

## **TAXATION**

### **Taxpayers affected by COVID-19 and natural disasters**

The ATO has issued a media release setting out its support options for year-end tax time including finalisation date for income statements.

### **Div 7A benchmark interest rate unchanged for 2021-22**

The benchmark interest rate for Div 7A purposes is expected to be 4.52% for the 2021-22 income year (unchanged from 2020-21).

### **ATO extension for Div7A minimum yearly repayments**

ATO will allow an extension of up to 12 months on Div 7A minimum yearly repayments due to COVID-19 impacts.

### **PAYG withholding schedules for 2021 released**

Various PAYG withholding schedules for 2021 has been registered covering amounts to be withheld and superannuation lump sums and income streams, among other things.

### **2021 Measures No 3 passes Senate**

Bill to implement changes to the Medicare levy low-income threshold and exempting various compensation payments from tax has passed the Senate.

### **COVID-19 Economic Response Bill passes Reps**

Bill to extend the concessional tax treatment of payments under eligible recover grant programs and tax secrecy provisions has passed the House of Reps.

### **Measures (No 4) Bill 2021 passes Reps**

Bill to implement FBT exemption for certain retraining and extend the LMITO has been passed by the House of Reps with no amendments.

**FBT car parking benefits ruling**

ATO has issued TR 2021/2 on when a car parking benefit is provided for FBT purposes, it replaces the previous ruling on the topic.

**2021 Measures No 5 Bill introduced**

Bill to reform the Australian Screen Production Incentive and disclosure of taxpayer information to tax and BAS agents has been introduced in the House of Reps.

**Warning to taxpayers lodging tax return early**

The IPA has issued an alert to warn people against lodging their tax return too early unless they are satisfied that they have included income from all sources.

**Open letter of support to the profession**

If you are finding that managing your clients' lodgment obligations is difficult due to issues such as ill-health, the loss of a key staff member, COVID-19, or you are generally overwhelmed, the ATO have a range of practical support options to assist you.

**FINANCIAL SERVICES****Temporary relief: ongoing fee disclosure by financial advisers**

Government has announced it will introduce a regulation to provide financial advisers with some temporary relief in relation to ongoing fee arrangement obligations.

**ASIC guidance: ongoing fee arrangements**

ASIC has released an information sheet explaining the ongoing fee arrangement changes for financial advisers from 1 July 2021.

**Foreign financial service providers: ASIC transitional relief extended**

An instrument has been registered to extend to 31 March 2023 the transitional relief for foreign financial service providers from the requirement to hold an AFS licence.

**AFS licensing exemption for super trustee investment activities**

An instrument has been registered to extend the AFS licensing relief for public offer super trustees in relation to certain investment activities.

**Financial Regulator Bill awaits Assent**

Bill to establish the Financial Regulator Assessment Authority has been passed without amendment and awaits Assent.

**Regulation of financial advisers; new disciplinary body: Bill**

Bill to establish a single disciplinary body for financial advisers as well as the wind up FASEA has been introduced in the House of Reps.

**SUPERANNUATION****SMSF related party LRBAs: interest rate**

For SMSF related party LRBAs used to acquire real property, the ATO's safe harbour interest rate is expected to be unchanged from 2020-21.

**SMSF auditor independence: proposed fee amendments**

APESB has issued an exposure draft with the purpose of strengthening the fee-related provisions of APES 110 Code of Ethics for Professional Accountants.

**Your Future, Your Super Bill receives Assent**

Bill to implement the government's Your Future, Your Super amendments receives assent after being passed with eight amendments.

**Super contributions bring forward age limit: Bill receives Assent**

Bill to extend the bring forward age limit to 65 and 66 for non-concessional contributions receives assent after passing with four amendments.

**SMSF membership limit increase Bill receives Assent**

Bill to increase from four to six the maximum number of allowable members in new and existing SMSFs has received assent after being passed without amendment.

**Family law super splits: interest rate for adjusting base amount**

Determination has been registered to specify the interest rate to be used for adjusting the base amount allocated in a court order or a super agreement under family law.

