

TREASURY NEWS

Govt Deregulation Taskforce priority areas announced

The Government has announced the first 3 priority areas for its Deregulation Taskforce, being food exporters, major infrastructure projects and small business employees.

Treasury releases its Corporate Plan 2019-20

Treasury has released its Corporate Plan 2019-20. It sets out Treasury's purpose, operating context and priorities for the next four years (2019-20 to 2022-23).

TAXATION

Single Touch Payroll deadline is looming

The ATO has reminded small employers (with 19 or less employees) that they need to move to Single Touch Payroll (STP) by 30 September.

Restrictions on use of cash Bill introduced

A Bill has been introduced in the House of Representatives to make it a criminal offence for entities to make or accept cash payments of \$10,000 or more.

ESS: meaning of employee share trust - Draft Taxation Determination

The ATO has issued ***Draft Determination TD 2019/D8*** on the meaning of "employee share trust" in s 130-85(4) of the ITAA 1997.

LCT refunds for farmers and tourism: Treasury (No 2) Bill introduced

The ***Treasury Laws Amendment (2019 Measures No 2) Bill 2019*** has been introduced into the House of Representatives.

Centrelink robodebt class action launched

Gordon Legal has announced that it will bring a class action on behalf of people who have had their Centrelink benefits clawed back by the Government.

Proof of life for overseas pensioners: Bill awaits assent

The ***Social Security Legislation Amendment (Overseas Welfare Recipients Integrity Program) Bill 2019*** has been passed by the Senate and now awaits Royal Assent.

First Home Loan Deposit Scheme Bill introduced

A Bill has been introduced in the House of Representatives, proposing to establish the Government's First Home Loan Deposit Scheme.

Lump sum payment of weekly workers' comp assessable

A lump sum payment of weekly compensation payments was assessable income, as it represented compensation for the loss of income during a period of incapacity.

ATO ordered to produce whistleblower documents to Senate Committee

The Senate has ordered the Commissioner of Taxation to provide all documents relating to the whistleblower disclosure by former ATO employee, Mr Richard Boyle.

Treasury miscellaneous amendments: draft legn - FBT and taxi travel

Treasury has released an exposure draft Bill and Regulations proposing minor and technical amendments across a range of laws including tax, FBT and super.

Luxury Car Tax and Wine Equalisation Tax - Regs remade

Two sets of regulations have been "remade" as a result of the earlier versions "sunsetting", ie ceasing to have effect.

Tax agent jailed for stealing refunds from clients

A tax agent has been sentenced in the Parramatta Court to a one-year jail term for lodging fraudulent income tax returns on behalf of clients and stealing refunds.

ATO reports 43% increase in tax paid to scammers

The ATO has reported that \$197,057 was paid to scammers impersonating the ATO in July 2019 (up 43% from June).

ATO disclosure of business tax debts - Senate Committee concern

The Senate Economics Legislation Committee has released its report into the ***Treasury Laws Amendment (2019 Tax Integrity and Other Measures No 1) Bill 2019***.

Div 7A: ATO discretion to disregard deemed dividends

The ATO has issued an updated version of the ***PS LA 2011/29*** on the Commissioner's discretion to either disregard or to permit a deemed dividend to be franked.

Property developer jailed for GST fraud

The ATO has reported that a property developer was sentenced in the County Court of Victoria to 6 years and 9 months in jail for GST fraud.

Man jailed for claiming GST refunds on fake car sales

The ATO has reported that a Queenslander was sentenced in the Hervey Bay District Court to 3 years jail for GST fraud, claiming refunds he wasn't entitled to.

Thin cap rules; GST and online hotel bookings; LCT - Bill awaits assent

The ***Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2019*** has been passed by the Senate.

Directors' liability: expansion of estimates regime to GST, LCT, WET

The ATO has issued a draft Guideline regarding the expansion of the estimates regime to include GST, LCT and WET.

FINANCIAL SERVICES

AFS compliance review results in compensation to clients

ASIC has reported that ClearView Financial Advice Pty Ltd has completed a review and remediation program for over 200 clients who received life insurance advice.

FASEA exam practice questions released

FASEA has released additional practice questions to help financial advisers prepare for the Financial Adviser Exam. AFCA national roadshow launched

The Australian Financial Complaints Authority has announced that it will start a national roadshow on 23 September 2019.

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Financial product design obligations: Draft Regs released

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Ending grandfathered commissions: Bill passes Reps

The *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Bill 2019* has been passed without amendment and now moves to the Senate.

SUPERANNUATION

SMSF investment strategy - further ATO details

The ATO has sought to clarify its previous communications sent to SMSF trustees about their investment strategy and diversification.

Insurance within super opt-in Bill: Govt amendments passed by Senate

The Senate has passed the ***Treasury Laws Amendment (Putting Members' Interests First) Bill 2019*** with 16 Government amendments that will defer the start date.

Super Guarantee amnesty for employers: Bill re-introduced

The Government has re-introduced legislation to establish and extend its proposed one-off amnesty to enable employers to self-correct historical SG underpayments.

Treasury Measures (No 2) Bill introduced: genuine redundancy age

The ***Treasury Laws Amendment (2019 Measures No 2) Bill 2019*** has been introduced into the House of Representatives, proposing previously-announced amendments.

Identity theft and super fraud syndicate dismantled by AFP/ASIC

The AFP and ASIC have moved to shut down a major identity theft and fraud syndicate that had been targeting superannuation and share trading accounts.

Super Measures (No 1) Bill 2019 awaits assent

The ***Treasury Laws Amendment (2018 Superannuation Measures No 1) Bill 2019*** has been passed by the Senate without amendment and now awaits Royal Assent.

Super guarantee charge: ATO remission of additional 200% penalty

A ***Draft Practice Statement Law Administration*** has been released, setting out the ATO's policy regarding the remission of the additional 200% super guarantee charge.

Successor fund transfer reporting - ATO seeking feedback

The ATO has updated its successor fund transfer (SFT) reporting protocol to clarify some of the common enquiries it has received from industry.

REGULATOR NEWS

Improved data key for better super member outcomes: APRA

APRA Chairman, Wayne Byres, has delivered a speech, *Driving better member outcomes*, focusing on super trustees who are not delivering for their members.

