

Federal Budget Summary

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Federal Budget 2011

10 May 2011

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FEDERAL BUDGET SUMMARY 2011/12

Preface

The Key Information

Treasurer Wayne Swan's fourth Budget aims to get Australia back in the black by 2012-13. The Government has stated the Budget will get more people into jobs, and create opportunities from the mining boom for more Australians.

The Headline numbers

	2010-11	2011-12	2012-13
Underlying Cash Position	(\$49.4)B	(\$22.6)B	\$3.5B
Economic Growth GDP	2.25%	4.0%	3.75%
Unemployment Rate	5%	4.75%	4.5%
CPI - Inflation	3.25%	2.75%	3.0%

The Government will allow the continued mining boom results to flow through to the budget while keeping a cap on spending to 1% growth over the forward estimates.

The Budget bottom line has also been strengthened by the identification of \$22b in savings across a range of measures.

Introduction

The 2011-12 Federal Budget, announced by the Treasurer, the Hon Wayne Swan, on 10 May 2011 focuses on making the Australian tax system simpler and fairer for the Australian community and businesses. The main taxation reforms are discussed in detailed below.



Summary:

- Reforming of "statutory formula" method for valuation of car fringe benefits
- Phasing out of Dependent Spouse Tax Offset
- Replacement of Entrepreneurs Tax Offset
- Introduction of \$5,000 immediate deduction for motor vehicles
- Increasing FTB A payments for 16 to 19 year olds
- Reducing overlap between FTB A
- Overlap between FTB Part A and Youth Allowance reduced in effort to reform family payments
- Establishment of Australian Charities and Not-for-profits Commission to improve regulation and reduce "red tape" for not-for-profits
- Introduction of statutory definition of "charity"
- Focus on a principles-based approach to tax law design
- Board of Taxation permitted to initiate reviews of effectiveness of tax policies and laws
- Tax System Advisory Board established
- Low Income Tax Offset removed for unearned income of minors
- Improving reporting of taxable payments to contractors

Individuals

Reduction in the minimum payment amounts for account-based pensions in 2011-12

The pension drawdown relief provided over the last three years will be phased out. Minimum payment amounts for account-based, allocated and market linked (term allocated) pensions will be reduced by 25 per cent for 2011-12 and will return to normal in 2012-13.

The following table shows the relevant percentage factor based on the member's age.

Age	Normal minimum payment % on account balance	Minimum payment % for 2009 - 2011 income years (50% of the normal drawdown)	Minimum payment % for 2011/12 income year (25% of the normal drawdown)	Minimum payment % for 2012/13 income year (A return to the normal draw down)
Under 65 years	4%	2%	3%	4%
65-74 years	5%	2.5%	3.75%	5%
75-79 years	6%	3%	4.5%	6%
80-84 years	7%	3.5%	5.25%	7%
85-89 years	9%	4.5%	6.75%	9%
90-94 years	11%	5.5%	8.25%	11%
95 years or more	14%	7%	10.5%	14%



Keywords:

- 25% reduction for 2011/12
- No reduction for 2012/13

Low Income Tax Offset restriction for minors

From 1 July 2011 the low income tax offset will not be available to minors to reduce income tax due on their non-work income. Non-work income for this purpose includes income from dividends, interest, rent and royalties whether received directly or via trust distributions.

Minors will continue to be entitled to use the low income tax offset to reduce income tax due on their work income.

The removal of the low income tax offset in relation to non-work income effectively pegs back the tax free non-work income threshold a minor can earn to \$416.

The measure is expected to increase revenue by \$740 million over the forward estimates.



Keywords:

- Non-work income of minors not eligible for low income tax offset
- Low income tax offset still able to be applied against work income
- Tax free amount of non-work income of minors effectively limited to \$416 from 2012

Low income earners to remain exempt from Medicare Levy

From the 2011 income year, the Medicare Levy low income threshold will increase to \$31,789 for couples (up from \$31,196), and to \$18,839 for singles (up from \$18,488).

For families, the additional amount of threshold for each dependent child or student rises to \$2,919 (up from \$2,865).

From 1 July 2010 the Medicare levy low income threshold for pensioners below Age pension age will increase to \$30,439 (up from \$27,697). The result of this increase is that below Age pension age pensioners will not pay Medicare levy when they do not have an income tax liability.



Keywords:

- Medicare levy low income singles threshold for 2011 - \$18,839 (\$18,488)
- Medicare levy low income couples threshold for 2011 - \$31,789 (\$31,196)
- Medicare levy low income threshold for pensioners aged below Age pension age for 2011 - \$30,439 (\$27,697)
- Additional amount of threshold for each dependent child or student increased to \$2,919 for 2011 (\$2,865)

Anstis decision overruled

With effect from 1 July 2011 the law will be amended so as to prevent deductions being claimed against all government assistance payments. This measure is in response to the High Court decision in *FCT v Anstis [2010] HCA 40*.



Keywords:

- No deductions against Government assistance payments from 1 July 2011

Dependent Spouse Tax Offset



Summary:

- The dependant spouse tax offset (**DSTO**) is currently available to taxpayers who meet the following criteria:
 - they are Australian tax residents;
 - they **maintain a dependant spouse or de-facto spouse** (who must also be an Australian tax resident);
 - the taxpayer has an Adjusted Taxable Income (**ATI**) below the relevant threshold (\$150,000 for 2009/10) and their dependant spouse has an ATI of less than the threshold (\$9,254 for 2009/10); and
 - neither the taxpayer nor their dependant spouse are eligible for Family Tax Benefit Part B.
- From 1 July 2011 **the DSTO will generally no longer be available** to taxpayers whose dependant spouse was born after 1 July 1971 (i.e. those who are under age 40);
- A number of **exceptions apply**, including:
 - **Taxpayers** who are eligible for the zone, overseas forces or overseas civilian tax offsets; and
 - **Dependant spouses** who are carers, invalids or permanently unable to work.

