TAXATION

2020-21 MYEFO

Treasurer has released the 2020-21 Mid-Year Economic and Fiscal Outlook (MYEFO), the statement builds on various commitments announced in the Budget.

Treasurer: tax-related changing commencing 1 Jan

Treasurer has issued a media release advising of tax-related changes that commenced on 1 January 2021 including insolvency and super.

BoT: second CGT consultation paper

Board of Taxation has released a second consultation paper as part of its review into the CGT roll-over rules.

Discussion paper released for deductibles on education

Treasury has issued a discussion paper to consult on allowing individuals to deduct education and training expenses not related to their current employment.

ATO Taxpayer Alert

ATO has issued a taxpayer alert expressing concerns where an Australian taxpayer purchases shares and enters into derivative instruments in certain circumstances.

Corporate tax transparency report 2018-19

ATO has released its Corporate Tax Transparency report for the 2018-19 income year based on the income tax returns of some of the largest corporate entities.

Draft legislative instrument: changes to STP reporting

ATO has issued a draft legislative instrument which will facilitate changes to Single Touch Payroll reporting requirements.

ANAO report: ATO effective in managing risks

ANAO has published its report which assessed ATO's ability to identify consider and manage risks given the rapid implementation of the COVID economic measures.

Easing financial reporting requirements for small/medium charities

Government has announced its intent to provide relief to Australian charities by easing financial reporting requirements for small and medium charities.

JobMaker Hiring Credit Statutory Rules released

Government has registered Rules which sets out the details of the JobMaker Hiring Credit rules.

JobMaker Hiring Credit: reporting obligations

Government has registered an Instrument which sets out the information that employers must provide to the ATO to participate in the JobMaker Hiring Credit scheme.

COVID-19 Supplement extensions to 31 March 2021: Instrument

Government has registered a Determination to ensure the continued payment of the COVID-19 Supplement to 31 March 2021.

Bills receive Assent

Various Bills have received Royal Assent including expanding the eligibility of the JobMaker plan.

WFH shortcut method available until end of 2020-21

ATO has extended again to 30 June 2021 the application of the shortcut rate for claiming work-from-home running expenses.

Commissioner High Court appeal - Transcript

Commissioner's appeal to the High Court against the Full Federal Courts decision in Travelex GST case has been released.

FINANCIAL SERVICES

Financial Reforms No 2 Bill introduced

Bill has been introduced into the House of Reps to implement further recommendations of the Banking Royal Commission.

Changes to responsible lending obligations: Bill introduced

Bill has been introduced to implement the removal of responsible lending obligations with the exception of small amount of credit contracts.

New financial advisers disciplinary body announced

Government has announced changes to the regulatory framework that applies to financial advisers including the expansion of the FSCP within ASIC.

Financial advice and conflicted remuneration: ASIC guidance

ASIC has released technical updates to its Regulatory Guide on conflicted and other banned remuneration to reflect recent legislative changes.

SUPERANNUATION

Super contributions bring forward age limit: Bill stuck in Senate

Bill to extend the bring-forward age limit failed to pass the Senate before Parliament rose in December which means the measure will not be considered until Feb 2021.

AFSL exemption removed for non-public offer super funds

Regulations have been amended to remove certain exemptions for the requirement to hold an AFSL.

WA super splitting Bill receives Assent

Bill to extend the Federal jurisdiction to WA family law super splitting and bankruptcy matters has received Royal Assent.

REGULATOR NEWS

TPB: 1 January changes

Tax Practitioners' Board has set out the pertinent law changes that took effect on 1 January 2021 including professional indemnity insurance.

Q&A on professional indemnity insurance: TPB

TPB has compiled a list of questions and answers following its webinar including having adequate cover and authorised insurers.

IGTO report on ATO administration

IGTO has released its latest report on ATO administration of JobKeeper and Boosting Cash Flow measures.

TAXATION

2020-21 MYEFO

The Treasurer has released the 2020-21 Mid-Year Economic and Fiscal Outlook (MYEFO). In a nutshell, the MYEFO statement (the "Statement) builds on the Government's commitments announced in the 2020-21 Budget and subsequently.

