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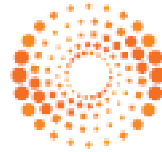

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FEDERAL BUDGET

Tax Bulletin 2018-2019

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THOMSON REUTERS WEEKLY TAX BULLETIN

Issue 19, 8 MAY 2018

SPECIAL ISSUE - 2018 FEDERAL BUDGET REPORT

[With special comments by Reuters News]

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EXECUTIVE SUMMARY

[531] 2018-19 Federal Budget: 7-year personal tax cut plan; R&D shakeup; instant asset write-off extended; $18bn deficit

On Tuesday, 8 May 2018, Treasurer Scott Morrison handed down the 2018-19 Federal Budget, his 3rd Budget. In what is widely perceived to be an election Budget (and certainly the last full Budget before the next Federal election), in his Budget speech, the Treasurer said that, in 2017-18, the Budget deficit will be $18.2 billion, less than half what it was 2 years ago. The deficit will fall again to $14.5 billion in 2018-19, Mr Morrison said. According to the Treasurer, the Budget is forecast to return to a modest balance of $2.2 billion in 2019-20 (a year ahead of what was previously expected) and increase to projected surpluses of $11.0 billion in 2020-21 and $16.6 billion in 2021-22. In the lead up to the Budget, the Treasurer had said the Budget needed to "exercise the restraint that has been so important in ensuring that we bring that Budget back to balance".

The Budget Papers themselves state that real GDP is forecast to grow by 2.75% in 2017-18 and is forecast to accelerate further to 3% growth in 2018-19 and 2019-20, a pace the Government considers sufficient to continue to lower the unemployment rate over the next few years (*Budget Paper No 1*).

The Government says the underlying cash balance is expected to return to a budget balance in 2019-20. An underlying cash surplus is projected in 2020-21, growing to more than 1% of GDP in the medium term. The Government says these projections are consistent with the Government's fiscal strategy which requires that tax receipts do not exceed 23.9% of GDP throughout the medium term.

On the revenue front, the centrepiece of a Budget containing a wide range of tax and related measures is a major **7-year 3-step plan to reform personal income tax**:

- **Step 1** will see a new non-refundable low and middle income tax offset from 2018-19 to 2021-22.
- **Step 2** will increase the top threshold of the 32.5% tax bracket from $87,000 to $90,000 from 1 July 2018. In 2022-23, the top threshold of the 19% bracket will increase from $37,000 to $41,000. The top threshold of the 32.5% bracket will increase from $90,000 to $120,000 from 1 July 2022.
- **Step 3** - from 1 July 2024, the top threshold of the 32.5% bracket will increase from $120,000 to $200,000, removing the 37% tax bracket completely.

The Government said it remains committed to pursuing its Ten Year Enterprise Tax Plan of **company tax cuts** and the Government's Enterprise Tax Plan announced in the 2016-17 Budget. The Treasurer said the Government continues to prosecute that Bill through the Parliament. [**Note**: The Bill is the *Treasury Laws Amendment (Enterprise Tax Plan No 2) Bill 2017* which has been passed by the House of Reps without amendment and is currently before the Senate. The Bill proposes to amend the *Income Tax Rates Act 1986* to progressively extend the 27.5% corporate tax rate to all corporate tax entities by the 2023-24 income year. The corporate tax rate would then be cut, for all corporate tax entities, to 27% (2024-25), 26% (2025-26) and 25% (2026-27 and later income years) - see 2017 WTB 20 [626]. *Date of effect*: The progressive extension of the lower 27.5% corporate tax rate to corporate tax entities with aggregated turnover of $50 million or more would commence from the 2019-20 income year.]

Mr Morrison said the Government has had "significant success already in delivering tax cuts for small and medium-sized businesses and we're looking at being able to continue to pursue the full tax cuts right across the board because we know that if you tax your economy less it grows more, we know that if we don't insist on companies paying the Government more in higher taxes they can invest more in their businesses and pay their workers more". He said the Finance Minister Senator Cormann is directly holding those discussions with the crossbenchers, including Senators Derryn Hinch and Tim Storer. The Treasurer said Senator Cormann is "patient, I'm patient, the Prime Minister's patient but we're also committed to this policy because we know it

delivers a stronger economy that means more jobs, more investment and the guarantee for the essentials". Senator Hinch has reportedly said he would agree to the Government's package if it was limited to companies with up to $500 million in turnover. The debate surrounding the company tax cuts Bill will be watched with interest.

Despite the publicity surrounding the high level of ***work-related expenses (WRE)*** claims, and the ATO's strong focus on this area, the Budget did not announce any measures in that regard. The ATO recently announced that it will be closely examining claims for work-related car expenses in 2018 tax returns. The ATO is concerned about taxpayers making mistakes or deliberately lodging false claims in relation to work-related car expenses. Last year, around 3.75 million people made a work-related car expense claim, totalling about $8.8 billion. ATO Assistant Commissioner Kath Anderson said this year, the ATO will be particularly focused on people "claiming things they're not entitled to". Claiming things like home to work travel or other private trips; making claims for trips they didn't actually undertake; or claiming expenses their employer has already paid for or reimbursed.

Revenue measures announced

The major revenue measures announced in the Budget included:

- Staged personal tax reform over 7 years from 2018-19, including new low income tax offset
- Extending the $20,000 instant asset write-off by another 12 months
- Major overhaul of the R&D tax incentive
- Application of Div 7A to UPEs clarified
- No tax deduction for non-compliant PAYG and contractor payments
- Cash payments limit of $10,000: payments made to businesses
- Taxing digital business in Australia - discussion paper to be issued within weeks
- Several measures to further address the black economy
- Minors and testamentary trusts - concessional tax rates limit
- Anti-avoidance rules: family trust circular distributions
- Deductions disallowed for holding vacant land
- MITs and AMITs: removing CGT discount at trust level
- Significant global entity definition to be broadened
- Offshore suppliers will be required to include supplies of hotel accommodation in Australia when calculating their GST turnover from 1 July 2019
- Super Guarantee opt-out for high-income employees who breach concessional cap
- Personal superannuation contributions - improving notice of intention to deduct
- SMSF audit cycle of 3 years for funds with good compliance history
- Super fees to be capped at 3% for small accounts, exit fees banned.

More information on the tax and related announcements is also contained in a number of Budget press releases on the Treasurer's website and the Minister for Revenue's website.

Where to get Budget documents

On the web

The 2018-19 Budget Papers are available from the following website:

- Budget 2018-19 - http://www.budget.gov.au/

Print copies

The 2018-19 Budget Papers are also available for sale from the CanPrint Communications Pty Limited. Details are on the Budget 2018-19 website at http://www.budget.gov.au/purchase.htm

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[532] "Big ticket" tax reform misses out again

Federal Budgets are not tax reform free zones, although what constitutes genuine "tax reform" may be open to debate - indeed, what such reform is meant to "fix" is also an open question. But it is undeniable that big ticket fundamental tax reforms (think the RATS (Reform of the Australian Tax System) reforms in 1985 – introduction of CGT, FBT, foreign tax credit system, dividend imputation, etc), are not a frequent visitor to Federal Budgets. In the past, major tax reforms have been the subject of separate announcements – perhaps Federal Budgets, with all their necessary revenue and expenditure focus, and the political climate they have to operate in (not to mention the 3-year electoral cycle), are no longer the place for big tax reform announcements.

In the run-up to most Federal Budgets, calls emerge for tax reform to take a prominent place. This year has been no different. Tax, accounting and business bodies all called for various tax reform measures to simplify the tax system and make "meaningful" reform. And calls for a lowering of the company tax rate were common. While the Government's proposal for a staged reform of personal tax rates was significant, fundamental tax reform is still illusive.

It is worth reflecting on the paper (entitled "*The Future of Tax: what's in it for you?*") given at the closing session of recent Tax Institute 33rd National Convention in Cairns by Mr Tony Slater QC.

Mr Slater considers that the current income tax system "is on the verge of collapse" and will within decades "contract to little more than a tax on wages, personal services and domestic sales of goods". He said the time is coming when a new national tax system will need to be designed from the beginning (not continual patch-ups of the existing system), "so that it is applicable in the context in which it is to operate". Conceptually, Mr Slater said land might be taxed "either at intervals on its capital value or from time to time on its yield or usage value". Other reform possibilities he suggested were including a tax per capita on individuals who are resident, and a tax on dealings in movables. Such changes he suggested would mean that the ATO "could relinquish its self-appointed role as world tax policeman", and would "avoid the need for earnest deliberations on BEPS issues". Mr Slater lamented however that, "as the realists among us know, none of this is the least likely to happen".

Mr Slater said that real, radical tax reform, while desirable, is "unlikely to happen". Nonetheless, he believes the profession should attempt to encourage reform and at the least, some simplification. He suggested a clarification of ideas and a brevity of expression might reduce the current 6,000 pages of tax legislation to "something like a

more manageable 500".

But simplification would have winners and losers and Mr Slater considered that those whose tax burdens would be increased (or tax refunds reduced) "would set up such a clamour … that any plan to simplify the tax law would be stillborn". A more realistic prospect, he said, is a material change in the compliance area. For instance, increasing ATO data-matching and pre-filling of tax returns could substantially reduce compliance costs for taxpayers and enable practitioners to focus on tax work other than pure compliance. A standard employee expense deduction, and substituting fixed rate withholding from dividends and interest income for TFN notification, would make it possible to waive filing of a tax return for most employees. According to Mr Slater, such a change, "when (not if) it comes, will reduce the administrative costs of the ATO", although would also result in loss of revenue for the tax profession and possible closure of some practices.

These days, there never seems to be a "right" time to undertake meaningful tax reform. Reforms of any kind are always a movable feast, but it seems tax reform often falls into the too hard basket. And perhaps in the current (and near recent) political and parliamentary climate, this is somewhat understandable. But the tax system and its legislation continues to lurch and struggle under its own weight – it's not getting any simpler, nor any shorter, and more people than ever it seems require help with their tax compliance.

That said, not all tax reform necessarily has a significant direct revenue implication - indeed many called-for reforms seek to reduce compliance costs and simplify the tax law. For example, simplification of Div 7A, the personal services income (PSI) rules, the CGT small business concessions (the Henry review recommended this) and the FBT system all feature in regular calls for reform. And of course, completing the re-write of the ITAA 1936 into the ITAA 1997 would help considerably with simplification. Australia's tax law is complex enough without having 2 assessment Acts for taxpayers and their advisers to deal with.

This year's Budget did not announce any big ticket fundamental tax reforms, although a number of significant tax changes were announced, as this *Bulletin* describes. In the meantime, calls for tax reform will continue.

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[533] Australia eyes early return to surplus; cuts personal taxes in budget

- by Swati Pandey and Jane Wardell, Reuters News

In its 2018-19 Budget, the Federal Government confirmed expectations that it would return Australia's finances to a small surplus in 2019-20, a year earlier than planned and after almost a decade of deficits.

The Government also unveiled some big spending measures, including a package of personal income tax cuts for low and middle-income earners, as a revenue windfall from company taxes enabled a shift away from its previous "debt and deficit disaster" rhetoric.

"We are no longer borrowing to pay for everyday expenses," Treasurer Scott Morrison told reporters. "We have reached a turning point for debt."

Morrison predicted a budget surplus of $2.2 billion in 2019-20, a remarkable turnaround on the $2.6 billion deficit forecast in the Government's mid-year review in December 2017. The projected surpluses increase to $11 billion

in 2019-20 and $16.6 billion in 2020-21.

Net debt is seen peaking at 18.6% of Australia's $1.8 trillion gross domestic product (GDP) in 2017-18, also a year earlier than forecast, before falling to 3.8% by 2028-29.

The marked improvement in the finances will likely be positive news for Prime Minister Malcolm Turnbull after a series of political setbacks, given the budget is widely viewed as the unofficial campaign kick-off for federal elections due in the first half of 2019.

The early return to surplus will also likely be welcomed by ratings agencies who have retained Australia's sovereign rating at a top-notch triple-A. Still, Standard & Poor's put Australia on a "negative watch" in mid-2016, citing deteriorating government finances, and some economists have warned that more spending before a federal election could put the pristine rating at risk.

Morrison maintained that the Government continued to "live within its means" despite the budget spending splash.

The Government estimated total 2018-19 revenues would rise to $486.1 billion, or 25.5% of GDP, largely from corporate taxes and as a crackdown on black economy and multinational tax avoidance bears fruit.

Despite the additional expenditure, spending levels were at just below the 30-year average of 24.8%.

Sustained growth

Australia's economy, which has outperformed many rich world peers since the global financial crisis, has now entered a 27th straight year of growth, but the pace has slowed significantly as the country recalibrates following the end of a once-in-a-generation mining investment boom.

The Government predicted domestic activity to accelerate at 3% through the forecast period ending 2021-22 in the budget, unchanged from December. Its outlook for unemployment and inflation were also unchanged.

The budget included a number of voter-friendly spending plans, as Turnbull seeks to restore his popularity after a dual citizenship crisis and a sex scandal involving his deputy, that have seen his popularity plummet in polls from record highs of late 2015.

Revelations of serious misconduct in Australia's powerful banking sector - during an ongoing inquiry the Government initially resisted as unnecessary - have ramped up the pressure.

