



# Budget 2021–22

## Tax incentives to support the recovery



Supporting households, driving business investment, and creating jobs

11 May 2021

### Personal income tax cuts

To support household income and create more jobs, the Government will deliver an additional \$7.8 billion in tax cuts by retaining the low and middle income tax offset (LMITO) in 2021-22.

This is on top of the \$25.1 billion in tax cuts announced in previous Budgets that is expected to flow to households in 2021-22.

Around 10.2 million individuals will benefit from retaining the offset in 2021-22, which is worth up to \$1,080 for individuals or \$2,160 for dual income couples.

With the additional year of the LMITO, the Government's Personal Income Tax Plan will deliver total tax cuts of up to \$7,020 for individuals and up to \$14,040 for couples, in total over the period 2018-19 to 2021-22.

Treasury estimates that extending the LMITO will boost GDP by around \$4.5 billion in 2022-23 and will create an additional 20,000 jobs by the end of 2022-23.

This is on top of the 2020-21 Budget measure which was estimated to create an additional

50,000 jobs by the end of 2021-22 and boost GDP by around \$3.5 billion in 2020-21 and \$9 billion in 2021-22.

When Stage 3 is implemented in 2024-25, around 95 per cent of taxpayers will face a marginal tax rate of 30 per cent or less.

Priya is a civil engineer working in regional Australia and earned a taxable income of \$80,000 each year from 2018-19 to 2021-22. Her husband, Kabir, is working part time as he completes his studies, and earned a taxable income of \$60,000.

With LMITO being retained, Priya and Kabir will benefit from a combined LMITO of \$2,160 after they lodge their 2021-22 tax returns.

With the additional year of LMITO, the Government's Personal Income Tax Plan will provide Priya and Kabir with a tax cut of \$12,960 in total from 2018-19 to 2021-22 compared with 2017-18 settings.

## Extending tax support for business

The Government will continue to support Australian businesses to invest, grow and create more jobs by extending the two tax incentives announced in the 2020-21 Budget by one year — temporary full expensing and temporary loss carry-back.

Together, temporary full expensing and temporary loss carry-back create a strong incentive for businesses to bring forward investment to access the tax benefits before they expire.

Combined, the extension of the temporary full expensing and temporary loss carry-back measures is estimated to deliver a further \$20.7 billion in tax relief to businesses over the forward estimates. This builds on the substantive support that was provided in the 2020-21 Budget.

Treasury estimates that the temporary full expensing and temporary loss carry-back measures, including the extensions, will create around 60,000 jobs by the end of 2022-23. They are estimated to boost GDP by around \$2.5 billion in 2020-21, \$7.5 billion in 2021-22 and \$8 billion in 2022-23.

### Temporary full expensing

Temporary full expensing will now be available until 30 June 2023.

Temporary full expensing allows eligible businesses with aggregated annual turnover or total income of up to \$5 billion to deduct the full cost of eligible depreciable assets. Assets must be acquired from 7:30pm AEDT on 6 October 2020 and first used or installed ready for use by 30 June 2023.

The 12-month extension will provide eligible businesses with more time to access the incentive, including projects that require longer planning times and those affected by COVID-19 related supply disruptions.

By encouraging eligible businesses to make further investments, the extension will continue to support the creation of jobs and the broader COVID-19 recovery.

All other elements of temporary full expensing will remain unchanged, including the alternative eligibility test based on total income and a track-record of investment, which will continue to be available to businesses.

Temporary full expensing applies to around \$320 billion worth of investment, and over 99 per cent of businesses, employing 11.5 million workers, are eligible for this measure.

### Temporary loss carry-back

Temporary loss carry-back will also be extended by one year. This will allow eligible companies to carry-back tax losses from the 2022-23 income year to offset previously taxed profits as far back as the 2018-19 income year.

Companies with aggregated annual turnover of up to \$5 billion can apply tax losses incurred during the 2019-20, 2020-21, 2021-22 and now the 2022-23 income years to offset tax paid in 2018-19 or later years. The tax refund will be available to companies when they lodge their 2020-21, 2021-22 and now 2022-23 tax returns.

This will help increase cash flow for businesses in future years and support companies that were profitable and paying tax but find themselves in a loss position as a result of the COVID-19 pandemic. Temporary loss carry-back also complements the temporary full expensing measure by allowing more companies to take advantage of expensing, while it is available, further supporting Australia's economic recovery.