In the 2019-20 MYEFO, the underlying cash balance for 2020-21 was forecast to be a surplus of $6.1 billion (0.3% of GDP). The current Statement expects the underlying cash deficit in 2020-21 to be $213.7 billion (11% of GDP). This is largely due to the Government's response to the 2019-20 bushfires and COVID-19 pandemic. Total initial COVID-19 response totalled $299 billion (health measures, JobKeeper, Boosting Cashflow for Employers, Coronavirus Supplement, etc) with further commitments in the 2020-21 Budget to bring the Government's overall support to $507 billion. The Statement expects the cash deficit to improve over the forward estimates to $66.9 billion deficit (3% of GDP) in 2023-24 and to a $49.5 billion deficit (1.6% of GDP) by the end of the medium term.

Other highlights include:

- Real GDP is forecast to grow by 4.5% in 2021 following a fall of 2.5% in 2020 (ie better than what was expected at Budget);
- The labour market shows strength with the unemployment rate expected to peak at 7.5% in the March quarter 2021 as opposed to the 8% forecast at the Budget. The unemployment rate is now forecast to fall to 6.25% in the June quarter 2022;

Gross debt and net debt is expected to be 44.8% and 36.1% of GDP respectively at the end of 2020-21. Both are expected to increase to 51.6% and 43.8% of GDP respectively at the end of the forward estimates.

Treasurer: tax-related changing commencing 1 Jan

The Treasurer has issued a media release advising of the following tax-related changes that commenced on 1 January 2021:

- changes to the insolvency laws;

- changes to Your Super, Your Choice rules to enhance the ability of people to choose their own super fund;
- the extension of HomeBuilder until 31 March 2021; and
- changes to the foreign investment framework.

The release also makes reference to PBS changes and the Job-ready graduates program (which provides discounted HECs for targeted professions and occupations).

BoT: second CGT consultation paper

The BoT released a second consultation paper as part of its review of the CGT roll-over rules.

The first paper was a consultation guide issued in February 2020 and received 16 written submissions. The latest paper sets out the Board's first-stage proposal for rationalising (and replacing) seven of the key roll-overs that deal with the most common business restructuring transactions, including mergers (ie takeovers), demergers and internal reorganisations.

The Chair of the BoT states that the consultation paper has been prepared with two key objectives in mind, ie to present:

- a framework of principles for CGT roll-overs to help develop a "shared understanding of what roll-overs are for and the role they play in the CGT framework and the tax system more broadly"; and
- a general roll-over for business restructuring.

The aim of the general roll-over is to replace the existing suite of transaction-based restructure roll-overs with a single, principles-based relief "that provides clear and consistent outcomes". The general roll-over is designed to be "simple, comprehensive, and aligned with commercial practices while preserving the important integrity function of CGT".

Submissions close 5 February 2021.

Discussion paper released for deductibles on education

Treasury has issued a discussion paper in accordance with the Government's announcement in the 2020-21 Budget, to consult on allowing individuals to deduct education and training expenses they incur, where the expense is not related to their current employment.

The current general principle in the income tax law allows deductions for expenses incurred in the course of earning assessable income, ie education or training related to the current employment. This discussion paper seeks stakeholder views on whether tax arrangements should play a greater role in encouraging Australians to retrain and reskill to support their future employment and career and how this is best achieved.

Submissions are due by 22 January 2021.

ATO Taxpayer Alert

The ATO has issued Taxpayer Alert TA 2020/5 in which it expressed concerns where an Australian taxpayer purchases shares and enters into derivative instruments that enable the taxpayer to claim franking credits – despite having no economic exposure to the dividend and capital performance associated with those shares.

One of the objects of the "qualified person" rules s 207-145(1)(a) of ITAA 1997 is that the benefits of imputation should only be available to the "true economic owners of shares". The ATO is concerned that these arrangements may involve taxpayers "inappropriately accessing the benefits of franking credits". Put simply, the concern is that taxpayers may be claiming imputation "benefits" to which they are not legally entitled.

