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[With special comments by Reuters News]

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EXECUTIVE SUMMARY

[646] **2011-12 Federal Budget: $45.7bn deficit, and many tax changes**

On 10 May 2011, the Treasurer Mr Swan handed down the 2011-12 Federal Budget, his 4th Budget.

While pre-Budget speculation was of a tough, even possibly austere, Budget, there was a mixture of taxation and related announcements that will both please and annoy taxpayers. There were a large number of tax changes announced covering areas such as superannuation (eg measures announced to overcome the excess contributions tax problem), income tax, CGT, GST, FBT and charities. An outline of the major announcements is given below.

Economic outlook

For 2010-11, the deficit is estimated to be $45.7bn, with the estimate for 2011-12 of a $20.3bn deficit. The Treasurer said the Government "can return the Budget to surplus in 2012-13, despite recent natural disaster", and he predicted a surplus of $3.5bn in 2012-13.

The Treasurer said the floods and Cyclone Yasi will cost the economy $9bn in lost output and reduce real GDP growth by 1/2 of a percentage point in 2010-11. Mr Swan said the impact of disasters in New Zealand and Japan will increase this impact to 3/4 of a percentage point this year. In its Budget submission, the Institute of Chartered Accountants in Australia had recommended the creation of a permanent natural disaster relief fund to guard against the future need for one-off taxes, such as the recently enacted flood levy. The Institute’s Tax Counsel, Yasser El-Ansary, said that although the Government had not adopted the Institute’s submission, an opportunity now exists for it to be considered as part of the October tax forum.

Mr Swan also said that tax receipts had been revised down by $16bn over the first 2 budget years, taking the total estimated revenue loss from the GFC to around $130bn over 5 years. The Treasurer forecast an underlying cash deficit of $22.6bn (1.5% of GDP) in 2011-12.

In the longer term, the Treasurer said the outlook for the economy in the years ahead is "very bright and Australians have good cause to be optimistic". He said the economy is forecast to grow at an "above-trend rate over the next 2 years, driven by an investment surge in the resources sector". Mr Swan said real GDP growth is forecast to increase to 4% in 2011-12 and 3.75% in 2012-13.

The Institute’s Mr El-Ansary said that if the uneven performance of the manufacturing, services and retail sectors do not improve as quickly as the Government anticipates, the forecast return to surplus will be under threat.

See also para [647] of this Bulletin for further details and analysis of the economic side of the Budget, including expert comments from our colleagues at Reuters News.

Revenue measures announced

The major revenue measures proposed in the Budget included:

- significant tax changes affecting charities;
- superannuation: excess super contributions tax problem addressed; concessional contributions; minimum pension drawdowns - 25% reduction;
- Govt overcomes High Court Anstis decision on self-education expenses;
- small businesses to get tax deduction of $5,000 for motor vehicles;
- FBT valuation method for cars to be one rate - 20% (phased in over 4 years);

- amendments re company loss recoupment rules;
- minors will no longer be entitled to low income tax offset on unearned income;
- CGT amendments: scrip-for-scrip rollover; small business tax concessions; main residence exemption; trading stock; incentives for renewable resources; rollovers for amalgamations of indigenous corporations;
- GST amendments: property in possession of mortgagee; supplies to health insurers; instalment system for small businesses;
- increase in Medicare levy thresholds;
- dependant spouse rebate for under 40s to be phased out;
- debt/equity rules to be amended;
- early access to be allowed to FMDs.

More information on the tax and related announcements is also contained in a number of press releases - see the Treasurer's website and the Assistant Treasurer's website.

by Terry Hayes

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[647] **Budget seeks to harness mining boom, avoid inflation risk**

- by Reuters News

The Budget sets a course for a small surplus in 2012-13, while seeking to alleviate labour shortages that threaten to fuel inflation as Australia rides an historic Asia-led resources boom.

Treasurer Wayne Swan said Australia, the only major developed nation to avoid recession during the global financial crisis, now faced major hurdles in handling the biggest resources boom in its history, a soaring Australian dollar and a 2-speed economy which has left non-mining industries struggling."With the investment pipeline ramping up and unemployment falling, the boom will test our economy and our workforce, and price pressures will re-emerge," Swan told Parliament in delivering the 2011-12 budget.

"We need to bring our budget back into surplus in 2012-13 so as not to compound price pressures from a mining boom we have not witnessed before in our history." The Reserve Bank of Australia has warned interest rates - already up 7 times since late 2009 - will have to rise to keep a lid on inflation. Underlying inflation has already bottomed out at just over 2% and the bank sees it rising to the upper end of its 3% target by the end of 2011.

Prime Minister Julia Gillard rules in a minority, but a handful of independent and Greens MPs have pledged not to block the budget, and bring the government down, but will seek some concession in return for continued support on other Labor policies like a planned mining tax and carbon price. "The economy cries out for workers. Just as our focus on jobs helped Australia beat the global financial recession, so too can a focus on jobs ensure we maximise our advantage in the Asian century," Swan said. Unemployment is nearing 4.5%, a level considered full employment, threatening to overheat the jobs market, fuel wage inflation and threaten the viability of key resource investments.

Deficit envy

"Our public debt is a tiny fraction of that carried by comparable economies, our fiscal position the envy of the developed world," said Swan. The Treasurer predicted the deficit would total $49.4bn in 2010-11 - 3.6% of GDP - then more than halve to $22.65bn in 2011-12 before hitting a surplus of $3.5bn in 2012-13, in part with the aid of a planned mining tax. Australia's 2011-12 deficit is projected at 1.5% of GDP, well below the 10.8% forecast for the United States and the 8.6% expected for the United Kingdom. The government capped

spending growth at 2% in 2011-12, but this comes as its economic stimulus packages during the global financial crisis come to an end and it will be more difficult to keep spending down in future years. Any major fall in commodity prices or a sustained appreciation in the local dollar could threaten Australia's narrow 2012-13 surplus forecast, say economists.

Australia's economy is forecast to grow by 4% in 2011-12 and 3.75% in 2012-13, after recovering from a series of natural disasters in 2011 which chopped 0.75 percentage point off growth. Many of Australia's major miners, like BHP Billiton, Rio Tinto Ltd and Xstrata, were forced to curb iron ore and coal mining and exports after floods and cyclones flooded pits, damaged transport lines and closed ports. Australia is the world's biggest exporter of iron ore and coking coal. Its biggest miners have placed big bets on the commodities boom, committing over $130bn over the next 5 years.

Jobs, jobs, jobs

Australia's economy is benefiting from a record terms of trade and climbing dollar - up 19% in the past year to A$1.07 to the US - but it has created a "two-speed" economy. Mining investment will rise to $76bn in 2011-12, benefiting the resource dependent states of Queensland and Western Australia, but the sector employ less than 2% of Australia's workforce. "For some talk of an investment boom seems divorced from reality. Wages are growing, yet many live pay cheque to pay cheque. Not every region prospers," Swan said.

Economists say Australia's mining boom is masking the state of the real economy, with weakness becoming entrenched in key sectors such as retail, housing and construction. The non-mining sectors make up 90% of the economy and struggling with rising interest rates, the high dollar, rising oil prices and a fall in consumer confidence. In the past year, 300,000 jobs were created and the unemployment rate was forecast to fall further to 4.5% by mid-2013, creating another half a million jobs, said Swan. "The centrepiece of this budget is jobs, jobs and jobs," he said. But total skilled migration will only rise by 10,000 to 125,850 in 2011-12 and net migration will be static at around 180,000. The government's own employment department has said Australia needs almost 1.3m workers by 2015-16.

Budget political risk

Gillard's one-seat majority government, reliant for its existence on a handful of rural MPs, allocated $36bn for road, rail and port infrastructure and $4.3bn for regional hospitals, health care, universities and roads. "This budget delivers for regional Australia like no budget before it," said Swan, a comment directed squarely at those key regional MPs who only agreed to back the Labor government after it committed to increase spending on rural Australia. The Greens party will control the balance of power in the Senate from 1 July 2011 and its support is crucial if the government is to introduce its 30% mining profits tax, which is expected to raise $7.7bn in the first 2 years from July 2012, and a carbon price to cut greenhouse gas emissions. Struggling in opinion polls, but with no election due until 2013, Gillard will be hoping this budget will convince voters her government is a good economic manager and shore up its minority government. "It's got to the point that this budget is a survival test for the Gillard government," Dennis Shanahan, political editor of The Australian newspaper wrote on 10 May 2011. (*Written by Michael Perry; Additional reporting James Grubel, Victoria Thieberger; Editing by Balazs Koranyi and Terry Hayes*.)

PERSONAL TAXATION

[648] **Personal tax rates - no change (but be careful of flood levy)**

The Government did not make any changes to the currently legislated tax rates which apply for the 2010-11 and following years (not forgetting that, from 1 July 2011 for one year, those rates will include the flood levy, where applicable). The resident tax rates are as follows:

Residents: rates and tax payable: 2010-11 and later years	
Taxable income ($)	***Tax payable ($)***
0 - 6,000	Nil
6,001 - 37,000	Nil + 15% of excess over 6,000
37,001 - 80,000	4,650 + 30% of excess over 37,000
80,001 - 180,000	17,550 + 37% of excess over 80,000
180,001 +	54,550 + 45% of excess over 180,000

Notes:
1. The above rates exclude the 1.5% Medicare levy and the flood levy (see below).
2. The low income tax offset is a maximum of $1,500.

