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PERSONAL TAXATION

Personal tax rates unchanged for 2023–2024

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

The 2023–2024 tax rates and income thresholds for residents (unchanged since 2021–2022) are:

- taxable income up to $18,200 – nil;
- taxable income of $18,201 to $45,000 – nil plus 19% of excess over $18,200;
- taxable income of $45,001 to $120,000 – $5,092 plus 32.5% of excess over $45,000;
- taxable income of $120,001 to $180,000 – $29,467 plus 37% of excess over $120,000; and
- taxable income of more than $180,001 – $51,667 plus 45% of excess over $180,000.

Stage 3: from 2024–2025

The Budget did not announce any changes to the Stage 3 personal income tax changes, which are set to commence from 1 July 2024, as previously legislated. From 1 July 2024, the 32.5% marginal tax rate will be cut to 30% for one big tax bracket between $45,000 and $200,000. This will more closely align the middle tax bracket of the personal income tax system with corporate tax rates. The 37% tax bracket will be entirely abolished at this time.

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

Low income offsets:

Low and middle income tax offset (not extended)

The 2023–2024 Budget did not announce any extension of the low and middle income tax offset (LMITO) beyond the 2021–2022 income year. The LMITO has now ceased and been fully replaced by the low income tax offset (LITO).

With no extension of the LMITO announced in this Budget, 2021–2022 was the last income year for which that offset was available.

As a result, low-to-middle income earners may see their tax refunds from July 2023 reduced by between $675 and $1,500 (for incomes up to $90,000 but phasing out up to $126,000), all other things being equal.

Low income tax offset (unchanged)

While the LMITO has now ceased, low and middle income taxpayers remain entitled to the low income tax offset (LITO). No changes were made to the LITO in the 2023–2024 Budget, and so it will continue to apply for the 2023–2024 income year and beyond.

The LITO was intended to replace the former low income and low and middle income tax offsets from 2022–2023, but the new LITO was brought forward in the 2020 Budget to apply from the 2020–2021 income year.

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

Medicare levy low-income thresholds for 2022–2023

For the 2022–2023 income year, the Medicare levy low-income threshold for singles will be increased to $24,276 (up from $23,365 for 2021–2022). For couples with no children, the family income threshold will be increased to $40,939 (up from $39,402 for 2021–2022). The additional amount of threshold for each dependent child or student will be increased to $3,760 (up from $3,619).

For single seniors and pensioners eligible for the seniors and pensioners tax offset (SAPTO), the Medicare levy low-income threshold will be increased to $38,365 (up from $36,925 for 2021–2022). The family threshold for seniors and pensioners will be increased to $53,406 (up from $51,401), plus $3,760 for each dependent child or student.

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

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

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

Government to waive student loans impacted by delayed records transfer to ATO

The Government will forgo $5.4 million in receipts over five years from 2022–2023 (and $15.5 million over two years to 2033–2024) to support students affected by a delay in the transfer of some historical tertiary education loan records to the ATO. This will mean waiving the following debts for affected loans, as determined at the date of transfer to the ATO:

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

Energy price relief plan

There has been much interest in the Government's plan to address rising energy prices, so although it's not directly linked to taxation, here is a brief outline.

The Government will provide $1.5 billion over five years from 2022–2023 (and $2.7 million per year ongoing) to reduce the impact of rising energy prices on Australian households and businesses by providing targeted energy bill relief and progressing gas market reforms.

Funding includes:

- $1.5 billion over two years from 2023–2024 to establish the Energy Bill Relief Fund to support targeted energy bill relief to eligible households and small business customers, which includes pensioners, Commonwealth Seniors Health Card holders, Family Tax Benefit A and B recipients and small business customers of electricity retailers;
- $14.7 million over five years from 2022–2023 (and $2.7 million per year ongoing) to the Australian Competition and Consumer Commission (ACCC) to administer and enforce compliance with a temporary cap of $12 per gigajoule on the price of gas and to develop and implement a mandatory gas code of conduct;
- $9.5 million over three years from 2022–2023 for the Australian Energy Regulator to monitor coal and gas markets across the National Electricity Market.

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

BUSINESS TAXATION

Small business instant asset write-off: $20,000 threshold for 2023–2024

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

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

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

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

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

Given that temporary full expensing will not be available in 2023–2024, the instant asset write-off rules come back into play. The threshold is currently $1,000 (but note again, this was not relevant while temporary full expensing allowed the cost of any qualifying asset to be written off immediately – which of course was available to other categories of taxpayers, not just small business entities).

Small business entities that use the simplified depreciation rules in Subdiv 328-D of the *Income Tax Assessment Act 1997* are entitled to an outright deduction for the "taxable purpose proportion" of the "adjustable value" of a depreciating asset if:

- the asset is a "low cost asset" (and is not an excluded depreciating asset); and

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- the taxpayer starts to hold the asset when the taxpayer is a small business entity (and, for a limited period, if the taxpayer also qualifies as a medium sized business).

The deduction is available in the income year in which the taxpayer first uses the asset, or first installs it ready for use, for a taxable purpose. The deduction is known as the "instant asset write-off".

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

Small Business Energy Incentive: 20% bonus deduction

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

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

However, certain exclusions will apply, such as:

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

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

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

Full details of eligibility criteria will be finalised following consultation.

TAX COMPLIANCE AND INTEGRITY

Small business lodgment penalty amnesty

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

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

Integrity measure to target unpaid tax and super

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

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

GST compliance program extended

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

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

SUPERANNUATION

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

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

The ATO will receive additional resourcing (some $40.2 million) to help it detect unpaid super payments earlier. It is estimated that $3.4 billion worth of super went unpaid in 2019–2020.

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

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

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

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

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In addition, fund income taxable as NALI will exclude contributions to effectively exempt large APRA regulated funds from the NALI provisions for both general and specific expenses of the fund. Expenditure that occurred prior to the 2018–2019 income year will also be exempted.

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

A Government consultation paper released on 23 January 2023 indicated that any proposed legislative amendments in relation to the NALE rules would apply from 1 July 2023 (following the expiry of the ATO's transitional compliance approach for general expenses (PCG 2020/5) for the period 2018–2019 to 2022–2023).

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

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

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

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

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

However, the Budget Papers did not reveal any further details other than to note its estimate that the measure will increase receipts by $950 million, and increase payments by $47.6 million, over the five years from 2022–2023.

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

Currently, fund earnings from superannuation in the accumulation phase are taxed at up to 15%. This 15% tax rate will continue for total superannuation balances below $3 million but individuals will pay an extra 15% for balances above that amount (around 80,000 people).

In response to the Government's consultation paper, the SMSF Association has called for super funds to be given the option of reporting "actual earnings" rather than the proposed model which would calculate earnings based on the movement in the member's TSB, which by definition, includes "unrealised gains". In its submission, the Association set out numerous reasons why certain amounts would need to be excluded from an individual's TSB to avoid "earnings" being overstated under the proposed model.

Super consumer advocate funding; ACCC super complaints mechanism

The Government will provide $5 million over five years from 2023–2024 to continue a superannuation consumer advocate to improve members' outcomes. This funding will be offset by an increase in the Superannuation Supervisory Levy administered by APRA.

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

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