TAXATION

Instant asset write-off Bill passes Reps

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Increased Medicare levy low-income thresholds – Bill introduced

The *Treasury Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2019* has been introduced and passed by the House of Reps and now moves to the Senate.

Energy assistance payment – Bill introduced

The *Social Services Legislation Amendment (Energy Assistance Payment) Bill 2019* has been introduced and passed by the House of Reps and now moves to the Senate.

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Regulations have been registered updating the list of prescribed professional schemes that have capped civil liability for misleading and deceptive conduct.

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ATO says it will receive line entry deductions data for 2019 individual tax returns lodged via the practitioner lodgment service.

ATO Online Terms and Conditions are changing from 1 June 2019

ATO’s Online Terms and Conditions are changing from 1 June 2019. Tax agent clients will be notified and they can choose whether or not to accept the Terms and Conditions.

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The Government's new procurement policy will require the tenderer's tax record to be taken into account.

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Labor's negative gearing and CGT changes will start 1 Jan 2020

Shadow Treasurer Chris Bowen has announced that Labor's reforms to negative gearing and the CGT discount would commence from 1 January 2020.

Trustee not liable to pay tax on income of public trading trust

Federal Court has held that a trustee of a family trust was not presently entitled to income of another trust that was a public trading trust.

ATO to ramp up bulk ABN cancellations

ATO has advised that, over the coming months, it will be increasing its focus on the bulk ABN cancellation program.

Taxation Statistics 2016-17 released by ATO

On 29 March 2019, the ATO released its Taxation Statistics 2016-17 publication, covering the 2016-17 financial year.

ETPs and redundancy trusts – Determination made

The *Income Tax: Employment Termination Payments Redundancy Trusts (12 month rule) Determination 2019* has been registered.

STP exemption for insolvency practitioners - Determination

Insolvency practitioners are exempt from reporting under Single Touch Payroll for the 2018-2019 financial year in respect of the employers they are administering.

Donations to Men's and Women's sheds to be tax deductible

The Treasurer has announced that the Government will make donations to Men's and Women's Sheds tax deductible.

Private health insurance rebate percentages for 2019-20

The Department of Health has released the Private Health Insurance Rebate Percentages effective from 1 April 2019 to 31 March 2020.

FBT rates and thresholds for the 2019-20 FBT year

The Commissioner's annual rulings of FBT rates, thresholds and other amounts have been released.

Fringe benefits: LAFHA - reasonable amounts for food and drinks

ATO has issued reasonable amounts for food and drink expenses incurred by employees receiving a living-away-from-home allowance fringe benefit for the 2019-20 FBT year.

STP exemption for employers with a Withholding Payer Number

A determination has been registered, exempting employers who do not have an ABN but instead have a WPN from reporting under Single Touch Payroll.

No discount capital gain where shares disposed of after roll-overs

The Federal Court has held that the capital gain made on shares disposed of following a series of roll-overs was not a discount capital gain: *Paule v FCT*.

Taxpayer fails to prove deposits of $16m were loans

The AAT has affirmed most of the ATO's objection decision as the taxpayer could not prove that the monies received were characterised as loans: *YPQF and FCT.*

Serious Financial Crime Taskforce amending Regs

Serious Financial Crime Taskforce has been extended for a further 4 years from 1 July 2019 and will now be formally led by the ATO.

GST: Family Day Care Scheme payments

The ATO has issued an ***Addendum*** to ***GST Determination GSTD 2001/1*** on the GST treatment of various Family Day Care Scheme payments.

GST: Out of time for input tax credit claim

A taxpayer has been unsuccessful before the AAT in seeking to claim input tax credits (ITCs) outside the 4-year time limit: *Rosebridge Nominees Pty Ltd (In Liq) and FCT.*

Tax invoices and adjustment notes: GST rulings amended, withdrawn

ATO has issued *Addenda* to its GST rulings on tax invoices (*GSTR 2013/1*) and adjustment notes (*GSTR 2013/2*).

GST Regulations remade and improved

A New Tax System (Goods and Services Tax) Regulations 2019 have been registered, remaking the *A New Tax System (Goods and Services Tax) Regulations 1999*.

FINANCIAL SERVICES

Design obligations re financial products – Bill passes Reps

The *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2019* has been passed by the House of Reps.

Additional licence conditions imposed on AMP Financial Planning

ASIC has imposed additional conditions on the AFS licence of AMP Financial Planning Pty Ltd (AMPFP).

Financial sector misconduct prosecutions - further funding announced

Government has announced that more than $35 million will be provided in the Federal Budget to support the expansion of the Federal Court's jurisdiction to corporate crime.

Ending grandfathered commissions - draft regulations released

Exposure Draft Regulations have been released to ensure that the ending of grandfathered conflicted remuneration is rebated to affected retail customers.

