
Bernard Pulle, Kai Swoboda and Tarek Dale
Economics Section

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Date introduced: 13 May 2014
House: House of Representatives
Portfolio: Treasury

Commencement: There are 15 Bills in this package and their commencement dates are interconnected. See clause 2 of each Bill for details.


The links to the 13 associated Bills, their Explanatory Memoranda and second reading speeches are set out in the Appendix to this Bills Digest.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.
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### Glossary

The following abbreviations and acronyms are used throughout this Bills Digest:

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<th>Definition</th>
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</thead>
<tbody>
<tr>
<td>Commissioner</td>
<td>Commissioner of Taxation</td>
</tr>
<tr>
<td>DASP</td>
<td>Departing Australia superannuation payment</td>
</tr>
<tr>
<td>FBT</td>
<td>Fringe benefits tax</td>
</tr>
<tr>
<td>FBTAA 1986</td>
<td>Fringe Benefits Tax Assessment Act 1986 (Cth)</td>
</tr>
<tr>
<td>FHSA</td>
<td>First home saver account</td>
</tr>
<tr>
<td>ITAA 1936</td>
<td>Income Tax Assessment Act 1936 (Cth)</td>
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<tr>
<td>ITAA 1997</td>
<td>Income Tax Assessment Act 1997 (Cth)</td>
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<tr>
<td>ITRA 1986</td>
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<tr>
<td>Main TBR Levy Bill</td>
<td>Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014</td>
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<tr>
<td>TBR Levy</td>
<td>Temporary budget repair levy</td>
</tr>
<tr>
<td>TBR Levy Rates Bill</td>
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Purpose of the Bills

- The Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014 (Main TBR Levy Bill), the Income Tax Rates Amendment (Temporary Budget Repair Levy) Bill 2014 (TBR Levy Rates Bill) and 13 other related Bills provide for the payment of additional income tax called the temporary budget repair levy (TBR Levy) by Australian and foreign resident individuals with annual taxable income in excess of $180,000.

- The *Income Tax Rates Act 1986* (Cth) (*ITRA 1986*) which declares the rates of income tax applicable for a year of income, will be amended by the TBR Levy Rates Bill to declare the rate of extra income tax payable by certain taxpayers as a TBR Levy.¹

- The TBR levy will be payable for each of the financial years 2014–15, 2015–16 and 2016–17 on the taxpayer’s taxable income for each corresponding year of income in excess of $180,000 at the rate of two percentage points. These are the years that the Government expects, on current estimates, that the fiscal balance will remain in deficit.²

Structure of the package of Bills

The method of working out the TBR Levy, which is a temporary extra or additional income tax, is included in the *Income Tax (Transitional Provisions) Act 1997* (Cth) (*IT(TP) Act 1997*) by amendments made by the Main TBR Levy Bill.³ The applicable rate is included in the *ITRA 1986*, which is the Act that declares rates of income tax, by amendments made by the TBR Levy Rates Bill.⁴

The 13 other supporting Bills are intended to maintain the integrity and fairness of the tax system and to minimise opportunities for avoiding the levy.⁵

The entire package of 15 Bills is listed in the Appendix to this Bills Digest, which briefly outlines the purpose of each Bill.

Background

The Commonwealth Government’s fiscal position has been a subject of intense political debate, with the two major parties emphasising the importance of a budget surplus prior to the election while disagreeing over the changes required and timing involved.⁶

The current fiscal deficit reflects both an increase in expenditure and a fall in revenue since the 2007–08 surplus. In 2007–08 Government revenue constituted 25.8 per cent of gross domestic product (GDP), while Government expenses were 23.8 per cent of GDP. In 2014–15 revenue is expected to be 24 per cent of GDP, while expenses are expected to be 25.4 per cent of GDP.⁷

While multiple factors influence revenue collections, including temporary factors such as the global financial crisis or changes in the terms of trade, the current level of revenue also reflects structural changes, including to personal income tax rates. The Parliamentary Budget Office estimated that:

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4. Section 3 of the *ITRA 1986* provides that the Assessment Act means the *Income Tax Assessment Act 1936* (*ITAA 1936*), accessed 16 June 2014. In addition, section 4 of the *ITRA 1986* provides that the Assessment Act is incorporated and shall be read as one with the *ITRA 1986*.
7. Australian Government, *Budget strategy and outlook: budget paper no. 1: 2014–15*, Statement 10: Historical Australian Government Data, Table 7: Australian Government general government sector revenue, expenses, net capital investment and fiscal balance, accessed 3 June 2014. This is on an accrual basis. Net capital investment was 0.2 per cent of GDP in 2007–08 and is expected to be 0.1 per cent of GDP in 2014–15.
Over two thirds of the 5 percentage points of GDP decline in structural receipts over the period 2002–03 to 2011–12 was due to the cumulative effect of the successive personal income tax cuts granted between 2003–04 and 2008–09.\(^8\)

Among these changes to personal income tax was a cut to the top marginal rate, reducing it from 47 to 45 per cent from the 2006–07 financial year onwards.\(^9\)

By international standards, Australia has a relatively low level of overall taxation (including both personal income and other taxes). Data from the Organisation for Economic Co-operation and Development (OECD) shows that in 2011 (the latest year in which Australia is included in OECD statistics) Australia had the fifth lowest tax to GDP level among OECD nations (see Figure 1 below).