Banking Royal Commission - ASIC implementation update

ASIC has provided its second Update on its actions in response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

New ASIC powers for licensing, search warrants, etc - draft legn

The Government has released exposure draft legislation proposing to grant ASIC new enforcement and supervision powers in response to the Banking Royal Commission.

Unauthorised changes made to ASIC register using corporate key

The NSW Supreme Court has alerted company owners to guard their corporate keys to prevent unauthorised changes to their details on ASIC registers.

Board of Taxation Reviewing Corporate Tax Residency Rules

The Board of Taxation is, at the request of the Treasurer, reviewing the corporate tax residency rules.

SMSF investment strategy diversification requirements clarified

The ATO has provided further clarification for SMSF Trustees and SMSF Auditors on SMSF investment strategy diversification requirements.

The time is running out for labour hire providers to apply for a licence to keep operating in Victoria.

A business which supplies workers in any occupation to another business in any industry may be a labour hire provider under the law.

TREASURY NEWS

Govt Deregulation Taskforce priority areas announced

The Government has [announced](#) the first 3 priority areas for its Deregulation Taskforce, being: food exporters - reducing regulatory burden for food manufacturers that export; major infrastructure projects - getting beneficial projects up and running sooner; and small business employees - making it easier for sole traders and micro businesses to employ their first person.

The Taskforce is seeking to drive improvements to the design, administration and effectiveness of Government regulation to ensure it is fit for purpose. The Taskforce's objective is to develop and recommend solutions to lower the costs of regulation for businesses. Its primary focus is to work from the perspective of business and co-design solutions with business and agencies across jurisdictions. The [terms of reference](#) are set out on the Deregulation Taskforce website.

The IPA is seeking member comments on how to improve regulation, especially relating to the employment of staff. Please send your comments to Vicki Stylianou at onevoice@theipagroup.org.

Treasury releases its Corporate Plan 2019-20

Treasury has released its [Corporate Plan 2019-20](#). It sets out Treasury's purpose, operating context and priorities for the next four years (2019-20 to 2022-23). Among other things, Treasury co-ordinates the preparation of the Commonwealth Government Budget and other documents including the Mid-Year Economic and Fiscal Outlook and the Final Budget Outcome and it supports effective Commonwealth-State relations by maintaining high-quality relationships, and making timely and accurate payments to the states and territories.

Treasury also provides advice on the Government's fiscal strategy and budget position over the forward estimates and the medium term.

TAXATION

Single Touch Payroll deadline is looming

The ATO has [reminded](#) small employers (with 19 or less employees) that they need to move to Single Touch Payroll (STP) by 30 September.

The ATO says that STP became mandatory for small employers from 1 July this year. The ATO provided a 3-month transition period to employers that needed more time to get ready until 30 September. Employers have a number of options to transition to STP. They can start reporting now, get a deferral, or work with their registered tax or BAS agent to report quarterly (if eligible), the ATO said.

Restrictions on use of cash Bill introduced

The [Currency \(Restrictions on the Use of Cash\) Bill 2019](#) has been introduced in the House of Representatives to make it a criminal offence for entities to make or accept cash payments of \$10,000 or more. The offences aim to reduce the risk of tax evasion, money laundering, fraud, bribery, obtaining financial advantage by deception and terrorism financing which can be facilitated by cash. It also seeks to ensure entities can't avoid the scrutiny of the ATO and participate in the black economy by making or receiving large cash payments.

The Bill proposes fines up to 60 penalty units (300 penalty units for corporations), and 120 penalty units or a 2-year prison for offences involving a greater level of culpability. Importantly, the measures will not apply to individual-to-individual transactions. Date of effect: The cash payment limit will apply to payments made or received from 1 January 2020.

ESS: meaning of employee share trust - Draft Taxation Determination

The ATO has issued [Draft Determination TD 2019/D8](#) on the meaning of "employee share trust" in s 130-85(4) of the ITAA 1997. This definition requires the trust's activities to be confined to: (a) obtaining shares or rights in a company; (b) ensuring that ESS interests in the company which are beneficial interests in those shares or rights are provided under the ESS to employees, or to associates of employees, of the company or a subsidiary of the company; and (c) other activities that are merely incidental to holding and providing those shares or rights. Draft TD

2019/D8 focuses on whether or not a trustee's activities are "merely incidental". In the Commissioner's view, activities are "merely incidental" if they are a natural incident or consequence of the trust obtaining, holding and providing shares or rights under an ESS.

The Commissioner accepts that the existence of broad-reaching powers or duties in the trust documents does not, of itself, mean that the requirements of s 130-85(4) cannot be satisfied. However, Draft TD 2019/D8 notes that if the Commissioner is asked to make a private ruling or class ruling, the correctness of the ruling may depend on whether or not the trustee will act on the relevant clauses in the trust documents. In this situation, the Commissioner will either decline to rule or will make an assumption that the power will be exercised or the duty undertaken. Comments are due by 18 October 2019.

LCT refunds for farmers and tourism: Treasury (No 2) Bill introduced

The [Treasury Laws Amendment \(2019 Measures No 2\) Bill 2019](#) has been introduced into the House of Representatives. Among other things, the Bill will amend the Luxury Car Tax Act to increase the amount of the refund available to an eligible primary producer or tourism operator who purchased or imported a refund-eligible car on or after 1 July 2019. Currently, a partial refund can be obtained (under Div 18 of the LCT Act). The refund is 8/33 of the LCT borne, which effectively reduces the LCT rate from 33% to 25%. The refund is also capped at \$3,000 per vehicle.

The proposed amendments will increase the refund from 8/33 to a full refund, subject to a new maximum cap of \$10,000 per claim. Note that the definition of "refund-eligible car" is contained in the LCT Regulations, which were remade on 5 September 2019. Date of effect: The amendments will apply to cars supplied or imported on or after 1 July 2019, ie they will apply retrospectively. There are transitional measures to ensure that affected entities will be paid the increased refund even if a claim for an acquisition has been lodged and paid, ie a further application will not be required.