**REGULATOR NEWS****IGTO releases Edition 16 of IGoT News**

Inspector-General of Taxation and Taxation Ombudsman has released edition 16 of IGTO's newsletter including latest achievements and deliverables.

**Radio advertising campaign for tax time**

TPB has issued a release providing details of its radio advertising campaign for the 2021 tax time.

## **TAXATION**

### **Taxpayers affected by COVID-19 and natural disasters**

The ATO has issued a [media release](#) setting out its support options for year-end tax time.

Of note, the ATO said that income statements can be accessed in ATO online services through myGov accounts and should be "finalised by 14 July", indicating the date for income statements and tax returns to be fully updated on myGov with relevant payments (as specified below) received during the income year.

The release provides a summary of tax treatment of different support schemes, such as JobKeeper, JobSeeker, early access to superannuation etc.

### **Div 7A benchmark interest rate unchanged for 2021-22**

The benchmark interest rate for Div 7A purposes is expected to be 4.52% for the 2021-22 income year (unchanged from 2020-21). This is the "Indicator Lending Rates - Bank variable housing loans interest rate" (being the rate recently [published by the Reserve Bank](#) for May immediately prior to the start of the relevant financial year).

The ATO no longer issues annual Taxation Determinations for the benchmark interest rate. However, it will confirm the benchmark interest rate for 2021-22 at some stage on its Website (search ref: [QC 17928](#)).

### **ATO extension for Div7A minimum yearly repayments**

The ATO [will allow](#) an extension of up to 12 months on Div 7A minimum yearly repayments where the inability to pay is a result of the impact of COVID-19.

By way of background, when there is a complying loan agreement between a private company (and certain interposed entities) and a borrower under s 109N of the ITAA 1936, the borrower must make the minimum yearly repayment ("MYR") by the end of the private company's income year. This avoids the borrower being considered to have received an unfranked dividend, generally equal to the amount of any MYR shortfall.

The ATO has announced that, due to the ongoing COVID-19 situation, it will allow an extension of the repayment period for those borrowers who are unable to make their MYR by the end of the lender's 2020-21 income year. The inability to pay must be as result of COVID-19. A similar extension was allowed last year.

If the request is approved by the Commissioner, any shortfall in the MYR will not be a deemed dividend at the end of the lender's 2020-21 income year – if the shortfall is paid within the extended time. In any case, the shortfall must be paid by 30 June 2022 (ie this will be the maximum extended period).

### **PAYG withholding schedules for 2021 released**

The [Taxation Administration Act Withholding Schedules 2021](#) has been registered. This instrument makes publicly available withholding schedules updated in accordance with the PAYG system.

Withholding schedules specify the formulas and procedures to be used for working out the amount to be withheld by an entity from a withholding payment covered by Subdiv 12-B, 12-C or 12-D of Sch 1 to the TAA. The 15 withholding schedules in the instrument are made for the purposes of collecting income tax and Medicare levy, but also amounts of liabilities to the Commonwealth under:

- the Higher Education Support Act 2003;
- the Trade Support Loans Act 2014;
- the Social Security Act 1991; and
- the Student Assistance Act 1973.

This means that the schedules cover among other things:

- calculating amounts to be withheld;
- tax table for actors;
- tax table for unused leave payments on termination of employment;
- tax table for commissions;
- tax table for seniors;
- tax table for superannuation lump sums; and
- tax table for superannuation income streams.

**Date of effect:** 1 July 2021.

## 2021 Measures No 3 passes Senate

The [Treasury Laws Amendment \(2021 Measures No 3\) Bill 2021](#) has been passed by the Senate, with no amendments.

The tax-related measures include:

- changes to the Medicare levy low-income thresholds;
- exempting annual and lump sum payments made by the Commonwealth to Thalidomide survivors from income tax;
- making disaster recovery grant payments in relation to the storms and floods; and
- granting deductible gift recipient status on a number of entities.

