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SPECIAL ISSUE - 2019 FEDERAL BUDGET REPORT

[With special comments by Reuters News]

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EXECUTIVE SUMMARY

[458] 2019-20 Federal Budget: an election, a surplus, personal tax cuts, and more

On Tuesday, 2 April 2019, Treasurer Josh Frydenberg handed down the 2019-20 Federal Budget, his 1st Budget. In an election Budget, the Treasurer announced the first Budget surplus in more than a decade at $7.1 billion for 2019-20. The Government forecasts surpluses over the next 4 years - $11 billion in 2020-21; $17.8 billion in 2021-22; $9.2 billion in 2022-23. That is a total of $45 billion of surpluses over the next 4 years. Total revenue for 2019-20 is expected to be $513.8 billion, an increase of 3.6% on estimated revenue in 2018-19. The Government says the economy is forecast to grow by 2.75% in 2019-20 and 2020-21.

On personal taxation, the Government announced **2 significant changes** designed to deliver $158 billion of additional tax relief:

- More than doubling the low and middle income tax offset up to $1,080 from 2018-19. Taxpayers earning up to $126,000 a year will receive this tax cut. The Treasurer said that for a single income family, this means up to $1,080 in their pocket per year. And for families on a dual income, up to $2,160. Mr Frydenberg said more than 10 million taxpayers will benefit, with 4.5 million receiving the full amount. This relief will be available to Australians after tax returns for the 2018-19 year are submitted from 1 July 2019.
- Lowering the 32.5% tax rate to 30% from 1 July 2024. This will cover all taxpayers earning between $45,000 and $200,000 and will mean that 94% of taxpayers will pay no more than 30 cents in the dollar.

With the Government's announced changes, from 2024-25, there would only be 3 personal income tax rates – 19%, 30% and 45%.

Under the Government, the Treasurer said tax as a share of the economy will not rise above the 23.9% cap.

Revenue measures announced

The major revenue measures announced in the Budget included:

- The ***tax cuts*** summarised above.
- ***Increasing the instant asset write-off*** from $25,000 to $30,000, with effect from 7:30pm (AEDT) on 2 April 2019. The write-off threshold will also be extended to apply to businesses with a turnover of up to $50 million - this will only apply to 30 June 2020.
- Defer by 12 months start date of the ***proposed Div 7A amendments*** to 1 July 2020.
- Tax exemption for grants to primary producers, small businesses and non-profit organisations affected by the North Qld floods.
- Extra $1 billion in funding over 4 years to extend the operation of the Tax Avoidance Taskforce and expand its coverage.
- Minor amendments to the hybrid mismatch rules.
- Increasing the Medicare levy low-income thresholds.

- The current tax relief for merging super funds will be made permanent (it was due to expire on 1 July 2020).
- Exempt current pension income calculation to be simplified for super funds.
- LCT relief for farmers and tourism operators.
- Strengthen the ABN system.

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 Assistant Treasurer's website.

Outstanding Bills, draft legn, etc

When Parliament resumed on 2 April, there were many Bills (tax, super and other measures - some more important than others) before both Houses. It is **possible that some/most/perhaps all of these Bills will lapse when the Federal election is called** [it is widely anticipated that the Prime Minister will visit the Governor-General over the weekend of 6-7 April 2019 to advise that he will call a Federal election (probably on 11 or 18 May 2019)]. The Appendix to this *Bulletin* contains a comprehensive listing of those Bills, as well as lists of outstanding draft legislation, consultation papers, reports, etc that could lead to legislative amendments. Of course, of all of this will be left hanging with the calling of the Federal election.

Where to get Budget documents

On the web

The 2019-20 Budget Papers are available from the following website:

- Budget 2019-20 - http://www.budget.gov.au/

Print copies

The 2019-20 Budget Papers are also available for sale from the CanPrint Communications Pty Limited. Details are on the Budget 2019-20 website at http://www.budget.gov.au/purchase.htm

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[459] Government delivers tax cuts, surplus in pre-poll budget

- by Colin Packham and Swati Pandey, Reuters News

CANBERRA, April 2 (Reuters) – The Government's 2 April Budget proposed tax cuts for low and middle-income earners and record spending on health and education while delivering the first budget surplus in more than a decade, setting up its campaign for an imminent election.

Treasurer Josh Frydenberg offered $158 billion in multi-year tax cuts primarily aimed at middle-income earners, on top of tax cuts last year of $144 billion, as the coalition government, which is trailing in opinion polls, tries to win over voters.

An election must be held by mid-May 2019 and could be called as soon as this week.

"We will ask the Australian people: "Who do you trust to deliver lower taxes?"," Frydenberg told a media conference. "The coalition has the track record of delivering."

Frydenberg predicted a budget surplus of $7.1 billion in the fiscal year ending June 2020, up from a December forecast of a $4.1 billion surplus, as higher export receipts and tax revenues boost government coffers.

If achieved, it would be the first surplus since 2007-08, before the global financial crisis hit.

The projected surpluses increase to $11 billion in 2020-21 and $17.8 billion in 2021-22 before easing to $9.2 billion in 2022-23.

Offering potential swing voters an immediate dividend, the Government said it will double the tax rebate for people earning between $48,000-$90,000 a year to $1,080 in the current fiscal year.

Frydenberg also proposed changes in future years that would see income bands widened and tax rates reduced to deliver personal tax cuts.

The Government also said it would accelerate tax cuts for small businesses, with the tax rate for businesses with turnover of less than $50 million cut to 25% in 2021-22.

Spending

The strong inflows into government coffers meant Frydenberg could increase spending on healthcare, a strength of the opposition Labor party, to a record $89.5 billion in 2022-23, up nearly 10% on expected spending in 2019-20.

Frydenberg also said the Government would spend $100 billion on infrastructure over the next decade to reduce congestion and improve links between Australia's cities and regional towns, a lot of which has already been announced.

Spending on rural infrastructure was forecast to rise by nearly 30%, with $4.5 billion to be spent on building roads in country areas, the major support base of the National Party, the junior member of the ruling coalition.

The Government also included an immediate one-off rebate on energy costs to pensioners, another key voter demographic for the coalition, of $75 for an individual or $125 for couples.

And Frydenberg announced $3.5 billion package to reduce emissions to meet Australia's commitments under the Paris accord. The Government's environmental record is seen as one of its electoral weaknesses with urban voters.

Back in black

Frydenberg maintained a relatively optimistic outlook for the economy, though he conceded there were risks including from falling house prices and global risks such as Brexit.

The Government forecast full-year economic growth of 2.25% in 2018-19, which would need activity to pick up in the January-to-June period as the economy grew 0.3% in the September quarter and 0.2% in the December quarter.

Growth in the $1.9 trillion economy is seen picking up to 2.75% in 2019-20 and 2020-21.

The tax cuts and increased spending, if enacted, could offer a boost to the economy, as consumer spending has been soft recently as falling home prices and high debt levels weigh on sentiment. Financial markets have priced in a rate cut later this year.

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[460] Australian budget "back in black", economy seen chugging along

- by Swati Pandey, Reuters News

CANBERRA, April 2 (Reuters) - In its 2019-20 Budget, Australia's Federal Government said on 2 April 2019 that it would return the country's finances to surplus next year after more than a decade of deficits while unveiling some big spending measures ahead of an imminent federal election.

The Government announced a $158 billion plan to lower personal income taxes and raised funding for healthcare and education led by a revenue windfall from company taxes. It also announced a "congestion-busting" plan to lift infrastructure spending across Australia.

Such largesse would be welcomed by Australia's central bank which is counting on some fiscal stimulus to boost a slowing economy when the benchmark interest rate is already at a record low 1.5%.

Treasurer Josh Frydenberg predicted a budget surplus of $7.1 billion for the year-ending June 2020, higher than $4.1 billion surplus in the Government's mid-year review in December 2018. Surpluses are then projected to increase to $11 billion in 2020-21 and $17.8 billion in 2021-22 before easing to $9.2 billion in 2022-23.

These projections are below the December forecasts, largely led by the proposed tax cuts.

Net debt as a share of the country's gross domestic product (GDP) is seen falling to 18%.

The marked improvement in Australia's finances will likely provide some boost to Prime Minister Scott Morrison's ruling Liberal-National coalition after a series of political setbacks.

The Budget is widely viewed as the campaign kick-off for federal elections due in May 2019.

However, Frydenberg was not too optimistic about the future as he pointed to "clear and genuine risks" emerging both at home and abroad.

"The residential housing market has cooled, credit growth has eased and we are yet to see the full impact of flood and drought on the economy," he said. Frydenberg also noted threats to Australia's export-heavy economy from global trade tensions and a growth slowdown in China.

Extended expansion

Still, the country's envious recession-free run of expansion is expected to stay intact although the Government downgraded forecasts for the economy after growth slowed sharply last year.

The government predicted economic growth of 2.25% in the current financial year despite a very subdued first-half. Activity is seen picking up to 2.75% next year and 3% in 2021-22 led by exports and household consumption.

The Government's outlook for unemployment was unchanged at 5% through 2022-23 - above the current 8-year low of 4.9% - while inflation is seen at 2.25% next year before picking up slightly to 2.5% in 2020-21.

"Consumer spending, investment by businesses and continued demand for Australian exports are all expected to contribute to economic growth," the Treasury said in its budget paper, adding the Government's tax relief measures and infrastructure spending will also support growth.

Still, an increasing number of economists expect the Reserve Bank of Australia (RBA) to cut interest rates later this year largely due to a deeper-than-expected housing downturn.

Home prices across the country fell for a 17th straight month in March and are now down about 7.4% since peaking in October 2017. The losses are particularly steep in Australia's 2 biggest markets of Sydney and Melbourne, raising fears indebted households would further cut back on spending.

But more money in the hands of Australian households led by lower tax rates together with bigger spending on infrastructure will likely boost the economy and keep monetary policy setting unchanged for some while yet.

The RBA has left rates at 1.5% since August 2016.

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PERSONAL TAXATION

[461] Personal tax cuts: Immediate major low-mid tax offset increase, other rate changes from 2022 to result in only 3 rates by 2024-25

In the Budget, the Government announced it will provide a further reduction in tax through the non-refundable low and middle income tax offset (LMITO). Under the changes, the reduction in tax provided by LMITO will increase from a maximum amount of $530 to $1,080 per annum and the base amount will increase from $200 to $255 per annum for the 2018-19, 2019-20, 2020-21 and 2021-22 income years.

- The LMITO will now provide a reduction in tax of up to $255 for taxpayers with a taxable income of

$37,000 or less.

- Between taxable incomes of $37,000 and $48,000, the value of the offset will increase at a rate of 7.5 cents per dollar to the maximum offset of $1,080.
- Taxpayers with taxable incomes between $48,000 and $90,000 will be eligible for the maximum offset of $1,080.
- From taxable incomes of $90,000 to $126,000 the offset will phase out at a rate of 3 cents per dollar.

The LMITO will be received on assessment after individuals lodge their tax returns for the 2018-19, 2019-20, 2020-21 and 2021-22 income years. This is designed to ensure that taxpayers receive a benefit when they lodge returns from 1 July 2019.

Low and middle income tax offset (proposed for 2018-19 to 2021-22)

Taxable income (TI)	LMITO
$0 – $37,000	$255
$37,001 - $48,000	$255 + ([TI - $37,000] × 7.5%)
$48,001 - $90,000	$1,080
$90,001 - $125,999	$1,080 - ([TI - $90,000] × 3%)
$126,000 +	Nil

Further rate and threshold changes from 1 July 2022 and beyond

From 1 July 2022, the Government proposes to increase the top threshold of the 19% personal income tax bracket from$41,000, as currently legislated (see below), to $45,000.