Centrelink robodebt class action launched

Gordon Legal has [announced](#) that it will bring a class action on behalf of people who have had their Centrelink benefits clawed back by the Government through its "Robodebt scheme". The class action will allege that Centrelink did not have a proper basis to issue these Debt Notices under the *Social Security Act 1991*. Gordon Legal Senior Partner, Peter Gordon, said more than 400,000 Debt Notices have been issued by Centrelink since July 2016. Between \$200-\$300 million has been illegally clawed back from pensioners, carers, widows, students, farmers and unemployed people, Mr Gordon said.

According to Gordon Legal, Centrelink used an online compliance intervention (OCI) system to create and recover alleged "debt" based on a comparison between ATO data and income reported by individuals receiving benefits. This method of "averaging" individual fortnightly earnings based on the ATO information rather than determining a person's "actual" fortnightly earnings. Gordon Legal argues that this is not a lawful method of establishing that a "debt" is due to Centrelink.

Proof of life for overseas pensioners: Bill awaits assent

The [**Social Security Legislation Amendment \(Overseas Welfare Recipients Integrity Program\) Bill 2019**](#) has been passed by the Senate without amendment and now awaits Royal Assent. The Bill introduces a proof of life requirement for certain overseas social security recipients aged 80 years and over. It will apply to those in receipt of an Age Pension, Carer Payment, Disability Support Pension, Widow B Pension or Wife Pension.

Such pensioners who have been residing permanently overseas for at least 2 years will be required to provide a proof of life certificate at least once every 2 years. If a pensioner fails to give a proof of life certificate, or the pensioner does not enter Australia within the 13-week suspension period, the pensioner's payment will be cancelled 26 weeks from the date of the notice.

First Home Loan Deposit Scheme Bill introduced

The [**National Housing Finance and Investment Corporation Amendment Bill 2019**](#) has been introduced in the House of Representatives, proposing to establish the Government's First Home Loan Deposit Scheme. The Scheme is designed to help first home buyers enter the property market by providing a guarantee that will allow eligible first home buyers on low and middle incomes to purchase a home with a deposit of as little as 5%.

The guarantee on eligible loans will be equal to the difference between the deposit (of at least 5%) and 20% of the purchase price. The Scheme is expected to support 10,000 first home buyers each financial year. The Bill will also expand the functions of the National Housing Finance and Investment Corporation (NHFIC) to enable it to provide guarantees to improve access to home ownership and undertake research into housing affordability. The amendments will apply from the day after Royal Assent and, subject to timing of passage of the Bill, allow for the issuing of guarantees from 1 January 2020.

Lump sum payment of weekly workers' comp assessable

A lump sum payment of weekly compensation payments under WA workers' compensation legislation was assessable income, as it represented compensation for the loss of income during a period of incapacity: [*Zaghloul and FCT*](#) [2019] AATA 3351 (AAT, File No 2019/0607, Boyle DP, 9 September 2019). In April 2011 the taxpayer, who was employed by Woodside, contracted a stress-related psychiatric condition which prevented him from working. After he used all of his sick leave entitlements, Woodside made discretionary payments to the taxpayer under its salary continuance policy. Although Woodside agreed in January 2013 to pay compensation to the taxpayer, they terminated the taxpayer's employment the following month. In July 2016, Woodside was then ordered to pay the taxpayer weekly compensation payments for total incapacity from 13 April 2011. In due course, the taxpayer received the sum of \$118,924 (the prescribed amount under the Compensation Act of \$198,365 less the payments made to the taxpayer after Woodside accepted liability) less PAYG withholding amounts.

The issue for the AAT was whether the \$118,924 was assessable income of the taxpayer. The AAT said that the language of the relevant provisions of the Compensation Act made it clear that the taxpayer was receiving payments to compensate him for the loss of income during his period of incapacity. The payment in question was a "back-payment" of the taxpayer's entitlement to those weekly payments, equal to the weekly earnings calculated and varied in accordance with Schedule 1 to the Compensation Act. The fact that the taxpayer received the weekly payments as a lump sum did not change their "fundamental character as being reflective of lost income during the period of incapacity". As a consequence, the payment was not capital in nature.

ATO ordered to produce whistleblower documents to Senate Committee

The Senate has [ordered](#) the Commissioner of Taxation to provide to the Senate Economics Legislation Committee all documents relating to the whistleblower disclosure by former ATO employee, Mr Richard Boyle. The motion, moved by Senator Rex Patrick of the Centre Alliance, and agreed to by the Senate, requires the Commissioner to provide all documents relating to the disclosure generated or received by Mr Boyle's supervisor, authorised officer and principal officer, including but not limited to notes, minutes, memoranda, letters, other external or internal correspondence, emails and/or Microsoft Office Communicator conversations.

Senator Patrick said the examination of the ATO's actions in relation to Mr Boyle's disclosure is consistent with the Senate's role in providing oversight of government administration. When the Senate Committee has considered the documents, it will report to the Senate as to whether the ATO's handling of disclosures by whistleblowers warrants further inquiry. While the Senate agreed to the motion ordering the ATO to produce the documents, Senator Jonathon Duniam said the Government believes that the public release of information requested within this motion would potentially prejudice future legal proceedings being a fair trial of criminal charges by jury.

Treasury miscellaneous amendments: draft legn - FBT and taxi travel

Treasury has released an [exposure draft Bill and Regulations](#) proposing minor and technical amendments across a range of Treasury laws including taxation, FBT, superannuation and corporations. The draft amendments seek to ensure the law operates as intended by correcting technical or drafting defects, removing anomalies and addressing unintended outcomes in the following areas (most of the amendments are minor in nature but some have not been previously announced):

FBT and taxi travel; Tax debts and RBAs; company loss recoupment rules; small business restructures; consolidated groups; foreign equity distributions; cross-border transfer pricing guidance; foreign service of documents; deductible gift recipients; super downsizer contributions; person involved in SIS Act contravention; super fee cap for part-year; and inactive low balance accounts. Submissions are due by

27 September 2019 to: Treasury. Email: MiscAmendments@treasury.gov.au; tel: +61 2 6263 3166.

Luxury Car Tax and Wine Equalisation Tax - Regs remade

Two sets of regulations have been reissued ("remade") as a result of the earlier versions "sunsetting", ie ceasing to have effect. The sunsetting is a result of the *Legislation Act 2003*, whereby all legislative instruments progressively sunset according to the timetable in s 50 (which is now generally a 10-year period).