The ATO is to determine if the claimant is a qualified person for the purposes of s 207-145, whether a s 177EA determination needs to be made and also if the promotor penalties provisions should be activated.

ATO contact officer: Andrew Grace – tel: (08) 8208 1688; email – Andrew.grace@ato.gov.au.

Corporate tax transparency report 2018-19

The ATO has released its Corporate Tax Transparency report for the 2018-19 income year. This is the sixth annual report on corporate tax transparency, this report being based on the 2018-19 income tax returns of some of the largest corporate entities operating in Australia.

Deputy Commissioner Rebecca Saint said that over 60% of all corporate income tax in 2018-19 was paid by the companies included in this report, which consisted of 2,311 corporate entities with a combined total income tax paid of $56.1 billion.

The report showed that total income tax paid increased $3.8 billion from the previous year, largely driven by the strong commodity prices and export volumes in the mining, energy and water segments. Other industry segments, however, saw declines in tax payable due to the downturn in non-mining company profits in that year. Despite the fall in income tax payable in most sectors, the proportion of companies that have paid no income tax remains at 32%, similar to 2017-18. It was highlighted that the proportion of companies that have paid no income tax has fallen from 36% since the first report in 2013-14.

According to Ms Saint, the ATO takes steps to verify that losses in the large market are not created through contrived schemes and that companies that report sustained losses year-on-year face scrutiny from the Tax Avoidance Taskforce. Ms Saint also highlighted the success of the:

- Tax Avoidance Taskforce which raised a total of $19.8 billion in tax liabilities and collecting $11.2 billion from large public groups, multinational corporations, wealthy individuals, and private groups from 1 July 2016 to 30 September 2020; and
- implementation of the Multinational Anti-Avoidance Law (MAAL) which resulted in 44 taxpayers restructuring to recognise sales in Australia and paying more than $100 million in 2018-19 in additional income tax compared to 2015-16. The taxpayers also reported an estimated net GST paid of approximately $80 million from the additional sales recognised in 2018-19.

Draft legislative instrument: changes to STP reporting

The ATO has issued a draft legislative instrument, STP 2020/D4: Taxation Administration - Single Touch Payroll - Amounts to be Notified Determination 2020, which will facilitate changes to Single Touch Payroll (STP) reporting requirements as a result of legislative amendments affecting:

- the way employment income is used to determine a person's rate of payment under the social security law (implemented by the Social Services and Other Legislation Amendment (Simplifying Income Reporting and Other Measures) Act 2020;
- the requirements for calculation and reporting of superannuation guarantee obligations in relation to amounts salary sacrificed to superannuation (implemented by the Treasury Laws Amendment (2018 Measures No 4) Act 2019 and Treasury Laws Amendment (2019 Measures No 3) Act 2020; and
- the voluntary reporting of Child Support Deductions and Child Support Garnishee amounts through STP and the sharing of that information with relevant Commonwealth agencies (implemented by the Treasury Laws Amendment (2020 Measures No 2) Act 2020.

This instrument will also enable the Commissioner to make changes to the approved form in response to feedback received regarding the operation of STP more generally.

This instrument also proposes that when future changes are made to the approved form, amounts determined in this instrument which were not previously required will not become amounts that are required by the approved form until the earlier of either:

- the date after 1 January 2021 that an entity chooses to commence reporting those amounts; or
- 1 July 2021.

Comments are due by 14 January 2021.

ANAO report: ATO effective in managing risks

The Australian National Audit Office (ANAO) has published Auditor-General Report no 24 of 2020-21: The Australian Taxation Office's Management of Risks Related to the Rapid Implementation of COVID-19 Economic Response Measures. The purpose of the audit was to assess ATO's ability to identify, consider and manage risks – given how the rapid implementation of COVID-19 economic response measures presented new and increased risks arising from the following:

- workforce redeployment;
- IT system development and data integrity;
- stakeholder engagement and coordination;
- adapting service delivery;
- potential internal and external fraud; and
- non-compliance with regulatory requirements.