The budget did not address that crisis in detail, saying only that the Government would continue to roll out stronger penalties, powers and enforcement for the sector. It also steered clear of discussing a plan to lower taxes for big businesses which did not have parliamentary support anyway.

Voter sweeteners

A $13.4 billion 4-year income tax package included immediate cuts for low- and mid-income households, and a proposal to flatten the overall tax structure by abolishing the high-income bracket in 2024-25. The extra money will be a boon for Australia's heavily indebted households. Monthly retail sales data released earlier in the day showed spending falling on everything from clothes to restaurants.

The Government will continue its $75 billion 10-year infrastructure plan to build new rail and road projects and a $30 billion 5-year investment plan in hospitals.

It will also invest $2.5 billion in public technology infrastructure, $1.6 billion in residential aged care and $294 million to improve national security.

(*Reporting by Swati Pandey and Jane Wardell; Editing by Richard Borsuk, James Dalgleish & Shri Navaratnam*)

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PERSONAL TAXATION

[534] Personal tax rates - staged 7-year reform plan starting from 2018-19

In the 2018-19 Budget, the Government announced staged tax relief for low and middle income earners. The Government is proposing a major **7-year 3-step plan to reform personal income tax**:

- **Step 1** will see a new non-refundable Low and Middle Income Tax Offset from 2018-19 to 2021-22, designed to provide tax relief of up to $530 for each of those years. The offset will be delivered on assessment after an individual submits their tax return and will be in addition to the existing low income tax offset (LITO).
  - The Low and Middle Income Tax Offset will provide a benefit of up to $200 for taxpayers with taxable income of $37,000 or less. Between $37,000 and $48,000, the value of the offset will increase at a rate of 3 cents per dollar to the maximum benefit of $530. Taxpayers with taxable incomes from $48,000 to $90,000 will be eligible for the maximum benefit of $530. From $90,001 to $125,333, the offset will phase out at a rate of 1.5 cents per dollar. The benefit of the Low and Middle Income Tax Offset is in addition to the existing Low Income Tax Offset.
- **Step 2** will increase the top threshold of the 32.5% tax bracket from $87,000 to $90,000 from 1 July 2018. In 2022-23, the top threshold of the 19% bracket will increase from $37,000 to $41,000 and the LITO will increase from $445 to $645. The increased LITO will be withdrawn at a rate of 6.5 cents per dollar between incomes of $37,000 and $41,000, and at a rate of 1.5 cents per dollar between incomes of $41,000 and $66,667. The top threshold of the 32.5% bracket will increase from $90,000 to $120,000 from 1 July 2022.
- **Step 3** - from 1 July 2024, the top threshold of the 32.5% bracket will increase from $120,000 to $200,000, removing the 37% tax bracket completely. Taxpayers will pay the top marginal tax rate of 45% from taxable incomes exceeding $200,000 and the 32.5% tax bracket will apply to taxable incomes of $41,001 to $200,000.

The Government says this means that around 94% of all taxpayers are projected to face a marginal tax rate of 32.5% or less in 2024-25.

Tax rates and thresholds for 2018-19 onwards

The following table reflects the Government's announced personal tax rate and threshold changes (highlighted in **bold**), excluding the 2% Medicare levy:

Tax rates and thresholds			
Rate	**2018-19 to 2021-22**	**2022-23 and 2023-24**	**2024-25 onwards**
0%	$0 - $18,200	$0 - $18,200	$0 - $18,200
19%	$18,201 - 37,000	$18,201 - **41,000**	$18,201 - $41,000
32.5%	$37,001 - **90,000**	**$41,001** - **120,000**	$41,001 - **$200,000**
37%	**$90,001** - $180,000	**$120,001** - $180,000	N/A
45%	$180,001+	$180,001+	**$200,001+**

Tax rates and thresholds for 2017-18 unchanged

The rates for the 2017-18 year (excluding the 2% Medicare levy) remain unchanged and are:

2017-18	
Taxable income $	**Tax payable $**
0 - 18,200	Nil
18,201 - 37,000	Nil + 19% of excess over 18,200
37,001 - 87,000	3,572 + 32.5% of excess over 37,000
87,001 - 180,000	19,822 + 37% of excess over 87,000
180,001+	54,232 + 45% of excess over $180,000

The Government had proposed to increase the Medicare levy from 2% to 2.5% from 1 July 2019, but has decided not to proceed with this (see below). Presumably the Bills to do this, which are currently before Parliament, will be removed from the Notice Paper. In an address on 26 April 2018 to the Australian Business Economists in Sydney, the Treasurer said that, due to the improving economy and fiscal position, the Government is "now in a position to give our guarantee to Australians living with a disability and their families and carers that all planned expenditure on the NDIS will be able to be met in this year's Budget and beyond without any longer having to

increase the Medicare levy". At the same time, it has been reported that Shadow Treasurer Chris Bowen has announced that Labor will not proceed with its proposal to increase the Medicare levy by 0.5% (to 2.5%) on those earning above $87,000.

Low income tax offset

The currently legislated low income tax offset (LITO) rates will not change for 2017-18 and are:

- LITO amount - $445.
- Lower withdrawal limit - $37,000.
- Upper withdrawal limit - $66,667.
- Withdrawal rate - 1.5%.

Foreign residents

The unchanged tax rates for foreign residents for 2017-18 are:

2017-18	
Taxable income $	**Tax payable $**
0 - 87,000	32.5%
87,001 - 180,000	28,275 + 37% of excess over 87,000
180,001+	62,685 + 45% of excess over $180,000

Foreign residents are not liable to pay the Medicare levy.

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[535] Minors and testamentary trusts: Concessional tax rates limit

The concessional tax rates available for minors receiving income from testamentary trusts will be limited to income derived from assets that are transferred from deceased estates or the proceeds of the disposal or investment of those assets. Currently, income received by minors from testamentary trusts is taxed at normal adult rates rather than the higher tax rates that generally apply to minors.

The Government is concerned that some taxpayers are able to inappropriately obtain the benefit of this lower tax rate by injecting assets unrelated to the deceased estate into testamentary trusts. This measure will clarify that minors will be taxed at adult marginal tax rates only in relation to income of a testamentary trust that is generated from assets of a deceased estate (or the proceed of the disposal or investment of these assets).

Date of effect

This measure applies from 1 July 2019.

Source: Budget Paper No 2 [p 44]

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[536] Increased compliance activities: individuals and their tax agents

The Government will provide $130.8 million to the ATO from 1 July 2018 to increase compliance activities targeting individuals and their tax agents. This measure stems from the ATO identifying a number of significant compliance issues for individual taxpayers which results in a significant loss of revenue for the Government each year.

The extra funding will continue 4 income matching programs that would have been otherwise terminated from 1 July 2018 to allow the ATO to detect incorrect reporting of income such as foreign sourced income of high wealth individuals. The funding will also allow for new compliance activities including additional audits and prosecutions, improving education and guidance materials, pre-filling of income tax returns, and improving real time messaging to tax agents and individual taxpayers to deter over-claiming of entitlements, especially in relation to higher risk taxpayers and their agents.

Date of effect

This measure applies from 1 July 2018

Source: Budget Paper No 2 [p 31]

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[537] Taxation of income for high profile individuals

The Government will ensure that high profile individuals will no longer be able to take advantage of lower tax rates by licensing their fame or image to another entity.

Currently, high profile individuals such as sportspeople or actors can license their fame or image to another entity (a related company or trust), and the income derived goes to the entity that holds the licence. This creates opportunities to take advantage of different tax treatments. This measure will ensure that all remuneration (including payments and non-cash benefits) provided for the commercial exploitation of a person's fame or image will be included in the assessable income of the individual.

Date of effect

This measure will apply from 1 July 2019.

Source: Budget Paper No 2 [p 45]

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[538] Medicare levy low-income thresholds for 2017-18

For the 2017-18 income year, the Medicare levy low-income threshold for singles will be increased to $21,980 (up from $21,655 for 2016-17). For couples with no children, the family income threshold will be increased to $37,089 (up from $36,541 for 2016-17). The additional amount of threshold for each dependent child or student will be increased to $3,406 (up from $3,356).

For single seniors and pensioners eligible for the SAPTO, the Medicare levy low-income threshold will be increased to $34,758 (up from $34,244 for 2016-17). The family threshold for seniors and pensioners will be increased to $48,385 (up from $47,670), plus $3,406 for each dependent child or student.

Date of effect

The increased thresholds will apply to the 2017-18 and later income years. Note that legislation is required to amend the thresholds and a Bill will be introduced shortly.

Source: Budget Paper No 2 [p 32]

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[539] A standard tax deduction for work expenses? Not in this Budget

Talk of allowing individual taxpayers a standard tax deduction for work-related expenses (WRE) has been around for more years than we may care to remember. There was some pre-Budget speculation around the likelihood of the Government introducing a standard tax deduction in this year's Budget, especially after the ATO aired its strong concerns about what it said was the over-claiming of work-related tax deductions. Calls for a standard deduction are not new and have been around for a number of years, most notably recommended by the Henry Tax Review in 2010, however, there was no announcement in this year's 2018-19 Federal Budget.

The Government on 15 February 2018 tabled in the House of Reps its response to the inquiry of the House of Reps Standing Committee on Economics into Tax Deductibility – see 2018 WTB 7 [165]. The Committee's review focussed on enhancing compliance in relation to tax deductions, and looked especially at Work Related Deductions and deductibility of interest for companies.

In relation to work-related expenses (WREs), the Committee said it saw little rationale for altering existing arrangements that allow taxpayers to claim personal income tax deductions for valid WREs. The Committee said

the ability to claim deductions for valid work-related expenses is "an entirely appropriate part of our taxation system".

The Committee considered that it was clear that it was not possible to reduce the cost to the budget of WRE deductions "without leaving a significant number of taxpayers worse off".

The Committee was against any proposal to establish a standard tax deduction. It said a proposal to introduce a system where all taxpayers could claim a standard WRE deduction without substantiation, coupled with the ability to make additional WRE claims with substantiation, was "not supported by the committee". While this system would have the benefit of simplicity, the Committee said it would be likely to come at an additional cost to government revenue. This is the case because all taxpayers would be able to claim the standard deduction, while those with substantial workplace expenses would still be able to claim their existing WREs. The overall impact of this would most likely be an increase in the total cost of WREs, the Committee said.

In the Committee's view, it is important that the actual cost to government revenue of WREs is clearly understood in order to inform budget planning. It was for this reason that the Committee recommended that The Treasury provide a clear estimate of the actual cost to Government revenue of WREs so as to properly inform policy in this area.

Background

Talk of allowing individual taxpayers a standard tax deduction for work-related expenses (WRE) has been around for more years than we may care to remember. However, despite much speculation before the Budget, it was silent on such a proposal.

Recommendation 11 of the Henry Tax Review in 2010 recommended a standard deduction should be introduced to cover work-related expenses and the cost of managing tax affairs to simplify personal tax for most taxpayers. Taxpayers should be able to choose either to take a standard deduction or to claim actual expenses where they are above the claims threshold, with full substantiation. Then in the 2010-11 Federal Budget on 11 May 2010, the Government announced that it would provide individual taxpayers with a standard deduction of $500 for work-related expenses and the cost of managing tax affairs from 1 July 2012. The standard deduction was to increase to $1,000 from 1 July 2013. Of course, we know that did not proceed.

On 30 March 2015, the Treasurer released the Government's tax discussion paper, entitled *Re:think* which also discussed WRE. Given the high proportion of taxpayers who incur a relatively low total value of legitimate WREs, the paper suggested that a standard deduction could provide significant compliance savings. Rather than substantiating WRE expense claims with receipts, these taxpayers could instead choose to "tick a box" to claim a standard deduction at a set amount (eg $500). While it could deliver a simplicity benefit, the paper notes that a standard deduction would come at significant cost as people who do not currently have any WRE deductions could reduce their taxable income by the value of the standard deduction. The *Re:think* paper was meant to be a precursor to the issue a Green Paper covering tax options in the second half of 2015 and then a tax reform White Paper prior to the 2016 Federal election - but neither Paper eventuated.

On 22 November 2016, the Treasurer asked the House of Reps Standing Committee on Economics to inquire into and report on tax deductibility, specifically on the deductibility of expenditure by individuals in earning assessable income (including, but not limited to, a comparison with NZ and the UK), and deductibility of interest incurred by businesses. [It is noted that New Zealand "cashed out" WRE deductions in the late 1980s by providing income tax cuts in exchange for disallowing WRE deductions.] The Committee heard that during the 2015 year, nearly $22 billion in work-related tax deductions were claimed. These claims have increased by 21%

over the past 5 years, and in its submission to the inquiry, the ATO expressed concern about the level of non-compliance in relation to work-related expenses.

It is understood it has been suggested that a standard tax deduction of $2,000 would be appropriate as the statistics reveal that is about the average of such claims made. Perhaps taxpayers could be given the option of claiming the standard deduction or, if they wish to claim more, they would have to substantiate that in full. Overall, any steps to help minimise tax compliance complexity and cost would be welcome, but of course, revenue implications would have to be factored in.

So the idea of a standard tax deduction has received plenty of attention in recent years. A standard deduction would of course constitute a hit to the revenue, although it could be clearly quantified.