- LCT Regulations remade: The **A New Tax System (Luxury Car Tax) Regulations 2019** have been registered. They are a remake of the *A New Tax System (Luxury Car Tax) Regulations 2000* which will sunset on 1 October 2019. The sunsetting regs will be repealed from this date.
- WET regulations remade: Similarly, the **A New Tax System (Wine Equalisation Tax) Regulations 2019** remake and improve the *A New Tax System (Wine Equalisation Tax) Regulations 2000*. The new regs also take effect from 1 October 2019, when the old regs are due to sunset.

Tax agent jailed for stealing refunds from clients

The ATO has [reported](#) that a tax agent has been sentenced in the Parramatta Court to a 1-year jail term for lodging fraudulent income tax returns on behalf of clients and stealing refunds. The ATO said the tax agent lodged a number of income tax returns between 2011 to 2015 in which he under-reported his clients' income in order to gain larger refunds. The refunds were then funnelled through a bank account controlled by the tax agent before being passed on to his unwitting clients, while he pocketed the inflated difference. On other occasions, the tax agent lodged correct income tax returns on behalf of clients, but still siphoned off some refunds into his own accounts.

According to the ATO, the tax agent's activities resulted in a loss to the Commonwealth of over \$80,000 and a loss to 8 individual taxpayers of over \$10,000. He had previously been investigated by the Tax Practitioners Board and his registration was terminated in July 2015. Acting Assistant Commissioner, David Mendoza, said taxpayers should be able to trust their registered tax professional to do the right thing when handling their tax affairs. If a member of the community has any knowledge or concerns about someone doing the wrong thing, Mr Mendoza said they can report it online at <https://www.ato.gov.au/tipoff> or by calling 1800 060 062.

ATO reports 43% increase in tax paid to scammers

The ATO has [reported](#) that \$197,057 was paid to scammers impersonating the ATO in July 2019 (up 43% from June). Google Play reported the highest total paid to scammers (averaging \$5,740 per payment) compared to iTunes which averaged \$3,160. The 25-34 age demographic paid the highest amount to scammers in July 2019, mostly by iTunes and Google Play.

The ATO said 6,645 phone scam reports were officially recorded (up 200 from June), while 6,179 online scam reports were received in the first month of the ATO's online reporting form going live. The ATO also recorded that 520 people provided scammers with their personal identifying information (PII) including date of birth, TFN, driver's licence number and notice of assessment details. This type of information can be used by scammers to potentially compromise a person's identity, the ATO said.

ATO disclosure of business tax debts - Senate Committee concern

The Senate Economics Legislation Committee has released its [report](#) into the **Treasury Laws Amendment (2019 Tax Integrity and Other Measures No 1) Bill 2019**. The Bill proposes to allow the ATO to disclose business tax debts, deny deductions in relation to holding vacant land and prevent the small business CGT concessions from being available for assignments of partnership income. The Bill also proposes to extend to family trusts the anti-avoidance rule for circular trust distributions. It will also ensure that an employer cannot count an individual's salary sacrifice contributions to reduce the employer's super guarantee contributions.

The Committee recommended that the Bill be passed but it called on Treasury and the ATO to address any unintended consequences for property owners where vacant property is unusable for reasons outside their control. For example, the Committee noted media reports suggesting that some investors who own an apartment in the abandoned Opal or Mascot towers in Sydney may lose the ability to negatively gear their property under proposed s 26-105 of the ITAA 1997. Of all the measures in the Bill, the most concerns were raised in relation to the amendments that will allow the ATO to disclose business tax debts to credit reporting bureaus. The Committee called on the ATO to engage with and address the concerns raised by the Inspector-General of Taxation and Taxation Ombudsman.

Div 7A: ATO discretion to disregard deemed dividends

The ATO has issued an updated version of the [PS LA 2011/29](#) on the Commissioner's discretion to either disregard a deemed dividend or to permit a deemed dividend to be franked. Section 109RB of Div 7A of the ITAA 1936 provides relief for taxpayers who trigger a deemed dividend as a result of an honest mistake or inadvertent omission. In section 109RB, the Commissioner has the discretion to either disregard a deemed dividend, or allow it to be franked. The decision of whether or not to exercise the discretion is a 2-step process.

- Step 1: Was Division 7A triggered because of an honest mistake or inadvertent omission? Only if this answer is YES can you proceed to step 2.
- Step 2: Do the facts and circumstances support the exercise of the discretion - to either disregard a deemed dividend, or allow it to be franked?

Property developer jailed for GST fraud

The ATO has [reported](#) that a property developer was sentenced in the County Court of Victoria to 6 years and 9 months in jail for GST fraud. The property developer was hired by a company's directors to manage a project to build 12 residential townhouses. When the project began running into financial difficulty, the property developer engaged an external accountant to lodge business activity statements (BAS).

According to the ATO, between March 2010 and June 2011, 16 false BAS statements were lodged, overstating the company's expenditure and inflating its GST refunds. The refunds were transferred to the property developer's personal bank account and other bank accounts for which he was a signatory. In this way, the ATO said he obtained nearly half a million dollars in GST refunds. The property developer was given a reparation order for the full amount that he illegally obtained. The ATO said he was also convicted of knowingly providing false information to his accountant to commit tax fraud for his own personal financial gain.

Man jailed for claiming GST refunds on fake car sales

The ATO [has reported](#) that a Queenslanders was sentenced in the Hervey Bay District Court to 3 years jail for GST fraud, claiming refunds he wasn't entitled to. The ATO said that the man registered a "Family Partnership" with his wife and obtained an ABN in 2010, describing the business activity as "Cafes and Restaurants". Contrary to the business description registered, the man told auditors he was in the

business of buying and selling vehicles, claiming to have sold around 20. He also claimed to have received an inheritance that allowed him to spend over \$2.4 million on expenses and purchases.

Between 1 August 2011 and 28 February 2015, the business claimed over \$228,328 in GST refunds they weren't entitled to. An audit found there was no evidence of sales or purchases reported by the entity during this period to support these claims. Acting Assistant Commissioner David Mendoza said it was astounding that people use tactics like this to cheat the tax system.