**Figure 1 Tax revenue as a per cent of gross domestic product, OECD countries (2011)**

![Graph showing tax revenue as a percentage of GDP for OECD countries in 2011](image)

Source: Organisation for Economic Co-Operation and Development (OECD), *StatExtracts*, *Revenue statistics – comparative tables*, accessed 29 May 2014. Data are for 2011 (the latest year which includes Australian data). Total government includes all levels of government; this is the best international comparison as it captures different government structures. The federal/central category corresponds to Australia’s Commonwealth Government.

The TBR levy is a revenue raising measure introduced by the Government in the 2014–15 Budget that will improve the fiscal balance. The Treasurer stated in his Budget speech that: ‘Without change, the Budget would never get back to surplus and the debt would never be repaid. So the time to fix the Budget is now’.\(^10\) The Treasurer also stated ‘Tonight we are asking higher-income earners to help repair the Budget. From 1 July this year and for just three years, we are asking higher-income earners to pay a Temporary Budget Repair Levy ...’.\(^11\)

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11. Ibid.
Committee consideration

### Senate Economics Committee

The Bills have been referred to the Senate Economics Legislation Committee for inquiry and report by 16 June 2014. The Committee had received six submissions at 5 June 2014. Comments from some submitters are included under ‘Position of major interest groups’, below.

### Senate Standing Committee for the Scrutiny of Bills

The Senate Standing Committee for the Scrutiny of Bills has not yet reported on the package of Bills.

### Policy position of non-government parties/independents

The Leader of the Opposition in the Senate, Senator Penny Wong, has stated that the Opposition ‘won’t stand in the way’ of the measures. The Australian Greens oppose the tax in its current form, but ‘have left open the option for permanent increases in taxes on the wealthy’.

In the House of Representatives, Independent Cathy McGowan noted ‘the inequity in the fact that high-income earners stop contributing to the budget deficit in 2017 just as average Australians begin to experience the hardest cuts’. Ms McGowan also introduced an amendment to the Bill (seconded by Andrew Wilkie) to extend the period of the budget repair levy until 2020–21, noting that: ‘Extending the temporary deficit levy for a further four years will raise at least another $3.1 billion to go towards tackling the debt and deficit challenges faced by the Government and this country’.

Leader of the Palmer United Party, Clive Palmer, stated that ‘We have no debt crisis; there is no justification for a debt levy’, and that ‘There is no need at all for a debt levy ... when these measures get to the Senate, Palmer United senators will just be voting against them’. Senator Nick Xenophon is reported to support the levy, as is Senator John Madigan (Democratic Labour Party), while Senators-elect John Leyonhjelm, Bob Day and Ricky Muir are reported to oppose the measure.

### Position of major interest groups

#### The Australian Chamber of Commerce and Industry

Prior to the Budget’s release the Australian Chamber of Commerce and Industry (ACCI) issued a press release stating that they ‘agree with the government that this [difficult financial situation] is a community problem that requires the burden to be shared’, but noting that ‘an increase in tax on higher income earners at this point of time could have a detrimental impact on growth and jobs’.

In a post-budget press release ACCI’s chief executive officer Kate Carnell AO stated: ‘The budget does impose some further costs on the economy that business continues to oppose such as the debt tax on higher incomes ...’

#### The Australian Council of Social Service

Australian Council of Social Service chief executive officer Cassandra Goldie stated:

16. Ibid.
20. Australian Chamber of Commerce and Industry (ACCI), *Business backs the Budget that we had to have*, media release, ACCI website, 13 May 2014, accessed 5 June 2014.
The proposed debt levy is a much fairer way to pay for essential services such as health care and the NDIS as the population ages than the harsh ‘user pays’ approach. However, the proposed levy lacks a clear purpose, it is introduced when it’s least needed and withdrawn just when it’s needed most - in 2017, exactly when more revenue is needed for essential programs like the National Disability Insurance Scheme.

The public supported a levy to help finance NDIS and has long supported a levy to help pay for health care. Any new levy should build on these firmer foundations. The levy would return to government a fraction of the massive tax cuts given to high earners over the 2000s which were clearly unaffordable both then and now.21

**The Australia Institute**

In a submission to the Senate Economics Committee inquiry into the legislation, the Australia Institute suggested:

... that the levy be supported, but furthermore there is a strong argument in favour of making the levy permanent, incorporating it into the regular income tax scales and perhaps increasing the top marginal rate over time to somewhere near the rates under the Menzies Government.22

**The Australian Institute of Company Directors**

The Australian Institute of Company Directors opposes the increase. Chief Executive John Colvin stated that ‘Economic activity actually provides the growth needed to create a strong tax base ... It also impacts people’s motivation; you can’t measure that with statistics’, and that ‘The business community have been arguing for years that these quick fixes and left-field ideas don’t provide the long-term stability needed for stronger investment’.23

The Institute also noted that the Government’s ‘sense of urgency is at odds with views expressed in the DSI [Director Sentiment Index] as only 26 per cent of respondents rated reducing the budget deficit as one of the top five issues the government should address in the short term’.24

**Business Council of Australia**

In a press release prior to the Budget, Business Council of Australia Chief Executive Officer Jennifer Westacott stated: ‘A temporary levy to deal with Australia’s deficit, as speculated in today’s media, is not a solution to the fiscal challenge and could let governments off the hook on the structural steps needed to fix the budget properly’.25