Taxpayers who **maintain a dependant spouse (or de-facto spouse)** are currently eligible for a dependant spouse tax offset (**DSTO**) of up to \$2,243 (2009/10 year) if:

- They are Australian tax residents;
- Their dependant spouse is also an Australian tax resident;
- They have an Adjusted Taxable Income (**ATI**) of less than \$150,000 (2009/10 year):
- Their dependant spouse has an ATI of less than \$9,254 (2009/10 year); and
- Neither the taxpayer nor their dependant spouse is eligible for Family Tax Benefit Part B.

The Government has announced that **the DSTO will be phased out** in order to encourage non-working spouses to enter paid employment.

From 1 July 2011 the DSTO will **no longer be available** for taxpayers whose **dependant spouse was born after 1 July 1971** (i.e. who is less than 40 years old as at 1 July 2011). This recognises that dependant spouses over age 40 may find it more difficult to re-enter the workforce, so they will remain eligible.

There will be **no impact on dependant spouses with children** - they will remain eligible for Family Tax Benefit (FTB) Part B rather than the DSTO.

In addition, a **number of exceptions will apply**. Taxpayers will **remain eligible for the DSTO** where they are eligible for the following:

- zone tax offset;
- overseas forces tax offset; or
- overseas civilian tax offset;

or where their dependant spouse is:

- a carer;
- an invalid; or
- permanently unable to work.

This measure will apply from 1 July 2011.



Keywords:

- Dependant spouse tax offset to be phased out from 1 July 2011;
- Taxpayers with dependant spouses born after 1 July 1971 are no longer eligible unless an exception applies;
- Exceptions for taxpayers eligible for zone, overseas defence force or overseas civilian tax offsets;
- Exceptions for dependant spouses who are carers, invalids or permanently unable to work;
- No impact on those with children as there is no change to Family tax Benefit Part B.

Higher Education Contribution Scheme (HECS) - reduction in discount

From 1 January 2012, the following discounts apply to payments made under the HECS:

- The discount available to students electing to pay their student contribution up-front will be reduced from 20 percent to 10 percent; and
- The bonus on voluntary payments made to the ATO of \$500 or more will be reduced from 10 percent to 5 percent.

Students electing to make contributions up-front will continue to receive a 10 percent discount.

Under the Higher Education Loan Program (**HELP**), payments of \$500 or more will attract a 5 percent bonus such as to reduce an outstanding HELP debt by \$525.



Keywords:

- Discount on HECS payments made up-front reduced to 10 percent
- Bonus on voluntary payments exceeding \$500 reduced to 5 percent.

FTB and family payments adjustments

From 1 July 2011, families in receipt of Family Tax Benefit (FTB) Part A will be eligible for an advance of up to 7.5 percent, up to a maximum of \$1,000, of their annual FTB Part A entitlement. Advances will be repaid over six months by reducing future fortnightly FTB payments. Payment of advances will be subject to an assessment of a family's ability to repay the advance without falling into financial hardship. Advances can be taken at any point throughout the year.

Part A Supplement.

From 1 July 2011, the payment of the end of year FTB Part A supplement to parents on income support with a child turning four will be conditional on the child undergoing a pre-school health assessment. Families will have up to two years after the end of the year their child turns four to meet the health check requirement and notify Centrelink before losing eligibility for the FTB.

From 1 January 2012, the eligibility for FTB Part A will be limited to children up to the age of 21 years, as young people aged 22 and over are considered independent. When a child turns 22 years of age, parents will no longer be able to receive FTB Part A for that child but the child may be eligible to receive Youth Allowance subject to usual means testing and academic progress rules.

Indexation of the FTB Part A and B supplements will be paused for 3 years at their current levels instead of being CPI-indexed. The FTB supplements will be fixed at the current 2010/11 levels of \$726.35 per annum per child for FTB Part A and \$354.05 per annum for FTB Part B until 1 July 2014

Indexation of family payment higher income thresholds and limits will remain fixed at their current level until 1 July 2014. This means that:

- Family Tax Benefit (FTB) Part B primary earner income limit will remain at \$150,000;
- the income limit for receiving the dependency tax offsets will remain at \$150,000;
- the Baby Bonus eligibility limit will remain at \$75,000 of family income in the six months following the birth or adoption of a child, equivalent to \$150,000 a year;
- the Paid Parental Leave primary carer income limit will remain at \$150,000 in the financial year before the birth or adoption of a child; and
- the higher income-free threshold of FTB Part A will remain at \$94,316 of family income, with an additional \$3,796 provided for each child after the first.

Income limits are the amount a family can earn before they are no longer eligible for family payments, and the higher income-free area for FTB Part A is the income level at which FTB payments begin to reduce. The FTB Part A income cut-off for each family varies depending on the number and age of their children.