Cyber attacks and information security: APRA consultation

APRA has released for consultation updated guidance on protecting financial institutions against information security risks, including cyber-crime.

SUPERANNUATION

Measures (No 1) Bill awaits Assent (minus SMSF member increase)

The *Treasury Laws Amendment (2019 Measures No 1) Bill 2019* awaits Assent having been passed by the Senate and amended to remove the SMSF member increase.

Labor commits to ban SMSFs borrowing for property

Shadow Treasurer Chris Bowen gave an address to AFR Wealth & Banking Summit outlining policy to ban SMSFs borrowing for property.

Super death benefits and indigenous kinship - discussion paper

Government has issued a discussion paper on the difficulties Aboriginal and Torres Strait Islander people face when making superannuation binding death benefit nominations.

MySuper insurance terms - issues paper released

Government has released an issues paper as part of its review of the merits of legislating for universal terms for insurance cover within MySuper products.

Superannuation Contributions Tax - Regs remade

Super contribution tax regulations due to sunset on 1 April 2019, have been remade and registered.

REGULATOR NEWS

Putting super members first: APRA focus areas for 2019-20

In a letter to RSE licensees, APRA has set out its expectations and focus areas for 2019-20 to ensure superannuation trustees are putting members first.

"Fairness imperative" for financial sector: ASIC speech

ASIC Chair, James Shipton, has spoken of the "fairness imperative" for the financial services industry and what ASIC is doing to promote that imperative.

ASIC report on general advice vs personal advice

ASIC has released a report, *Financial advice: Mind the gap* (REP 614) highlighting new research on how many consumers confuse "general" and "personal" advice.

ASIC search fees reduced – Regs made

Journalists will be exempted from paying certain registry fees to facilitate free access to important information about companies and financial service providers.

TAXATION

Instant asset write-off Bill passes Reps

The ***Treasury Laws Amendment (Increasing the Instant Asset Write-Off for Small Business Entities) Bill 2019*** has been passed by the House of Reps and now moves to the Senate.

It proposes to amend the ITAA 1997 and *Income Tax (Transitional Provisions) Act 1997* to: (i) 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); and (ii) increase the threshold below which amounts can be immediately deducted under the rules from $20,000 to $25,000 from 29 January 2019 until 30 June 2020. Note that the 2019-20 Federal Budget announcements are not in the Bill.

Increased Medicare levy low-income thresholds – Bill introduced

The ***Treasury Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2019*** has been introduced and passed by the House of Reps and now moves to the Senate.

As announced in the 2019-20 Federal Budget, it amends the *Medicare Levy Act 1986* and the *A New Tax System (Medicare Levy Surcharge - Fringe Benefits) Act 1999* to increase Medicare levy low-income thresholds.

Energy assistance payment – Bill introduced

The ***Social Services Legislation Amendment (Energy Assistance Payment) Bill 2019*** has been introduced and passed by the House of Reps and now moves to the Senate. The Bill implements a 2019-20 Federal Budget measure to pay a one-off energy assistance payment to recipients of the age pension, disability support pension, carer payment, farm household allowance, parenting payment, AUSTUDY, ABSTUDY Living Allowance, double orphan pension, newstart allowance, partner allowance, sickness allowance, special benefit, widow allowance, widow pension B, wife pension and youth allowance, together with recipients of various veterans' payments, who are payable and residing in Australia on 2 April 2019.

The rate of payment will be $75 for singles and $62.50 for each eligible member of a couple. No payment would be made to people not residing in Australia.

Professional standards schemes for accountants and lawyers updated

The ***Treasury Laws Amendment (Professional Standards Schemes) Regulations 2019*** have been registered, updating the list of prescribed professional schemes that have capped civil liability for misleading and deceptive conduct under the *Australian Securities and Investments Commission Act 2001* (the ASIC Act), the *Competition and Consumer Act 2010* (the CCA) and the *Corporations Act 2001*.

They give effect to the decisions of the Professional Standards Councils to approve or amend professional standards schemes in their respective jurisdictions, as published in the relevant state Government gazette or on the relevant state Government legislation website. Under the 2019 Regs, replacement professional standards schemes that have capped civil liability for misleading or deceptive conduct include:

- Replacement scheme - Law Society of New South Wales Professional Standards Scheme.
- Replacement scheme - Bar Association of Queensland Professional Standards Scheme.
- Replacement scheme - Institute of Public Accountants Professional Standards Scheme.

Tax agent lodgments 2019 - ATO to receive line entry deduction data

The ATO says it will receive line entry deductions data for 2019 individual tax returns lodged via the practitioner lodgment service (PLS). The ATO has been working with tax agents, professional associations and digital service providers to make changes that will allow it to receive more data from tax agent lodgments.

