TAXATION

2021-22 Federal Budget to be held 11 May 2021

Government has confirmed that the 2021-22 Budget will be handed down on Tuesday 11 May 2021.

Temporary full expensing: SAP schedule released

ATO has released the schedule to be used by individuals, companies, partnerships, trusts and AMITs who are claiming a deduction or opting out of temporary full expensing.

More business to be able to access JobMaker

ATO has registered an instrument that makes changes to the JobMaker hiring credit to allow non-STP employers to claim the JobMaker.

Cashflow boost: Decision Impact Statement

ATO has released a Decision Impact Statement on the AAT decision that a business did not meet the eligibility requirements of the cash flow boost program.

CGT exemption for granny flat arrangements: draft legislation

Treasury has released draft legislation which will exempt certain granny flat arrangements from CGT.

FBT exemption for retraining: draft legislation

Government has released draft legislation which will provide employers with an exemption from FBT if they provide training to a redundant employee.

Commissioner’s discretion to retain tax refunds

PS LA 2021/2 has been issued to provide guidance to ATO staff on discretion to retain tax refunds which has been extended to combat phoenix activities.

Private health insurance rebate percentages

The private health insurance rebate percentages effective from 1 April 2021 to 31 March 2022 have been confirmed by the ATO.

ATO consultation: client identity verification guidelines

ATO has released a consultation paper seeking feedback on its proposed guidelines that set a minimum standard on due diligence for tax practitioners when engaging new clients. The draft guidelines will establish standards that tax practitioners will need to follow. The IPA will be making a submission and it is important that we receive any member feedback by 28 May 2021 to irwin.bushnell@publicaccountants.org.au so that we can incorporate any concerns members may have in relation to draft guidelines.

Draft legislation: small business insolvency reform

Treasury has released draft legislation to make amendments to primary and subordinate legislation to support new insolvency processes.

CPI March quarter 2021 index number

ABS has released the CPI index number of 117.9 for the March quarter 2021, it is used to index certain tax and super amounts as well as remote area FBT benefits.

Taxation revenue 2019-20 down by 1.4%

ABS has released figures which indicate that total taxation revenue collected by all levels of government in Australia decreased in 2019-20.

GST-free supplies of certain beds, mattresses and overlays

Draft GST Determination 2021/D1 discusses the specifically designed and not widely used tests in relation to GST-free supplies of certain beds, mattresses and overlays.

FINANCIAL SERVICES

Quality of advice review to cover financial planning and insurance

Government has announced that it will conduct Quality of Advice Review in 2022 to ensure people have access to high quality and affordable advice.

Draft Bill: central disciplinary body for financial advisers

Treasury has released a draft Bill to implement the previous announcement of a single disciplinary body for financial advisers and the wind-up of FASEA.

ASIC draft guidance: financial service breach reporting reforms

ASIC has issued draft guidance on the breach reporting reforms set to commence on 1 October 2021.

APRA draft guidance: climate change financial risks

APRA has released draft guidance on managing financial risks of climate change for banks, insurers and super trustees.

SUPERANNUATION

Downsizer in-specie contributions confirmed by ATO

ATO has confirmed that an individual can make a downsizer super contribution as an in-specie contribution provided other eligibility criteria are satisfied.

Draft Regs released to support super reforms

Treasury has released three sets of draft regulations prosing to support the Government's Your Future, Your Super package of super reforms announced in the 2020-21 Budget.

Super funds and non-arm's length expenditure: auditor obligations

ATO has extended to 2021-22 its transitional compliance approach for the non-arm's length expenditure rules set out in PCG 2020/5.

Illegal early release super scheme: adviser pleads guilty

A former Victorian financial adviser has pleaded guilty to charges involving an illegal early access super scheme for his clients.

Super early release fraud: WA woman charged

A WA woman has faced Court charged with 31 fraud offences for allegedly submitting multiple false claims to gain early access to super.

REGULATOR NEWS

ASIC appointments; new expectations for ASIC

A new full-time ASIC Chairperson has been announced and the government will also be issuing ASIC a new statement of expectations re financial services obligations.

ATO online services for businesses now operational

ATO has advised that its new service, Online Services for business, is now operational and replaces the old Business Portal.

ASIC extends deadlines for financial reports and AGMs

ASIC has announced it will extend the deadline to lodge financial reports for listed and unlisted entities by one month for balance dates from 23 June to 7 July 2021.