**Taxpayers Australia**

Taxpayers Australia commented in a submission to the Senate Economics Committee that the tax represented ‘poor public policy’, and that ‘the Debt Tax was designed as a political “fix”’.26 Their submission included suggestions for other options to increase tax revenue, including removal of negative gearing tax concessions, reform of superannuation tax concessions, and permanently increasing the top marginal income tax rate.27 They concluded that:

The fact that none of these measures – all of them widely flagged by tax policy specialists over many years – were seriously considered is a clear indication that the government is not serious about spreading the burden and that

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27. Ibid.
the Debt Tax itself is camouflage designed to maximise public attention whilst minimising the actual burden on the wealthy. 28

Taxpayers Australia also commented on the potential for tax minimisation, arguing that ‘with tax minimisation already thriving in this sector, the increase in the top rate of income tax will lead to an upturn in tax planning, which is likely to directly impact both the numbers of people who pay the Debt Tax and the amount of extra tax which they pay’.29 After listing seven potential strategies for minimising tax liability, Taxpayers Australia noted: ‘most of this planning is relatively straightforward and is already being actively marketed by many tax advisers. In short, it is clear that in practice only the wealthy but poorly advised will be paying the Debt Tax’. 30

The Tax Institute

In their submission to the Senate Economics Committee, the Tax Institute noted: ‘The Institute is concerned that the Bills add unnecessary complexity to the tax system. Paying the levy is not as simple as increasing the highest marginal tax rate by two per cent’.31 Their submission noted concerns over the additional complexity created by the TBR levy, and the potential for unintended consequences in the interaction of particular changes in the legislation.

Financial implications

The tax change is expected to raise an additional $3.1 billion over the forward estimates:

<table>
<thead>
<tr>
<th>Year</th>
<th>Levy Amount (m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013–14</td>
<td>$0</td>
</tr>
<tr>
<td>2014–15</td>
<td>$600</td>
</tr>
<tr>
<td>2015–16</td>
<td>$1,150</td>
</tr>
<tr>
<td>2016–17</td>
<td>$1,200</td>
</tr>
<tr>
<td>2017–18</td>
<td>$150</td>
</tr>
</tbody>
</table>


Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights can be found at page 24 of the Explanatory Memorandum to the package of Bills. As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the package of Bills compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the package of Bills is compatible.

The Parliamentary Joint Committee on Human Rights has not yet reported on the package of Bills, but is expected to do so on 17 June 2014.

Key issues

Individuals liable for the temporary budget repair levy

The TBR levy applies to taxable incomes above $180,000, which is the current threshold for the highest personal income tax rate (45 per cent). This means that the levy will apply only to those individuals who also have incomes above the highest threshold; approximately equivalent to raising the top marginal rate. The Explanatory Memorandum notes that ‘around 400,000 taxpayers (or less than four per cent of taxpayers) will directly incur the levy’.32 Figure 2 shows the distribution of taxable incomes in the 2011–12 financial year (the latest publicly available data), in which around 69,000 women and 224,000 men paid the top marginal tax rate (approximately three per cent of total taxpayers). 33

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28. Ibid.
29. Ibid.
30. Ibid.
Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.

Figure 2  Distribution of taxable incomes in the 2011-12 financial year and marginal tax rates on personal income (2013–14)

Source: Parliamentary Library estimates based on Australian Taxation Office (ATO), Tax statistics 2011–12, Table 3: individual tax - selected items by taxable income, age, gender and taxable status, 2011–12 income year and Table 14: Percentile distribution of taxable individuals, by taxable income and gender, 2011–12 income year, and ATO, ‘Individual income tax rates’, ATO website, 20 August 2013, accessed 15 May 2014. Thresholds for the lower marginal rates are approximate, and exclude the Medicare levy and the low-income tax offset. Taxpayer distribution data is for 2011–12 (the most recent available), but tax rates are for the 2013–14 financial year. Taxable income brackets are in $5,000 increments (i.e. taxpayers earning between $5,001–$10,000), with the exception of very low or high income earners (<$10,000 or >$180,000).

Impacts on incentives

Some media coverage has suggested that the TBR levy will reduce incentives to work for those impacted. 34 Two factors make it unlikely that the levy will have any significant impact on work incentives. The first is that the levy is a comparatively small increase (see ‘Tax amounts’, below). The second is that for high income male workers (the majority of individuals earning over $180,000 are male), there is little change in labour supply in response to changes in income and taxation. 35 While there is some suggestion that male labour supply elasticities may be underestimated, the evidence suggests that labour supply by high income male earners is relatively inflexible, and that an increase in the top marginal tax rate will not significantly impact on work incentives. 36

International comparisons

Prior to the Budget, the Australian Financial Review reported that a two per cent levy meant that ‘top earners will face a 49 per cent marginal tax rate, the eighth highest among developed countries’. 37 Based on statistics from the OECD, in 2013 Australia had the 14th highest top marginal tax rate on personal income. 38 Compared to 2013 figures, a 49 per cent top effective marginal tax rate on personal income would be the 10th highest rate. 39

38. Organisation for Economic Co-Operation and Development (OECD), StatExtracts, Table I.7. top statutory personal income tax rate and top marginal tax rates for employees, OECD website, accessed 2 June 2014. The OECD lists Australia’s top marginal tax rate on personal income as 46.5 per cent, reflecting the current 1.5 per cent Medicare levy, which increases the effective marginal tax rate by 1.5 per cent for income above the levy threshold.
39. Ibid. The 49 per cent rate represents the 0.5 per cent increase in the Medicare levy (the Disabilitycare levy) applying from 2014–15, as well as the proposed TBR levy.
However several OECD countries have a different taxation model to Australia, and impose social security taxes (and subsequently pay benefits based on a person’s earnings, while Australia’s model includes defined superannuation contributions). When these social security rates are included, Australia’s top marginal tax rate on personal income is the 19th highest, and would be the 14th highest after the imposition of the TBR levy. The top marginal rate in Australia ($180,000) is imposed at a relatively low multiple of the domestic average wage (2.32 times) compared to other OECD countries.

