

# Federal Budget Report 2015

Expanded edition with insights from  
the Deloitte budget team

Friday 15 May 2015



Wolters Kluwer

**Deloitte.**

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## Highlights

### 2015/16 Federal Budget Highlights

The Federal Treasurer, Mr Joe Hockey, handed down his second budget at 7:30 pm (AEST) on 12 May 2015. In general, the budget is aimed at supporting small business and growing jobs (\$5.5b including \$5b of tax relief), supporting families (\$4.4b funding boost), ensuring fairness of tax and benefits, national security and progressing budget repair in a measured way.

The full Budget papers are available at [www.budget.gov.au](http://www.budget.gov.au) and the Treasury ministers' media releases are available at [ministers.treasury.gov.au](http://ministers.treasury.gov.au).

Here are the tax, superannuation and social security highlights.

### Multinational profit shifting and international

- A targeted multinational anti-avoidance law will be introduced into the general anti-avoidance provisions of the Income Tax Assessment Act 1936.

- The maximum administrative penalties for companies that enter into tax avoidance and profit shifting will be doubled.
- The OECD's new transfer pricing documentation standards will be implemented from 1 January 2016.
- A voluntary corporate disclosure code will be developed to facilitate greater compliance with the tax system.
- To further combat multinational tax avoidance, the government will tackle treaty abuse in its treaty practices, consult on the development of anti-hybrid rules, exchange information with other countries on harmful tax practices, and further fund the ATO's profit-shifting investigations.
- The reforms to modernise the Offshore Banking Unit (OBU) regime and targeted integrity measures will proceed.

## Small business

- The tax rate for companies with an aggregated annual turnover of less than \$2m will be reduced by 1.5 percentage points (ie from 30% to 28.5%) from the 2015/16 income year. A 5% tax discount for individual taxpayers with business income from an unincorporated business with an aggregated annual turnover of less than \$2m will also be introduced from the 2015/16 income year.
- The threshold below which small businesses can claim an immediate deduction for the cost of assets will be temporarily increased from \$1,000 to \$20,000. The rules preventing small businesses from re-entering the simplified depreciation regime for five years after opting not to use it will also be temporarily suspended.
- Start ups will be able to claim an immediate deduction for professional expenses associated with starting a business from the 2015/16 income year.
- Further changes will be made to the taxation of employee share schemes.
- Other measures to encourage business start-ups and entrepreneurship will be introduced.
- Capital gains tax relief will be available to small businesses for a CGT liability arising from the alteration of their legal structure from the 2016/17 income year.
- Primary producers will be able to claim accelerated depreciation for water facilities, fodder storage and fencing from 1 July 2016.
- The fringe benefits tax exemption for portable electronic devices used primarily for work purposes will be expanded from 1 April 2016.

## Fringe benefits tax and managed investment trusts

- A separate, single grossed-up cap of \$5,000 will be introduced for salary sacrificed meal entertainment and entertainment facility leasing expenses (meal entertainment benefits) for employees of not-for-profits.
- The start date of the new managed investment trusts (MITs) regime has been deferred to 1 July 2016 but MITs can choose to apply the new regime from 1 July 2015.

## GST and luxury car tax

- Offshore supplies of services and intangibles to Australian consumers will be subject to GST from 1 July 2017.
- The previously announced measure to implement reverse charge rules for going concerns and farmland sales will not proceed.
- The government will provide funding to the ATO over three years from 2016/17 to continue to promote GST compliance.
- A luxury car tax exemption will apply to cars acquired by endorsed public museums and public art galleries.

## Individuals and families

- The methods of calculating work-related car expense deductions will be modernised from the 2015/16 income year.
- From 1 July 2016, the income tax exemption that is currently available to government employees who earn income while delivering Official Development Assistance overseas for more than 90 continuous days will be removed.
- From 1 July 2016, the tax residency rules will be changed to treat most people who are temporarily in Australia for a working holiday as non-residents for tax purposes, regardless of how long they are here.
- Income tax relief will be provided for Australian Defence Force personnel deployed on Operations AUGURY and HAWICK.
- The Medicare levy low-income thresholds for singles, families and single seniors and pensioners will be increased from the 2014/15 income year.
- From 1 July 2015, the zone tax offset will exclude “fly-in fly-out” and “drive-in drive-out” (FIFO) workers where their normal residence is not within a “zone”.
- Two organisations have been added to the list of specifically listed deductible gift recipients and two organisations have had their listings extended.
- The government will not be proceeding with elements of the 2014/15 Budget measure that relate to the pension income test free areas and deeming thresholds.
- A new Child Care Subsidy will be introduced from 1 July 2017 as part of reforms to the child care system.
- Families will no longer be eligible for subsidised child care or the Family Tax Benefit Part A end-of-year supplement unless their child is up-to-date with all childhood immunisations.
- The ability for individuals to access government assistance in the form of the existing Parental Leave Pay (PLP) scheme, in addition to any employer-provided parental leave entitlements, will be removed, from 1 July 2016.
- The Family Tax Benefit (FTB) Part A large family supplement will cease from 1 July 2016.

- From 1 January 2016, families will only be able to receive Family Tax Benefit Part A for six weeks in a 12-month period while they are overseas.