Also from 1 July 2022, the Government proposes to increase the low income tax offset (LITO) from $645, as currently legislated, to $700. The increased LITO will be withdrawn at a rate of 5 cents per dollar between taxable incomes of $37,500 and $45,000, instead of at 6.5 cents per dollar between taxable incomes of $37,000 and $41,000 as previously legislated. LITO will then be withdrawn at a rate of 1.5 cents per dollar between taxable incomes of $45,000 and $66,667.

Together, the increase to the top threshold of the 19% personal income tax bracket and the changes to LITO will lock in the reduction in tax provided by LMITO when LMITO is removed.

From 2024-25, the Government said it would reduce the 32.5% marginal tax rate to 30%. This will more closely align the middle tax bracket of the personal income tax system with corporate tax rates. In 2024-25 an entire tax bracket, the 37% tax bracket will be abolished under the Government's already legislated plan. With these changes, by 2024-25, around 94% of Australian taxpayers are projected to face a marginal tax rate of 30% or less.

Therefore, **with the Government's announced changes, from 2024-25, there would only be 3 personal**

income tax rates – 19%, 30% and 45%. From 1 July 2024, taxpayers earning between $45,000 and $200,000 will face a marginal tax rate of 30%.

The changes are reflected in the table below:

Tax rates and income thresholds			
Tax rates in 2017-18	**Thresholds in 2017-18**	**New rates in 2024-25**	**New thresholds in 2024-25**
Nil	$0 - $18,200	Nil	$0 - $18,200
19%	$18,201 - 37,000	19%	$18,201 - $45,000
32.5%	$37,001 - $87,000	30%	$45,001 - $200,000
37%	$87,001 - $180,000	-	-
45%	Above $180,000	45%	Above $200,000
LITO in 2017-18	Up to $445	LITO in 2024-25	Up to $700

The Government says its changes will maintain a progressive tax system. It is projected that in 2024-25, around 60% of all personal income tax will be paid by the highest earning 20% of taxpayers, broadly similar to that cohort's share if 2017-18 rates and thresholds were left unchanged. The share of personal income tax paid also remains similar for the top 1, 5 and 10% of taxpayers.

The Government says under its Budget announcements, an individual with taxable income of $200,000 earns 4.4 times more income than an individual with taxable income of $45,000, but in 2024-25 will pay around 10 times more tax.

Expanded rates and threshold tables

Expanded tables reflecting the Government's proposed changes are below:

Tax rates and income thresholds			
Rate	**2017-18**	**2018-19 to 2021-22**	**2022-23 to 2023-24**
Nil	$0 - $18,200	$0 - $18,200	$0 - $18,200
19%	$18,201 - 37,000	$18,201 - 37,000	$18,201 - **45,000**
32.5%	$37,001 - $87,000	$37,001 - $90,000	$**45,001** - $120,000
37%	$87,001 - $180,000	$90,001 - $180,000	$120,001 - $180,000
45%	$180,001 +	$180,001 +	$180,001 +

Low and middle income tax offset	-	Up to $1,080	-
Low income tax offset (LITO)	Up to $445	Up to $445	Up to $700

Proposed rates and thresholds from 2024-25 onwards

Tax rates and income thresholds 2024-25 onwards	
Rates from 2024-25	**New thresholds from 2024-25**
Nil	$0 - $18,200
19%	$18,201 - 45,000
30%	$45,001 - **$200,000**
45%	**$200,000 +**
LITO	Up to $700

Source: Budget Paper No 2 [pp 17-18]

Background: currently legislated tax rates and thresholds for 2018-19 onwards

The following table reflects the currently legislated (via the ***Treasury Laws Amendment (Personal Income Tax Plan) Act 2018***) personal tax rates and thresholds, excluding the 2% Medicare levy:

Tax rates and income 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+

Low and middle income tax offset (currently legislated from 2018-19 to 2021-22)

Taxable income (TI)	LMITO
$0 – $37,000	$200
$37,001 - $48,000	$200 + ([TI - $37,000] × 3%)
$48,001 - $90,000	$530
$90,001 - $125,333	$530 - ([TI - $90,000] × 1.5%)
$125,334 +	Nil

Low income tax offset (currently legislated from 2018-19 to 2021-22)	
Taxable income (TI)	**LITO**
$0 – $37,000	$445
$37,001 - $66,666	$445 - ([TI - $37,000] × 1.5%)
$66,667 +	Nil

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[462] Removal of CGT main residence exemption for foreign residents still in limbo - Budget silent

There was no comment in the Budget about the proposal to remove the CGT main residence exemption for foreign residents. It had been speculated that the Government may not proceed with it.

[**Note**: The measure had been widely criticised especially for its unintended effects and the considerable delay in legislating it – it was originally announced on 9 May 2017 in the 2017-18 Federal Budget. Comments attributed to the Assistant Treasurer at a recent tax conference (see 2019 WTB 12 [373]) were widely interpreted to mean that the measures were unlikely to proceed.]

The measure is contained in the *Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No 2) Bill 2018*. The Bill is currently before the Senate (it had passed the House of Reps without amendment on 1 March 2018). It is proposed that removal of the CGT main residence exemption for foreign residents would apply to CGT events that happen on or after 7.30 pm, by legal time in the ACT, on 9 May 2017 (the date they were announced – the ***application time***), subject to a 30 June 2019 transitional rule (see 2019 WTB 12 [373]).

Key features of the proposed the measures included:

- Individuals who are foreign residents at the time a CGT event occurs to a dwelling (or for a compulsory acquisition a part of a dwelling) in which they have an ownership interest would not be entitled to the CGT main residence exemption.
- A trustee of a deceased estate would not be entitled to the CGT main residence exemption in respect of an ownership interest in a dwelling of a deceased individual if the deceased was a foreign resident at the time of death. A beneficiary of a deceased estate would not be entitled to the portion of the CGT main residence exemption in respect of an ownership interest in a dwelling of a deceased individual if the deceased was a foreign resident at the time of death.
- A beneficiary of a deceased estate would be entitled to the portion of the CGT main residence exemption in respect of an ownership interest in a dwelling of a deceased individual if the deceased was a resident at the time of death. This would apply even if the beneficiary is a foreign resident at the time a CGT event occurs to the dwelling. However, the beneficiary would be denied any additional component of the main residence exemption that they would otherwise be entitled to in their own right if they are a foreign resident at the time a CGT event occurs to the dwelling.

It may be that the Government is consulting further on this measure, or (more likely) it may be that the Bill containing the amendments will simply lapse when the Federal election is called.

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[463] Medicare levy low-income thresholds for 2018-19

For the 2018-19 income year, the Medicare levy low-income threshold for singles will be increased to $22,398 (up from $21,980 for 2017-18). For couples with no children, the family income threshold will be increased to $37,794 (up from $37,089 for 2017-18). The additional amount of threshold for each dependent child or student will be increased to $3,471 (up from $3,406).

For single seniors and pensioners eligible for the SAPTO, the Medicare levy low-income threshold will be increased to $35,418 (up from $34,758 for 2017-18). The family threshold for seniors and pensioners will be increased to $49,304 (up from $48,385), plus $3,471 for each dependent child or student.

Date of effect

The increased thresholds will apply to the 2018-19 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 19]; Treasurer's media release, 2 April 2019

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[464] Extending FTB to ABSTUDY recipients aged 16 and over who study away from home

The Government announced that it will provide $36.4 million over 5 years from 2018-19 to extend Family Tax Benefit (FTB) eligibility to the families of ABSTUDY (secondary) student recipients who are aged 16 years and over, and are required to live away from home to attend school.

Source: Budget Paper No 2 [p 159]

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[465] New deductible gift recipients

The following organisations have been approved as specifically-listed deductible gift recipients from 1 July 2019 to 30 June 2024:

- Australian Academy of Law;
- China Matters Limited;
- Foundation Broken Hill Limited;
- Motherless Daughters Australia Limited;
- Superannuation Consumers Centre Limited; and
- The Headstone Project (Tasmania) Incorporated.

The Government will also establish a deductible gift recipient (DGR) general category to enable Men's Sheds and Women's Sheds to access DGR status from 1 July 2020.

Source: Budget Paper No 2 [p 20]

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[466] Concessional FHA treatment for income from forced disposal of livestock

From 1 July 2019, farmers receiving Farm Household Allowance (FHA) will be able to discount or exempt income from the forced sale of livestock from the FHA income test when that income is invested in a farm management deposit.

This measure will assist FHA recipients who are destocking in retaining access to income support while still being able to make long-term financial plans.

Source: Budget Paper No 2 [p 46]; Minister for Agriculture and Water Resources media release 2 April 2019.

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BUSINESS TAXATION

[467] Instant asset write-off extended to more taxpayers, threshold up

The Budget contains important changes to the instant asset write-off rules. These changes are in addition to the measures contained in a Bill currently before Parliament (see below under "Arrangements prior to 2 April 2019").

There are 2 key changes.

First, the write-off has been extended to medium sized businesses, where it previously only applied to small business entities. The implications for each category of taxpayer are set out under the respective headings below.

The second important change is that the instant asset write-off threshold is to increase from $25,000 to $30,000. The threshold applies on a per asset basis, so eligible businesses can instantly write off multiple assets.

The threshold increase will apply from 2 April 2019 to 30 June 2020.

Small businesses

Small business entities (ie those with aggregated annual turnover of less than $10 million) will be able to immediately deduct purchases of eligible assets costing less than $30,000 that are first used, or installed ready for use, from Budget night (ie 2 April 2019) to 30 June 2020.

Small businesses can continue to place assets which cannot be immediately deducted into the small business simplified depreciation pool and depreciate those assets at 15% in the first income year and 30% each income year thereafter. The pool balance can also be immediately deducted if it is less than the applicable instant asset write-off threshold at the end of the income year (including existing pools). The current "lock out" laws for the simplified depreciation rules (ie 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 2020.

Medium sized businesses

Medium sized businesses (ie, those with aggregated annual turnover of $10 million or more, but less than $50 million) will also be able to immediately deduct purchases of eligible assets costing less than $30,000 that are first used, or installed ready for use, from Budget night to 30 June 2020.

The purchase date is critical. The concession will only apply to assets acquired after 2 April 2019 by medium sized businesses (as they have previously not had access to the instant asset write-off) up to 30 June 2020.

Arrangements prior to 2 April 2019

The *Treasury Laws Amendment (Increasing the Instant Asset Write-Off for Small Business Entities) Bill 2019* was introduced in the House of Reps on 13 February 2019. It proposes to amend the tax law to increase the threshold below which amounts can be immediately deducted under these rules from $20,000 to $25,000 from 29 January 2019 until 30 June 2020, and extend by 12 months to 30 June 2020 the period during which small business entities can access expanded accelerated depreciation rules (instant asset write-off). The Bill is still before the House of Reps.

The changes in the Bill interact with the Budget changes. This means that, when legislated, small businesses will be able to immediately deduct purchases of eligible assets costing less than $25,000 that are first used or installed ready for use over the period from 29 January 2019 until 2 April 2019. The changes outlined above will take affect from then (with access extended to medium sized businesses).

Date of effect

The changes announced in the Budget will apply from 2 April 2019 to 30 June 2020.

Accordingly, the threshold is due to revert to $1,000 on 1 July 2020 (subject of course to further changes). Although not spelt out in the Budget papers, a Treasury official confirmed to Thomson Reuters on Budget night that from that time the concession will only be available to small business entities, ie the instant asset write-off will not be available to medium sized businesses.

Source: Budget Paper No 2 [p 14]

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[468] Proposed Div 7A amendments – start date deferred 12 months

The Government announced that it will defer the start date of the 2018-19 Budget measure, *Tax Integrity - clarifying the operation of the Division 7A integrity rule*, from 1 July 2019 to **1 July 2020**.

The Government issued a consultation paper in October 2018 (comments closed on 21 November 2018) seeking stakeholder views on the proposed implementation approach for the amendments to Division 7A of the ITAA 1936. The Government said it received valuable feedback from stakeholders which highlighted that this is a complex area of the tax law and raised implementation issues that warrant further consideration.