Top Packaging Pty Ltd (Top Packaging), a packaging company, decides in December 2021 to expand its operations. However, the new machinery ordered from overseas will not be available to be installed until August 2022. Top Packaging is relying on being able to fully expense the new machines and claim a tax refund through loss carry-back to help finance the expansion. Without the extension to temporary full expensing and temporary loss carry-back, Top Packaging would not be able to benefit from the incentives and would not be able to expand.

## Patent box

The Government is encouraging investment in, and the retention of, Australian medical and biotech technologies by introducing a patent box. Over twenty countries currently have patent boxes, including the UK and France.

From 1 July 2022 the patent box will tax income derived from Australian medical and biotech patents at a 17 per cent effective concessional corporate tax rate. Normally corporate income is taxed at 30 per cent or 25 per cent for small and medium companies.

Only granted patents, which were applied for after the Budget announcement, will be eligible.

The patent box encourages businesses to undertake their R&D in Australia and keep patents here.

The Government will follow the OECD’s guidelines on patent boxes to ensure the patent box meets internationally accepted standards.

The Government will consult closely with industry on the design of the patent box and to determine whether a patent box is also an effective way of supporting the clean energy sector.

### Corporate tax rates with a patent box

	Income	
	Patented products	Non-patented products
Income due to manufacturing, branding and other attributes	30%	30%
Income due to the patent	17%	

### Benefits of the patent box



Watson Medical Technologies makes \$180 million in net income from selling a product that contains knowhow covered by a single patent.

\$175 million relates to the patent and \$5 million relates to other attributes, such as branding. As the company conducted 80 per cent of the patent’s research and development in Australia, Watson can include \$140 million in the patent box, which is taxed at 17 per cent. The remaining \$40 million is taxed at 30 per cent.

With the patent box Watson Medical Technologies will pay a total \$35.8 million in tax, compared to up to \$54 million without.

## Employee Share Schemes

The Government is supporting Australian companies to attract and retain talent by removing the cessation of employment taxing point for tax-deferred Employee Share Schemes (ESS) that are available for all companies. By removing the cessation of employment taxing point, the measure will result in tax being deferred until the earliest of the remaining taxing points:

- in the case of shares, when there is no risk of forfeiture and no restrictions on disposal
- in the case of options, when the employee exercises the option and there is no risk of forfeiting the resulting share and no restrictions on disposal
- the maximum period of deferral of 15 years.

The change to the cessation of employment taxing point will apply to ESS interests issued on or after 1 July following Royal Assent.

The Government is also making regulatory improvements to the ESS regime, reducing red tape, by:

- removing disclosure requirements, and exempting the offer from licensing, anti-hawking and advertising prohibitions for ESS, where employers do not charge or lend to the employees to whom they offer ESS
- increasing the value of shares that can be issued to an employee with simplified disclosure requirements, and exemptions from licensing, anti-hawking and advertising requirements, from \$5,000 to \$30,000 per employee per year (leaving unchanged the absence of such a value cap for listed companies), where employers do charge or lend for issuing employees shares in an unlisted company

These regulatory changes will apply three months after Royal Assent of the enabling legislation.

This measure is estimated to decrease receipts by \$550 million over the forward estimates period. At maturity, which occurs in the medium term, the proposal is expected to have a negligible impact

on receipts as the costs of the proposal are expected to be offset by the collection of previous deferrals.

These reforms will make it easier for companies to offer ESS to employees giving more Australians a share in the economic value they create through their hard work and ingenuity.

ABCDE Technology Limited, an Australian company, provides its employee Tamara shares under an ESS. Tamara is granted the shares on 1 October 2022, which will vest on 31 August 2025 after certain conditions are met.

On 31 December 2023, Tamara leaves her employment to pursue other opportunities but continues to be entitled to acquire the shares. Under the current law, Tamara would be taxed at the time she ceases employment before she has acquired the shares.

Under the new arrangements, Tamara would be taxed at the next deferred taxing point when there is no risk of forfeiture and no restrictions on disposal of the shares.