Governments have tantalised taxpayers with the prospect of a standard tax deduction for work-related expenses … it's long been recognised as an important element towards a system of pre-filled tax returns. Maybe for another time.

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[540] New deductible gift recipients

The following organisations have been approved as specifically-listed deductible gift (DGRs) for the following dates:

- Paul Ramsay Foundation Limited from 1 July 2018 to 30 June 2020;
- Australian Women Donors Network from 9 March 2018 to 8 March 2023;
- Victorian Pride Centre Limited from 9 March 2018 to 8 March 2023;
- Smile Like Drake Foundation Limited from 9 March 2018 to 8 March 2023;
- Australian Sports Foundation Charitable Fund from 1 July 2018 to 30 June 2023; and
- Q Foundation Trust from 1 January 2018 to 31 December 2022.

Taxpayers may claim an income tax deduction for gifts of money or property to these organisations of $2 or more.

Source: Budget Paper No 2 [p 34]

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BUSINESS TAXATION

[541] $20,000 instant asset write-off for SBEs extended by 12 months

The Government will extend the current instant asset write-off ($20,000 threshold) for small business entities (SBEs) by 12 months to 30 June 2019. This applies to businesses with aggregated annual turnover less than $10 million.

The threshold amount was due to return to $1,000 on 1 July 2018. As a result of this announcement, SBEs will be able to immediately deduct purchases of eligible depreciating assets costing less than $20,000 that are acquired between 1 July 2017 and 30 June 2019 and first used or installed ready for use by 30 June 2019 for a taxable purpose. Only a few assets are not eligible for the instant asset write-off (or other simplified depreciation rules), eg horticultural plants and in-house software.

Assets valued at $20,000 or more (which cannot be immediately deducted) can continue to be placed into the general small business pool (the pool) and depreciated at 15% in the first income year and 30% each income year thereafter. The pool can also be immediately deducted if the balance is less than $20,000 over this period (including existing pools).

The current 'lock out' laws for the simplified depreciation rules (these prevent small businesses from re-entering the simplified depreciation regime for 5 years if they opt out) will continue to be suspended until 30 June 2019.

The instant asset write-off threshold and the threshold for immediate deductibility of the balance of the pool will revert to $1,000 on 1 July 2019.

Comment

While the extension of the write-off will be welcomed, SMEs of course need to have the cash-flow to enable them to spend the $20,000 in the first place.

Source: Budget Paper No 2, p 20

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[542] R&D tax incentive overhaul

The Government will amend the research and development (R&D) tax incentive in response to the recommendations of the 2016 Review of the R&D Tax Incentive. The changes will apply for income years starting on or after 1 July 2018.

For companies with aggregated annual turnover of $20 million or more, the Government will introduce an ***R&D premium that ties the rates of the non-refundable R&D tax offset to the incremental intensity of R&D expenditure as a proportion of total expenditure for the year***. The marginal R&D premium will be the claimant's company tax rate plus:

- 4 percentage points for R&D expenditure between 0% to 2% R&D intensity;

- 6.5 percentage points for R&D expenditure above 2% to 5% R&D intensity;
- 9 percentage points for R&D expenditure above 5% to 10% R&D intensity; and
- 12.5 percentage points for R&D expenditure above 10% R&D intensity.

The R&D expenditure threshold - the maximum amount of R&D expenditure eligible for concessional R&D tax offsets - will be increased from $100 million to $150 million per annum.

For companies with aggregated annual turnover below $20 million, the refundable R&D offset will be a premium of 13.5 percentage points above a claimant's company tax rate. ***Cash refunds from the refundable R&D tax offset will be capped at $4 million per annum***. R&D tax offsets that cannot be refunded will be carried forward as non-refundable tax offsets to future income years.

Refundable R&D tax offsets from R&D expenditure on clinical trials will not count towards the cap.

The Government says it will further improve the integrity of the R&D program by implementing stronger compliance and administrative improvements. These improvements include increased resourcing for the ATO and Department of Industry, Innovation and Science, which will be used to undertake greater enforcement activity and provide improved program guidance to participants. Other changes include improving the transparency of the program by ***enabling the ATO to publicly disclose claimant details and the R&D expenditure they have claimed***, ***limits on time extensions to complete R&D registrations***and amendments to technical provisions (such as the feedstock and clawback rules and the general anti avoidance rules).

Source: Budget Paper No 2 [p 21]

Comment

Prior to the Budget, concerns had been expressed about mooted R&D changes that would come from the 2016 Tax Incentive Review and the 2018 Innovation and Science Australia proposals. The intensity threshold in particular came in for criticism.

The Australian Information Industry Association (AIIA) says thin evidence supporting changes such as limiting the incentive to businesses with a particular level of R&D intensity suggests that the primary motivation is to boost short-term tax revenue, even at the risk of compromising long-term prosperity and in the face of evidence showing that R&D expenditure claims is already in decline for the last 2 years.

It had been suggested that startups, which incur high R&D costs prior to earning any significant income, could be harshly penalised by the introduction of the refund cap.

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[543] Taxing digital business in Australia - discussion paper to be issued within weeks

In the Budget, the Treasurer said that despite the Government's crackdowns on multinationals having already brought around $7 billion a year in sales revenue by multinationals into the tax net, "we need to do more". After reiterating the Government's already announced measures re changing the tax treatment of stapled securities

(announced on 27 March 2018 – see 2018 WTB 13 [333]) and further tightening of the thin cap rules (as reported in this *Bulletin*), Mr Morrison said "the next big challenge is to ensure big multinational digital and tech companies pay their fair share of tax". Over the past year, he said he has been working with counterparts at the G20 to bring the digital economy into the global tax net. ***"In a few weeks' time", the Treasurer said he will release a discussion paper that will explore options for taxing digital business in Australia.***

Comment

Taxing the digital economy remains a difficult and contentious issue. In a recent address, the Treasurer said "we are seeing a big part of our tax base being ripped out of our country by the business models of global digital and social media companies". He said the international tax system was simply designed for a different time and a different economy. This is increasingly acknowledged by the companies themselves, with Mr Morrison saying that at a recent meeting he had with several digital companies such as Google and Amazon, there was an understanding that the current system that has benefited them greatly is simply not sustainable, nor palatable to the public.

At the March G20 meeting of finance ministers in Buenos Aires, there was a deep understanding of the need to work collaboratively, not just with each other, but with the architects of the new economy, the Treasurer said. "We need their involvement to ensure our tax and regulatory systems are calibrated for the new economy." Mr Morrison said there are some big decisions being made in this area and Australia continues to work with other countries.

Perhaps the Treasurer was taking his lead from what has been happening in Europe. Europe has been taking a lead in measures to tax the digital economy. In March this year, the European Commission proposed to introduce a digital services tax aimed at addressing the tax challenges of the digital economy in the European Union. Companies such as Google and Facebook would clearly be impacted.

The Commission said the current EU tax rules were not designed for the recent boom in global digital business that have little or no physical presence. According to the Commission, lucrative profits made through selling user-generated data and content are not captured by the current tax rules. With 9 of the world's top 20 companies by market capitalisation now digital, the Commission said the challenge is to ensure digital companies contribute their fair share of tax. The Commission has put forward a more coordinated approach involving 2 distinct legislative proposals:

- ***Reform to corporate tax rules*** (long-term solution) - ***significant digital presence*** - EU Member States would be able to tax profits that are generated in their territory, even if a company does not have a physical presence there. Profits would be registered and taxed where businesses have significant interaction with users through digital channels. It would apply to a taxable "digital presence" (or a virtual permanent establishment) in a Member State if it fulfils *one* of the following criteria:
  - it exceeds a threshold of €7 million in annual revenues in a Member State;
  - it has more than 100,000 users in a Member State in a taxable year; or
  - over 3,000 business contracts for digital services are created between the company and business users in a taxable year.
- ***Digital services tax*** (interim solution) – the proposal is for an interim digital tax (say 3%) to cover the main digital activities that currently escape tax altogether in the EU. This interim tax would apply to

revenues created from activities where users play a major role in value creation, such as those revenues created from: (i) selling online advertising space; (ii) digital intermediary activities (which allow users to interact with other users and which can facilitate the sale of goods and services between them); or (iii) the sale of data generated from user-provided information.

These legislative proposals will be submitted to the Council for adoption and to the European Parliament for consultation. The EU will also continue to consult within the G20/OECD for international solutions.

However, it is understood there may be some wavering on the proposals as concerns rise among European countries of possible US retaliation over the measures. In addition, the UK has called for a global approach to digital taxation through further dialogue at the OECD (the BEPS regime is already grappling with the issues), rather than pursuing a temporary ad hoc solution in the EU. Other EU countries have echoed this concern. It is also known that Ireland and Luxembourg have warned of potential repercussions from the US if the EU digital tax went ahead. Unilateral actions by individual countries or blocs challenge the approach taken by avenues such as BEPS.

Unilateral action v multilateral action - the issue is far from settled.

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[544] Application of Div 7A to UPEs

The Government will clarify the operation of Div 7A of the ITAA 1936 to ensure that unpaid present entitlements (UPEs) come within the scope of Div 7A. A UPE arises where a related private company becomes entitled to a share of trust income as a beneficiary but has not been paid that amount.

Division 7A requires benefits provided by private companies to related taxpayers to be taxed as dividends unless they are structured as Div 7A complying loans or another exception applies. This measure will ensure the UPE is either required to be repaid to the private company over time as a complying loan or subject to tax as a dividend.

Start date of other Div 7A measures deferred

The start date of the amendments to Div 7A that were announced in the 2016-17 Budget (see 2016 WTB 18 [559]) will be deferred from 1 July 2018 to 1 July 2019.

The 2016-17 Budget measures included:

- a self-correction mechanism providing taxpayers whose arrangements have inadvertently triggered Div 7A with the opportunity to voluntarily correct their arrangements without penalty;
- new safe harbour rules, such as for use of assets, to provide certainty and simplify compliance for taxpayers; and amended rules, with appropriate transitional
- arrangements, regarding complying Div 7A loans, including having a single compliant loan duration of

10 years and better aligning calculation of the minimum interest rate with commercial transactions.

Date of effect

These measures will apply from 1 July 2019, including the measures announced in the 2016-17 Budget. As a result, all the Div 7A amendments will form part of a consolidated package.

Source: Budget Paper No 2 [p 41]

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[545] Anti-avoidance rules: family trust circular distributions

The Government will extend specific anti-avoidance rules that applies to other closely held trusts that engage in circular trust distributions to family trusts.

Currently, where family trusts act as beneficiaries of each other in a round robin arrangement, a distribution can ultimately be returned to the original trustee in a way that avoids any tax being paid on that amount. The measure will allow ATO to pursue family trusts that engage in these arrangements and impose tax on such distributions at a rate equal to the top personal rate plus the Medicare levy.

Date of effect

This measure applies from 1 July 2019.

Source: Budget Paper No 2 [p 43]

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[546] Concessional loans between tax exempt entities

Where a tax exempt entity becomes taxable after 8 May 2018, tax deductions that arise on the repayment of the principal of a concessional loan will be disallowed.

The deductions arise due to the unforeseen complex interaction between the taxation of financial arrangements (TOFA) rules and the rules dealing with deemed market values for tax exempt entities that become taxable.

Under this measure, concessional loans that are entered into by tax exempt entities that become taxable will be required to be valued as if they were originally entered into on commercial terms.

Source: Budget Paper No 2 [p 25]

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[547] Significant global entity definition to be broadened

The Government announced that it will broaden the definition of a large multinational (or significant global entity (SGE)) to ensure that Australia's multinational tax integrity rules operate as intended. [An SGE is an entity that has annual global income of AUD$1 billion or more, or one that is a member of a group of entities that are consolidated for accounting purposes as a single group and the global parent entity of the group has annual global income of AUD$1 billion or more.]

The SGE definition identifies entities which are required to prepare Country-by-Country (CbC) reports and is used to determine entities which may be subject to Australia's multinational tax integrity rules, such as the Multinational Anti Avoidance Law and the Diverted Profits Tax.

The current definition applies only to an entity which is a member of a group headed by a public company or a private company required to provide consolidated financial statements. The ***definition will be broadened to include members of large multinational groups headed by private companies, trusts and partnerships***. ***It will also include members of groups headed by investment entities***. This measure will also ensure the Commissioner's power to determine an entity to be an SGE parent operates as intended.

Date of effect

The measure will apply to income years commencing on or after 1 July 2018.

Source: Budget Paper No 2 [p 26]

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[548] Thin cap: aligning valuation of assets

The thin capitalisation rules will be amended by requiring entities to align the value of their assets for thin cap purposes with the value included in their financial statements. This will be achieved by requiring all entities to rely on the asset values contained in their financial statements for thin cap purposes. This change will ensure that asset valuations used to justify debt deductions are robust.

The Government will also ensure that foreign controlled Australian consolidated entities and multiple entry consolidated groups that control a foreign entity are treated as both outward and inward investment vehicles for thin cap purposes. This change will ensure that inbound investors cannot access tests that were only intended for outward investors.

Date of effect

These measures will apply to income years commencing on or after 1 July 2019.

Valuations that were made before 7.30PM (AEST) on 8 May 2018 may be relied on until the beginning of an entity's first income year commencing on or after 1 July 2019.