The Government considers that delaying the start date by 12 months "will allow additional time to further consult with stakeholders on these issues and to refine the Government's implementation approach, including to ensure appropriate transitional arrangements so taxpayers are not unfairly prejudiced".

Background

Strong concerns had been raised in submissions (eg about pre-December 2009 UPE arrangements, and short timeframes for transitional arrangements, etc) and practitioners have been keenly awaiting a government announcement about the outcome of its consultations.

The proposed amendments draw on recommendations from the Board of Taxation and include:

- simplified Division 7A loan rules to make it easier for taxpayers to comply;
- a self-correction mechanism to assist taxpayers to promptly rectify breaches of Division 7A by giving them the opportunity to voluntarily correct their arrangements without penalty;
- safe harbour rules for the use of assets to provide certainty and simplify compliance for taxpayers;
- technical amendments to improve the integrity and operation of Division 7A while providing increased certainty for taxpayers; and

- clarification that unpaid present entitlements (UPEs) come within the scope of Division 7A;
- 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.

The measures in question were announced in the last 2 Federal Budgets. In last year's 2018-19 Federal Budget, the Government announced it would clarify the operation of Div 7A of the ITAA 1936 to ensure that 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 was designed to 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.

Amendments to Div 7A that were announced in the 2016-17 Budget (see 2016 WTB 18 [559]) included the self-correction mechanism, safe harbour rules.

As a result, all the Div 7A amendments are to form part of a consolidated package, with a start date of 1 July 2020.

Source: Budget Paper No 2 [p 25]

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[469] Tax integrity: clarifying the operation of the hybrid mismatch rules

The Government will make a number of minor amendments to the hybrid mismatch rules in Div 832 of the ITAA 1997 to clarify their operation.

The purpose of the hybrid mismatch rules is to prevent multinational corporations from exploiting differences in the tax treatment of an entity or instrument under the laws of two or more tax jurisdictions.

Division 832 will be amended to:

- stipulate how the rules apply to MEC groups and trusts;
- limit the meaning of "foreign tax" for hybrid mismatch purposes; and
- specify that the integrity rule in Subdiv 832-J can apply where other provisions have applied. The integrity rule target arrangements where multinational groups use interposed country conduit type vehicles to invest into Australia as an alternative to investing into Australia using hybrid instruments or entities.

Date of effect

The amendments will apply to income years commencing on or after 1 January 2019, with the exception of the amendments to the integrity rule, which will apply to income years commencing on or after 2 April 2019.

Source: Budget Paper No 2 [p 24]

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[470] Tax Avoidance Taskforce on Large Corporates etc: more funding

The Government will provide $1.0bn over 4 years from 2019-20 to the ATO to extend the operation of the Tax Avoidance Taskforce and to expand the Taskforce's programs and market coverage.

The Taskforce undertakes compliance activities targeting multinationals, large public and private groups, trusts and high wealth individuals. This measure is intended to allow the Taskforce to expand these activities, including increasing its scrutiny of specialist tax advisors and intermediaries that promote tax avoidance schemes and strategies.

The Government has also provided $24.2m in 2018-19 to Treasury to conduct a communications campaign focused on improving the integrity of the Australian tax system.

Source: Budget Paper No 2 [p 24]

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[471] Tax exemption for North Queensland floods grants

The Government will provide an income tax exemption for qualifying grants made to primary producers, small businesses and non-profit organisations affected by the North Queensland floods.

Qualifying grants include Category C and Category D grants provided under the Disaster Recovery Funding Arrangements 2018, and grants provided under the On-Farm Restocking and Replanting Grants Program and the On-Farm Infrastructure Grants Program.

The exemption will apply where the grants relate to the monsoonal trough, which produced flooding that started on or after 25 January 2019 and continued into February 2019. The grants will be non-assessable non-exempt income for tax purposes.

Source: Budget Paper No 2 [p 19]

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[472] Tax exemption for primary producers affected by Queensland storms

The Government will provide an income tax exemption to primary producers in the Fassifern Valley, Queensland affected by storm damage in October 2018.

The tax exemption relates to payments distributed to affected taxpayers through a grant totalling $1.0 million to the Foundation for Rural and Regional Renewal, working with the Salvation Army and a local community panel.

Source: Budget Paper No 2 [p 22]

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[473] Australian MITs: updated list of info exchange countries

The Australian Managed Investment Trusts (MITs) regime provides for a reduced withholding tax rate of 15% (rather than the default 30%) on certain distributions to residents of countries that enter into effective information sharing agreements with Australia.

The Government will update the list of countries whose residents are able to access the reduced rate by adding the following countries to the 114 other jurisdictions already on the list: Curaçao, Lebanon, Nauru, Pakistan, Panama, Peru, Qatar and the United Arab Emirates.

The updated list will be effective from 1 January 2020.

Source: Budget Paper No 2 [p 16]

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[474] Tax integrity focus on unpaid tax and super by larger businesses

The Government will provide $42.1 million over 4 years to the ATO to increase activities to recover unpaid tax and superannuation liabilities. These activities will focus on larger businesses and high wealth individuals (HWI) to ensure on-time payment of their tax and superannuation liabilities. However, the measure will not extend to small businesses.

In underlying cash balance terms, the measure is estimated to have a gain to the budget of $103.6 million over the forward estimates.

Source: Budget Paper No 2 [p 25]

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SUPERANNUATION

[475] Super contributions work test exemption extended to age 66; spouse contributions age limit increased

The Budget confirmed the Treasurer's announcement on 1 April 2019 that individuals aged 65 and 66 will be able to make voluntary superannuation contributions from 1 July 2020 (both concessional and non-concessional) without needing to meet the contributions work test. The age limit for making spouse contributions will also be increased from 69 to 74.

Super contributions work test

Currently, individuals aged 65-74 must work at least 40 hours in any 30-day period in the financial year in which the contributions are made (the "work test") in order to make voluntary personal contributions: reg 7.04 of the SIS Regulations.

The proposed extension of the work test exemption means that individuals aged 65 or 66 who don't meet the work test, because they may only work one day a week or volunteer, will be able to make voluntary contributions to superannuation, giving them greater flexibility as they near retirement. Around 55,000 people aged 65 and 66 are expected to benefit from this reform in 2020-21.

The Treasurer said the proposed change will align the work test with the eligibility for the Age Pension, which is scheduled to reach age 67 from 1 July 2023.

The ITAA 1997 will also be amended to extend to those aged 65 and 66 access to the bring forward arrangements for non-concessional contributions. The bring forward rules currently allows individuals aged less than 65 years to make 3 years' worth of non-concessional contributions (which are generally capped at $100,000 a year) in a single year. This will be extended to those aged 65 and 66. Otherwise, the existing annual caps for concessional contributions and non-concessional contributions ($25,000 and $100,000 respectively) will continue to apply.

Spouse contributions age limit increase

The age limit for making spouse contributions will be increased from 69 to 74. Currently, those aged 70 and over cannot receive contributions made by another person on their behalf.

Date of effect

1 July 2020.

Source: Budget Paper No 2 [p 22]; Treasurer's media release, 1 April 2019

Thomson Reuters note

The SIS Regulations were amended on 7 December 2018 to implement the 2018-19 Federal Budget measure to provide a 1-year exemption from the work test from 1 July 2019 for superannuation contributions by recent retirees aged 65-74 with total superannuation balances less than $300,000: see 2018 WTB 51 [1646]. While the SIS Regulations have been amended to give effect to this measure, other draft amendments proposed for s 292-85 of the ITAA 1997 (see 2018 WTB 42 [1382]) in relation to the bring forward rule are yet to be introduced.

The proposed increased age limit for spouse contributions may enable more taxpayers to obtain a tax offset for spouse contributions from 1 July 2020. A tax offset is currently available up to $540 for a resident taxpayer in respect of eligible contributions made on behalf of their spouse. The spouse's assessable income, reportable fringe benefits and reportable employer superannuation contributions must be less than $37,000 in total to obtain the maximum tax offset of $540, and less than $40,000 to obtain a partial tax offset. Of course, if the spouse in respect of whom the contribution is made is age 67-74 from 1 July 2020, the spouse may still need to satisfy the requisite work test in order for the super fund to accept the contribution.

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[476] Exempt current pension income calculation to be simplified for super funds

Superannuation fund trustees with interests in both the accumulation and retirement phases during an income year will be allowed to choose their preferred method of calculating exempt current pension income (ECPI).

The Government will also remove a redundant requirement for superannuation funds to obtain an actuarial certificate when calculating ECPI using the proportionate method, where all members of the fund are fully in the retirement phase for all of the income year.

Date of effect

1 July 2020.

Source: Budget Paper No 2 [p 23]

ECPI - background

There are 2 methods to work out the ECPI for a complying superannuation fund:

1. Segregated method – the segregation of specific assets (segregated current pension assets) which are set aside to meet current pension liabilities;
2. Proportionate method – a proportion of assessable income attributable to current pension liabilities is exempt.

Since 1 July 2017, SMSFs and small APRA funds are prevented from using the segregated method to determine their ECPI if there are any fund members in retirement phase with a total superannuation balance that exceeds $1.6m on 30 June of the previous income year. Such SMSFs and SAFs with "disregarded small fund assets" are instead required to use the proportionate method. This is currently the case even if the fund's only member interests are retirement phase superannuation income streams whereby an actuarial certificate will provide a 100% tax exemption for the income in any event.

Where a SMSF is 100% in pension phase for all or part of an income year, the ATO considers that all of the fund's assets are "segregated current pension assets" and the fund cannot choose to use the alternative proportionate method. The ATO has previously acknowledged that this legal view is at odds with an industry practice whereby some SMSFs have used the proportionate method even if the fund was solely in pension phase. The ATO therefore granted an administrative concession whereby SMSF trustees did not face compliance action for 2016-17, and prior years, for ECPI calculations based on an industry practice. However, for 2017-18 and later years, the ATO has expected funds that are 100% in pension phase to only use the segregated method.

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[477] Tax relief for merging superannuation funds to be made permanent

The current tax relief for merging superannuation funds that is due to expire on 1 July 2020 will be made permanent from that time.

Since December 2008, tax relief has been available for superannuation funds to transfer revenue and capital losses to a new merged fund, and to defer taxation consequences on gains and losses from revenue and capital assets.

The permanent tax relief will ensure superannuation fund member balances are not impacted by tax when funds merge. It will remove tax as an impediment to mergers and facilitate industry consolidation, consistent with the recommendation of the Productivity Commission's final report released on 10 January 2019. According to the Government, consolidation of super funds would help address inefficiencies by reducing costs, managing risks and increasing scale, leading to improved retirement outcomes for members.

Date of effect

1 July 2020.

Source: Budget Paper No 2 [p 23]

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[478] Release authorities to be included in SuperStream Rollover standard

The Government will provide $19.3m over 3 years from 2020-21 (including $12.6m in capital funding in 2020-21) to the ATO to send electronic requests to superannuation funds for the release of money required under a number of superannuation arrangements.

This change, which will take effect from 31 March 2021, will be implemented by expanding the electronic SuperStream Rollover Standard used for the transfer of information and money between employers, superannuation funds and the ATO.

The start date of self-managed superannuation (SMSF) funds rollovers in SuperStream will be delayed until 31 March 2021 to coincide with the expansion of the SuperStream Rollover Standard.

Date of effect

31 March 2021.

Source: Budget Paper No 2 [p 169]

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[479] Super insurance opt-in rule for low-balances - delayed start date confirmed

The Government confirmed that it will delay the start date to 1 October 2019 for ensuring insurance within superannuation is only offered on an opt-in basis for accounts with balances of less than $6,000 and new accounts belonging to members under age 25.

That delayed start day of 1 October 2019 was previously announced as part of the ***Treasury Laws Amendment (Putting Members' Interests First) Bill 2019***, which was introduced in the House of Reps on 20 February 2019: see 2018 WTB 8 [240]. That Bill (currently before Parliament) proposes to amend the SIS Act to prevent insurance within superannuation from being provided on an opt-out basis for account balances less than $6,000 and members under 25 years old (who begin to hold a new product on or after 1 October 2019).