TPB and privacy awareness week

TPB has released an article reminding tax practitioners of the importance of safeguarding personal information of clients and appropriate privacy practices.

TAXATION

2021-22 Federal Budget to be held 11 May 2021

The Treasurer has confirmed that the 2021-22 Budget will be handed down on Tuesday 11 May 2021.

Temporary full expensing: SAP schedule released

The ATO has released the schedule to be used by individuals, companies, partnerships, trusts and AMITs who are claiming a deduction or opting out of temporary full expensing or backing business investment, and either:

- have an approved substituted accounting period with a year ending before 30 June 2021; or
- need to lodge a tax return for part of the year.

When lodging a tax return, the ATO requires that an entity use this schedule to advise it of either the entity's:

- deduction for temporary full expensing, number of assets it is claiming for, aggregated turnover and if it is using the alternative income test; or
- decision to opt out of temporary full expensing or backing business investment, and the number and value of the assets that it is opting out for.

The ATO states that the schedule should only be completed if the entity is claiming temporary full expensing or making the choice to opt out of temporary full expensing or backing business investment. It should be completed by either the individual, public officer, director, partner, trustee or tax agent who lodges for the business before 1 July 2021.

From 1 July 2021, entities must use the 2021 tax return.

More business to be able to access JobMaker

The ATO has registered the JobMaker Hiring Credit Reporting Obligations Amendment Instrument 2021. The instrument makes changes to the JobMaker Hiring Credit Reporting Obligations Instrument 2020 (the primary instrument) to enable employers using a software solution that does not support the reporting of all required information through Single Touch Payroll (STP) to claim JobMaker Hiring Credit (JMHC) payments.

Due to the STP reporting requirement of the primary instrument, some employers, because of STP software constraints, are unable to transmit some of the required information for eligibility purposes. This instrument modifies the reporting obligations of the primary instrument by allowing an alternative mechanism for these employers, ie via an additional form within ATO Online. This instrument also relaxes the STP reporting requirement for these employers, where instead of reporting all information set out in s 7(2) of the primary instrument, these employers will only need to report the full name and TFN of each eligible employee through STP before they claim.

The instrument also makes minor adjustments to the primary instrument that are machinery in nature, eg grammatical errors, repealing redundant words, etc.

Date of effect: The amendments apply in relation to JobMaker periods commencing on or after 7 October 2020.

Cashflow boost: Decision Impact Statement

The ATO has issued a decision impact statement (DIS) on Slatter Building Group Pty Ltd and FCT [2021] AATA 456. In that case, the AAT concluded that Slatter Building (SB) did not meet the requirements to be entitled to the Government's cash flow boost program. To be eligible to the first and second cash flow boost, an entity that is not a charity registered with the Australian Charities and Not-for-profits Commission (ACNC), must satisfy the "business activity" requirement under either ss 5(5) or 5(6) of the Boosting Cash Flow Act, where:

- either (i) the entity had an amount included in its assessable income for the 2018-19 income year in relation to it carrying on a business; or (ii) the entity made a taxable, GST-free or input taxed supply in a tax period that applied to it that started on or after 1 July 2018 and ended before 12 March 2020; and
- the Commissioner had notice of that assessable business income or taxable supply on or before 12 March 2020 (or a later time allowed by the Commissioner).

As SB was created on 17 January 2020, even though it took over the operation of a sole trader that operated since 2018, it did not have a tax period that applied to it that ended before 12 March 2020. Thus, it was not able to meet the requirements for the cash flow boost program.

The ATO considers that the AAT decision is consistent with the ATO's interpretation of the Boosting Cash Flow Act. The ATO also said that entities in similar situations as SB will not be entitled to JobKeeper payments given the program has an identical requirement as provided in s 11(6) to s 11(8) of the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020.

Comments are due by 21 May 2021.

CGT exemption for granny flat arrangements: draft legislation

Treasury has released exposure draft legislation which will exempt certain "granny flat arrangements" from CGT. This measure follows the Government's announcement of a targeted CGT exemption in the 2020-21 Federal Budget in October 2020.