The current resident tax thresholds and those applying for the 2011-12 financial year (for those subject to the flood levy) are:

Tax threshold levels - flood levy comparison			
Current, and from 1 July 2011 for those NOT subject to the flood levy		***2011-12 (for those subject to the flood levy)***	
Taxable income ($)	***Rate (%)***	***Taxable income ($)***	***Rate (%)***
0 - 6,000	0	0 - 6,000	0
6,001 - 37,000	15	6,001 - 37,000	15
37,001 - 80,000	30	37,001 - 50,000	30
80,001 - 180,000	37	50,001 - 80,000	30.5
180,001 +	45	80,001 - 100,000	37.5
		100,001 - 180,000	38
		180,001 +	46
Note: The rates above exclude Medicare levy.			

Flood levy

Generally, the flood levy will apply to individual taxpayers, both resident and non-resident, who have a taxable income over $50,000 in the 2011-12 financial year. By virtue of the levy, for the 2011-12 financial year, the effective top personal marginal tax rate will be 47.5%, including the flood levy and the Medicare levy.

Under the levy:

- individuals with a taxable income between $50,001 and $100,000 will pay a 0.5% levy on that part of taxable income above $50,000;
- individuals with a taxable income of $100,001 or more will pay a 0.5% levy on that part of their taxable income between $50,001 and $100,000 and a 1% levy on that part of their taxable income above $100,000; and
- no levy is payable where the taxpayer has a taxable income of $50,000 or less, or where they fall into an exemption category as specified in a legislative instrument that is made by the Minister.

Exemption: Individuals are exempt from the levy if they were affected by a natural disaster during 2010-11 and received an Australian Government Disaster Recovery Payment. Where a trustee has income that is taxed as if the income was of an individual, they will be liable for the levy as per the relevant thresholds.

Thomson Reuters comment: Obviously, the flood levy will mean an increase in tax rates for many people after 1 July 2011. With the change (usually reduction) in tax rates that has taken place over recent years, traditional year-end tax planning has suggested that taxpayers, where possible, defer income and bring forward deductions. But this year, the reverse applies - although it is acknowledged that the increase in tax rates will be only small. For example, salary sacrificing into superannuation (within the limits that apply) after 1 July will reduce taxable income for that year and thereby reduce the impact of the flood levy. The levy is calculated as follows:

Flood levy calculation	
Taxable income (TI) 2011-12 financial year ($)	***Flood levy ($)***
0 - 50,000	Nil
50,001 - 100,000	[TI - 50,000] x 0.5%
100,001 +	250 + [(TI - 100,000) x 1%]

Non-resident individuals

The tax rates for non-residents have not changed and are as follows:

Non-residents: rates and tax payable: 2010-11 and later years	
Taxable income ($)	***Tax payable ($)***
0 - 37,000	29%
37,001 - 80,000	10,730 + 30% of excess over 37,000
80,001 - 180,000	23,630 + 37% of excess over 80,000
180,001 +	60,630 + 45% of excess over 180,000
Note: The above rates exclude the 1.5% Medicare levy and the flood levy (the flood levy can apply to non-residents where they have taxable Australian income over $50,000).	

by Terry Hayes

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[649] Minors no longer entitled to low income tax offset on unearned income

The Government will remove the ability of minors (children under 18 years of age) to access the low income tax offset (LITO) to reduce tax payable on their ***unearned income***, such as dividends, interest, rent, royalties and other income from property, ***with effect from 1 July 2011***. This is designed to discourage income splitting between adults and children, the Government said.

The Assistant Treasurer said the increases in LITO over recent years have increased the amount of income that can be allocated to children tax-free. He said these increases have been accompanied by increased distributions of income to children, especially from discretionary trusts.

Income earned by minors from work will still be eligible for the full benefit of the LITO. Unearned income of minors who are orphans or disabled, as well as compensation payments and inheritances received by minors, will not be affected by this measure.

Source: Budget Paper No 2 [p 40]; Assistant Treasurer's press release, 10 May 2011

Thomson Reuters comment

Looks like it's back to the "good ole days" of $416 etc that many of the "more mature" practitioners will no doubt recall!

The Assistant Treasurer said the change is to "discourage the tax avoidance that currently occurs when high income earners allocate their income to children under 18 years of age". However, Paul Banister, Director at Grant Thornton (and a co-author of the Thomson Reuters *Australian Financial Planning Handbook*) points out that there will be many minors caught up in this change eg what about children who have shares in their name where the number acquired was calculated on the basis of the higher LITO-influenced threshold?

by Terry Hayes

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[650] **No deductions against Govt assistance payments - *Anstis* overruled**

The Government will amend the tax law to ***prevent deductions being claimed against all government assistance payments, with effect from 1 July 2011***, in response to the 2010 High Court decision in *FCT v Anstis* [2010] HCA 40. The Government says the change is designed to maintain the integrity of the deductions system and provide certainty as to the scope of eligible deductions.

Commencing the denial of deductions from 1 July 2011 is designed to allow individuals who receive Youth Allowance (Student) to claim a deduction for expenses incurred in gaining their payment for the 2010-11 income year. This is to ensure individuals who have maintained records of their expenditure following the High Court decision are not precluded from claiming a deduction. For each of the years 2006-07 to 2009-10, the Commissioner of Taxation has determined that he will administer the law to allow eligible taxpayers to receive an automatic deduction of $550 or make potentially higher claims if expenses can be substantiated.

Thomson Reuters note: The Assistant Treasurer announced in December 2010 that the Government would not amend the law retrospectively in this regard: see 2011 WTB 1 [8].

Source: Budget Paper No 2 [p 39]

by Terry Hayes

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[651]**Dependent spouse rebate for spouses under 40 to be phased out**

The Government announced it will phase out the tax offset for dependent spouses aged less than 40 (ie born on or after 1 July 1971) "to help encourage more Australians into paid employment". This change will mean taxpayers with a dependent spouse aged less than 40 years will no longer be eligible for the dependent spouse tax offset (DSTO) from 1 July 2011.

Exceptions: The change will not affect taxpayers whose dependent spouse is a carer, who is an invalid, or permanently unable to work; and taxpayers with children (eligible for Family Tax Benefit B), or eligible for the zone, overseas forces or overseas civilian tax offsets. Dependent spouses with children are not affected by this measure because they receive Family Tax Benefit B rather than the DSTO.

The Government says this change recognises that dependent spouses who may have been out of the paid workforce for many decades would find it more difficult to find jobs, so they will continue to be eligible for the DSTO.

The Treasurer said the offset had its origins in the initial ITAA 1936 at a time when a breadwinner was expected to "maintain' a spouse even without children, and there were limited employment opportunities for women. Mr Swan said this was no longer the case "for most Australians in today's modern economy, especially with unemployment set to fall further to 4.5%".

Source: Budget Paper No 2 [p 14]; Treasurer's press release, 10 May 2011

Thomson Reuters note

The Henry Tax System Report said the DSTO should be removed where it impacts on participation incentives and should be limited to circumstances where there is less concern about the impact on workforce participation of the secondary earner. Henry's Recommendation 6(a) was that the existing dependency offsets should be replaced with a single dependent tax offset in certain circumstances.

by Terry Hayes

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[652] **Medicare levy thresholds increased for 2010-11**

From the 2010-11 income year, the Medicare levy low-income thresholds will be increased for singles to $18,839 (up from $18,488 for 2009-10) and to $31,789 for those who are members of a family (up from $31,196 for 2009-10).

The additional amount of threshold for each dependent child or student will also be increased to $2,919 (from $2,865).

The Medicare levy low-income threshold for pensioners below Age Pension age will also be increased from 1 July 2010 to $30,439 (from $27,697). This increase will ensure that pensioners below Age Pension age do not pay the Medicare levy while they do not have an income tax liability.

Date of effect

The measure will apply from 1 July 2010.

Source: Budget Paper No 2 [p 39]; Treasurer's press release, 10 May 2011

by Stuart Jones

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[653] Income test on the private health insurance rebate: Govt to try again

Although not formally announced in the Budget, Thomson Reuters confirmed with Treasury officials in Canberra that the Government plans to re-introduce a package of Bills (possibly in the Budget session) to income test the 30% private health insurance rebate. The measures will be essentially the same as the Bills that were defeated in the Senate in February and March 2010, although it is understood the threshold levels will be indexed upwards (as originally proposed).

The *Fairer Private Health Insurance Incentives Bill 2009*, *Fairer Private Health Insurance Incentives (Medicare Levy Surcharge) Bill 2009*, and *Fairer Private Health Insurance Incentives (Medicare Levy Surcharge - Fringe Benefits) Bill 2009* were originally introduced on 27 May 2009, and sought to give effect to 2009 Budget changes concerning the private health insurance rebate and consequential Medicare Levy Surcharge changes: see 2009 WTB 22 [1012].

The Bills were passed by the House of Reps without amendment, but were then defeated in the Senate in 2009 (see 2009 WTB 38 [1793]). They were re-introduced as [No 2] Bills on 19 November 2009 (see 2009 WTB 48 [2282]). The reintroduced Bills were then defeated in the Senate in February and March 2010: see 2010 WTB 10 [408].