**Tax amounts**

The TBR levy will apply at a rate of two per cent for taxable incomes over $180,000. This means that an individual will be liable for an amount that is:  

$$\text{Levy} = \frac{\text{taxable income} - \$180,000}{\text{taxable income}} \times 0.02.$$

Table 1 shows the amounts that individuals at various levels of taxable income will pay—a person with an annual taxable income of $200,000 will pay an additional $400, while a person with a taxable income of a million dollars will pay $16,400.

<table>
<thead>
<tr>
<th>Taxable income</th>
<th>Per cent of taxpayers with taxable incomes above this level in 2011–12</th>
<th>Additional tax on personal income</th>
<th>Per cent of taxable income</th>
<th>Additional tax as share of total tax paid (%; 2014–15)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$180,000</td>
<td>3</td>
<td>$0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>$200,000</td>
<td>N/A</td>
<td>$400</td>
<td>0.2</td>
<td>0.6</td>
</tr>
<tr>
<td>$250,000</td>
<td>1.4</td>
<td>$1,400</td>
<td>0.56</td>
<td>1.5</td>
</tr>
<tr>
<td>$500,000</td>
<td>0.3</td>
<td>$6,400</td>
<td>1.28</td>
<td>3.0</td>
</tr>
<tr>
<td>$1,000,000</td>
<td>0.1</td>
<td>$16,400</td>
<td>1.64</td>
<td>3.6</td>
</tr>
</tbody>
</table>

Source: Parliamentary Library estimates based on Explanatory Memorandum, Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014 [and associated Bills], and Australian Taxation Office (ATO), Tax Statistics 2011–12, Table 3: individual tax - selected items by taxable income, age, gender and taxable status, 2011–12 income year, ATO, 2013, accessed 2 June 2014. The exact per cent of taxpayers with taxable incomes above $200,000 is not reported in the ATO statistics.

The additional tax to be paid rises from 0.6 per cent of total tax paid on a taxable income of $200,000 to 3.6 per cent of total tax paid on a taxable income of $1 million.

**The fiscal impact of the temporary budget repair levy**

The current fiscal deficit—the imbalance between revenue and expenditures—reflects both an increase in Government expenditures and a fall in Government revenue (see ‘Background’, p. 4). The fall in revenue reflects both temporary factors and structural changes, including cuts to personal income tax between 2003–04 to 2008–09. Among these was a cut to the top marginal rate, reducing it from 47 to 45 per cent from the 2006–07 financial year; in broad terms this levy simply reverses that change (temporarily).

By increasing the tax on personal incomes of high income earners, the TBR levy will improve the fiscal balance—in net terms it is the largest revenue measure in the 2014–15 Budget. The Treasurer stated in his Budget speech ‘Tonight we are asking higher-income earners to help repair the Budget’. However the majority of policy changes since the 2013–14 Mid-Year Economic and Fiscal Outlook involve reductions in expenditure, rather than increases in revenue; changes in the 2014–15 Budget increase receipts by around $8.3 billion over the forward estimates, while expenditures are reduced by around $27.7 billion.
More importantly, as a temporary measure the TBR levy will not have a permanent impact on the fiscal balance. It will only provide revenue during the three years of its operation—beyond that point, it has no impact on the fiscal balance and does not provide a sustainable revenue base for funding government expenditure.

**Key provisions**

*Guide to key definitions impacting on the package of Bills*

**Meaning of Income Tax law and income tax**

Subsection 995–1(1) of the ITAA 1997 states that *income tax law* means a provision of an Act or regulations that sets out the workings, among others, of the extent of liability to tax. *Tax* is also defined in subsection 995–1(1) to mean income tax imposed by the *Income Tax Act 1986 (Cth)* (ITAA 1986) or by any other Act and as assessed under the ITAA 1997.

Subsection 4–10(1) of the ITAA 1997 states the obligation to pay income tax for each financial year. Subsection 4–10(2) states that a taxpayer’s income tax is worked out by reference to their taxable income for an income year.

**Meaning of financial year, income year and temporary budget repair levy year**

*Financial year* is a period of 12 months commencing on 1 July in any year and ending on 30 June of the following year.47

*Income year* is generally the same as the financial year, unless with leave of the Commissioner of Taxation (the Commissioner) obtained under section 18 of the *Income Tax Assessment Act 1936 (Cth)* (ITAA 1936), a taxpayer has adopted an accounting period which ends on a day other than 30 June.48

*Temporary budget repair levy year* (TBR Levy year) is defined in proposed subsection 4–11(5), to be inserted into the IT(TP) Act 1997 by item 2 of Schedule 1 of the Main TBR Levy Bill. It states that a TBR Levy year is the 2014–15, 2015–16 or 2016–17 financial year.