The proposed legislation will amend the ITAA 1997 to ensure that a CGT event does not happen if an arrangement is entered into which creates, varies or terminates a granny flat interest, providing the following requirements are met:

- ***Eligibility for a granny flat interest*** – an individual is eligible for a granny flat interest if the individual has reached pension age or has a disability that means they require assistance for most day-to-day activities for at least 12 months;
- ***Ownership of the dwelling*** – an individual must own the dwelling where the granny flat interest is held, or is to be held, at the time of entering into or varying the arrangement, or agrees to acquire such a dwelling under the arrangement. For clarity, parties to a granny flat arrangement need not own the dwelling where the granny flat interest is to be held at the time of entering into the arrangement;
- ***Parties to the granny flat arrangement*** – both the individual who is to hold the granny flat interest, and the individual who owns, or agrees to acquire, the dwelling where the granny flat interest is to be held, are parties to the arrangement;
- ***Arrangement must be in writing*** – the granny flat arrangement must be in writing and indicate an intention for the parties to be legally bound by it; and
- ***Commerciality*** – the arrangement is not of a commercial nature. For example, requiring the holder of the granny flat interest to pay rent to occupy

the accommodation could indicate that the arrangement is of a commercial nature which could lead to failing the requirement of the legislation.

Date of effect: The amendments will apply in relation to events that happen on or after the amendments commence that would, apart from the amendments, be CGT events, ie when the granny flat arrangements were entered into is irrelevant.

Submissions are due by 29 April 2021.

FBT exemption for retraining: draft legislation

Treasury has released exposure draft legislation which will provide employers with an exemption from FBT if they provide training or education to a redundant, or soon to be redundant, employee for the purpose of assisting that employee to gain new employment. The measure was previously announced on 2 October 2020 and confirmed in the Budget.

Under the new law, a benefit will be exempt from FBT if all of the following conditions are satisfied:

- the benefit is provided in, or in respect of, the tax year in respect of education or training undertaken by an employee of an employer;
- the employee is redundant;
- the employer has complied with any obligations under the *Fair Work Act 2009* that applies in relation to the redundancy (such as any requirements to consult about the redundancy or, if the employee has been dismissed, any obligations regarding the dismissal);
- the education or training is for the primary purpose of enabling the employee to gain or produce salary or wages in respect of any employment to which the education or training relates.

The benefit must be provided in respect of education or training undertaken by an employee of the employer. This covers the expenses associated with obtaining the education or training (such as the cost of the education or training or related materials such as textbooks).

Date of effect: The new law applies to benefits provided on or after 2 October 2020.

Submissions are due by 29 April 2021.

Commissioner's discretion to retain tax refunds

Practice Statement PS LA 2021/2, provides guidance to ATO staff on the Commissioner's discretion to retain a tax refund, which was recently extended to combat "phoenix" activities. The ATO has the power to retain a refund if an entity has failed to lodge a return or provide other information that may affect the amount to be refunded. (Previously this power was limited to BAS and PRRT provisions.)

The ATO says its administrative approach in PS LA 2021/2 has been developed in recognition that the Commissioner's exercise of this extended power will not be taken lightly. In particular, the exercise of the discretion will be considered in circumstances where taxpayers are identified as engaged in high risk behaviour (including those engaging in illegal phoenix activity).

Date of effect: PS LA 2021/2 applies from 1 April 2020. It finalises Draft PS LA 2020/D2.

Private health insurance rebate percentages

The private health insurance rebate percentages effective from 1 April 2021 to 31 March 2022 have been confirmed by the ATO as follows:

Private Health Insurance Rebate percentages from 1.4.2021 - 31.3.2022				
Age	**Base Tier**	**Tier 1**	**Tier 2**	**Tier 3**
Under 65	24.608%	16.405%	8.202%	0%
65 - 69	28.710%	20.507%	12.303%	0%
70+	32.812%	24.608%	16.405%	0%

These are the income ranges: **Base Tier**: Singles - $90,000 or less; Families - $180,000 or less; **Tier 1**: Singles - $90,001-$105,000; Families - $180,000-$210,000; **Tier 2**: Singles - $105,001-$140,000; Families - $210,001-$280,000; and **Tier 3**: Singles - $140,001 or more; Families - $280,001 or more.

Note that the income thresholds used in calculating the private health insurance rebate (and Medicare levy surcharge) have been frozen for the last six years from 2015-16 to 2020-21. The income thresholds for 2021-22 are yet to be confirmed - perhaps the Government is planning to further extend this pause to the indexation of the income thresholds? One to watch in the 2021-22 Federal Budget.