The essence of the proposed changes was to effectively income test the private health insurance rebate. The Fairer Private Health Insurance Incentives Bill 2009 [No 2] proposed to introduce 3 new "Private Health Insurance Incentive Tiers":

- **Tier 1**: Singles earning between $75,001 and $90,000 and couples/families earning between $150,001 and $180,000 would receive a 20% private health insurance rebate if they are aged up to 65 years (25% if they are aged over 65, and 30% if they are aged 70 years or over).
- **Tier 2**: Singles earning between $90,001 and $120,000 and couples/families earning between $180,001 and $240,000 would receive a 10% private health insurance rebate if they are aged up to 65 years (15% if they are aged over 65, and 20%if they are aged 70 years or over).
- **Tier 3**: Singles earning above $120,000 and couples/families earning above $240,000 would not receive any private health insurance rebate, regardless of age.

The defeated Bills had also proposed to increase the rate of Medicare levy surcharge that certain taxpayers would be liable for when they have income for surcharge purposes above specified thresholds and do not have complying health insurance:

- Singles earning between $90,001 and $120,000 and couples/families earning between $180,001 and $240,000 would have been liable for a 1.25% Medicare levy surcharge.
- Singles earning above $120,000 and couples/families earning above $240,000 would have been liable for a 1.5% Medicare levy surcharge.

The fate of the Bills will probably rest with the Independents in the House of Reps, as the Greens have previously stated they are opposed to the private health insurance rebate, so it could be expected that any re-introduced Bills may obtain Greens approval in the Senate (especially if the Bills are debated in the Senate after 1 July 2011).

by Terry Hayes

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[654]Low income tax offset: bring forward - more in pay packets

From 1 July 2011, the Government will increase the proportion of the low income tax offset (LITO) that is delivered through workers' week-to-week pay packets from 50% to 70%. This change means instead of being compensated after they put in their tax return at the end of the year, lower income earners are taxed less during the year. The remaining 30% of their LITO will still be paid as a lump sum on assessment of income tax returns.

Someone with annual income of $30,000 will get an extra $300 during the year in their regular pay. A person's total LITO entitlement for any one tax year will remain unchanged. An individual's total LITO entitlement in any one year remains unchanged.

Source: Budget Paper No 2 [p 15]; Treasurer's press release, 9 May 2011

Thomson Reuters note: The Henry Tax System Review recommended that LITO and the senior Australians, pensioner and Beneficiary tax offsets should be removed as separate components of the system and incorporated into the personal income tax rates scale. So, the Government's announcement does not implement the Henry recommendation, but may be seen as going some little way towards it.

by Terry Hayes

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[655]Family Tax Benefit, Baby Bonus and related changes

The 2011-12 Federal Budget provides an increase in Family Tax Benefit (FTB) Part A for 16-19 year olds.

From 1 January 2012, the new maximum rate of FTB Part A for 16-17 year olds in secondary school will be increased from the current $52.64 per fortnight to $214.06 per fortnight, ie by around $160 per fortnight - an increase of around $4,200 per year. For 18-19 year olds in school, the rate will be $3,741 per year. This will align with the 13-15 year old rate and ensure assistance for families does not drop when children turn 16. The increases to FTB Part A will only be available for families where their teenager is in full-time secondary study, or the vocational equivalent.

From 1 January 2012, the Government will lower the maximum age of eligibility for FTB Pt A from 24 to 21. This will bring FTB Pt A into line with the reduction in the Youth Allowance age of independence to 22 from 1 January 2012.

From 1 July 2011, families will be able to advance a maximum of 7.5% of their total rate of FTB Pt A payment, up to $1,000. For example, a family with 2 children under 12 will be able to receive an advance payment of up to $644.

The Government also said it would extend indexation pauses on higher income limits for a further 2 years until 30 June 2014 in the following areas:

- the FTB Pt B primary earner income limit will remain at $150,000;

- the income limit for receiving dependency tax offsets will remain at $150,000;
- the Baby Bonus eligibility limit will remain at $75,000 family income in the 6 months following the birth or adoption of a child;
- the Paid Parental Leave income limit will stay at $150,000 for the primary carer in the previous financial year before the birth of the child;
- the higher income-free area of FTB Pt A will remain constant.

Fortnightly payment rates for Family Tax Benefit and the Baby Bonus will continue to be indexed every year.

The annual end of year FTB supplements will be held at the curent levels for the next 3 years. The FTB supplements will be fixed at the current 2010-11 levels of $726.35 per annum per child for FTB Pt A and $354.05 per annum for FTB Pt B until 1 July 2014.

Source: Minister for Families med release, 10 May 2011; Budget Paper No 2 [p 195]; PM's media release, 4 May 2011

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[656]Tax-free apprenticeship payments

The 2011-12 Budget includes $281m for additional tax-free payments to encourage apprentices in critical trades to complete their qualifications. The Government expects the $1,700 Trades Apprentice Income Bonus to support 200,000 trade apprentices over 4 years in skills shortage occupations to stay in their training and get a skilled job.

From 1 January 2011, eligible Australian Apprentices have received an additional tax-exempt bonus of up to $1,700 as they reach milestones in their training, including an $800 completion bonus, bringing them to a total of a maximum of $5,500 over the course of their apprenticeship.

The incentive payments were announced in the 2010 Election as part of a package to support Australian Apprentices and as at May 2011, the PM said more than 34,000 Australian Apprentices had already benefited from this new payment.

Source: Assistant Treasurer's press release, 10 May 2011; PM's media release, 6 May 2011

by Terry Hayes

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[657] Pacific Seasonal Worker Pilot Scheme: improved tax treatment

The Government announced it will reduce the bottom marginal tax rate for non-resident individuals participating in the Pacific Seasonal Worker Pilot Scheme (the Scheme) to 15%. This rate will apply from the first dollar of income up to $37,000, with effect from the 2011-12 income year.

Currently, scheme participants face a marginal tax rate of 29% from the first dollar of income up to $37,000. The Government considers the 15% is more appropriate to the circumstances of participants in the Scheme

and, by improving remittance outcomes, will also strengthen the development and strategic objectives of the Scheme.

The 15% reflects the marginal tax rate that would usually apply to Australian residents earning a similar level of income to participants in the Scheme. However, workers qualifying for the reduced rate will not have access to the tax-free threshold or low income tax offset.

Source: Budget Paper No 2 [p 38]

by Terry Hayes

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[658] **HECS: reduction in discounts**

The Government will reduce the following discounts applying to payments made under the Higher Education Contribution Scheme (HECS):

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

Under HECS, students electing to pay their student contribution up-front will continue to receive a 10% discount on the payment. Students choosing not to pay up-front can take out a concessional loan to pay their student contribution under the Higher Education Loan Program (HELP).

Under HELP, students accrue an outstanding debt which is repaid gradually when their assessable income exceeds a minimum repayment threshold. Students can also elect to make additional voluntary payments through the Tax Office to further reduce their outstanding HELP debt. Payments of $500 or more will now attract a 5% bonus so that a payment of $500 would reduce an individual's outstanding HELP debt by $525.

Date of effect

1 July 2012.

Source: Budget Paper No 2 [p 163]

by Ian Murray-Jones

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SUPERANNUATION

[659]**Excess contributions tax: refund option for contributions up to $10,000**

The Government will provide eligible individuals who breach the concessional contributions cap by up to $10,000 with a one-off option to request that these excess contributions be refunded to them. This new refund option will only apply to first time breaches from 1 July 2011.

The changes will give individuals the option to take excess concessional contributions out of their superannuation fund and have them assessed as income at their marginal rate of tax, rather than the excess concessional contributions tax rate of 31.5% (in addition to the 15% contributions tax for the fund).

The Government expects that this reform will help to reduce the number of occasions where the concessional contributions are exceeded resulting in an excess contributions tax (ECT) assessment.

The Government said it will consult with the superannuation industry on the implementation of this measure. This is supported by the Institute of Chartered Accountants in Australia, which will be actively involved in the implementation consultation. According to the Institute's head of superannuation, Liz Westover, if the measure is effectively implemented, the onerous nature of ECT will be avoided for many taxpayers who have made inadvertent errors and contributed too much into super. Westover believes the change will reduce the number of taxpayers caught out by the existing law and provide relief for those whose small breaches of the concessional cap might otherwise have resulted in significant tax penalties.

Concessional contributions

Concessional contributions generally include employer contributions (those made under salary sacrifice arrangements and super guarantee contributions) and personal contributions for which the taxpayer intends to claim a deduction. However, less obvious concessional contribution include notional taxed contributions for defined benefit interests, transfers of certain fund reserves and payments by employers of fund expenses (eg life insurance premiums).

Since 2009-10, the "concessional contributions cap" has been set at $25,000 (or $50,000 for those aged 50-74 until 30 June 2012). Note that the Government has proposed to allow individuals aged 50 and over with less than $500,000 in super to contribute $25,000 more per year than other individuals from 1 July 2012: see para [662] of this *Bulletin*. As a result, when the general concessional contributions cap increases with indexation from $25,000 to $30,000, the higher cap will increase by the same dollar amount.