## Increased rights for small business to pause the collection of disputed debts

The Government will make it simpler, faster and cheaper for small businesses to pause or modify Australian Taxation Office (ATO) debt recovery actions in relation to cases under review by the Administrative Appeal Tribunal (AAT) by broadening the AAT's powers to pause actions until the underlying dispute is resolved. Such action includes recovery of the underlying debt, application of garnishee notices, and/or related penalties and interest.

Small business entities (including individuals carrying on a business) with an aggregated turnover of less than \$10 million per year will be able to apply to the Small Business Taxation Division of the AAT to have ATO debt recovery actions paused until their underlying case is decided by the AAT.

To ensure the increased powers are applied appropriately, the AAT will have regard to the integrity of the tax system in deciding whether to pause or modify the ATO's debt recovery actions.

These new powers will be available to small business entities in respect of proceedings commenced before the AAT on or after the date of Royal Assent of the enabling legislation.

## Supporting the growth of the digital games development industry in Australia

The Government is introducing the Digital Games Tax Offset (DGTO) to promote the growth of the digital games development industry in Australia. Investing in this dynamic and innovative industry will support Australia taking a greater share of the \$250 billion global games development market. From 1 July 2022, the DGTO will provide eligible game developers with a 30 per cent refundable tax offset for qualifying Australian games expenditure.

The DGTO will be available in the year when the qualifying expenditure has ceased on a game. The maximum DGTO a developer will be able to claim in each year is \$20 million.

Eligibility criteria will require that the game must not have gambling elements and that a minimum of \$500,000 qualifying expenditure has been spent on the game.

Details of the eligibility criteria and the definition of qualifying Australian games expenditure will be informed through stakeholder consultation. This measure is estimated to deliver \$18.8 million in support to the Australian digital games development industry over the forward estimates.

## Tax relief for brewers and distillers — Excise Refund Scheme cap increased to \$350,000 from \$100,000

The Government is increasing the excise refund cap for distillers and brewers to support jobs and further grow Australia's alcohol manufacturing sector.

From 1 July 2021, all eligible brewers and distillers will receive full remission (up from 60 per cent) of any excise they pay on the alcohol they produce up to a cap of \$350,000 each financial year (increased from \$100,000).

This will align the benefit available under the Excise Refund Scheme for brewers and distillers with the existing Wine Equalisation Tax Producer Rebate, placing all alcohol manufacturers and wine producers on an equal footing.

### Small gin distillery

Sarah operates a small gin distillery in Western Australia. The distillery produces 5,000, 700mL bottles of gin (40 per cent alcohol by volume) each financial year, attracting around \$120,000 in excise.

Prior to 1 July 2021, the gin distillery could only claim 60 per cent of the excise they paid up to a cap of \$100,000 per financial year resulting in an excise refund of \$72,000 of the total \$120,000 excise they paid.

From 1 July 2021, they will be eligible to claim the full amount of excise they paid (\$120,000) — \$48,000 more than under the previous arrangements.

Around 600 brewers and 400 distillers will benefit from \$225 million in tax relief over the forward estimates period in the 2021-22 Budget.

The Government's measure to increase the concession complements and builds on the 2020-21 Mid-Year Economic and Fiscal Outlook measure to allow alcohol manufacturers to automatically receive their excise remission upon lodgement of their excise returns.

### Small brewery

Benny operates a small craft brewery in Victoria. The brewery produces 195,000 litres of beer with 4.9 per cent alcohol content. Of the total beer production:

- 45,000 litres are filled into kegs above 8 litres and poured on premises or distributed to local pubs in the region
- 150,000 litres are bottled and distributed for sale in shops in the region.

The kegged beer attracts excise of around \$60,000, while the bottled beer attracts around \$290,000 in excise, totalling around \$350,000.

Prior to 1 July 2021, the brewery could only claim 60 per cent of the excise they paid up to a cap of \$100,000 per financial year. This means that its refund would have been capped at \$100,000 with around \$250,000 in total excise paid.

From 1 July 2021, the brewery will be eligible to receive an automatic remission of up to \$350,000 in excise, meaning it will pay no excise on its beer production.

## Reducing compliance costs for individuals claiming self-education expense deductions

The Government is removing the exclusion of the first \$250 of deductions for prescribed courses of education. This will simplify the tax return process and reduce compliance costs for individuals claiming self-education expense deductions.