From 1 July 2019, the ATO says it will receive the line entry deduction data entered in tax agent practice management software for 2019 and later individual tax returns as it does from self-prepared myTax returns. The ATO says that as most agents may already enter this level of detail, this will not change their work practices. Tax agent digital service providers will include this update in their practice management software as part of other tax time changes this year, the ATO said.

ATO Online Terms and Conditions are changing from 1 June 2019

The ATO says its Online Terms and Conditions are changing from 1 June 2019. Tax agent clients will be notified and they can choose whether to accept the Terms and Conditions, or unlink their myGov account from the ATO. The ATO says the most important changes are:

- Tax agent clients will have an option to give their agent written authorisation to receive some or all of their communications from the ATO via the agent's Practice inbox. The ATO says it will still send digital communications that agents are not authorised to receive to the agents' clients' myGov inboxes. This is in preparation for a new feature of Online services for agents the ATO is currently testing in private beta.
- If clients of tax agents use secret questions and answers to confirm their identity and access ATO Online through myGov, the ATO says they should use myGov security codes or the myGov access app to improve their security.
- From 1 June 2019, tax agent clients will need to use myGov security codes or the myGov access app to confirm their identity if they want their myGov account linked to the ATO. If tax agent clients choose to downgrade the way they confirm their identity to secret questions and answers, their myGov account will automatically be unlinked from the ATO.

Increasing integrity in government procurement

The Government's new procurement policy will require the tenderer's tax record to be taken into account. Changing supply chain practices of the Commonwealth will have an impact on businesses in all sectors, Assistant Treasurer Stuart Robert said.

The Government is one of the largest procurers of goods and services in the national market. In 2017-18, total Australian Government procurement was over $71 billion. To ensure public confidence that tenderers receiving taxpayers' money are complying with their tax obligations, from 1 July 2019, the Assistant Treasurer said Australian and foreign businesses seeking to tender for Australian Government procurement contracts over $4 million will have to obtain a statement from the ATO to show they have a satisfactory tax record. This action follows a recommendation of the Black Economy Taskforce. The new procurement-connected policy has been released by the Treasury and is available on the Treasury website.

AUSkey to be replaced in 2020

AUSkey will be replaced in 2020. The ATO says it will be replaced by:

- **myGovID** - a way for practitioners to prove who they are online as an individual, and for their practice;
- **Relationship Authorisation Manager** (RAM) – will let practitioners manage who can act on behalf of their practice. Practitioners will be able to use Access Manager from within RAM.

The ATO says practitioners can continue to use their AUSkey to access ATO online services while myGovID and RAM are being developed. The ATO has been privately testing myGovID and RAM with tax and BAS agents and small businesses.

ATO collects more than $500 million from illegal phoenix operators

The ATO has announced it has collected more than $500 million in revenue as a result of audits of illegal phoenix operators since the Phoenix Taskforce started in November 2014. The successful result comes as the Australian National Audit Office (ANAO) released its report Addressing Illegal Phoenix Activity on 29 March 2019.

The ANAO examined the effectiveness of the Phoenix Taskforce in combating illegal phoenix activity, focusing on governance, strategies, processes and performance measurement. The annual direct impact of illegal phoenix activity is estimated to cost the Australian community between $2.85 billion and $5.13 billion. The ANAO noted that taskforce strategies and enforcement activities as well as increased exchange of information exchange and law reforms have strengthened the compliance powers of taskforce agencies.

Labor's negative gearing and CGT changes will start 1 Jan 2020

In an address to the Financial Services Council BT Political Series, Shadow Treasurer Chris Bowen has announced that Labor's reforms to negative gearing and the CGT discount would commence from 1 January 2020. "This of course means that any investment undertaken prior to 1 January 2020 will be fully protected by our grandfathering arrangements. That is, all investments made before the 1 January 2020 will continue to enjoy the current negative gearing and capital gains tax concession arrangements. This gives investors adequate time to plan and invest this year before the new rules come into force."

Mr Bowen said the negative gearing changes "will buttress some of this weakness by targeting tax concessions at new residential construction". said a 1 January 2020 start date allows for around 7 months, "a less but we think sufficient amount of time to get the legislation in place before the changes are due to come into effect". He said Labor announced its reforms to negative gearing over 3 years ago and has "withstood the shrill scare campaigns and the apocalyptic warnings".

Trustee not liable to pay tax on income of public trading trust

The Federal Court has held that a trustee of a family trust was not presently entitled to income of another trust that was a public trading trust. *Trustee for the Michael Hayes Family Trust v FCT* [2019] FCA 426, Fed Court, Logan J, 27 March 2019. The taxpayer was the trustee of the Michael Hayes Family Trust (MHFT). Following an audit of MHFT, the ATO issued notices of assessment to the taxpayer for the 2010 to 2014 income years. The assessments totalled almost $2.137m, of which approximately $1.177m was for 2010. The taxpayer was assessed under s 99A of the ITAA 1997 on the basis that it was presently entitled to income of the MJH Trading Trust. An objection relating to the 2011 income year was allowed in part.