## Superannuation

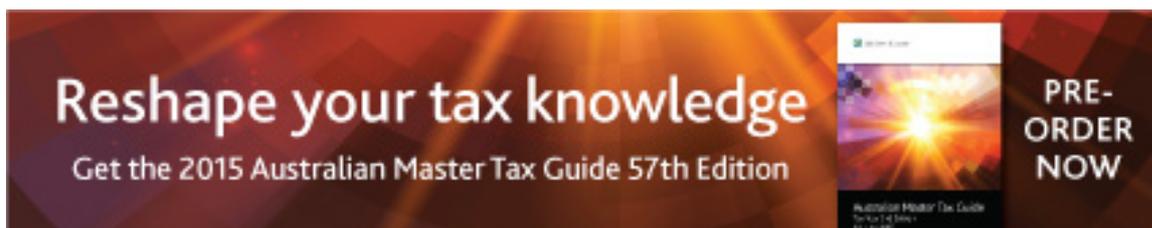
- Early access to superannuation will be provided to people with a terminal medical condition with effect from 1 July 2015.
- A package of measures will be implemented to remove redundant superannuation reporting obligations and to streamline administrative arrangements for lost and unclaimed superannuation.
- The supervisory levies paid by financial institutions will increase.

## Other measures

- An additional \$130.9m will be provided to the ATO over four years (including capital of \$35.6m) to deliver an improved experience for clients.
- The Inspector-General of Taxation's office will receive additional funding exceeding \$14.6m over five years to support its operations.
- The Global Infrastructure Hub will be specifically listed as an income tax exempt entity.

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## Multinational profit shifting and international

### New multinational anti-avoidance law to be introduced

An exposure draft Bill has been released to introduce a multinational anti-avoidance law into the general anti-avoidance provisions in Pt IVA of the Income Tax Assessment Act 1936. The Draft Tax Laws Amendment (Tax Integrity Multinational Anti-avoidance Law) Bill 2015 intends to counter the erosion of the Australian tax base by multinational entities using artificial or contrived arrangements to avoid the attribution of business profits to a taxable permanent establishment in Australia.

According to the proposed measure, the anti-avoidance rules will apply if in connection with a scheme:

- a non-resident entity derives income from the making of a supply of goods or services to Australian customers, with an entity in Australia supporting that supply, and
- the non-resident avoids the attribution of the income from the supply to a permanent establishment in Australia.

For the multinational anti-avoidance law to apply, it must be reasonable to conclude that the division of activities between the non-resident entity, the Australian entity, and any other related parties has been designed to ensure that the relevant taxpayer is not deriving income from making supplies that would be attributable to an Australian permanent establishment.

Additionally, the relevant taxpayer, who entered into or carried out the scheme, must have done so for the principal purpose, or for one of the principal purposes, of enabling a taxpayer to obtain a tax benefit, or both to obtain a tax benefit and to reduce other tax liabilities under Australian law (other than income tax) or under a foreign law.

Where a scheme is captured by the multinational anti-avoidance law, the Commissioner has the power to look through the scheme and apply the tax rules as if the non-resident entity had been making a supply through an Australian permanent establishment. This includes the business profits from the supply that would have been attributable to an Australia permanent establishment and obligations arising under royalty and interest withholding tax (for the relevant taxpayer or another taxpayer).

To reduce compliance costs and provide certainty, the new measure only applies to non-resident entities that have annual global revenue of over AU\$1b in the relevant income year in which they sought to obtain a tax benefit under the scheme.

In addition, the multinational anti-avoidance law will only apply to non-resident entities that are, or have a related entity (or entities) in their corporate structure that are, subject to no corporate tax or a low corporate tax rate (either under the law of a foreign country or through preferential regimes).

Carve-outs to this condition apply where the non-resident can show that:

- the activities of the entity in that jurisdiction (or of each of those entities if there is more than one entity in a no or low tax jurisdiction) are not related directly or indirectly to the Australian supply, or
- the entity (or each of the entities in the no or low tax jurisdiction) has substantial economic activity in the no or low tax jurisdiction in relation to those Australian supplies relative to the profits subject to no or low corporate tax in that jurisdiction.

The measures are proposed to apply to tax benefits obtained from 1 January 2016 (under both new and existing schemes). The measure has an unquantifiable gain to revenue over the forward estimates period.

## INSIGHT

### Implications

If enacted in a manner consistent with the exposure draft legislation, the proposed measures have the **potential to significantly extend the scope of Australia's taxing rights** over multinational enterprises selling to unrelated customers in Australia. The measures will be incorporated into Australia's anti-

avoidance provisions which generally take precedence over Australia's tax treaties. Although principally focused on foreign owned groups, the measures could apply to an Australian parented group, which for example, had a foreign subsidiary which sold to unrelated customers in Australia.

Where operative, the measure could result in an Australian withholding tax liability in respect of interest or royalties payable between two non-Australian entities. Depending on the facts, the withholding tax liability could be the significant impact of the announcement. The potential operation of relevant double tax treaties would need to be addressed. Coupled with the ability to impose a fine equal to 100% of unpaid tax, plus interest, the measures could have a material impact on affected multinationals.

These measures represent a fundamental shift in Australia's approach to addressing multinational tax avoidance. As evidenced in other Budget measures, Australia is moving swiftly on base erosion and profit shifting (BEPS) matters, and in respect of Action 7 on permanent establishments, is running ahead of the BEPS process.

### Action required

Multinational enterprises will need to carefully consider these measures as the law is further developed and key concepts in the law are defined. A proper analysis of whether the rules could operate will be an extensive exercise, requiring a thorough understanding, and documentation, of the global supply chain and the activities of entities in Australia and overseas. Affected enterprises may also wish to make a submission to Treasury. Submissions are due by 9 June 2015.

Consideration should also be given to the potential financial statement impacts of the measures, such as for the purposes of FIN 48 reporting by US entities.

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*Source: Budget Paper No 2, p 14-15; and exposure draft to Tax Laws Amendment (Tax Integrity Multinational Anti-avoidance Law) Bill 2015.*

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## Stronger penalties for multinational tax avoidance

The maximum administrative penalties that can be applied by the Commissioner to large companies that enter into tax avoidance and profit shifting schemes will be doubled. The increased penalties, under Sch 1 to the Taxation Administration Act 1953, will help to deter tax avoidance and will apply for income years commencing on or after 1 July 2015.