Source: Budget Paper No 2 [p 46]

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[549] Deductions disallowed for holding vacant land

The Government will disallow deductions for expenses associated with holding vacant land. Where the land is not genuinely held for the purpose of earning assessable income, expenses such as interest costs will be denied. It is hoped this measure will reduce the tax incentives for land banking which limit the use of land for housing or other development.

The measure will apply to both land held for residential and commercial purposes. However, the "carrying on a business" test would generally exclude land held for a commercial development. It will not apply to expenses associated with holding land that are incurred after:

- a property has been constructed on the land, it has received approval to be occupied and available for rent; or
- the land is being used by the owner to carry on a business, including a business of primary production.

Disallowed deductions will not be able to be carried forward for use in later income years. Expenses for which deductions will be denied could be included in the cost base if it would ordinarily be a cost base element (ie borrowing costs and council rates) for CGT purposes. However, if the denied deductions are for expenses would not ordinarily be a cost base element, they cannot be included in the cost base.

Date of effect

This measure applies from 1 July 2019.

Source: Budget Paper No 2 [p 42]

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[550] MITS and AMITs: removing CGT discount at trust level

Managed Investment Trusts (MITs) and Attribution MITs (AMITs) will be prevented from applying the 50% capital gains discount at the trust level. This measure will prevent beneficiaries that are not entitled to the CGT discount in their own right from getting a benefit from the CGT discount being applied at the trust level.

This will ensure that MITs and AMITs operate as genuine flow through tax vehicles, so that income is taxed in the hands of investors, as if they had invested directly.

Under the measure, MITs and AMITs that derive a capital gain will still be able to distribute this income as a capital gain that can be discounted in the hands of the beneficiary.

Date of effect

This measure will apply to payments made from 1 July 2019.

Source: Budget Paper No 2 [p 44]

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[551] Partnerships: enhancing integrity of concessions

Partners that alienate their income by creating, assigning or otherwise dealing in rights to the future income of a partnership will no longer be able to access the small business capital gains tax (CGT) concessions in relation to these rights.

The Government said this measure will prevent taxpayers, including large partnerships, inappropriately accessing the CGT small business concessions in relation to their assignment to an entity of a right to the future income of a partnership, without giving that entity any role in the partnership.

There are no changes to the small business CGT concessions themselves. The concessions will continue to be available to eligible small businesses with an aggregated annual turnover of less than $2 million or net assets less than $6 million.

Date of effect

These measures will apply from 7:30PM (AEST) on 8 May 2018.

Source: Budget Paper No 2 [p 43]

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[552] Updating the list of information exchange countries

The Government announced that it will update the list of countries whose residents are eligible to access a reduced withholding tax rate of 15%, instead of the default rate of 30%, on certain distributions from Australian Managed Investment Trusts (MITs). Listed countries are those which have established the legal relationship enabling them to share taxpayer information with Australia. The update will add the 56 jurisdictions that have

entered into information sharing agreements since 2012.

Date of effect: The updated list will be effective from 1 January 2019.

The Government says this measure supports the operation of the MIT withholding tax system by providing the reduced withholding tax rate only to residents of countries that enter into effective information sharing agreements with Australia. These agreements form an important part of Australia's commitment to safeguard against offshore tax avoidance and evasion.

Source: Budget Paper No 2 [p 28]

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[553] Increase in film location funding expenditure

The Government has confirmed that it will provide $140 million over 4 years from 2019-20 to attract international investment in the Australian film production and related industries through a competitive incentive program. This funding will complement the Government's existing Location Offset component of the Australian Screen Production Incentive tax rebate.

The additional funding was flagged by the Minister for Foreign Affairs on 4 May (see 2018 WTB 18 [500]). The Location Incentive will effectively provide an increase to the Location Offset rate from 16.5% to 30% for eligible large budget international productions that film in Australia.

Source: Budget Paper No 2 [p 79]

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[554] Tax exemption for International Cricket Council World Twenty20

The Government will provide a 5-year income tax exemption to a subsidiary of the International Cricket Council (ICC) for the ICC World Twenty20 to be held in Australia in 2020. An exemption will also be provided to the subsidiary from interest, dividend, and royalty withholding tax liabilities for the same period. The exemptions are a part of the Government's support for ICC to stage the World Twenty20 in Australia.

Date of effect

This measure applies from 1 July 2018 to 30 June 2023.

Source: Budget Paper No 2 [p 25]

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TAX COMPLIANCE AND INTEGRITY

[555] Black Economy Taskforce: consultation on new regulatory framework for ABNs

The Government will consult on and design a new regulatory framework for Australian Business Numbers (ABNs) in the 2018-19 income year. This measure implements a recommendation of the final report of the Black Economy Taskforce that the ABN system be strengthened to provide improved confidence in the identity and legitimacy of Australian businesses.

Source: Budget Paper No 2 [p 180]

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[556] Firm stance on tax and super debts

The Government will provide $133.7 million to the ATO to continue to deliver on a range of strategies that sustain both an increase in debt collections and an improvement in the timeliness of debt collections.

This will extend, and roll into ongoing funding, the measure announced in the August 2013 Economic Statement addressing the level of unpaid tax and superannuation in the community that would otherwise terminate on 30 June 2018.

The measure will ensure the ATO is able to continue to target those taxpayers gaining an unfair financial advantage over those who pay their fair share of tax and superannuation.

In underlying cash balance terms this measure is estimated to have a gain to the budget of $1.2 billion over the forward estimates period (4 years). The measure is estimated to increase GST payments to the States and Territories by $483.7 million over the forward estimates period.

Source: Budget Paper No 2 [p 19]

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[557] No tax deduction for non-compliant PAYG and contractor payments

Measures will be enacted to ensure that taxpayers will not be able to claim deductions for payments to their employees such as wages where they have not withheld any amount of PAYG from these payments, despite the PAYG withholding requirements applying.

Similarly, the Government intends to remove deductions for payments made by businesses to contractors where the contractor does not provide an ABN and the business does not withhold any amount of PAYG (again despite the withholding requirements applying).

This was recommended by the Black Economy Taskforce.

The revenue expectations linked with this expenditure is quite modest, ie "a small unquantifiable gain to revenue over the forward estimates period".

Date of effect

The measure will commence on 1 July 2019 (ie next year).

Source: Budget Paper No 2 [p 24]

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[558] Black Economy: increase in ATO funding

The Government will provide $318.5 million over 4 years to implement additional strategies to combat the black economy.

As part of this, the Tax Office will:

- implement new "mobile strike teams";
- increase its audit presence;
- start a Black Economy Hotline (that will allow for the community to report black economy and phoenix activities);
- improve government data analytics and data matching;
- increase information sharing between government enforcement agencies; and
- enhance educational activities.

By way of background, the Tax Office currently receives funding through a terminating program called the "Black Economy Taskforce: one year extension of funding for ATO audit and compliance activities" – which ceases on 30 June 2018.

The Budget papers state that feedback from industry, business and community stakeholders "supported additional resourcing to the ATO in recognition of the enforcement challenges due to the size and clandestine nature of the black economy".

There are no details in the Budget papers and media release as to the increased audit presence. The media release does indicate, however, a desire for a more visible and targeted enforcement.

The revenue expectations linked with this expenditure are certainly impressive, namely $3 billion over the forward estimates period (ie the next 4 years).

Date of effect

The funding will commence on 1 July 2018.

Source: Budget Paper No 2 [p 23]; Minister for Revenue media release, 8 May 2018

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[559] Cash payments limit: payments made to businesses

The Government will introduce a limit of $10,000 for cash payments made to businesses for goods and services.

This measure will require transactions over a threshold to be made through an electronic payment system or by cheque. Logically it would seem that this threshold amount should be $10,000, but this is not spelt out in the Budget papers or the media release.

The rules will not apply to transactions with:

- financial institutions; or
- consumer-to-consumer non-business transactions.

This measure was recommended by the Black Economy Taskforce. It is designed to support other measures designed to counter the black economy. There is no revenue impact associated with it.

Date of effect

The limit will apply from 1 July 2019 (ie next year). The Government will consult further as part of the implementation process.

Source: Budget Paper No 2 [p 23]; Minister for Revenue media release, 8 May 2018

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[560] Reportable payments system extended: security providers, road freight transport and computer design

The Government will extend the taxable payments reporting system (TPRS) to the following industries:

- security providers and investigation services;

- road freight transport; and
- computer system design and related services.

This will extend the TPRS requirements already applying to the building and construction industry. The TPRS requirements will also be extended, from 1 July 2018, to the cleaning and courier industries under measures contained in the Treasury Laws Amendment (Black Economy Taskforce Measures No 1) Bill 2018 (see 2018 WTB 6 [148]).

Date of effect

The reporting requirements will apply from 1 July 2019 (ie next year), with the first annual report required in August 2020.

Source: Budget Paper No 2 [p 22]

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[561] Countering illegal phoenix activities

The Government has flagged a package of reforms intended to "deter and disrupt" phoenix activity. The package includes:

- introducing new phoenix offences to target those who conduct or facilitate phoenixing;
- preventing directors improperly backdating resignations to avoid liability or prosecution;
- limiting the ability of directors to resign when this would leave the company with no directors;
- restricting the ability of related creditors to vote on the appointment, removal or replacement of an external administrator;
- extending the Director Penalty Regime to GST, luxury car tax and wine equalisation tax, making directors personally liable for the company's debts; and
- expanding the Tax Office's power to retain refunds where there are outstanding tax lodgements.

These reforms are stated to "complement and build on the work of the Government's Phoenix, Serious Financial Crime and Black Economy taskforces". They extend other announced reforms such as: (i) the Director Identification Number; (ii) a combined black economy and illegal phoenixing hotline; and (iv) reforms to address corporate misuse of the Fair Entitlements Guarantee and to tackle non-payment of the Superannuation Guarantee Charge.

For the economists out there, the measures are estimated to have a nil revenue impact on the Commonwealth, although the cost to the Budget of extending the Director Penalty Regime is estimated to be $40 million (over 4 years). The reason for this is that the revenue that is derived from this measure is not counted – as the amount collected is paid to the States. The ability of the Tax Office to retain refunds will have a "small but unquantifiable"

gain to revenue.

Date of effect

No date of effect for any measure is specified in the Budget papers.

Source: Budget Paper No 2 [p 37]

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[562] Integrity measures for Commonwealth procurement process

Businesses seeking to tender for Australian Government procurement contracts over $4 million (including GST) will be required to provide a statement from the Tax Office indicating that they are "generally compliant with their tax obligations".

In addition, the Government will provide $9.2 million over 4 years to the Tax Office to develop and consult on a "Procurement Connected Policy".

These measures were both recommended by the Black Economy Taskforce. There are no revenue consequences attached to this proposal.

Date of effect

The requirement for the ATO compliance statement will apply from 1 July 2019 (ie next year). The funding will be provided from the 2018-19 income year.

Source: Budget Paper No 2 [p 181]; Minister for Revenue media release, 8 May 2018

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GST AND INDIRECT TAXES

[563] No major GST measures in 2018-19 Federal Budget

Not unexpectedly, the Federal Budget Papers for 2018-19 do not contain any major changes directly affecting GST. We state "not unexpectedly", as there had been no speculation or indication of any type leading up to the Budget that might have led practitioners to think that there would be GST changes. This possibly dovetails with the sense that the impetus for reforming and improving the GST system has somewhat waned.

The only specific GST measure is one that applies to overseas suppliers of hotel accommodation in Australia,

which is stated to have a negligible revenue impact. Other changes covered in this Bulletin which indirectly affect GST include measures to counter illegal phoenixing and certain exemptions for overseas consulates.

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[564] GST: offshore suppliers of Australian hotel accommodation

Offshore suppliers will be required to include supplies of hotel accommodation in Australia when calculating their GST turnover from 1 July 2019.

By way of background, currently offshore vendors are not required to include such supplies in the calculation. The result is that such vendors are often not required to register for and so charge GST on their mark up over the wholesale price of the accommodation. The exemption was introduced in 2005, when most offshore sales of Australian hotel rooms were to foreigners booking through offshore tour operators, and the online booking market was small.

However, the situation now is that both Australian and foreign consumers are increasingly booking Australian hotel rooms though online services which are based offshore. The Government quite rightly points out that the same GST treatment should be applied regardless of whether accommodation is booked through a domestic or offshore company. Obviously no GST will be charged by a foreign resident supplier if it is not required to register for Australian GST purposes (and chooses not to register).

The change can be seen as part of the Government's move to capture offshore supplies and suppliers in the Australian GST net (most relevantly through the Netflix tax, but also including the soon-to-commence low value imported goods measures).

The measure is expected to have a net gain to revenue of $15 million over the next 4 years.

Date of effect

The measure will apply to sales made on or after 1 July 2019 (ie next year). Sales that occur before 1 July 2019 will not be subject to the measure – even if the stay at the hotel occurs after this date.

Source: Budget Paper No 2 [p 29]

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[565] Diplomatic and consular concessions: 4 new countries

The Government has granted or extended access to refunds of indirect tax under the Indirect Tax Concession Scheme for 4 countries. New access to refunds will be granted to the diplomatic and consular representations in

Australia of:

- Cote d'Ivoire;
- Guatemala;
- Costa Rica; and
- Kazakhstan.