The Federal Court has upheld the taxpayer’s challenge to the assessments, on the basis that the MJH Trading Trust was, in each income year, a public trading trust within Div 6C of Pt III of the ITAA 1936. As a result, the MJH Trading Trust was liable to be assessed and pay tax at the corporate tax rate and the taxpayer was not presently entitled to any of the income of the MJH Trading Trust. The Federal Court also agreed with the taxpayer’s alternative submission that it was not entitled to the net income of the MJH Trading during the relevant years, because the trustee of the MJH Trading Trust had exercised the power under the trust deed to accumulate the net income each year (apart from the distribution in respect of the 2011 income year). It achieved this by crediting its accounting profit to a "Retained Profits Account", rather than distributing it to the unitholders.

ATO to ramp up bulk ABN cancellations

The ATO has advised that, over the coming months, it will be increasing its focus on the bulk ABN cancellation program, to continue “to ensure the integrity of the Australian Business Register”. The ATO says it has refined its models to help it identify businesses that are no longer active or have forgotten to cancel their ABN when they ceased business. Things the ATO looks for include ABN holders that have stopped reporting business income or expenses, and provide the ATO with no other indications they may be in business.

The ATO excludes those it knows are renting out property, or are receiving income elsewhere. If the ATO cancels an ABN as part of this bulk cancellation process and it is needed it in the future, the taxpayer can easily reapply and will receive the same ABN if the business structure is the same.

Taxation Statistics 2016-17 released by ATO

On 29 March 2019, the ATO released its Taxation Statistics 2016-17 publication, covering the 2016-17 financial year. The report presents an overview of 16.5 million 2017 income tax returns for 13.9 million individuals, 970,000 companies, as well as super funds, partnerships and trusts. The statistics cover areas such as average taxable income by occupation. The profession with the highest income was surgeons, with a national average taxable income of $394,866. Anaesthetists filled the second spot with an average income of $367,343 and internal medicine specialists came in third with an average income of $299,378.

Other stats include the highest average taxable income of $230,330, recorded in Sydney's 2108 postcode which covers Coasters Retreat, Currawong Beach, Great Mackerel Beach and Palm Beach. Melbourne's 3142 postcode, covering Toorak and Hawksburn, was the second highest nationally with an average taxable income of $193,904 and NSW was home to the lowest earning area, postcode 2308, covering Newcastle University and Callaghan, with an average taxable income of $20,589. Queensland had 5 of the bottom 10 postcodes with 4611 recording the second lowest average income nationally of $23,225.

ETPs and redundancy trusts – Determination made

The *Income Tax: Employment Termination Payments Redundancy Trusts (12 month rule) Determination 2019* has been registered. It extends the definition of employment termination payment to include certain payments from redundancy trusts that are received more than 12 months after the termination of a person's employment.

The instrument replaces *Employment Termination Payments Redundancy Trusts (12 month rule) Determination 2009 F2009L00716* registered on 12 March 2009. Date of effect: The instrument is taken to have commenced on the day after it is registered ie on 27 March 2019.

STP exemption for insolvency practitioners - Determination

The ***Taxation Administration – Single Touch Payroll – Exemption for Insolvency Practitioners and Employers subject to their appointment*** has been registered, exempting insolvency practitioners from reporting under Single Touch Payroll (STP) for the 2018-2019 financial year in respect of the employers they are administering. This instrument also exempts from reporting under STP for the 2018-2019 financial year those employers subject to the appointment of an insolvency practitioner, in relation to payments they make after the commencement of the appointment of the insolvency practitioner.

Date of effect: 29 March 2019. However, it applies retrospectively from 1 July 2018 to ensure that affected entities will not be disadvantaged by not having the exemption apply from the beginning of the financial year.

Donations to Men's and Women's sheds to be tax deductible

The Treasurer has announced that the Government will make donations to Men's and Women's Sheds tax deductible.

The Sheds will receive Deductible Gift Recipient status. From 1 July 2020, anyone who donates $2 or more to a Shed can claim an income tax deduction for that donation.

Private health insurance rebate percentages for 2019-20

While the income thresholds for the private health insurance (PHI) rebate have been frozen until 1 July 2021, the rebate percentages continue to be adjusted annually on 1 April.

The Department of Health has released the Private Health Insurance Rebate Percentages effective from 1 April 2019 to 31 March 2020. These are set out in the table below (the amounts in parentheses are the rebate percentages applicable for the period from 1 April 2018 to 31 March 2019).