The ANAO found overall that the ATO has been effective in managing risks related to the rapid implementation of COVID-19 economic response measures and did not see a need to make any recommendations to the ATO. The Auditor-General did however, identify key messages, including instances of good practice, which were identified in this audit that may be relevant for the operations of other Australian Government entities.

Easing financial reporting requirements for small/medium charities

The Government has announced its intent to provide relief to Australian charities by easing financial reporting requirements for small and medium charities. This follows the recent Royal Commission into National Natural Disaster Arrangements which highlighted the crucial role charities play in disaster recovery efforts, but noted the complexities of operating across jurisdictions with distinct regulatory schemes.

The Council on Federal Financial Relations (CFFR) has agreed to develop a framework by mid-2021 based on changes recommended by an independent review of the ACNC Legislation, Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review 2018, to reduce the regulatory burden whilst retaining the transparency required to maintain public trust and confidence. The Government said the new framework would mean over 3,000 charities will no longer need to produce reviewed financial statements (saving each charity about

$2,400 per annum) and approximately 2,000 charities will no longer be required to produce audited financial statements (saving each charity about $3,000 per annum).

The Government also said that CFFR has agreed to establish a cross-border recognition model to harmonise charitable fundraising laws. The model will provide a single registration point for national operators, which will reduce the costs and administrative burdens for charitable fundraisers that operate across multiple jurisdictions.

JobMaker Hiring Credit Statutory Rules released

The Government registered the Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No 9) 2020. These set out details of the JobMaker Hiring Credit rules.

The JobMaker Hiring Credit was announced in the Federal Budget and legislation to implement the rules – namely the Economic Recovery Package (JobMaker Hiring Credit) Amendment Act 2020 – which has received assent. This Act contains what may be termed the machinery provisions, while the Statutory Rules contain the nuts and bolts of the system.

The Statutory Rules specify:

- the start and end date of the scheme;
- when an employer or business is entitled to a payment;
- the amount and timing of a payment; and
- other matters relevant to the administration of the payment.

Broadly, the JobMaker Hiring Credit will be available to employers for each new job they create over the next 12 months for which they hire an eligible young person, aged 16 to 35 years old. Generally, the amount of the JobMaker Hiring Credit payment depends on the age of the eligible additional employee when they commence employment with the entity. An entity may receive up to $200 per week for each eligible additional employee aged 16 to 29 years and up to $100 per week for each eligible additional employee aged 30 to 35 years.

Under the JobMaker scheme, qualifying entities can only receive the payment for a JobMaker period in respect of eligible additional employees. An "eligible additional employee" is an individual who:

- was employed by the qualifying entity at any time during the JobMaker period;
- commenced employment between 7 October 2020 and 6 October 2021;
- was aged between 16 and 35 years at the time they commenced employment;
- has worked an average of 20 hours a week for each whole week the individual was employed by the qualifying entity during the JobMaker period;
- meets the pre-employment conditions;
- meets the notice requirement; and
- is not excluded as an eligible additional employee.

Date of effect: The Statutory Rules take effect from 4 December 2020.

They were released in draft form on 2 November 2020. During the consultation, "some concerns" were raised around complexity for small businesses. Changes were made to accommodate this (ie to clarify certain provisions and to reduce complexity "where possible"). Nevertheless, the Explanatory Statements says that some complexity in the provisions "is unavoidable" (in particular in relation to the "additionality" requirements). It goes on to state, however, that "much of the practical implications" will be resolved through the ATO's "proposed administration of the scheme".

JobMaker Hiring Credit: reporting obligations

The Government has registered the JobMaker Hiring Credit Reporting Obligations Instrument 2020. This sets out the information that employers who seek to participate in the JobMaker Hiring Credit scheme must provide the ATO.

Specifically, it describes information that must be reported under the JobMaker Hiring Credit scheme, including the information that must be reported each time a claim for a payment is made under the scheme. The instrument also explains how reporting must be undertaken and when reports are due.

