

FEDERAL BUDGET

Federal Budget to be held on 2 April 2019

The Prime Minister has announced the 2019-20 Federal Budget will be held on 2 April 2019 ahead of the Federal election.

TAXATION

Non-refundable franking credits: committee hearings

House of Representatives Standing Committee on Economics has held public hearings as part of its inquiry into Labor's proposed removal of refundable franking credits.

ATO decision impact statement on Sandini

ATO has released a decision impact statement on the Full Federal Court decision in *Ellison v Sandini Pty Ltd* [2018] FCAFC 44.

Tendering for Government contracts: draft guidelines

Government has released its draft procurement connected policy guidelines for consultation as part of its black economy measures.

Consultation Paper: improving black economy enforcement

Government has announced it will conduct a review of existing criminal offences, and civil and administrative penalties for black economy activity.

ATO updates taxpayers' charter

ATO has updated the taxpayers' charter which sets out what taxpayers can expect when they deal with the ATO.

Productivity Commission to review remote area tax assistance

The Productivity Commission has been requested to undertake a review into remote area tax assistance.

Senate report on tax practices of aged care providers

Senate Economics References Committee has released its report on the financial and tax practices of for-profit aged care providers.

Foreign investment obligations for residential real estate

The Joint Committee of Public Accountants and Audit will hold a hearing as part of inquiry into compliance with the foreign investment obligations for residential real estate.

Labour hire phoenix operator jailed in WA

ATO has reported that a business owner has been sentenced to jail for fraudulently obtaining more than \$890,000 through illegal phoenix activity.

Conduct standards for charities operating overseas – Regs made

The Regulations prescribe external conduct standards (ECS) that charities registered with the Australian Charities and Not-for-profits Commission (ACNC) will need to comply with when operating outside Australia.

Deduction for establishing trees in carbon sink forests - guidelines updated

The Income Tax Assessment (Environmental and Natural Resource Management in relation to the Establishment of Trees for the purposes of Carbon Sequestration) Guidelines 2018 has been registered.

Black Economy Taskforce (No 2) Bill now law

The Treasury Laws Amendment (Black Economy Taskforce Measures No 2) Bill 2018 and Excise Tariff Amendment (Collecting Tobacco Duties at Manufacture) Bill 2018 both received Assent.

GST on property developments involving government

The ATO has released a taxpayer alert outlining the GST implications of certain development lease arrangements.

No GST on feminine hygiene products from 1 January 2019

The A New Tax System (Goods and Services Tax) (GST-free Health Goods) Determination 2018 removes GST on feminine hygiene products from 1 January 2019.

FINANCIAL SERVICES

FASEA releases revised standards for financial advisers

Financial Adviser Standards and Ethics Authority (FASEA) has released details of its revised standards framework for financial advisers.

Financial advisers must be on ASIC register by 31 December 2018

ASIC has reminded financial advisers to make sure that they are on ASIC's Financial Advisers Register no later than 31 December 2018.

SUPERANNUATION

Productivity Commission: economies of scale in super industry

The Productivity Commission has released a supplementary paper suggesting that economies of scale in the superannuation industry could deliver annual cost savings.

ATO begins issuing excess super contributions determinations

The ATO has begun issuing determinations for excess concessional contributions (ECC) for the 2017-18 financial year.

Notification of pending ATO mail out to approved SMSF auditors – increased security required when using software provided by a Digital Service Provider.

This email is to inform you that we will be issuing correspondence next week to each registered approved SMSF auditor.

REGULATOR NEWS

Financial misconduct prosecutions to get funding boost

Treasurer has announced additional funding for the Commonwealth Director of Public Prosecutions (CDPP) and the Federal Court.

ASIC supervisory cost levy for 2017-18

Legislative instruments have been registered to specify how ASIC will allocate its regulatory costs for the 2017-18 financial year to each of the 48 sub-sectors.

Treasury consultation paper: ASIC registry fees

Government has released a consultation paper for a review of ASIC registry fees as part of its broader program for Modernising Business Registers.