Thin cap rules; GST and online hotel bookings; LCT - Bill awaits assent

The [Treasury Laws Amendment \(Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures\) Bill 2019](#) has been passed by the Senate without amendment. It now awaits Royal Assent. As well as amendments to the ITAA 1997 to tighten the thin capitalisation rules, the Bill also makes the following amendments:

- **GST and online hotel bookings:** The Bill also requires offshore suppliers of rights or options to use commercial accommodation in Australia (eg hotels) to include these supplies in working out their GST turnover from 1 July 2019. If the GST turnover of such offshore suppliers equals or exceeds the registration turnover threshold (currently \$75,000 or \$150,000 if the entity is a non-profit organisation), then GST must be remitted for their taxable supplies. The Bill amends the GST Act to include in an entity's GST turnover supplies of a right or option to use commercial accommodation in the indirect zone (essentially, Australia), even where that supply is not made in the indirect tax zone and is made through an enterprise that the supplier does not carry on in the indirect tax zone. This is designed to ensure that entities that supply rights to use Australian commercial accommodation, such as hotels, motels, hostels, student accommodation or caravan parks, but carry on their business offshore are still required to register for GST if their GST turnover, including those supplies, equals or exceeds the relevant GST turnover threshold.
- **Luxury car tax:** Luxury car tax (LCT) will be removed from cars that are re-imported after 1 January 2019 following service, repair or refurbishment overseas.

Directors' liability: expansion of estimates regime to GST, LCT, WET

The ATO has issued this draft Guideline *PCG 2019/D4*, explaining how the Commissioner intends to administer changes proposed by Sch 3 to the *Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019* if Sch 3 is enacted without amendment. Schedule 3 of the Bill will bring GST, LCT and WET within the existing estimates and director penalty regimes. The draft Guideline focuses on the expansion to estimates. The estimates regime enables the Commissioner to make an estimate of certain unpaid and overdue tax-related liabilities and recover the amount of the estimate personally from company directors.

The draft Guideline should be read in conjunction with Law Administration Practice Statement PS LA 2011/18 *Enforcement measures used for the collection and recovery of tax-related liabilities and other amounts*, which will be updated if the Bill becomes law. Date of effect: if the Bill becomes law, this Guideline will apply from the commencement of Schedule 3, being the first day of the quarter following Royal Assent. Comments on the Draft are due by 4 October 2019.

FINANCIAL SERVICES

AFS compliance review results in compensation to clients

ASIC has [reported](#) that ClearView Financial Advice Pty Ltd has completed a review and remediation program for over 200 clients who received life insurance advice. Under remediation program, ClearView reviewed 4,269 advice files from 279 of its advisers and remediated clients who had suffered loss. Of these, 215 clients were offered \$730,138 in financial compensation and 21 clients received non-financial remediation through reissued advice documents and fee disclosure.

ASIC first identified issues of non-compliant advice by ClearView's representatives during an industry-wide review of retail life insurance in 2014. A sample review of ClearView's advice files highlighted areas of concern to ASIC, such as inadequate needs analysis for client, insufficient explanation about the pros and cons of using superannuation to fund insurance premiums, inadequate consideration of premium affordability issues and poor disclosure about replacement products.

FASEA exam practice questions released

FASEA has released [additional practice questions](#) to help financial advisers prepare for the [Financial Adviser Exam](#). The practice questions are intended to provide advisers with a guide to the types of questions in the exam. The Government has granted existing advisers an extra year to complete the FASEA exam by 1 January 2022.

The exam questions typically involve client scenarios or case studies covering various types of advice (financial planning, superannuation, stockbroking, SMSF, insurance etc). The questions require financial advisers to apply their knowledge of Financial Advice Regulatory and Legal requirements (including the Corporations Act Chapter 7, AML, Privacy and *Tax Agents Services Act 2009* (TASA)); Financial Advice Construction (including the suitability of advice); and applied ethical and professional reasoning and communication.

AFCA national roadshow launched

The Australian Financial Complaints Authority (AFCA) has announced that it will start a national roadshow on 23 September 2019 to offer free Financial Fairness Checks and raise awareness of its free financial dispute resolution services. The roadshow bus will start in Hobart and stop at 77 metropolitan, regional and rural communities between September and April 2020. Details about the roadshow are on the [AFCA website](#).

AFCA's Chief Ombudsman and Chief Executive Officer, David Locke, said the roadshow is an important step in ensuring people understand their rights and know what to do when they have an unresolved issue with their financial firm. New research shows that fewer than one out of every 2 people with a concern about their financial firm actually lodge a complaint. In its first 10 months of operation, AFCA said it has received over 60,687 financial complaints and awarded more than \$144.7m in compensation.

Financial product design obligations: Draft Regs released

Treasury has released the [Exposure Draft - Corporations Amendment \(Design and Distribution Obligations\) Regulations 2019](#), proposing to complement the operation of design and distribution obligations (DDO) in relation to financial products. The DDO regime was established by the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019*

(which received assent on 5 April 2019). The new obligations are designed to improve consumer outcomes by ensuring that financial services providers have a customer-centric approach to making initial offerings of products to consumers.

The Draft Regs propose to enhance the DDO regime by altering the products and persons in relation to which the DDO regime applies. The Draft Regs will insert proposed Pt 7.8A of the *Corporations Regulations 2001* which will extend the DDO to additional persons and products, while excluding certain products from the DDO. The Draft Regs are proposed to commence on the later of the day after registration, or the commencement of the DDO Act (which commences on 5 April 2021, being 2 years after it received assent). Submissions are due by 11 October 2019.

Ending grandfathered commissions: Bill passes Reps

The [Treasury Laws Amendment \(Ending Grandfathered Conflicted Remuneration\) Bill 2019](#) has been passed without amendment and now moves to the Senate. The Bill proposes to ban grandfathered conflicted remuneration paid to financial advisers from 1 January 2021.