Members will still be able to obtain insurance cover within their superannuation by electing to do so (ie opting-in). The changes seek to prevent the erosion of super savings through inappropriate insurance premiums and duplicate cover.

The Putting Members' Interests First Bill essentially re-introduced the Government's policy proposal that was previously contained in the *Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018*. That Bill received Royal Assent on 12 March 2019 after being passed with Green's amendments which removed aspects of the insurance opt-in rule for account balances less than $6,000 and members under 25. The Government agreed to those amendments in the Senate to ensure the prompt passage of the other measures in that Bill. As enacted, that Bill requires a trustee to stop providing insurance on an opt-out basis from 1 July 2019 to a member who has had a product that has been inactive for 16 months or more, unless the member has directed the trustee to continue providing insurance.

Date of effect

1 October 2019.

Source: Budget Paper No 2 [p 21]

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[480] ADF Super members eligible to remain contributory after discharge

The Government will extend Australian Defence Force Superannuation Scheme (ADF Super) membership eligibility to allow ADF Super members to choose to remain contributory members when they discharge from the ADF.

This will align ADF Super arrangements with superannuation arrangements available in broader industry and other public superannuation schemes.

Source: Budget Paper No 2 [p 66]

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[481] Superannuation Consumer Advocate to be established

The Government will undertake an expression of interest process to identify options to support the establishment of a Superannuation Consumer Advocate. The Advocate would provide input on behalf of consumers in policy discussions and provide information to educate and assist consumers navigate the superannuation system.

The costs of the measure will be met from within the existing resources of Treasury.

Source: Budget Paper No 2 [p 171]

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GST AND INDIRECT TAXES

[482] No GST measures in 2019-20 Federal Budget

Not unexpectedly, the Federal Budget Papers for 2019-20 did not contain any changes affecting GST. We state "not unexpectedly", as there had been no speculation or indication of any type leading up to the Budget that led people to think that there would be GST changes.

However, there were minor changes to the luxury car tax regime, as well as to the concessions available to diplomatic, consular and international organisations for certain indirect taxes.

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[483] Increased LCT refunds for farmers and tourism operators

The Government announced that it will provide further relief to farmers and tourism operators by amending the luxury car tax (LCT) refund arrangements. **For vehicles acquired on or after 1 July 2019**, eligible primary producers and tourism operators will be able to apply for a refund of any luxury car tax paid, up to a maximum of $10,000.

Currently, primary producers and tourism operators may be eligible for a partial refund of LCT paid on eligible 4-wheel or all-wheel drive cars, up to a maximum refund of $3,000. The eligibility criteria and types of vehicles eligible for the current partial refund ***will remain unchanged*** under the new refund arrangements.

Source: Budget Paper No 2 [p 18]

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[484] Calls for abolition of Luxury Car Tax ignored in the Budget

Prior to the Budget, there had been a number of calls for the abolition of the 33% Luxury Car Tax (LCT). No such announcement was made in the Budget.

The LCT is levied on vehicles priced above a $66,331 threshold, although a higher threshold of $75,000 threshold applies to "fuel-efficient vehicles" (ie those that consume 7.0L/100km or less).

The LCT is today seen as anachronistic – way past its use-by date. Introduced in 1999 and associated with the abolition of sales tax and the introduction of the GST, the LCT was directed at imports of "luxury" cars and was seen as an attempt to help protect Australia's then car manufacturing industry. That industry no longer exists and it has been suggested that the rationale for the LCT is weaker than it has ever been. It is also claimed that serious anomalies now exist with the application of the LCT eg that buyers of some family SUVs are hit with the tax. Of course, it does raise not-insignificant revenue – around $700 million for the 2018-19 financial year. While it represents one of the Government's smaller revenue items (even WET is $1.030 billion), it is revenue nonetheless.

LCT was introduced in 1999 via the *A New Tax System (Luxury Car Tax) Act 1999*. It applied from 1 July 2000 on taxable supplies and importations of "luxury cars". At that time, the LCT applied at a rate of 25% of the value above the luxury car tax threshold. To coincide with the commencement of the GST and the abolition of the wholesale sales tax from 1 July 2000, the LCT applied to all taxable supplies and importations of luxury cars on or after 1 July 2000. It replaced the previous WST luxury car tax.

The EM to the Bill that introduced the LCT said [at 1.22]:

"Cars in general will fall in price as a result of the change from the wholesale sales tax to the GST. If the Government took no specific action, then the price of [mostly imported] luxury cars would fall dramatically as they are currently subject to the special wholesale sales tax rate of 45% to the value above the luxury car tax threshold. The Government does not believe that this price reduction is appropriate following the replacement of the wholesale sales tax with the GST. Therefore, the Government will impose a retail tax on luxury cars, at a rate of 25% of the value above the luxury car tax threshold. The luxury car tax threshold is a GST-inclusive value equal to the car depreciation limit (the car depreciation limit for the 1997-98 financial year is $55,134). The tax will ensure that luxury cars only fall in price by about the same amount as a car just below the luxury threshold."

In 2009, the Henry Tax Review recommended it be abolished, stating stated that luxury taxes should not be used to raise revenue and are inefficient because of their narrow tax base. The review report said: "In the current Australian context, a tax on luxury cars is not a desirable means of raising revenue. It discriminates against a particular group of people because of their tastes. It is not an effective way of redistributing income from rich to poor. Its design is complex and becoming more complex over time."

The Henry Review said: "Luxury taxes are also flawed in their impact on vertical equity. Very few luxury goods are the exclusive preserve of the wealthy. Some of the burden of the LCT falls on people of average means with a preference for relatively expensive cars. In some cases, this reflects the fact that price is an arbitrary proxy for luxury within a given product category. Many people would feel that a small sports car is luxurious at $60,000 but a 7-seater minivan is not luxurious at the same price."

The LCT could be phased out over a period of time. If however the LCT is to remain, it has been suggested that the thresholds should at least be increased to better reflect so-called "true luxury vehicles" in the current motor vehicle market.

Would an Australia-EU FTA affect the LCT?

Another factor that could impact the LCT is Australia's burgeoning trade relations. It has been suggested that if Australia signs a Free Trade Agreement with the EU (which is currently under negotiation), abolition of the LCT might be considered.

It its submission on the negotiations, the Business Council of Australia (BCA) said it would support the elimination of the LCT. It said:

"As part of efforts to achieve outcomes that are meaningful and important for Australia in a range of areas - such as our financial, professional service and agricultural trade interests - the Business Council would support eliminating duties and taxes that affect vehicle imports.

These duties and taxes include the five per cent *ad valorem* tariff on motor vehicles – the elimination of which would be in line with Australia's other FTAs – and the Luxury Car Tax (LCT), which the Henry Tax Review recommended abolishing. The presence of the LCT discourages the purchase of high standard, low-emission and fuel-efficient vehicles, including those produced in the EU.

Elimination of these barriers should be part of a broad and expansive trade agreement that embraces substantial and ambitious liberalisation by both Australia and the EU, rather than a narrow agreement achieving only defensive trade outcomes for both sides. The Business Council would prefer that Australia reach agreement with the EU on issues such as car tariffs and the LCT instead of other EU demands such as geographic indicators, which detract from the fundamental purpose of an FTA in liberalising trade."

The LCT remains …. but for how long?

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[485] Indirect tax concessions for diplomats etc

The Government will grant new access to refunds of indirect tax (including GST, fuel and alcohol taxes) to the diplomatic and consular representations of Sudan in Australia. The concession is part of the Indirect Tax Concession Scheme ("ITCS").

The Commission for the Conservation of the Southern Bluefin Tuna will be granted upgraded access to the ITCS. The Government has extended ITCS access for Laos, Mauritius and Samoa to include construction and renovation relating to their current and future diplomatic missions and consular posts.

Date of effect

The measures will come into effect at a time to be specified by the Minister for Foreign Affairs. The arrangements are reciprocal and reviewed "periodically".

The financial impact is small, ie it is expected to reduce revenue by $1.8m.

Source: Budget Paper No 2 [p 15]

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OTHER MEASURES

[486] Black Economy Taskforce: strengthening the ABN rules

The Government will strengthen the Australian Business Number (ABN) system by imposing new compliance obligations for ABN holders to retain their ABN.

Currently, ABN holders are able to retain their ABN regardless of whether they are meeting their income tax return lodgment obligation or the obligation to update their ABN details.

Accordingly, from 1 July 2021, ABN holders with an income tax return obligation will be required to lodge their income tax return and from 1 July 2022 confirm the accuracy of their details on the Australian Business Register annually.

These new requirements will make ABN holders more accountable for meeting their government obligations, while minimising the regulatory impact on businesses complying with the law.

This measure stems from the 2018-19 Budget measure *Black Economy Taskforce: consultation on new regulatory framework for ABNs* – see 2018 WTB 19 [555].

Source: Budget Paper No 2 [p 13]

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[487] ATO analytics: increased funding

The Government will provide funding designed to increase the ATO's analytical capabilities.

First, the Government will provide $70 million over 2 years from 2018-19 to undertake preparatory work required for the ATO to migrate from its existing data centre provider to what is termed in the Budget papers as an "alternative data centre facility". The funding will also be used to prepare a second pass business case that will identify the full cost of activities required to complete the data centre migration project.

The Government will also provide $6.9 million over 4 years from 2019-20 to support additional analytical capabilities within the Treasury and other agencies.

Source: Budget Paper No 2 [p 61]

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[488] Funding for Government response to Banking Royal Commission

The Government will provide $606.7 million over 5 years from 2018-19 to facilitate the Government's response to the Hayne Banking Royal Commission.

On 4 February 2019, the Government proposed a package of measures to take action on all 76 of the recommendations of the Hayne Royal Commission's final report (see 2019 WTB 6 [156]), including:

- designing and implementing an industry funded compensation scheme of last resort for consumers and small business ($2.6 million over 2 years from 2019-20);
- providing the Australian Financial Complaints Authority (AFCA) with additional funding to help establish a historical redress scheme to consider eligible financial complaints dating back to 1 January 2008 ($2.8 million in 2018-19);
- paying compensation owed to consumers and small businesses from legacy unpaid external dispute resolution determinations ($30.7 million in 2019-20);
- resourcing ASIC to implement its new enforcement strategy and expand its capabilities and roles in accordance with the recommendations of the Royal Commission ($404.8 million over 4 years from 2019-20);
- resourcing APRA to strengthen its supervisory and enforcement activities, including with respect to governance, culture and remuneration ($145 million over 4 years from 2019-20);
- establishing an independent financial regulator oversight authority, to assess and report on the effectiveness of ASIC and APRA in discharging their functions and meeting their statutory objectives ($7.7 million over 3 years from 2020-21);
- undertaking a capability review of APRA which will examine its effectiveness and efficiency in delivering its statutory mandate, as well as its capability to respond to the Royal Commission ($1 million in 2018-19);
- establishing a Financial Services Reform Implementation Taskforce within the Treasury to implement the Government's response to the Royal Commission, and co-ordinate reform efforts with APRA, ASIC and other agencies through an implementation steering committee ($11.2 million in 2019-20); and
- providing the Office of Parliamentary Counsel with additional funding for the volume of legislative drafting that will be required to implement the Government's response ($0.9 million in 2019-20).

The Government said the cost of this measure will be partially offset by revenue received through ASIC's industry funding model and increases in the APRA Financial Institutions Supervisory Levies and from funding already provisioned in the Budget.

Source: Budget Paper No 2 [pp 167-68]

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[489] EMDG scheme - extra $60 million in funding

The Budget confirmed the Government's announcement *by Trade Minister Simon Birmingham* on 29 March 2019 that it will invest an additional $60 million in the export market development grants (EMDG) scheme over the next 3 years to help more businesses export their products and services around the world.