This measure will apply to companies with global revenue of \$1b or more, and it is estimated to have an unquantifiable gain to revenue over the forward estimates period.

Penalties will not change for taxpayers who have a "reasonably arguable" tax position, as defined under Sch 1.

*Source: Budget Paper No 2, p 16.*

## OECD's transfer pricing documentation standards to be implemented

The OECD's new transfer pricing documentation standards will be implemented from 1 January 2016.

Under the new documentation standards, the ATO will receive the following information on large companies that operate in Australia:

- a country-by-country report showing information on the global activities of the multinational, including the location of its income and taxes paid
- a master file containing an overview of the multinational's global business, its organisational structure and its transfer pricing policies, and
- a local file that provides detailed information about the local taxpayer's intercompany transactions.

Together, these reports will provide the ATO with a global picture of how multinational entities operate, assisting it to identify multinational tax avoidance.

This measure will apply to companies with global revenue of \$1b or more.

The government will provide the ATO with \$11.3m over the forward estimates period to implement the new standards. This measure is estimated to have an unquantifiable gain to revenue over the forward estimates period.

### INSIGHT

#### Implications

At present, the ATO receives information disclosing an Australian entity's transfer pricing methodologies and approach to international related party dealings, which is lodged with the entity's income tax return. The entity's supporting documentation, policies and detailed information on its related party dealings (which could be considered broadly similar to the content of a 'local file') are not disclosed, unless information is formally requested as part of a review or audit.

As a result, the information received by the ATO is somewhat limited in scope.

For an Australian company, the country-by-country report will be required to be filed with the ATO. The OECD implementation guidance under Action item 13 recommends the master file and local file be shared directly with relevant tax authorities in each jurisdiction. The need to produce and provide a master file and local file to relevant tax authorities raises additional compliance obligations.

As a result, the ATO and other global tax authorities will receive significantly more information regarding an entity's transfer pricing approach, making it possible for them to compare outcomes between jurisdictions and thereby target enterprises for appropriate reviews and audit activity. We expect the measures will drive a significant increase in audit activity across a range of industries.

## Action required

Multinational groups subject to the proposed rules should consider how the new documentation requirements will impact their current processes and systems, and determine how best to gather relevant data so as to comply with the requirements.

These groups should also anticipate the questions that global tax authorities will begin to ask, based on the data provided. Having identified areas of risk, companies should then assess their audit readiness with respect to their transfer pricing policies, existing structures and documentation.

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Source: Budget Paper No 2, p 15.

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## Voluntary corporate disclosure code to be developed

The government will work with business to develop a voluntary code to promote greater public disclosure of tax information by large corporates. The voluntary code is designed to highlight companies that are paying an appropriate share of taxation, and to discourage companies from engaging in aggressive tax avoidance.

Although some companies are leading the way by voluntarily disclosing their tax information to the community, the government would like more companies, especially large multinationals operating in Australia, to do so. The voluntary code complements the country-by-country reporting requirements under new transfer pricing documentation standards to be introduced from 1 January 2016.

The Board of Taxation will lead the development of the transparency code. Progress will be monitored and the government will consider further changes to the law if required.

Source: Treasurer's press release "Voluntary Corporate Disclosure Code", 12 May 2015; and "Fairness in Tax and Benefits", p 8, 12 May 2015.

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## Combating multinational tax avoidance – other measures

To further combat multinational tax avoidance, the government will tackle treaty abuse in its treaty practices, consult on the development of anti-hybrid rules, exchange information with other countries on harmful tax practices, and further fund the ATO's profit-shifting investigations.

### Treaty abuse rules

Although Australia already includes anti-abuse rules in its tax treaties, the government will act to incorporate the OECD's recommendations on tackling treaty abuse into its treaty practice.

A paper issued in September 2014 on Action Point 6 of the OECD's wider Base Erosion

and Profit Shifting (BEPS) Action Plan recommended limitation of benefits provisions and anti-abuse provisions in model double tax conventions. These provisions are designed to prevent multinational enterprises structuring business operations to take advantage of jurisdictions with favourable tax treaties.

### **Anti-hybrid rules**

The Board of Taxation will consult on the implementation of the OECD's draft plan to tackle the problem of multinationals claiming a tax deduction in one country but not paying tax in another.

### **Harmful tax practices – information exchange**

The ATO has commenced the exchange of information on tax deals provided to multinationals by other countries, that may contribute to tax avoidance in Australia.

Some countries provide preferential tax deals to multinationals to attract their business, which may be harmful to other countries. According to the OECD, Australia does not engage in any harmful tax practices.

### **Funding profit-shifting investigations**

The ATO will be provided with \$87.6m over the next three years to continue the International Structuring and Profit Shifting programme. The programme has so far raised over \$250m in tax liabilities and is estimated to raise a total of \$1.1b.

## **INSIGHT**

### **Implications**

The budget is Australia's first BEPS-focused budget. The Government has foreshadowed the adoption of aspects of six BEPS Action plans on a fast track basis, prior to the finalisation of the BEPS process:

- GST on the offshore supplies of services and intangibles (Action Item 1);
- Anti-hybrid rules (Action Item 2);
- Harmful tax practices and exchange of rulings (Action Item 5);
- Treaty abuse rules (Action Item 6);
- Multinational anti-avoidance measures (Action Item 7); and
- Transfer pricing documentation standards (Action Item 13).

Australia is leading the way on BEPS implementation, as part of a wider focus on the taxation of multinationals and following on from Australia's tenure as president of the G20 during 2014, when a number of BEPS reports relating to Budget measures were produced.

The measures announced in respect of GST, multinational anti-avoidance and transfer pricing documentation contain commitments to specific commencement dates.

