax, the Coalition was "prepared to consider providing support for the Government's proposed increase to the Medicare levy". He did say however, that if elected to government, the Coalition would resolve to ensure that the increase to the Medicare levy was a temporary increase and would be removed "when the budget returns to strong surplus and the NDIS can be funded without it".

Mr Abbott said the legislation to give effect to the Medicare levy increase and the full NDIS package "must be introduced and voted on in the current parliament". He said the legislation must also establish how the Scheme would work and who would be eligible, and that the Government "must also outline how the remaining 60% funding shortfall will be provided". (Source: Leader of the Opposition joint press release, 2 May 2013.)

Thomson Reuters comment

Of course, not everyone pays the Medicare levy, so its increase would not affect all taxpayers. Relief from the Medicare levy is currently provided to certain low-income earners with families eg those married on the last day of the income year, those entitled to the child-housekeeper or housekeeper offset, and those notionally entitled to the sole parent offset.

If a taxpayer's taxable income is below the relevant low-income threshold, he or she is not liable to pay the levy. The low-income thresholds for 2012-13 are:

- senior Australians entitled to SAPTO - $32,279 [SAPTO is the merged pensioner rebate and SATO that has applied from 1 July 2012];
- others - $20,542.

If a taxpayer's taxable income exceeds the relevant low income threshold amount, but does not exceed what is called the "phase-in limit", the Medicare levy is 10% of the excess of taxable income above the low income threshold limit. The phase-in limits for 2012-13 are:

- senior Australians entitled to SAPTO - $37,975;
- others - $24,167.

The full levy becomes payable if a taxpayer's taxable income exceeds the phase-in limit.

The Medicare levy family income threshold for individuals with a spouse and/or dependants who are entitled to an offset under s 160AAAA of the ITAA 1936 was previously increased to $46,000 with effect from 1 July 2012: *Clean*

Energy (Tax Laws Amendments) Act 2011. The actual family income thresholds for 2012-13 were announced in the 2013-14 Federal Budget – see para [860] of this *Bulletin*. These thresholds will apply up to 30 June 2013.

The Medicare levy has been the focus of tax reform attention in the past. It might be recalled that the Henry Tax Review's Recommendation 5 was that the Medicare levy be abolished and removed as a separate component of the system and instead, be incorporated into the personal income tax rates scale.

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[858] DisabilityCare: Payments to be tax-free; some supports GST-free

The Government will exempt payments and benefits provided by DisabilityCare Australia (whether directly or otherwise) to participants from income tax. The Government will also amend the GST law to make GST-free certain supports delivered under the National Disability Insurance Scheme Act 2013. This will mirror the existing GST treatment of services to people with disability and is estimated to have a negligible impact on GST payments to the States and Territories over the forward estimates period. These arrangements will commence on 1 July 2013.

Source: Budget Paper No 2 [p 141]

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[859] Phase-out of medical expense tax offset

The Government is to phase out the net medical expenses tax offset, with transitional arrangements for those currently claiming the offset. However, the offset will continue to be available for taxpayers for out-of-pocket medical expenses relating to disability aids, attendant care or aged care until 1 July 2019.

From 1 July 2013, those taxpayers who claimed the offset in 2012-13 will continue to be eligible for 2013-14 if they have eligible out-of-pocket medical expenses above the relevant thresholds. In addition, those who claim the offset in 2013-14 will be eligible to claim it in 2014-15.

Thomson Reuters comment

Treasury officials advised Thomson Reuters on Budget night that there will be a 2-step phase out of the medical

expense tax offset.

Taxpayers who claimed the offset in 2012-13 will be able to claim it in 2013-14 (for all currently-qualifying expenses that meet the requisite threshold). Similarly, taxpayers who claim the offset in 2013-14 will be able to claim it in 2014-15 (again, for all qualifying expenses). However, an offset can only be claimed by such taxpayers from 2015-16 for medical expenses relating to disability aids, attendant care or aged care.

Consequently, taxpayers who do not claim the offset in 2012-13 cannot claim it in 2013-14 or later income years – except if the net medical expenses relate to disability aids, attendant care or aged care. As stated above, the offset for these expenses may only be claimed until 2018-19.

Source: Budget Paper No 2 [p 30]

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[860] **Medicare levy low-income threshold for families increased**

The Budget announced that the Medicare levy low-income threshold for families will increase to $33,693 for the 2012-13 income year, with effect from 1 July 2012. The additional amount of threshold for each dependent child or student will also increase to $3,094.

Source: Budget Paper No 2 [p 29]

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[861] **Confirmation that self education expenses to be capped**

The Budget Papers confirmed the Treasurer's 13 April 2013 announcement (see 2013 WTB 16 [667]) that the Government would introduce a $2,000 cap on tax deduction claims for work-related self-education expenses per person from 1 July 2014. The announcement was made "as part of a package of reforms to make a down-payment on the National Plan for School Improvement".

Taxpayers will be able to claim a tax deduction of up to $2,000 of education expenses in an income year. Deductible education expenses are costs incurred in undertaking a course of study or other education activity, such as conferences and workshops, and include tuition fees, registration fees, student amenity fees, textbooks, professional

and trade journals, travel and accommodation expenses, computer expenses and stationery, where these expenses are incurred in the production of the taxpayer's current assessable income.

Source: Budget Paper No 2 [p 30]

In his April announcement, Mr Swan said that without a cap, "it's possible to make large claims for expenses such as first class airfares, 5-star accommodation and expensive courses". However, Mr Swan said "the majority of those with self-education expenses will not be affected by this change". He said the Government "will consult closely with employees and employers to better target this concession while still supporting essential training". The Budget Papers advised that a discussion paper will be released in late May 2013 as part of this process of consultation. Further, Mr Swan said the Government would retain the current treatment that employers are not liable to FBT for education and training they provide to their employees, unless an employee salary sacrifices to obtain these benefits.

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[862] **Exemption for military compensation for legal advice**

The Budget will provide an income tax exemption for compensation provided for legal advice to beneficiaries under the *Military Rehabilitation and Compensation Act 2004* (MRC Act). This measure responds to the Review of Military Compensation Arrangements and extends the existing income tax exemption for financial advice under the MRC Act.

Date of effect

The measure will apply from 1 July 2013

Source: Budget Paper No 2 [pp 37-38]

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[863] **New DGR approved**

United Way Australia has been approved as a deductible gift recipient (DGR). The Budget papers did not specify the date from which a donation to United Way Australia will be deductible or the date from which donations cease to be deductible.