Date of effect

This measure will apply from 1 July 2011 in respect of 2011-12 or later years, and only for the first year, commencing from 2011-12, in which a breach occurs.

Source: Budget Paper No 2 [pp 43-44]; Assistant Treasurer's media release, 10 May 2011

Thomson Reuters comment

Obviously, this reform may benefit taxpayers with a marginal rate below the top marginal rate of 46.5% who inadvertently breach the concessional contributions cap by $10,000 or less for the first time. The reform will also provide some one-off relief in situations where excess concessional contributions (up to $10,000) would otherwise flow through and also result in a breach of the non-concessional contributions cap and trigger a tax rate up to 93%.

Unfortunately, the one-one nature of the measure will only provide partial relief where a taxpayer may have repeated the error over a couple of financial years. Due to the time lag for the Commissioner to collect and process contributions data to notify a taxpayer about a potential cap breach, it may be a couple of years before a taxpayer becomes aware of a problem. In addition, the measure will not provide any relief for taxpayers who inadvertently exceed the concessional cap by more than $10,000 or for breaches before 1 July 2011. Such taxpayers will need to apply to the Commissioner to disregard or reallocate the excess contributions.

by Stuart Jones

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[660] **Minimum pension drawdowns: 25% reduction for 2011-12**

The minimum annual payment amounts for pensions and annuities will be reduced by 25% for 2011-12 and will return to normal in 2012-13. In this respect, the Government will begin to phase out the 50% pension drawdown relief that has been provided for 2008-09, 2009-10 and 2010-11 financial years.

Reducing the minimum payment amounts by 25% for account-based, allocated and market linked (term allocated) pensions from 1 July 2011 seeks to provide some assistance to holders of these products to recoup capital losses incurred as a result of the global financial crisis. This measure has an estimated cost to revenue of $7m over 2 years and is also expected to increase Government expenditure by $9m in 2011-12 through higher pension outlays.

Date of effect

The measure will apply from 1 July 2011.

Source: Budget Paper No 2 [p 41]

by Stuart Jones

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[661]**SMSF regulation: additional funding and increased levy**

To implement the range of "Stronger Super" reforms to the self-managed superannuation fund (SMSF) sector, the Government will provide $40.2m to the Tax Office and $8.4m to ASIC from 2010-11 to 2014-15. The package of SMSF reforms, previously announced by the Government on 16 December 2010, are designed to improve the operation, efficiency and integrity of the SMSF sector.

The cost of this measure will be offset by an increase to the SMSF levy from $150 to $180 with effect from the 2010-11 income year and the introduction of SMSF auditor registration fees from 1 July 2012.

SMSF auditors

The Government will provide $2.8m to ASIC to develop a second pass business case and initial capital expenditure for the development of a facility for the online registration of approved auditors of SMSFs from 1 July 2012.

SuperStream

The Government will also provide $14.6m to the Tax Office to develop a business case and initial capital related expenditure to implement a mechanism for members to view their superannuation accounts that have been reported to the ATO and establish governance and project teams during consultation to undertake detailed design of ATO IT systems to support the SuperStream measures.

MySuper

The Government will provide $26.2m to APRA and $3.7m to ASIC to introduce MySuper. This measure will be funded by an increase in the levy on APRA regulated superannuation funds.

Source: Budget Paper No 2 [pp 324-326]

by Stuart Jones

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[662]**Concessional contributions: higher cap for those 50 and over**

The Government will set the proposed higher concessional contributions cap at $25,000 above the general concessional cap for eligible individuals aged 50 and over with total superannuation balances of less than $500,000.

The proposal to allow individuals aged 50 and over with total superannuation balances below $500,000 to continue making up to $50,000 per year in concessional contributions from 1 July 2012 was previously announced as part of the Government's response to the Henry Tax Report on 2 May 2010.

The Government has confirmed that the higher cap will enable eligible persons over 50 to be able to contribute $25,000 more per year than other workers subject to the general concessional contributions cap of $25,000. As a result, when the general concessional contributions cap increases with indexation from $25,000 to $30,000, the higher cap will increase by the same dollar amount.

Date of effect

This measure will apply from 1 July 2012.

Source: Budget Paper No 2 [p 44]

by Stuart Jones

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[663] **Other measures: SMSFs; co-contributions; TFNs; payslips**

Other superannuation measures announced include:

- ***SMSF trustee-director a parent or guardian of minor*** - the Government will amend the superannuation legislation so that where the trustee of a self-managed superannuation fund is a body corporate, a parent or guardian may be director of the body corporate in place of a member that is a minor. No commencement date specified;
- ***superannuation co-contribution indexation freeze extended* -** the Government will continue the freeze on the income thresholds for an additional year to 2012-13. Under the co-contribution scheme, the Government provides a matching co-contribution for contributions made into superannuation out of after-tax income. The matching Government co-contribution is up to $1,000 for people with incomes of up to $31,920 in 2010-11 (with the amount available phasing down for incomes up to $61,920). This measure will continue to freeze these thresholds at $31,920 and $61,920, respectively;
- ***greater use of TFNs for superannuation*** - the Government will allow superannuation fund trustees and RSA providers to make greater use of tax file numbers (TFNs) to locate member accounts and to facilitate the consolidation of multiple member accounts. This measure will remove the existing requirement for fund trustees and RSA providers to use other methods of identification to locate accounts before TFNs can be used, with effect from 1 July 2011. It will also assist fund trustees and RSA providers to carry out more efficient consolidation of multiple member accounts, with effect from 1 January 2012, if not proclaimed earlier;
- ***superannuation on payslips*** - the Government will ensure that employees receive information on their payslips about the amount of superannuation actually paid into their account. Employees and employers will also receive quarterly notification from their superannuation fund if regular payments cease, with effect from 1 July 2012;
- ***Federal Magistrates' superannuation contributions*** - the Government will increase the superannuation employer contribution rate for Federal Magistrates from 13.1% to 15.4. This increase will align the employer contribution rates for Federal Magistrates with most Australian Government employees and office holders.

Source: Budget Paper No 2 [pp 43-44, 48, 326]

by Stuart Jones

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BUSINESS TAXATION

[664**] Small business motor vehicle tax write-off to replace Entrepreneur's Tax Offset**

The Government will provide Australian small businesses with an instant tax write-off of the first $5,000 of any motor vehicle purchased from 2012-13. The Treasurer said that, for example, a tradesman on a 30% marginal tax rate, buying a new $33,960 ute would receive an extra tax benefit of $1,275 in the year they purchased the vehicle. The remainder of the purchase value can be transferred into the general small business depreciation pool, which is depreciated at 15% in the first year and 30% in later years.

The Treasurer said this new write-off was in addition to the Government's proposed tax reforms for small businesses to be introduced in 2012-13 that would allow:

- an immediate write-off of all assets valued at under $5,000 (up from $1,000 presently);

- a write-off of all other assets (except buildings) in a single depreciation pool at a rate of 30%. Currently, small businesses allocate assets to 2 different depreciation pools, with 2 different depreciation rates (30% and 5%); and
- a reduction in company tax rate to 29% for incorporated small businesses.

These reforms will be available to all small businesses, including sole traders and businesses operating through trusts, partnerships and companies. [**Thomson Reuters note**: These tax reforms were originally announced as part of the Government's response to the Henry Tax System Review report in May 2010 (see 2010 WTB 18 [679]), and there has so far been no legislation introduced to implement them. It is also noted that the original Govt announcement proposed a 28% tax rate for small businesses from 2021-13.]

The new small business instant write-off for the first $5,000 of any motor vehicle will effectively replace the Entrepreneurs Tax Offset (ETO), which will be abolished with effect from the 2012-13 income year. The Henry Tax System Review recommended abolition of the ETO because of its poor targeting and high compliance costs. The Henry Report concluded that ETO provided a disincentive for businesses to grow because the benefit available started to decline at $50,000 of annual turnover and cut out completely at $75,000. The ETO was also only available to individuals with incomes under $70,000 and the Government said its poor targeting and complexity meant 2.3m small businesses missed out on any benefit.

Thomson Reuters comment: While the $5,000 deduction will be welcome for many small businesses, those with cash flow issues may find it difficult to outlay the initial funds to secure the deduction.

Source: Budget Paper No 2 [pp 13 and 42]; Treasurer's press release No 044, 8 May 2011

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[665] **FBT and cars - flat 20% valuation rate to apply**

The Government announced what would amount to implementation of Henry Tax Review Recommendation 9(c) that the current statutory formula 4-percentage rate scale method for valuing car fringe benefits be replaced with a single statutory rate of 20%, regardless of the number of kilometres travelled. This announcement is also consistent with recent recommendations made by the Institute of Chartered Accountants in Australia to align the operation of these FBT rules with the Government's long-term climate change policy.

Date of effect

The changes will apply to new vehicle contracts entered into after 7:30pm (AEST) on 10 May 2011, and will be phased in over 4 years as follows:

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

FBT statutory rate method					
	Statutory rate (x cost of car to determine person's car fringe benefit)				
More than 40,000km	7	10	13	17	20

People who use their vehicle for a significant amount of work-related travel will still be able to use the "operating cost" (or "log book") method to ensure their car fringe benefit excludes any business use of the vehicle.