Proposed section 32 of Part IV, to be inserted into the ITRA 1986, by item 1 of Schedule 1 of the TBR Levy Rates Bill defines *temporary budget repair levy year* to mean a year of income corresponding to a TBR Levy year. As indicated above, a TBR Levy year will be each of the financial years 2014–15, 2015–16 and 2016–17.

In consequence, a TBR Levy year will be the year commencing on 1 July 2014, the year commencing on 1 July 2015 and the year commencing on 1 July 2016.

*What is the nature of the ‘temporary budget repair levy’ and the period of its operation?*

The ‘temporary budget repair levy’ (TBR Levy) is the extra or additional income tax Australian resident individuals and foreign residents with Australian sourced income must pay for each of the financial years 2014–15, 2015–16 and 2016-17 if their taxable income for the corresponding income year exceeds $180,000, at the rate of two per cent of the excess.

The corresponding years of income for determining taxable income for each of these financial years for most taxpayers will be the years ending on 30 June 2015, 30 June 2016 and 30 June 2017 respectively, unless with leave of the Commissioner a taxpayer has adopted a 12 month accounting period ending on some date other than 30 June.49

Proposed subsection 4–11(2) of the IT(TP) Act 1997 states that the TBR levy is to be worked out by reference to the taxable income for the corresponding income year applying the rate or rates specified in proposed Part IV of the ITRA 1986.50

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47. *Income Tax Assessment Act 1997 (Cth)*, subsection 995–1(1), *financial year* means a period of 12 months beginning on 1 July.

48. Ibid., subsection 4–10(1) states that income tax is payable for each financial year and subsection 4–10(2) states that income tax is worked out by reference to the taxable income for the *income year*.

49. Subsection 4–10(2) of the ITAA 1997 provides further that the *income year* is usually the financial year for individuals except where an individual has an accounting period that is not the same as the financial year. Note 1 to subsection 4–10(2) states that the Commissioner can allow a taxpayer to adopt an accounting period ending on a date other than 30 June under section 18 of the ITAA 1936.

50. Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014, Schedule 1, item 2.
What is the rate of temporary budget repair levy?

The rates of the TBR Levy for a financial year on a taxpayer’s taxable income for the corresponding year of income is set out in a table in proposed section 34 of Part IV of the ITRA 1986:

- the rate of TBR levy is two per cent for the part of the taxable income of an individual taxpayer that exceeds $180,000 and
- individuals with a taxable income of $180,000 or less will not be liable to the levy, except if part of their income, or part thereof, is subject to tax based on the top marginal tax rate.

Other income tax rates

Proposed section 35 of the ITRA 1986, at item 1 of Schedule 1 of the Main TBR Levy Bill sets out in a table certain provisions of income tax law that are aligned with the top marginal tax rate of 45 per cent. It provides that the top marginal tax rate referred to in these provisions will be increased by two percentage points so as to incorporate the TBR levy.

Other provisions

Consequential amendments to other tax and superannuation legislation

A number of tax and superannuation laws apply the top marginal tax rate (plus the Medicare levy) to a range of arrangements so as to minimise opportunities to reduce tax. This equivalent rate is usually specified in numerical terms rather than being cross referenced to the ITRA 1986 and the Medicare Levy Act 1986 (Cth).

Therefore any change to the top marginal tax rate in the ITRA 1986 and/or Medicare Levy Act needs to be mirrored in other tax and superannuation legislation. The following sections briefly discuss how the top marginal rate is expressed in each area and how each consequential Bill adjusts the rate to be consistent with the top marginal tax rate in the ITRA 1986 and the Medicare Levy Act.

Similar consequential amendments are generally required when either the top marginal rate or Medicare Levy is adjusted. A recent example of such a change were those associated with the Medicare Levy Amendment (Disabilitycare Australia) Bill 2013.

This Bills Digest briefly deals with the consequential amendments to the fringe benefits tax and superannuation legislation. In addition, the Appendix to this Bills Digest makes references to the detailed explanation given in the Explanatory Memorandum to the package of Bills.

Fringe Benefits Tax Amendment (Temporary Budget Repair Levy) Bill 2014

The Fringe Benefits Tax Act 1986 (Cth) (FBTA 1986) imposes tax on the fringe benefits taxable amount of an employer and sets the applicable rate for each year. Item 1 of the Fringe Benefits Tax Amendment (Temporary Budget Repair Levy) Bill 2014 inserts proposed subsection 6A into the FBTA 1986 to provide for an increase in the rate of tax in section 6 by two percentage points. Proposed subsection 6A(3) states that each of the FBT years starting on 1 April 2015 and 1 April 2016 is a temporary budget repair levy year for FBT. Schedule 2 of the main TBR Levy Bill makes consequential amendments to the Fringe Benefits Tax Assessment Act 1986 (FBTAA 1986).

Superannuation (Departing Australia Superannuation Payments Tax) Amendment (Temporary Budget Repair Levy) Bill 2014

The Superannuation (Departing Australia Superannuation Payments Tax) Act 2007 (Cth) imposes tax on the payment of superannuation benefits for temporary residents when they leave Australia permanently. The payment—referred to as a departing Australia superannuation payment (DASP)—is taxed on a withholding basis rather than being treated as income.