ATO consultation: client identity verification guidelines

The ATO has released a consultation paper seeking feedback from the tax profession on its proposed guidelines that set a minimum standard on due diligence for tax practitioners when engaging new clients, or where there is suspicion that a client may have had their identity compromised. These guidelines are set to address the growing risk of identity theft and fraud.

The ATO said that it is encouraging tax practitioners to voluntarily adopt these standards into business practices now, with the view for the standards to become compulsory in the future following an initial transition period which will be followed by further consultations with the tax profession.

The consultation paper sets out details on:

- who needs to be verified;
- the verification methods – including the identity documents required;
- relationship verification;
- reviewing client verification and relationship authorisation for ongoing clients and individual representatives; and
- recording the client verification process.

The consultation paper also includes questions from the ATO to understand the impacts the proposed guidelines will have on the tax profession.

Comments are due by 9 June 2021.

Draft legislation: small business insolvency reform

Treasury has released draft legislation Consequential amendments to small business insolvency reforms. This follows the Government's recent corporate insolvency reforms that came into effect on 1 January 2021. By way of background, this introduced new insolvency processes directed at small businesses with the objectives of reducing complexity, time and costs.

The purpose of the draft legislation is to make amendments to primary and subordinate legislation to support the new insolvency processes. It comes in two forms – a draft Bill and a draft legislative instrument.

The draft Treasury Laws Amendment (Corporate Insolvency Reforms Consequentials) Bill 2021 will:

- amend the Fair Entitlements Guarantee Act 2012 to ensure employees who are otherwise eligible to receive entitlements can access the Fair Entitlements Guarantee scheme where their employer had been under restructuring prior to being wound up;
- amend various legislations to clarify that entities subject to prudential regulation by APRA are not eligible to access the new simplified insolvency processes; and
- clarify the operation of the new debt restructuring and simplified liquidation processes and to ensure that such processes work as intended, eg clarification on the role of the restructuring practitioner, liquidator requirements under simplified liquidation, etc.

The draft Treasury Laws Amendment (Corporate Insolvency Reforms Consequentials) Regulations 2021 will:

- amend regulations made pursuant to the Corporations (Aboriginal and Torres Strait Islander) Act 2006 to ensure that Aboriginal and Torres Strait Islander corporations may utilise the new debt restructuring and simplified liquidation processes, with some modifications to ensure consistency with the objectives and framework of the CATSI Act.

Proposed date of effect: The day after assent for the Bill; the day after registration for the instrument.

Submissions for both documents are due by 7 May 2021.

CPI March quarter 2021 index number

The Australian Bureau of Statistics (ABS) has released the CPI index number of 117.9 for the March quarter 2021 (up from 117.2 for the December 2020 quarter). This CPI index number is used to index certain tax and superannuation amounts under Subdiv 960-M of the ITAA 1997. The index number is also used for FBT purposes concerning remote area benefits (under ss 60 and 60AA of the FBTAA).

The ABS said the 0.6% increase in the CPI for March 2021 was impacted by an increase in price for automotive fuel (+8.7%), reflecting the recovery of fuel consumption since the COVID-19 lockdowns. The most significant price fall in the quarter was for furniture (-3%).

Taxation revenue 2019-20 down by 1.4%

Total taxation revenue collected by all levels of government in Australia decreased by $8 billion (-1.4%) from $560 billion in 2018-19 to $552 billion in 2019-20. These figures were revealed in Taxation Revenue, Australia, 2019-20, released by the Australian Bureau of Statistics.

Key contributors to the fall in "All Australia government taxation revenue" in 2019-20 were:

- company income tax was down $7.1 billion (-7.5%) as a result of the adverse effect of the COVID-19 pandemic on businesses with the largest falls in the tourism, banking, superannuation and insurance sectors;
- income tax paid by superannuation funds was down $4.3 billion (-39.3%) due to weakness in financial markets during the onset of the COVID-19 pandemic; and
- GST was down $1.1 billion (-1.7%) due to reduced consumer spending in cafes, restaurants and takeaway food services, and clothing, footwear and personal accessory retailing.