## COVID-19 Economic Response Bill passes Reps

The [Treasury Laws Amendment \(COVID-19 Economic Response\) Bill 2021](#) has been passed by the House of Reps without amendment. It now heads to the Senate for debate. It contains two previously unannounced measures which will take effect from the date of assent.

Schedule one of the Bill extends the concessional tax treatment of payments received by eligible businesses under eligible COVID-19 recovery grant programs administered by a State or Territory Government in the 2021-22 financial year. Such payments will qualify as non-assessable non-exempt income and, as such, will not be subject to income tax by the Commonwealth. The Bill will amend s 57-97(1)(c) of ITAA 1997 by including "or 2021-22" (ie the exemption otherwise applies only to grants received in 2020-21). The exemption also applies to entities with substituted accounting periods.

Schedule two makes amendments to the tax secrecy provisions in the TAA 1953 to allow tax information to be disclosed to Services Australia for the purposes of administering the COVID-19 Disaster Payment. The COVID-19 Disaster Payment provides financial assistance to eligible workers who are unable to earn their usual income as a result of health restrictions (public health order) imposed by State or Territory governments, where the Commonwealth Chief Medical Officer has determined the location to be a COVID-19 hotspot for the purposes of Commonwealth support.

## Measures (No 4) Bill 2021 passes Reps

The [Treasury Laws Amendment \(2021 Measures No 4\) Bill 2021](#) has been passed by the House of Reps with no amendments. It contains the following tax-related measures:

- FBT exemption for certain retraining expenses from 1 October 2020;
- low and middle income tax offset (LMITO) extended to include 2021-22;
- exempting granny flat arrangements from CGT, with the start date dependent on when the Bill gets assent, ie 1 July 2021 or 1 July 2022;
- NZ taxing to retain taxing rights over NZ sports teams and support staff for those stuck in Australia due to COVID-19 travel restrictions;
- extension of the junior minerals exploration incentive to cover 2021-22 to 2024-25; and
- amendments to ASIC product intervention regime, a measure that has not been previously announced and which will apply from the date of assent.

The Senate is due to resume sitting on Monday 21 June 2021.

## FBT car parking benefits ruling

The ATO has issued [TR 2021/2](#) on when a car parking benefit is provided for FBT purposes. It replaces the previous Ruling on this topic, TR 96/26, which was withdrawn when TR 2021/2 was issued in draft form (as TR 2019/D5). The need for a replacement ruling is due to changes to the ATO view following two Full Federal Court decisions - *Virgin Blue Airlines Pty Ltd v FCT* [2010] FCAFC 137 and *FCT v Qantas Airways Ltd* [2014] FCAFC 168.

A car parking benefit is provided to an employee if various requirements in s 39A of the Fringe Benefits Tax Assessment Act 1986 are met. One requirement is that a commercial parking station must be located within a one km radius of the work car park. A commercial parking station is a permanent facility that makes all-day parking available to the public for a fee and does this in the ordinary course of business. The ATO considers that a facility can qualify as a commercial parking station even if it has a purpose other than providing all-day parking (eg hourly parking at a hospital or airport), and even if its fee structure discourages all-day parking. The previous ATO view (in withdrawn TR 96/26) was that a car parking facility was not a commercial parking station if it had a primary purpose other than providing all-day parking (by



charging penalty rates significantly higher than the rates chargeable for all-day parking at commercial all-day parking facilities).

While the meaning of "primary place of employment" was addressed in Draft TR 2019/D5, this commentary has been removed from the final Ruling. However, the ATO advises that TR 2021/2 will be amended once it has finished considering its position in light of the recent Federal Court decision in *Virgin Australia Airlines Pty Ltd v FCT* [2021] FCA 523.

**Date of effect:** generally retrospective. However, the revised ATO view on commercial parking stations charging higher fees will only apply to car benefits provided from 1 April 2022.

## 2021 Measures No 5 Bill introduced

The [Treasury Laws Amendment \(2021 Measures No 5\) Bill 2021](#) has been introduced into the House of Reps. Schedule one contains reforms to the Australian Screen Production Incentive, in line with the announcement on 30 September 2020. The key change is the increase in the producer offset rebate from 20% to 30% for eligible screen content for television and other production. The changes will apply from 1 July 2021.