FBT rates and thresholds for the 2019-20 FBT year

The Commissioner's annual rulings of FBT rates, thresholds and other amounts have been released today. Each of the following ***Taxation Determinations*** applies to the 2019-20 FBT year (ie 1 April 2019 to 31 March 2020):

- ***TD 2019/3*** - the cents per kilometre rates for calculating the taxable value of a fringe benefit arising from the private use of a motor vehicle other than a car are: vehicles with an engine capacity of up to 2,500cc - 55 cents/km; vehicles with an engine capacity of over 2,500cc - 66 cents/km; and motorcycles - 16 cents/km;
- ***TD 2019/4*** - the FBT record-keeping exemption threshold is $8,714;
- ***TD 2019/5*** - the indexation factors for valuing non-remote housing are: NSW - 1.020; Victoria - 1.019; Queensland - 0.997; South Australia - 1.008; Western Australia - 0.937; Tasmania - 1.043; Northern Territory - 0.948; ACT - 1.028.
- ***TD 2019/6*** - the benchmark interest rate is 5.37% pa.

Fringe benefits: LAFHA - reasonable amounts for food and drinks

Taxation Determination TD 2019/7 has been issued setting out the weekly amounts the ATO treats as reasonable for food and drink expenses incurred by employees receiving a living-away-from-home allowance fringe benefit for the 2019-20 FBT year.

For Australian locations, the reasonable weekly amounts for the 2019-20 FBT year are: 1 adult - $269; 2 adults - $404; 3 adults - $539; 1 adult and 1 child - $337; 2 adults and 1 child - $472; 2 adults and 2 children - $540; 2 adults and 3 children - $608; 3 adults and 1 child - $607; 3 adults and 2 children - $675; and 4 adults - $674. For larger family groupings, add $135 for each additional adult and $68 for each additional child. An "adult" for this purpose is an individual aged 12 years or more at 31 March 2019. Date of effect: 1 April 2019 to 31 March 2020.

STP exemption for employers with a Withholding Payer Number

The ***Taxation Administration – Single Touch Payroll – Exemption for Employers with a Withholding Payer Number*** has been registered, exempting employers who do not have an Australian Business Number (ABN) but instead have a Withholding Payer Number (WPN) from reporting under Single Touch Payroll (STP).

Date of effect: 29 March 2019. However, it applies retrospectively from 1 July 2018 to ensure that affected entities will not be disadvantaged by not having the exemption apply from the beginning of the financial year.

No discount capital gain on shares disposed of after roll-overs

The Federal Court has held that the capital gain made on shares disposed of following a series of roll-overs was not a discount capital gain, as the shares were not deemed to have been held for more than 12 months. *Paule v FCT* [2019] FCA 394, Federal Court, Thawley J, 22 March 2019. The taxpayers were beneficiaries of the S&TP Trust, which had held units in a unit trust for over 12 months. In January 2008, the unit trust disposed of all of its assets (a business) to a company (STP Holdings) and the S&TP Trust exchanged its units in the unit trust for shares in the company. This involved both a same-asset roll-over and a replacement-asset roll-over under Subdiv 124-N of the ITAA 1997. Shortly afterwards, on 15 January 2008, the S&TP Trust exchanged all of its shares in STP Holdings for newly issued shares in E-Quest Holdings. The trust chose to obtain a scrip-for-scrip roll-over under Subdiv 124-M for the disposal of those shares. The trust then exchanged all of its shares in E-Quest for shares in Findex, also choosing a scrip-for-scrip roll-over under Subdiv 124-M. Three days later, the trust sold its Findex shares for just over $5.25m realising a capital gain.

The issue to be decided was whether the gain realised on the sale of the Findex shares was a discount capital gain under Subdiv 115-A. The Court found that s 115-34 (which was added in 2010 with retrospective effect) did not apply to deem the shares to have been acquired at least 12 months before the date of disposal. This was because the Findex shares were acquired in a Subdiv 124-M replacement-asset roll-over which was not a roll-over of a kind covered by s 115-34(1)(c). Nor did s 115-30 (which was amended in 2010) operate to deem the Findex shares to be acquired any earlier than 15 January 2008. The Court said that the "express terms of the provisions following the 2010 Amendments are clear". However, it considered that in some ways the result was "unpalatable" because the underlying policy was to allow discount capital gains where, as a matter of economic substance rather than legal form, the assets disposed of have been held by a taxpayer for at least 12 months, which is what occurred in this case.

Taxpayer fails to prove deposits of $16m were loans

The AAT has affirmed most of the ATO's objection decision as the taxpayer could not prove that the monies received were characterised as loans. (*YPQF and FCT* [2019] AATA 518, AAT, File Nos 2016/5583-5585, McCabe DP, 21 March 2019.) The taxpayer was a Chinese businesswoman who has been living in Australia since 2006. She received large payments from China in the 2011, 2012 and 2013 years of income. The taxpayer argued the inflow of money – most of which came from her daughter in China – was actually borrowed money that was ultimately obtained through intermediaries from Chinese banks. The ATO issued amended assessments in respect of the 2011 and 2012 financial years which included the disputed amounts in the taxpayer's assessable income. The ATO also issued a default assessment in respect of the 2013 year of income and imposed administrative penalties in all 3 years.