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52. Ibid., Schedule 1, Item 1, proposed section 36.
53. Explanatory Memorandum, Medicare Levy Amendment (DisabilityCare Australia) Bill 2013, accessed 21 May 2014.
55. The Appendix to this Bills Digest refers to paragraphs 1.48–1.53 at pages 13–14 of the Explanatory Memorandum for details of the consequential changes.
The amount of tax depends on how the superannuation has accrued, with amounts specified as ‘nil’ for any tax free component (generally the member’s post-tax contributions), 35 per cent for the element taxed in the fund and 45 per cent for the element untaxed in the fund.56 These differential tax rates reflect the necessary adjustments required to apply the highest marginal tax rate to those elements that have not been taxed or have been subject to the 15 per cent concessional tax on superannuation contributions and earnings.

The Superannuation (Departing Australia Superannuation Payments Tax) Amendment (Temporary Budget Repair Levy) Bill 2014 proposes to amend the Superannuation (Departing Australia Superannuation Payments Tax) Act 2007 (Cth) to change the tax rate for the element taxed in the fund from 35 per cent to 38 per cent and to change the rate for the element untaxed from 45 per cent to 47 per cent.

The Explanatory Memorandum notes that new 38 per cent rate, which is adjusted by three rather than two percentage points, is necessary to ensure that total taxation is equivalent to the top marginal rate (including the additional two percentage point levy proposed by the Main TBR Levy Bill) taking into consideration the 15 per cent tax that has already been paid on contributions and earnings. This higher adjustment is also affected by rounding the necessary amount to a single figure.57

Superannuation (Excess Non-Concessional Contributions Tax) Amendment (Temporary Budget Repair Levy) Bill 2014

The Superannuation (Excess Non-Concessional Contributions Tax) Act 2007 (Cth) imposes excess non-concessional contributions tax (ECT) at a rate of 47 per cent of excess non-concessional contributions.58

The Superannuation (Excess Non-Concessional Contributions Tax) Amendment (Temporary Budget Repair Levy) Bill 2014 proposes to amend the Superannuation (Excess Non-Concessional Contributions Tax) Act 2007 by inserting proposed section 6, which has the effect of increasing the specified 47 per cent rate by two percentage points (to 49 per cent) for the period defined as a ‘temporary budget repair levy year’ in the Main TBR Levy Bill.

As some contributions to superannuation and the earnings of a superannuation fund are concessional taxed, concessional and non-concessional contributions caps are in place to limit the amount of funds that that can be shifted into superannuation each year.59 Excess concessional contributions which breach these caps are effectively taxed at an individual’s marginal rate and excess non-concessional contributions are currently taxed at the top marginal rate (plus the applicable Medicare Levy).60

The imposition of this higher tax rate of 49 per cent will however be reduced for some taxpayers. Under existing arrangements, the operation of the concessional and non-concessional caps can result in some taxpayers effectively being taxed at the highest marginal rate for excess concessional contributions (which are also counted in the non-concessional contributions cap) and for non-concessional contributions.61 Proposed subsection 6(3) limits the combined maximum tax rate to 95 per cent rather than the potential 98 per cent that could apply to some taxpayers.

Superannuation (Excess Untaxed Roll-over Amounts Tax) Amendment (Temporary Budget Repair Levy) Bill 2014

The Superannuation (Excess Untaxed Roll-over Amounts Tax) Act 2007 (Cth), imposes an additional tax of two percentage points on top of the highest marginal tax rate for resident taxpayers as specified in the ITRA

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57. Explanatory Memorandum, Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014 [and associated Bills], op. cit., p. 16.
60. The Government announced in the 2014–15 Budget that it would allow individuals to avoid ECT on non-concessional contributions by withdrawing superannuation contributions in excess of the cap made from 1 July 2013 and any associated earnings and have these taxed at their marginal rate. The final details of the policy are yet to be determined, with the Government indicating that there would be further consultation with industry on the measure (Australian Government, Budget measures: budget paper no. 2, 2014–15, p. 19, accessed 21 May 2014).
61. Contributions that exceed the concessional cap are included in the non-concessional cap. Should these contributions then result in the non-concessional cap also being exceeded, the contributions are again subject to a tax of 47.5 per cent, bringing the possible tax total payable to 95 per cent.
This effectively adds the Medicare Levy component to the marginal tax rate that applies for the individual, and means that the required rate is 47 per cent.

When a superannuation benefit is transferred between funds (‘rolled over’) it is not generally taxable. However, there is an exception where it consists wholly or partly of an amount paid from an element untaxed in the fund. Such rollover amounts can arise, for example, where a government employee has a defined superannuation benefit in a government scheme, that has not been funded (the government has not set aside assets to meet this superannuation liability in a superannuation fund), and transfers this benefit into another scheme. Excess untaxed roll-over amounts over a prescribed cap (set at $1 million for 2007–08 and indexed in $5000 increments to movements in average weekly ordinary time earnings which reached $1.315 million in 2013–14).63

The Superannuation (Excess Untaxed Roll-over Amounts Tax) Amendment (Temporary Budget Repair Levy) Bill 2014 proposes to amend the Superannuation (Excess Untaxed Roll-over Amounts Tax) Act 2007 (Cth) by inserting proposed section 6, which has the effect of imposing an additional two percentage points on top of the two percentage points already imposed on the highest marginal tax rate. This additional two percentage points would be applied to income years defined as a ‘temporary budget repair levy year’ in the Main TBR Levy Bill and effectively brings the tax rate up to 49 per cent.

Concluding comments

Tax minimisation opportunities?