The indirect tax refunds extend to include GST, fuel and alcohol taxes. Consistent with international practice, these concessions are reciprocal and reviewed periodically.

Date of effect

Each of these changes has effect from a time specified by the Minister for Foreign Affairs (this information is not available to Thomson Reuters at the time of writing).

Source: Budget Paper No 2 [p 28]

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[566] Luxury car tax: reimported refurbished vehicles

The Government intends to remove luxury car tax (LCT) on cars re-imported into Australia following a refurbishment overseas.

Cars that are refurbished in Australia are not currently subject to LCT. However, cars exported from Australia to be refurbished which are then imported back are subject to LCT where the value of the car exceeds the relevant LCT threshold. The change will ensure the same tax treatment applies, regardless of where the car is refurbished.

The Government change will align Australia with its trade obligations with its foreign trading partners.

This measure is estimated to have a negligible cost to revenue over the forward estimates period.

Date of effect

The exemption will apply from 1 January 2019.

Source: Budget Paper No 2 [p 38]

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SUPERANNUATION

[567] SMSF member limit to increase from 4 to 6 - law to be amended

The Budget confirmed that the maximum number of allowable members in new and existing self-managed superannuation funds (SMSFs) and small APRA funds will be expanded from 4 to 6 members from 1 July 2019. This measure was originally flagged on 27 April 2018 by the Minister for Revenue and Financial Services, Kelly O'Dwyer.

The proposed increase to the maximum number of SMSF members seeks to provide greater flexibility for large families to jointly manage retirement savings. Given the growth in the sector to date, Ms O'Dwyer said the measure will ensure SMSFs remain compelling retirement savings vehicle. The Government is expected to ask the Tax Office to work with industry on the design and implementation of this measure. It is not expected to have a revenue impact.

Date of effect

1 July 2019.

Source: Budget Paper No 2 [p 40]

Extra SMSF members to provide flexibility

Currently, s 17A(1)(a) of the SIS Act requires an SMSF to have fewer than 5 members. In addition, each member must be a trustee of the fund (or a director of the corporate trustee). This seeks to ensure that all members are fully involved and equally responsible for fund decisions and investments.

The Government's proposal to allow up to 6 SMSF members may assist those with larger families to implement intergenerational solutions for managing long-term, capital intensive investments, such as commercial property and business real property. For example, allowing an extra 2 members provides an opportunity to improve a fund's cash flow by using the contributions of the younger members to make pension payments to the members in retirement phase, without needing to sell a long-term investment.

As each member must be a trustee of the fund, a decision to add extra members should not be taken lightly as it can add complexity to the fund's management and investment strategy. A change to the membership of an SMSF will alter the trustee arrangements which can impact who controls the fund in the event of a dispute. This is especially relevant in the event of the death of a member, as the surviving trustees have considerable discretion as to the payment of the deceased's super benefits (subject to any binding death benefit nomination).

Adding SMSF members - Labor's dividend imputation policy

Allowing up to 6 SMSF members may assist some SMSFs to implement strategies to guard against Labor's proposal to end cash refunds of excess franking credits from 1 July 2019. SMSFs in tax-exempt pension phase are expected to feel the brunt of Labor's proposal, although an exemption was subsequently announced for SMSFs with at least one Government pensioner or allowance recipient before 28 March 2018.

To avoid wasting non-refundable franking credits, Labor's proposal would create an incentive for SMSFs in

pension phase to add additional accumulation phase members (eg adult children) who could effectively make some use of the excess franking credits within the fund. That is, the excess franking credits would be used to absorb some of the 15% contributions tax in relation to the accumulation members. For example, the proposal to increase the maximum number of SMSF members from 4 to 6, would enable a typical 2-member fund in pension phase to admit up to 4 adult children as members. If those adult children are making concessional contributions up to the maximum of $25,000 per year, the fund could use the excess franking credits to offset up to $15,000 (4 x $25,000 x 15%) in contributions tax each year for the adult children.

This strategy would essentially replicate, to the extent possible, the position of large APRA funds under Labor's policy. APRA funds typically have more contributing members and diverse income sources (beyond franked dividends) that can usually fully absorb the franking credits.

As noted above, a decision to add additional members to an SMSF may add complexity to the management and control of the fund. This would require professional advice for the specific circumstances of the fund and its members.

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[568] Personal superannuation contributions - improving notice of intention to deduct

The Government announced measures aimed at improving the integrity of the notice of intent (NOI) processes for claiming deductions for personal superannuation contribution. An additional $3.1 million of funding will be provided to the ATO to develop a new compliance model for deducting personal super contributions, and to undertake additional compliance and debt collection activities.

The Government said some individuals currently receive deductions on their personal superannuation contributions but do not submit a NOI, despite being required to do so under s 290-170 of the ITAA 1997. This results in their superannuation funds not applying the appropriate 15% tax to their contribution. As the contribution has been deducted from the individual's income, no tax is paid on it at all, the Government said.

Currently, a notice under s 290-170 of the ITAA 1997 must be given to the super fund by the time the person lodges her or his income tax return for the year in which the contribution is made or, if no return has been lodged by the end of the following income year, by the end of that following year. This requirement is even more important from the 2017-18 income year given that individuals up to age 75 can now deduct personal contributions, regardless of whether they earn 10% or more of their income from employment (provided that the other requirements are satisfied).

The ATO will also modify income tax returns to alert individuals to the NOI requirements with a tick box to confirm they have complied. The ATO is expected to provide guidance to individuals on how to comply if they have not yet done so. This seeks to ensure that any deductible contributions are appropriately taxed by superannuation funds and enable the ATO to deny deductions to individuals who do not comply with the NOI requirements.

This measure is expected to have a gain to revenue of $430 million over the forward estimates through increased compliance and collections from business owners and other non-employees.

Date of effect

1 July 2018.

Source: Budget Paper No 2 [p 39]

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[569] Superannuation work test exemption for contributions by recent retirees

The Government will introduce an exemption from the work test for voluntary superannuation contributions by individuals aged 65-74 with superannuation balances below $300,000 in the first year that they do not meet the work test requirements.

Currently, the work test in reg 7.04 of the SIS Regulations restricts the ability to make voluntary superannuation contributions for those aged 65-74 to individuals who self-report as working a minimum of 40 hours in any 30-day period in the financial year. The measure will give recent retirees additional flexibilities to get their financial affairs in order in transition to retirement.

Date of effect

This measure will apply from 1 July 2019.

Source: Budget Paper No 2 [p 30]

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[570] Super Guarantee opt-out for high-income employees who breach concessional cap

The Government will allow individuals whose income exceeds $263,157 and have multiple employers to nominate that their wages from certain employers are not subject to the superannuation guarantee (SG) from 1 July 2018.

As SG contributions are counted as concessional contributions, high-income earners with several employers (eg doctors who are employees of multiple hospitals and company directors holding a number of board positions) are especially at risk of inadvertently breaching the annual concessional cap of $25,000.

The measure will allow eligible individuals to avoid unintentionally breaching the $25,000 concessional cap as a result of multiple compulsory SG contributions (ie $263,157 x 9.5% = $25,000). Breaching the concessional cap otherwise results in these individuals being liable to pay excess contributions tax, as well as a shortfall interest charge.

Employees who use this measure will be able to negotiate to receive additional income (which is taxed at

marginal tax rates), instead of SG contributions.

Note that a superannuation guarantee "maximum contribution base" of $54,030 per quarter applies for 2018-19 (representing an annual equivalent of $216,120). An employer is not required to provide the minimum 9.5% super guarantee on its payments to an employee above the maximum contribution base.

Date of effect

1 July 2018.

Source: Budget Paper No 2 [p 40]

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[571] SMSF audit cycle of 3 years for funds with good compliance history

The annual audit requirement for self-managed superannuation funds (SMSFs) will be extend to a 3-yearly cycle for funds with a history of good record-keeping and compliance.

The measure will apply to SMSF trustees that have a history of 3 consecutive years of clear audit reports and that have lodged the fund's annual returns in a timely manner.

Date of effect

This measure will start on 1 July 2019. The Government said it will undertake consultation to ensure a smooth implementation.

Source: Budget Paper No 2 [p 41]

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[572] Super borrowings - No Budget changes to LRBAs but restrictions growing

The Budget did not reveal any changes for limited recourse borrowing arrangements (LRBAs).

The use of LRBAs within self-managed superannuation funds (SMSFs) recently came back into focus as part of the Banking Royal Commission inquiry into inappropriate financial advice. The Murray Financial System Inquiry, which is likely to play an important role in informing the Banking Royal Commission, had recommended to ban LRBAs on a prospective basis back in December 2014. However, that Murray recommendation was rejected by the Government at that time due to a lack of evidence in relation to any abuse of LRBAs. Instead, the Government tasked the Council of Financial Regulators to monitor leverage and risk in the superannuation system and report back to the Government in 2018. The latest ATO statistics also show that the proportion of

SMSF assets held under LRBAs was relatively low at 3.99% in 2015-16 (or $25.355bn).

LRBA flexibility from increased SMSF members

While the Budget did not reveal any direct changes for LRBAs, the proposal to increase the maximum number of SMSF members from 4 to 6 should provide some additional flexibility around the use of LRBAs. Given the reduced contribution caps and restrictions from 1 July 2017, the ability to include an extra 2 members within a SMSF may assist in managing the fund's cash flow in relation to an LRBA. Adding extra SMSF members could also help the fund to put together a deposit for direct property, given that LRBA lenders typically require a loan-to-value ratio below 70%.

Caution required amid growing restrictions for LRBAs

Draft legislation has proposed to include a member's share of any outstanding LRBA (entered from 1 July 2018) in their "total superannuation balance" (TSB). This 2017-18 Budget measure (yet to be legislated as at 8 May 2018) will also effectively curtail the future use of LRBAs for some individuals. Those with a TSB of $1.6m or more are now also prevented from making further non-concessional contributions, so this proposed measure would effectively restrict the future use of large LRBAs (or at least require more sophisticated contributions planning to address the extra complexity over the life of a LRBA).

Royal Commission case study

The use of a LRBA within an SMSF was recently at the centre of a case study by the Banking Royal Commission involving inappropriate financial advice to purchase and operate of a bed and breakfast. Despite the couple having limited retirement savings, a financial adviser had recommended the clients should set up a SMSF from where they could borrow up to 80% of the purchase price of a bed and breakfast property within the SMSF. This inappropriate advice had a terrible financial impact on the couple, including the loss of their family home. ASIC also told the Royal Commission that about examples of clients being encouraged to undertake borrowing within an SMSF to invest in real property.

Such horror stories from the Royal Commission involving LRBAs will no doubt receive a mention when Kenneth Hayne submits his interim report by 30 September 2018. Arguably, however, the problem is not with the LRBA itself, but the inappropriate financial advice that was aimed at driving commissions from the expensive life insurance the adviser recommended to cover the borrowing. Before recommending any prospective ban on LRBAs, the Royal Commission (and Government) will need to give due consideration to how such a ban would unfairly impact individuals seeking to use LRBAs as part of an investment strategy to maximise their income in retirement.

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[573] Super fees to be capped at 3% for small accounts, exit fees banned

Passive fees charged by superannuation funds will be capped at 3% for small accounts with balances below $6,000, while exit fees will be banned for all superannuation accounts from 1 July 2019. These measures form part of the Government's *Protecting Your Super Package*.

The Minister for Revenue and Financial Services, Kelly O'Dwyer, said there were around 9.5 million super account with a balance less than $6,000 in 2015-16. To avoid these small accounts from being eroded, the Government will cap the administration and investment fees at 3% annually, Ms O'Dwyer said.

The Government will also ban exit fees on all superannuation accounts. Exit fees of around $37 million were charged to members in 2015-16 to simply close an account with a super fund. The proposed ban on exit fees will also benefit members looking to rollover their super accounts to a different fund, or who hold multiple accounts and see exit fees as a barrier to consolidating accounts.

With nearly 2 million low and inactive accounts belonging to women, the Minister said these measures will help to protect the hard-earned super savings of women from undue erosion.

Date of effect

These changes will take effect from 1 July 2019.

Exposure draft legislation to give effect to the Government's *Protecting Your Super Package* measures has been released on the Treasury Website. Submissions are due by 29 May 2018.

Source: Budget Paper No 2 [p 35]; Minister for Revenue and Financial Services, media release, 8 May 2018

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[574] ATO consolidation of small inactive super accounts to get more proactive

The Government will strengthen the ATO-led consolidation regime by requiring the transfer of all inactive superannuation accounts with balances below $6,000 to the ATO to protect them from further erosion.

The ATO will expand its data matching processes to proactively reunite these lost and low balance super accounts with the member's active account, where possible. This measure will also include the proactive payment of funds already held by the ATO. The majority of accounts transferred to the ATO are expected to be reunited in the year they are received.

The new ATO system is expected to send $6 billion of super back to 3 million members' active super accounts in 2019-20.

Date of effect

These changes will take effect from 1 July 2019.

Source: Budget Paper No 2 [p 35]; Minister for Revenue and Financial Services, media release, 8 May 2018

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[575] Superannuation insurance opt-in rule for younger and low-balance members

The Government will change the insurance arrangements for certain cohorts of superannuation members from 1 July 2019. Under the proposed changes, insurance within superannuation will move from a default framework to be offered on an opt-in basis for:

- members with low balances of less than $6,000;
- members under the age of 25 years; and
- members with inactive accounts that have not received a contribution in 13 months.