The measure will have effect from the first income year after the date of Royal Assent of the enabling legislation, and is estimated to have a negligible impact on receipts over the forward estimates period.

Anna is a part-time social worker and is undertaking additional training related to her employment. Anna is eligible to deduct expenses associated with this training, including tuition fees and textbooks, which total \$5,000 for the income year. Anna has also incurred \$150 in occasional childcare expenses and \$150 in travel expenses between study, work and home while attending her training activities. These childcare and travel expenses are not deductible.

Currently, Anna is required to reduce the amount of her deduction by \$250. However, she is able to offset the \$250 reduction with certain non-deductible expenses, including expenses for childcare while attending the training and travel. In this case, Anna's non-deductible expenses fully offset the \$250 reduction and she is able to claim a deduction of \$5,000. However, Anna has had to calculate and keep records of her non-deductible expenses in order to complete her income tax return.

Under the new arrangements, Anna will still be eligible to claim a deduction of \$5,000 for her self-education expense deduction but will no longer need to keep records of her non-deductible expenses for tax purposes.



## Modernising the individual tax residency rules

The Government will replace the individual tax residency rules with a new framework that is easy to understand, provides certainty and reduces compliance costs for globally mobile individuals and their employers.

The primary test will be a simple ‘bright line’ test: a person who is physically present in Australia for 183 days or more in any income year will be an Australian tax resident.

Individuals who do not meet the primary test will be subject to secondary tests that depend on a combination of physical presence and measurable, objective criteria.

Under the current rules, individuals (and their employers) can face large compliance costs, including the need to seek third-party advice, despite having otherwise simple tax affairs.

The new framework is designed to strike the right balance between certainty, simplicity and integrity.

The new framework is based on recommendations of a 2019 Board of Taxation report *Reforming Individual Tax Residency Rules — a model for modernisation*.

These changes will apply from 1 July following Royal Assent.

## Corporate tax residency rules

In the 2020-21 Budget, the Government announced amendments to clarify the corporate residency test to address uncertainty for foreign incorporated entities.

In the 2021-22 Budget, the Government announced it will consult on broadening this amendment to trusts and corporate limited partnerships. The Government will seek industry’s views as part of the consultation on the original corporate residency amendment.



## Digital economy strategy — self assess life of intangibles

The Government will allow taxpayers to self-assess the effective life of certain depreciating intangible assets for tax purposes, rather than being required to use the effective life currently prescribed by statute.

This will apply to patents, registered designs, copyrights, in-house software, licenses and telecommunications site access rights. Taxpayers will be able to bring deductions forward if they self-assess the assets as having a shorter effective life than the current statutory life. This change will reduce the cost of investment for business, and align the tax treatment of these intangible assets with the treatment of tangible assets.

Taxpayers will continue to have the option to use the existing statutory effective life when depreciating these assets.

This will apply to eligible assets acquired following the completion of temporary full expensing, which has been extended and will now end on 30 June 2023.

Australis Aeronautics Pty Ltd (Australis) specialises in agriculture drones. Australis develops in-house flight guidance software worth \$5 million. However, the rapid improvements in drone technology means Australis believes the software will need to be replaced in 4 years. The statutory effective life of in-house software is 5 years.

Without being able to self-assess, Australis would only be able to deduct \$1 million a year in depreciation costs (using the prime cost method of depreciation). Thanks to the measure, Australis can now self-assess the software's effective life as 4 years, increasing the deduction by \$250,000 in the first year to \$1.25 million. Australis can now bring forward its deductions and use the improved cash flow to support developing the next software upgrade.

## ATO early engagement service: supporting businesses to invest in Australia

The ATO will introduce a new early engagement service to encourage and support new business investments into Australia.

The service will:

- provide “up front” confidence to investors about how Australian tax laws will apply,
- be tailored to the particular needs of each investor,
- offer support in relation to any or all federal tax obligations,
- accommodate specific project timeframes, and other time sensitive aspects of a transaction

such as foreign investment review board (FIRB) approvals,

- Where binding advice is desired, it will also incorporate access to expedited private binding rulings and advance pricing agreements; and
- Integrate with the tax aspects of the FIRB approval process (if applicable) so that investors only need to provide information once.

The ATO will consult with business and other stakeholders to develop the early engagement service during May and June 2021.

The service will be available for eligible investors from 1 July 2021.