The Government has also provided a firm commitment to both treaty abuse and harmful tax practice initiatives, while no specific commencement date has been provided in respect of anti-hybrid rules.

Australia has taken a very proactive stance in committing to these measures in

advance of the completion of all of the BEPS project deliverables, which are due from the OECD team by the end of 2015.

### Action required

Taxpayers must now begin to rigorously assess the potential impact of the BEPS measures on their current structures, documentation and approach to tax risk management.

Tax directors, audit committees and boards of directors have been put on notice that BEPS related measures are coming and Australia intends to determinedly pursue these issues, as part of the first wave of BEPS-adopters.

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*Source: Budget 2015 "Fairness in Tax and Benefits", p 4 and 8, 12 May 2015.*

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## OBU reforms to proceed

The reforms to modernise the Offshore Banking Unit (OBU) regime and targeted integrity measures will proceed. This will apply to income years commencing on or after 1 July 2015.

The law will be amended to modernise the OBU tax concession by:

- updating the list of eligible activities to better target genuine mobile financial sector activities by including, for example, leasing arrangements, and
- updating the method of allocating certain expenses between the operations of a taxpayer's domestic banking unit and the OBU to ensure expenses and revenue are properly matched.

The law will also be amended to improve the integrity of the regime by:

- limiting the availability of the OBU concession by constraining the ability for the domestic bank to transfer ownership of a foreign subsidiary to the OBU part of the bank
- ensuring internal financial dealings (eg between the OBU part of an Australian bank and the offshore branch of the bank) are priced on an arm's length basis, and
- codifying the "choice principle" to remove uncertainty for taxpayers as recommended by the Johnson Report.

*Source: Budget Paper No 2, pp 24-25.*

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# Small business

## Small business tax rate cuts

The tax rate for companies with an aggregated annual turnover of less than \$2m will be reduced by 1.5 percentage points (ie from 30% to 28.5%) from the 2015/16 income year. However, the maximum franking credit rate for a distribution will remain at 30%.

Further, a 5% tax discount will be introduced for individual taxpayers with business income from an unincorporated business, such as a sole trader, trust or partnership, that has an aggregated annual turnover of less than \$2m. This measure will also apply from the 2015/16 income year.

The discount, given in the form of a tax offset, will apply to the income tax payable on the business income received and will be capped at \$1,000 per individual for each income year.

*Source: Budget Paper No 2, p 19-20.*

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## Small business accelerated depreciation changes

The threshold below which small businesses can claim an immediate deduction for the cost of an asset they start to use or install ready for use will be temporarily increased from the current \$1,000 to \$20,000.

The \$20,000 threshold will apply for assets acquired and installed ready for use between 7.30pm (AEST) 12 May 2015 and 30 June 2017. It is available for small businesses with an aggregate annual turnover of less than \$2m,

Currently, under Subdiv 328-D of the Income Tax Assessment Act 1997, a small business can claim an immediate deduction for assets costing less than \$1,000 to the extent the asset is used for tax deductible purposes.

With the increase of the threshold for the immediate deduction, assets valued at \$20,000 or more that cannot be immediately deducted will be included in the entity's small business pool and depreciated at 15% in the first income year and 30% each income year thereafter, in the same way the rules currently apply for assets costing \$1,000 or more.

Similarly, over the period from 7.30pm (AEST) 12 May 2015 up to 30 June 2017, the balance in the small business pool can be immediately deducted if it is less than \$20,000 (including an existing pool).

The current rules preventing a small business using the simplified depreciation regime for five years if it opts out of the regime will also be suspended until 30 June 2017.

From 1 July 2017, the \$20,000 threshold for the immediate deduction of assets and

the value of the pool will revert to \$1,000.

While small businesses can access the simplified depreciation regime for a majority of capital assets, certain assets are not eligible (such as horticultural plants and in-house software) for which specific depreciation rules apply.

## INSIGHT

### Implications

The accelerated tax depreciation write-off on assets up to \$20,000 is a valuable boost for small business (with \$20,000 being higher than many expected) and is likely to stimulate increased levels of business activity, especially for sectors such as retailing.

One factor that has not been made clear is whether the \$20,000 threshold is GST exclusive or inclusive. Capital allowances are generally based on a cost excluding any recoverable GST. While any tax rate cut is welcome, the additional cash retained by small business will not be significant, especially if taxable income has also been reduced by accelerated tax depreciation claims. The corporate tax rate cut will create some additional complexity, especially for taxpayers on the cusp of growth beyond a \$2million turnover. Tax planning around splitting or fragmenting their business may result.

A reduction in corporate tax will only be a temporary saving to the extent that dividends are paid out to shareholders.

### Action required

Eligible taxpayers should review their forecasted expenditures to 1 July 2017 to maximise the accelerated depreciation available. In particular, eligible taxpayers should look to purchase and install assets prior to 30 June 2015.

Taxpayers currently not using the simplified depreciation regime should consider whether to opt in to take advantage of the temporary accelerated depreciation regime.

Small companies should monitor the legislation surrounding the cut in the corporate tax rate and consider whether it will impact on the ability to distribute any current franking balances.

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Source: Budget Paper No 2, p 19.

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## Immediate deduction for business establishment costs

An immediate deduction will be available for professional expenses that are associated with starting a new business, such as professional, legal and accounting advice or legal expenses to establish a company, trust or partnership.

The deduction will be available to start-up businesses from the 2015/16 income year.

Currently, such expenses are deductible over five years under s 40-880 of the Income Tax Assessment Act 1997, the blackhole expenditure provision.

Source: *Budget Paper No 2*, p 17.

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## Employee share schemes: further changes

Further changes will be made to the taxation of employee share schemes (ESSs).