The AAT found that the taxpayer could not prove that the money received from her daughter ($16m) was a loan as the taxpayer and her daughter did not create loan documents to record the terms of the loan and there was no evidence that the taxpayer took any steps to repay her daughter or the Chinese banks while she was in Australia. The AAT also found that the $1.1m received from a friend was not a loan either as there were timing issues regarding the documentation. Finally, the objection decision with respect to the 2013 year of income was varied so that the $10,000 repayment received from a subsidiary company was not treated as assessable income.

Serious Financial Crime Taskforce amending Regs

The *Taxation Administration Amendment (Serious Financial Crime Taskforce) Regulations 2019* have been registered, amending the *Taxation Administration Regulations 2017* to prescribe the Serious Financial Crime Taskforce.

The Serious Financial Crime Taskforce has been extended for a further 4 years from 1 July 2019 and will now be formally led by the ATO. The amendments made by the Regulations enable the ongoing disclosure of information between taskforce agencies under the new governance arrangements.

GST: Family Day Care Scheme payments

The ATO has issued an ***Addendum*** to ***GST Determination GSTD 2001/1*** on the GST treatment of various Family Day Care Scheme payments.

The Addendum updates GSTD 2001/1 to reflect consequential changes made to the GST Act by the *Family Assistance Legislation Amendment (Jobs for Family Child Care Package) Act 2017*. Date of effect: 2 July 2018.

GST: Out of time for input tax credit claim

A taxpayer has been unsuccessful before the AAT in seeking to claim input tax credits (ITCs) outside the 4-year time limit. (*Rosebridge Nominees Pty Ltd (In Liq) and FCT* [2019] AATA 426, AAT, File No 2018/3685, Lazanas SM, 19 March 2019.) The taxpayer was a company that went into liquidation. It had quarterly tax periods and accounted for GST on an accruals basis. In July 2017, the taxpayer's liquidator lodged numerous BASs starting from 1 January 2002 and ending 31 March 2013. Those BASs resulted in ITCs being claimed and a refund was owed to the taxpayer.

The AAT found that the taxpayer failed to claim the ITCs within the 4-year time period required, as it had not lodged any notification to preserve its claims at any time, as required by Div 93 (and its corresponding former equivalent in the GST Act). The AAT found that the 4-year time limit also applied in this case to representatives lodging GST returns for incapacitated entities, ie the liquidators. The reason was that the liquidator lodged the GST returns on his own accord, ie he was not directed to do so by the Commissioner under s 58-50(1) of the GST Act.

Tax invoices and adjustment notes: GST rulings amended, withdrawn

The ATO has issued ***Addenda*** to its GST rulings on tax invoices (***GSTR 2013/1***) and adjustment notes (***GSTR 2013/2***). Both rulings have been amended to reflect the repeal of various legislative instruments. References to GST regulations have also been updated.

GST Determination GSTD 2004/1 (When will the requirement to hold a tax invoice or adjustment note be waived as a result of a court or tribunal decision?) was *withdrawn* with effect from 17 April 2019. The Commissioner will exercise, on a case-by-case basis, the discretion to treat a document as a tax invoice or adjustment note.

GST Regulations remade and improved

The *A New Tax System (Goods and Services Tax) Regulations 2019* have been registered. They remake and improve the operation of the A New Tax System (Goods and Services Tax) Regulations 1999 (the 1999 Regulations) before their 'sunset' on 1 April 2019.

The 2019 Regs repeal redundant provisions, simplify language and restructure provisions for ease of navigation. These changes do not affect the substantive meaning or operation of the provisions except in limited cases that are specifically identified in Attachment A to the Explanatory Statement to the 2019 Regs. The Regulations broadly follow the numbering of the 1999 Regulations. Date of effect: The Regulations commence on 1 April 2019.

FINANCIAL SERVICES

Design obligations re financial products – Bill passes Reps

The ***Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2019*** has been passed by the House of Reps and now moves to the Senate. The amendments made in the House implement part of the Government's response to the Banking Royal Commission.

The Bill proposes to amend the Corporations Act to introduce design and distribution obligations in relation to financial products. The Bill also introduces a product intervention power for ASIC to prevent or respond to significant consumer detriment.

Additional licence conditions imposed on AMP Financial Planning

ASIC has imposed additional conditions on the AFS licence of AMP Financial Planning Pty Ltd (AMPFP) to ensure it has adequate arrangements in place for its managed discretionary account (MDA) services. ASIC believes that MDAs create particular risks for retail clients as they give authority for the provider to make investment decisions on behalf of the client on an ongoing basis without seeking the client's prior approval.

