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Tax Insights Series

Presenter:

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November 2021 | Online

Overview of session

- Legislative update
- Victorian Windfall Gains Tax
- High Court case — *Addy v FCT*: Backpacker tax
- ATO rulings and guidance — PCG 2020/3 extended (Working from home)
- Commissioner's address to The Tax Institute's *2021 The Tax Summit*



Introduced on 27 October 2021

Treasury Laws Amendment (Enhancing Superannuation Outcomes for Australians and Helping Australian Businesses Invest) Bill 2021



- **SG \$450 income threshold** — **Schedule 1** to the Bill will remove the monthly income threshold — expected to be from 1 July 2022
- **FHSSS** — **Schedule 2** will increase the limit on the maximum amount of voluntary contributions made over multiple financial years that can be released under the FHSSS from \$30,000 to \$50,000 — from 1 July 2022
- **Downsizer contributions** — **Schedule 3** will allow individuals aged 60 (currently 65) and over to make downsizer contributions to their superannuation fund from the proceeds of selling their home — from 1 July 2022

Introduced on 27 October 2021





Treasury Laws Amendment (Enhancing Superannuation Outcomes for Australians and Helping Australian Businesses Invest) Bill 2021



- **Work test reforms** — **Schedule 4** will repeal the work test for non-concessional and salary sacrifice contributions for those aged 67–74 (and allow them to make NCC under the bring forward rule) — from 1 July 2022
- Work test still required for those aged 67–74 to make personal deductible contributions
- **Segregated current pension assets** — **Schedule 5** will allow superannuation trustees to choose their preferred method of calculating exempt current pension income when they have member interests in both accumulation and retirement phases for part, but not all, of the income year — from 2021–22 income year

TFE | Comparison with IAWO

Extension of temporary full expensing of depreciating assets — Schedule 6

 Aggregated turnover	 Date asset acquired (IAWO) or first held (TFE)	 Date asset first used or installed ready for use (IRFU)	 Asset threshold (cost)
IAWO: SBE: < \$10m	Before 7:30pm on 12 May 2015	Before 7:30pm on 12 May 2015	< \$1,000
	Acquired from 7:30 pm on 12 May 2015 to 31 December 2020	From 7:30pm on 12 May 2015 to before 29 January 2019 From 29 January 2019 to before 7:30pm on 2 April 2019 From 7:30pm on 2 April 2019 to before 12 March 2020 From 12 March 2020 to 30 June 2021	< \$20,000 < \$25,000 < \$30,000 < \$150,000
	Acquired from 1 January 2021	Practically, not relevant until after 30 June 2022 2023	< \$1,000
IAWO: Medium business: \$10m to < \$50m	Acquired from 7:30 pm on 2 April 2019 to 31 December 2020	From 7:30 pm on 2 April 2019 to before 12 March 2020 From 12 March 2020 to 30 June 2021	< \$30,000 < \$150,000
IAWO: Medium-large business: \$50m to < \$500m	Acquired from 7:30 pm on 2 April 2019 to 31 December 2020	From 12 March 2020 to 30 June 2021	< \$150,000
TFE: Businesses < \$5b or satisfies alternative income test	First held from 7:30pm on 6 October 2020 to 30 June 2022 2023	By 30 June 2022 2023	No limit

Introduced on 12 October 2021

[Windfall Gains Tax and State Taxation and Other Acts Further Amendment Bill 2021 \(Vic\)](#)



- **New Windfall Gains Tax (WGT)** — imposes, from **1 July 2023**, a WGT on the increase in the value of land resulting from a rezoning
- Applies when the taxable value uplift (**TVU**) of all rezoned land is above **\$100,000** (TVU = difference in the capital improved value of land before and after rezoning less any deductions)
- TVU > \$100,000 and < \$500,000 — WGT rate is **62.5%** of that part of the TVU that exceeds \$100,000
- TVU ≥ \$500,000 — WGT rate is a flat **50%** of TVU