The government said that consultations on the draft legislation to implement changes to the taxation of ESSs identified some minor technical changes that could be made to the legislation by:

- excluding eligible venture capital investments from the aggregated turnover test and grouping rules (for the start-up concession)
- providing the capital gains tax discount to ESS interests that are subject to the start-up concession where options are converted into shares and the resulting shares are sold within 12 months of exercise, and
- allowing the Commissioner to exercise discretion in relation to the minimum three-year holding period where there are circumstances outside the employee's control that make it impossible for them to meet this criterion.

A number of other amendments will accompany these changes to make ESSs more accessible.

Together with the enabling legislation, these changes will take effect from 1 July 2015.

Source: *Budget Paper No 2*, p 16.

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## Measures encouraging business start-ups

In order to encourage business start-ups and entrepreneurship:

- business registration processes will be streamlined with a single online portal ([business.gov.au](http://business.gov.au)) developed for business registration and company registration, making it quicker and simpler to set up a new business. A start up business will no longer need an Australian Company Number or business Tax File Number but can use its Australian Business Number to interact with the ATO and ASIC. The new portal (expected to be implemented by mid-2016) will provide all the relevant information and have integrated customer support, and
- a regulatory framework to facilitate the use of crowd-source equity funding will be implemented, including simplified reporting and disclosure requirements, to help small businesses access innovative funding sources.

Source: *Budget Paper No 2*, p 175; *Growing jobs and small business package to help small businesses invest more, grow more, and employ more*, Prime Minister, Treasurer and Minister for Small Business joint press release, 12 May 2015; *Budget 2015 "Growing jobs and small business" glossy*.

## CGT relief reforms for small business restructures

Small businesses may change the legal structure of their business without attracting a capital gains tax (CGT) liability from the 2016/17 income year. This measure will be available for small businesses with an aggregated annual turnover of less than \$2m. It will enable small businesses to alter their legal structure as they find suitable without being impeded by potential CGT implications.

Currently, CGT roll-over relief is available under Div 122 of the Income Tax Assessment Act 1997 for individuals, trustees or partners in a partnership that incorporate as a company.

*Source: Budget Paper No 2, p 18.*

## Accelerated depreciation for water facilities, fodder storage and fencing

All primary producers will be able to immediately deduct capital expenditure on fencing and water facilities such as dams, tanks, bores, irrigation channels, pumps, water towers and windmills for income years commencing on or after 1 July 2016. Primary producers will also be allowed to depreciate over three years all capital expenditure on fodder storage assets such as silos and tanks used to store grain and other animal feed. Currently, the effective life for fences is up to 30 years, water facilities is three years and fodder storage assets is up to 50 years.

The measure is aimed at improving resilience for those primary producers who face drought, assist with cash flow and reduce red tape by removing the need for primary producers to track expenditure over time. It will form part of the government's White Paper on Agricultural Competitiveness.

*Source: Budget Paper No 2, p 14; Treasurer's press release "Helping Australian farmers prepare for and manage drought", 12 May 2015.*

## Broader FBT exemption for portable electronic devices

The fringe benefits tax (FBT) exemption for work-related portable electronic devices used primarily for work purposes will be expanded from 1 April 2016. Small businesses with an aggregated annual turnover of less than \$2m that provide their employees with more than one qualifying work-related portable electronic device will be able to access the FBT exemption even if the additional items have substantially similar functions as the first device.

Currently, s 58X of the Fringe Benefits Tax Assessment Act 1986 only provides an exemption for more than one work-related, portable electronic device provided to an employee during an FBT year, if the devices do not perform substantially

identical functions.

Source: *Budget Paper No 2, p 18.*

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## Fringe benefits tax and managed investment trusts

### FBT: meal and entertainment for not-for-profit employees

A separate, single grossed-up cap of \$5,000 will be introduced for salary sacrificed meal entertainment and entertainment facility leasing expenses (meal entertainment benefits) for employees of not-for-profits. Meal entertainment benefits exceeding the separate grossed-up cap of \$5,000 can also be counted in calculating whether an employee exceeds their existing fringe benefits tax (FBT) exemption or rebate cap. All use of meal entertainment benefits will become reportable.

Currently, employees of public benevolent institutions and health promotion charities have a standard \$30,000 FBT exemption cap (this will be \$31,177 for the first year of the measure, due to the budget repair levy) and employees of public and not-for-profit hospitals and public ambulance services have a standard \$17,000 FBT exemption cap (this will be \$17,667 for the first year).

In addition to these FBT exemptions, these employees can salary sacrifice meal entertainment benefits with no FBT payable by the employer and without it being reported. Employees of rebatable not-for-profit organisations can also salary sacrifice meal entertainment benefits, but the employers only receive a partial FBT rebate, up to a standard \$30,000 cap (\$31,177 for the first year).

This measure will apply from 1 April 2016.

Source: *Budget Paper No 2, pp 22-23.*

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### Managed investment trusts: transitional start date

The start date of the new managed investment trusts (MITs) regime has been deferred to 1 July 2016 but MITs can choose to apply the new regime from 1 July 2015.

The government says that the transition period is a response to stakeholder feedback that many MITs require additional time to make amendments to their trust deeds and IT systems.

MITs and other trusts treated as MITs will continue to be allowed to disregard the trust streaming provisions for the 2015/16 income year. This will ensure these interim arrangements for MITs continue to apply until the commencement of the new rules.

## GST and luxury car tax

### GST extended to offshore supplies of services and intangibles to Australian consumers

Offshore supplies of services and intangibles to Australian consumers will be subject to GST from 1 July 2017.

The government has released an exposure draft Bill extending the scope of the GST to offshore supplies of services and intangibles to Australian consumers from 1 July 2017. The Tax Laws Amendment (Tax Integrity: GST and Digital Products) Bill 2015 amends the GST Act to make all supplies of things other than goods or real property connected with the indirect tax zone where they are made to Australian consumers. This will result in supplies of digital products, such as streaming or downloading of movies, music, apps, games, e-books as well as other services such as consultancy and professional services receiving similar GST treatment whether they are supplied by a local or foreign supplier.