Schedule two will enact some consequential matters arising from the corporate insolvency reforms. Notably, entities subject to prudential regulation by APRA are not eligible to access the small business restructuring processes. Schedule three will implement a range of tax and super "miscellaneous and technical amendments". These had largely been released in draft form. Matters covered include:

- disclosure of taxpayer information to tax and BAS agents;
- country-by-country reporting;
- loss carry back elections;
- consolidation rules and lessees.

## Warning to taxpayers lodging tax return early

The IPA has issued an alert to warn people against lodging their tax return too early unless they are satisfied that they have included income from all sources. The ATO receives third party information which populates the taxpayers pre-fill data. This pre-fill information can take some time to appear after the end of the financial year and

our caution around lodging early is a reminder to taxpayers about exercising caution. To access our media release click

## **Open letter of support to the profession**

If you are finding that managing your clients' lodgment obligations is difficult due to issues such as ill-health, the loss of a key staff member, COVID-19, or you are generally overwhelmed, the ATO have a range of practical support options to assist you. Once you contact them, they will individually tailor the support available to meet your specific needs.

The supported lodgment program is our premium program designed to help agents and practices of all sizes when you need additional time to lodge a large proportion of your clients' obligations and are unable to lodge a normal deferral request. For more details on how to access [click here](#).

## **FINANCIAL SERVICES**

### **Temporary relief: ongoing fee disclosure by financial advisers**

The Government has [announced](#) that it will introduce a regulation to provide financial advisers with some temporary relief in relation to ongoing fee arrangement obligations introduced by the [Financial Sector Reform \(Hayne Royal Commission Response No 2\) Act 2021](#). As fees are required to be reported up to the day before a fee disclosure statement is issued, the Government recognises that the financial advice industry may have difficulties generating an accurate fee disclosure statement during the transition period of 1 July 2021 to 30 June 2022.

The regulation, to be made by 1 July 2021, will allow financial advisers to report an estimate of fees for the 60 days prior to the statement being issued. The estimate would be reported alongside the actual fees charged for the remainder of the previous 12 months.

The announcement made clear that the regulation will only apply for the transition period, after which financial advisers will have 60 days from the anniversary date to

issue their fee disclosure statements which must report all fees paid in the previous 12 months.

## **ASIC guidance: ongoing fee arrangements**

ASIC has released [Information Sheet INFO 256](#) explaining the ongoing fee arrangement changes for financial advisers from 1 July 2021. This follows the [Financial Sector Reform \(Hayne Royal Commission Response No 2\) Act 2021](#) which implemented the Banking Royal Commission recommendation to require the annual renewal of ongoing fee arrangements and prevent fee recipients from deducting ongoing fees without the client's consent. INFO 256 will replace ASIC Regulatory Guide RG 245, which will be withdrawn. ASIC has also updated [Regulatory Guide RG 175](#) to reflect new advice obligations.

The ASIC guidance explains the new obligations for fee recipients in relation to ongoing fee arrangements, fee disclosure statements (FDSs) and ongoing fee consents. These obligations apply from 1 July 2021. For ongoing fee arrangements in force before 1 July 2021, an FDS must be given to the client between 1 July 2021 and 30 June 2022 (ie the transition period). The day the client is provided with an FDS during the transition period will become the "anniversary day" for that arrangement.

A fee recipient must give a client an FDS no later than 60 days after the "anniversary day" of the ongoing fee arrangement each year. A client may only renew the ongoing fee arrangement in writing and during the "renewal period" (being 120 days from the anniversary day). A client can renew an ongoing fee arrangement electronically (eg email, SMS or webpage), so long as it is in writing. If the client does not renew the ongoing fee arrangement during the renewal period, the ongoing fee arrangement will terminate 30 days after the end of the renewal period. Deducting, arranging to deduct, or accepting payment of, fees from a client's account without obtaining written consent is subject to a civil penalty.