GST-free supplies of certain beds, mattresses and overlays

The supply of an adjustable bed, a pressure management mattress or a pressure management overlay is GST-free if the product is specifically designed for persons with an illness or disability and it is not widely used by other persons. Draft Determination GSTD 2021/D1, discusses the "specifically designed" and "not widely used" tests and also outlines a proposed compliance approach (in recognition of the practical difficulties suppliers of these products may face in applying the widely used test).

The ATO undertakes not to apply compliance resources in the following circumstances:

- in the case of an entity that supplies these products to a bed retailer - less than 25% of sales by volume of the particular product are supplied to "standard" bed retailers; or
- in the case of a bed retailer - the supplier has confirmed in writing that it supplies less than 25% of the particular product by volume to standard bed retailers.

Proposed date of effect: retrospective.

The compliance approach will apply from the start of the tax period commencing three months after Draft GSTD 2021/D1 has been finalised. In the meantime, the ATO will not seek to disturb the GST-free treatment of supplies of adjustable beds, pressure management mattresses or pressure management overlays (unless there is evidence of avoidance, fraud or evasion).

Comments are due by 21 May 2021.

FINANCIAL SERVICES

Quality of advice review to cover financial planning and insurance

The Government has announced that it will conduct Quality of Advice Review in 2022 to ensure people have access to high quality and affordable advice about financial planning and life insurance. This is a post-implementation review recommended by the Banking Royal Commission.

At a recent address, the Minister for Superannuation, Financial Services and the Digital Economy, Senator Jane Hume, said that rather than conducting two separate reviews, one for the Life Insurance Framework (LIF) and another considering the Quality of Advice, the Government's Quality of Advice Review will now also consider the LIF as part of its wider mandate, removing the need for a separate LIF review.

Senator Hume said the Quality of Advice Review will be conducted under the one roof by Treasury, who can appropriately consider the full breadth of issues impacting on both quality and affordability of all forms of financial advice. In practice, this will mean that once ASIC finishes its data collection phase under the LIF review, this information will be provided to Treasury for further analysis in the context of the Quality of Financial Advice Review. Important issues like the degree of underinsurance and maintaining access to affordable, quality advice will be at the forefront of the Quality of Advice Review, Ms Hume said.

Legacy insurance products

Senator Hume also noted that legacy insurance products still impose significant costs on the industry, including specialist accounting, audit, disclosure, legal, actuarial, product, tax and administrative services. The ability for insurers to rationalise legacy products is an important issue that Senator Hume will be "looking at closely". Currently, there are legal, consumer and tax issues that prevent insurance providers from rationalising such legacy products. The Government estimates that there are 286 outdated life products, and $22.6bn of funds under management that are allocated to such aged products.

Draft Bill: central disciplinary body for financial advisers

Treasury has released Exposure Draft - Financial Sector Reform (Hayne Royal Commission Response - A New Disciplinary System for Financial Advisers) Bill 2021. The Draft Bill follows the Government's previous announcement to expand the role of the Financial Services and Credit Panel (FSCP) within ASIC as the single, central disciplinary body for financial advisers.

The Draft Bill consists of four parts:

- **Part 1: Single disciplinary body for financial advisers** – to allow ASIC to appoint the FSCP to take on the functions of a single disciplinary body for financial advisers;
- **Part 2: Registration of financial advisers** – in addition to authorising a person to provide financial advice, the financial services licensee will be required to register (and annually renew) the financial adviser;
- **Part 3: Wind-up of FASEA and transfer of its standards functions to the Minister and ASIC** – the Minister responsible for administering the Corporations Act 2001 may make education and training standards and a Code of Ethics and ASIC will administer exams for financial advisers; and
- **Part 4: Regulation of tax (financial) advisers** – to introduce a single registration and disciplinary system for financial advisers who provide tax (financial) advice services. It proposes to allow financial advisers who meet the additional education and training standard in the Corporations Act, to provide tax (financial) advice services without needing to be registered under the Tax Agent Services Act 2009.

Proposed date of effect: 1 January 2022.

Submissions are due by 14 May 2021.

ASIC draft guidance: financial service breach reporting reforms

ASIC has issued the following draft guidance on the breach reporting reforms set to commence on 1 October 2021:

- Consultation Paper (CP 340) setting out proposed updates to its draft guidance on the breach reporting reforms;
- Draft Regulatory Guide (RG 78) which reflects the reforms to the breach reporting regime;
- Draft Information Sheet (Complying with the notify, investigate and remediate obligations) set to apply to AFS licensees who are financial advisers (and credit licensees who are mortgage brokers).