Mr Birmingham said the EMDG scheme supports businesses to increase their marketing and promotional activities in international markets so they can connect with new customers and grow their exports.

The EMDG scheme reimburses up to 50% of eligible export promotion expenses above $5,000 provided that the total expenses are at least $15,000. It provides up to 8 grants to each eligible application.

To be eligible, a business must have:

- income of not more than $50 million in the grant year;
- incurred at least $15,000 of eligible expenses under the scheme (first-time applicants can combine 2 years expenses); and
- principal status for the export business (some exceptions apply, such as non-profit export-focused industry bodies).

The business also must have promoted one of the following:

- the export of goods or most services;
- inbound tourism;
- the export of intellectual property and know-how;
- conferences and events held in Australia.

Last year alone, Mr Birmingham said over 3,500 small and medium enterprises accessed the EMDG scheme, employing almost 66,500 people and generating exports of $3.8 billion.

Further information is available via the Austrade Website.

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[490] Skills package – new apprenticeships, incentive payment, training

The Budget announced a new $525 million skills package. It seeks to create 80,000 new apprenticeships over 5 years in industries with skills shortages. The Government will double incentive payments to employers to $8,000 per placement.

These new apprentices will also receive a $2,000 incentive payment. This payment will provide:

- Employers a total of $4,000 ($2,000 after 12 months and $2,000 at completion), in addition to the existing standard employer incentives of $1,500 at commencement and $2,500 at completion of an apprenticeship.

- Apprentices a total of $2,000 ($1,000 after 12 months and $1,000 at completion).

Eligible occupations will include: Carpenters and joiners; Plumbers; Hairdressers; Air-conditioning and refrigeration mechanics; Bricklayers and stonemasons; Plasterers; Bakers and pastry cooks; Vehicle painters; Wall and floor tilers; Arborists. Eligible occupations will be reviewed annually to ensure current and expected skills shortages are captured.

The Government will also work closely with industry to train Australians in areas of future high demand, including communications technology, advanced manufacturing and health services, the Treasurer said.

Also announced in the Budget are 10 new training hubs connecting schools, local industries and young people in regional areas with high youth unemployment.

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[491] Addressing sham contracting – dedicated unit to be set up

The Government announced that it will provide $9.2 million over 4 years from 2019-20 (and $2.3 million per year ongoing) to establish a dedicated sham contracting unit within the Fair Work Ombudsman to address sham contracting behaviour engaged in by some employers, particularly those who knowingly or recklessly misrepresent employment relationships as independent contracts to avoid statutory obligations and employment entitlements.

The unit will be designed to more effectively tackle sham contracting by increasing education, compliance and enforcement activities, and dedicating additional resources to investigate and litigate cases.

Source: Budget Paper No 2 [p 147]

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[492] Countering money laundering – more funding

The Government will provide $28.4 million over 4 years from 2019-20 (including $6.5 million in capital funding) to the Australian Transaction Reports and Analysis Centre (AUSTRAC) to expand the Fintel Alliance. The Fintel Alliance is a public private partnership that builds resilience in the financial system and disrupts money laundering, terrorism financing and other serious crime.

The cost of this measure will be offset by an increase in the *Australian Transaction Reports and Analysis Centre Industry Contribution* levy.

Source: Budget Paper No 2 [p 109]

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[493] Seasonal Worker Programme - pilot to address regional workforce shortages

The Government announced that it will provide $2.9 million over 2 years from 2018-19 to implement a 12-month pilot program to improve small farmers' access to workers through the existing Seasonal Worker Programme (SWP). The Pilot will simplify SWP requirements to make it easier and quicker for labour hire approved employers under the SWP to recruit and move seasonal workers between smaller farms. The Pilot will be implemented in up to 3 regions from 1 May 2019.

The measure includes $1.6 million over 2 years from 2018-19 for the Fair Work Ombudsman to increase education, monitoring and investigation activities relating to SWP employers participating in the Pilot.

Source: Budget Paper No 2 [p 151]

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[494] Visa Application Charge - uplift

The Government announced that it is increasing the base visa application charge (VAC) for all visa subclasses, with the exception of the Visitor (subclass 600) visa, by 5.4% from 1 July 2019. There will be no increase to second instalment VACs. This measure is estimated to increase revenue by $275 million over the period from 2018-19 to 2021-22.

Source: Budget Paper No 2 [p 12]

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[495] Trades Recognition Australia - full cost recovery

In the Budget, the Government it will provide $131.6 million over 5 years from 2018-19 to streamline and strengthen Trades Recognition Australia's (TRA's) oversight of skills assessments related to migration, employment and licensing purposes.

These activities will be fully cost recovered by the collection of fees from individual applicants. Fees will be collected by TRA rather than through Registered Training Organisations, as is currently the case, which will streamline interactions with Government. This will not alter the costs incurred or services provided to individual applicants, the Government said.

Under the revised arrangements, TRA will be responsible for certifying trade skills assessments sought by potential skilled migrants to Australia under the *Migration Act 1958*. This is designed to ensure that an applicant is able to perform at the required skill level for their nominated occupation in Australia.

Source: Budget Paper No 2 [p 71]

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[496] Aged care initiatives

The Government will provide $282.4 million over 5 years from 2018-19 for the release of an additional 10,000 home care packages across the 4 package levels. The Treasurer said this will bring to 40,000 the number of new packages announced over the last 18 months.

The Government is also providing a $320 million general subsidy boost in 2018-19 for residential aged care and 13,500 new residential care places.

Source: Budget Paper No 2 [p 101]

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SOCIAL SECURITY MEASURES

[497] One-off tax-free energy payment to pensioners

The Budget confirmed the Treasurer's announcement of 31 March 2019 that more than 3.9 million Australians will receive a one-off Energy Assistance Payment to help with their next energy bill and cost of living expenses.

The payment of $75 for singles and $125 for eligible couples ($62.50 for each member), who were eligible for qualifying payments on 2 April 2019 and who are resident in Australia, will be exempt from income tax and will be paid automatically before the end of the current financial year, subject to the passage of legislation [Labor has indicated it would likely support such measures].

The payment will be made to:

- 2.4 million Australians receiving the Age Pension;
- 744,000 recipients of the Disability Support Pension;
- 280,000 carers receiving the Carer Payment;
- 242,000 Parenting Payment Single recipients; and
- 225,000 veterans and their dependants receiving eligible payments from the Department of Veterans' Affairs.

Qualifying payments are the Age Pension, Carer Payment, Disability Support Pension, Parenting Payment Single, the Veterans' Service Pension and the Veterans' Income Support Supplement, Veterans' disability payments, War Widow(er)s Pension, and permanent impairment payments under the *Military Rehabilitation and Compensation Act 2004* (including dependent partners) and the *Safety, Rehabilitation and Compensation Act 1988*.

Source: Budget Paper No 2 [p 159]

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[498] Social security income to be automatically reported via Single Touch Payroll

The Government will automate the reporting of employment income for social security purposes through Single Touch Payroll (STP). The measure is expected to save $2.1 billion over 5 years from 2018-19.

From 1 July 2020, income support recipients who are employed will report income that is received during the fortnight, rather than calculating and reporting their earnings. Each fortnight, income data received through an expansion of STP data sharing arrangements will also be shared with the Department of Human Services, for recipients with employers utilising STP.

This measure will assist income support recipients by greatly reducing the likelihood of them receiving an overpayment of income support payments (and subsequently being required to repay it).

The Government says the efficiencies from this measure will be derived through more accurate reporting of incomes. This measure will not change eligibility criteria or maximum payment rates. The resulting efficiencies will be redirected by the Government to repair the Budget and fund policy priorities

Date of effect

1 July 2020.

Source: Budget Paper No 2 [p 158]

STP expansion

The Government will provide $82.4m over 4 years from 2019-20 (including capital funding of $16m over 4 years from 2019-20) to the ATO and the Department of Veterans' Affairs to support the expansion of the data collected through STP by the ATO and the use of this data by Commonwealth agencies.

STP data will be expanded to include more information about gross pay amounts and other details. These changes will reduce the compliance burden for employers and individuals reporting information to multiple Government agencies.

Source: Budget Paper No 2 [p 170]

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APPENDIX: POST-BUDGET LEGISLATION LOGJAM

[499] Bills still before Parliament at Budget time, plus outstanding draft legn, consultations, etc

Federal Parliament resumed on Tuesday, 2 April 2019, the day the 2019-20 Federal Budget was handed down. It is likely to be a very short Parliamentary session with a Federal election imminent. As at 2 April 2019, a significant number of tax and related Bills ***covering important measures***remain before Parliament. Add to that the volume of draft legislation on foot and various consultations and reports etc, and there is a substantial amount of unfinished business on the table.

This Appendix lists the many Bills (tax, super and other measures) still stuck in Parliament (some more important than others). It is **possible that some/most/perhaps all of these Bills will lapse when the Federal election is called** [it is widely anticipated that the Prime Minister will visit the Governor-General over the weekend of 6-7 April 2019 to advise that he will call a Federal election (probably on 11 or 18 May 2019)].

There is also a large volume of draft legislation, consultation papers, reports (including MYEFO), and reviews that are also outstanding that could lead to legislative amendments and these are outlined in this Appendix.

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[500] Tax and related Bills still before Parliament

The list below contains the tax and related Bills still before Parliament as at 2 April 2019. It is **possible that some/most/perhaps all of these Bills will lapse when the Federal election is called**.

- ***Treasury Laws Amendment (Increasing the Instant Asset Write-Off for Small Business Entities) Bill 2019*** was introduced in the House of Reps on 13 February 2019. It proposes to amend the tax law to increase the threshold below which amounts can be immediately deducted under these rules from $20,000 to $25,000 from 29 January 2019 until 30 June 2020, and extend by 12 months to 30 June 2020 the period during which small business entities can access expanded accelerated depreciation rules (instant asset write-off). The Bill is still before the House of Reps.
- ***Treasury Laws Amendment (2019 Measures No 1) Bill 2019*** - proposes to: (i) increase the maximum number of allowable members in SMSFs from 4 to 6; (ii) make miscellaneous GST and FHSS amendments. The Measures No 1 Bill and the ***Excise Tariff Amendment (Supporting Craft Brewers) Bill 2019*** would amend the Excise Tariff Act and the Excise Act to extend concessional rates of excise to brewers that supply draught beer in kegs or other containers that have a capacity of 8 litres or more that are designed for use with a pressurised gas delivery system or pump delivery system. The Bills are still in the House of Reps.
- ***Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No 2) Bill 2018***; ***Foreign Acquisitions and Takeovers Fees Imposition Amendment (Near-new Dwelling Interests) Bill 2018***. The Measures No 2 Bill proposes to: (i) remove the entitlement to the CGT main residence exemption for foreign residents; (ii) modify the foreign resident CGT regime to clarify that, for the purpose of determining whether an entity's underlying value is principally derived from TARP, the principal asset test is applied on an associate inclusive basis; (iii) amend the ITAA 1997 and the TAA to provide an additional affordable housing capital gains discount. The extra discount of up to 10% (taking

the CGT discount from 50% to 60%) would apply if a CGT event occurs to an ownership interest in residential premises that has been used to provide affordable housing. Consequential amendments are proposed by the *Foreign Acquisitions and Takeovers Fees Imposition Amendment (Near-new Dwelling Interests) Bill 2018* to the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* in order to impose the amount of the fee payable by developers. *Date of effect*: generally from 1 July 2017, although the removal of the CGT main residence exemption for foreign residents applies to CGT events that happen on or after 9 May 2017 (the date they were announced), subject to a 30 June 2019 transitional rule. See 2018 WTB 6 [144]. Both Bills had passed the House of Reps without amendment and are currently before the Senate.