A written consent must contain the information required by [ASIC Corporations \(Consent to Deductions - Ongoing Fee Arrangements\) Instrument 2021/124](#). The Government has also proposed to make a new regulation to allow financial advisers to report an estimate of fees for the 60 days prior to a FDS being issued during the transition period 1 July 2021 to 30 June 2022.

## Foreign financial service providers: ASIC transitional relief extended

[ASIC Corporations \(Amendment\) Instrument 2021/510](#), has been registered to extend to 31 March 2023 the transitional relief for foreign financial services providers (FFSPs) from the requirement to hold an AFS licence. This 12-month extension follows the 2021-22 Federal Budget announcement that the Government will consult on options to:

- restore regulatory relief for FFSPs who are licensed and regulated in jurisdictions with comparable financial service rules and obligations, or have limited connection to Australia, from holding an AFS licence; and
- create a fast-track licensing process for FFSPs who wish to establish more permanent operations in Australia.

The instrument also delays the commencement of the ASIC Corporations (Foreign Financial Services Providers - Funds Management Financial Services) Instrument 2020/199 until 1 April 2023. Under that instrument ASIC gives licensing relief to some providers of funds management financial services to certain categories of Australian professional investors.

## AFS licensing exemption for super trustee investment activities

[ASIC Corporations \(Amendment\) Instrument 2021/550](#), has been registered to extend the AFS licensing relief for public offer super trustees in relation to certain investment activities on behalf of fund members so that the same licensing obligations apply to non-public offer trustees.

By way of background, [ASIC Corporations \(Superannuation and Schemes: Underlying Investments\) Instrument 2016/378](#) currently exempts public offer trustees (PO trustees) from the requirement to have an AFSL authorising conduct related to certain investment activities on behalf of fund members, such as investing in shares, derivatives, and financial products. At the time Instrument 2016/378 was made, PO trustees were required to hold an AFS licence to deal in superannuation interests, but non-public offer trustees (NPO trustees) were not.

From 1 July 2021, providing a superannuation trustee service (PSTS) is a "financial service" following amendments by the Financial Sector Reform (Hayne Royal Commission Response) Act 2020. This obligation to have a PSTS authorisation will

apply to both PO trustees and NPO trustees from that date. The Financial Sector Reform (Hayne Royal Commission Response) (Regulation of Superannuation) Regulations 2020 also repealed from 1 July 2021 the current AFS licensing exemption (reg 7.6.01(1)(a) of the Corporations Regulations 2001) for NPO trustees in relation to dealing in a financial product in the capacity of trustee of a super fund.

Accordingly, Instrument 2021/550 amends Instrument 2016/378 to extend the AFS licensing relief in relation to certain investment activities on behalf of fund members so that PO trustees and NPO trustees have the same AFS licensing obligations.

**Date of effect:** The Instrument applies from 1 July 2021 until 31 December 2022.

### **Financial Regulator Bill awaits Assent**

The [Financial Regulator Assessment Authority Bill 2021](#) has been passed by the Senate with no amendments. It therefore is awaiting assent.

It will establish the Financial Regulator Assessment Authority ("FRAA") to assess the effectiveness and capability of each of APRA and ASIC, as recommended by the Royal Commission into financial services. The associated Bill entitled Financial Regulator Assessment Authority (Consequential Amendments and Transitional Provisions) Bill 2021 is also awaiting assent.

### **Regulation of financial advisers; new disciplinary body: Bill**

The [Financial Sector Reform \(Hayne Royal Commission Response - Better Advice\) Bill 2021](#) has been introduced in the House of Reps. It has been referred to the Senate Economics Legislation Committee for a report by 28 July 2021.

The Bill proposes to implement recommendation 2.10 of the Banking Royal Commission to establish a single disciplinary body for financial advisers and require the registration of all financial advisers who provide personal financial advice to retail clients. It will also implement recommendation 7.1 of the Tax Practitioners Board (TPB) Review to establish a new model for regulating tax (financial) advisers in alignment with the Royal Commission recommendation. Tax (financial) advisers will no longer be regulated by the TPB but instead will be regulated only under the *Corporations Act 2001*.