FTB and Youth Allowance will be changed to:

- match the payment rates of FTB Part A for dependent 16 to 19 year olds in full time secondary study to the rates for 13 to 15 year olds. This will increase the level of support provided by FTB by up to \$4,208 a year for 16 and 17 year olds, and up to \$3,741 a year for 18 and 19 year olds;
- align the participation requirement for FTB Part B and the Multiple Birth Allowance with the existing FTB Part A participation requirement. This change will require 16 to 19 year olds to be undertaking full time secondary study, or be exempt from this requirement, to be eligible for these payments; and
- include all 16 to 19 year olds in full time secondary study for the purposes of calculating the Youth Allowance parental income test. This will ensure Youth Allowance recipients do not experience a lower rate of assistance as a result of siblings aged 16 to 19 years old in full time secondary study remaining in the FTB system.

Youth Allowance will continue to be available for 16 to 19 year olds who are independent, away from home or not in full time secondary study, and for people aged 19 years and older. All Youth Allowance recipients aged 16 to 19 on 1 January 2012 will have the option to remain on Youth Allowance.

The Government will change the method under which a Child Support payer's income is assessed to more accurately reflect their actual income. The changes will take effect from 1 July 2011 and will only apply to those payers who have not lodged a tax return for two or more years. This change will increase the average rate of Child Support payments, reducing Child Support recipients' Family Tax Benefit entitlements. Currently, Child Support payers who are late lodging or fail to lodge a tax return for two years or more have their Child Support assessment based on a default income of two thirds of Male Total Average Weekly Earnings (MTAWE), often resulting in an underestimation of their actual income. Under the new arrangements, such clients will have their income assessment based on their last known taxable income, indexed by growth in average wages during the period since their last return. The default income of two thirds of MTAWE will still be used in cases where the last known taxable income, indexed by growth in average wages, is lower than the default income.



Keywords:

- Advance of the Family Tax Benefit up to \$1,000
- Part A - limited to children aged 21 years and under
- Suspension of indexation for the next 3 years
- Various other amendments

Superannuation

Stronger Super – SMSF reforms

Additional funding will be provided to the ATO and ASIC to implement the 'Stronger Super' self managed fund reforms that were announced on 16 December 2010.

The reforms include:

- A new administrative penalty framework;
- Registration of fund auditors subject to competency and independence standards;
- Improved data collection; and
- Improvement to the self managed superannuation fund registration process.

To assist the funding of the administration the SMSF levy will rise from \$150 to \$180 for the year ended 30 June 2011 and the introduction of SMSF auditor registration fees from 1 July 2012.

Option to request refund from superannuation fund of excess concessional superannuation contributions



Summary:

- If an individual has had **concessional (i.e. deductible)** superannuation contributions made on their behalf to a superannuation fund (whether by **themselves** or from an **employer**), an **annual cap** applies to the amount of such contributions that can be made before **excess concessional contributions tax (at 31.5%)** becomes payable.
- The 31.5% is in **addition** to the **15% tax** that is paid on the concessional contributions in the **fund** itself.
- The **current** annual cap is **\$25,000**, unless the taxpayer is aged **over 50** at the end of the year, when the cap is **\$50,000**.
- A **new option** will be provided to **avoid** excess concessional contributions tax, for an excess of **up to \$10,000**, on a **once-only** basis.

While the Commissioner already has a **discretion** to disregard the excess, or allocate it to a different income year, this discretion is exercisable only in very **limited** special circumstances, which do not include ignorance of the law or inadvertent error.

Individuals who have **exceeded** their cap will be provided with a **new option** to have the excess concessional contributions **refunded** from their superannuation fund and instead **assessed** as **income** at their **marginal** rate of tax, rather than incurring excess contributions tax.

The following **restrictions** will apply on the option:

- It will apply where an individual has made excess concessional contributions of **up to \$10,000** (not indexed) in a particular year;
- It is only available for breaches in respect of **2011-12 or later years**, and **only** for the **first year**, commencing from 2011-12, in which a **breach** occurs.



Implications:

The option will effectively only be **advantageous** if the marginal tax rate of the individual is **lower** than the 46.5% combined fund (15%) plus excess contributions (31.5%) tax rate.

The Government will consult with the superannuation industry on the implementation of this measure.



Keywords:

- New option to reverse contributions up to \$10,000 in excess of concessional superannuation contributions cap
- Available for first breach only from 2011-12
- Refunded contributions taxed as income at individual's marginal tax rate

Removal of trading stock exemption for super funds



Summary:

- Shares, units in trusts and land can no longer be treated as trading stock by a complying super fund.
- All gains and losses from such assets acquired after 10 May 2011 will be of a capital nature, and not income.

Effective from 7.30pm on 10 May 2011 the exemption from CGT contained in section 118-25 *ITAA 1997* will be amended to exclude access for complying superannuation funds.

Assets acquired after this time by a complying fund will not be able to be treated as trading stock and so will fall under the CGT regime with respect to the timing and taxation of gains and losses made on the disposal of such assets. The trading stock exemption had been used by some superannuation funds to treat losses made on the sale of shares as arising on income account. This change will prevent this. It will apply to shares, units and land.

Transitional rules will allow trading stock owned by a complying superannuation entity to continue to be treated as such until disposal.



Keywords:

- Super funds can no longer have trading stock.
- All assets now taxed under CGT regime.

Higher superannuation contributions cap for over 50s



Summary:

- 2010-2011 Budget announced that from 1 July 2012 eligible individuals 50 and over have a concessional contribution cap of \$50,000 if their super account balance is under \$500,000
- 2011-2012 Budget announces that this higher cap will remain \$25,000 over the general concessional cap.
- This will ensure no erosion of indexation

The 2011 Budget announced that they would ensure that the concessional superannuation contribution cap for eligible individuals 50 and over will always be \$25,000 above the concessional cap for under 50 year olds.