Employee reporting

Certain information must be reported before an employer can claim a JobMaker Hiring Credit. This includes the following details for each employee an employer intends to claim for as an eligible additional employee using STP:

- TFN;

- date of birth;
- full name;
- date employment commenced (if occurring in the jobmaker period);
- date employment ceased (if occurring in the jobmaker period); and
- whether the employee met the average hours of work requirement for the JobMaker period.

The ATO is developing specifications setting out the JobMaker Hiring Credit functionality for STP enabled payroll software. Information will be located on the ATO website.

The Rules set out reporting deadlines on this, the first being in April 2021 and the progressing forward on a monthly basis. Given that the information must be provided before a claim can be paid, it is in the employer's interest to provide the information asap.

Payment claim information

There is certain information that must be provided when a claim is made. This includes the following:

- the total payroll expenses for the JobMaker period;
- the baseline payroll amount for the period;
- the total headcount at the end of the JobMaker period;
- the baseline headcount for the JobMaker period;
- confirmation that each employee included in the claim calculation is an eligible additional employee (including that the minimum hours test has been satisfied);
- a declaration which meets specific requirements;
- a signature which meets specific requirements; and
- financial institution account details.

This information is to be reported via ATO Online services for Individuals, ATO Online Services for Business, Business Portal or Online Services for Agents or the Business Portal as part of the claims process.

Date of effect: The instrument took effect on 4 December 2020.

It had been released in draft form but on a targeted basis, ie it was sent to various representatives of professional and industry associations and meetings were also held.

COVD-19 Supplement extensions to 31 March 2021: Instrument

The Minister for Families and Social Services has registered the Social Security (Coronavirus Economic Response - 2020 Measures No 16) Determination 2020 to ensure the continued payment of the COVID-19 Supplement to 31 March 2021.

The Supplement will be paid to recipients of JobSeeker Payment, Parenting Payment, Youth Allowance, Austudy Payment, Special Benefit, Widow Allowance and Partner Allowance. It will be paid at a rate of $150 a fortnight for social security instalment periods that begin on a day during the period commencing on 1 January 2021 and ending on 31 March 2021 (down from $250 per fortnight, which was paid up to 31 December 2020).

The Determination also extends the waiver of certain waiting periods, including the seasonal work preclusion period and the newly arrived resident's waiting period, and the qualifying residence requirement for Parenting Payment.

In addition, the Determination extends (until 16 April 2021) the period for which a person is taken to receive a social security pension or benefit at nil rate (resulting in continued access to benefits such as concession cards).

Bills receive Assent

The following Bills have received assent:

- Treasury Laws Amendment (2020 Measures No 6) Bill 2020 - Assent on 17 December 2020 as Act No 141 of 2020. The Bill expands eligibility for the 2020-21 Budget measure JobMaker Plan - temporary full expensing to support investment and jobs. The Bill provides an alternative mechanism to the existing test for working out if the $5 billion threshold applies to qualify for the temporary full expensing concession and allows entities to opt out of temporary full expensing on an asset-by-asset basis.
- Economic Recovery Package (JobMaker Hiring Credit) Amendment Bill 2020 - Assent on 13 December 2020 as Act No 96 of 2020. The Bill sets up the "machinery" provisions by which the Treasurer can issue Statutory Rules

relating to the new payment (ie in the same way as it works in the context of JobKeeper). It amends the Coronavirus Economic Response Package (Payments and Benefits) Act 2020 to allow the Treasurer to do this. The main instrument is statutory rules.