Responsibility for GST liability arising under the amendments may be shifted from the supplier to the operator of an electronic distribution service in certain circumstances where the operator controls any of the key elements of the supply such as delivery, charging or terms and conditions. Shifting responsibility for GST liability to operators is aimed at minimising compliance costs as operators are generally better placed to comply and ensure that digital goods and services sourced in a similar manner are taxed in a similar way. These amendments are broadly modelled on similar rules currently in operation in the European Union and Norway.

The Bill also amends the GST law to permit the making of regulations to provide for a modified GST registration and remittance scheme for entities making supplies that are only connected with the indirect tax zone as a result of the amendments. The scope of these rules is to be determined in consultation. Entities will also be able to elect to have limited registration for GST which will prevent them from accessing input tax credits. It is expected that most of the simplified administrative rules set out in the regulations will apply only for entities that elect to apply limited registration.

The measure will result in Australia being an early adopter of guidelines for business-to-consumer supplies of digital products and services being developed by the Organisation for Economic Co-operation and Development (OECD) as part of the OECD/G20 base erosion and profit shifting project. The change will require the unanimous agreement of the States and Territories before enactment of legislation.

#### INSIGHT

##### Implications

This change is being welcomed by Australian businesses competing against foreign suppliers selling services and intangibles to Australian end consumers.

Requiring foreign suppliers to remit GST on supplies made to Australian

consumers is seen as an overdue levelling of the playing field.

### Action required

On the other hand, foreign suppliers, as well as EDS operators, will be focusing on the detail of the proposed measure. The first step will be to gain a full understanding of all of the circumstances in which GST liabilities will arise on services and intangibles supplied to Australian customers.

This task will be made more difficult by the uncertainty created by particular aspects of the proposed amendments (for example, determining the place of 'consumption' for GST-free treatment in respect of overseas legal advice received via email) together with the fact that some of the practical administrative details have yet to be worked out by the Government and may take an extended period to be resolved.

The Government has invited public input on the proposed legislative changes, with submissions being accepted until 7 July 2015.

**Deloitte.**

*Source: Budget Paper No 2, p 20; Exposure Draft Tax Laws Amendment (Tax Integrity: GST and Digital Products) Bill 2015.*

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## Reverse charge rules for going concerns and farmland sales

The previously announced measure to replace the current GST-free treatment for supplies of going concerns and certain farmland sales with a reverse charge mechanism will not proceed.

The government had previously announced that it would proceed with the measure in December 2013. This measure was initially announced in the 2009/10 Federal Budget in response to a report by the Board of Taxation on the legal framework for the administration of GST, intended to reduce the compliance burden for taxpayers. However, during design of the implementation of this measure, it became apparent that proceeding with this measure would have resulted in adverse consequences for taxpayers.

*Source: Budget Paper No 2, p 22.*

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## Funding for GST compliance: three-year extension

The government will provide funding \$265.5m of to the ATO over three years from 2016/17 to continue a range of activities to promote GST compliance. Arrangements for funding these activities will be settled with the States and Territories in accordance with the GST Administration Performance Agreement.

*Source: Budget Paper No 2, p 21.*

## Luxury car tax exemption for endorsed public museums and art galleries

Public museums and public art galleries that have been endorsed by the Commissioner as a deductible gift recipient will be allowed to acquire cars free of luxury car tax. The measure will only be in respect of cars acquired for the purpose of public display, consigned to the collection and not used for private purposes. This measure will have effect from the date of Royal Assent of the enabling legislation.

*Source: Budget Paper No 2, p 23.*

## Individuals and families

### Modernising the methods used for calculating work-related car expense deductions

The methods of calculating work-related car expense deductions will be modernised from the 2015/16 income year.

The “12% of original value method” and the “one-third of actual expenses method”, which are used by less than 2% of those who claim work-related car expenses, will be removed. The “cents per kilometre method” will be modernised by replacing the three current rates based on engine size with one rate set at 66 cents per kilometre to apply for all motor vehicles, with the Commissioner responsible for updating the rate in following years. The “logbook method” of calculating expenses will be retained. These changes will not affect leasing and salary sacrifice arrangements.

These changes will better align car expense deductions with the average costs of operating a motor vehicle.

*Source: Budget Paper No 2, p 27.*

### Removal of government employee income tax exemption

The income tax exemption that is currently available to government employees who earn income while delivering Official Development Assistance overseas for more than 90 continuous days will be removed.

This measure will remove the inconsistent taxation of government employees delivering Official Development Assistance overseas by ensuring that their foreign earnings are treated as assessable income in Australia.

Australian Defence Force and Australian Federal Police personnel and individuals delivering Official Development Assistance for a charity or private sector contracting firm will maintain eligibility for the exemption.

This measure will take effect from 1 July 2016.

*Source: Budget Paper No 2, p 27.*

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## **Changes to tax residency rules for temporary working holiday makers**

The tax residency rules will be changed to treat most people who are temporarily in Australia for a working holiday as non-residents for tax purposes, regardless of how long they are here. This means they will be taxed at 32.5% from their first dollar of income.

Currently, a working holiday maker can be treated as a resident for tax purposes if they satisfy the tax residency rules, typically that they are in Australia for more than six months. This means they are able to access resident tax treatment, including the tax-free threshold, the low income tax offset and the lower tax rate of 19% for income above the tax free threshold up to \$37,000.

The government will provide \$5.1m to the ATO to implement this measure.

This measure will apply from 1 July 2016.

*Source: Budget Paper No 2, p 26.*

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## **Income tax relief for Australian Defence Force personnel deployed overseas**

Income tax relief will be provided for Australian Defence Force personnel deployed on Operations AUGURY and HAWICK.