Small business tax disputes: Govt initiatives announced

The Government will establish a Small Business Concierge Service within the Australian Small Business and Family Enterprise Ombudsman's office.

FEDERAL BUDGET

Federal Budget to be held on 2 April 2019

The Prime Minister, Scott Morrison, has announced that the 2019-20 Federal Budget will be held on 2 April 2019, ahead of the Federal election which is expected to be held in May 2019. The Treasurer, Josh Frydenberg, also announced that the Mid-Year Economic and Fiscal Outlook (MYEFO) will be released on 17 December 2018.

TAXATION

Non-refundable franking credits: committee hearings

The House of Representatives Standing Committee on Economics has held [public hearings](#) in Sydney and Melbourne as part of its inquiry into Labor's proposed removal of refundable franking credits. Under Labor's policy proposal, resident individuals and super funds (including SMSFs) would only be able to use the franking credits on their grossed-up dividend income to offset their tax liability for an income year, with no cash refund for any excess credits.

If Labor is elected, the change would apply from 1 July 2019. Recipients of Government pensions and allowances would be exempt, along with SMSFs with at least one pensioner or allowance recipient before 28 March 2018. To date, the Committee has received [240 submissions](#), including many from retirees who are concerned about the proposal. During the hearings, the Committee said there will be time for short public statements by people to explain their concerns about how they may be affected by the policy.

ATO decision impact statement on Sandini

The ATO [has released](#) a decision impact statement (DIS) on the Full Federal Court decision in *Ellison v Sandini Pty Ltd* [2018] FCAFC 44. The case concerned the availability of marriage breakdown roll-over under Subdiv 126-A of ITAA 1997, where an asset owned by the trustee of a trust controlled by one former spouse was transferred to the trustee of a trust controlled by the other former spouse. The DIS says the case confirms that triggering CGT event A1 in s 104-10 does not require a change in legal as well as beneficial ownership. In addition, a change in beneficial ownership does not occur unless the purported acquirer of the CGT asset has full dominion over it that a court of equity would enforce. It is not sufficient for a change in beneficial ownership that the purported acquirer of the CGT asset has some form

of proprietary interest, or equitable or beneficial interest in the asset falling short of beneficial ownership, and the purported seller has retained rights to deal with the asset, including powers of disposition over it.

Comments are due by 21 December 2018.

Tendering for Government contracts: draft guidelines

The Government has released its [Draft Procurement Connected Policy Guidelines](#) for consultation as part of its Black Economy measures announced in the 2018-19 Federal Budget. From 1 July 2019, businesses seeking to tender for Commonwealth Government procurement contracts over \$4 million (inclusive of GST) will be required to provide a statement of tax record from the ATO that indicates that they are generally compliant with their tax obligations. The draft PCP guidelines include a description of the satisfactory Statement of Tax Record requirement, and sets out the other key components that are aimed at improving the integrity of the procurement process and provides guidance to assist all relevant Commonwealth entities in implementing the policy. The draft PCP is also accompanied by a [Treasury certification letter](#).

The Assistant Treasurer, Stuart Robert, said the results from the first year will be assessed and used to refine guidance where required. For example, additional criteria could be taken into account in determining a satisfactory tax record, such as whether the business has complied with its superannuation guarantee obligations, and whether the business or its directors have been convicted of tax evasion, phoenix activity, and bribery or corruption offences.

Date of effect: The policy will apply to new Government approaches to market from 1 July 2019. For existing tender panels, including panels established before 1 July 2019 but that are refreshed or renewed from 1 July 2019, there will be no requirement to obtain a satisfactory STR unless requested by the procuring agency.

Submissions are due by 21 December 2018.