The breach reporting reforms, made by the Financial Sector Reform (Hayne Royal Commission Response) Act 2020, seek to clarify and strengthen the existing obligation on AFS licensees to self-report certain breaches of the law to ASIC. They implement the Government's response to recommendations 1.6, 2.8, 2.9 and 7.2 of the Hayne Royal Commission.

ASIC Deputy Chair, Karen Chester, said breach reporting is a core component of the financial services and credit regulatory framework. The reforms will better position ASIC to act decisively to disrupt misconduct and escalating harms and identify patterns of non-compliance across industry, Ms Chester said.

ASIC expects a significant increase in the volume of reports received as a wider range of entities will be required to report and a wider range of breaches will be subject to reporting. Entities are not required to report every instance of non-compliance or trivial breaches, but a targeted set of "reportable situations".

Comments are due by 3 June 2021.

Date of effect: ASIC will publish its final guidance before the obligations commence on 1 October 2021.

APRA draft guidance: climate change financial risks

APRA has released a draft Prudential Practice Guide (CPG 229) on managing the financial risks of climate change for banks, insurers and superannuation trustees. The draft guide seeks to assist APRA-regulated entities in managing climate-related risks as part of their existing risk management and governance frameworks.

The draft guidance covers APRA's view of sound industry practice and regulatory expectations in areas such as governance, risk management, scenario analysis and disclosure. Importantly, CPG 229 does not create new requirements or obligations. Rather, it is designed to be flexible in allowing each institution to adopt an approach that is appropriate for its size, customer base and business strategy.

APRA Chair, Wayne Byres, said that since the Government became a party to the Paris Agreement, APRA has been raising awareness of climate-related risks to the financial sector. Given the unique and long-term nature of the risks, however, processes to measure, monitor and manage climate-related financial risks are still developing. The draft guide does not direct or prevent APRA-regulated entities making any particular business or investment decision. Rather, it is aimed at ensuring decisions are well-informed.

Comments are due by 31 July 2021. The final PPG is expected to be released before the end of 2021.

SUPERANNUATION

Downsizer in-specie contributions confirmed by ATO

The ATO has confirmed to the SMSF Association that an individual can make a downsizer super contribution as an in-specie (ie non-cash) contribution, provided that the other eligibility criteria are satisfied.

SMSF Association Technical Manager, Mary Simmons, said there has been some confusion in relation to the ATO's view on in-specie downsizer contributions stemming from Law Companion Ruling LCR 2018/9. In particular, para 62 suggests that if an individual is eligible to make a downsizer contribution, they can only make it as an in-specie contribution, if they use the proceeds of downsizing to buy the asset they are contributing.

Ms Simmons said the ATO has now confirmed to the SMSF Association that, provided the downsizer eligibility criteria is met, there is no need to analyse how the contribution is funded, provided it does not exceed $300,000 or the total capital proceeds from the sale of the qualifying dwelling. This means that an individual can make a downsizer contribution as an in-specie contribution (eg an off-market transfer of listed shares), provided the value of the asset is equal to all or part of the proceeds from the disposal of the qualifying dwelling. The contribution also needs to be accompanied by the Downsizer contribution into super form.

With the existing strict eligibility criteria that an individual must satisfy to be eligible to make a downsizer contribution, the SMSF Association said it is pleased that the ATO's interpretation supports the intent of the law and does not see any mischief if the contribution is funded via an in-specie transfer of any asset(s), provided it is at arm's length and permitted by s 66 of the SIS Act.

Draft Regs released to support super reforms

Treasury has released three sets of exposure draft regulations proposing to support the Government's Your Future, Your Super (YFYS) package of super reforms announced in the 2020-21 Budget:

- Exposure Draft - Treasury Laws Amendment (Your Future, Your Super - Single Default Account) Regulations 2021 - will amend the Superannuation Guarantee (Administration) Regulations 2018 (SGA Regs) to support the amendments proposed by the Treasury Laws Amendment (Your Future, Your Super) Bill 2021 (which is still before the House of Reps). The Bill seeks to limit the creation of multiple super accounts for employees who do not choose a super fund when they start a new job. If a new employee (who has started their employment on or after 1 July 2021) has no chosen fund, but has an existing "stapled" fund, an employer will need to comply with the choice of fund rules by making contributions to the employee's stapled fund. To determine whether a stapled fund for an employee exists, employers will need to request that information from the ATO. The Draft Regs set out the proposed requirements that a fund must meet to be a stapled fund, and procedural matters relating to requests to and responses from the ATO about stapled funds. DATE OF EFFECT: Applicable to employment that starts on or after 1 July 2021.