The Bill provides for the wind up of FASEA on 1 January 2022, and the transfer of its standards functions to the Minister responsible for administering the Corporations Act and to ASIC. The role of the Financial Services and Credit Panel (FSCP) within ASIC will be expanded to take on the functions of the single disciplinary body for financial advisers to ensure that less serious misconduct does not go unaddressed. This measure was announced by the Government on 9 December 2020. Additional penalties and sanctions may apply for financial advisers who have breached their obligations under the Corporations Act, reflecting that the current sanctions are limited to banning a financial adviser.

The Minister will be responsible for making education and training standards for financial advisers, including approving principles for the financial adviser exam, and a Code of Ethics. The Minister will also be responsible for approving foreign qualifications. ASIC will be responsible for administering the financial adviser examination in accordance with the principles approved by the Minister. The [Treasurer said](#) the Government will extend the cut-off date to 30 September 2022 for advisers who have attempted the exam twice prior to 1 January 2022.

To provide tax (financial) advice services, the Bill will require a person to either be a registered tax agent, or be a financial adviser who has met the additional education and training standard to provide tax (financial) advice services under the Corporations Act. The Minister may also make additional education and training standards for the provision of tax (financial) advice services. From 1 January 2022, financial advisers who meet the additional education and training requirements to provide tax (financial) advice services may do so without being registered under the Tax Agent Services Act 2009 (TASA). However, a person or entity who provides tax agent services or BAS services must continue to be a registered tax agent or registered BAS agent under the TASA.

**Date of effect:** The Bill will commence the day after Royal Assent. The new disciplinary and registration systems for financial advisers will apply from 1 January 2022. Stage one registrations of financial advisers (will commence no later than 1 January 2023) - financial services licensees will be required to apply to ASIC to register their financial advisers. Stage two registration (will commence by proclamation) - financial advisers will be required to apply to the Registrar to register themselves annually.



## **SUPERANNUATION**

### **SMSF related party LRBAs: interest rate**

For SMSF related-party limited recourse borrowing arrangements (LRBAs) used to acquire real property, the ATO's safe harbour interest rate is expected to be 5.10% for 2021-22 (unchanged from 2020-21).

Practical Compliance Guideline PCG 2016/5 sets the safe harbour interest rate each year according to the [Reserve Bank Indicator Lending Rates](#) for banks providing standard variable housing loans for investors (being the rate recently published for May immediately prior to the start of the relevant financial year). This Indicator Lending Rate for May 2021 is 5.10%. Accordingly, the ATO's safe harbour interest rate is expected to be 5.10% for 2021-22 (7.10% for listed securities). The ATO will confirm these rates at some stage on its [Website - Key superannuation rates and thresholds](#).

### **SMSF auditor independence: proposed fee amendments**

The Accounting Professional & Ethical Standards Board (APESB) has issued an [exposure draft](#) with the purpose of strengthening the fee-related provisions of APES 110 Code of Ethics for Professional Accountants (including Independence Standards). The proposed amendments:

- provide additional guidance to firms on evaluating and addressing independence threats created when fees are negotiated with and paid by an audit client, and those created by the level of fees, proportion of fees from non-audit services, and fee dependency; and
- introduce a rule for assessing fee dependency where there are multiple audit clients referred from one referral source.

The rule states that where the total fees in respect of multiple audit clients referred from one source represent more than 20% of the total fees of the firm, partner or office of the firm, a firm will be required to evaluate the significance of independence threats and apply safeguards, as necessary, to eliminate or reduce them to an acceptable level.

**Proposed date of effect:** 1 January 2023.

**Comments** are due by 31 August 2021.

## **Your Future, Your Super Bill receives Assent**

The [Treasury Laws Amendment \(Your Future, Your Super\) Bill 2021](#) has received Royal Assent as Act No 46 of 2021 after being passed by both Houses with eight Government amendments in the Senate (to which the House of Reps agreed).