Consultation Paper: improving black economy enforcement

The [Assistant Treasurer has announced](#) the release by the Government in November 2018 of a [Consultation Paper](#) in another step towards implementing its response to the recommendations of the Black Economy Taskforce final report, as announced part of the 2018-19 Budget. In the 2018-19 Budget, the Government announced that it will conduct a review of existing criminal offences, and civil and administrative penalties for black economy activity. As part of this process, the Government is consulting stakeholders on how it could implement the Black

Economy Taskforce recommendation to introduce a modern offences regime to tackle the black economy.

The Taskforce recommended implementing a more targeted, stronger and more visible enforcement strategy to reduce black economy behaviours, with the key focus on more effective prosecution processes and tailored black economy offences. The Government is now seeking feedback on the issues explored in the consultation paper.

Comments on the Consultation Paper are due by 21 December 2018.

ATO updates taxpayers' charter

The ATO has [updated the Taxpayers' Charter](#). The Charter sets out what taxpayers can expect when they deal with the ATO and what the ATO expects from taxpayers in return. It also outlines taxpayers' options if they are not satisfied with a decision.

The updated Charter includes:

- clearer information about what taxpayers can expect during the ATO's review and audit processes;
- more information about the ATO's digital interactions with taxpayers;
- a one-page overview so taxpayers can see their rights and obligations at a glance.

Productivity Commission to review remote area tax assistance

The Treasurer has [announced](#) that the Productivity Commission had been requested to undertake a review into remote area tax assistance. The Zone Tax Offset, Fringe Benefit Tax remote area concessions and Remote Area Allowance provide financial support to people living in remote areas of Australia.

Eligibility is determined by geographic zones, which are defined in tax legislation. The eligible zones still largely reflect the original design in 1945 and there is concern that the remote area tax assistance does not reflect changes that have occurred since then. The Commission has released its [terms of reference](#). It will invite submissions when the review commences in February 2019. The Commission is expected to report to the Government within 12 months.

Senate report on tax practices of aged care providers

The Senate Economics References Committee has released its [report](#) on the financial and tax practices of for-profit aged care providers. Overall, the Committee said a lack of transparency meant it was unable to conclude with any certainty whether for-profit aged care providers were, or were not, engaging in improper tax or financial practices.

The Committee noted the ATO's concerns about transparency and questions surrounding the use of financing arrangements used by certain multinational entities. While the ATO accepted that some of the corporate structures adopted by entities in the aged care industry do not in and of themselves raise tax compliance concerns, the ATO submitted that they have "the potential to obscure intra-group transactions for financial or public tax reporting". Accordingly, the Committee recommended that the [Royal Commission into Aged Care Quality and Safety](#) should consider the tax and financial structures of aged care providers.

Foreign investment obligations for residential real estate

The Joint Committee of Public Accounts and Audit is to hold its second public hearing as part of its [inquiry](#) into compliance with the foreign investment obligations for residential real estate. It is scheduled for 28 November 2018 in Canberra where it will hear from the ATO, Treasury and the Australian National Audit Office. The committee is assessing the effectiveness of the ATO's and Treasury's management of compliance with foreign investment obligations for residential real estate.

Labour hire phoenix operator jailed in WA

The ATO has [reported](#) that a business owner has been sentenced in the District Court of Western Australia to 5 years and 4 months' jail for fraudulently obtaining more than \$890,000 through illegal phoenix activity. The ATO said the business owner was convicted of 20 charges under the Criminal Code, including obtaining a financial advantage by deception. He had also failed to report and remit GST and PAYG withholding while having sole and full control of the relevant entities, the ATO said.

Conduct standards for charities operating overseas – Regs made

The [Australian Charities and Not-for-profits Commission Amendment \(2018 Measures No 2\) Regulations 2018](#) have been registered. They prescribe external conduct standards (ECS) that charities registered with the Australian Charities and Not-for-profits Commission (ACNC) will need to comply with when operating outside Australia. The instrument sets 4 minimum standards for conduct, governance and behaviour.

By introducing this measure, Australia complies with international obligations including the Financial Action Task Force Recommendations (FATF) Recommendations. The FATF is an inter-governmental body established in 1989 to promote measures for combatting money laundering, terrorist financing and related threats to the integrity of the international financial system.