Source: Budget Paper No 2 [p 23]; Treasurer's press release, 10 May 2011

Thomson Reuters comment

As we all know, there are 2 methods for valuing car fringe benefits - the "statutory formula" method and the "operating costs" method. The statutory formula method operates on a per-car basis by applying a statutory percentage to the base value of the car. The percentage varies depending on the total number of kilometres travelled in the FBT year - the higher the kms, the lower the percentage. The percentages have been:

- 26% - where total kms travelled are less than 15,000;
- 20% - where total kms travelled are between 15,000 and 24,999;
- 11% - where total kms travelled are between 25,000 and 40,000; and
- 7% - where total kms travelled are more than 40,000.

The flat 20% rate will particularly benefit those who drive less than 15,000 kilometres, resulting in an FBT saving. For those who drive between 15,000 and 25,000kms pa, there will be no change - the rate stays at 20%. For those who drive between 25,000 and 40,000kms pa, the rate will rise from 11% to 20% over 3 years. For those who drive more than 40,000kms pa, the rate will rise from 7% to 20% over 4 years (although it might be expected they would be using the operating costs method anyway). In fact, those driving more than 25,000 kilometres a year might find that using the alternative operating cost method more beneficial.

The single 20% rate will certainly bring a welcome simplification of the FBT car valuation rules and the removal of the incentive to drive more kilometres to achieve lower FBT seems appropriate (that change was probably coming anyway). The new single rate will most likely be broadly welcomed, but in this age of high fuel prices and the use of novated leases, query whether large numbers of employees would drive many extra kilometres just to get over the 15,000, 25,000 or 40,000km thresholds. The advent of the novated lease, where the cost of the car (eg fuel, rego, repairs, etc) is much more directly borne by the employee, would suggest employees might be more careful in incurring extra costs such as fuel in driving extra kilometres.

The change may encourage employers and employees to:

- purchase lower cost and more fuel efficient cars (although the needs of the user will need to borne in mind eg sales rep needing a larger car to take samples, etc to customers). Company sales representatives need cars to conduct company business, and that will not change, so a move to lower cost cars might eventuate. The Government has a few balls to juggle here eg maximising FBT revenue, supporting local car manufacture (with attendant employment implications);
- keep company cars longer - this can have the added benefit of being able to take advantage of the 1/3rd reduction in the base value of the car after 4 years. The reduction takes effect from the beginning of the 1st FBT year following the 4th anniversary of the date on which the car was first owned or leased eg if the car was leased on 23 May 2006, the reduction would apply in the FBT year that commenced on 1 April 2011;
- investigate more use of cars with diesel engines (for their longevity and fuel efficiency);
- encourage more employee contributions (recipient's payment) to reduce the FBT liability. A employee can make a payment to their employer as a contribution towards the cost of providing fringe benefits

(such as cars). These payments are referred to as "employee contributions" and they generally reduce the taxable value of a fringe benefit by the full amount of the contribution. Employee contributions are considered assessable income of the employer. For the 2009-10 FBT year (ie 1 April 2009 to 31 March 2010), the statistics show that employee contributions towards car fringe benefits for which the taxable value was calculated using the statutory formula method were the most popular type of employee contribution. This could be expected to continue (or even increase) following the Budget changes. For the 2009-10 FBT year, the ATO estimated that the taxable value of over 513,000 car fringe benefits was calculated using the statutory formula method.

Of course, an employer could still elect to use the operating costs method (which requires the use of log books) for valuing car fringe benefits (rather than simply adopt the flat 20% rate), where this would produce a lower FBT liability.

Gary Fitton, Director at Remuneration Strategies Group (and a co-author of the Thomson Reuters *Australian Financial Planning Handbook*) says the adoption of the flat 20% rate would be the most dramatic change to the valuation of car fringe benefits since the introduction of the FBT system in 1986 and the increase in the statutory values to their current rates from 1 April 1995.

Overall, he believes it will be to the advantage of most employees and employers providing, or considering providing, cars as a part of employees' flexible, total remuneration packages (TR). He said his firm's experience is that:

- the statutory formula is by far the most common method of determining taxable values (ie the log book method is just too difficult and costly for most);
- most existing packaged perquisite vehicles are driven less than 25,000 kilometres per annum and many are driven less than 15,000 kilometres per annum;
- the 4-rate tiered statutory rate method created an administrative burden for both the employer and the employees eg re keeping annual odometer readings, etc.

Therefore, for most employers and employees (as benefit cars are fully costed into employees' TR packages), Mr Fitton said the flat FBT statutory rate of 20% will result in either no additional tax, or annual tax savings.

For example, Mr Fitton said that (using current tax rates) for the average packaged car costing $35,000 and travelling less than 15,000 kilometres pa, the annual FBT saving will be $2,016. Alternatively, where the employee receives, say an annual salary of $150,000 and utilises the contribution method and is subject to the 39.5% income tax rate (including Medicare levy), the annual income tax saving would be $1,315. He also noted that New Zealand has always had a fixed car FBT statutory value rate of 24%, which has operated successfully, so perhaps it was only a matter of time before Australia adopted a single rate.

Reportable fringe benefits - other tax consequences

The change will also have other potentially significant flow-on effects. The FBT value of a company car is included in the "reportable fringe benefits amount" that is shown on an employee's Payment Summary. Any change (up or down) in this amount could affect eligibility to certain tax concessions and government benefits as the "reportable fringe benefits amount" is counted towards various income tests that are used to determine eligibility for certain tax concessions and government assistance programs, including:

- Child Care Benefit, child support and Family Tax Benefit (Part A and B);
- dependant tax offsets;
- Medicare levy surcharge;
- personal superannuation contribution deduction - 10% test for the maximum earnings as an employee;
- government superannuation co-contribution; spouse superannuation contributions tax offset;

- Senior Australians Tax Offset; Mature Age Worker tax offset; Entrepreneurs' tax offset (while noting this is proposed to be abolished from 2012-13: see para [664] of this *Bulletin*);
- Higher Education Loan Programme (HELP);
- offsetting of excess deductions from a non-commercial business;
- employee share scheme upfront tax concession.

by Terry Hayes

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[666] **Important changes affecting charities**

The Budget contains significant changes to the operation of the not-for-profit sector in Australia. There are 3 broad areas of change:

- treatment of income tax concessions;
- a statutory definition of "charity"; and
- establishment of the Australian Charities and Not-for-profits Commission.

Treatment of income tax concessions

- The Government intends to ensure that tax concessions provided to charities (or NFPs) are targeted only at those activities which directly further its altruistic purposes. Under this measure, the NFP income tax concessions will only apply to profits generated by unrelated commercial activities that are directed back to a NFP entity to carry out its altruistic work. This means NFP entities will pay income tax on profits from their unrelated commercial activities that are not directed back to their altruistic purpose (ie, the earnings they retain in their commercial undertaking).
- NFP entities, in respect of their unrelated commercial activities, will also not have access to the FBT exemptions or rebate, GST concessions, or deductible gift recipient support in relation to those activities. Commercial activities that further a NFP entity's altruistic purposes, and small-scale and low-risk unrelated commercial activities, will not be affected by the reforms.
- The accompanying Press Release states that the reforms will not affect the use of tax concessions to further a NFP's altruistic purpose, even where the charitable operation is conducted commercially. Examples include not-for-profit hospitals, op-shops that sell second-hand household items and clothing (at discounted prices to those in charitable need), NFP child care centres, and business whose purpose is to provide meaningful employment to disabled persons. It also states that the changes will not affect NFPs carrying on small-scale and low-risk activities, such as lamington drive fundraisers, school fetes and leasing out church halls.
- ***Date of effect***: The arrangements will commence on 1 July 2011 and will initially affect only new unrelated commercial activities that commence after 7:30 pm (AEST) on 10 May 2011. However, there will be transitional arrangements intended to phase out NFPs with existing unrelated commercial activities. The Government intends to consult on these arrangements.
- NFP entities that have entered into a government service delivery contract as at 10 May 2011 will be allowed to use their tax concessions in support of that contract. Likewise, the 50,000 National Rental Affordability Scheme allocations should be unaffected by the tax changes.

Statutory definition of "charity"

- The Government will consult on and introduce a statutory definition of "charity" for all Commonwealth laws. It will be based on the 2001 Report of the Inquiry into the Definition of Charities and Related Organisations, taking account of the findings of recent judicial decisions, such as Aid/Watch Incorporated v FCT.

- Although the Budget Papers state that this measure is not expected to have an impact on revenue, the proposed new Commission (see below) is expected to re-assess the charitable status of existing NFPs on the basis of the new definition - in other words, there may be changes to the status of NFPs as a result.

  Date of effect: 1 July 2013.

The Australian Charities and Not-for-profits Commission

The Government will establish a new independent statutory agency, the Australian Charities and Not-for-profits Commission (ACNC).

It will initially be responsible for determining the legal status of groups seeking charitable, public benevolent institution (PBI) and other NFP benefits for all Government agencies. The Government will also implement a "report-once use-often" reporting framework for charities, provide education and support to the sector on technical matters, and establish a public information portal.

An implementation taskforce (headed by the expected Commissioner of the ACNC) will also be set up in Treasury from 1 July 2011 to ensure the ACNC is ready for operation by 1 July 2012.