- National Emergency Declaration (Consequential Amendments) Bill 2020 - Assent on 15 December 2020 as Act No 129 of 2020. Among other things, the Bill amends the ITAA 1997 to create an alternative test for declaring an event to be a disaster for the purpose of deducting a gift made to a disaster relief fund, where the Governor-General has declared the event is a national emergency.
- Social Services and Other Legislation Amendment (Extension of Coronavirus Support) Bill 2020 – Assent on 17 December 2020 as Act No 140 of 2020. The Bill implements the extension of the temporary Coronavirus Supplement from 1 January 2021 to 31 March 2021, at a reduced rate.
- Social Services and Other Legislation Amendment (Omnibus) Bill 2020 – Assent on 26 November 2020 as Act No 107 of 2020. It amends the Social Security (Administration) Act 1999 so that the offence provisions for providing false and misleading statements or documents are extended to capture information that is not provided to a natural person.
- Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019 – Assent on 17 December 2020 as Act No 133 of 2020. It expands the circumstances in which reporting entities may rely on customer identification and verification procedures undertaken by a third party.
- Financial Sector Reform (Hayne Royal Commission Response) Bill 2020 – Assent on 17 December 2020 as Act No 135 of 2020. Corporations (Fees) Amendment (Hayne Royal Commission Response) Bill 2020 – Assent on 17 December 2020 as Act No 137 of 2020. The Bills implement further recommendations of the Banking Royal Commission.
- Corporations Amendment (Corporate Insolvency Reforms) Bill 2020 – Assent on 15 December 2020 as Act No 130 of 2020. The Bill passed without amendment and implements insolvency reforms that will apply to incorporated businesses with liabilities less than $1 million. The measures will change from a "one-size-fits-all" model to a more flexible "debtor in possession" model.
- Treasury Laws Amendment (2020 Measures No 5) Bill 2020 - Assent on 11 December 2020 as Act No 118 of 2020. It makes tax-free certain State and Territory small business grants for the impacts of COVID-19, facilitate the payment of lost and unclaimed superannuation money held by the ATO directly to New Zealand KiwiSaver scheme providers and grant DGR status to Neighbourhood Watch Australasia.

WFH shortcut method available until end of 2020-21

The has ATO again extended - this time from 31 December 2020 to 30 June 2021 - the application of the "shortcut" rate outlined in Practical Compliance Guideline PCG 2020/3 for claiming work-from-home running expenses. As amended, PCG 2020/3 allows eligible taxpayers to claim additional running expenses incurred between 1 March 2020 and 30 June 2021 at the rate of $0.80 per work hour, provided they keep a record of the number of hours worked from home. Taxpayers eligible to use the shortcut rate are employees and business owners who:

- work from home to fulfil their employment duties or to run their business during the period from 1 March 2020 to 30 June 2021; and
- incur additional running expenses that are deductible under s 8-1 or Div 40 of the ITAA 1997.

Commissioner High Court appeal - Transcript

The Commissioner's appeal to the High Court against the Full Federal Court decision in FCT v Travelex Ltd [2020] FCAFC 10 was heard on 2 December 2020. A transcript (63 pages) of that hearing has now been released - FCT v Travelex Limited [2020] HCATrans 209. The Court reserved its decision.

The Full Federal Court had, by majority (Steward and Kenny JJ, with Derrington J dissenting), dismissed the ATO's appeal against a 2018 decision concerning the payment of interest on an RBA surplus that arose where the taxpayer had overstated its GST liability.

FINANCIAL SERVICES

Financial Reforms No 2 Bill introduced

The Financial Sector Reform (Hayne Royal Commission Response No 2) Bill 2020 has been introduced into the House of Reps to implement further recommendations of the Banking Royal Commission.

Ongoing fee arrangements

The Bill will amend the Corporations Act to require financial services providers that receive fees (fee recipients) under an ongoing fee arrangement to:

- provide clients with a single document each year which outlines the fees that will be charged and the services which the client will be entitled to in the following 12 months and which seeks annual renewal from clients for all ongoing fee arrangements; and
- obtain written consent before fees under an ongoing fee arrangement can be deducted from a client's account.

Date of effect: 1 July 2021.

Disclosure of lack of independence

The Bill will further amend the Corporations Act to require a providing entity (a financial services licensee or authorised representative) to give a written disclosure of lack of independence where they are authorised to provide personal advice to a retail client.

Date of effect: 1 July 2021.