Source: Budget Paper No 2 [p 32]

BUSINESS TAXATION

[864] CGT: Clarification of tax treatment of native title benefits

The Budget will remove the uncertainty regarding the CGT treatment of native title rights. This measure augments the Mid-Year Economic and Fiscal Outlook 2012-13 measure Income tax which clarified that income tax is not payable on certain native title benefits. This measure will clarify that there are no CGT implications resulting from the transfer of native title rights (or the right to a native title benefit) to an Indigenous holding entity or Indigenous person, or from the creation of a trust that is an Indigenous holding entity over such rights. This measure also clarifies that capital gains or losses made from surrendering or cancelling such rights are disregarded.

Date of effect

This measure will apply to CGT events happening on or after 1 July 2008.

Source: Budget Paper No 2 [p 24]

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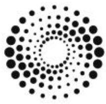
[865] Small business concerned about red tape and tax

In a small business survey released just before the Budget, minimising the cost of doing business was stated as the number one priority for the next Federal Government. The pre-election survey was conducted by the Australian Chamber of Commerce and Industry's (ACCI) and was released on 9 May 2013. Some 1,700 small businesses were surveyed.

Tax burdens and compliance, as well as dealing with red tape, emerged as the other priorities identified by business owners, the ACCI said. Among other findings were:



- More than one-half of small businesses indicated they have major concerns with the overall complexity of the tax system (59.3%) and frequency of changes to tax laws and rules (56.1%).
- Around 75% of small businesses expressed major and moderate concerns with ATO Administration of the Tax system (75.8%).
- Small businesses rated company tax reductions, personal income tax reductions and Carbon Tax abolition as their top-3 tax reform priorities to be pursued by the next Federal Government.
- More than 4 in 5 small businesses surveyed were concerned with the increase in compulsory superannuation from the current 9% to 12% over the coming years, with 65.7% of small businesses rating this issue as a major concern. ACCI CEO Peter Anderson said the increase would add $20bn in new costs. It was "a very substantial and highly controversial new levy which had not been subject to proper analysis, costing or thought", he said. Mr Anderson said there was no current mechanism "to provide a wages trade off and ... [it] is still being rushed through Parliament without the usually required regulatory and cost analysis."
- Some 63.3% of small businesses surveyed indicated they have a major concern with the lack of regulators' consideration of small business capacity to comply with regulation. The survey found that almost 9 in 10 small businesses reported that they had concerns with cost of compliance with government regulation, with 58.1% expressing major concerns.

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[866] Further extension of monthly PAYG instalments

The Government will extend the requirement to make monthly PAYG income tax instalments to include all large entities in the PAYG instalment system, including trusts, superannuation funds, sole traders and large investors.

The Government has already announced that

- corporate tax entities with turnover of more than $1bn will move to monthly PAYG instalments from 1 January 2014;
- corporate tax entities with turnover of $100m or more will move to monthly PAYG instalments from 1 January 2015; and
- corporate tax entities with turnover of $20m or more will move to monthly PAYG instalments from

1 January 2016.

Draft legislation to implement these measures was released in March 2013: see 2013 WTB 13 [541].

The Government has now announced that:

- all other entities in the PAYG instalment system with turnover of $1bn or more will move to monthly PAYG instalments from 1 January 2016; and
- all other entities in the PAYG instalment system with turnover of $20m or more will move to monthly PAYG instalments from 1 January 2017.

Entities, other than head companies or provisional head companies, that have a turnover of less than $100m and report GST on a quarterly or annual basis will not be required to pay PAYG instalments monthly.

In addition, to ensure the continued equity of the system, entities in the taxation of financial arrangements (TOFA) regime will assess their entry to monthly instalments using a modified turnover test, based on their gross TOFA income rather than their net TOFA income.

Source: Budget Paper No 2 [pp 26-27]

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[867] **Tax information exchange agreement signed with Uruguay**

The Budget Papers said the Government signed a tax information exchange agreement with Uruguay on 10 December 2012. The Agreement will enter into force once Australia and Uruguay have completed their respective domestic requirements.

This Agreement will allow for the full exchange of information in relation to Australian federal taxes and Uruguayan taxes between tax collection agencies in Australia and Uruguay.

Australia has now signed 34 tax information exchange agreements.

Source: Budget Paper No 2 [p 26]

TAX COMPLIANCE

[868] Compliance improvements through third party reporting and data matching

The Government will provide $77.8m over 4 years to the ATO to improve compliance for Australian taxpayers by expanding data matching with third party information. The information provided to the ATO will also improve the pre-filling of tax returns. The measure will also establish new and strengthen existing reporting systems for:

- taxable government grants and specified other government payments;
- sales of real property, shares (including options and warrants), and units in managed funds;
- sales through merchant debit and credit services;
- managed investment trust and partnership distributions, company dividend and interest payments; and
- transactions reported to the ATO by the Australian Transaction Reports and Analysis Centre.

The Government will consult with key stakeholders including the States and Territories on the design of these systems.

Source: Budget Paper No 2 [p 44]

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[869] Increased funding for trusts taskforce

The Government will provide $67.9m over 4 years to the Tax Office to undertake compliance activity in relation to trust structures.

The taskforce will target the exploitation of trusts to conceal income, mischaracterise transactions, artificially reduce trust income amounts and underpay tax. It will focus on taxpayers who have been "involved in egregious tax avoidance and evasion" involving trusts.

Compliance activity will target "known tax scheme designers, promoters, individuals and businesses who participate

in such arrangements".

This measure is estimated to increase revenue by $379m over the forward estimates period.

Source: Budget Paper No 2 [pp 43-44]

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[870] Enhancing ABN administration, ABR access and Standard Business Reporting

The Government will provide $80.2m in extra funding to strengthen up-front checks for issuing ABNs and encourage the use of AUSkey (the access point for online services of the Australian Business Register).

This measure will also enhance Standard Business Reporting to continue to reduce compliance costs for business. This measure is intended to reduce regulatory costs and minimise the compliance burden for individuals and businesses.

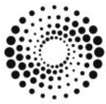
Source: Budget Paper No 2 [p 43]

SUPERANNUATION

[871] No new super measures announced - but recent super reforms loom large

The Government did not announce any new major superannuation measures in the Budget. This will be a welcome relief for the superannuation industry which is already suffering from "reform fatigue" on multiple fronts as compliance with the MySuper, Stronger Super and FoFA reforms become a reality from 1 July 2013.

The Treasurer had previously indicated that there would be no more "bad news" for super investors in the Budget following the package of super reforms announced on 5 April 2013. Nevertheless, the Budget Papers provide some further details in relation to the range of recent superannuation reforms previously announced on 5 April 2013: see



below.

A range of other minor superannuation measures were also announced (see para [873] of this *Bulletin*), including:

- low income superannuation contribution - to include payments under $20;
- Pension Bonus Scheme - late registrations to cease from July 2014;
- further financial assistance grants for the failure of Trio Capital Limited to be recovered through levies;
- Superannuation Complaints Tribunal (SCT) - additional funding of $2.6m;
- Financial literacy - additional funding of $5.4m.