These changes seek to protect the retirement savings of young people and those with low balances by ensuring their superannuation is not unnecessarily eroded by premiums on insurance policies they do not need or are not aware of. The Minister for Revenue and Financial Services, Kelly O'Dwyer, said around 5 million individuals will have the opportunity to save an estimated $3 billion in insurance premiums by choosing to opt-in to this cover, rather than paying for it by default.

The changes also seek to reduce the incidence of duplicated cover so that individuals are not paying for multiple insurance policies, which they may not be able to claim on in any event. Importantly, these changes will not prevent anyone who wants insurance from being able to obtain it. That is, low balance, young, and inactive members will still be able to opt-in to insurance cover within super.

In addition, the Government said it will consult publicly on ways in which the current policy settings could be improved to better balance the priorities of retirement savings and insurance cover within super.

Date of effect

The changes will take effect on 1 July 2019. Affected superannuants will have a period of 14 months to decide whether they will opt-in to their existing cover or allow it to switch off.

Source: Budget Paper No 2 [p 36]; Minister for Revenue and Financial Services, media release, 8 May 2018

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[576] Super trustees required to formulate retirement income strategy for members

The *Superannuation Industry (Supervision) Act 1993* (SIS Act) will be amended to introduce a retirement covenant that will require superannuation trustees to formulate a retirement income strategy for fund members. This requirement appears to be aimed at supporting the Government's proposed development of a comprehensive income product for retirement (CIPR) framework.

Currently, the SIS Act includes covenants requiring trustees to formulate, review regularly and give effect to an investment strategy and an insurance strategy.

Date of effect

Not specified.

Source: Budget Paper No 2 [p 185]

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[577] Retirement income products - standardised metrics for disclosure statements

The Government will amend the *Corporations Act 2001* to introduce a requirement for providers of retirement income products to report simplified, standardised metrics in product disclosure statements (PDSs) to assist customer decision making.

Date of effect

Not specified.

Source: Budget Paper No 2 [p 185]

Social security treatment of lifetime income streams

Note that the Government is yet to make a final decision on the social security treatment of the new category of tax-exempt pooled lifetime retirement income streams. The social security means testing rules for these lifetime retirement income streams and deferred lifetime annuities will obviously be crucial to their take up by retirees and commercial success.

For the purposes of the Age Pension income test, the Department of Social Services (DSS) had previously proposed in a policy paper to assess 70% of all income paid from such pooled lifetime retirement income streams. For the assets test, 70% of the nominal purchase price of the product would be assessed at purchase date. Once a person reaches life expectancy (determined at the time the product was purchased), the assessable asset value would be reduced to 35% from then on. However, the superannuation industry has called for a 60%/30% structure for the assets test to provide the necessary incentive for retirees to take up such lifetime income streams.

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[578] Superannuation supervisory levies to increase from 1 July 2018

The Government will fully recover the cost of regulating superannuation activities by raising an additional $31.9 million over 4 years from 2018-19 by increasing the Financial Institutions Supervisory Levies. This measure is expected to fully recover the cost of superannuation activities undertaken by the Tax Office.

Date of effect

1 July 2018.

Source: Budget Paper No 2 [p 27]

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OTHER MEASURES

[579] Increase in tax practitioner registration fees

The Government will provide $20.1 million over four years from the 2018-19 income year to the Tax Practitioners Board (TPB) to assist it in meeting broadened responsibilities to ensure that tax agent services are provided to the public in accordance with appropriate professional and ethical standards. This measure will be funded by an increase in tax practitioner fees.

Source: Budget Paper No 2 [p 189]

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[580] Combatting illicit tobacco: duty to be paid when tobacco enters country; new Taskforce; more ATO resources

In the Budget, the Government announced that it will target what it said were the 3 main sources of illicit tobacco in Australia (smuggling, leakage from licensed warehouses and domestic production). The measure consists of 5 components:

- ***Collecting tobacco duties and taxes at the border*** - From 1 July 2019, importers of tobacco will be required to pay all duty and tax liabilities upon importation. This is designed to reduce the potential for leakage from warehouses to the black market. This will be a change from the current system, where tobacco can be imported and stored in licensed warehouses prior to tax being paid. For tobacco products that are held in licensed warehouses at the commencement of the measure on 1 July 2019, transitional arrangements will apply, allowing eligible affected entities to pay the liability on the warehoused stock within 12 months. Current weekly settlement arrangements will no longer apply to imported tobacco. Although there is currently no licensed commercial tobacco production in Australia, the taxing point for any future domestic manufacture of tobacco will also be changed to be consistent with the new taxing point for tobacco imports.

- ***Creation of the Illicit Tobacco Task Force*** - From 1 July 2018, a multi-agency Illicit Tobacco Task Force will be formed, comprising members from a number of law enforcement and border security agencies, to increase the resources and capabilities dedicated to combatting illicit tobacco smuggling. The new Task Force, which builds on the successful approach of the Australian Border Force (ABF) Tobacco Strike Team, will have additional powers and capabilities to enhance intelligence gathering and proactively target, disrupt and prosecute serious and organised crime groups at the centre of the illicit tobacco trade.
- ***Additional resources to combat domestic tobacco crops***- From 1 July 2018, the ATO will be provided ongoing funding to bolster its capabilities to detect and destroy domestically grown illicit tobacco crops.
- ***Introducing a prohibited import control for tobacco***- From 1 July 2019, permits will be required for all tobacco imports (except for tobacco imported by travellers within duty free limits). This will make it easier for the ABF to take enforcement action and seize tobacco where no duty has been paid, increasing the deterrent against illicit tobacco smuggling.
- ***ATO excise systems upgrade*** - The ATO will upgrade and modernise its excise and excise equivalent goods payment systems beginning 2020-21 to replace the outdated paper lodgment system.

The Minister for Revenue said that recent estimates from the ATO and the Department of Home Affairs reveal that almost $600 million in tobacco duty was foregone in 2015-16 financial year as a result of the trade in illicit tobacco.

Source: Budget Paper No 2 [p 12]

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[581] Excise changes to benefit smaller (including craft) brewers

The Budget confirmed the Treasurer's announcement on 4 May 2018 that the Government will increase the alcohol excise refund scheme cap to $100,000 per financial year and extend the concessional draught beer excise rates to 8 litre or greater kegs, **from 1 July 2019**.

The alcohol excise refund scheme currently provides eligible domestic alcohol producers a refund of 60% of excise paid up to a cap of $30,000 per financial year. The higher cap of $100,000 will provide additional support to domestic brewers, distillers and producers of other fermented beverages such as non-traditional cider.

Currently, draught beer sold at licensed venues such as pubs and clubs in individual containers exceeding 48 litres is taxed at lower rates compared with beer sold in individual containers up to and including 48 litres. However, the lower rates mainly benefit large breweries, which typically use 50 litre kegs. Extending the concessional draught beer excise rates to 8 litre or greater kegs will allow craft brewers, which typically use smaller sized kegs, to also benefit from the lower rates, levelling the playing field between craft and large

breweries, the Government said.

Source: Budget Paper No 2 [p 19]

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[582] Pathway to Permanent Residency for Retirement Visa Holders

The Government announced that it will introduce a pathway to permanent residency for holders of Retirement (subclass 410) and Investor Retirement (subclass 405) visas.

From 2018-19, a portion of the planned parent permanent migration places will be quarantined for retirement visa holders each year. Retirement visa holders in Australia will be eligible to apply onshore for a permanent visa through the Parent (subclass 103) or Contributory Parent (subclass 143) visa streams. Retirement visa holders will be exempted from some parent visa requirements that they would typically be unable to meet, such as having family in Australia. The pathway will remain open until all retirement visa holders who wish to transition to permanent residency have done so.

As part of the establishment of the pathway, the Government will close the subclass 405 visa to new applicants. The subclass 410 visa is already closed to new applicants.

Source: Budget Paper No 2 [p 14]

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[583] Skilling Australians Fund Levy - refund and exemption provisions

The Government announced that it will expand the refund provisions for the Skilling Australians Fund levy to allow refunds of the levy in the following scenarios:

- the employer's sponsorship application is approved but the employee's subsequent visa application is refused on health or character grounds;
- the sponsorship and visa applications are approved but the visa holder does not commence work with the employer; or
- a Temporary Skill Shortage (subclass 482) visa holder leaves their employer within the first 12 months of employment where the visa period was for more than 12 months.

Refunds will only be available in this scenario for unused full years of the levy.

These provisions are in addition to the existing refund provision for scenarios in which an employer's sponsorship

application is refused.

Source: Budget Paper No 2 [p 15]

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[584] Additional funding for Single Touch Payroll to assist small businesses

The Government will provide an addition $15 million over 3 years from the 2018-19 income year to the ATO to support the modernisation of payroll and superannuation fund reporting. The funding will be used to support small businesses with fewer than 20 employees during the transition to Single Touch Payroll Reporting from 1 July 2019.

Source: Budget Paper No 2 [p 185]

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[585] Royal Commission into Banking: additional funding for ASIC

The Government will provide $10.6 million over 2 years from the 2017-18 income year to the Australian Securities and Investments Commission (ASIC) and $2.7 million in the 2018-19 income year to the Australian Prudential Regulation Authority (APRA) to assist in their involvement in the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

The cost of this measure will be offset by an increase in the APRA Financial Institutions Supervisory Levies of $2.7 million in the 2018-19 income year, and an increase in levies of $10.6 million over 2 years from the 2018-19 income year under the ASIC industry funding model.

Source: Budget Paper No 2 [p 188]

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SOCIAL SECURITY MEASURES

[586] Social welfare debt recovery

The Government will extend the Department of Human Services' (DHS) fraud detection and debt recovery activities.

From 1 July 2019, DHS will focus debt recovery activities on ex-recipient debtors with high value debts (at least $10,000), not in a payment arrangement and ex-recipient debtors in a payment arrangement, with an identified capacity to pay more.

Also from 1 July 2019, welfare recipients who have not paid a court-imposed fine, will have money deducted from their regular payment until the debt is paid. Welfare recipients with outstanding warrants for indictable criminal offences will have their payment suspended for up to 4 weeks or until the warrant is cleared, and cancelled thereafter where the warrant remains outstanding. The Government will work closely with State and Territory governments to identify relevant welfare recipients.

From 1 July 2021, DHS will continue to enhance the integrity of social welfare payments, by extending data matching activities with the ATO.

The Government hopes to achieve savings of $299.3 million over 3 years from 2019-20.

Source: Budget Paper No 2 [p 178]; Minister for Social Services media release, 8 May 2018

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[587] ABSTUDY reforms for secondary students

The Government will provide $38.1 million over 5 years from the 2017-18 income year for reforms to ABSTUDY for secondary school students. The changes include:

- providing the Boarding Allowance to all ABSTUDY recipients under 16 years of age receiving the Living Allowance;
- implementing safer and more flexible travel arrangements for ABSTUDY secondary students studying away from home, including more supervised trips for students and more family or community member visits;
- applying the Maintenance Income Test more fairly to ABSTUDY payments;
- simplified criteria for the approval of secondary school scholarships under ABSTUDY, allowing students to access a wider range of schools; and
- making more frequent payments to boarding providers, linked to student attendance.

This measure is aimed at improving educational opportunities of Indigenous secondary school students.

Source: Budget Paper No 2 [p 170]

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[588] Aligning eligibility of student payments with HELP

The Government will align the eligibility of student payments for higher education courses with eligibility for the Higher Education Loan Program (HELP) from the 2017-18 income year. The measure will limit the eligibility for student payments to students undertaking courses approved for higher education loans. Payments to existing student payment recipients will be grandfathered for the duration of their current course.

Source: Budget Paper No 2 [p 170]

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[589] Disability support pension: suspension arrangements change

The Government will align the Disability Support Pension (DSP) payment suspension arrangements for imprisoned recipients with provisions for imprisoned recipients of other income support payments.

From 1 January 2019, the maximum payment suspension period available to DSP recipients who are imprisoned will be reduced from 2 years to 13 weeks, consistent with the suspension periods available to imprisoned recipients of other income support payments such as the Newstart Allowance.

Source: Budget Paper No 2 [p 171]

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[590] New carer support services and income test threshold

The Government will provide $113.3 million over 5 years from the 2017-18 income year for new integrated carer support services model to provide a range of early intervention and preventative services for carers. To provide the funding for these services, the Government will introduce a $250,000 income test threshold for the Carer Allowance payment.

Source: Budget Paper No 2 [p 174]

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[591] Improve access to Youth Allowance for regional students

The Government will be providing $53.9 million over 4 years from the 2018-19 income year to improve regional

students' access to the Youth Allowance by changing the threshold and assessment year for parental income. The new Parental Income Test threshold cut-off under the regional workforce independence criterion will be increased from $150,000 to $160,000. The new $160,000 cut-off will also be increased by $10,000 for each additional child in the family.

In addition to increasing the cut-off, the assessment year will also be changed to the financial year preceding the beginning of the recipient's 14 month "self-support period". This gives students certainty to know whether their parental income is above or below the cut-off before they make the decision to defer university studies, take a gap year and work, to qualify as independent.

