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# Tax Insights Series

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Presenter:

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*May 2021 | Online*

# Overview of session

- Federal Budget 2021–22 — key measures
- ED: exempting granny flat arrangements from CGT
- ED: FBT exemption for employer-provided retraining and reskilling benefits
- Extended timeframe for applying for director identification number (DIN)
- PBR: sale proceeds from subdivision of property
- PBR: apportionment of rental income
- *Apted* DIS and update to PS LA 2020/1



Measures that are long overdue	Start date
Remove exclusion for first \$250 of self-education expenses	1 July following RA
Superannuation guarantee: remove \$450 monthly income threshold	1 July following RA*
SMSF residency changes — remove active member test (and increase temporary absence rule for trustees from 2 years to 5 years)	1 July following RA*

\* Expected to be 1 July 2022

Welcome measures that do not go far enough	Start date
Remove work test for 67–74 for voluntary non-concessional and salary sacrifice concessional contributions	1 July following RA*
Full expensing of depreciating assets extended to 30 June 2023	Budget night
Loss carry back extended by 12 months to 2022–23	Budget night
Introduce a patent box concept for medical and biotechnology innovation	1 July 2022

\* Expected to be 1 July 2022

Awaiting further detail	Start date
Broaden corporate tax residency changes to trusts and CLPs	TBA
Individual tax residency rules changes — new primary ‘bright line test’ and secondary ‘Factors test’	1 July following RA
New digital games tax offset	1 July 2022

# Federal Budget 2021–22

Other measures	Start date
Downsizer superannuation contributions age reduced to 60	1 July following RA*
FHSSS increase in maximum releasable amount from \$30,000 to \$50,000	1 July following RA*
Self-assess useful life for intangibles otherwise depreciable	1 July 2023
Remove cessation of employment as ESS taxing point	1 July following RA
Provide AAT with power to pause ATO debt recovery	On or after RA

# ED legislation | CGT exemption for granny flat arrangements

Released 16 April 2021

- Proposes to insert **new Div 137** into the ITAA 1997
- **Start date:** **first 1 July after Royal Assent**
- Concerns that CGT incidence on granny flat arrangements could lead to elder abuse — measures will exempt\* such arrangements from CGT
- ‘Granny flat interest in a dwelling’ — interest in a dwelling under an arrangement where an individual has a lifelong right to occupy the dwelling that has been conferred by the arrangement
- An individual is ‘eligible for a granny flat interest’ if they have reached pension age or the individual has a disability and needs assistance to carry out most day-to-day activities



\* CGT event is taken not to happen

# FBT exemption | Employer-provided retraining and reskilling benefits

Released 16 April 2021

- Proposes to insert **new s 58ZE** into the FBTAA
- **Start date:** benefits provided on or after **2 October 2020**
- Measure will support and incentivise employers to retrain and reskill individuals so they are better prepared to transition to their next career
- FBT exemption will be available if an employer provides training or education to a redundant, or soon to be redundant, employee for the purpose of assisting that employee to gain new employment
- Employer must be satisfied that the education or training is being undertaken for the primary purpose of enabling the employee to gain or produce salary or wages in respect of any employment to which the education or training relates (education or training undertaken primarily for personal reasons or interest will not satisfy this test)





# DIN regime | Extended timeframe

## New director identification number (DIN) regime

[ATO Legislative instrument F2021L00513](#)

- Commences 22 June 2022 unless an earlier date is fixed by Proclamation
- Every director will be issued with a unique life-long identifier

[ATO Legislative instrument F2021L00515](#)

### Benefits of regime



- Assist with investigations of illegal phoenix activity
- Reduce time and cost for administrators and liquidators, improving the efficiency of the insolvency process
- Improve data integrity and security

### Existing directors



- Transitional period — 4 April 2021 to 30 November 2022
- Need to apply for a DIN within the transitional period

### New directors



- If appointed as a director between 4 April 2021 and 31 October 2021, must apply for a DIN by 30 November 2022
- Otherwise — will need to have a DIN before appointed as a director

PBR 1051804621099

- Purchased property as main residence before moving overseas (son then lived in the property, never rented out)
- While overseas, decided to demolish house, subdivide land and build two new houses (sold immediately after construction)
- **Sale proceeds determined to be an isolated transaction on revenue account** — more than mere realisation
- Couple had no history of property development transactions — should the activities be repeated, the ATO considers this would constitute the carrying on of a business
- Subdivision of land is not a CGT event — CGT event A1 occurs on the sale of the lots but any capital gain arising is reduced to the extent of any profit that is also assessable as ordinary income under s 6-5 of the ITAA 1997 (see s 118-20 of the ITAA 1997)



PBR 1051790833930

- On separation, agreed that **B** would receive XX% of the net rental income and **A** would receive the remaining amount of the net rental income — the percentage split of rental income between **A** and **B** was not 50/50
- Property expenses deducted from rent received, remainder of the rent was paid into each of **A** and **B**'s bank accounts in the proportions agreed
- **A** seeks to include the rental income she has received in her tax return, rather than the amount that accords with her ownership interest
- Rental income or losses must be shared according to the legal interest of the owners:
  - As joint tenants, this is 50/50
  - An agreement with an ex-spouse does not alter or over-ride their respective entitlements for income tax purposes



# Apted DIS and updated PS LA 2020/1

- [Decision Impact Statement](#) on *Apted* and [updated PS LA 2020/1](#) issued on 29 April 2021 — ATO accepts that the discretion is broader than was applied in *Apted*

*Commissioner of Taxation v Apted*  
[2021] FCAFC 45, 24 March 2021



- Pertains to discretion\* only to allow an entity further time to:
  - hold an ABN; or
  - provide notice to the Commissioner of assessable income or supplies
- Not a free-for-all — still required to meet existing conditions
- ATO will automatically review and contact entities who received a previous adverse decision
- Otherwise, **contact the ATO before 31 May 2021** — [See ATO guidance](#)

\* CFB and JobKeeper (eligible business participation only)



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*Thank you*

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Robyn Jacobson, CTA is the Senior Advocate at The Tax Institute.

Her role is a key engagement and advocacy contact for Tax Institute members, government, non-government organisations, regulators and other stakeholders. She brings to the role her 23 years' experience as a professional tax trainer, and preceding roles in public practice.

Robyn is a Chartered Tax Adviser of The Tax Institute, Fellow of both Chartered Accountants Australia & New Zealand and CPA Australia, and a registered tax agent.

**Disclaimer:** The material and opinions in the paper should not be used or treated as professional advice and readers should rely on their own enquiries in making any decisions concerning their own interests.



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