Recent super reforms

On 5 April 2013, the Government announced a range of further superannuation reforms presumably to end mounting speculation ahead of the Budget: see 2013 WTB 14 [588]. The Budget Papers make reference to these previously announced reforms and provide some subtle further details. Although these previously announced reforms are not strictly Budget measures, they will form a central plank of the superannuation policies that the Labor Government's will take to the Election in September 2013. The proposed superannuation reforms are outlined as follows.

Tax-free pension earnings capped at $100,000

The tax exemption for earnings on superannuation fund assets supporting income streams will be capped at $100,000 pa per person from 1 July 2014.

Currently, all superannuation fund earnings (including net capital gains) on assets supporting superannuation pensions and annuities are tax-free under Subdiv 295-F of the ITAA 1997. This is commonly referred to as exempt current pension income (ECPI).

Under the proposed reforms, a tax rate of 15% will apply for superannuation fund earnings (such as dividends, interest, rent and realised net capital gains) on pension assets above $100,000 (to be indexed to CPI in $10,000 increments). That is, earnings above $100,000 per person will be taxed at the concessional 15% rate that applies to earnings in the accumulation phase.

Transitional arrangements will apply for capital gains on CGT assets purchased before 1 July 2014. For assets purchased before 5 April 2013, the reforms will only apply to capital gains that accrue after 1 July 2024. For assets purchased from 5 April 2013 to 30 June 2014, individuals will have the choice of applying the reform to the entire capital gain, or only that part that accrues after 1 July 2014. The Budget Papers also indicate that capital gains that are subject to the tax will receive a 33% CGT discount (compared to the 50% CGT discount for individuals), and will therefore effectively be taxed at a rate of 10%.

Assuming an estimated rate of return of 5%, the government considers that earnings of $100,000 would be derived from individuals with around $2 million in superannuation. Treasury estimates that around 16,000 individuals will be affected by this measure in 2014-15. The Government argues that the proposed change is justifiable as a person with $100,000 of tax-exempt super earnings receives a minimum tax concession of $26,447 each year (compared to the maximum rate of the single Age Pension of $21,076).

Thomson Reuters comment: The installation of a $100,000 threshold above which a 15% tax rate will apply to earnings on superannuation fund assets supporting current pensions will require trustees to review the fund's investment strategy ahead of the 1 July 2014 start date. Despite the CGT transitional rules, the $100,000 threshold will require SMSFs with "lumpy" assets (such as business real property, or other commercial and residential property) to undertake more careful planning for when substantial capital gains above $100,000 per member crystallise in one particular income year. Trustees currently looking to undertake significant investments in real property may also need to consider appropriate investment structures (such as a unit trust) which could enable the asset to eventually be sold gradually over several income years to stay under the $100,000 annual threshold. This would also be a consideration when real property acquired under a limited recourse borrowing arrangement is ultimately transferred from the holding trust back to the SMSF when the loan is repaid. The transitional rules for CGT assets suggest that a valuation will be required for all superannuation fund assets at 1 July 2014.

Higher concessional contributions cap

The Government previously confirmed that it would introduce legislation to deliver its proposal for a higher concessional contributions cap of $35,000 for people aged 60 or over from 1 July 2013 (or 1 July 2014 for people aged 50-59) instead of the general concessional cap of $25,000. To this end, the Government has released the ***Exposure Draft - Tax and Superannuation Laws Amendment(2013 Measures No 3) Bill 2013***: see 2013 WTB 19 [819]. Comments were due by 13 May 2013. This measure is expected to be contained in the ***Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and OtherMeasures) Bill 2013***, which has been cleared for introduction (possibly on 15-16 May 2013).

The proposed higher concessional cap is temporary and will cease to apply when the general cap reaches $35,000 through indexation (expected to be 1 July 2018). The higher concessional cap will not affect the non-concessional contributions cap (which remains at 6 times the general concessional cap of $25,000) for all individuals, regardless of age.

The draft legislation also proposes to determine eligibility for the higher cap from 1 July 2013 by reference to an individual's age as at 30 June in the financial year preceding the relevant financial year in which the higher cap applies. That is, the proposed $35,000 concessional cap for the 2013-14 financial year will apply to taxpayers who are 59 years or over on 30 June 2013. From 2014-15, the proposed $35,000 cap will apply to taxpayers who are 49 years or over on 30 June of the previous financial year.

Previously, eligibility for the higher concessional cap (up to the 2011-12 financial year) applied where the individual turned 50 years old in the relevant financial year (ie eligibility was based on an individual's age as at 30 June in the relevant financial year). However, if an individual died before their 50th birthday, they did not qualify for the higher cap and their estate could be issued with an excess contributions tax assessment which would not have been the case had they reached 50 years.

Thomson Reuters comment: Once this legislation is finalised, taxpayers aged 59 on 30 June 2013 should consider reviewing their salary sacrificing arrangements, deductions for personal contributions and transition to retirement (TTR) pensions to take into account the proposed higher concessional cap of $35,000 for 2013-14.

Withdrawal of excess concessional contributions

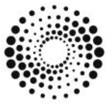
The Government has also previously indicated that it would introduce legislation to allow all individuals to withdraw from their superannuation fund any excess concessional contributions made from 1 July 2013. Under the proposed measure, the withdrawn excess contributions will instead be taxed at the individual's marginal tax rate (plus an interest charge). This reform is expected to cost $60m over the forward estimates.

Under current arrangements, concessional contributions that are in excess of the annual cap are subject to excess contributions tax (ECT) at the rate of 31.5% (plus the 15% contributions tax paid by the fund) *and* counted towards the taxpayer's non-concessional cap. Since 1 July 2011, a once-only option has been available under s 292-467 of the ITAA 1997 so that individuals can elect to have excess concessional contributions up to $10,000 released to the Commissioner and instead assessed as income.

Pending the release of exposure draft legislation to implement this measure (yet to be released as at 14 May 2013), it remains unclear how it will interact with the existing option for individuals to elect to have excess concessional contributions up to $10,000 released to the Commissioner and assessed as income.

Thomson Reuters comment: Taxpayers on the top marginal tax rate may have a slightly higher tax liability (due to the additional interest charge) if they choose to withdraw any excess concessional contributions which would be taxed at the top marginal rate in their hands in any event. As such, taxpayers on the top marginal tax rate may be better served by leaving the excess contributions in their superannuation fund and simply paying the excess concessional contributions tax of 31.5% (on top of the 15% contributions tax paid by the superannuation fund). The taxpayer can still use a release authority to withdraw an amount from her or his fund to pay the ECT liability. However, a taxpayer on the top marginal tax rate should consider withdrawing any excess concessional contributions which would otherwise automatically flow through and trigger a breach of the $450,000 bring forward rule for any non-concessional contributions. In this situation, the proposed withdrawal option may help to prevent a severe ECT penalty with an effective tax rate of up to 93%.