A full income tax exemption will be provided to personnel on Operation AUGURY, and the overseas forces tax offset will be available to personnel on Operation HAWICK.

*Source: Budget Paper No 2, p 22.*

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## **Medicare levy low-income thresholds for singles, families and single seniors and pensioners increased**

The Medicare levy low-income thresholds for singles, families and single seniors and pensioners will be increased from the 2014/15 income year.

The threshold for singles will be increased to \$20,896 (up from \$20,542 for 2013/14). For couples with no children, the threshold will be increased to \$35,261 (up from \$34,367 for 2013/14) and the additional amount of threshold for each dependent child or student will be increased to \$3,238 (up from \$3,156 for 2013/14). For single seniors and pensioners, the threshold will be increased to \$33,044 (up from \$32,279 for 2013/14).

The increase in these thresholds takes into account movements in the Consumer Price Index so that low-income taxpayers generally continue to be exempted from paying the Medicare levy.

*Source: Budget Paper No 2, p 26.*

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## **Zone tax offset to exclude “fly-in fly-out” and “drive-in drive-out” workers**

The zone tax offset will exclude “fly-in fly-out” and “drive-in drive-out” (FIFO) workers where their normal residence is not within a “zone”.

The zone tax offset is a concessional tax offset available to individuals in recognition of the isolation, uncongenial climate and high cost of living associated with living in identified locations. Eligibility is based on defined geographic zones.

The specified remote areas of Australia covered by the zone tax offset are comprised of two zones, Zone A and Zone B. In general, Zone A comprises those areas where the factors of isolation, uncongenial climate and the high cost of living are more pronounced and Zone B comprises the less badly affected areas. The tax offset for ordinary Zone A residents is accordingly higher than the tax offset for ordinary Zone B residents. A special category of zone allowances is available to taxpayers residing in particularly isolated areas (“special areas”) within either zone.

Currently, to be eligible for the zone tax offset, a taxpayer must reside or work in a specified remote area for more than 183 days in an income year. It is estimated that around 20% of all claimants do not actually live full-time in the zones. Many of these are FIFO workers who do not face the same challenges of remote living that the zone tax offset was designed to address.

This measure will better target the zone tax offset to taxpayers who have taken up genuine residence within the zones. This will align the zone tax offset with the original intent of the policy, which was to support genuine residents of zones. For those FIFO workers whose normal residence is in one zone, but who work in a different zone, they will retain the zone tax offset entitlement associated with their normal place of residence.

This measure will take effect from 1 July 2015.

*Source: Budget Paper No 2, p 25.*

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## **Updates to list of specifically listed deductible gift recipients**

Two organisations have been added to the list of specifically listed deductible gift recipients and two organisations have had their listings extended.

Since the 2014/15 Mid-Year Economic and Fiscal Outlook, the following organisations have been approved as specifically listed deductible gift recipients (DGRs) from 1 January 2015:

- International Jewish Relief Limited, and
- National Apology Foundation.

The following organisations, which are currently listed as DGRs, have had their listings extended, to expire on 31 December 2017:

- National Boer War Memorial Association, and
- Australian Peacekeeping Memorial Project.

*Source: Budget Paper No 2, p 28.*

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## Pension reforms not proceeding

The government will not be proceeding with elements of the 2014/15 Budget measure that relate to the pension income test free areas and deeming thresholds.

The government proposal was to change how it deems the return from a person's financial assets for the purposes of the pension active test. The deeming thresholds were to be reset from \$46,000 to \$30,000 for single pensioners and from \$77,400 to \$50,000 for pensioner couples from 1 September 2017.

Instead, the pension income test free areas and deeming thresholds will continue to be indexed annually by the Consumer Price Index.

*Source: Budget Paper No 2, p 167.*

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## Families package: reforms to child care system

The government will provide an additional \$3.2b over five years from 2014/15 to support families with child care so they can move into work, stay in work, train, study or undertake other recognised activities.

A new Child Care Subsidy will be introduced from 1 July 2017 which will support families where both parents work. Families meeting the activity test with annual incomes up to \$60,000 will be eligible for a subsidy of 85% of the actual fee paid, up to an hourly fee cap. The subsidy will taper to 50% for eligible families with annual incomes of \$165,000. The Child Care Subsidy will have no annual cap for families with annual incomes below \$180,000. For families with annual incomes of \$180,000 and above, the Child Care Subsidy will be capped at \$10,000 per child per year.

Under the new regime, parents must do a minimum of eight hours a fortnight of work, study or training to qualify for any child care support.

The income threshold for the maximum subsidy will be indexed by the Consumer Price Index (CPI) with other income thresholds aligned accordingly. Eligibility will be linked to the new activity test to better align receipt of the subsidy with hours of work, study or other recognised activities. The hourly fee cap in 2017/18 will be set at \$11.55 for long day care, \$10.70 for family day care, and \$10.10 for outside school hours care. The hourly fee caps will be indexed by CPI.

Additional support will be provided to eligible families through a Child Care Safety Net providing targeted support to disadvantaged or vulnerable families to address barriers to accessing child care. The Child Care Safety Net consists of three programmes – the Additional Child Care Subsidy, a new Inclusion Support Programme and the Community Child Care Fund. Families with incomes of around \$65,000 or less in 2017/18, who do not meet the activity test, will be eligible to receive up to 24 hours subsidised care per fortnight under the Child Care Safety Net.

A new Interim Home Based Carer Subsidy Programme will subsidise care provided by a nanny in a child's home from 1 January 2016. The pilot programme will extend fee assistance to the parents of approximately 10,000 children. Families selected to participate will be those who are having difficulty accessing child care with sufficient flexibility. Support for families will be based on the Child Care Subsidy parameters, but with a fee cap of \$7.00 per hour per child.