The concessional cap for eligible individuals aged 50 and over with superannuation balances of less than \$500,000 will be \$25,000 above the general concessional cap from 1 July 2012.

The general concession is currently \$25,000 but will increase when the AWOTE index applied to the base is greater than \$5,000. Therefore an adjustment to the cap will increase it to \$ 30,000. This would mean that an eligible individual 50 and over would then have a concessional cap of \$55,000. (i.e. the higher concessional amount will also increase by the \$5,000 AWOTE adjustment).

**Keywords:**

- From 1 July 2012 the higher superannuation contribution cap for 50 years and over will now be set at \$ 25,000 over the general cap.
- No erosion of indexation

Using tax file numbers to find members and to consolidate multiple member accounts

**Summary:**

- TFNs will be able to be used to locate members' accounts from 1 July 2011 and as a means of identifying multiple accounts for possible amalgamation from 1 July 2012.

Trustees of superannuation funds and retirement savings accounts to use tax file numbers ("TFNs") for two purposes.

Firstly trustees will be able to use TFNs from 1 January 2012 to match accounts where a member has multiple accounts in a single superannuation fund. This will then allow the trustee to contact the member to determine whether they will consent for the multiple accounts to be amalgamated.

Secondly trustees will be able to use TFNs more readily from 1 July 2011 as a means of identifying a member. Currently TFNs may only be used for this purpose once several other methods of identification have been tried and found unsuccessful.

**Keywords:**

- TFNs can be used by super fund trustees from 1 July 2011 to locate members
- They can also be used from 1 July 2012 to locate multiple accounts for a single member

Freeze on Super co-contribution threshold continues



Summary:

- The indexation of the income thresholds for the phasing out of the superannuation co-contribution scheme will not occur in FY13, so the current income limits of \$31,920 for full access and \$61,920 for partial access remain.

Under the superannuation co-contribution scheme the Federal Government matches non-concessional contributions made by individuals with incomes below certain thresholds, up to a maximum co-contribution of \$1,000.

The existing freeze on indexation of the income thresholds used for the phasing down of the superannuation co-contributions is to be extended for one further year into FY2013, and so they remain as \$31,920 for the full contribution, with the final phase-out occurring at a taxable income of \$61,920.

The indexation will re-commence in FY14.



Keywords:

- Super co-contribution income levels remain unchanged for FY13.
- Indexation resumes for FY14.

Employer super payments on payslips



Summary:

- From 1 July 2012 employers will need to advise on payslips the superannuation actually paid for an employee.
- Super funds will advise both the employer and the employee where regular payments have ceased.

From 1 July 2012 employers will be required to include details of employer superannuation payments made by the employer for the employee. Further, each quarter both employers and employees will receive notification from the relevant superannuation fund if the regular payments have ceased.

It is intended that this will allow employees to know whether superannuation is being paid by their employers so that they can take action if a shortfall arises.

**Keywords:**

- Employers to advise employees of superannuation amounts paid
- Super Funds to advise employers and employees if super payments have ceased

Trusts

Special Disability Trusts

**Summary:**

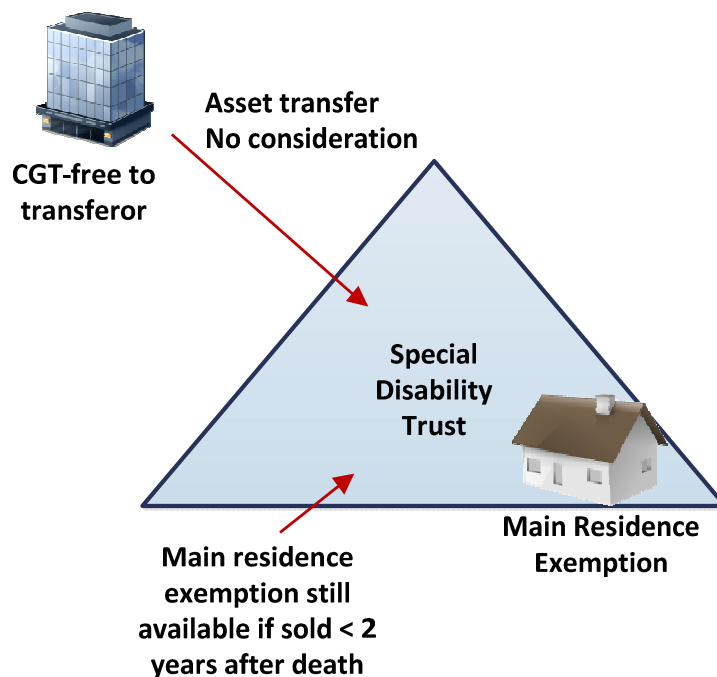
- Special Disability Trusts (SDTs) are set up for the long term care and accommodation of a person with severe disability.
- 2009-2010 Budget allowed the Trust to be taxed at the principal beneficiary's marginal tax rate instead of at s 99A 46.5% for amounts unexpended.
- 2011-2012 Budget expands these measures to make it easier to transfer assets into the trusts and expands the main residence exemption at death and for the holding to main residence in the Trust.
- All measures back dated to 2006-2007 when SDTs were first available.

The 2011-2012 Budget announces removal of impediments affecting Special Disability Trusts (**SDT**) to enable the family of a severely disable person to assist in providing long term care and accommodation.

These Special Disability Trusts have been available to be set up from 2006-2007 year under the Social Security Act 1991 or equivalent for the benefit of an eligible person with severe disability.