Deferred lifetime annuities

 THOMSON REUTERS

Deferred lifetime annuities will be granted the same concessional tax treatment that superannuation assets supporting income streams receive from 1 July 2014. This reform will seek to give retirees more choice by assisting those who wish to ensure financial security in their later years, by allocating part of their superannuation to a product that will provide an ongoing income stream beyond a certain age. A deferred lifetime annuity is an annuity that is purchased for an up-front premium but where payments do not commence immediately. For example, the product might be purchased at age 60 with payments commencing at age 80 and continuing for life. The existing law requires that income streams must make payments at least annually. As a deferred annuity does not meet this requirement it does not qualify as an income stream, and therefore is currently not entitled to the associated concessional tax treatment that applies to earnings on superannuation assets supporting income streams.

Other

Other proposed superannuation reforms previously announced on 5 April 2013 include:

- ***Lost superannuation transfers*** - the account balance threshold above which lost and inactive superannuation accounts must be transferred to the Tax Office will be increased from $2,000 to $2,500 from 31 December 2015 (and to $3,000 from 31 December 2016);
- ***Social security deeming rules*** - will be extended to ensure that superannuation account-based pension payments are assessed from 1 January 2015 for the purposes of the pension income test. Products held by pensioners before 1 January 2015 will be grandfathered indefinitely (unless the product is changed on or after 1 January 2015);
- ***Council of Super Custodians*** – will be established to help ensure that any future superannuation changes are consistent with an agreed Charter of Superannuation Adequacy and Sustainability. The Council will be charged with assessing future policy against the Charter and tabling a report (and annual report) in Parliament. The Charter will be developed against the principles of certainty, adequacy, fairness and sustainability, according to an independent and robust institutional framework. Funding of $0.2m will be provided in 2012-13 to support a Charter Group that will consult and report on the proposed charter and Council. Funding for the Council will be considered once the Charter Group has reported.

Source: Budget Paper No 2 [pp 39-42, 151, 271]

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[872] **Extra 15% contributions tax for incomes above $300,000: legislation imminent**

As previously announced in the 2012-13 Federal Budget on 8 May 2012 (see 2012 WTB 19 [681]), the Government has proposed to double the effective contributions tax from 15% to 30% for concessional contributions made on behalf of individuals with incomes greater than $300,000.

Currently, the 15% flat tax on concessional contributions (paid by the receiving superannuation fund) provides high income earners with a larger tax concession than those on lower marginal tax rates. However, despite the proposed extra 15% tax on contributions for individuals with incomes above $300,000, there will still be an effective tax concession of 15% (ie the top marginal rate less 30%) on their concessional contributions up to the cap of $25,000.

Refinements to 2012-13 measure

The Budget Papers note that the Government will make minor amendments to the 2012-13 Budget measure. These minor amendments (which appear to have already been incorporated into the exposure draft legislation: see below) involve:

- exempting from the measure employer contributions for Federal judges sitting on or after 1 July 2012 who are entitled to a benefit payable under the *Judges' Pension Act 1968*, and employer contributions made to constitutionally protected funds for State higher level office holders sitting on or after 1 July 2012 (to mitigate constitutional risks);
- using a similar definition of income for the measure to that used for calculating whether an individual is liable to pay the Medicare levy surcharge; and
- refunding former temporary residents the tax paid under the measure as they effectively do not receive any concessional tax treatment on their contributions to superannuation as a result of the operation of other rules.

Source: Budget Paper No 2 [p 38]

Draft legislation

On 1 May 2013, the Government released 50+ pages of draft legislation proposing to give effect to this 2012-13 Budget measure: see 2012 WTB 18 [768]. Comments were due by 8 May 2013. This measure is expected to be contained in the ***Superannuation (Sustaining the Superannuation Contribution Concession) Imposition Bill 2013***, which has been cleared for introduction (possibly on 15-16 May 2013).

The draft legislation proposes to insert a new Div 293 of the ITAA 1997 to apply an additional 15% tax on "Division 293 taxable contributions" for taxpayers above the "high income threshold" of $300,000 in relation to affected contributions from 1 July 2012. That is, the proposed amendments will double the effective contributions tax from 15% to 30% for concessional contributions (up to the cap of $25,000) made on behalf of individuals above the

$300,000 threshold (and thereby effectively reduce the concessional tax treatment from 30% to 15% on such contributions).

$300,000 high income threshold

The extra 15% tax under proposed Div 293 of the ITAA 1997 will be payable by individuals whose combined "income for surcharge purposes" (less reportable superannuation contributions to avoid double counting) and "low tax contributions" (ie concessional contributions up to the cap of $25,000) exceed $300,000 for an income year from 2012-13: proposed s 293-20 of the ITAA 1997.

A taxpayer's "low tax contributions" will essentially be her or his "concessional contributions" (as modified by the special rules for certain defined benefit interests: see below) *less* any excess concessional contributions for the year: proposed ss 293-25 and 293-30. Importantly, this means that the extra 15% contributions tax will not apply to concessional contributions which exceed a taxpayer's concessional contributions cap (generally $25,000). Such excess concessional contributions are already effectively taxed at the individual's top marginal tax rate in any event.

The government is proposing to use the definition of "income for surcharge purposes" for the purposes of the high income threshold test to prevent individual's from attempting to manipulate their taxable income (eg via salary packaging arrangements or negative gearing) to reduce or avoid the extra Div 293 tax. "Income for surcharge purposes" is currently used to determine whether an individual is liable for the Medicare levy surcharge. It is defined in s 995-1 of the ITAA 1997 to include:

- taxable income (after adding back any amount which was exempt because family trust distribution tax was paid in relation to it);
- reportable fringe benefits total (if any);
- reportable superannuation contributions;
- total net investment losses (ie both net financial investment losses and net rental property losses);
- *less* any superannuation lump sum amounts entitled to a tax offset for the income year.

The amount of tax payable will be 15% of the amount of the low tax contributions that exceed the $300,000 threshold. That is, if an individual's income (excluding their concessional contributions) is less than the $300,000 income threshold, but the inclusion of their concessional contributions pushes them over the threshold, the increased tax rate will only apply to the part of the contributions that are in excess of the high income threshold. If a taxpayer does not have low tax contributions there will be no liability for the extra Div 293 tax.

Assessment and payment

The time at which the assessed Division 293 tax will become due and payable to the Commissioner will differ

depending on whether the amount assessed is attributable in whole or part to a defined benefit interest.

For superannuation interests that are not defined benefit interests, the amount of Div 293 tax will be assessed by the Commissioner and will generally be due and payable within 21 days of the Commissioner giving the notice of assessment. This will be the outcome for the majority of superannuation interests (except defined benefit interests: see below). Individuals will be personally liable to pay the Div 293 tax (in contrast to the former surcharge regime where the fund paid the tax), although individuals will be authorised to have amounts released from certain superannuation interests for the payment of Div 293 tax.