- Exposure Draft - Treasury Laws Amendment (Your Future, Your Super - Addressing Underperformance in Superannuation) Regulations 2021 - will amend the SIS Regs to support the implementation of the annual performance assessments under the Treasury Laws Amendment (Your Future, Your Super) Bill 2021. The Bill proposes to require trustees of super funds providing "Part 6A products" (eg MySuper products and other specified products) to give notice to its beneficiaries if it has failed a performance test conducted by APRA. Where a product has failed the performance test in two consecutive years, the trustee will be prohibited from accepting new beneficiaries into that product. The Draft Regs support the Bill by specifying when APRA must conduct the annual performance test; the circumstances where products are to be treated as combined; the form and content for notices about failing a test; the circumstances where APRA may lift an underperformance prohibition on a trustee; and the formulas for ranking Part 6A products for use in the Government's YourSuper comparison tool. DATE OF EFFECT: Annual performance tests are proposed to apply to MySuper products from 1 July 2021 (and from 1 July 2022 for other specified products).
- Treasury Laws Amendment (Your Future, Your Super - Improving accountability and member outcomes) Regulations 2021 - will amend the SIS Regs and the Corporations Regulations 2001 to: prescribe how information must be provided under the portfolio holdings disclosure (PHD) regime; prescribe the information that must be provided with a notice for an annual members' meeting; and remove an exception to the prohibition on the use of goods and services to influence employers in revised s 68A of the SIS Act (the employer kickback rule). DATE OF EFFECT: The PHD amendments will apply to the first reporting day on or after 31 December 2021, or the first reporting day after the commencement of the final Regulations, whichever occurs later. The amendments in relation to members' meetings will apply prospectively to any notices that relate to a year of income that ends on or after the commencement of the final Regulations. The employer kickback rule amendments will apply to the provision of goods or services from the day after the final Regulations are registered.

Submissions are due by 25 May 2021.

Industry Super Australia welcomed the Draft Regulations and noted its view that the proposed performance test better focuses on member outcomes and appears to now include administration fees. Industry Super Australia also welcomed that the Draft Regs will benchmark the performance of unlisted assets to more appropriate indices and ensure super funds are not penalised for investing in local infrastructure projects..

Super funds and non-arm's length expenditure: auditor obligations

The ATO has extended to 2021-22 its transitional compliance approach for the non-arm's length expenditure (NALE) rules set out in Practical Compliance Guideline PCG 2020/5.

As a result of the extension, the ATO says approved SMSF auditors do not need to modify their opinion in Part A of the SMSF Independent auditor's report (IAR) for the income years where the ATO's transitional compliance approach in PCG 2020/5 applies.

However, the ATO reminds SMSF auditors that they will still need to consider modifying their opinion in Part A of the IAR where the fund incurred NALE that directly related to the fund deriving particular ordinary or statutory income as the compliance approach in PCG 2020/5 does not apply. The ATO said it will provide a further update for SMSF auditors when it finalises Draft Law Companion Ruling LCR 2019/D3.

Illegal early release super scheme: adviser pleads guilty

A former Victorian financial adviser has pleaded guilty to charges involving an illegal early access to superannuation scheme for his clients while working as an authorised representative of a financial planning business. ASIC said the scheme involved the former adviser submitting applications for one-off advice fees to NULIS Nominees (Australia) Limited (Nulis), as trustee for the MLC Super Fund, supposedly for financial services that he claimed he had provided to clients. However, the adviser had not provided any services and instead paid the funds back to clients, facilitating the unlawful early release of their super.

Between 11 November 2016 and 13 October 2017, the adviser obtained $1.5m from Nulis on behalf of 168 clients. Between 11 August 2017 and 11 October 2017, the adviser attempted to obtain a further $92,400 on behalf of 10 clients. The adviser was charged on 24 February 2021. Each offence carries a maximum penalty of up to 10 years jail. The matter has been adjourned until 25 October 2021 for a plea hearing before the County Court.