There has been some commentary on how the TBR levy might be avoided wholly or partly.64 It has been suggested that there is an opportunity to do so where employees with taxable income exceeding $180,000 are concerned because the commencement date for the TBR levy is the financial year 2014–15 which commences on 1 July 2014 and the measures relating to the fringe benefits tax (FBT) apply from the FBT year 2015 which commences on 1 April 2015.65 This commencement date difference gives a nine month window of opportunity for employees to make adjustments to their remuneration packages so that components of the package can be weighted in favour of non-cash benefits to reduce their taxable income below $180,000.

The Explanatory Memorandum acknowledges that an important integrity matter is the need to raise the FBT rate from the current 47 per cent to 49 per cent, the proposed top marginal rate.66 The first financial year when the TBR levy takes effect commences on 1 July 2014 and if the FBT rate had been raised from 1 July 2014 it would mean that employers would have a rate of 47 percent applicable to employee benefits from 1 April 2014 to 30 June 2014 and a rate of 49 percent to employee benefits from 1 July 2014 to 31 March 2015. The Explanatory Memorandum states that to increase the FBT part way through the FBT year would have created a large administrative burden on employers.67

The other 13 associated Bills listed in the Appendix are intended to reflect the TBR levy in a number of tax rates set by reference to the marginal tax rates, or by calculations which include the marginal tax rate and the Medicare levy. The associated Bills are intended to maintain the integrity and fairness of the tax system as well as minimise opportunities for avoiding the TBR levy.68

The TBR levy, as mentioned earlier in this Bills Digest, is an extra or additional income tax and is being administered under the existing income tax law. Hence, the general anti avoidance rules (GAARs) in Part IVA of the ITAA 1936 will apply to any schemes or arrangements carried out with the sole or dominant purpose of securing a tax advantage to a taxpayer (for example, by altering the weighting of non-cash benefits in a remuneration package to reduce taxable income below $180,000). These rules were strengthened by

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67. Ibid., paragraph 1.13, p. 8.
68. Ibid., paragraph 1.18, p. 8.
amendments to Part IVA made by *Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Act 2013* (Cth). The Bills Digest to that Bill gives details of the amendments to Part IVA.

Thus the enhanced GAARs could cover any scheme or arrangement to reduce the taxable income of a taxpayer to avoid liability to the TBR levy.

**Should ‘adjusted taxable income’ be the basis for imposing the temporary budget repair levy?**

Finally, some of the avenues for tax avoidance suggested in the media may be minimised if ‘adjusted taxable income’ (ATI) was adopted for the purposes of imposing the TBR levy instead of ‘taxable income’. The ATI is the taxable income adjusted by adding to taxable income a person’s:

- reportable employer superannuation contributions for the period
- deductible personal superannuation contributions for the period
- tax-free government pensions or benefits for the period
- tax-free government pensions or benefits for the period
- net financial investment loss for the period
- net rental property loss for the period and
- adjusted fringe benefits for the period.

The ATI calculation allows a deduction for child maintenance a person provided to a third party for the period.

The ATI is under current income tax law adopted for determining eligibility to the Dependent (Invalid and Carer) Tax offset (DICTO). The adoption of ATI would undoubtedly increase the revenue collected by the TBR levy.

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70. Ibid.


72. For the year 2013–14, the maximum offset is $2,471 and cuts off at a maximum ATI of $10,166. The maximum offset is reduced by $1 for every $4 by which ATI exceeds $282 (J Tu, *Tax Rates and Tables: March 2014 Update*, Thomson-Reuters (Professional) Australia, Sydney, 2014, pp. 10–11).

73. The Parliamentary Library is unable to estimate the additional revenue as the publicly available information is inadequate to attempt such an estimate.
## Appendix

### Appendix—Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014 and associated Bills

<table>
<thead>
<tr>
<th>Name of Bill with link to homepage</th>
<th>Purpose of the Bills(^{74})</th>
<th>Reference in the Explanatory Memorandum to detailed explanation of the new law(^{75})</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Income Tax Rates Amendment (Temporary Budget Repair Levy) Bill 2014</strong></td>
<td>The Bill amends the <em>Income Tax Rates Act 1986</em> to increase by two per cent: the income tax rates payable on taxable income that exceeds $180 000; certain other income tax rates that are aligned with the top personal marginal tax rate or with calculations comprising that rate and the Medicare levy; and the income tax rate applicable to the unearned income of a minor.</td>
<td>Paragraphs 1.21-1.45 at pages 9-13</td>
</tr>
<tr>
<td><strong>Family Trust Distribution Tax (Primary Liability) Amendment (Temporary Budget Repair Levy) Bill 2014</strong></td>
<td>The Bill amends the <em>Family Trust Distribution Tax (Primary Liability) Act 1998</em> to increase to 49 per cent the rate of family trust distribution tax.</td>
<td>Paragraphs 1.46-1.47 at page 13</td>
</tr>
<tr>
<td><strong>Fringe Benefits Tax Amendment (Temporary Budget Repair Levy) Bill 2014</strong></td>
<td>The Bill amends the <em>Fringe Benefits Tax Act 1986</em> to increase to 49 per cent the rate of fringe benefits tax.</td>
<td>Paragraphs 1.48-1.53 at pages 13-14</td>
</tr>
<tr>
<td><strong>Income Tax (Bearer Debentures) Amendment (Temporary Budget Repair Levy) Bill 2014</strong></td>
<td>The Bill amends the <em>Income Tax (Bearer Debentures) Act 1971</em> to increase from 45 to 47 per cent the rate of non-final withholding tax payable on the interest paid for certain bearer debentures.</td>
<td>Paragraphs 1.54-1.55 at pages 14-15</td>
</tr>
<tr>
<td><strong>Income Tax (First Home Saver Accounts Misuse Tax) Amendment (Temporary Budget Repair Levy) Bill 2014</strong></td>
<td>The Bill amends the <em>Income Tax (First Home Saver Accounts Misuse Tax) Act 2008</em> to increase to 49 per cent the rate of misuse tax.</td>
<td>Paragraphs 1.56-1.57 at page 14</td>
</tr>
<tr>
<td><strong>Income Tax (TFN Withholding</strong></td>
<td>The Bill amends the <em>Income Tax (TFN Withholding</em>*</td>
<td>Paragraphs 1.58-1.59</td>
</tr>
</tbody>
</table>