The measures announced:

- 2009-2010 Budget measure provided that a main residence exemption would be available to SDTs. This measure will be backdated to 2006-2007 year.
- If the principal beneficiary of the SDT dies then Capital Gains Tax (CGT) exemption will be provided for the beneficiary's main residence as long as it is disposed of within 2 years of the date of death.
- A CGT exemption will be available for assets transferred into the SDT for no consideration.
- Ensuring that there is equivalent taxation treatment amongst SDTs established under different Acts.



Keywords:

- Special Disability Trusts
- Removing impediments to the use of the trusts
- CGT exemption for transferring assets into the trust
- Main Residents exemptions for homes owned in the trust
- Main Residents exemption extended if property sold within 2 years if principal beneficiary dies.

Small Business Measures

Accelerated depreciation for motor vehicles for SBE's

On the 8 May 2011 in a joint announcement the Treasurer Wayne Swan together with the Assistant Treasurer and Minister for Financial Services and Superannuation Bill Shorten, and Nick Sherry the Minister for Small Business announced an instant tax write-off of the first \$5,000 of any motor vehicle purchased from 2012-13.

The announcement advised that the remainder of the purchase value of the vehicle can be transferred into the general small business depreciation pool, which is depreciated at 15 per cent in the first year and 30 per cent in later years.

The new small business instant write-off for the first \$5,000 of any motor vehicle will replace the Entrepreneurs Tax Offset (**ETO**).

Unlike the ETO the new tax reforms will be available to all small businesses, including sole traders and businesses operating through trusts, partnerships and companies.

**Keywords:**

- ETO replaced
- Immediate deduction of \$5,000 for motor vehicles purchased from 2012-13 for small businesses.
- Amount exceeding \$5,000 pooled in general small business pool and depreciated:
 - Year 1 - 15 percent
 - Year 2 and onwards - 30 percent.

PAYG Instalments to be reduced

Tax instalments paid by small business taxpayers under the PAYG system to be reduced by using the gross domestic product (GDP) method for one year.

PAYG instalments in 2012 will be set at 4% above a small businesses taxable income for the previous year, half the statutory rate that would otherwise have applied. This measure will only apply for one year and the statutory rate will return to normal for 2013 onwards.

Whilst not specifically announced in the Budget papers, other instalments where the Commissioner uses the GDP rate (such as, GST instalments) may also be impacted.

Vehicle write off

Small business taxpayers will be eligible for an immediate write-off of the first \$5,000 on the purchase of any motor vehicle acquired from the 2013 income year.

Small business depreciating assets

Depreciable assets acquired in 2013 onwards and valued at under \$5,000 will be eligible for immediate write-off.

Removal of long life pool

The long life pool to be removed from. Small businesses will be able to allocate all assets not eligible for immediate write-off to a single pool at a rate of 30%.

Corporate tax rate of 29%

Incorporated small business entities to have a reduced corporate tax rate of 29% from 2013.

Small business tax concessions amendments

For CGT events happening after 7.30 pm (AEST) on 10 May 2011 trusts will no longer be able to avoid being connected entities for the purpose of testing eligibility for the small business tax concessions solely because they do not own assets for their own benefit. In addition these changes will also ensure that some small businesses will be able to access the small business capital gains tax (CGT) concessions because the changes will make their business assets 'active'.

**Keywords:**

- PAYG instalments to be reduced
- First \$5,000 purchase price of motor vehicles can be written-off
- Long life asset pool to be abolished
- Incorporated small business entity tax rate of 29%
- Connected entities - Trusts - minor technical amendments

Not For Profit Entities

**Summary:**

- Tax Exemptions Apply for many Not for Profit entities.
- Other concessions exist including GST and FBT concessions
- The Government has announced changes to make it easier for the NFP Charities to meet their altruistic objectives.

Establishment of Australian Charities and Not For Profits Commission

The Government has announced that it will establish a one stop shop for the support and regulation of the NFP sector providing funding of \$53.6m over four years. The Commission will commence on 1 July 2012. It will initially be responsible for determining the legal status of groups seeking charitable, public benevolent institution and other NFP benefits on behalf of all Commonwealth agencies.

Better targeting Tax Concessions (businesses run by NFP entities)

The Government will reform the use of tax concessions by businesses run by NFP entities. Where the business activities profits are not directed to the NFP entities' **altruistic purposes** income tax will be payable. This measure will apply from 1 July 2011 and will initially affect only new unrelated commercial activities that commence after 7.30pm on 10 May 2011.

Existing unrelated commercial activities will continue to obtain tax concessions. The Government will consult on transitional arrangements with an intention to phase out over time.

Statutory definition of Charity

The Government will introduce a statutory definition of "charity" across all government agencies with effect from 1 July 2013. This will update the current reliance on the Elizabethan Statute of 1601 as the definition of charitable purposes.

**Keywords:**

- Establish an Australian Charities and NFP Commission
- Refine tax Concessions for businesses run by NFP entities
- Must direct profits for altruistic purposes to get tax concessions for unrelated commercial activities.
- Date of effect 1 July 2011. Special transitional rules for current activities

Capital Gains Tax (CGT)

Amendments to the scrip for scrip roll-over integrity rules



Summary:

- Subdivision 124-M scrip for scrip roll-over integrity measures to be tightened to include trusts, superannuation funds and life insurance companies.

The Government has announced that the scrip for scrip roll-over integrity provisions in Subdivision 124-M will be tightened to apply to trusts, superannuation funds and life insurance companies.