ASIC said the conditions were imposed when ASIC granted AMPFP's application to vary its AFS licence to provide MDA services, and follows an ASIC surveillance of AMPFP's MDA services and advice business. The ASIC surveillance involved on-site interviews with AMPFP compliance personnel about processes and systems, and with the advisers who provide MDA services and advice. It also included reviews of AMPFP's documented processes and systems, its client advice files and adviser audit files.

Financial sector misconduct prosecutions - further funding announced

The Government has announced that more than $35 million will be provided in the 2019-20 Federal Budget to support the expansion of the Federal Court's jurisdiction to corporate crime. The Treasurer, Josh Frydenberg, and Attorney-General, Christian Porter, said the expansion of the Court's jurisdiction and funding will ensure that those who engage in financial sector criminal misconduct are prosecuted in a timely manner.

The increased funding will support the appointment of 2 judges, 11 registry and support staff and the construction of new court facilities for the hearing of criminal proceedings. Referrals arising out of the Banking Royal Commission, and increased enforcement activity as part of ASIC's shift to a "why not litigate" approach, are expected to give rise to more criminal prosecutions. In a separate media release, the Treasurer outlined how more than $550 million will be allocated to ASIC and APRA in the 2019-20 Federal Budget to assist them in stamping out misconduct in the financial sector.

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), implement the Government's response to Recommendation 2.4 of the Banking Royal Commission. The Draft Regs will apply to a "covered person" (ie a financial product issuer) who is legally obliged to pay any previously grandfathered conflicted remuneration to another person (ie a financial adviser or licensee) after 1 January 2021.

Where the conflicted remuneration can be attributed to a particular client (eg if the financial adviser received a commission for selling a financial product to that client), the covered person will be required to provide a cash rebate to the affected retail client on a dollar-for-dollar basis. Where the conflicted remuneration can only be attributed to a client group, the covered person will be required to divide that conflicted remuneration between the affected retail clients in a just and equitable way. The covered person may provide a cash rebate, or they may provide a monetary benefit (eg a reduction in fees). The Draft Regs also impose record keeping obligations on covered persons required to pass through benefits. Submissions are due by 25 April 2019.

Cyber attacks and information security: APRA consultation

APRA has released for consultation updated guidance on protecting financial institutions against information security risks, including cyber-crime. Draft Prudential Practice Guide CPG 234 (Information security) outlines how entities can maintain information security capabilities commensurate with the size and complexity of their business and the sensitivity of the data they possess. The Draft Guide will replace the existing CPG 234 which is set to apply to APRA-regulated entities from 1 July 2019.

The Draft Guide is aimed at boards and senior management, as well as risk and information technology experts within regulated entities. It also explains how entities can optimise their resilience when aspects of their information security are managed by third parties. Submissions are due by 17 May 2019 to: PolicyDevelopment@apra.gov.au.

SUPERANNUATION

Measures (No 1) Bill awaits Assent (minus SMSF member increase)

The ***Treasury Laws Amendment (2019 Measures No 1) Bill 2019*** awaits Royal Assent having been passed by the Senate. The Bill was amended by the Government in the House of Reps to remove the SMSF changes (that had proposed to increase the maximum number of allowable members in SMSFs from 4 to 6) so as not to delay the passage of the other measures in the Bill.

The Bill, together with the ***Excise Tariff Amendment (Supporting Craft Brewers) Bill 2019*** (which has also been passed by the Senate), will amend the Excise Tariff Act and the Excise Act to extend concessional rates of excise to craft brewers. Schedule 3 to the Bill will extend the income exemption for the G20 Global Infrastructure Hub for an additional 4 years. Schedule 4 includes changes to the First Home Super Saver (FHSS) scheme and minor GST amendments for the notification by suppliers of resident premises.

Labor commits to ban SMSFs borrowing for property

Shadow Treasurer Chris Bowen gave an address to AFR Wealth & Banking Summit making a number of points including the following:

- LRBAs and SMSFs - The Murray FSI Report recommended that SMSFs be banned from borrowing to invest in property – Labor accepted the recommendation. Mr Bowen said that "As it stands it will be left to a Labor government to take the responsible decision and adopt the recommendation of the Financial System Inquiry – a report delivered years ago – to restore the prohibition on direct borrowing by superannuation funds on a prospective basis".
- There have been successive delays to legislated increases in the superannuation guarantee (SG). "Let me make it clear that the Labor Party does not regard a 9.5% SG as providing adequacy - we will brook no further delay to the legislated timetable [to take it to 12%]."

Super death benefits and indigenous kinship - discussion paper

The Government has issued a discussion paper on the difficulties that Aboriginal and Torres Strait Islander people face when making superannuation binding death benefit nominations (BDBNs). In response to the Banking Royal Commission, the Government said it would consult with relevant representative bodies about difficulties in using BDBNs for Indigenous kinship structures. During the Royal Commission, evidence was heard about the Lockhart River community and the difficulties that some Aboriginal and Torres Strait Islander people faced when accessing their superannuation entitlements due to complexities associated with Indigenous kinship structures.