The Child Care Subsidy will replace the current child care fee assistance provided by the Child Care Benefit and Child Care Rebate. Accordingly, the existing Child Care Benefit and Child Care Rebate will be abolished from 1 July 2017.

*Source: Budget Paper No 2, p 154-155; Prime Minister's and Minister for Social Services' joint press release "Jobs for families child care package delivers choice for families", 10 May 2015.*

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## **Immunisation requirements for eligibility to government payments**

Children will have to fully meet immunisation requirements before their families can access certain government payments, from 1 January 2016.

Families will no longer be eligible for subsidised child care or the Family Tax Benefit Part A end-of-year supplement unless their child is up-to-date with all childhood immunisations.

Exemptions will only apply for medical reasons.

*Source: Budget Paper No 2, p 167.*

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## **Accessing parental leave pay from both employer and government**

From 1 July 2016, the ability for individuals to access government assistance in the

form of the existing Parental Leave Pay (PLP) scheme, in addition to any employer-provided parental leave entitlements, will be removed.

Currently, individuals are able to access government assistance in the form of PLP as well as any employer-provided parental leave entitlements.

The government will ensure that all primary carers would have access to parental leave payments that are at least equal to the maximum PLP benefit (currently 18 weeks at the national minimum wage).

The government will achieve savings of \$967.7m over four years through this measure.

*Source: Budget Paper No 2, p 168.*

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## End of Family Tax Benefit Part A large family supplement

The Family Tax Benefit (FTB) Part A large family supplement will cease from 1 July 2016.

Families will continue to receive a per child rate of FTB Part A for each eligible child in their family.

*Source: Budget Paper No 2, p 151.*

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## Family Tax Benefit Part A reduced portability

From 1 January 2016, families will only be able to receive Family Tax Benefit (FTB) Part A for six weeks in a 12-month period while they are overseas.

Currently, FTB Part A recipients who are overseas are able to receive their usual rate of payment for six weeks and then the base rate for a further 50 weeks.

Portability extension and exception provisions which allow longer portability under special circumstances will continue to apply.

The government will achieve savings of \$42.1m over five years through this measure.

*Source: Budget Paper No 2, p 157.*

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# Superannuation

## Release of superannuation for a terminal medical condition

Early access to superannuation will be provided to people with a terminal medical

condition with effect from 1 July 2015. Currently, patients must have two medical practitioners (including a specialist) certify that they are likely to die within one year to gain unrestricted tax-free access to their superannuation balance. The government will change this period to two years. This will give terminally ill patients earlier access to their superannuation.

*Source: Budget Paper No 2, p 29.*

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## Lost and unclaimed superannuation

The government will implement a package of measures to reduce red tape for superannuation funds and individuals by removing redundant reporting obligations and by streamlining administrative arrangements for lost and unclaimed superannuation. The cost of implementing the measures will be met from within the existing resources of the ATO.

The measures will have effect from 1 July 2016.

*Source: Budget Paper No 2, p 173.*

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## Supervisory levies to increase

The government will raise additional revenue of \$46.9m over four years from 2015/16 by increasing the supervisory levies paid by financial institutions. It says that this will fully recover the cost of superannuation activities undertaken by the ATO and the Department of Human Services, consistent with the government's cost recovery guidelines.

*Source: Budget Paper No 2, p 17.*

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## Other measures

### ATO reforms to cut red tape

An additional \$130.9m will be provided to the ATO over four years (including capital of \$35.6m) to deliver an improved experience for clients.

Red tape will be reduced and future administrative savings delivered through investment in three initiatives: (1) a digital-by-default service for providing information and making payments, (2) improvements to data and analytics infrastructure, and (3) enhancing streamlined income tax returns through the myTax system for taxpayers with more complex tax affairs.

*Source: Budget Paper No 2, p 176.*

## Additional funding for IGT

The government will provide at least \$14.6m over five years to the Inspector-General of Taxation's (IGT's) office to support its operations. This funding is in addition to the 2014/15 Budget funding to the IGT in relation to the transfer of tax complaints handling.

*Source: Budget Paper No 2, p 176.*

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## Specifically listing Global Infrastructure Hub as an income tax exempt entity

The Global Infrastructure Hub (the Hub) will be specifically listed as an income tax exempt entity by amending Div 50 of the Income Tax Assessment Act 1997.

The Hub was established following a joint statement from the Prime Minister and the Treasurer at the G20 Leaders' Summit in November 2014. The Hub will work internationally to lift the quality and quantity of public and private investment in infrastructure through information development, knowledge sharing, training and the implementation of leading practices.

The mandate for the Hub will cease in 2018 and the exemption from income tax will apply to amounts that would be included in assessable income from 24 December 2014 to 30 June 2019.

*Source: Budget Paper No 2, p 28.*

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#### Claudio Cimetta - International Tax Partner, Melbourne

Claudio advises multinational corporations and investment funds on cross-border transactions, including Australian inbound investment and outbound investments across Asia, Europe and North America. He has over 17 years of experience, including three years as a director in Deloitte's M&A tax group in London.

#### Vik Khanna - International Tax Partner, Melbourne

Vik has 26 years' experience in the profession and has been a partner for 15 years at Deloitte. Vik has extensive experience in advising Multinational Corporations and PE Firms on cross border transactions, acquisitions and restructures, on tax due diligence assignments and on financing issues.

#### Roger Muir - Indirect Tax Partner, Sydney

With over 29 years' experience of working with GST in Australia and New Zealand, Roger has provided a wide range of GST advisory services to both corporate and government clients, and has significant experience in the property sector. This experience spans across the property lifecycle from due diligence and transaction structuring on acquisition, day-to-day compliance GST matters post-acquisition, and GST considerations on disposal.

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