It is the understanding of the Government that some trusts, superannuation funds and life insurance companies consider that the integrity provisions do not apply to them as stakeholders, on the basis that they hold the interests for the benefit of their beneficiaries, rather than their own benefit.

The Government does not believe that this is the intended interpretation of the integrity provisions and will tighten the measures to ensure that they apply to all stakeholders.

This measure will apply from 7:30pm, 10 May 2011.



Keywords:

- Subdivision 124-M scrip for scrip roll-over relief;
- Integrity measures to be tightened to include trusts, superannuation funds and life insurance companies as stakeholders.

Income tax relief and roll-over for water reforms

Amendments will be made to provide CGT and capital allowance roll-over to ensure that taxation is not an impediment to water reforms implemented by State and Territory governments. Such State and territory reforms are intended to provide greater certainty to taxpayers about the application of the federal *Water Market Rules 2009*, remove unnecessary regulation and give water users flexibility to reconfigure their water delivery systems.

The measures will apply to income tax assessments for the 2009-10 income year and later income years.



Keywords:

- CGT and capital allowance roll-over relief to apply to State and Territory government water reforms
- To apply for 2009-10 and later assessments

A series of minor amendments will be made to ensure the proper functioning of the CGT and associated provisions.

Rollover for exchange of shares

Ensuring that rollover for the exchange of shares in one company for shares in another operates properly so there is a deferral in the profit or loss where the original shares are held on revenue account at the time of the exchange. This change will have effect from 7:30pm (AEST) on 10 May 2011.

Extending the rollover for certain disposals of assets by trusts

Roll over relief is to be allowed where a transferee company or trust holds rights, just before the disposal or transfer time, associated with a deed or similar document that is designed to facilitate the transfer of assets into the company or trust.

The changes to the rollover for the disposal of assets by a trust to a company will have effect for CGT events happening after 7:30pm (AEST) on 10 May 2011.

The changes to the rollover for the disposal of assets between certain trusts will have retrospective effect for CGT events happening on or after 1 November 2008.

Gains or losses from life insurance policies

To ensure that gains or losses arising from life insurance policies that are generally exempted from CGT are not then taxed under the ordinary income tax provisions by removing the exception to the CGT primary code rule for such gains or losses. This will remove uncertainty in the application of income tax to compensation or damages payments made under life insurance policies. The changes will have effect for CGT events arising in the 2006 income year and later income years.

Testamentary trust asset distributions

The ATO administrative practice of allowing a testamentary trust to distribute assets of the deceased person without triggering a CGT taxing point will be legislated. The income tax law in relation to deceased estates will also be rewritten using a principle based format and minor technical issues relating to deceased estates fixed. These changes will have effect on or after the day the legislation receives Royal Assent.

Discretion to extend two year deceased main residence period

The Commissioner will be provided with discretion to extend the 2 year ownership period in which a deceased individual's main residence must be disposed of in order to access the full main residence exemption.

Small business CGT concessions

Ensure that for the purposes of the CGT concession stakeholder test, taxpayers can have a non-zero direct small business participation percentage where:

- a) Shares in a company are held jointly by taxpayers; and
- b) A discretionary trust has not made a distribution in an income year where the trust had a tax loss or not net income for that year.

Exemption for renewable resources

Gains or losses from a **right** to a **financial incentive** granted to taxpayers under an Australian Government scheme encouraging **acquisition of renewable resource assets** or **preservation** of a part of an **environmental amenity** will be **exempt** from CGT.

This measure will apply from the **2008-09 and later** income years. It will also **disregard** the income tax **recoupment rules** under Division 20 of the *1997 ITAA* to ensure that the benefits are not clawed back through assessable income recovery amounts.



Keywords:

- CGT Exemption for
- Rights to financial incentives for Renewable resources
- Preservation of environmental amenity
- No assessable recoupment recognised
- From 2008-09 and later income years

International issues

Investor Manager Regime

The Government has announced an extension to the previously announced Investment Manager Regime and the income tax concessions.

The ATO will be prevented from making assessments for certain investment income of foreign managed funds for the 2010-11 income year where the fund has never lodged an Australian income tax return. The measure was previously announced by the Government on 17 December 2010 and related to 2009 and earlier income years.



Keywords:

- Investor Manager Regime extended
- 2010-11 year added
- ATO precluded from making assessments for foreign managed funds and certain investment income

Taxation of Financial Arrangements (TOFA)

Hedging Rules

The Government will make minor technical amendments to the TOFA rules in relation to the hedging rules to ensure they operate as intended. Under the TOFA Stage 3 and 4 regime, elections can be made that determine the tax treatment of certain financial arrangements. These elections include the reliance on the financial reports method and the hedging method. The hedging method takes priority over the reliance on the financial reports method.

The Government amendments will ensure that taxpayers who have elected to apply both of these methods, the hedging rules will only apply to the effective portion of the gains and losses on the hedging arrangement. Essentially the gains or loss on the hedge arrangement will be brought to account when the gain or loss is brought to account on the underlying transaction being hedged.

The date of effect of these amendments will be the income year to which the TOFA rules first apply to the taxpayer.

Functional Currency Elections

The Government has announced that it will amend the functional currency election to permit certain trusts and partnerships to be able to use this election. This means that the trust or partnership will calculate the net income in the foreign currency and convert the net income into \$A. This measure will apply from the date of Royal Assent of the amending legislation.