Advice fees in superannuation

The Bill will amend the Superannuation Industry (Supervision) Act 1993 to provide greater protection for superannuation members against paying fees for no service. The amendments increase the visibility of advice fees for all superannuation products and prohibit the charging of ongoing advice fees from MySuper products.

Date of effect: to apply from 1 July 2021, with a 12-month transitional period commencing 1 July 2021 for arrangements entered into before 1 July 2021.

Changes to responsible lending obligations: Bill introduced

The National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020 has been introduced into Parliament, it implements measures announced in the 2020-21 Budget.

The key elements of the Bill include:

- removing responsible lending obligations from the National Consumer Credit Protection Act 2009, with the exception of small amount credit contracts (SACCs) and consumer leases where heightened obligations will be introduced;
- ensuring that authorised deposit-taking institutions (ADIs) will continue to comply with APRA's lending standards requiring sound credit assessment and approval criteria;
- adopting key elements of APRA's ADI lending standards and applying them to non-ADIs;
- allowing lenders to rely on the information provided by borrowers, replacing the current practice of "lender beware" with a "borrower responsibility" principle; and
- removing the ambiguity regarding the application of consumer lending laws to small business lending.

The Bill will also amend the Credit Act to "enhance" the consumer protection framework for consumers of small amount credit contracts and consumer leases, while ensuring these products "can continue to fulfil an important role in the economy".

In announcing the changes, the Treasurer stated that the Government will also introduce a new licensing regime to protect consumers from the predatory practices of debt management firms by requiring them to hold an Australian Credit Licence when they are paid to represent consumers in disputes with financial institutions.

Date of effect: from the day after date of assent or 1 March 2021, whichever is later. The amendments for the "best interests obligations" commence six months after that date.

New financial advisers disciplinary body announced

The Treasurer and the Assistant Minister for Superannuation, Financial Services and Financial Technology have issued a joint media release announcing changes to the regulatory framework that applies to financial advisers.

Findings of the recent Retirement Income Review showed that most Australians do not access financial advice at retirement due largely to the cost of advice and a lack of consumer trust. Coupled with recommendation 2.10 of the Royal Commission into

Misconduct in the Banking, Superannuation and Financial Services Industry which called for a single, central disciplinary body to be established for financial advisers, the Government has announced the following.

- The operation of the **Financial Services and Credit Panel (FSCP)** within ASIC will be expanded. It will become the single, central disciplinary body for financial advisers. It currently supports ASIC in the exercise of its regulatory functions with respect to the making of banning orders against individuals for misconduct and will be able to leverage its extensive expertise and existing governance structures, avoiding the need to establish a new body to perform the expanded role.
- The **Financial Adviser Standards and Ethics Authority's (FASEA)** standard-making functions will be moved to Treasury, with standards to be set by legislative instrument. The remaining elements of FASEA's role, including administering the adviser examination, will be incorporated into the FSCP's expanded mandate. FASEA will be wound up as the reforms will streamline the number of bodies involved in the oversight of financial advisers.

The Government said that legislation implementing these reforms will be introduced into Parliament in the first half of 2021.

The release also references changes contained in the Financial Sector Reform (Hayne Royal Commission Response No 2) Bill 2020, which has been introduced into the House of Reps.

Financial advice and conflicted remuneration: ASIC guidance

ASIC has released technical updates to its Regulatory Guide RG 246 on conflicted and other banned remuneration to reflect recent legislative changes. The updates to RG 246 reflect the end of the grandfathering of conflicted remuneration for financial product advice from 1 January 2021. The updates also incorporate the extension of the ban on conflicted remuneration to stamping fees paid in relation to listed investment companies and listed investment trusts (excluding real estate investment trusts) that took effect on 1 July 2020.

Product issuers are required to provide rebates to clients for all previously grandfathered benefits that they remain legally obliged to pay on or after 1 January 2021. Updated RG 246 clarifies that the law does not prescribe a timeframe for repaying commissions that are being clawed back where a life insurance policy has been cancelled or reduced in the first two years. ASIC said this is consistent with the guidance previously published on the ASIC website.