- ***Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018*** – The Bill seeks to ensure that rules tackling multinational tax avoidance, such as the Diverted Profits Tax (DPT) and the Multinational Anti-Avoidance Law (MAAL), "apply to all relevant entities". The significant global entity (SGE) definition in the ITAA 1997 will be broadened - see 2018 WTB 40 [1305]. The Bill will also amend the CbC reporting requirements to apply to a subset of significant global entities referred to as CbC reporting entities. By amending the thin cap rules, it also seeks to prevent multinationals from manipulating the values of their assets to increase their debt deductions and reduce their tax payable in Australia. The Bill also seeks to level the playing field for Australian hotel bookings by ensuring offshore sellers of hotel accommodation in Australia calculate their GST turnover in the same way as local sellers. It also removes the luxury car tax currently imposed on re-imported cars refurbished overseas. The Bill also makes changes to the R&D Tax Incentive eg: (i) to permanently increase the R&D expenditure threshold from $100 million to $150 million; (ii) link the R&D tax offset for refundable R&D tax offset claimants to their corporate tax rates plus a 13.5 percentage point premium; (iii) cap the refundability of the R&D tax offset at $4 million per annum. The Bill is still before the House of Reps, although the Senate Economics Legislation Committee report into the Bill has recommended that the **Senate defer consideration of the Bill** until further examination and analysis of the impact of Schedules 1-3 (dealing with the R&D tax incentive amendments) is undertaken. In particular, the Committee recommended that: (i) the approach to the cap on the refundable portion of the R&D tax incentive is refined, noting investment decisions already taken; and (ii) the formula for R&D intensity is refined, noting inherent differences in R&D intensity across industries and impacts on businesses with large operating costs. The Committee considers that, as currently drafted, the proposed intensity measure has possible unintended consequences that may disadvantage a range of Australian R&D entities.
- ***Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018***: see 2018 WTB 40 [1304]. Related Bills are the ***Income Tax (Managed Investment Trust Withholding Tax) Amendment Bill 2018*** and ***Income Tax Rates Amendment (Sovereign Entities) Bill 2018***. The Bills have been passed by the House of Reps (the Foreign Investors Bill with 2 minor amendments, the other 2 Bills without amendment). They have not

yet been introduced in the Senate but the Senate Economics Legislation Committee has recommended they be passed. The Bills propose changes to the: (i) non-concessional MIT income by increasing the MIT withholding rate on fund payments that are attributable to non-concessional MIT; (ii) thin capitalisation by modifying the thin capitalisation rules to prevent double gearing structures; (iii) super funds for foreign residents withholding tax exemption by limiting the withholding tax exemption for superannuation funds for foreign residents; and (iv) sovereign immunity to limit access to tax concessions for foreign investors by codifying and limiting the scope of the sovereign immunity tax exemption.

- ***Treasury Laws Amendment (2018 Measures No 2) Bill 2018***. The Bill proposes to: (i) make amendments to the venture capital and early stage investor tax concession provisions in the ITAA 1997 to ensure they operate as intended with respect to CGT transactions, MITs and the early stage investor tax offset. *Date of effect*: 1 July 2018; (ii) extend the regulation-making powers under the *Corporations Act 2001* to provide exemptions from obtaining an Australian Financial Services Licence (AFSL) or an Australian Credit Licence (ACL) for the purposes of testing financial products and services under certain conditions. *Date of effect*: Day after Royal Assent. See 2018 WTB 6 [147]. The Bill had passed the House of Reps without amendment and is currently before the Senate.
- ***Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019*** - proposes to make amendments: (i) to ensure directors are held accountable for misconduct by preventing directors from improperly backdating resignations or ceasing to be a director when this would leave the company with no directors; (ii) allow the Commissioner to collect estimates of anticipated GST liabilities and make company directors personally liable for their company's GST liabilities in certain circumstances; (iii) extend the operation of s 8AAZLG of the TAA to authorise the Commissioner to retain tax refunds where a taxpayer has failed to lodge a return or provide other information to the Commissioner that may affect the amount the Commissioner refunds; (iv) introduce new phoenixing offences. The Bill is still before the House of Reps.
- ***Treasury Laws Amendment (Mutual Reforms) Bill 2019*** - introduced in the Senate, the Bill would introduce a definition of a mutual entity into the Corporations Act. The Bill would also implement elements of the reforms announced in the 2017-18 MYEFO measure *Debt-Equity rules - allowing debt tax treatment for Tier 2 capital issued by customer-owned banks* by making consequential amendments to the ITAA 1936 and the ITAA 1997. The Bill is still before the Senate.
- ***Treasury Laws Amendment (2019 Petroleum Resource Rent Tax Reforms No 1) Bill 2019*** - proposes to: (i) lower the uplift rates that apply to certain categories of carried-forward expenditure; (ii) remove onshore projects from the PRRT regime from 1 July 2019. The Bill is still before the House of Reps although the Senate Economics Legislation Committee has recommended the Bill be passed.
- ***Social Services Legislation Amendment (Maintaining Income Thresholds) Bill 2018*** was introduced on 10 May 2018 (see 2018 WTB 20 [612]) and is still before the House of Reps. It proposes to amend the: (i) *A New Tax System (Family Assistance) Act 1999* to: pause indexation of the end-of-

year Family Tax Benefit (FTB) supplements for 3 years from 1 July 2018; and extend the pause on indexation of the FTB Part A higher income free area and the FTB Part B primary earner income limit for a further year from 1 July 2020; and (ii) *Paid Parental Leave Act 2010* to extend the pause on indexation of the Parental Leave Pay and Dad and Partner Pay income limits for a further year from 1 July 2020.

- ***Social Security Legislation Amendment (Overseas Welfare Recipients Integrity Program) Bill 2019***, introduced in the House of Reps on 13 February 2019, proposes a proof of life requirement for certain overseas social security recipients aged 80 years and over. It will apply to those in receipt of an Age Pension, Carer Payment, Disability Support Pension, Widow B Pension or Wife Pension. The Bill is still in the House of Reps.
- ***Commonwealth Registers Bill 2019*** would create a modern business registry regime and introduce a director identification number (DIN) requirement. The Bill is still in the House of Reps.
- ***Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019*** will also introduce a DIN requirement as another Government initiative to prevent phoenix activity. A DIN is a unique identifier that a director will keep forever meaning it will provide traceability of a director's profile and relationships across companies and over time. This will provide greater insights to regulators, businesses and individuals on the identity and affiliations of directors. The Bill is still in the House of Reps.
- ***Customs Amendment (Peru-Australia Free Trade Agreement Implementation) Bill 2018*** was introduced in the House of Reps on 19 September 2018. It proposes to amend the *Customs Act 1901* to give effect to the Peru-Australia Free Trade Agreement (PAFTA). Complementary amendments will also be made to the *Customs Tariff Act 1995* by the ***Customs Tariff Amendment (Peru-Australia Free Trade Agreement Implementation) Bill 2018***, also introduced on 19 September, to give effect to the preferential treatment of customs duty in accordance with PAFTA. Both Bills are still before the House of Reps.
- ***Customs Tariff Amendment (Craft Beer) Bill 2019*** was introduced in the House of Reps on 14 February 2019 and proposes to amend the Customs Tariff Act 1995 to lower the rate of excise-equivalent customs duty applied to beer imported in certain size containers. The Bill is still before the House of Reps.
- ***Customs Amendment (Immediate Destruction of Illicit Tobacco) Bill 2019*** was introduced in the House of Reps on 14 February 2019. The Government announced in the 2018-19 Federal Budget that it would tighten tobacco border controls by introducing a prohibited import control for tobacco products through the Black Economy Package – Combatting Illicit Tobacco (the Black Economy Package). From 1 July 2019, it is proposed that tobacco products will be prohibited imports under the *Customs (Prohibited Imports) Regulations 1956*. The Bill is still before the House of Reps.
- ***Taxation Administration Amendment (Corporate Tax Entity Information) Bill 2017*** **[Private Senator's Bill]** - was introduced in the Senate on 14 August 2017 by former ALP Senator Katy Gallagher – see 2018 WTB 28 [906]. It was passed by the Senate on 25 June 2018 with amendments

from the Greens. The amendments reduce the reporting threshold for private corporate entities from $100 million to $50 million, and remove the grandfathered reporting exemption for large proprietary companies. The Bill is currently before the House of Reps. The Bill, as introduced in the Senate, seeks to amend the TAA to provide that the threshold for the public reporting of corporate entity tax information by the ATO for private corporate entities be lowered from $200 million to $100 million.

- ***Judiciary Amendment (Commonwealth Model Litigant Obligations) Bill 2017*** **[Private Senator's Bill]** - was introduced by then Senator Leyonhjelm on 15 November 2017 - see 2018 WTB 28 [907]. It 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; and
  - 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.
  - The Bill seeks to subject Commonwealth litigants (which include the ATO) to enforceable model litigant obligations.

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[501] Superannuation and financial services measures still before Parliament

The list below contains the superannuation and financial services Bills still before Parliament as at 2 April 2019. It is **possible that some/most/perhaps all of these Bills will lapse when the Federal election is called**.

- ***Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 1) Bill 2017*** - proposes to enhance APRA's powers and replace the "scale test" with an "outcomes test" to require MySuper trustees to undertake an annual determination of member outcomes: see 2017 WTB 39 [1374]. The Bill was amended in the Senate (it was introduced there in September 2017) to incorporate Royal Commission recommendations and to extend the outcomes test to choice products as well as MySuper products – see 2019 WTB 7 [199]. An amendment also seeks to put beyond doubt that the portfolio holdings disclosure rule will apply to all choice products, even where there is a no investment option. There was no carve-out for platform products in the original Bill. The Bill is currently before the House of Reps.
- ***Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 2) Bill 2017*** - 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*: 1 July 2018. The Bill had been passed by the House of Reps without amendment and is currently before the Senate.

- ***Treasury Laws Amendment (2018 Superannuation Measures No 1) Bill 2018*** had passed the House of Reps without amendment and is before the Senate. The Bill contains amendments re: (i) A one-off 12-month amnesty will enable employers to self-correct historical underpayments of Super Guarantee (SG) amounts without incurring additional penalties that would normally apply; (ii) High-income employees with multiple employers will be able to opt-out of the Super Guarantee regime to avoid unintentionally breaching the $25,000 concessional contributions cap; (iii) The NALI provisions in s 295-550 of the ITAA 1997 will be expanded so that superannuation funds (including SMSFs) are taxed at 45% for related-party schemes involving non-arm's length expenses not incurred (eg reduced interest rates); (iv) A member's share of the outstanding balance of certain LRBAs will be included in the member's "total superannuation balance" (TSB) under s 307-230 of the ITAA 1997 - see 2018 WTB 22 [677]. The 2018-19 MYEFO statement of December 2018 confirmed that the minimum penalty will be increased from 50% to 100% of the SG charge for employers who could have come forward under the proposed SG amnesty (from 24 May 2018 until 23 May 2019) but did not and are subsequently caught.
- ***Treasury Laws Amendment (Putting Members' Interests First) Bill 2019***, introduced in the House of Reps on 20 February 2019, proposes to amend the SIS Act to prevent insurance within superannuation from being provided on an opt-out basis for: (i) account balances less than $6,000; and (ii) members under 25 years old (who begin to hold a new product on or after 1 October 2019). The Bill is still before the House of Reps.
- ***Superannuation (Objective) Bill 2016*** - had passed the House of Reps without amendment and is currently before the Senate. The Bill proposes to enshrine the primary objective of the superannuation system in law - see 2016 WTB 47 [1627].
- ***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 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 (Design and Distribution Obligations and Product Intervention Powers) Bill 2018*** was introduced in the House of Reps on 20 September 2018 – see 2018 WTB 40 [1314]. It proposes to amend the Corporations Act to introduce design and distribution obligations in

relation to financial products. The Bill is still before the House of Reps.