The Bill goes further than the Royal Commission recommendation by including an obligation on AFS licensees and financial product issuers to rebate product holders for any grandfathered conflicted remuneration that they are legally obliged to pay after 1 January 2021. The Bill will also enable regulations to provide for a scheme to rebate conflicted remuneration to affected "product holders" (ie customers) via a payment or monetary benefit (eg reduced fees). Draft Regulations were previously released on 28 March 2019.

SUPERANNUATION

SMSF investment strategy - further ATO details

The ATO has sought to [clarify](#) its previous communications sent to SMSF trustees about their investment strategy and diversification. In late August 2019, the ATO contacted about 17,700 self-managed super funds (SMSF) and their auditors where data from the 2018 SMSF annual return indicated that these SMSFs may be holding 90% or more of their retirement savings in one asset or a single asset class. The SMSFs contacted also used a limited recourse borrowing arrangement (LRBA) to acquire the single asset or asset class (typically property). The ATO said it is

concerned that these SMSF trustees may not have given due consideration to diversifying their fund's investments and the risks associated with a lack of diversification when formulating and reviewing their investment strategy under reg 4.09 of the SIS Regs.

While the ATO accepts that a trustee can choose to invest 90% or more of their retirement savings in a single asset or asset class, the ATO believes that concentration risk, combined with leveraged borrowings, can expose the SMSF and its members to unnecessary risk if a significant investment fails. Therefore, the ATO has asked trustees to review their investment strategy and clearly document the reasons behind the investment decisions. The ATO said it has also asked trustees to have their documentation ready for their SMSF's approved auditor for their next audit.

Insurance within super opt-in Bill: Govt amendments passed by Senate

The Senate has passed the [Treasury Laws Amendment \(Putting Members' Interests First\) Bill 2019](#) with [16 Government amendments](#) (as amended by One Nation) that will defer the start date and provide an exception for dangerous occupations. The Bill now returns to the House of Representatives for consideration of the amendments. The Bill, as introduced, proposes to require insurance within superannuation be provided on an opt-in basis for: (i) account balances less than \$6,000; and (ii) members under 25 years old (who begin to hold a new product). Date of effect: The [16 Government amendments](#) were passed by the Senate to delay the commencement of the measure. The Government had proposed to delay commencement until 1 February 2020. However, the Senate agreed to [4 amendments by One Nation](#) that have further deferred the commencement until 1 April 2020. Under the amendments, on 1 November 2019, trustees will be required to identify members who may be affected by the measure and notify these members by 1 December 2019.

Dangerous occupations exception: The Government amendments also include a dangerous occupation exception that will allow trustees to continue to provide opt-out insurance to new members aged under 25 years and members with balances below \$6,000.

Super Guarantee amnesty for employers: Bill re-introduced

The Government has re-introduced legislation to establish and extend its proposed one-off amnesty to enable employers to self-correct historical underpayments of Super Guarantee (SG). The amnesty was originally announced by the Government on 24 May 2018 to run until 23 May 2019. However, the legislation lapsed when Parliament was prorogued for the Federal election. The [Treasury Laws Amendment \(Recovering Unpaid Superannuation\) Bill 2019](#), has been introduced in the House of Representatives, proposing to enable employers to self-correct historical underpayments of SG amounts without incurring additional penalties that would normally apply. It will apply to SG shortfalls as far back as 1 July 1992, and up until the quarter starting on 1 January 2018 (inclusive).

Assistant Minister Jane Hume [said](#) employers will not be totally "off the hook" and must still pay all SG shortfall amounts owing to their employees, including the nominal interest and GIC (but not the administrative component). Rather, the amnesty will encourage employers to come forward and pay outstanding SG amounts by not hitting them with the penalties usually associated with late payment. Importantly, employers will be able to claim a tax deduction for payments of SG charge or contributions made during the amnesty period. Date of effect: The amnesty period will start from 24 May 2018 and run until 6 months after the day the Bill receives Royal Assent.

Treasury Measures (No 2) Bill introduced: genuine redundancy age

The [Treasury Laws Amendment \(2019 Measures No 2\) Bill 2019](#) has been introduced into the House of Representatives, proposing the following previously-announced amendments.

- Genuine redundancy age: the ITAA 1997 will be amended to extend the concessional tax treatment for genuine redundancy and early retirement scheme payments. Concessional tax for these payments is currently restricted to employees who are dismissed before they turn 65. The Bill will extend this age 65 limit to align it with the pension age. Date of effect: will apply to payments received by employees who are dismissed or retire on or after 1 July 2019.
- LCT refunds for farmers and tourism: the luxury car tax (LCT) refund arrangements will be amended to provide a full refund (up to a cap of \$10,000) for eligible primary producers and tourism operators who have purchased or imported an eligible vehicle. Date of effect: will apply to cars supplied or imported on or after 1 July 2019.

- Interest on ATO super payments: provides for regulations to prescribe a rate of interest which is payable on amounts held by the ATO which are proactively reunified into a person's superannuation account, as originally intended. Date of effect: The day after Royal Assent. Interest will be paid on amounts reunified by the ATO after this date.

Identity theft and super fraud syndicate dismantled by AFP/ASIC

The Australian Federal Police (AFP) and ASIC have moved to shut down a major identity theft and fraud syndicate that had been targeting superannuation and share trading accounts. The AFP and ASIC [said](#) a 21-year-old Melbourne woman appeared in Court following investigations into the multi-layered cybercrime activity for more than 12 months. ASIC and the AFP alleged that the woman worked as part of a syndicate which used fraudulently-obtained identities to commit large-scale online fraud.

It will be alleged the syndicate used stolen identity information purchased from dark net marketplaces, together with single use telephone SIM cards and fake email accounts, to undertake an "identity takeover". These identities, fraudulently created to mimic real individuals who unknowingly had their identities compromised, were then used to open bank accounts. Investigations have uncovered at least 70 bank accounts created using fraudulently-obtained identities to date. Once the false identities and accounts were established, ASIC and the AFP allege the syndicate committed cybercrime offences to illegally steal money from the superannuation accounts of these victims, and from their share-trading accounts in ASX-listed companies.