SUPERANNUATION

Super contributions bring forward age limit: Bill stuck in Senate

Individuals aged 65 and 66 face ongoing uncertainty with their superannuation contribution plans after the legislation proposing to increase the age limit to allow the bring forward of up to three years of non-concessional contributions failed to pass the Senate before Parliament rose on 10 December 2020. This means that the Senate will not get an opportunity to consider the Bill again until Federal Parliament resumes on 2 February 2021.

The Treasury Laws Amendment (More Flexible Superannuation) Bill 2020 proposes to amend s 292-85(3)(c) of the ITAA 1997 to extend the bring-forward age limit to 65 and 66 (ie under age 67) in the financial year of the non-concessional contributions. Individuals under age 67 in the financial year in which they make a non-concessional contribution will be able bring forward up to three times (ie $300,000) of their annual non-concessional cap of $100,000, provided that they meet the other conditions. Currently, only individuals under age 65 in the financial year in which they make a non-concessional contribution may access the bring forward rule.

Date of effect: Applicable to non-concessional contributions made on or after 1 July 2020.

AFSL exemption removed for non-public offer super funds

The Financial Sector Reform (Hayne Royal Commission Response) (Regulation of Superannuation) Regulations 2020, has been registered to amend the SIS Regs and Corporations Regulations 2001 to remove certain exemptions from the requirement to hold an Australian financial services licence (AFSL), and make other minor amendments to support the reforms to the roles of the superannuation regulators. Those broader reforms have been made by the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020 (which awaits assent after passing all stages of Parliament). That Bill implements recommendations 3.8, 6.3, 6.4 and 6.5 of the Banking Royal Commission.

The Regulations repeal the exemption for trustees of non-public offer superannuation funds from the requirement to hold an AFSL to deal in financial products (including superannuation interests). Trustees of non-public offer funds are advised to lodge their AFSL applications with ASIC on or before 30 April 2021. The Regulations also repeal reg 1.04A of the SIS Regs, which is made redundant by the Bill's clarification that the Commissioner of Taxation is responsible for receiving written notices of elections under the SIS Act.

WA super splitting Bill receives Assent

The Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Bill 2019 has received assent as Act No 112 of 2020. It passed the Senate unamended, with the House of Reps having made two Government amendments which include transitional arrangements for previous WA Family Court orders and financial agreements. The Act will extend Federal jurisdiction to WA family law super splitting and bankruptcy matters.

REGULATOR NEWS

TPB: 1 January changes

The Tax Practitioners' Board has set out the pertinent law changes that took effect on 1 January 2021. Matters covered include: professional indemnity insurance; time limits for lodgment of registration renewals; surrender of registration and TPB investigations; address for service of notices; and how documents can be "given" by the TPB to various entities.

Q&A on professional indemnity insurance: TPB

The TPB has compiled a list of questions and answers following its webinar – Professional indemnity insurance. The Q&A is broken into four main categories: (i) adequate cover; (ii) who should be covered; (iii) notifying us (the TPB) of your cover; and (iv) authorized insurers.

IGTO report on ATO administration

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) has released its latest report entitled A Report on aspects of the Australian Taxation Office's administration of JobKeeper and Boosting Cash Flow Payments for New Businesses.

IGTO conducted complaint investigations (commencing in June 2020) in response to concerns raised by or on behalf of new small businesses (individuals and entities). Most complainants were concerned that the ATO had decided they were ineligible to receive JobKeeper and/or Boosting Cash Flow payments because either sales had not been reported in their BAS as lodged (or to be lodged) before 12 March 2020 or they were not required to lodge a BAS at all.

IGTO concluded that the ATO did not provide a number of new businesses with an opportunity to provide evidence of having made taxable supplies (within the modified meaning) before it determined that they were ineligible for the JobKeeper and Boosting Cash Flow support measures.

IGTO states that new businesses should understand that they can demonstrate they are eligible for economic support measures other than by lodging a BAS with the ATO before 12 March 2020. As the ATO has not contacted (or identified) all potentially affected taxpayers, those who think they may be impacted should "engage directly with the ATO at first instance".