Source: Budget Paper No 2 [p 174]; Joint Media release of Minister for Social Services and Minister for Human Services, 8 May 2018

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[592] Waiting period for newly arrived migrants extended

The Government will increase the waiting period for newly arrived migrants to access certain welfare benefits from 3 years to 4 years from 1 July 2018. This measure also clarifies the application of the waiting period and exemptions for certain welfare benefits.

Current exemptions for vulnerable groups will continue to apply. Humanitarian migrants will remain exempt from all waiting periods, and hardship provisions will remain in place.

This measure is expected to achieve savings of $202.5 million over 5 years from 2017-18.

Source: Budget Paper No 2 [p 172]

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[593] Measures for older Australians

The Government will introduce a range of measures to enhance the standard of living of older Australians:

- increase the Pension Work Bonus from $250 to $300 per fortnight (ie $7,800 a year) and extend the Bonus to self employed retirees who will be able to earn up to $300 per fortnight without impacting their pension;
- amend the pension means test rules to encourage the development and take up of lifetime retirement income products that can help retirees manage the risk of outliving their savings; and
- expand the Pension Loans Scheme to everyone over Age Pension age and the maximum fortnightly

income stream will be increased to 150% of the Age Pension rate. This will enable Australians to use the equity in their homes to increase their incomes.

These measures commence on 1 July 2019.

Source: Budget Paper No 2 [p 175]; Treasurer media release 8 May 2018

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[594] Lifetime limit for higher education loans: commencement delayed

The Government will implement changes to the combined lifetime limit for tuition fee assistance as part of higher education reforms including:

- allowing students who have reached their combined lifetime limit for tuition fee assistance under the Higher Education loan Program (HELP) and the VET Student Loans Program to re-access loan amounts repaid after 30 June 2019; and
- delaying commencement date for the combined lifetime limit for tuition fee assistance from 1 January 2019 to 1 January 2020.

Source: Budget Paper No 2 [p 86]

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APPENDIX: POST-BUDGET LEGISLATION LOGJAM FACES GOVT

[595] Parliament returns to face legislation logjam of tax, super and related Bills

What follows was not announced in the 2018-19 Federal Budget, but it does set the tax legislative scene for the Government as at Budget time.

Federal Parliament's resumption on Budget Day, Tuesday, 8 May 2018 sees it face a substantial number of significant tax and related Bills that are still before Parliament in respect of which debate is set to resume. Adding Budget measures to the Government's legislative program will only exacerbate the legislative logjam it will face.

As at 8 May 2018, legislation before Parliament includes the following Bills.

Taxation Bills

- ***Treasury Laws Amendment (Enterprise Tax Plan No 2) Bill 2017***- passed House of Reps without amendment and currently stalled before the Senate. The Bill proposes to amend the *Income Tax Rates Act 1986* to progressively extend the 27.5% corporate tax rate to all corporate tax entities by the 2023-24 income year. The corporate tax rate would then be cut, for all corporate tax entities, to 27% (2024-25), 26% (2025-26) and 25% (2026-27 and later income years) - see 2017 WTB 20 [626]. ***Date of effect***: The progressive extension of the lower 27.5% corporate tax rate to corporate tax entities with aggregated turnover of $50 million or more would commence from the 2019-20 income year.
- ***Treasury Laws Amendment (Tax Integrity and Other Measures) Bill 2018*** – still before House of Reps – proposes the following amendments:
  - Multinational anti-avoidance law (MAAL) extended – amends the ITAA 1936 to extend the application of the MAAL to capture the use of foreign trusts and partnerships in corporate structures that may otherwise circumvent the law. *Date of effect*: 1 January 2016 (regardless of whether the scheme was entered into before that day). Does not apply to tax benefits derived before 1 January 2016.
  - Small business CGT concessions – amends the ITAA 1997 to include additional conditions that must be satisfied to apply the small business CGT concessions in Div 152 of the ITAA 1997. The new conditions are designed to ensure that the small business concessions are only available for CGT assets that are either used or held ready for use in the course of a small business or are an interest in a small business. *Date of effect*: CGT events that occur on or after 1 July 2017.
  - Fintech and venture capital - amends the ITAA 1997 to ensure that the venture capital investment tax concessions are available for investments in fintech businesses. *Date of effect*: 1 July 2018.
  - Defence Force Ombudsman Scheme - amends the ITAA 1997 to exempt from income tax payments received from the Commonwealth as reparation for abuse by Defence Force personnel. *Date of effect*: 2017-18 income year and later years.
- ***Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No 2) Bill 2018*** – proposes to implement 2017-18 Federal Budget measures to make CGT changes for foreign residents – see 2017 WTB 32 [1110]. It is proposed that the ITAA 1997 be amended, essentially ***with effect from 9 May 2017***, to:
  - remove the entitlement to the CGT main residence exemption for foreign residents that have dwellings that qualify as their main residence. Therefore, any such capital gain or loss arising upon disposal of a foreign resident's main residence would need to be recognised; and
  - modify the foreign resident CGT regime to clarify that, for the purpose of determining whether an entity's underlying value is principally derived from taxable Australian real property (TARP), the principal asset test is applied on an associate inclusive basis.
  - The change to the main residence exemption ensures that only Australian residents for tax

purposes can access the exemption. As a result, temporary tax residents who are Australian tax residents will be unaffected by the change.

  - Measures to implement elements of the Government's housing affordability plan – see 2017 WTB 39 [1372]. Proposed measures include: Extra 10% CGT discount for investors in affordable rental housing; Enabling managed investment trusts (MITs) to invest in affordable housing; Clarifying that from 4:30pm AEST 14 September 2017, MITs cannot acquire residential property, other than affordable housing. *Date of effect*: Extra CGT discount – 1 January 2018; MIT investment – 1 July 2017.

- ***Treasury Laws Amendment (OECD Multilateral Instrument) Bill 2018*** **–**still before House of Reps - proposes to amend the *International Tax Agreements Act 1953* to give the force of law in Australia to the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI).
- ***Treasury Laws Amendment (2018 Measures No 4) Bill 2018*** – still before House of Reps - proposes to implement the Government's Superannuation Guarantee (SG) integrity package and other omnibus measures. The SG measures will:
  - allow the ATO, in cases where employers fail to comply with their SG obligations, to issue directions to pay unpaid SG and undertake SG education courses;
  - introduce criminal penalties for failure to comply with a direction to pay an estimate of unpaid SG. In cases where employers defy directions to pay their SG liabilities, the ATO will be able for the first time to apply for court-ordered penalties, including up to 12 months imprisonment;
  - improve the operation of the ATO's collection and compliance measures eg strengthening the integrity of the director penalty provisions for directors who fail to comply with their SGC and PAYG withholding obligation;
  - allow the ATO to disclose more information about SG non-compliance to affected employees;
  - extend Single Touch Payroll (STP) to all employers, regardless of the number of employees, from 1 July 2019.
  - The Bill will also amend s 307-80(3) of the ITAA 1997 to ensure that a reversionary transition to retirement income streams (TRIS) will always be allowed to automatically transfer to eligible dependants upon the death of the primary recipient. The amendment will allow the original TRIS to be paid to the dependant beneficiary, rather than having to be commuted and a new income stream started from the deceased member's underlying superannuation interests. *Date of effect*: from 1 July 2017.
  - Will allow pre-filling of TFNs; will introduce a uniform process to enable the verification and sharing of TFNs between the ATO and Commonwealth agencies; will rewrite provisions regarding offshore information notices from the ITAA 1936 into Div 353 of Sch 1 to the TAA.
- ***Medicare Levy Amendment (National Disability Insurance Scheme Funding) Bill 2017*** plus 9 associated Bills to increase the Medicare levy to 2.5% to fund the NDIS. The Government has

announced this increase in the levy will not proceed so presumably the Bills will be taken off the notice paper. The Bills had passed House of Reps without amendment and were before the Senate and had proposed to amend the *Medicare Levy Act 1986* to increase the Medicare levy rate from 2 to 2.5% of taxable income for the 2019-20 income year and later income years in order to help finance the National Disability Insurance Scheme - see 2017 WTB 35 [1221]. Other rates that are linked to the top personal tax rate, such as the FBT rate, excess super contributions tax, TFN withholding tax, franking deficit tax, etc, were also to have been increased. The Senate Economics Legislation Committee majority recommended the Bills be passed. However, in a dissenting report, Labor Senators recommended that the Bills be amended so that: (i) the Medicare Levy be increased by 0.5 percentage points only for incomes above $87,000; and (ii) there is a legislative framework for reinstating the Budget Repair Levy. If any of these amendments fail, Labor Senators said they would vote against the *Medicare Levy Amendment (NDIS Funding) Bill 2017* and related tax amendment Bills. The Greens Senators consider the Bills should not be passed in their current form. ***Date of effect***: The changes would have applied to the 2019-20 income year and later income years. The amendments to the *Fringe Benefits Tax Act 1986* would apply to the year of tax beginning on 1 April 2019 and later years of tax.

- ***Treasury Laws Amendment (Black Economy Taskforce Measures No 1) Bill 2018*** – still before House of Reps – proposes to implement 2017-18 Federal Budget measures to address the growing economic and social problem of the black economy – see 2017 WTB 45 [1543]. The amendments would: (i) Ban the manufacture, distribution, possession, use or sale of sales suppression technology; (ii) Extend the Taxable Payment Reporting system (TPRS) to 2 high-risk industries - cleaning and couriers - to ensure payments made to contractors in these sectors are reported to the ATO. *Date of effect*: measure (i) would apply from the date of commencement (being the day after the Bill receives the Royal Assent); measure (ii) will commence on the first day of the first quarter to commence after the day the amendments receive Royal Assent - these amendments will apply to consideration that is provided on or after 1 July 2018, whether under an existing ongoing arrangement or otherwise, and regardless of the time the supply occurred and the service is provided.
- ***Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017*** – still before the Senate - was introduced by the Government in the Senate on 7 December 2017. The Bill is designed to create a single whistleblower protection regime in the Corporations Act, to cover the corporate, financial and credit sectors, and create a new whistleblower protection regime in the taxation law, to protect those who expose tax misconduct – see 2017 WTB 51 [1769]. ***Date of effect***: The amendments would apply in relation to disclosures made on or after 1 July 2018.
- ***Treasury Laws Amendment (Enterprise Tax Plan Base Rate Entities) Bill 2017*** – had passed the House of Reps with an amendment and is before the Senate. The Government amendment adjusts the meaning of "base rate entity passive income" to exclude certain interest income of financial institutions from the passive income test. The Bill proposes to amend the tax law to ensure that a company will not qualify for the lower company tax rate if more than 80% of its assessable income is passive income

(such as interest, dividends or royalties) – see 2017 WTB 44 [1518]. The amendments would modify the requirements that must be satisfied for a corporate tax entity to qualify as a base rate entity by replacing the carrying on a business test with a passive income test. The amendments are proposed to apply from the 2017-18 income year. ***Date of effect***: The amendment will apply prospectively from the 2017-18 income year. In the 2016-17 income year, a company will need to be carrying on a business and have a turnover under $10 million to qualify for the 27.5% tax rate.

- ***Treasury Laws Amendment (Working Holiday Maker Employer Register) Bill 2017*** – still before House of Reps - proposes to give effect to the Government's commitment that: (i) the information collected by the Commissioner of Taxation concerning the employer registration information of employers of working holiday makers will not be able to be made publicly available; and (ii) the Commissioner will only be able to disclose protected information to the Fair Work Ombudsman for an entity that is actually or is reasonably suspected of non-compliance with a taxation law – see 2017 WTB 7 [216]. ***Date of effect***: The amendments are proposed to apply from 2 December 2016.
- ***Taxation Administration Amendment (Corporate Tax Entity Information) Bill 2017*** (Private Senator's Bill introduced in the Senate on 14 August 2017 by Senator Gallagher (ALP)) – still before the Senate - proposes to amend s 3C of the TAA to align the public reporting threshold for private corporate entities with that of public corporate entities by lowering the threshold from $200 million to $100 million - see 2017 WTB 35 [1223]. Section 3C details the type of income and tax information the Commissioner of Taxation is required to make publicly available annually for corporate entities. The Bill would repeal the current wording of s 3C(1), and substitute it with language that ensures corporate tax entities (including private companies) with total income equal to or exceeding $100 million are subject to the public reporting requirements of s 3C. ***Date of effect***: would apply from the 2017-18 income year onwards.

Superannuation Bills

- ***Superannuation (Objective) Bill 2016*** – sill before the Senate - proposes to enshrine the primary objective of the superannuation system in law - see 2016 WTB 47 [1627]. In his second reading speech on the Bill, the Treasurer explained that the Bill "enshrines in law that the objective of the superannuation system is to provide income in retirement to substitute or supplement the age pension". The subsidiary objectives of super would be prescribed through regulation. The Bill was passed by the House of Reps in November 2016 without amendment. ***Date of effect***: The Bill would apply from commencement, which is the start of the first day of the first quarter following Royal Assent of the Bill.
- ***Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 1) Bill 2017*** - still before the Senate (was introduced there on 14 Sept 2017) - proposes a range of amendments eg (i) amend the SIS Act to strengthen the obligation on superannuation trustees to consider the appropriateness of their MySuper product offering annually; (ii) give APRA an enhanced

capacity to refuse a registerable superannuation entity (RSE) licensee a new authority to offer a MySuper product or to cancel an existing authority; (iii) amend the SIS Act to impose civil and criminal penalties on directors of RSE licensees who fail to execute their responsibilities to act in the best interests of members, or who use their position to further their own interests to the detriment of members; (iv) replace the current "scale test" (s 29VN of the SIS Act) with an "outcomes test" that would require MySuper trustees to undertake an annual determination to ensure the outcomes are promoting the financial interests of their members. See 2017 WTB 39 [1374]. ***Date of effect***: Various eg day after Royal Assent; 3 months after Royal Assent; 31 Dec 2018.