Super Measures (No 1) Bill 2019 awaits assent

The [Treasury Laws Amendment \(2018 Superannuation Measures No 1\) Bill 2019](#) has been passed by the Senate without amendment and now awaits Royal Assent. It makes the following amendments:

- **Super Guarantee opt-out:** high-income employees with multiple employers will be able to opt-out of the Super Guarantee regime to avoid unintentionally breaching the \$25,000 concessional contributions cap. Such employees with income exceeding \$263,157 will be able to apply to the ATO for an "employer shortfall exemption certificate". Date of effect: 1 July 2018.
- **Non-arm's length expenses:** the non-arm's length income (NALI) rules in s 295-550 of the ITAA 1997 will be expanded so that super funds are taxed at

45% for related-party schemes involving non-arm's length expenses not incurred that would normally be expected to apply in a commercial transaction. Date of effect: 1 July 2018, regardless of whether the scheme was entered into before that time.

- **LRBAs:** a member's share of the outstanding balance of certain limited recourse borrowing arrangements (LRBAs) will be included in the member's total superannuation balance. Date of effect: Will only apply to new LRBAs entered on or after 1 July 2018. Refinancing of existing loans entered into prior to that date will be excluded.

Super guarantee charge: ATO remission of additional 200% penalty

Draft Practice Statement Law Administration [PS LA 2019/D1](#) has been released, setting out the ATO's policy in relation to the remission of the additional 200% super guarantee charge (SGC) imposed by s 59 in Pt 7 of the *Superannuation Guarantee Administration Act 1992* (SGAA). This additional penalty applies for failing to lodge an SGC statement for a quarter. It is in addition to the SGC liability (non-deductible) for the shortfall in relation to an employee which the ATO cannot remit.

The Draft sets out a 3-step process for the ATO to follow when determining whether to remit the additional Pt 7 penalty down from 200%. It generally considers an employer's efforts to comply with their SGC obligations, compliance history and other relevant circumstances (eg impact of natural disasters, ATO outages etc). A full or partial remission of the Pt 7 penalty may apply where the employer contends, and has a reasonable argument, that the worker was a contractor and not an employee. When finalised, the Draft Practice Statement will replace current Practice Statement PS LA 2011/28. Comments are due by 4 October 2019.

Successor fund transfer reporting - ATO seeking feedback

The ATO has updated its [successor fund transfer \(SFT\) reporting protocol](#) to clarify some of the common enquiries it has received from industry. It has also set out additional information to assist superannuation funds meeting their reporting obligations when undergoing this process.

The ATO is seeking feedback in relation to this chapter. Submissions are due by 2 October 2019.

REGULATOR NEWS

Improved data key for better super member outcomes: APRA

APRA Chairman, Wayne Byres, has delivered a speech, [Driving better member outcomes](#), at the Gilbert + Tobin Conversation Boardroom event in Sydney. Mr Byres said APRA's recently-enacted statutory powers and prudential standards provide a strong platform for the regulator to drive a much more intense focus on member outcomes. "It will inevitably produce some difficult discussions with trustees who are not delivering for their members - put very bluntly, are you going to get better or get out?", Mr Byres said.

APRA is also planning to kick off consultation on a major overhaul of the superannuation data reporting regime. Mr Byres said the comparability and consistency of reported information has proven inadequate - "so the status quo is not an option". APRA also noted that the ongoing delay in implementation of choice product dashboards has delayed APRA's collection of more granular information on investment performance, fees and costs for choice products. APRA's proposed data overhaul aims to provide greater coverage, more granularity, enhanced consistency and better quality data. To this end, APRA's focus will be on the choice segment of the market, where the largest data gaps remain.

Banking Royal Commission - ASIC implementation update

ASIC has provided its second [Update](#) on its actions in response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. The Update outlines a number of measures by which ASIC is implementing the 7 priorities highlighted in its Corporate Plan 2019-23, one of which is to prioritise the recommendations and referrals from the Royal Commission. ASIC Chair James Shipton said a number of the referrals and case studies from the Royal Commission are before the courts, and it has more under investigation. ASIC's new regulatory powers are also enabling early intervention on matters ASIC believes have the potential for significant harm to consumers, Mr Shipton said.

Of the 13 matters referred to ASIC for possible misconduct, all of them are under investigation with one in litigation. From the Royal Commission case studies, ASIC said it has 29 investigations underway (some with external counsel involvement). Four matters are before the court (Select AFSL, Dover and 2 matters relating to NAB), and another 2 matters are being considered by the CDPP for potential criminal action. This work is part of ASIC's wider enforcement effort. As at

31 July 2019, ASIC had 311 investigations on foot covering a range of misconduct across the breadth of ASIC's jurisdiction. These include directors' and officers' breaches, insider trading and market manipulation, auditor and liquidator breaches, and breaches of licensing obligations.

New ASIC powers for licensing, search warrants, etc - draft legn

The Government has released [exposure draft legislation](#) proposing to grant ASIC new enforcement and supervision powers in response to the recommendations of the ASIC Enforcement Review Taskforce and the Banking Royal Commission. The draft legislation proposes to strengthen ASIC's licensing powers by replacing the AFS licence requirement that a person be of "good fame and character" with an ongoing requirement that they be a "fit and proper person" at both the time of application and subsequently. It also proposes to extend ASIC's powers so that they may ban a person from performing functions in a financial services or credit business. The legislation would also expand the grounds on which ASIC can issue banning orders, including where ASIC has reason to believe the person is "not adequately trained or is not competent".

The draft legislation will also harmonise ASIC's search warrant powers across ASIC-administered Acts and bring them into line with the search warrant powers in the *Crimes Act 1914* (Cth). ASIC would be able to apply for a search warrant where the contravention would be an indictable offence under the ASIC Act, Corporations Act or SIS Act. It will also allow interception agencies (such as the police, ASIO and anti-corruption bodies) to provide lawfully intercepted telecommunications information to ASIC for serious offences that ASIC can investigate or prosecute. Further it will align the penalties for false and misleading statements in AFS and Credit Licence applications. Submissions are due by 9 October 2019 to: Manager, Regulator Powers Reform Unit, Financial Services Reform Taskforce, Treasury. Email: ASICenforcementreview@TREASURY.GOV.AU; tel: +61 2 6263 2111.