Special rules for defined benefit interests, judges etc

The draft legislation proposes special rules to apply the additional 15% tax to individuals above the $300,000 threshold who have defined benefit interests, State higher level office holders in respect of interests in constitutionally protected funds, certain Commonwealth justices and judges, and temporary residents who depart Australia. These complex special rules in proposed Subdivs 293-D to 293-G of the ITAA 1997 modify the rules for these individuals.

Deferred payment for defined benefits

For defined benefit interests, the proposed Div 293 tax will generally be automatically included in a "debt account" and subject to deferred payment until 21 days after the first benefit eventually becomes payable from the superannuation interest (subject to certain exceptions: see below): proposed Divs 133 and 134 of the *Taxation Administration Act 1953* (TAA). This reflects the fact that money generally cannot be released from defined benefit interests (especially unfunded benefits) until a superannuation benefit is paid from the scheme (generally upon retirement). Note that the first superannuation benefit payable can be a superannuation lump sum or the first payment of a superannuation income stream or a combination of both. Interest will be applied annually at the long term bond rate to the outstanding balance of a debt account (although the Commissioner will be able to remit the interest in special circumstances). Individuals will also be able to voluntarily pay their Div 293 tax liability for a defined benefit interest from other sources.

The limited exceptions under proposed s 134-60(2) of the TAA in which a superannuation benefit can be paid from a defined benefit interest without triggering a liability to pay the debt for deferred Division 293 tax for that interest include:

- benefits rolled over or transferred to a successor fund under an arrangement where a different fund assumes the obligation to provide the same superannuation benefits as the original fund. However, this exception will not apply to a roll-over or transfer where the individual requests the provider to roll-over their benefit to a different superannuation fund;
- benefits paid due to satisfaction of a condition of release concerning "severe financial hardship" or

"compassionate grounds".

An "end benefit cap" will also apply to ensure that the debt amount payable does not exceed 15% of the employer financed component of the value of the superannuation interest that accrued after 1 July 2012: proposed s 134-65 of the TAA.

Thomson Reuters comment: Until the legislation is finalised, the message seems clear for individuals with incomes above $300,000 - consider restricting concessional contributions to only the 9% compulsory superannuation guarantee contributions (rising to 9.25% for 2013-14) where such benefits can be packaged in a more tax effective manner. Of course, there will still be an effective tax concession of 15% (ie the top marginal rate less 30%) on concessional contributions up to the cap of $25,000. However, such contributions will form part of the taxable component of a superannuation benefit and must be preserved in the superannuation system until a cashing condition is met. Or consider whether it is more beneficial to instead make after-tax non-concessional contributions (which will form part of the tax-free component of a superannuation benefit).

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[873] Other super measures - low income contribution; pension bonus; etc

While the Government did not announce any new major superannuation measures, a range of other minor superannuation initiatives were announced, as follows.

Low income super contribution - payments under $20

The Government will amend the eligibility for the low income superannuation contribution (LISC) to now pay individuals with an entitlement below $20. Previously, the LISC was not paid if it would be less than $20. Entitlements under $10 will be rounded up to $10. The LISC effectively refunds, up to $500 a year, the contributions tax paid by a superannuation fund on concessional contributions for people with incomes up to $37,000. This technical amendment will cost $15m over the forward estimates. (*Source: Budget Paper No 2 [p 266].)*

Pension Bonus Scheme - to cease from July 2014

The Government will cease late registrations for the Pension Bonus Scheme from 1 March 2014. The Government previously closed the scheme to new entrants from 20 September 2009 and replaced it with the Work Bonus. All those eligible for the scheme will still have an opportunity to register before 1 March 2014 and receive the bonus. By ceasing late registrations the Government will simplify the administration of its workforce participation incentives and provide savings of $80.5m over 3 years (from 2013-14). (*Source: Budget Paper No 2 [p 150].)*

Financial assistance grants for Trio Capital

The Government noted that it provided further grants of financial assistance under Pt 23 of the SIS Act to compensate members of 4 APRA-regulated superannuation funds, formerly under the trusteeship of Trio Capital Limited (Trio), that suffered losses due to fraudulent conduct. The cost of these assistance grants was $16.7m in 2012-13 and will be recovered through levies collected in 2012-13 by APRA under the *Superannuation (Financial Assistance Funding) Levy Act 1993*. These grants are in addition to the $55m provided in 2010-11 to members of superannuation funds formerly under the trusteeship of Trio. These funds were largely recovered through levies collected in 2011-12 by APRA. Funding for this measure was included as a "decision taken but not yet announced" in the Mid-Year Economic and Fiscal Outlook 2012-13. (*Source: Budget Paper No 2 [p 270].)*

Super Complaints Tribunal funding

The Government will provide $2.6m over 4 years from 2013-14 to support the operations of the Superannuation Complaints Tribunal (SCT). The cost of this measure will be offset by an increase in the levy on APRA regulated superannuation funds. (*Source: Budget Paper No 2 [p 271].)*

Financial literacy funding

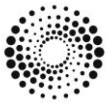
Funding of $5.4m over 4 years from 2013-14 will be provided to Treasury to make payments to states and territories under a new *National Partnership for MoneySmart Teaching*. This measure builds on the initiatives undertaken through the *National Partnership on Helping Our Kids Understand Finances - Professional Learning and MoneySmart Schools*, which expires on 30 June 2013. (*Source: Budget Paper No 2 [p 266].)*

Over-the-counter derivatives

The Government will provide $5.9m over 4 years to implement reforms to the supervision of over-the-counter (OTC) derivatives markets, as part of Australia's commitment as a member of the Group of Twenty (G-20) nations to reducing systemic risk in these markets. This builds on previous funding provided to enhance the role of ASIC in market surveillance and supervision. The cost of this measure will be offset by an increase in financial sector levies collected by the APRA. (*Source: Budget Paper No 2 [p 268].)*

SOCIAL SECURITY MEASURES

[874] **Baby Bonus to be abolished and replaced from 1 March 2014**



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The Government announced that it would replace the Baby Bonus from 1 March 2014 with the following arrangements:

- It will increase Family Tax Benefit Part A (FTB Part A) payments by $2,000, to be paid in the year following the birth or adoption of a first child or each child in multiple births, and $1,000 for second or subsequent children. The additional FTB Part A would be paid as an initial payment of $500, with the remainder to be paid in seven fortnightly instalments.
- Parents who take up Paid Parental Leave (PPL) will not be eligible for the additional FTB Part A component, but will benefit from improved access to PPL as their family expands. As part of this package, parents will be able to count time on Government PPL where it occurs in the work test period for a subsequent child, just like employer funded parental leave can be counted now. This change will mean more women will be able to access Government PPL when they have another baby.