Securities Lending Arrangements

The Government has announced that the rules in relation to Securities Lending Arrangements (SLA's) will be amended as follows:

A lender will be treated as not having disposed of their securities under a SLA where:

- The borrower does not return the securities within 12 months due to insolvency; and
- No later than 30 days after the default (or such further time as the Commissioner allows) the lender restores their original position by using collateral received under the SLA to purchase identical securities.



Keywords:

- FINANCIAL ARRANGEMENTS
- TOFA - Hedging election applies to the effective portion of the hedge gain or loss where both hedging election and reliance on financial reports method chosen.
- TOFA - Functional Currency expanded to certain trusts and partnerships
- SLA's No disposal where lender restores to original position by acquiring identical securities after default by borrower due to insolvency

Companies

Debt/equity rules: proposed amendments

The Government will amend the debt/equity tax rules to restrict the application of an integrity provision that deems an interest from an arrangement that funds a return through connected entities to be an equity interest under certain circumstances. The intent of the changes is to ensure that this provision will only apply to arrangements where both the purpose and effect is that the ultimate investor has, in substance, an equity interest in the issuer company. Additionally, the integrity provision will not apply where the Commissioner considers that it would be unreasonable for the provision to apply.

The Government has extended the debt/equity transitional period for Upper Tier 2 capital instruments to 1 July 2011.

**Keywords:**

- Debt/equity integrity provision to be restricted in regards to interests through connected entities
- Transitional period for Upper Tier 2 capital instruments extended to 1 July 2011

Improvements to the company loss recoupment rules

**Summary:**

- The **continuity of ownership test will be amended** so that ownership does **not need to be traced through certain superannuation entities**.
- **Technical deficiencies** in the company loss rules in relation to certain entities interposed between certain stakeholders and the loss company **will be removed**.
- **Loss integrity rules will be tightened** to ensure that all membership interests in an entity are treated as a single entity when applying the low value asset exclusions.

The Government will **amend the continuity of ownership test** effective **from 1 July 2011** so that **ownership does not need to be traced through certain superannuation entities**. This measure should improve the operation of the continuity of ownership test and make it easier for companies to satisfy.

Certain technical deficiencies within the company loss rules will also be removed in the following circumstances where:

- An entity is interposed between certain stakeholders and the loss company in certain circumstances;
- An interposed entity demerges;
- An interposed foreign entity issues bearer depository receipts; or
- A corporate change arising from the issue of new shares happens.

The **loss integrity rules will also be tightened** to ensure that all membership interests in an entity are treated as a single entity when applying the low value asset exclusions.

**Keywords:**

- Continuity of ownership test to be amended so that ownership does not need to be traced through certain superannuation entities.

Designated Infrastructure Projects and losses



Summary:

- Certain approved infrastructure projects will obtain relief from the continuity of ownership test and the same business test in relation to losses incurred.
- These losses will also be indexed at the bond rate to preserve their real value until recoupment.

Infrastructure Projects have significant lead times and commercial uncertainty.

Infrastructure projects with long lead times experience changes to the investor base over time. This change can lead to the project entity reaching a point where it will no longer pass the continuity of ownership test, and any changes in business operation over time can also result in the same business test being failed.

Further, the long period of time until losses are able to be recouped erodes the real value of the losses incurred.

In order to address these issues, infrastructure projects that are designated as being of national significance will:

- Be exempted from the continuity of ownership test and same business test in relation to the recoupment of losses incurred; and
- Have their losses indexed at the government bond rate.

These rules will apply from Royal Assent of the relevant legislation. Projects will be approved under the related process from that date until 30 June 2017.



Keywords:

- Specifically approved infrastructure projects will
 - Be exempted from the COT and SBT loss recoupment tests; and
 - Have their losses indexed to preserve their real value.

Tax compliance – countering fraudulent phoenix activities companies

The tax law will be strengthened to counter fraudulent phoenix activity involving intentional accumulation of debts by a company for the purpose of improving cash flow or wealth and subsequent liquidation to avoid payment of the debt.

The business then continues to operate under another entity, whilst being controlled by the same individual or group. This avoids the entity from being liable for the previous debts.

From 1 July 2011:

- The director penalty regime will be extended to superannuation guarantee amounts, resulting in directors being personally liable in scenarios where the company fails to make superannuation contributions for employees.
- The ATO will be given the power to recover against directors under the director penalty regime and will not be required to provide a 21 day grace period for certain unpaid company liabilities, which remain unreported after three months of the due date; and
- In some circumstances, directors and associates of directors will be prevented from obtaining credits for withheld amounts in their individual income tax returns where the company has failed to pay the withheld amounts to the ATO.



Keywords:

- Director penalty regime extended to superannuation guarantee amounts
- Directors personally liable for company failure to pay employee super
- Directors/associates prevented from obtaining credits for amounts withheld in individual return where company not remitted these amounts to ATO.
- Applicable from 1 July 2011.

Primary Producers

Farm Management Deposits - early access as a result of natural disasters and improved administration

Primary producers that have been affected by the natural disasters will be able to access their farm management deposits within 12 months of making a deposit and will still be able to maintain the concessional tax treatment. This measure provides those affected primary producers the same taxation relief as available to primary producers who are faced with severe drought.

Further changes dealing with the administration of FMD's will also be introduced whereby more timely and frequent reporting will be required by authorised deposit taking institutions (**ADI's**) that hold FMD's. In addition, primary producers will be permitted to hold FMD's with more than one financial institution.



Keywords:

- Primary producers affected by natural disasters able to access FMD's within 12 months of deposit
- Concessional tax treatment still applies
- Same treatment as primary producers affected by severe drought
- ADI's holding FMD's required to report frequently and on a timely basis
- Primary producers permitted to hold FMD's with more than one financial institution.