Date of effect: 1 July 2019.

Deduction for establishing trees in carbon sink forests - guidelines updated

The [Income Tax Assessment \(Environmental and Natural Resource Management in relation to the Establishment of Trees for the purposes of Carbon Sequestration\) Guidelines 2018](#) has been registered on the Federal Register of Legislative Instruments. They have been made under s 40-1010(3) of the ITAA 1997. This instrument repeals the *Environmental and Natural Resource Management Guidelines in relation to the establishment of trees for the purposes of carbon sequestration* that was registered on 1 December 2018, but maintains the intent of those guidelines.

Subdivision 40-J of the ITAA 1997 provides a deduction for capital expenditure for the establishment of trees in carbon sink forests. Subparagraph 40-1010(1)(h)(i) provides that expenditure on establishing trees in carbon sink forests is covered if a taxpayer gives the Commissioner of Taxation a statement that sets out all information necessary to determine whether all of the conditions in s 40-1010(2) are satisfied.

Black Economy Taskforce (No 2) Bill now law

The [*Treasury Laws Amendment \(Black Economy Taskforce Measures No 2\) Bill 2018*](#) and [*Excise Tariff Amendment \(Collecting Tobacco Duties at Manufacture\) Bill 2018*](#) both received Assent as Act Nos 141 and 137, respectively, of 2018. The Black Economy Taskforce (No 2) Bill:

- amends the ITAA 1997 to deny an income tax deduction for certain payments if the associated withholding obligations have not been complied with;
- amends the TAA by requiring entities with ABNs providing "road freight", "IT" or "security, investigation or surveillance" services to report to the ATO information about transactions in which other entities are engaged to undertake those services on their behalf; and
- amends the Excise Acts to establish a framework to make excise duty on tobacco due and payable at the time of manufacture (along with the Excise Tariff Amendment Bill).

GST on property developments involving government

The ATO has released [*Taxpayer Alert TA 2018/3 - GST implications of certain development lease arrangements*](#). The ATO said it is reviewing arrangements involving property developers acquiring land from government entities, specifically where the developer purportedly provides certain development works to the government entity as payment for the land. Under these arrangements, there are instances where the developer and the government entity are not reporting the value of their supplies in a consistent manner, resulting in the underpayment of GST.

The ATO said it is engaging with taxpayers and government entities to examine the issues of concern and ensure that all parties have correctly accounted for their GST and income tax obligations. In situations where there is a change in how the arrangement is accounted for, after the fact, so as to gain an advantage due to the lapse of the statutory periods for amending activity statements, the fraud or evasion provisions may be considered, the ATO warned.

No GST on feminine hygiene products from 1 January 2019

The [*A New Tax System \(Goods and Services Tax\) \(GST-free Health Goods\) Determination 2018*](#) removes GST on feminine hygiene products from 1 January 2019. This follows the unanimous vote of the Treasurer and State Treasurers at the meeting of the Council on Federal Financial Relations in October 2018.

The goods that are covered are "maternity pads, menstrual cups, menstrual pads and liners, menstrual underwear, tampons, and other similar products specifically designed to absorb or collect lochia, menses or vaginal discharge". The Treasurer [has advised](#) that he has directed the ACCC to "monitor the market of these products". There is a Private Member's Bill still before Parliament that sought to achieve the same outcome, ie the [Treasury Laws Amendment \(Axe the Tampon Tax\) Bill 2018](#). It is safe to assume that this Bill will now not proceed.