The Bill implements the Government's *Your Future, Your Super* (YFYS) reforms from the 2020-21 Budget, including "stapled" single default accounts, a best "financial" interests duty for trustees and APRA benchmark testing of investment performance.

In welcoming the passage of the Bill, the [Treasurer said](#) the measures are expected to save \$17.9bn over 10 years by:

- Having superannuation follow an individual - preventing the creation of unintended multiple super accounts when employees change jobs. This will commence from 1 November 2021.
- Making it easier to choose a better fund - with access to a new interactive online YourSuper comparison tool. This will commence from 1 July 2021.
- Holding funds to account for underperformance - to lower fees and protect members from poor outcomes. Superannuation products will be required to meet an annual objective performance test conducted by APRA. Those that fail will be required to inform members and persistently underperforming products will be prevented from taking on new members. Members will be notified by 1 October 2021 if their fund fails this test.
- Increasing transparency and accountability - trustees will be required to act in the best "financial" interests of members and provide better information regarding how they manage and spend members' money in advance of Annual Members' Meetings and through enhanced Portfolio Holdings Disclosure.

The Government's Senate amendments to the Bill (agreed to by the Reps) delay the application of the single default account amendments so that it applies to employees commencing employment on or after 1 November 2021 (instead of 1 July 2021). Delaying the application date to 1 November 2021 seeks to align the single default account amendments with the notice of the outcomes of the first annual APRA performance test for MySuper products.



The Senate amendments also make a technical correction to clarify that a requirement that must be met to pass an APRA underperformance test can relate to a specific Part 6A product as prescribed by the regulations. The Senate also made amendments to remove the regulation making powers to prescribe additional requirements where failure to comply with the additional requirements would be a contravention of the proposed best financial interests duty for trustees.

### **Super contributions bring forward age limit: Bill receives Assent**

The [Treasury Laws Amendment \(More Flexible Superannuation\) Bill 2020](#) has received Royal Assent as Act No 45 of 2021 after being passed by both Houses with four Senate amendments by One Nation. The Senate amendments (agreed to by the Reps) abolish the excess concessional contributions charge and prohibit a deduction for COVID-19 re-contributions of superannuation from 1 July 2021: see below.

The Bill implements the 2019-20 Budget measure to extend the bring forward age limit to 65 and 66 (ie under age 67) for non-concessional contributions. From the 2020-21 financial year, individuals under age 67 in the financial year in which they make a non-concessional contribution can bring forward up to three times their annual non-concessional cap, provided that they meet the other conditions. Note that the Government further proposed in the 2021-22 Budget to repeal the contributions work test from 1 July 2022 for those 67-74. Under this proposal, individuals under 75 will be allowed to make or receive non-concessional (including under the bring-forward rule) or salary sacrifice contributions from 1 July 2022 without meeting the work test. Legislation to implement this further measure is yet to be introduced.

The [One Nation Senate amendments to the Bill \(agreed to by the Reps\)](#) prohibit a taxpayer from claiming a deduction for a re-contribution of a COVID-19 early release amount received during 2019-20 or 2020-21. Under the One Nation amendments, a deduction will be prohibited under s 290-169 of the ITAA 1997 for COVID-19 re-contributions (defined in s 292-103) made during the period 1 July 2021 until 30 June 2030. In welcoming the passage of the Bill, the [Treasurer said](#) individuals who released superannuation under the COVID-19 early release scheme will still have the option of recontributing these amounts as non-concessional contributions over and above the existing caps.

The [other One Nation amendments to the Bill](#) have repealed the Superannuation (Excess Concessional Contributions Charge) Act 2013 in respect of excess

concessional contributions from 1 July 2021. The amendments have also repealed s 26-74 of the ITAA 1997 which currently prohibits a deduction for the excess concessional contributions charge (ECC charge). The amendments apply to excess concessional contributions for a financial year starting on or after 1 July 2021.