Thomson Reuters note: The *Family Assistance and Other Legislation Amendment Bill 2013*, which is still before the House of Reps, proposes to reduce from $5,000 to $3,000 the amount of Baby Bonus for second and subsequent children who come into a family from 1 July 2013 - see 2013 WTB 7 [261].

Source: Budget Paper No 2 [p 144]

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[875] Family payments: indexation pauses extended 3 years on upper income limits and supplements

The Government announced that it will maintain the higher income thresholds for family payments and supplement amounts at their current levels for a further 3 years until 1 July 2017.

This measure will maintain the current upper income test limit of $150,000 for Family Tax Benefit (FTB) Part B, the dependency tax offsets, the Paid Parental Leave Scheme and Dad and Partner Pay. The FTB Part A upper income free area will remain at $94,316, plus an additional $3,796 for each child after the first.

FTB supplement amounts will also be maintained at current levels of $726.35 per child per annum for FTB Part A and $354.05 per family per annum for FTB Part B.

The FTB Part A lower income-free threshold (currently $47,815) and the FTB Part B secondary earner income

threshold (currently $5,037) will continue to be indexed.

Source: Budget Paper No 2 [p 143]; Minister for Families media release, 14 May 2013

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[876] Family and Parental Payments: change to rules for receiving payments overseas

In the Budget, the Government announced that it will change the allowed period of temporary absence from Australia for accessing certain family and parental payments from 3 years to 1 year from 1 July 2014. Affected payments include Family Tax Benefit Part A, Schoolkids Bonus and Paid Parental Leave.

Australian Defence Force and Australian Federal Police personnel deployed overseas will not be affected by this measure and will continue to be able to access payments while overseas for up to 3 years.

Source: Budget Paper No 2 [p 142]

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[877] Scrapping of planned FTB Pt A increase confirmed

The 2013-14 Budget papers confirmed Finance Minister Senator Penny Wong's announcement on 7 May 2013 (see 2013 WTB 19 [795]) that the Government would not proceed with its 2012-13 Budget proposal (see 2012 WTB 19 [651]) to provide $1.8bn in funding over 4 years to increase the maximum payment rate of FTB (Family Tax Benefit) Part A by $300 pa for families with one child and $600 pa for families with 2 or more children. [**Thomson Reuters note**: In his 2012-13 Budget speech on 8 May 2012, the Treasurer said the increase would "share the proceeds of the mining tax with families". It was to have been a redirection of the funds for the proposed company tax cut to 29% that was scrapped in the 2012-13 Budget.] For families receiving the base rate of FTB Part A, the increase would have been $100 pa for families with one child and $200 pa for families with 2 or more children. The increased FTB was to have come into effect from 1 July 2013. The Minister said the budgetary position meant the Government was not in a position to proceed with the increase.

The Minister said the Government was seeing "very substantial hits to revenue" from what was anticipated and that this financial year, from budget to budget, the Government would get $17bn less in revenue than was anticipated this

time last year [up from the $12bn recently reported by the Prime Minister].

Thomson Reuters note: The base rate if FTB Pt A is currently $54.32 per fortnight. That is unaffected by the Budget announcement. There is an income test, but no assets test, for FTB Pt A.

Source: Budget Paper No 2 [p 150]

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[878] Family Tax Benefit Part A: Changes to age of eligibility

The Government announced it will change eligibility for Family Tax Benefit Part A (FTB Part A) for children aged 16 years and over. FTB Part A will only be paid until the end of the calendar year a child completes school. This change will start from 1 January 2014.

Individuals who no longer qualify for FTB Part A may be eligible to receive Youth Allowance, subject to the usual eligibility requirements. The Government said this change will focus payments in the family assistance system on families with children who are at school, while Youth Allowance will become the primary form of assistance to eligible young people who have completed secondary school, or are no longer in school.

Source: Budget Paper No 2 [p 146]

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[879] FTB and Child Care Assistance: realignment of time period for income reconciliation

The Government announced that it will bring lump sum and income reconciliation periods for Family Tax Benefit (FTB) and Child Care Assistance (CCA), which includes Child Care Benefit and the Child Care Cash Rebate, more in line with the usual arrangements for lodging tax returns.

Beginning with 2012-13, families will have 12 months rather than 2 years from the end of the financial year for which the family is claiming FTB or CCA to reconcile their income, initiate lump sum claims and satisfy any requirements for the end of year supplements. The timing required for lodging tax returns means that most families will have the information they need to reconcile their income within the 12 month period, the Government said.

Extensions will be provided in exceptional circumstances.

Source: Budget Paper No 2 [p 145]

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[880] Income free area increased

The Government will increase the income free area for eligible income support recipients from $62 per fortnight to $100 per fortnight from 20 March 2014. This means that persons on Newstart Allowance, Sickness Allowance, Parenting Payment Partnered, Widow Allowance, Partner Allowance Benefit and Partner Allowance Pension will be able to earn $100 per fortnight (from 20 March 2014) before their income support is reduced.

The income free area will also be indexed annually from 1 July 2015.

Source: Budget Paper No 2 [pp 136-137]; Minister for Employment and Workplace Relations' press release, 14 May 2013

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[881] Pensioner concession card and education supplement for single parents

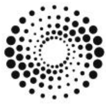
The Government will provide $2.2m over 4 years to enable eligible single parents to retain eligibility for the Pensioner Concession Card (PCC) for a period of 12 weeks if they:

- no longer qualify for Parenting Payment Single because their youngest child has turned eight; and
- do not qualify for another social security benefit, pension or allowance due to earnings from employment.

Parents affected by this proposal have taken the important step of participating in the labour market and will no longer immediately lose access to the PCC because they earn too much to qualify for another payment.

Date of effect

This expanded eligibility will commence from 1 January 2014.



Pensioner education supplement

The Government will also extend the Pensioner Education Supplement (PES) of up to $62.40 a fortnight to all Newstart Allowance (NSA) single principal carer recipients. This is estimated to cost $39.7m over 5 years.

This extension will seek to help recipients with the costs of study while they gain an initial qualification to assist them to re-enter the labour market. This expands current arrangements which limit access to the PES to single principal carer recipients of NSA who were receiving the supplement prior to transitioning off Parenting Payment Single. These recipients will continue to receive the supplement for the duration of their enrolled course.

Date of effect

This new arrangements will take effect from 1 January 2014.

Source: Budget Paper No 2 [pp 129-30]

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[882] **Seniors downsizing from family home - means test exemption**

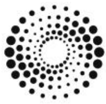
The Government will trial a pilot program to provide a means test exemption for Age Pension recipients who are downsizing from their family home. The proposed measure will seek to remove the disincentive for pensioners to move to more age-appropriate housing.