The discussion paper explores the law surrounding the distribution of superannuation death benefits, Aboriginal and Torres Strait Islander peoples' kinship structures, and how these kinship structures are accommodated elsewhere in the law. Submissions are due by 24 May 2019 to: Manager, Retirement Benefits Unit, Retirement Income Policy Division, Treasury - email: superannuation@treasury.gov.au; tel: +61 2 6263 3980 (Darren Magennis).

MySuper insurance terms - issues paper released

Government has released an issues paper as part of its review of the merits of legislating for universal terms for insurance cover within MySuper products. The issues paper is seeking feedback on the impact such a change may have on premiums as well as the merits of prescribing minimum, maximum or set levels of cover.

The review forms part of the Government's response to Recommendation 4.13 of the Banking Royal Commission. In his final report, Commissioner Hayne called for Treasury, in consultation with industry, to determine the practicability, and likely pricing effects, of legislating universal key definitions, terms and exclusions for default MySuper group life policies. Submissions are due by 26 April 2019.

Superannuation Contributions Tax - Regs remade

The *Superannuation Contributions Tax (Assessment and Collection) Regulations 2019* and *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Regulations 2019*, which were due to sunset on 1 April 2019, have been remade and registered.

These Regulations were remade to omit redundant provisions, simplify language and restructure provisions for ease of navigation. Otherwise, the remaking of the former 1997 Regulations is not intended to affect the substantive meaning or operation of the remade provisions. Date of effect: 1 April 2019.

REGULATOR NEWS

Putting super members first: APRA focus areas for 2019-20

In a letter to RSE licensees, APRA has set out its expectations and focus areas for 2019-20 to ensure superannuation trustees are putting members first. While APRA-regulated super funds have served the majority of their members well, APRA Deputy Chair, Helen Rowell, said there are a number of areas where the industry lacks maturity in its governance and risk management practices. Ms Rowell said APRA will be intensifying its focus on underperforming funds to ensure timely and adequate action is taken by trustees. Over the coming year, APRA will also take steps to enhance transparency through improved data and disclosure on the industry's performance, Ms Rowell said.

In an Attachment to the letter, APRA outlined its specific focus areas, including: assessing and improving member outcomes (Prudential Standard SPS 515); trustee board capabilities and culture; risk governance; conflicts of interest; data and reporting; accountability and remuneration; sole purpose test; and insurance and inactive accounts. 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.

"Fairness imperative" for financial sector: ASIC speech

ASIC Chair, James Shipton, has spoken of the "fairness imperative" for the financial services industry and what ASIC is doing to promote that imperative. According to ASIC, the end goal is to embed fairness into every aspect of a financial services firm's business and build real trust and confidence in the financial system. Mr Shipton said the Banking Royal Commission financial report made it very clear that the primary responsibility for misconduct in the financial services industry lies with the entities concerned and those who managed and controlled those entities.

Mr Shipton noted that a penalty now applies for a breach of the primary obligation in s 912A of the Corporations Act which will be an important foundation to ASIC's new enforcement approach of "*Why not litigate?*". Although he clarified that this is a very different concept to "litigate first" or "litigate everything", ASIC is looking to use the full extent of its new penalties and powers for misconduct. From February 2018 to March 2019, Mr Shipton said there has been a 15% increase in the number of ASIC enforcement investigations (with a 129% increase for wealth management), and a 65% increase in enforcement investigations involving the big 6 financial institutions.

ASIC report on general advice vs personal advice

ASIC has released a report, *Financial advice: Mind the gap* (REP 614) highlighting new research on how many consumers confuse "general" and "personal" advice, exposing them to greater risk of poor financial decisions. ASIC Deputy Chair, Karen Chester, said this gap in understanding whether the advice consumers are getting is personal or not means many are under the false premise their interests are being prioritised, when no such protection exists.

The survey revealed that only 53% of those surveyed correctly identified "general" advice. And even when provided the general advice warning, nearly 40% of those surveyed wrongly believed the adviser had an obligation to take their personal circumstances into account. Nearly 40% of those surveyed were unaware that advisers were not required by law to act in their clients' best interests when only providing general advice.

ASIC search fees reduced – Regs made

The *Treasury Laws Amendment (ASIC Cost Recovery and Fees) Regulations 2019* have been registered, amending various regulations. From 1 July 2019 journalists will be exempted from paying certain registry fees to facilitate free access to important information about companies and financial service providers, and search fees for accessing company roles and relationship extracts will be reduced from $40 to $19.

From 1 April 2019, a number of other minor amendments to address definitional and fee errors will apply to ensure ASIC's fees-for-services reflect ASIC's regulatory costs.