### **SMSF membership limit increase Bill receives Assent**

The [Treasury Laws Amendment \(Self Managed Superannuation Funds\) Bill 2020](#) has received Royal Assent as Act No 47 of 2021 after being passed by both Houses without amendment. The Bill will commence from 1 July 2021, provided that it receives Royal Assent by 30 June 2021.

The Bill increases from four to six the maximum number of allowable members in new and existing SMSFs and small APRA funds. It does this by amending s 17A(1)(a) of the SIS Act to require an SMSF to have fewer than seven members (instead of fewer than five) to satisfy the definition of an SMSF. An increase in the maximum number of SMSF members will also have implications for the fund's trustee arrangements as s 17A also requires each member to be a trustee of the fund (or a director of the corporate trustee).

For an SMSF with three to six directors or trustees, the Bill also amends s 35B of the SIS Act to require the accounts and statements of the SMSF to be signed by "at least half of" the directors or individual trustees to also satisfy the trustee limit in the State legislation. An SMSF with one to two directors or individual trustees must have its accounts and statements signed by all of the directors or trustees.

### **Family law super splits: interest rate for adjusting base amount**

The [Family Law \(Superannuation\) \(Interest Rate for Adjustment Period\) Determination 2021](#) has been registered. It specifies the interest rate to be used for adjusting the "base amount" allocated in a court order or a superannuation agreement under the Family Law Act 1975 that splits a future defined benefit superannuation interest or an interest in a self-managed superannuation fund (SMSF).

Where the adjustment period is the financial year beginning on 1 July 2021, the interest rate is set at 0.057 (unchanged from 2020-21) for the purposes of reg 45D(3) of the Family Law (Superannuation) Regulations 2001.

## **REGULATOR NEWS**

### **IGTO releases Edition 16 of IGoT News**

The Inspector-General of Taxation and Taxation Ombudsman (IGTO), Karen Payne, has released [edition 16](#) of the IGTO's newsletter - "IGoT News".

The edition kicks off with a catch-up on what the IGTO's latest achievements and deliverables - of note, the IGTO is expecting to publish its investigation into undisputed tax debts by the end of the month. The undisputed tax debts investigation is where the IGTO examines the underlying causes for the rise in uncollected, undisputed tax debts.

The edition brings to attention the IGTO's thought leadership article on the taxpayer's right to receive reasons for decisions made by or on behalf of the ATO. This comes ahead of its investigation into the effectiveness of ATO communications of taxpayers' rights to complain, review and appeal. While the investigation is still on-going, the article notes that the circumstances in which the tax law prescribes a specific obligation for the ATO to issue reasons for decisions are limited and that taxpayers should keep that in mind.

As with previous IGoT News!, some high level data of the IGTO's Q3 FY21 Quarterly Reporting Pack is shared - complaint cases received and closed, top five issues of complaints, etc.

Additional updates were shared in relation to two review investigations underway:

- [The effectiveness of ATO communications of taxpayers' rights to complain, review and appeal](#) – the IGTO is aiming to provide the ATO with a preliminary draft report for its initial comments in July and that the final report should be published before the end of 2021; and
- [Investigation and Exploration of Undisputed Tax Debts in Australia](#) – a Final Draft Report has been provided to the ATO and the report, together with the ATO response, is expected to be published by 30 June 2021.

Other topics of interest included:

- The refresh of the IGTO's Register of Potential Review Investigation Topics; and

- The IGTO's Q4 FY21 activities.

## Radio advertising campaign for tax time

The Tax Practitioners Board (TPB) has issued a [release](#) providing details of its radio advertising campaign for the 2021 tax time. The campaign will run from early June to the end of July encouraging consumers to ensure their tax practitioner is registered with the TPB.

According to the TPB, the campaign will most likely reach taxpayers recruiting the services of a tax practitioner for the first time (or those who are considering switching practitioner) and are searching online. For a wider audience reach, the TPB is running a separate radio campaign from 21 June to 18 July - a 30-second advert titled "Nobody likes unpleasant surprises" to remind listeners of the risks of dealing with an unregistered practitioner.