Under the proposal, the family home must have been owned for at least 25 years with at least 80% of proceeds from the sale (up to $200,000) to be deposited into a special account by an authorised deposit taking institution (ADI). These funds (plus earned interest) will be exempt from pension means testing for up to 10 years provided there are no withdrawals during the life of the account. The exemption will also be accessible to people assessed as home owners who move into a retirement village or granny flat. It will not be available to people moving into residential aged care. The Government will provide $112.4m in funding for the pilot measure over 4 years.

Date of effect

The pilot will commence on 1 July 2014 and be closed to new customers from 1 July 2017.

Source: Budget Paper No 2 [p 152]



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[883] Social security compliance reviews of earned income

The Government will provide $8.9m in 2013-14 to increase the number of compliance reviews in the social security payments system. The Department of Human Services (DHS) will review 19,000 cases where it identifies inconsistencies between PAYG income tax payment summaries and the income reported to DHS for the 2010-11 financial year. This measure is expected to provide net savings of $58.6m over 3 years. The DHS will also develop a first pass business case to identify options for the upgrade or replacement of the Income Security Integrated System (ISIS), to be completed in 2015.

Source: Budget Paper No 2 [pp 195-196]

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[884] Child Care Rebate - indexation pause continued

The Government will continue to pause the indexation of the annual cap on the Child Care Rebate (CCR) for a further 3 years. The maximum amount of CCR that can be paid will remain at $7,500 a year until 30 June 2017. Pausing indexation of the cap will not alter the percentage of out-of-pocket expenses reimbursed by the Government, which will remain at 50% until the cap is reached.

The Government said that no family will see a reduction in payments as a result of this measure.

Source: Budget Paper No 2 [p 125]

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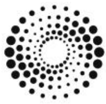
[885] Farm household allowance and drought reform package

The Government will provide a new Farm Household Allowance under the National Drought Program Reform commencing from 1 July 2014. The Farm Household Allowance (FHA) will be available to eligible farm families in periods of hardship regardless of the source of that hardship. Eligibility for support will be determined through an



assessment of the farmer's existing assets, liabilities and income.

The FHA will be paid at the Newstart Allowance rate and will be available to eligible recipients for a maximum period of 3 years, with the flexibility to come on and off the payment until the maximum period is reached. A condition of receiving the FHA will be completion of individually tailored reciprocal obligations targeted at assisting farmers to better manage their individual situation in the future. Reciprocal obligations could include training or development activities, both on-farm and off-farm, seeking professional advice or succession planning. This payment will replace the existing Exceptional Circumstances (EC) Relief Payment and the Transitional Farm Family Payment from 1 July 2014.

National Drought Program Reform

The National Drought Program Reform will be delivered in cooperation with state and territory governments. The reform will assist farm families during difficult times, improve farmer preparedness for future challenges including droughts and other variable climatic and business conditions and help farmers to become more self-reliant. The reform also includes the following elements:

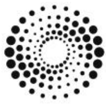
- continuation of Farm Management Deposits (FMDs) and taxation measures such as current primary producer taxation concessions that support and assist farmer risk management;
- a national approach to the provision of farm business training through a standardised Vocational Education and Training accredited skill set developed by AgriFood Skills Australia and key members of the farming and training sector and delivered through the Vocational Education and Training system by registered training organisations;
- a coordinated, collaborative approach to the provision of social support services that aims to ensure that people receive support before reaching a crisis point; and
- tools and technologies to inform farmer's risk-management decision making including examining ways to improve the provision of information to farmers.

More information about the drought reform package is available on the DAFF website at http://www.daff.gov.au/drought.

Farm finance measures

The Government will provide a package of farm finance measures to support and assist farmers experiencing acute levels of debt and to help improve their ongoing financial resilience, including:

- the provision of up to $420m over 2 years in concessional loans to eligible primary production businesses for the purpose of productivity enhancements and debt refinancing from 1 July 2013;



- changes to the Farm Management Deposit (FMD) scheme to allow FMD owners to consolidate their existing accounts that have been held for longer than 12 months without triggering tax liabilities;
- increasing the non-primary production threshold for FMDs from $65,000 to $100,000, resulting in a reduction in estimated taxation revenue of $13m over 3 years from 1 July 2014;
- $6.3m over 2 years to expand the Rural Financial Counselling Service by an additional 17 full-time equivalent counsellors from 1 July 2013;
- $0.9m over 3 years for a communication campaign to increase awareness of the assistance package; and
- the development of a nationally consistent approach to farm debt mediation process across all jurisdictions, to be developed by a working group comprising federal, state and industry stakeholders.

The concessional loans program will make available up to $30m per annum for 2 years to each state and the Northern Territory for the provision of concessional loans to eligible farmers. Loans will be for a maximum of $650,000 per eligible primary production business, available for a period of up to 20 years, and will be administered by an appropriate state or territory delivery agency. The interest only concessional loan component will be available for 5 years, and after this time the loan will revert to a market rate and recipients will also commence repaying the principal.

Source: Budget Paper No 2 [pp 76-78]; Minister for Agriculture, Fisheries and Forestry, press release, 14 May 2013

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[886] **Aged care: insurance for accommodation bonds deferred**

In response to concerns raised by aged care providers during consultations, the Government will defer implementation of the requirement for providers of residential aged care to insure any accommodation bonds they hold for residents entering care on or after 1 July 2014.

This requirement was previously announced in the 2012-13 Budget. However, while negotiations continue with providers and the insurance industry, the Government said that it will continue to guarantee all bonds under the Guarantee Scheme established in the *Aged Care (Bond Security) Act 2006* and *Aged Care (Bond Security) Levy Act 2006*. If a provider becomes insolvent or bankrupt and is unable to repay outstanding bond balances to aged care residents, the Australian Government will repay the balance owing to each resident.

Aged care workforce supplement

The Government will also amend the eligibility for the aged care workforce supplement to exclude aged care

providers whose employees are paid under state and territory awards or agreements and to broaden eligibility to include the service providers for the Veterans' Home Care and Community Nursing programs, which are administered within the Veterans' Affairs portfolio. This amends the 2012-13 Budget measure. The aged care workforce supplement was introduced to assist aged care providers to retain and attract skilled employees to the sector.

Staying at home program

The Government will make changes to improve Home Care for care recipients by aligning leave provisions across all levels of Home Care packages and providing oxygen and enteral feeding supplements to all care recipients who have a clinical need. This measure will also ensure that there is no reduction in funding for existing recipients of Community Aged Care packages or Extended Aged Care at Home packages when the dementia supplement is introduced, and will provide a new top-up supplement for existing Extended Aged Care at Home Dementia recipients. This measure builds on the 2012-13 Budget measure for staying at home.

Veterans

From 1 July 2013, residential aged care providers will receive a supplement for each veteran in their care with an accepted mental health condition. Providers may also receive a supplement for each veteran in their care who has severe behavioural and psychological symptoms of dementia.