The Commissioner of the ACNC will be appointed by the Government and report to Parliament through the Assistant Treasurer. The Commissioner will have sole responsibility for determining charitable, public benevolent institution, and other not-for-profit status for all Commonwealth purposes. The ACNC will also initially be responsible for providing education and support to the sector; implementing the 'report-once use-often' reporting framework; and implementing a public information portal by 1 July 2013.

From 1 July 2011, the Tax Office will structurally separate its role of determining charitable status from its role of administering tax concessions, in preparation for the establishment of the ACNC. The Commissioner of Taxation will retain responsibility for administering tax concessions for the not-for-profit sector.

The Tax Office will provide corporate service support to the ACNC in the form of information technology services, human services, financial services and other related functions. The Government will also undertake negotiations with the States and Territories on national regulation and a new national regulator for the sector, with the aim of minimising reporting and other regulatory requirements through coordinated national arrangements.

Interestingly, the measure is expected to result in additional tax revenue of $41m over 4 years as a result of increased compliance activity to ensure that NFP tax concessions are used only as intended.

Date of effect: 1 July 2012.

Source: Budget Paper No 2 [pp 36; 37; 322]; Assistant Treasurer Budget press release, 10 May 2011

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[667] **Company loss recoupment rule amendments**

The company loss recoupment rules will be amended to make it easier for companies to satisfy the continuity of ownership test in certain circumstances.

This measure will modify the continuity of ownership test so that ownership does not need to be traced through certain superannuation entities. It will also remove technical deficiencies in the modified rules for widely held entities where:

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

The measure will also ensure that all membership interests held in an entity are treated as a single asset for the purpose of applying the low value asset exclusions under the loss integrity rules.

Date of effect

The measures will apply with effect from the 2011-12 income year.

by Kirk Wilson

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[668] PAYG instalments - GDP adjustment factor reduced for 1 year

The Government will reduce income tax instalments paid under PAYG using the gross domestic product (GDP) adjustment method for one year. PAYG instalments in 2011-12 will be set at 4% above a small business's taxable income for the previous year, half the statutory rate that would otherwise have applied. In accordance with the existing law, taxpayers may still vary their quarterly tax instalments if they consider their income is expected to be lower or higher than the amount determined by the Commissioner of Taxation using the 4% adjustment factor.

This is a one-year benefit, and the statutory rate will apply as normal from 2012-13.

This reduction does not apply to taxpayers who calculate their instalments based on the instalment rate notified by the ATO. Their payments will automatically adjust when they apply the given rate to their actual income for the quarter.

The GDP adjustment method bases instalment amounts on the previous year's taxable income, uplifted by a GDP adjustment factor. This adjustment factor reflects nominal GDP growth over the previous 2 calendar years and is intended to calculate tax instalments payable based on expected profit growth. Taxpayers using this method include those carrying on a small business and those with investment income (eg self-funded retirees) and wage and salary earners with investment income subject to the PAYG instalment system.

Source: Budget Paper No 2 [p 38]; Treasurer's media release, 10 May 2011

by Terry Hayes

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[669] Loss utilisation for infrastructure projects

There will be special tax provisions for infrastructure projects designated to be of national significance.

The changes will uplift project losses associated with designated infrastructure projects at the government bond rate and exempt those losses from the continuity of ownership test and the same business test.

The Budget papers state that infrastructure projects often experience long lead times between incurring deductible expenditure and earning income leading to tax losses being incurred in the early stages of the project. Under current arrangements, this leads to the erosion of the real value of tax deductions over time. Further, investors face a risk that a change in ownership of an infrastructure project and change in business operation, means future owners will not be able to access previous years' losses. This measure is intended to improve certainty for investors by ensuring that the value of losses will be maintained through time and making it more likely they will be able to utilise their tax losses.

A decision maker will be empowered to confer designated infrastructure project status on privately financed public infrastructure of national significance based on a range of criteria, including a global capital expenditure cap of $25bn over the period from commencement of the enabling legislation to 30 June 2017.

Date of effect

The change will apply from the date of assent of the enabling legislation. The government will undertake detailed consultations with industry over the next few months to finalise the package, including the development of appropriate legislation and governance arrangements. Infrastructure Australia will be closely involved in this process.

Source: Budget Paper No 2 [p 29]

by Ian Murray-Jones

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[670] Income tax relief and roll-over for water reforms

Amendments will be made to ensure that income tax, including CGT, does not discourage State and Territory reforms to streamline governance arrangements applying to private water supply and drainage systems.

This measure will provide CGT and capital allowance roll-overs to ensure that taxation is not an impediment to water reforms implemented by State and Territory governments. These State and Territory government reforms provide greater certainty to taxpayers about the application of the federal *Water Market Rules 2009*, remove unnecessary regulation and give water users flexibility to reconfigure their water delivery systems.

Date of effect

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

Source: Budget Paper No 2 [p 29]

by Kirk Wilson

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[671] Farm Management Deposits: early access allowed

The Government announced it will allow primary producers affected by natural disasters to access their farm management deposits (FMDs) within 12 months of making a deposit while retaining concessional tax treatment under the scheme. This will provide the same taxation relief as provided to primary producers affected by severe drought to those who are affected by other types of natural disaster.

The Government said it will also make some minor changes to the administration of the FMD scheme which will require more timely and frequent reporting from authorised deposit-taking institutions holding FMDs and allow primary producers to hold FMDs with more than one financial institution. The Government said it will also amend the unclaimed monies provisions of the *Banking Act 1959* so that FMD accounts that have not been operated for at least 7 years are only treated as unclaimed monies if the financial institution is unable to contact the FMD holder following reasonable efforts to do so.

Source: Budget Paper No 2 [p 22]

by Terry Hayes

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[672] **Foreign currency rules: use of functional currency**

The Government announced it will allow certain trusts and partnerships that keep their accounts solely or predominantly in a particular foreign currency to calculate their net income by reference to that currency. This change will take effect from the date of Royal Assent of the amending legislation [to be introduced at some later stage].

Source: Budget Paper No 2 [p 23]

by Terry Hayes

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[673] **Debt/equity rules: proposed amendments**

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

Date of effect: 1 July 2001 (ie from the commencement of the debt/equity tax rules).

Transitional period for Upper Tier 2 capital instruments

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

The extension will give issuers of relevant financial instruments, mainly Authorised Deposit-Taking Institutions, the opportunity to amend relevant instruments to come within the terms of regulations which were made on 10 March 2011. The new regulations ensure that certain Upper Tier 2 perpetual subordinated notes are not precluded from being a debt interest under the debt/equity tax rules.

Date of effect: applies to Upper Tier 2 instruments issued before 1 July 2001.

Source: Budget Paper No 2 [p 28]

by Ian Murray-Jones

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[674] **General interest charge: ensuring its continuous operation**

The Government announced it will rectify a technical deficiency with the law relating to the general interest charge (GIC) that prevents the ongoing imposition of the GIC in some circumstances. The amendments will have effect from 1 July 2010.

The tax law imposes GIC for the late payment of income tax and shortfall interest charge (SIC) liabilities. However, the Government said a deficiency arose from the rewrite and transfer of the GIC rules from the ITAA 1936 to the ITAA 1997 in 2010. The current transitional rules do not impose GIC on income tax and SIC liabilities due on or after 1 July 2010 which relate to financial years ending on 30 June 2010 or earlier. The changes announced are meant to rectify this.

Source: Budget Paper No 2 [p 24]

by Terry Hayes

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[675] **Definition of exploration to include geothermal energy**

The Government will incorporate geothermal exploration into the wider definition of exploration.

Currently, geothermal exploration expenditure does not attract the same tax treatment as applies to traditional hydrocarbon energy sources that require exploration and drilling. This measure is expected to cost $10m over the forward estimates period.

Date of effect

The measure will take effect from 1 July 2012.

Source: Budget Paper No 2 [p 28]

by Ian Murray-Jones

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[676] **Project Wickenby: reduced involvement of Crime Commission**

The Government has identified savings of $2.5m by discontinuing a component of the Australian Crime Commission's (ACC) involvement in addressing tax fraud involving the use of offshore tax havens (Project Wickenby). The Government said the saving will be achieved through a reduction in staff and associated project expenses.

However, funding for the other component of the 2009-10 Budget measure will be retained, leaving the ACC with $6m over the forward estimates to finalise litigation of several cases that were investigated as part of the original Project Wickenby initiative.

Source: Budget Paper No 2 [p 94]

by Stuart Jones

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[677] **Countering fraudulent phoenix activities by company directors**

The Government will strengthen the tax law to counter fraudulent phoenix activity (which involves a company intentionally accumulating debts to improve cash flow or wealth and then liquidating to avoid paying the debt. The business is then continued as another corporate entity, controlled by the same person or group and free of their previous debts and liabilities).

Under the proposed measures:

- the director penalty regime will be extended to superannuation guarantee amounts,
- directors will be personally liable for their company's failure to pay employee superannuation;
- the Tax Office will be given the power to commence recovery against directors under the director penalty regime, without providing a 21 day grace period, for certain unpaid company liabilities that remain unreported after three months of becoming due; and
- in certain circumstances directors and associates of directors will be prevented from obtaining credits for withheld amounts in their individual tax returns where the company has failed to pay withheld amounts to the ATO.

Date of effect

The measures will apply with effect from 1 July 2011.