Unauthorised changes made to ASIC register using corporate key

The NSW Supreme Court has alerted company owners to guard their corporate keys to prevent unauthorised changes to their details on ASIC registers: [In the matter of McDonagh Management Pty Limited](#) [2019] NSWSC 1099 (NSW Supreme Court, Rees J, 26 August 2019). In this case, a company's details on the ASIC register were changed on two occasions without the knowledge or consent of the original and rightful director, secretary and shareholder of the company. The changes to the

ASIC register were allegedly made by an accountant who had possession of the company's registration key (an 8-digit number issued by ASIC on the registration of a company) as part of an elaborate series of attempts to frustrate common law proceedings commenced by the company. The company (McDonagh Management Pty Limited) is the corporate trustee of a self-managed super fund (SMSF). The company was established in 2013 with Ms Sharon McDonagh as the sole director, secretary and shareholder. Ms McDonagh had received \$640,000 following a motor vehicle accident in which she suffered brain damage.

Following a string of activities involving the abuse of the corporate key of Ms McDonagh and her company, the Court said it was appropriate to order ASIC to record Ms McDonagh as the sole director, secretary and shareholder of the company, and withdraw the previous Change of Company Details forms. The Court considered that the power under s 1322 of the Corporations Act was sufficiently wide for it to order the rectification of the ASIC register. To prevent any further abuse of the corporate key, the Court ordered ASIC to cancel the original corporate key and issue a new key for the company to Ms McDonagh.

Board of Taxation Reviewing Corporate Tax Residency Rules

The Board of Taxation is, at the request of the Treasurer, reviewing the corporate tax residency rules.

The purpose of the review is to ensure that the corporate tax residency rules are operating appropriately in light of modern, international and commercial board practices and international tax integrity rules.

The Board has commenced consultation on these issues (a Consultation Paper was published on the Board's webpage on 6 September 2019) and is seeking feedback from businesses and tax professionals on the corporate residency rules. The feedback will assist the Board in understanding how the rules interact with current board practices and will help the Board make effective recommendations to modernise the rules.

The Board will be holding roundtable consultations in Sydney, Melbourne and Perth over the coming weeks, and is accepting written submissions until 4 October 2019.

Further details on the consultation process and the review is available at the [Board of Taxation website](#). You can register your interest in the review by sending an email

to corporateresidency@taxboard.gov.au. You can also [subscribe](#) to receive email notifications about Board of Taxation updates.

SMSF investment strategy diversification requirements clarified

Background

In August 2019 the ATO contacted SMSF Trustees and SMF Auditors where the 2018 SMSF annual return data indicated that these SMSFs may be holding 90% or more in one asset or a single asset class. This was because of a concern that 'the fund's investment strategy may be at risk of not meeting the requirements in regulation 4.09 of the *Superannuation Industry (Supervision) Regulations 1994*'.

For SMSF Trustees:

The requirement was to review the 'investment strategy to make sure it complies with the law. In particular you need to be able to provide evidence, ideally within a written investment strategy, of how you considered: diversification of the fund's investments and the risks involved with inadequate diversification'. Also, 'have your investment strategy ready to provide to your SMSF's approved auditor as part of your next audit'.

For SMSF Auditors: 'check that they [SMSF Trustee] have an investment strategy that complies with regulation 4.09' and 'expect to see documented evidence from the SMSF Trustee'.

ATO Clarification

Following a number of queries, the ATO has since provided clarification:

- 'SMSFs contacted were selected based on a report to government in February by the Council of Financial Regulators and the ATO. The Leverage and Risk in the Superannuation System report highlighted concerns that less diversified SMSFs with LRBAs are exposed to asset concentration risk;
- While a trustee can choose to invest 90% or more of their retirement savings in a single asset or asset class, concentration risk combined with leveraged borrowings, can expose the SMSF and its members to unnecessary risk if a significant investment fails;
- We asked trustees to review their investment strategy and clearly document the reasons behind the investment decisions; and

- We also asked trustees to have their documentation ready for their SMSF's approved auditor for their next audit to help the auditor form an opinion on the fund's compliance with these requirements'.

More information <https://www.ato.gov.au/Super/Sup/More-information-for-SMSF-trustees-on-investment-diversification/>

A number of SMSF Auditors have contacted the ATO to request a list of their clients that received the letter. The ATO are in the process of organising for these lists to be provided and expect that this will be completed by the end of October 2019.

IPA Member query: 'If the investment strategy says that the trustee have considered diversification but have decided at this stage to invest 90% of the fund assets in, say property is the auditor obligated to make a management letter point or contravene Part B of the audit report?'

IPA response: The ATO wants to ensure that auditors are more vigilant in ensuring that trustees are acting in accordance with the fund's investment strategy and have documented reasons around inadequate diversification if this is the case.

If the SMSF Auditor is satisfied that the trustee considered diversification and the risks of inadequate diversification in their investment strategy (that is, documented reasoning around this), then no qualification of the audit report would be needed.

However, if the SMSF Auditor cannot see any evidence of the trustee having considered diversification and the risks of inadequate diversification in the strategy, then the trustee has failed to comply with regulation 4.09(2). If the SMSF Auditor believes this failure amounts to a material contravention of regulation 4.09 then they would qualify the audit report and lodge an Auditor-actuary Contravention Report (ACR) if the contravention is one that has been previously identified and has been repeated again or not rectified at the point of undertaking the audit. These types of contraventions can be rectified at the time of doing an audit. That is, if the SMSF Auditor identifies these types of issues they could ask the trustee to amend their strategy or document the risks of inadequate diversification in a trustee minute.

The time is running out for labour hire providers to apply for a licence to keep operating in Victoria.

A business which supplies workers in any occupation to another business in any industry may be a labour hire provider under the law.

- Labour hire providers have until 29 October 2019 to apply for a licence with the Labour Hire Authority to continue operating in Victoria or face major penalties.
- From 30 October 2019 businesses must only use licensed providers or providers who have applied for a licence before 30 October 2019 and have not been refused, or face major penalties.
- The maximum penalties can exceed \$500,000 per breach.
- The labour hire licensing scheme was introduced to protect labour hire workers from exploitation and to improve transparency and integrity.
- There is more information about what labour hire providers and hosts need to do on our website.