Fringe Benefits Tax (FBT)

Reforms to car fringe benefit rules

The current statutory formula sliding scale rates to be replaced with a single rate of 20% regardless of the number of kilometres travelled. This measure will apply to new vehicle contracts entered into after 7:30pm (AEST) on 10 May 2011, and will be phased in over four years as per the following table:

FBT statutory rate method					
	Statutory rate (x cost of car to determine person's car fringe benefit)				
Distance travelled during FBT year (1 April - 31 March)	Existing contracts (%)	New contracts from 10 May 2011 (%)	New contracts from 1 April 2012 (%)	New contracts from 1 April 2013 (%)	New contracts from 1 April 2014 (%)
0 - 15,000km	26	20	20	20	20
15,000 - 24,999km	20	20	20	20	20
25,000km - 40,000km	11	14	17	20	20
More than 40,000km	7	10	13	17	20

The 20% rate reflects the current rate for vehicles that travel between 15,000 and 25,000 kilometres a year.

No changes have been made to the operating cost method.



Keywords:

- Flat statutory rate of 20% to apply to new vehicle contracts entered into on or after 7:30pm (AEST) on budget night
- 20% rate to be phased on over 4 years
- No changes to operating cost method

GST measures

GST and Luxury Car Tax

No significant GST reform in the 2011-12 Budget, but a number of minor tweaks and adjustments. The main GST change with any revenue impact is that relating to new residential premises.

New Residential Premises

Amendments will be made, consistent with the Government's announcement on 27 January 2011 ([link](#)), to restore the policy intent of the law following the 2010 decision in the [Gloxinia Case](#).

The amendments will ensure that:

- Effective from 3 October 2007, new residential premises constructed under development lease arrangements are treated as taxable supplies;
- from 1 July 2000, the granting of individual strata lot leases over newly constructed residential premises is not sufficient by itself to make future supplies of the premises input taxed; and
- from 1 July 2000, any change in property title arrangements will not result in the premises once again becoming new residential premises.

Transactions entered into before 27 January 2011 that are consistent with the case will be subject to transitional arrangements, but will not be disadvantaged.

Increased revenue from this measure is expected to be in the order of \$60m over 5 years.

Mortgage in Possession

Division 105 of the GST law will be amended to clarify that Division 105 will operate to the exclusion of Division 58 (dealing with representatives of incapacitated entities) where a mortgagee in possession or control sells the property of a corporation. No revenue impact, but should reduce compliance costs for impacted taxpayers.

Supplies to Health Insurers

Certain supplies to health insurers in the course of settling health insurance claims will be GST-free (effective from 1 July 2000). No revenue impact, and restores the status quo.

Government response to Board of Taxation report: minor changes

The start date of a number of the GST recommendations announced in the 2009-10 Budget that were due to commence with effect from 1 July 2011 will be deferred. The new start date will be the first quarterly tax period after Royal Assent. Measures affected:

- adopt the income tax self assessment regime for indirect taxes and refresh the period of review;
- reform the change of use adjustments;
- allow adjustments for pre-registration acquisitions;
- clarify the treatment of tax law partnerships;
- simplify the GST grouping membership rules, including grandfathering of current membership rules, and allowing grouping of non-operating holding companies and trusts;
- amending indirect tax sharing agreement provisions; and
- introduce a reverse charge for supplies of going concerns and farmland.

The deferral will allow additional time to develop these in consultation with taxpayers. Revenue impact unquantifiable.

The option for taxpayers to treat business-to-business supplies as taxable (as also announced in the 2009 Budget, and originally scheduled to take effect 1 July 2010) will not proceed at this stage. This will allow more extensive consideration of the possible use of a reverse-charge mechanism or GST-free treatment for such transactions.

GST Instalment System for those in net refund position

The GST law will be amended to allow taxpayers in a net refund position to access the GST instalment system. Such taxpayers would effectively have a zero quarterly instalment and would reconcile its GST in an annual return. This change will be effective following Royal Assent. Minimal revenue impact.

Luxury Car Tax

The LCT law will be amended to allow eligible entities, such as endorsed public museums and art galleries, to import cars free from LCT. This will ensure consistent treatment of imports by these entities that already access duty-free and GST-free importations of works of art and collectors pieces. The change will also bring Australia in line with its international treaty obligations.



Keywords:

- Goods and Services Tax;
- new residential premises;
- mortgagee in possession;
- Division 105;
- GST instalment system;
- Luxury Car Tax.

ATO Compliance Issues

Reporting taxable Contractor Payments

From 1 July 2012, business in the **building and construction** industry will be required to report annually to the ATO payments made to contractors in the industry along with the ABN of the contractor.

The ATO will be provided with an additional \$46.4m to data match and target for reviews and audits or better education and assistance.

The Government will also undertake consultation to examine a reporting regime for the **cleaning industry**.

Refund Fraud

The ATO will be provided with additional funding of \$56.4m to prevent instances of over-claiming refunds being issued. The ATO will work on detecting and preventing the issue of such fraudulent refunds **before** they are issued.

Reporting Government Payments

The ATO will be provided with an additional \$43.3m to monitor and collect information on Government payments to ensure tax obligations are being met.



Keywords:

- Increased ATO Compliance Activities
- Reporting of Contractor Payments in the Building and Construction industry from 1 July 2012
- Early detection and prevention of issue of fraudulent refunds
- Monitoring and data matching Government payments



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