Source: Budget Paper No 2 [pp 45-46], Assistant Treasurer's press release, 10 May 2011

by Kirk Wilson

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[678] **Tax changes for securities lending arrangements**

The Government will amend the tax rules for securities lending arrangements to ensure that the lender under a securities lending arrangement is treated as not having disposed of the lent securities where:

- the borrower does not return the securities, or identical securities, within 12 months due to the borrower's insolvency; and
- no later than 30 days after the resulting default (or within such longer period that the Commissioner allows), the lender restores their original position prior to the securities
- lending arrangement by using the collateral received under the arrangement to purchase identical securities.

Date of effect

The amendments will apply to securities lending arrangements in existence as at 1 July 2008 and those arrangements entered on or after that date.

Source: Budget Paper No 2 [p 42]

by Ian Murray-Jones

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[679] Reporting Government grants and payments

The Government will provide $43.3m over four years to the Tax Office to allow it to monitor the accurate accounting of government grants and payments. The increased funding will enable the Tax Office to collect payment information from government agencies across all three levels of government, and will provide for sophisticated data-matching techniques to examine compliance by the recipients of such payments.

Source: Budget Paper No 2 [pp 46-47], Assistant Treasurer's press release, 10 May 2011

by Kirk Wilson

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[680] Luxury car tax: importation by public museums

The Government will amend the luxury car tax legislation to allow eligible entities, such as endorsed public museums and art galleries, to import cars free from the luxury car tax.

This is intended to ensure consistent treatment of imports by these entities which are currently able to import works of art or collectors' pieces free from Customs duty and GST. Allowing imports of museum pieces by these entities to be free of all import taxes will bring Australia fully into line with its international treaty obligations.

Date of effect

The change will apply from the date of assent of the enabling legislation.

Source: Budget Paper No 2 [p 32]

by Ian Murray-Jones

[681] Enhanced refund fraud detection and management

The Government will provide $56.4m over four years to the Tax Office to address fraudulent tax refund claims. This measure is estimated to result in an additional $232.6m in revenue in fiscal balance terms over four years.

Source: Budget Paper No 2 [p 46], Assistant Treasurer's press release, 10 May 2011

by Kirk Wilson

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[682] **Reporting taxable payments**

The Government will require certain businesses to report annually on payments made to contractors in the building and construction industry. The reporting regime will require businesses to report information that they should already collect under existing tax arrangements. This measure also includes an increase in funding for the Tax Office of $46.4m over the forward estimates period which will allow the Tax Office to undertake data matching, reviews of contractors' tax liabilities and targeted audits. This funding will also be used to provide further assistance and education to industry.

The Government will also consult publicly on options to introduce a similar reporting regime for payments to contractors in the commercial cleaning industry.

Date of effect

The measures will apply with effect from 1 July 2012.

Source: Budget Paper No 2 [p 47], Assistant Treasurer's press release, 10 May 2011

by Kirk Wilson

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[683] **Investment Manager Regime - interim arrangements**

The Government will amend the income tax laws to prevent the Tax Office from raising assessments for certain portfolio investment income on foreign managed funds for the 2010-11 income year or prior income years, where the fund has never lodged an Australian income tax return. This measure extends the arrangements initially announced on 17 December 2010 which applied to the 2009-10 and prior income years. The Assistant Treasurer said these interim Investment Manager Regime (IMR) arrangements seek to address uncertainty regarding the taxation arrangements for certain portfolio investment income of foreign managed funds. The measure will also enable foreign managed funds and their investors to comply with US reporting requirements, Mr Shorten said.

The Government said it will also amend the law to provide that to the extent relevant investment income of a foreign managed fund is taxed only because the fund is taken to have a "permanent establishment" in Australia, such income will be exempt from tax (except for the arm's length fee for services provided by Australian investment advisors). This will remove an impediment to foreign funds engaging Australian investment advisers to manage primarily offshore assets, and will apply to the 2010-11 and later income years.

Board of Taxation review

The Assistant Treasurer also noted that the Board of Taxation is currently examining the design of the IMR regime as part of its review of the tax treatment of collective investment vehicles (CIVs). Extending the previously announced measure will allow the Government to consider the Board's report prior to making a final

decision on the tax treatment of this investment, Mr Shorten said. The Board will continue to progress other aspects of an IMR as part of its CIV review, with a view to reporting to Government by 31 December 2011.

Source: Budget Paper No 2 [pp 30-31]; Assistant Treasurer's media release, 10 May 2011

by Stuart Jones

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[684] **Payments under Sustainable Rural Water Use and Infrastructure Program**

The Government will amend the tax law to eliminate the timing difference between when payments under the Sustainable Rural Water Use and Infrastructure Program (SRWUIP) are taxed and when deductions are available for amounts spent under program agreements.

Date of effect

The amendments apply with effect from 1 April 2011.

Source: Budget Paper No 2 [p 48]

by Kirk Wilson

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[685] **Petroleum Resource Rent Tax: clarifying the taxing point**

The Government announced it will amend the tax law to provide greater certainty around how the taxing point is calculated for the purposes of the Petroleum Resource Rent Tax (PRRT), ***with effect from 1 July 1990***. This is designed to confirm existing application of the PRRT in relation to the taxing point and is also designed to provide greater certainty for PRRT taxpayers.

The location of the taxing point within a PRRT project is used in determining PRRT liabilities, and was the central issue recently considered by the Federal Court in *Esso Australia Resources Pty Ltd v FCT* [2011] FCA 360 (reported at 2011 WTB 15 [542]). [**Thomson Reuters note**: The Commissioner won this case before the Federal Court in respect of a series of questions about whether amounts assessed by the Commissioner as "assessable petroleum receipts" should be excised from such receipts returned by Esso and BHP Billiton Petroleum (Bass Strait) Pty Ltd.]

The Government said the amendments will provide further statutory support for the Court's judgment, and will be consistent with the established application of the PRRT law.

Source: Budget Paper No 2 [p 40]

by Terry Hayes

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CGT MEASURES

[686] Scrip for scrip roll-over integrity measures

The Government will amend the scrip for scrip roll-over integrity provisions that apply to individuals and companies to ensure that they also apply appropriately to trusts, superannuation funds and life insurance companies.

Currently, the scrip for scrip roll-over integrity provisions apply to transactions where stakeholders in the target and acquiring entities have the potential to influence both entities. However, some trusts superannuation funds and life insurance companies consider the integrity provisions do not apply to them because as the stakeholders, they own the interests for the benefit of others (ie beneficiaries), rather than for their own benefit. As this was never the intended interpretation of the integrity provisions, the Government will amend them to ensure that they apply effectively to all stakeholders.

Date of effect

The measures will have effect for CGT events happening after 7.30pm (AEST) on 10 May 2011.

Source: Budget Paper No 2 [pp 15 -16]

by Kirk Wilson

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[687] Small business tax concessions amendments

The Government will amend the small business tax concessions so that trusts will not be able to avoid being treated as connected entities for the purpose of testing eligibility for the concessions on the basis that the trusts do not own assets for their own benefit. These changes will also ensure that some small businesses will be able to access the small business CGT concessions because the changes will make their business assets *active*.

Date of effect

The measures will have effect for CGT events happening after 7.30pm (AEST) on 10 May 2011.

Source: Budget Paper No 2 [pp 15 -16]

by Kirk Wilson

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[688] Extensions to main residence exemption for special disability trusts

The Government will extend the 2009-10 Budget measure that provides a CGT main residence exemption to special disability trusts (SDTs). In particular, the measures will:

- backdate the CGT main residence exemption for SDTs to apply to CGT events happening in the 2006-07 income and later years;
- provide equivalent taxation treatment amongst SDTs established under either the *Veterans' Entitlements Act 1986* and *Social Security Act 1991*; and
- provide a CGT exemption for assets transferred into a SDT for no consideration and give a market value cost base for testamentary transfers

In addition, the measures will provide a CGT exemption in the advent of the death of the principal beneficiary for the intended recipient of the principal beneficiary's main residence, if the recipient disposes of the dwelling within two years of the principal beneficiary's death (and the dwelling was not used to produce assessable income). Note that a partial exemption may be available to the trustee of the SDT if the dwelling was used to produce assessable before the principal beneficiary's death.

Date of effect

The measures apply with effect for income tax assessments for the 2006-07 and later income years.

Source: Budget Paper No 2 [p 17], Assistant Treasurer's press release, 10 May 2011

by Kirk Wilson

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[689] Exemption for incentives re renewable resources or environmental preservation benefits

The Government will exempt from CGT any gains or losses arising from a right to a financial incentive granted to taxpayers under an Australian government (Commonwealth, State or Territory)scheme that encourages them to acquire renewable resource assets (eg photovoltaic solar cells or solar hot water systems) or for their agreeing to preserve a part of Australia's environmental amenity (eg for refraining from removing remnant vegetation). This measure will also turn off the income tax recoupment rules in relation to any underlying assets (eg a solar hot water system) to ensure that the incentive keeps its full financial value.

Date of effect

This measure will apply to income tax assessments for the 2007-08 income year and later income years.