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[502] Outstanding draft legn, consultation papers, reports, reviews - Part 1

As at 2 April 2019, outstanding draft legislation, consultation papers, reports, reviews includes:

- **Changes to Div 7A**: Treasury released a Consultation Paper on 22 October 2018 on proposed changes to Div 7A of the ITAA 1936 - see 2018 WTB 45 [1457]. The amendments involve:
  - simplification of the Div 7A loan rules;
  - changes to the treatment of unpaid present entitlements ("UPEs");
  - enacting a "self-correction mechanism" for inadvertent errors;
  - providing safe harbour rules for the use of assets; and
  - other minor technical amendments.
  - The changes are proposed to apply from 1 July 2019.
  - ***Submissions*** were due by 21 November 2018.
- **Partnerships, the rights to future income and CGT - draft legn**: The Government released draft legislation on 12 October 2018 to give effect to its 2018-19 Budget announcement to remove access to the small business CGT concessions for partners that alienate their income by creating, assigning or otherwise dealing in rights to the future income of the partnership – see 2018 WTB 44 [1441]. The proposed amendments will create an additional basic condition for partnerships that must be satisfied in relation to a capital gain in order to obtain the small business CGT concessions in Div 152. The changes will apply from 8 May 2018 (ie the date of the Budget announcement). ***Submissions*** were due by 31 October 2018.
- **Stapled structures: additional integrity rules - draft legn**: The Government on 7 August 2018 released draft legislation setting out the conditions stapled entities must comply with to access the infrastructure concession and/or transitional arrangements for its proposed changes to the tax treatment of stapled structures – see 2018 WTB 34 [1110]. ***Submissions*** were due by 14 August 2018.
- **Digital economy and corporate tax system - Treasury paper**: On 2 October 2018, the Government released a discussion paper seeking views on options to strengthen the integrity of the corporate tax system in the age of the digital economy and the growing economic dominance of internet-based businesses, such as Facebook, Amazon, Netflix and Google – see 2018 WTB 42 [1372]. The Government is concerned that some very profitable, highly digitalised companies pay very little tax in the countries in which they do business because the majority of their profit-generating assets and labour are located offshore. ***Submissions*** were due by 30 November 2018. In March 2019, the Government released its response to digital economy consultation it had undertaken following the release of the

discussion paper – see 2019 WTB 12 [374]. The Treasurer announced that the Government will not proceed with interim measures, such as a digital services tax (DST), "at this time" but will continue with the multilateral process led by the OECD.

- **Parliamentary committee looks at implications of removing refundable franking credits**: The House of Reps Standing Committee on Economics is holding an inquiry into the implications of removing refundable franking credits – see 2018 WTB 40 [1292]. [Labor had proposed such a policy in an announcement on 13 March 2018 - see 2018 WTB 11 [282]. This would mean that franking tax offsets would be non-refundable. As such, a resident individual (or super fund) would only be able to use the franking credits on their grossed-up dividend income to offset their tax liability for an income year, with no cash refund for any excess credits. Labor's changes would apply from 1 July 2019.] The Committee will examine what impacts the removal of refundable franking credits would have, particularly on retirees who have made long term retirement saving decisions based on their ability to claim refunds on their franking credits and whether it will compromise their financial security. ***Submissions*** were due by 2 November 2018.
- **Early recovery of small business tax debts: ATO to be scrutinised**- Minister for Small and Family Business, Michaelia Cash has asked the Australian Small Business and Family Enterprise Ombudsman (ASBFEO), Kate Carnell AO, to look into the ATO's practices in pursuing early recovery of tax debts from small businesses who are in dispute with the ATO – see 2019 WTB 10 [298]. The Minister said she was determined to make sure the ATO "treats small business fairly".
- **Review of Tax Practitioners Board announced**: On 5 March 2019, the Government announced an independent review of the effectiveness of the Tax Practitioners Board and the *Tax Agent Services Act 2009* to ensure that tax agent services are provided to the public in accordance with appropriate professional and ethical standards – see 2019 WTB 10 [302]. Submissions are due by 12 April 2019.
- **Anti-avoidance rules for circular trust distributions - draft legn**: The Government released draft legislation on 12 October 2018 to give effect to its 2018-19 Budget measure to extend to family trusts the anti-avoidance rule that applies to closely held trusts which undertake circular trust distributions – see 2018 WTB 44 [1439]. Where family trusts act as beneficiaries of each other in a "round robin" arrangement, a distribution can be ultimately returned to the original trustee in a way that avoids any tax being paid on that amount. The proposed changes are intended to empower the ATO to pursue taxpayers entering into these arrangements and impose tax on such distributions at the top marginal tax rate. The changes are proposed to apply from 1 July 2019. ***Comments*** were due by 31 October 2018.
- **Deductions to be disallowed for vacant land - draft legn**: The Government released draft legislation on 15 October 2018 to give effect to its 2018-19 Federal Budget measure to disallow deductions for expenses associated with holding vacant land – see 2018 WTB 44 [1440]. The changes will deny deductions for losses or outgoings incurred to the extent they relate to holding vacant land, although there will be a number of important exceptions and exclusions to this general rule. The amendments are proposed to apply to losses and outgoing incurred on or after 1 July 2019, regardless

of whether the land was first held before that date. ***Submissions*** were due by 31 October 2018.

- **Review into ATO use of garnishee notices – IGT report released**: The Acting Inspector-General of Taxation and Taxation Ombudsman, on 13 March 2019, released the review investigation report into the ATO's use of garnishee notices – see 2019 WTB 11 [336]. The review was undertaken after serious allegations were made by both a current and former ATO officer on the ABC *Four Corners* program on 9 April 2018 about the ATO's inappropriate use of garnishee notices upon small business. The report made 4 recommendations, all of which were accepted and agreed to by the ATO. In responding to the report, the Australian Small Business and Family Enterprise Ombudsman Kate Carnell said the number of ATO garnishee debt-recovery notices released each day "is of great concern" to her office.
- **Black economy – reportable payment system to be extended to road freight, IT and security providers – draft legn**: The Government on 23 July 2018 released draft legislation to further expand the taxable payment reporting system (TPRS) to the security, road freight, and information technology industries, to ensure payments made to contractors in these industries are reported to the ATO - see 2018 WTB 32 [1038]. This measure was previously announced in the 2018-19 Federal Budget (see 2018 WTB 19 [560]) as part of other measures aimed at tackling the black economy. *Date of effect*: The proposed amendments would apply to consideration that is provided on or after 1 July 2019, whether under an existing ongoing arrangement or otherwise, and regardless of the time the supply occurred or the service is provided. However, they would not apply where the entity is merely liable to provide consideration prior to 1 July 2019, if no consideration is provided on or after 1 July 2019. ***Comments*** were due by 17 August 2018.
- **Individual tax residency rules - guide**: On 25 September 2018, the Board of Taxation publicly released its Consultation Guide to seek public views on options for reforming the individual income tax residency rules – see 2018 WTB 41 [1335]. The Consultation Guide includes options for a 2-step model for individual tax residency. ***Submissions*** were due by 26 October 2018.
- **Remote area tax assistance: Productivity Commission issues paper**: On 12 March 2019, the Productivity Commission released an issues paper seeking information from interested stakeholders on the review into remote area tax assistance – see 2019 WTB 11 [345]. The Commission has been requested to determine the appropriate ongoing form and function of the zone tax offset, FBT remote area concessions, and Remote Area Allowance. Submissions are due by 29 April 2019.
- **Concessional loans between tax exempt entities - draft legn**: The Government announced in the 2018-19 Budget that, 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. Treasury released draft legislation on this measure on 12 October 2018 – see 2018 WTB 44 [1442].
- **MYEFO 2018-19**statement released on 17 December 2018 – see 2019 WTB 1 [2].
  - ***Disclosure of business tax debts*** - the Government intends to amend its proposal that will enable the ATO to disclose business tax debts to registered credit reporting bureaus (CRBs) where businesses have not effectively engaged with the ATO to manage their debt (subject to

certain conditions and safeguards). The measure is currently contained in draft legislation: see 2018 WTB 2 [46]. The proposed changes will: (i) increase the threshold of business tax debts that can be disclosed to CRBs from $10,000 to $100,000; (ii) introduce a requirement that the Minister consult with the Australian Information Commissioner before changes to the reporting criteria are made; and (iii) amend the start date of the measure to the day after Royal Assent of the enabling legislation.

- ***OECD hybrid mismatch rules*** - MYEFO confirmed minor amendments to the OECD hybrid mismatch measures, as originally announced in the 2016-17 and 2017-18 Budgets.
- ***MIT withholding on residential and agricultural property***- MYEFO confirmed the Government's intention to apply a final 30% withholding tax rate to income and capital gains from agricultural and residential property (other than certain affordable and disability housing) held in a Managed Investment Trust (MIT) from 1 July 2019. This measure is contained in the *Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018*: see 2018 WTB 40 [1304].
- ***Super guarantee amnesty*** – MYEFO confirmed that the minimum penalty will be increased from 50% to 100% of the super guarantee (SG) charge for employers who could have come forward under the proposed SG amnesty (from 24 May 2018 until 23 May 2019) but did not and are subsequently caught. The proposed SG amnesty is contained in the *Treasury Laws Amendment (2018 Superannuation Measures No 1) Bill 2018* (see 2018 WTB 22 [677]), which is still before the Senate.
- ***Super contributions work test exemption*** - will be extended to allow recent retirees who use the work test exemption in the year they turn age 65 to access the bring forward arrangements to make non-concessional contributions up to $300,000. *Date of effect*: 1 July 2019. See also 2018 WTB 51 [1646].

- **Sharing economy reporting system**: The Government has released a Consultation Paper seeking views on the possible design characteristics of a reporting regime to provide information on Australians who receive an income from sharing economy websites – see 2019 WTB 4 [92]. ***Comments*** were due by 22 February 2019.
- **Tax treatment of granny flats**: The Government has requested the Board of Taxation undertake a review of the tax treatment of granny flat arrangements and recommend any potential changes – see 2018 WTB 50 [1594]. The Board has commenced consultations with stakeholders which will continue through April 2019. A final report is due to the Government in the second half of 2019.
- **Amendments to Corporate Tax Transparency Code: Consultation Paper:**The Board of Taxation commenced a post-implementation review of the Corporate Tax Transparency Code (TTC) in 2018. Following consultation with a wide range of stakeholders, the Board is proposing amendments to the TTC which are outlined in a Consultation Paper that was released on 26 February 2019 – see 2019 WTB 9 [262]. The Board is proposing 5 sets of changes eg minimum standards be supplemented, and

new minimum standards be introduced. Submissions were due by 26 March 2019.

- **Tendering for Govt contracts - ATO statement of tax record**: On 20 November 2018, the Government released its Draft Procurement Connected Policy Guidelines for consultation as part of its Black Economy measures announced in the 2018-19 Federal Budget: see 2018 WTB 49 [1557]. From 1 July 2019, businesses seeking to tender for Commonwealth Government procurement contracts over $4 million (inclusive of GST) will be required to provide a statement of tax record from the ATO that indicates that they are generally compliant with their tax obligations. ***Comments*** were due by 21 December 2018. The new Government procurement-connected policy was released on 26 March 2019 by the Treasury – see 2019 WTB 13 [408].
- **Allocation of tax debts to running balance accounts: draft legn released**: On 27 February 2019, the Government released exposure draft legislation proposing to amend the running balance account (RBA) rules to enable the ATO to account for more tax debts in RBAs – see 2019 WTB 9 [266]. The TAA would be amended to permit the Commissioner to allocate to a RBA amounts that are the balance of multiple taxation liabilities or credits, and allow amounts within a RBA to be transferred to a different RBA. The draft legislation also proposes technical amendments to the superannuation tax law. Submissions were due by 27 March 2019.
- **Improving black economy offences and enforcement**: The Government on 22 November 2018 released a Consultation Paper in another step towards implementing its response to the recommendations of the Black Economy Taskforce final report, as announced part of the 2018-19 Budget – see 2018 WTB 49 [1559]. The Government is consulting stakeholders on how it could implement the Black Economy Taskforce recommendation to introduce a modern offences regime to tackle the black economy.
- **Earnout arrangements**: The ATO on 3 December 2018 released a Discussion Paper for comment on Issues concerning earnout arrangements (excluding arrangements that create look-through earnout rights) – see 2018 WTB 51 [1629]. The Board of Taxation is currently conducting a post-implementation review of the tax treatment of contingent consideration (including earnouts). In light of the Board's review, the ATO is seeking feedback on the need and priority for additional public advice and guidance on the income tax treatment of arrangements (commonly referred to as 'earnouts') entered into in the context of the sale of a business asset or interests in an entity carrying on a business. ***Comments*** were due by 1 February 2019.