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\(^{74}\) The purpose of each Bill is stated in the home page of the Bill.

\(^{75}\) There is only one Explanatory Memorandum to the package of 15 Bills located in the home page for each Bill. The references to paragraphs and pages are to those of this single document.
<table>
<thead>
<tr>
<th>Bill Title</th>
<th>Summary</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Withholding Tax (ESS) Amendment (Temporary Budget Repair Levy) Bill 2014</td>
<td>Tax (ESS) Act 2009 to increase to 49 per cent the rate of tax payable by employees who receive an employee share scheme (ESS) interest under an ESS and have not provided an Australian Business Number or tax file number.</td>
<td>at page 15</td>
</tr>
<tr>
<td>Superannuation (Departing Australia Superannuation Payments Tax) Amendment (Temporary Budget Repair Levy) Bill 2014</td>
<td>The Bill amends the Superannuation (Departing Australia Superannuation Payments Tax) Act 2007 to increase the rates of tax payable on departing Australia superannuation payments from a taxed superannuation fund to 38 per cent and from an untaxed superannuation fund to 47 per cent.</td>
<td>Paragraphs 1.60-1.65 at page 16</td>
</tr>
<tr>
<td>Superannuation (Excess Untaxed Roll-over Amounts Tax) Amendment (Temporary Budget Repair Levy) Bill 2014</td>
<td>The Bill amends the Superannuation (Excess Untaxed Roll-over Amounts Tax) Act 2007 to increase to 49 per cent the rate at which excess untaxed roll-over amounts tax is payable on an individual’s excess untaxed roll-over amounts.</td>
<td>Paragraphs 1.73-1.74 at page 18</td>
</tr>
<tr>
<td>Superannuation (Excess Non-concessional Contributions Tax) Amendment (Temporary Budget Repair Levy) Bill 2014</td>
<td>The Bill amends the Superannuation (Excess Non-concessional Contributions Tax) Act 2007 to increase to 49 per cent the rate at which excess non-concessional contributions tax is payable on an individual’s excess non-concessional contributions.</td>
<td>Paragraphs 1.66-1.72 at pages 17-18</td>
</tr>
<tr>
<td>Taxation (Trustee Beneficiary Non-disclosure Tax) (No. 1) Amendment (Temporary Budget Repair Levy) Bill 2014</td>
<td>The Bill amends the Taxation (Trustee Beneficiary Non-disclosure Tax) Act (No. 1) 2007 to increase to 49 per cent the rate of trustee beneficiary non-disclosure tax where a share of the net income of a trust is distributed to the trustee of a closely held trust and there is no correct trustee beneficiary statement.</td>
<td>Paragraphs 1.75-1.76 on pages 18-19</td>
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<tr>
<td>Taxation (Trustee Beneficiary Non-disclosure Tax) (No. 2) Amendment (Temporary Budget Repair Levy) Bill 2014</td>
<td>The Bill amends the Taxation (Trustee Beneficiary Non-disclosure Tax) Act (No. 2) 2007 to increase to 49 per cent the rate of trustee beneficiary non-disclosure tax where a share of the net income of a trust is distributed to the trustee of a closely held trust.</td>
<td>Paragraphs 1.77-1.78 on page 19</td>
</tr>
<tr>
<td>Tax Laws Amendment (Interest on Non-Resident Trust Distributions) (Temporary Budget Repair Levy) Bill 2014</td>
<td>The Bill amends the Income Tax Assessment Act 1936 to increase by two per cent the rate of tax on the amount of interest payable by an Australian resident taxpayer on distributions from non-resident trust estates.</td>
<td>Paragraphs 1.79-1.82 on pages 19-20</td>
</tr>
<tr>
<td>Tax Laws Amendment (Untainting Tax) (Temporary Budget Repair Levy) Bill 2014</td>
<td>The Bill amends the Income Tax Assessment Act 1997 to increase by 2.5 per cent the rate of untainting tax payable by a company which chooses to untaint a franking account.</td>
<td>Paragraphs 1.83-1.87 on page 20</td>
</tr>
<tr>
<td>Trust Recoupment Tax Amendment (Temporary Budget Repair Levy) Bill 2014</td>
<td>The Bill amends the Trust Recoupment Tax Act 1985 to increase to 47 per cent the rate of tax imposed on amounts involved in certain trust stripping arrangements.</td>
<td>Paragraphs 1.88-1.91 on pages 20-21</td>
</tr>
</tbody>
</table>
Tax Laws Amendment (Temporary Budget Repair Levy) Bill 2014

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