Super early release fraud: WA woman charged

A 35-year-old West Australian woman has faced Perth Magistrates Court charged with 31 fraud offences for allegedly submitting multiple false claims to gain early access to superannuation totalling $330,000.

The Australian Federal Police (AFP) alleged that the woman submitted several false hardship claims from early 2019 on behalf of other people, to access superannuation payments of up to $10,000 each. The woman was originally charged in 2020 as part of an AFP investigation by Taskforce Iris in partnership with the ATO-led Serious Financial Crime Taskforce (SFCT). AFP investigators executed a search warrant at the woman's home in High Wycombe WA on 22 May 2020 where they seized several documents, $1,750 cash, ink-based business identification and certification stamps, and electronic devices.

The woman faced Perth Magistrates Court on 23 April 2020 charged with 31 counts of intent to defraud, by deceit or fraudulent means, induced a person to do an act that the person was lawfully entitled to abstain from doing, contrary to s 409(1)(e) of the Criminal Code Act 1913 (WA). These charges replace the 4 initial offences of making a false Commonwealth document with the intention that document be used to dishonestly induce a third person to accept it as genuine: ss 144.1(5) and 145.1(5) of the Criminal Code Act 1995 (Cth).

REGULATOR NEWS

ASIC appointments; new expectations for ASIC

The Treasurer has appointed Mr Joseph Longo as the full-time ASIC Chairperson, and Ms Sarah Court as a full-time Deputy Chair, for a five-year period commencing on 1 June 2021.

Mr Longo is currently a senior advisor at Herbert Smith Freehills and prior to that worked as general counsel for Deutsche Bank in London and Hong Kong for 17 years. He was also previously the national director of enforcement at ASIC. Ms Court has been a commissioner of the Australian Competition and Consumer Commission (ACCC) since May 2008, where she is currently responsible for enforcement matters. Prior to that, Ms Court was a senior executive lawyer with the Australian Government Solicitor. Ms Court will fill the role left vacant by deputy chair, Mr Daniel Crennan. The Treasurer also thanked the outgoing ASIC Chair, Mr James Shipton, for his contribution to ASIC.

In addition to the new ASIC appointments, the Treasurer announced that the Government will be issuing ASIC a new Statement of Expectations and introducing legislation to establish the Financial Regulator Assessment Authority (FRAA). The new Statement of Expectations will outline the Government's priorities for and expectations of ASIC. The FRAA will provide an external framework for assessing the effectiveness and capability of both ASIC and the APRA. The FRAA will consist of three independent statutory appointees together with the Treasury Secretary. Reviews will be conducted once every two years and as directed by the Treasurer. Legislation to implement the FRAA will be introduced by mid-2021.

ATO online services for businesses now operational

The ATO has advised that its new service, Online services for business, is now operational.

The service replaces the 17-year old Business Portal, as well as the ATO's eSAT service (the electronic superannuation service). However, both of these will be maintained for a transition period "in the coming months". No strict deadline was provided.

In addition to providing the services available in the Business Portal, Online services for business allows users to access new services including: view and print tax returns and income tax history; create payment plans; and switch between businesses with a single log in.

ASIC extends deadlines for financial reports and AGMs

ASIC has announced that it will extend the deadline to lodge financial reports for listed and unlisted entities by one month for balance dates from 23 June to 7 July 2021 (inclusive). ASIC said the extension will help alleviate pressure on resources for the audits of smaller entities and provide adequate time for the completion of the audit process taking into account challenges presented by COVID-19 conditions. This relief will not apply to registered foreign companies.

ASIC said it will also extend its "no-action" position for public companies to hold their Annual General Meetings (AGMs) from within five months to within seven months after the end of financial years that end up to 7 July 2021.

TPB and privacy awareness week

The Tax Practitioners Board (TPB) has released an article reminding tax practitioners of the importance of safeguarding personal information of clients by implementing appropriate privacy practices. The article is part of the TPB's response to the Privacy Awareness Week, an annual event organised by the Office of the Australian Information Commissioner (OAIC) that runs from 3 to 9 May 2021.

The TPB article also includes tips on protecting personal information for tax practitioners, which would assist in meeting their Code of Professional Conduct obligations.