FINANCIAL SERVICES

FASEA releases revised standards for financial advisers

The Financial Adviser Standards and Ethics Authority (FASEA) has released [details of its revised standards framework for financial advisers](#). FASEA Chief Executive Stephen Glenfield said industry feedback, involving 800 submissions, has helped to create a balanced set of standards, while at the same time balancing FASEA's legislative obligations. Areas revised include: education pathways; existing advisers; foreign qualifications; financial adviser examination; continuing professional development (CPD); code of ethics; and provisional financial adviser. The Assistant Treasurer, Stuart Robert, welcomed the revised FASEA standards framework noting that they are an important part of "raising the education, training and ethical standards of financial advisers to improve trust and confidence in the financial advice industry". (Source: [Assistant Treasurer's media release, 19 November 2018](#).) FASEA is progressively releasing draft Legislative Instruments for each of the revised standards on its [Website](#). Each of the Standards will be available for consultation for periods varying between 2-4 weeks. Following consultation, FASEA will review any feedback and finalise the standards for registration on the Federal Register of Legislation.

Financial advisers must be on ASIC register by 31 December 2018

ASIC has reminded financial advisers, who are currently authorised, to make sure that they are on [ASIC's Financial Advisers Register](#) no later than 31 December 2018, before new professional standards requirements take effect. ASIC said professional standards reforms for financial advisers were introduced in March 2017 to raise the education, training and ethical standards of people providing personal advice to retail clients on more complex financial products. The new requirements will be implemented progressively from 1 January 2019.

Under the reforms, only financial advisers who were authorised at any time between 1 January 2016 and 1 January 2019, and who are not prohibited from providing advice on 1 January 2019, will be recognised as an "existing provider". ASIC said financial advisers can demonstrate they are an "existing provider" by having a status of "current" on the Financial Advisers Register at any time in this period. Without recognition as an "existing provider", ASIC said financial advisers will be treated as "new entrants" to the industry.

SUPERANNUATION

Productivity Commission: economies of scale in super industry

The Productivity Commission has released a supplementary paper suggesting that economies of scale in the superannuation industry could deliver annual cost savings of \$1.8 billion if the 50 highest cost super funds merged with the 10 lowest cost funds. The supplementary paper, [Economies of scale](#), follows the release in May 2018 of the Commission's Stage 3 draft report on assessing efficiency and competitiveness.

The Commission said its further analysis confirmed that economies of scale in the super system is compelling with larger scale strongly associated with lower average system expenses. However, the Commission found little evidence that scale benefits have been passed through to members in the form of lower fees. Not-for-profit funds, on average, appeared to have passed through some scale economies in higher returns (by investing more heavily in higher-cost unlisted assets and securing higher returns as a result), but data limitations preclude a firm finding, the Commission said.

The Commission believes that further cost savings can still be realised, especially from further consolidation. Even a one basis point reduction in administration expense ratios for funds with more than \$10 billion in assets could result in annual savings of around \$130 million, the Commission said.

ATO begins issuing excess super contributions determinations

The ATO has begun issuing determinations for excess concessional contributions (ECC) for the 2017-18 financial year. The [ATO said](#) it will be issuing a higher volume of ECC determinations for 2017-18, following the reduction in the concessional contributions cap to \$25,000 for all taxpayers.

The ATO said tax practitioners and super funds should prepare for increased calls from clients, and funds should anticipate the receipt of release authorities to be actioned. From

1 July 2018, the ATO issues release authorities directly to the taxpayer's super fund. The fund must then pay the amount to the ATO within 20 business days (temporarily extended from 10 business days).

Notification of pending ATO mail out to approved SMSF auditors – increased security required when using software provided by a Digital Service Provider.

This email is to inform you that we will be issuing correspondence next week to each registered approved SMSF auditor via their individual email address which will outline the following;

1. That the ATO has been working closely with the Superannuation industry, along with Tax Practitioners and Digital Service Providers (DSPs) to improve the security of the digital taxation and superannuation ecosystem. Consequently the ATO has created a Digital Service Provider Operational Framework (the Framework)
2. The Framework outlines the minimum security requirements necessary to protect taxpayer information and the ATO has been working to implement these requirements across DSPs working within the superannuation industry
3. This means that if an approved SMSF auditor accesses taxation and superannuation data of their clients by using software provided by a Digital Service Provider they will need to do the following:
 - Ensure they have an individual login to access their software and make sure that logins are not shared
 - Implement strong user names and passwords
 - Be prepared to use additional authentication processes when required - for example SMS codes
 - Ensure information is protected by limiting authorisation to those who have a need to know

It also means that over the coming months approved SMSF auditors might notice changes to the software provided by their Digital Service Provider to accommodate the additional security requirements.