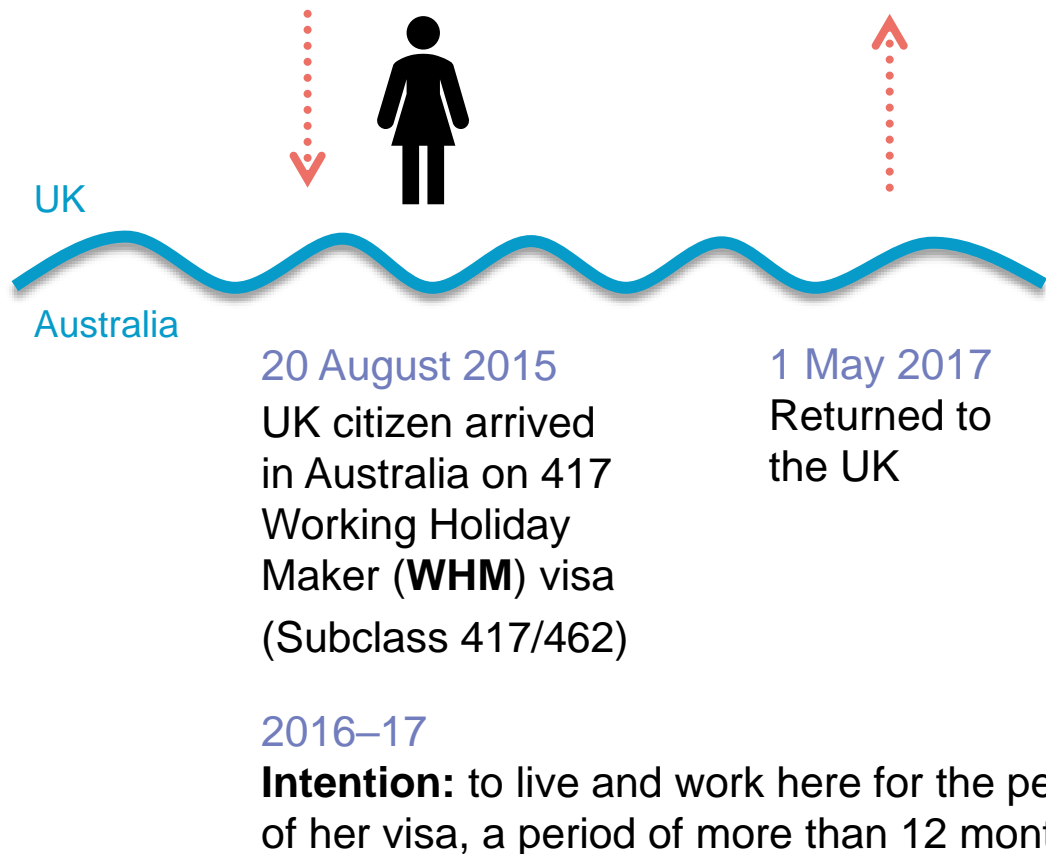
Introduced on 12 October 2021

[Windfall Gains Tax and State Taxation and Other Acts Further Amendment Bill 2021 \(Vic\)](#)



- Exemptions for up to 2 hectares of residential land (including primary production land with a residence) and certain land owned by charities
- Transitional arrangements available for certain contracts, option arrangements and proponent-led rezonings underway when the WGT was announced on 15 May 2021
- Can defer payment of up to 100% of WFT for up to 30 years or until a dutiable transaction in respect of the land or relevant acquisition occurs, whichever occurs first
- **CGT cost base** — difficult to see how it falls under 4th element (does it increase or preserve the asset's value?), but possible 3rd element (cost of owning the asset)

Addy v FCT — Backpacker tax



- ATO assessed her as a non-resident at WHM rates (15%) — no tax-free threshold (**TFT**)
- ATO and taxpayer conceded she was a resident — under 183-day test and usual place of abode was in Australia
- Taxpayer argued that Article 25 (anti-discrimination provision) of DTA applied to prohibit her from being discriminated based on nationality — the 15% tax rate (without the TFT) was ‘other or more burdensome’ than the taxation imposed on a citizen of Australia who was also an Australian tax resident
- HCA held she had been discriminated against

PCG 2020/3 Temporary shortcut method for WFH expenses extended to 2021–22



- Has been available from 1 March 2020 to 30 June 2020, and all of 2020–21
- **Now, 80 cents per hour extended to all of 2021–22**
- Employees may continue to use either of the alternative methods:
 - Fixed-rate method (52 cents per hour)
 - Actual cost method
- Keep accurate records of hours WFH
- ATO is looking to modernise the 52 cents per hour fixed rate method from 2022–23

ATO guidance:

www.ato.gov.au/Individuals/Income-and-deductions/Deductions-you-can-claim/Home-office-expenses/Shortcut-method/

Address to The Tax Institute's 2021 The Tax Summit (21 October 2021)

- [Division 7A and s 100A](#)
 - It is recognised that there are ongoing complexities in the consistent understanding and application of Div 7A of Part III of the ITAA 1936 and s 100A of the ITAA 1936
 - The ATO is committed to providing further guidance in 2022
- [PCG 2021/D2](#) — ATO will soon publish revised guidance on:
 - the allocation of profits by professional firms
 - arrangements where taxpayers redirect their income to an associated entity from a business or activity which includes their professional services



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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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