- ***Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017*** - still before the Senate (was introduced there on 14 Sept 2017) - proposes to require all trustees of registrable superannuation entities (RSE licensees) to have a minimum of one-third independent directors on their trustee board, and an independent Chair - see 2017 WTB 39 [1376]. The Bill had been introduced in the Senate on 14 September 2017. The Senate Economics Legislation Committee report on the Bill recommended that the Senate pass the Bill. However, in a dissenting report, Labor Senators recommended that the Bill be opposed. ***Date of effect***: The Bill will generally commence the day after Royal Assent (subject to a 3-year transition period to allow RSE licensees time to amend their trust deeds).
- ***Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 2) Bill 2017***- passed House of Reps without amendment and is before the Senate - proposes the following amendments to the *Superannuation Guarantee (Administration) Act 1992*: (i) salary sacrifice integrity - employers will be prevented from using an employee's salary sacrifice contributions to reduce the employer's own minimum 9.5% super guarantee (SG) contributions; and (ii) choice of super fund - to be extended to employees covered by new enterprise agreements and workplace determinations made on or after 1 July 2018 - see 2017 WTB 39 [1375]. ***Date of effect***: The amendments will apply to working out an employer's SG shortfall for quarters beginning on or after 1 July 2018. The proposed choice of fund amendments will apply to enterprise agreements and workplace determinations that are made on or after 1 July 2018.

Other Bills

- ***Private Health Insurance Legislation Amendment Bill 2018; A New Tax System (Medicare Levy Surcharge - Fringe Benefits) Amendment (Excess Levels for Private Health Insurance Policies) Bill 2018***; and ***Medicare Levy Amendment (Excess Levels for Private Health Insurance Policies) Bill 2018***. Among other things, the Bills will make amendments to allow for age-based premium discounts for hospital cover and allow private health insurers cover travel and accommodation costs for regional Australians as part of a hospital treatment. The amendments will also increase maximum voluntary excess levels for products providing individuals an exemption from the Medicare levy

surcharge and remove the use of benefit limitation periods in private health insurance policies.

- ***Corporations Amendment (Asia Region Funds Passport) Bill 2018*** – still before House of Reps on 28 March 2018. The Asia Region Funds Passport (ARFP) is a multilateral agreement between Australia, Japan, Republic of Korea, New Zealand and Thailand to establish a common framework of coordinated regulatory oversight to facilitate cross border issuing of collective investment schemes (CIS). The Bill will amend the *Corporations Act 2001*to implement the legislative framework in Australia that will allow eligible funds to be marketed across the participating economies with limited additional regulatory requirements. The Passport allows certain CISs based and regulated in one economy (the home economy) to be "passported" or sold to investors in other economies in the region (host economies).
- ***Judiciary Amendment (Commonwealth Model Litigant Obligations) Bill 2017*** (Private Senator's Bill) – still before the Senate - was introduced in the Senate as a Private Senator's Bill by Senator Leyonhjelm on 15 November 2017 and seeks to subject Commonwealth litigants (which include the ATO) to enforceable model litigant obligations – see 2017 WTB 51 [1771]. It has been referred to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report by 8 May 2018. The Bill proposes to:
  - amend the *Judiciary Act 1903* to: (i) require the Attorney-General to issue directions applying generally to Commonwealth legal work that contain requirements for Commonwealth litigants to act as model litigants (model litigant obligations); and (ii) enable a court to order a stay of proceedings or make orders in relation to contraventions of model litigant obligations;
  - amend the *Ombudsman Act 1976* to: (i) require the Commonwealth Ombudsman to investigate complaints in relation to contraventions of model litigant obligations; and (ii) provide for annual reporting requirements.
  - ***Date of effect***: Day after Royal Assent.
- ***Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2017*** was introduced by the Government in the Senate on 6 December 2017. It contains measures to address challenges associating with detecting and addressing serious corporate crime and bribery of foreign officials. Also makes consequential amendments to the ITAA 1997 and GST Act ***Date of effect***: Various.
- ***Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Bill 2017*** – passed House of Reps without amendment and is currently before the Senate - proposes to extend the crowd-sourced funding (CSF) framework to proprietary companies – see 2017 WTB 39 [1381]. This is designed to allow these companies to access an alternative form of finance with additional obligations that will protect investors. The Bill would enable proprietary companies to access CSF without transitioning to public company status. Draft legislation had been released in May 2017. ***Date of effect***: The amendments to extend the CSF regime to proprietary companies will take effect the day after the end of the period of 6 months after Royal Assent. The changes to the CSF regime for public companies take effect from the day after Royal Assent.

- ***Higher Education Support Legislation Amendment (A More Sustainable, Responsive and Transparent Higher Education System) Bill 2017*** – still before the Senate - proposes to amend the *Higher Education Support Act 2003* to, among other things, reduce the Higher Education Loan Program (HELP) minimum repayment income threshold and replace the current repayment thresholds with new ones, including additional repayment thresholds and rates. From 1 July 2019, repayment thresholds including the minimum repayment income are proposed to be indexed using the CPI rather than Average Weekly Earnings. The HELP minimum repayment income threshold would be reduced from $51,956 to $41,999 from 1 July 2018, with a lower 1% repayment rate, and a maximum threshold of $119,882, with a repayment rate of 10% - see 2017 WTB 39 [1383]. The Bill had passed the House of Reps without amendment. ***Date of effect***: Various.
- ***Family Assistance and Child Support Legislation Amendment (Protecting Children) Bill 2017*** – passed House of Reps with amendments and is currently before the Senate - proposes to: (i) amend the *Child Support (Assessment) Act 1989* to allow the Registrar to take into account an amended tax assessment in an administrative assessment of child support if it results in a higher taxable income; (ii) replace the current compliance incentives that make the payment of FTB Part A end of year supplement dependent on a 4 year old child of an individual or their partner receiving income support, undergoing a health check and on each FTB child in a family meeting immunisation requirements - see 2017 WTB 39 [1382]. ***Date of effect***: 1 July 2018.
- ***Social Services Legislation Amendment (Ending Carbon Tax Compensation) Bill 2017*** – still before House of Reps - proposes to amend 5 Acts (including the *Social Security Act 1991*) to prevent new recipients of welfare payments or concession cards from being paid the energy supplement from 20 September 2017 - see 2017 WTB 26 [878]. The Senate Community Affairs Legislation Committee report on the Bill was tabled on 9 August 2017. The Committee majority recommended the Bill be passed, however in a dissenting report, Labor Senators on the Committee rejected the recommendation of the majority report. The Greens oppose the Bill. Labor and the Greens senators recommended the Bill be rejected and not passed by the Senate. ***Date of effect***: 20 September 2017.
- ***Social Services Legislation Amendment (Payment Integrity) Bill 2017*** – still before House of Reps - proposes to amend the *Social Security Act 1991* to make changes concerning the residency requirements for the Age Pension and the Disability Support Pension; stop the payment of pension supplement after 6 weeks temporary absence overseas and immediately for permanent departures; align the income test taper rates so that all income above the higher income free area is treated equally when calculating an individual's rate of Family Tax Benefit Part A – see 2017 WTB 27 [924]. ***Date of effect***: Various.
- ***Social Services Legislation (Transition Mobility Allowance to the National Disability Insurance Scheme) Bill 2016*** – still before the Senate - proposes to make amendments to the *Social Security Act 1991*, *Social Security (Administration) Act 1999*, *Farm Household Support Act 2014*, ITAA 1997 and *NDIS Legislation Amendment Act 2013* to support transition of Mobility Allowance to the National

Disability Insurance Scheme (NDIS): see 2016 WTB 43 [1474]. The Bill had passed the House of Reps without amendment on 21 November 2016. ***Date of effect***: Various.

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[596] Substantial amount of draft legislation adds to Government's legislative "to do" list after the Budget

In addition to the large number of Bills still before Parliament (as reported above in this *Bulletin*), there is also a considerable amount of released draft legislation that has not been finalised and progressed into Bills in Parliament. More to add to the Government's "to do" list following the 2018-19 Federal Budget. That draft legislation list includes a surprising number of important measures:

- ***ATO disclosure of tax debt info to credit agencies***: Draft legislation and a draft legislative instrument were released on 11 January 2018 to amend the TAA to authorise the ATO to disclose business tax debts to registered credit reporting bureaus (CRBs) where the businesses have not effectively engaged with the ATO to manage their debt (subject to certain conditions and safeguards) - see 2018 WTB 2 [46]. The draft legislation intends to place tax debts on a similar footing as other debts to increase timely payment or engagement with the ATO for businesses who want to avoid having their debt information affect their credit worthiness. In addition, according to the draft legislation, disclosure will only be permitted if the Commissioner has notified the taxpayer at least 21 days before the disclosure. **Comments** were due by 9 February 2018.
- ***Superannuation tax integrity measures***: A consultation paper and draft legislation were released on 11 January 2018 (see 2018 WTB 2 [57]) to give effect to the following superannuation taxation integrity measures previously announced in the 2017-18 Budget:
  - ***NALI to include expenses not incurred*** - the non-arm's length income (NALI) rules in s 295-550 of the ITAA 1997 for related-party superannuation fund transactions are proposed to be expanded to also include *expenses not incurred* (as well as income) that would normally be expected to apply in a commercial arm's length transaction (such as reduced interest expenses, brokerage, accountancy fees or legal costs). *Date of effect:* 1 July 2018.
  - ***LRBAs and total superannuation balance*** - a member's share of the outstanding balance of a limited recourse borrowing arrangement (LRBA) is proposed to be included in the member's "total superannuation balance" (TSB). *Date of effect:* new LRBAs entered on or after the new law commences on 1 July 2018. Refinancing of existing loans entered into prior to that date would be excluded.
  - **Comments** are due by 9 February 2018.
- ***Anti-hybrid mismatch rules***: Measures to implement: (i) a universal rule denying an exemption for

non-portfolio distributions received by an Australian company where those distributions are deductible by the payer, and a second rule denying imputation benefits for shareholders where a distribution paid by an Australian company has been deducted by the payer in a foreign country; and (ii) a suite of dedicated anti-hybrid rules modelled on the OECD/G20 recommendations published in October 2015 – see 2017 WTB 49 [1682] and 2017 WTB 50 [1704]. **Date of effect**: The changes would apply to distributions paid 6 months or more after the Bill receives Royal Assent. **Comments** closed on 22 December 2017.

- ***Enhanced FinTech Regulatory Sandbox***: Measures related to the Government's 2017-18 Budget announcement that it would introduce a legislative framework for an enhanced regulatory sandbox to enable new and innovative financial technology (FinTech) products and services to be tested in Australia – see 2017 WTB 45 [1556]. **Comments** were due by 3 November 2017. Draft regs were also released containing the policy design details for the licensing exemptions, including the eligibility criteria, the eligible types of products and services, and the conditions which must be met by those using the exemption. **Comments** were due by 1 December 2017.

Other matters

Combatting phoenixing: On 28 September 2017, the Revenue Minister released for consultation a paper entitled "Combatting Illegal Phoenixing" – see 2017 WTB 41 [1420]. The Consultation Paper seeks views on proposed reforms to the corporations and tax laws to deter and disrupt the core behaviours of phoenix operators, while minimising any unintended impacts on legitimate businesses and honest restructuring. The Minister said the proposed changes are intended to assist regulators to better target action against those who repeatedly misuse corporate structures and enable them to take stronger action against those entities and individuals. ***Comments*** were due by 27 October 2017.

Early release of super: A consultation paper was released on 22 December 2017 to frame the key issues for the Government's review of the early release of superannuation on the grounds of severe financial hardship and compassionate grounds under reg 6.19A of the SIS Regulations - see 2018 WTB 1 [23]. The paper also examines whether, and the circumstances in which, an offender's superannuation should be available to pay compensation to victims of crime. ***Submissions*** were due by 12 February 2018.

TOFA: Simplification of the Taxation of Financial Arrangements (TOFA) rules was announced in the 2016-17 Federal Budget - see 2016 WTB 18 [563]. The TOFA rules set out the amount and timing of gains and losses on financing transactions for tax purposes. The amended rules were announced to apply to income years commencing on or after 1 January 2018. Legislation implementing this proposal has yet to be released. Simplification of the TOFA rules is a highly complex task, and the Government considers it is important to take the time to ensure that any changes are carefully considered to prevent any unintended outcomes, and to ensure the expected compliance costs savings are realised. To this end, the Minister for Revenue announced in December 2017 that the Government will defer the commencement of changes to the TOFA regime and the ***changes will now commence from income years that begin after Royal Assent*** - see 2018 WTB 1 [10]. This was confirmed in the 2018-19 Federal Budget.

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