Approved SMSF auditors can talk to their software providers if they have any concerns.

REGULATOR NEWS

Financial misconduct prosecutions to get funding boost

The Treasurer has [announced](#) an additional \$51.5m of funding for the Commonwealth Director of Public Prosecutions (CDPP) and the Federal Court to enable further prosecutions of criminal misconduct by banks and other financial institutions. The additional funding is comprised of \$41.6m for the CDPP over 8 years, and \$9.9m for the Federal Court over 4 years, including funding for 2 new judges to support civil cases.

The Government has also asked the Attorney-General's Department (AGD) to conduct a review of whether the Federal Court's criminal jurisdiction should be expanded to include corporate crime (currently heard in State courts). The AGD will consult with relevant stakeholders including the States in undertaking the review and provide its report to the Government in January 2019.

In addition, the Government will establish a Committee of Regulatory Enforcement Strategy, chaired by the Attorney-General's Department and comprising representatives from the relevant agencies, to provide feedback on regulatory and civil enforcement policy, Mr Frydenberg said.

ASIC supervisory cost levy for 2017-18

The [ASIC \(Supervisory Cost Recovery Levy - Regulatory Costs\) Instrument 2018/1062](#) and [ASIC \(Supervisory Cost Recovery Levy - Annual Determination\) Instrument 2018/1063](#), have been registered to specify how ASIC will allocate its regulatory costs of \$237m for the 2017-18 financial year to each of the 48 sub-sectors under its supervision, including the financial advice sector, investment management and superannuation. For example, ASIC has attributed \$9.6m of its costs to the supervision of 139 superannuation trustees, and \$25.6m for 2,985 AFS licensees that provide personal advice on financial products to retail clients.

ASIC uses the figures set out in these Instruments to calculate the levies payable by each leviable entity for the 2017-18 pursuant to the formulae specified in the *ASIC Supervisory Cost Recovery Levy Regulations 2017*. ASIC is expected send out the invoices for the levies in January 2019.

Treasury consultation paper: ASIC registry fees

The Government has released a [consultation paper](#) for a Review of ASIC Registry Fees as part of its broader program for Modernising Business Registers (MBR). Currently, ASIC collects a range of registry fees from companies and other entities, including registration fees, annual review fees, late fees and search fees. The Assistant Treasurer, Stuart Robert, said the Government review is consulting on ways to make the registry fee regime simpler, easier to understand and more equitable.

The Government announced in the 2018-19 Budget that registers currently administered by ASIC and the Australian Business Register (ABR) will be moved to a modern registry platform administered by the ABR within the ATO. This includes the registers for companies, business names and ABNs. Mr Robert said the Government will consider the findings of the review in 2019, and any changes to the fee regime will be delivered through its broader MBR program.

Submissions are due by 21 December 2018.

Small business tax disputes: Govt initiatives announced

Assistant Treasurer Stuart Robert has announced that the Government will make it easier, cheaper and quicker for small businesses to resolve tax disputes with the ATO. He [confirmed](#) that the Government will establish a Small Business Concierge Service within the Australian Small Business and Family Enterprise Ombudsman's office to provide support and advice about the Administrative Appeals Tribunal (AAT) process before an application is made.

The Government will also create a dedicated Small Business Taxation Division within the AAT, with key features including:

- A case manager supporting them throughout the entire process.
- A standard application fee of \$500.
- Fast-tracked decisions to be made within 28 days of a hearing.

If the ATO appeals the AAT decision to the Federal Court, it will pay the small business reasonable costs.