Source: Budget Paper No 2 [pp 174-75, 278]

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[887] Deeming rate – no change

With the Reserve Bank lowing official interest rates to 2.75% on 7 May 2013, some movement in the deeming rates might have been expected. However, none was announced in the Budget.

Deeming means that "deemable" investments such as cash, managed investments, shares, money owing are subject to a "deemed" rate of interest regardless of the rate of return the pensioner was earning.

There are 2 income levels (or thresholds) relevant for deeming purposes – with effect from 1 July 2012, they are $45,400 for single pensioners and $75,600 for married couples. Effective from 1 July 2012, for single pension or allowance recipients, the first $45,400 of their financial investments was deemed to earn income at 3% pa and any amount over that was deemed to earn income at 4.5% pa. These deeming rates have been reduced to 2.5% and 4%, respectively, with effect from 20 March 2013.

For married couples, the situation works a little differently.

- Where at least one member of the couple is getting a pension, the first $75,600 (combined) of that person's and her or his partner's financial investments is deemed to earn income at 3% pa (2.5% from 20 March 2013) and any amount over that is deemed to earn income at 4.5% pa (4% from 20 March 2013).
- Where neither person is getting a pension, the first $37,800 for each of the person's and her or his partner's financial investments is deemed to earn income at 3% pa (2.5% from 20 March 2013) and any amount over that is deemed to earn income at 4.5% pa (4% from 20 March 2013).

Using the deeming rates effective from 20 March 2013, a single pensioner whose only income is from financial investments could have financial investments of up to $115,800 at the deeming rate and still receive a full pension under the income test, while a pensioner couple could have $202,500 in investments and still receive a full pension.

OTHER MEASURES

[888] Establishment of Tax System Advisory Board

The Government reiterated that it will establish a Tax System Advisory Board within the Tax Office to advise the Commissioner and the ATO Executive Committee on the strategic direction, culture, organisation, management, compliance planning, staff profile and information technology plans at the Tax Office.

The cost of this measure will be met from within the existing resources of the Tax Office.

Source: Budget Paper No 2 [p 272]

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[889] Online registration for financial advisers

The Government will provide $1.4m over 4 years to provide for a single, online registration for financial advisors

registered with ASIC that also need to be registered with the ATO as tax advisers from 30 June 2013. This follows the end of the exemption of financial advisers from the tax agent services licensing regime.

The cost of this measure will be offset by fees charged by the ATO for registering financial advisers under the *Tax Agent Services Act 2009* from 1 July 2015. The proposed fees are $400 for a 3-year registration for a Category 2 financial advisor who carries on a business as a Category 2 financial advisor; and $200 for a 3-year registration for a Category 2 financial advisor who does not carry out a business as a Category 2 financial advisor.

Source: Budget Paper No 2 [p 297]

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[890] **Tobacco excise to be indexed to AWOTE**

The Government will change the indexation of excise and excise-equivalent customs duty for tobacco and tobacco products to average weekly ordinary time earnings (AWOTE), instead of the Consumer Price Index (CPI), commencing from 1 March 2014. The excise and excise-equivalent customs duty rates will continue to be indexed bi-annually, on 1 March and 1 September each year, to coincide with the releases of AWOTE data by the Australian Bureau of Statistics.

Currently, the rates of excise and excise-equivalent customs duty for cigarettes and other tobacco products are indexed bi-annually on and from 1 February and 1 August in line with the CPI. The 1 February 2014 CPI increase will not occur to ensure there are only two indexation adjustments in the 2014 calendar year.

Based on the average historical difference between annual AWOTE and CPI movements this measure would result in the cost of a typical packet of 25 cigarettes increasing by an additional 7 cents in the first half of 2014. This indexation would occur on 1 March 2014 instead of 1 February 2014.

This reform implements another recommendation of the *Australia's Future Tax System* review (the Henry Review).

Source: Budget Paper No 2 [p 25]

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[891] **Apprenticeships alternative pathways program**

The Government will provide $68.8m over 4 years to establish an Alternative Pathways Program to support the development and trial of flexible training pathways for apprentices in high demand industries experiencing skills shortages.

Up to $50.6m will be provided, under a competitive grants process, to peak industry bodies and large employers to develop and trial innovative approaches to training for approximately 4,000 apprentices over 4 years. An additional $2,000 per apprentice will be available for employers to encourage their participation in the program.

The program will allow individual industries and larger employers to develop training programs tailored to their needs that utilise more flexible combinations of on and off the job training than is currently available through traditional apprenticeships. A reference group consisting of representatives from the Commonwealth and state and territory governments, training providers and peak industry bodies will be established to support the development of the program.

Source: Budget Paper No 2 [p 207]

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[892] **Export of liquids, aerosols and gels**

The Government will not proceed with the new regulatory arrangement for liquids, aerosols and gels (LAGs) items announced in the *Mid-Year Economic and Fiscal Outlook 2007-08* measure *Verification measures to support new arrangements concerning liquids, aerosols and gels and the sealed bag scheme*, following consultation with industry. Instead, the interim arrangement allowing travellers to pack LAGs items in their checked luggage announced in that measure will continue.

Continuation of the interim arrangement means that a more intensive LAGs declaration requirement will not be imposed, thus avoiding an administrative burden on the duty-free industry.

Source: Budget Paper No 2 [pp 45-46]

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[893] **New data centre for AUSTRAC**

The Government will provide $16.1m over 4 years to AUSTRAC for the establishment of a new data centre. $9.1m of the total cost will be recovered (over 4 years) from AUSTRAC's regulated entities, which include banks and other lenders, non-bank financial services, money service businesses, gambling and bullion businesses.

Source: Budget Paper No 2 [p 86]

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[894] **HELP discounts to be abolished**

The Government will remove the discounts applying to up-front and voluntary payments made under the Higher Education Loan Program (HELP) from 1 January 2014. The discounts that will be removed are:

- the 10% discount available to students electing to pay their student contribution up-front; and
- the 5% bonus on voluntary payments to the ATO of $500 or more.

Source: Budget Paper No 2 [p 216]

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[895] **Changes to Import Processing Charge**

The Government will restructure the Import Processing Charge (IPC) to recover the costs of all import related cargo and trade functions undertaken by the Australian Customs and Border Protection Service.

For consignments valued over $10,000, the IPC for electronic sea import declarations will be increased by $102.60 to $152.60 per consignment; and the IPC for electronic air import declarations will be increased by $81.90 to $122.10 per consignment.

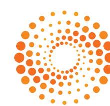
For consignments valued over $1,000 and up to $10,000 the IPC will remain at current levels: $50.00 for electronic sea import declarations and $40.20 for electronic air import declarations. The IPC is not applied to consignments

valued at $1,000 or less.

The new charges will come into effect on 1 January 2014.

Source: Budget Paper No 2 [p 10]

A PLAN FOR AUSTRALIA'S ECONOMIC PROSPERITY



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