Source: Budget Paper No 2 [p 16]

by Kirk Wilson

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[690] Limiting the trading stock exception for super funds

The Government will remove the trading stock exception to the CGT primary code rule for complying superannuation entities for specified assets. This measure will ensure gains or losses on specified assets (primarily shares, units in a trust and land) are subject to CGT, consistent with CGT being the primary code for taxing gains and losses of complying superannuation entities. A small number of complying superannuation entities are seeking to treat shares as trading stock, so as to deduct losses on their shares against income other than capital gains.

Date of effect

The measure will apply with effect from 7.30 pm (AEST) 10 May 2011. However, transitional rules will apply to ensure that assets held or accounted for as trading stock before the time of announcement are unaffected.

Source: Budget Paper No 2 [p 17]

by Kirk Wilson

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[691] **Minor amendments: roll-over for shares, life insurance, deceased estates**

A series of minor amendments to the income tax law to ensure the proper functioning of the CGT and associated provisions, including:

- Ensuring that the **roll-over for the exchange of shares** in one company for shares in another company operates properly, so that there is deferral of a profit or loss where the original shares are held on revenue account at the time of the exchange. *Date of effect*: This change will have effect from 7.30 pm (AEST) on 10 May 2011.
- Amending the **roll-over for certain disposals of assets by a trust** to allow roll-over relief to apply where a transferee company or trust holds rights, just before the disposal or transfer time, associated with a deed or similar document that is designed to facilitate the transfer of assets into the company or trust. *Date of effect*: These changes to the roll-over for the disposal of assets by a trust to a company will have effect for CGT events happening after 7.30 pm AEST on 10 May 2011 and the changes to the roll-over for the transfer of assets between certain trusts will have retrospective effect for CGT events happening on or after 1 November 2008.
- Ensuring that gains and losses arising from **life insurance policies** that are generally exempted from CGT are not then taxed under the ordinary income tax provisions by removing the exception to the CGT primary code rule for such gains and losses. This will remove uncertainty in the application of income tax to compensation or damages payments made under life insurance policies. *Date of effect:* These changes will apply to CGT events happening in the 2005-06 income year and later income years.
- Legislating the current Tax Office practice of allowing a **testamentary trust** to distribute an asset of the deceased person without a CGT taxing point occurring. The income tax law in relation to **deceased estates** will also be rewritten using a principle based format and minor technical issues relating to deceased estates fixed. *Date of effect*: These changes will apply to CGT events happening on or after the day the legislation receives Royal Assent.
- Provide the Commissioner with a discretion to extend the two-year ownership period in which the trustee of a deceased estate or beneficiary of such an estate must dispose of their interest in the **deceased's dwelling** to access a full capital gains tax main residence exemption (or a more generous partial exemption).
- Ensure that for the purposes of the CGT concession stakeholder test in the **small business concessions**, taxpayers can have a non-zero direct small business participation percentage where: (a) shares in a company are held jointly by taxpayers; and (b) a discretionary trust has not made a distribution in an income year where the trust had a tax loss or no net income for that year.

Source: Budget Paper No 2 [pp 18, 48]

by Kirk Wilson

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[692] **CGT and other roll-overs for amalgamations of indigenous corporations**

The income tax laws will be amended to ensure that there are no immediate taxation consequences for Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act) corporations that amalgamate with one or more CATSI Act corporations.

The measure will provide a capital gains tax roll-over for members' interests in CATSI Act corporations that amalgamate, and will also provide a roll-over for any gains or losses realised by the original corporation when it ceases to own its CGT assets, revenue assets, trading stock and depreciating assets that become assets of the newly amalgamated entity.

Date of effect

The measures will apply with effect for income tax assessments for the 2007-08 income year and later income years.

Source: Budget Paper No 2 [p 19]

by Kirk Wilson

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GST MEASURES

[693] **Instalment system for small businesses**

The Government will extend the current GST instalment system to allow access for small businesses that are in a net refund position.

The current legislation does not allow a business that is in a net refund position to pay GST by instalments. A business is in a net refund position when it is entitled to receive more input tax credits on its purchases than it is required to pay GST on its sales. This measure is intended to allow small businesses in a net refund position to choose to access the GST instalments system, with an instalment amount each quarter of zero. Any refunds or liability due to the taxpayer will be reconciled in their annual GST return.

Date of effect

The measure will come into effect following assent of the enabling legislation.

Source: Budget Paper No 2 [p 27]

by Ian Murray-Jones

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[694] **Deferral of Board of Taxation recommendations**

The Government has announced the deferral of a number of measures announced in the 2009-10 Budget which were to implement the Board of Taxation recommendations relating to the administration of GST. The measures were to commence on 1 July 2011. The measures that are to be deferred are:

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

The revised start date will be the first quarterly tax period after Royal Assent, or, where appropriate, a later quarterly tax period after Royal Assent. It is stated that this will have an unquantifiable revenue impact and an unquantifiable impact on GST payments to the States and Territories.

In addition, the Government announced that will also not proceed at this stage with the 2009-10 Budget measure to provide an option to treat certain business-to-businesssupplies as taxable, which was scheduled to take effect on 1 July 2010. The deferral is intended to enable more extensive consideration of the possible wider use of reverse charging or GST-free business-to-business transactions.

Source: Budget Paper No 2 [p 26]

by Ian Murray-Jones

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[695] **Property in possession of a mortgagee**

The Government will amend the GST Act to clarify that Div 105 operates to the exclusion of Div 58 where a mortgagee in possession or control sells the property of a corporation. This is intended to provide certainty and reduce compliance costs for entities in the mortgage lending sector by allowing mortgagees in possession or control of property of corporations to continue to report and account for their GST obligations under a single registration.

Date of effect

The measure will take effect from 1 July 2012.

Source: Budget Paper No 2 [p 25]

by Ian Murray-Jones

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[696] **Supplies to health insurers**

Certain supplies made to health insurers in the course of settling health insurance claims will be GST-free. This follows the decision in *FCT v Secretary to the Department of Transport (Victoria)* [2010] FCAFC 84.

Date of effect

The measure will be backdated to 1 July 2000.

Source: Budget Paper No 2 [p 26]

by Ian Murray-Jones

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OTHER MEASURES

[697] Alternative fuels taxation: confirmation of delayed introduction

The Government confirmed its January 2011 announcement (see 2011 WTB 4 [116]) that it would delay the introduction of excise and excise-equivalent customs duty on alternative fuels until 1 December 2011 in response to representations from industry to allow additional time to implement the tax changes.

The Budget papers also state that the Government will simplify the arrangements by applying transitional tax rates to gaseous fuels and biodiesel at the scheduled effective tax rates during the transition to 2015-16, instead of imposing tax at the final rate and providing offsetting production grants.

The Government said it will also make several other minor changes, including revising the unit of measurement of compressed and liquefied natural gas for taxation purposes from cents per litre to cents per kilogram, consistent with general industry practice.

Source: Budget Paper No 2 [p 14]

by Terry Hayes

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[698] Crude oil excise - technical amendments

The Government said it will make several technical legislative amendments to ensure that condensate production is subject to crude oil excise as announced in the 2008-09 Budget.

The amendments include changes to the *Excise Tariff Act 1921* to introduce a statutory definition of the production area "Rankin Trend", and to ensure that production from "Rankin Trend" does not represent "exempt offshore oil and condensate". The *Petroleum Excise (Prices) Act 1987* will be amended to clarify that determinations of Volume Weighted Average Realised Price, which are integral to the operation of the excise regime, are not invalidated merely by a failure to issue a notice to the producer.

Date of effect

The changes will take effect from midnight (AEST) on 13 May 2008, consistent with the original 2008-09 Budget measure.

Source: Budget Paper No 2 [p 19]

by Terry Hayes

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[699] Excise and excise-equivalent customs duty – measures not to proceed

The Government announced it will not proceed with the 2007-08 Budget measure to expand access to refunds, remissions and drawbacks of duty for particular excisable goods. In developing the legislation, the Government said compliance and administration issues emerged, raising concern that the proposed legislative amendments would impose unforseen compliance and administration costs.

Source: Budget Paper No 2 [p 21]

by Terry Hayes

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[700] Apprentices and training

The Government announced it will allocate some $558m to a Workforce Development Fund designed to deliver 130,000 training places over 4 years. The Budget also delivers a $101m national mentoring program to help 40,000 apprentices finish training and better meet the needs of industries and regions. The Government said it is also investing $100m in more flexible training models, allowing apprenticeships to be fast-tracked as they acquire critical trade skills.

The Government said it will provide up to $1.75bn over 5 years from 2012-13 to states and territories under a national partnership, on top of its existing $7bn investment, to drive reforms of the vocational education and training system. The Budget also funds 30,000 more places in the Language, Literacy and Numeracy Program to provide the basic skills essential for a job. Also, to get the very long-term unemployed into work, the Budget will invest $233m in 35,000 targeted wage subsidies and extended work experience programs.

Source: Treasurer's press release, 10 May 2011

by Terry Hayes

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[701] Deferral of Paid Paternity Leave start date

The Government is to defer the implementation of Paid Paternity Leave by 6 months, from 1 July 2012 until 1 January 2013. The measure will provide eligible working fathers, and other partners who are providing full-time care or sharing the child's care, with 2 weeks paternity leave paid at a rate equivalent to the national minimum wage for children born on or after 1 January 2013.

Source: Budget Paper No 2 [p 193]

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