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[503] Outstanding draft legn, consultation papers, reports, reviews - Part 2

As at 2 April 2019, outstanding draft legislation, consultation papers, reports, reviews includes:

- **Taxation of income for an individual's fame or image**: The Government is seeking comments from interested parties on its proposed approach to implementing the 2018-19 Budget measure: *Tax Integrity - taxation of income for an individual's fame or image*, which are proposed to apply from 1 July 2019. A Consultation Paper was released on 13 December 2018 - see 2018 WTB 52 [1677]. The measure aims to 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 that individual and be taxed at their individual marginal tax rates. ***Comments*** were due by 31 January 2019.
- **House Committee performance review of ATO's Annual Report 2016-2017**: The House of Reps Standing Committee on Tax and Revenue on 21 February 2019 tabled its performance review of the ATO's Annual Report 2016-2017 – see 2019 WTB 8 [223]. The Committee made 37 recommendations to ensure there is consistent agency-wide benchmarking and reporting against core Reinvention commitments on fairness to taxpayers and on digital functionality. The report also recommends for improved data disaggregation on small business debt, including on garnishees, the restructuring of the ATO's appeals, dispute resolution and compensation processes, refinement of key aspects of tax law, and improvements to the ATO's communications and information strategies.
- **Early release of super benefits**: On 21 November 2018, the Government released an Issues Paper proposing draft changes to the rules governing the early release of superannuation benefits on compassionate grounds and financial hardship grounds under the SIS Regulations – see 2018 WTB 49 [1570]. ***Comments*** are due by 15 February 2019. The related proposal to allow victims of crime to access an offender's superannuation is being handled through a separate process: see Treasury consultation papers released on 28 May 2018 – see 2018 WTB 23 [717].
- **Super law refinements for market linked pensions and death benefits: draft legislation**: On 27 February 2019, the Government released exposure draft legislation and regulations proposing technical amendments to the superannuation tax law to address some "minor", but important issues, as part of the ongoing implementation of the super reforms – see 2019 WTB 9 [278]. Amendments include: (i) correct a valuation error under the pension transfer balance cap rules where a market-linked pension is commuted and rolled over, or involved in a successor fund transfer; (ii) defined benefit pensions - the pension transfer balance cap valuation rules will be amended to accommodate certain capped defined benefit pensions (eg reversionary pensions or the reclassification of invalidity pensions) that are permanently reduced following an initial higher payment. The Draft Bill would also amend s 294-145 of the ITAA 1997 to correct an error in the way that market-linked income streams (MLIS) are valued under the $1.6m pension transfer balance cap when they are commuted or rolled over, resulting in a nil debit in the individual's transfer balance account. Submissions were due by 27 March 2019.
- **Compensation for defective ATO administration: Govt review announced**: The Government has announced that Mr Robert Cornall, a former Secretary of the Attorney-General's Department, will lead a review of the Scheme for the Compensation for Detriment Caused by Defective Administration (CDDA Scheme) – see 2019 WTB 9 [265]. The Government said it commissioned the review to consider the

operation by the ATO of the CDDA Scheme in relation to small business.

- **Banking Royal Commission final report released; Govt to act on all 76 recommendations**: The Government on 4 February 2019 released the final report of the Royal Commission into misconduct in the banking, superannuation and financial services industry, as well as the Government's response. The Treasurer said the Government will take action on all 76 of the recommendations made by Kenneth Hayne in the final report. Importantly, the Royal Commission did not call for a mandatory structural separation between the manufacture or sale of financial products, and the provision of financial advice. However, the grandfathering provisions for conflicted remuneration will be repealed. In relation to superannuation, there are 9 specific recommendations covering trustees' obligations, nominating default funds and regulation, including civil penalties for breaches of covenants.
- **Super work test exemption for contributions by recent retirees - draft legn**: The Government released draft legislation in early Oct 2018 to give effect to its 2018-19 Federal Budget measure to provide a 1-year exemption from the work test for superannuation contributions by recent retirees aged 65-74 with total superannuation balances less than $300,000 – see 2018 WTB 42 [1382]. While the SIS Regulations have been amended to give effect to this measure (see 2018 WTB 51 [1646]), other draft amendments proposed for s 292-85 of the ITAA 1997 in relation to the bring forward rule are yet to be introduced.
- **Productivity Commission inquiry into super**: On 10 January 2019, the Productivity Commission released the final report of its inquiry into the superannuation system recommending a package of major reforms to address multiple super accounts and default funds that underperform – see 2019 WTB 2 [42]. The final report made 46 findings and 31 recommendations for policy changes. The Government responded to certain aspects of the recommendations as part of its response to Hayne Banking Royal Commission on 4 February 2019.
- **Super: Sole purpose test: APRA to review and update guidance**: APRA has indicated that it intends to undertake a review of the sole purpose test in s 62 of the SIS Act for particular cases or circumstances where compliance has been called into question – see 2019 WTB 13 [423]. APRA said the review, which will involve ASIC as appropriate, may also lead to recommendations as to whether the law could be clarified to better meet the intent of the sole purpose test.
- **Retirement income disclosure**: On 10 December 2018, the Government released a Retirement Income Disclosure Consultation Paper as part of its proposed retirement income framework – see 2018 WTB 52 [1690]. The consultation paper proposes a simplified disclosure document with a range of standardised metrics to assist retirees to assess how a retirement income product aligns with their own preferences in relation to potential income, variations in income, access to capital, death benefits and risk management. ***Submissions*** were due by 28 March 2019.
- **Financial services: ending grandfathered commissions - draft regulations released**: The Government has released Exposure Draft Regulations to ensure that the ending of grandfathered conflicted remuneration is rebated to affected retail customers or passed on in the form of a monetary

benefit. The Draft Regulations, together with the Draft Bill (released on 22 February 2019: see 2019 WTB 8 [239]), implement the Government's response to Recommendation 2.4 of the Banking Royal Commission to ban all conflicted remuneration. Submissions are due by 25 April 2019.

- **Reforming ABN system; possible renewal fee - Consultation paper**: On 20 July 2018, the Government released a Consultation Paper for comment on the 2018-19 Budget measure to strengthen and modernise the ABN system – see 2018 WTB 31 [1006]. The Paper also seeks views on possible changes to the ABN system including adjusting ABN entitlement rules, imposing conditions on ABN holders, and introducing a renewal process including a renewal fee. ***Submissions*** were due by 31 August 2018.
- **Senate report on tax practices of aged care providers**: On 27 November 2018, the Senate Economics References Committee released its report on the financial and tax practices of for-profit aged care providers – see 2018 WTB 50 [1601]. The Committee examined the financial and tax practices of for-profit aged care providers, with particular reference to the use of public money and any tax avoidance or aggressive tax minimisation strategies. The Committee recommended that the Royal Commission into Aged Care Quality and Safety (see 2018 WTB 43 [1408]) should consider the tax and financial structures of aged care providers.
- **Taxation of insurance companies**: On 5 November 2018, the Government released a Consultation Paper on the tax impacts of implementing the new accounting standard for insurance contracts (AASB17), which will apply for annual reporting periods beginning on or after 1 January 2021 – see 2018 WTB 47 [1503]. AASB17 adopts the new international accounting standard for insurance contracts IFRS17. The consultation paper aims to obtain information and data on the tax impacts of implementing AASB17 to inform the Government's consideration of whether and what changes may be needed to the tax law. ***Submissions*** were due by 31 January 2019.
- **Conduct standards for charities operating overseas - draft regs**: On 13 August 2018, Treasury released draft regulations proposing external conduct standards that charities registered with the ACNC will need to comply with when operating outside Australia. Four standards are proposed – see 2018 WTB 35 [1143]. The proposed measure would commence on the latter of 1 July 2019 and the end of the last day of the disallowance period. ***Submissions*** were due by 21 September 2018.
- **Remote area tax assistance**: In November 2018, the Treasurer announced that the Productivity Commission has been requested to undertake a review into remote area tax assistance eg Zone Tax Offset, FBT remote area concessions and Remote Area Allowance – see 2018 WTB 50 [1600]. The review commenced in February 2019 and the Commission is expected to report to the Government within 12 months. On 12 March 2019, the Commission released an Issues Paper seeking information from interested stakeholders on the review into remote area tax assistance. In particular, the Commission is to:
    - examine the operation of the zone tax offset and FBT remote area concessions, including the levels of assistance provided, indexation and the boundaries of eligible areas and prescribed

zones;
  - examine the economic and employment impacts of the zone tax offset, FBT remote area concessions, and Remote Area Allowance, including the effect of applying indexation, in regional Australia;
  - examine the operation of the Remote Area Allowance, which extends the benefits of the zone tax offset to income support recipients in remote zones;
  - consider whether the zone tax offset, FBT remote area concessions, and the Remote Area Allowance are delivering on their policy objectives and whether those objectives remain appropriate in a contemporary Australia;
  - consider if businesses in remote areas should be provided with similar support; and
  - consider if there are alternative mechanisms to better provide this support to Australians residing in specified geographic areas.
  - Submissions on the Issues Paper are due by 29 April 2019.
- **Tier 2 capital instruments**: On 21 January 2019, the Government released draft regulations to amend the *Income Tax Assessment Regulations 1997* to align the tax treatment of Tier 2 capital instruments convertible into mutual equity interests (MEI) with those convertible into ordinary shares – see 2019 WTB 4 [94]. ***Comments*** were due by 11 February 2019.
- **CCIVs**: The Government on 17 January 2019 released for public consultation 2 Draft Bills that implement the tax and regulatory components of the Corporate Collective Investment Vehicle (CCIV) regime – see 2019 WTB 3 [60]. This consultation allows stakeholders the ability to assess the complete package of reforms to implement the CCIV. ***Comments*** were due by 28 February 2019.
- **Tax rules on agricultural investment**: The House of Reps Standing Committee on Agriculture and Water Resources has tabled its report into the issue of superannuation fund investment in Australian agriculture - see 2018 WTB 52 [1676]. It recommends that the Government investigate the following to reduce the impact of foreign investment and taxation rules on agricultural investment: (i) Reviewing the rules regarding foreign investment advertising requirements and managed investment trust tax rates, and consider any unintended consequences when applied to investment in agriculture by companies investing on behalf of foreign interests or in tandem with domestic investors; and (ii) Engaging with state and territory governments regarding the impact of stamp duty and land tax on agricultural investment, while investigating options for taxation offset relief at the Commonwealth level in appropriate circumstances.
- **Miscellaneous amendments: draft legn released**: Treasury has released draft miscellaneous amendments to the competition, corporations, tax and superannuation laws - ***Draft Treasury Laws Amendment (Measures for aLater Sitting) Bill 2018*** and ***Draft Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018*** – see 2018 WTB 45 [1470]. Most of the proposed amendments are aimed at removing inoperative provisions from the ITAA 1936, ITAA 1997, *Corporations Act 2001* and the SIS Act. However, the Draft Bill also proposes amendments to

correct technical defects and anomalies. For example, s 14-255 of Sch 1 to the TAA will be amended to refer to the person who is liable to pay the GST on the supply of residential premises, rather than the entity that made the supply. Another amendment to s 18-85 of Sch 1 to the TAA deals with refunds by the ATO of amounts withheld from payments in respect of a supply of real property. ***Comments*** were due by 2 November 2018.

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