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EXECUTIVE SUMMARY

[559] 2017-18 Federal Budget: \$29.4bn deficit; housing affordability package; increased Medicare levy and bank tax

On Tuesday, 9 May 2017, Treasurer Scott Morrison handed down the 2017-18 Federal Budget, his 2nd Budget.

In his Budget Speech, the Treasurer reported an underlying cash balance deficit of \$29.4bn for 2017-18. However, this outcome is projected to improve to a \$7.4bn surplus by 2020-21. The Budget expects the economy to rebound and grow at 2.75% in 2017-18 and 3.0% in 2018-19, supported by growth in household consumption, exports and a transition to non-mining business investment.

Forecast tax receipts for 2017-18 have been revised up by \$6.4bn over the forward estimates to 2019-20 due to new policy measures, including an increase in the Medicare levy, introducing a major bank levy, improving the integrity of GST on property transactions and a Skilling Australia Fund levy. These policy measures are expected to raise \$11.9bn over the forward estimates. While tax receipts have been affected by downward revisions to the outlook for wages, an upgrade to the outlook for profits is expected to see higher taxes for companies to more than offset the lower tax receipts expected from individuals.

Reflecting this economic optimism, the Government has committed over \$70bn from 2013-14 to 2020-21 to transport infrastructure across Australia, using a combination of grant funding, loans and equity investments. To ensure that each dollar of funding (so-called "Good Debt") for infrastructure goes further to enable more projects, the Government will look to identify ways to deliver infrastructure through more innovative financing methods

In the week leading up to the Budget, the Treasurer said that the Government was very cognisant of the frustration about rising costs of living, especially when wages are tight. While Mr Morrison said it was important to put downward pressure on rising costs of living, no government can solve that. He said Governments "have to take the actions they can take to put downward pressure on those rising costs of living". In this area, the Government has also

put forward a comprehensive plan on housing affordability, including initiatives for first home buyers.

Revenue measures announced

The major revenue measures announced in the Budget included:

- a new major bank levy from 1 July 2017 for ADIs with licensed entity liabilities of at least \$100bn;
- the instant asset write-off (\$20,000 threshold) for small business entities (SBEs) will be extended by 12 months to 30 June 2018;
- the small business CGT concessions will be restricted to assets used in a small business or ownership interests in a small business from 1 July 2017;
- the multi-national anti-avoidance law (MAAL) will be amended to negate the use of foreign trusts and partnerships in corporate structures effective from 1 January 2016;
- additional ATO funding for black economy audit and compliance programs;
- changes to the GST treatment of digital currencies (from 1 July 2017) and changes for payments on sales of new residential premises (from 1 July 2018);
- the Medicare levy will be increased by 0.5% to 2.5% from 1 July 2019; and
- faster higher education repayment and threshold changes from 1 July 2018.

More information on the tax and related announcements is also contained in a number of Budget press releases on the [Treasurer's website](#) and the [Minister for Revenue's website](#).

Where to get Budget documents

On the web

The 2017-18 Budget Papers are available from the following website:

- Budget 2017-18 - <http://www.budget.gov.au/>

Print copies

The 2017-18 Budget Papers are also available for sale from the CanPrint Communications Pty Limited. Details are on the Budget 2017-18 website at <http://www.budget.gov.au/purchase.htm>

[560] "Big ticket" tax reform takes back seat to Budget economics (again)

In the run-up to most Federal Budgets, calls emerge for tax reform to take a prominent place. This year has been no different. Tax, accounting and business bodies all called for various tax reform measures to simplify the tax system and make "meaningful" reform. A pre-Budget survey by Pitcher Partners of business owners for example found that 60% of those surveyed wanted the tax system to be made simpler, just ahead of balancing the budget.

The Business Council of Australia, in its Budget submission, called for lower personal and company tax rates, as well as measures to simplify the tax system.

These days, there never seems to be a "right" time to undertake meaningful tax reform. Reforms of any kind are always a movable feast, but it seems tax reform often falls into the too hard basket. And perhaps in the current (and near recent) political and parliamentary climate, this is somewhat understandable. But the tax system and its legislation continues to lurch and struggle under its own weight – it's not getting any simpler, nor any shorter, and more people than ever it seems require help with their tax compliance.

That said, not all tax reform necessarily has a significant direct revenue implication - indeed many called-for reforms seek to reduce compliance costs and simplify the tax law. For example, simplification of Div 7A, the personal services income (PSI) rules, the CGT small business concessions (the Henry review recommended this) and the FBT system all feature in regular calls for reform. And of course, completing the re-write of the ITAA 1936 into the ITAA 1997 would help considerably with simplification. Australia's tax law is complex enough without having 2 assessment s Acts for taxpayers and their advisers to deal with.

In last year's Budget, the Government announced a number of "tax reform" measures as part of what it called its "Ten Year Enterprise Tax Plan" – these included increasing the small business entity turnover threshold, reducing the company tax rate to 25% over 10 years, targeted amendments to Div 7A and increasing the \$80,000 tax threshold to \$87,000 – see 2016 WTB 18 [543]. A number of these have been legislated.

This year's Budget did not announce any big ticket fundamental tax reforms, although a number of significant tax changes were announced, as this *Bulletin* describes. These include measures designed to help make housing more affordable. Speculation about the possibility of a standard tax deduction for work-related expenses amounted to nothing. In the meantime, calls for tax reform will continue.

[561] Earlier measures abandoned

The Government announced that it will not proceed with various measures announced in previous Budgets and MYEFOs. These include:

- abolition of the seafarer tax offset;
- cessation of the education entry payment and the pensioner education supplement;
- various higher education measures – new measures are reported elsewhere in this Bulletin;
- phasing out end of year supplements and limiting FTB Part B to single families with a youngest child aged under 17 years; and
- reducing FTB Part B for single parents with a youngest child aged 13-16.

Source: Budget Paper No 2 [pp 77-78]

[562] Budget delivers national Infrastructure plan and bank levy

Reuters report that total 2017-18 revenues are estimated to rise to A\$444.4 billion, or 24.4% of GDP. Expenses are seen rising to A\$464.3 billion or 24.4% of GDP.

Net debt as a share of GDP is expected to peak in 2018-19 and fall to 8.4% over the next decade.

National Infrastructure Plan - the government is committing more than A\$70 billion from 2013-14 to 2020-21 to build transport infrastructure across Australia.

It will make an equity investment of up to A\$5.3 billion in the Western Sydney Airport Corporation to build a second international airport in Australia's biggest city.

The government is also establishing a A\$10 billion National Rail Programme to fund priority regional and urban rail investments, with funding to be provided over 10 years.

Banking - from July 1, Australia's major banks with liabilities of over A\$100 billion will pay a 6 basis points levy on their deposits, raising at least A\$1.5 billion per year to assist with budget repair. This measure will secure A\$6.2 billion over the budget and forward estimates.

If banks breach misconduct rules, they will face bigger fines starting at A\$50 million for small banks and A\$200 million for large banks.

PERSONAL TAXATION

[563] Personal tax rates - no change: 2% Budget deficit levy to end on 30 June 2017

The 2017-18 Budget contained no changes to the personal income tax rates and thresholds. This means that the 2% budget deficit levy on incomes over \$180,000 will not be extended beyond its initial 3 years. The levy will therefore cease at the end of the 2016-17 financial year.

Tax rates and thresholds summarised

The rates for the 2016-17 year (including the 2% temporary budget deficit levy, but excluding the 2% Medicare levy) are:



2016-17	
Taxable income \$	Tax payable \$
0 - 18,200	Nil
18,201 - 37,000	Nil + 19% of excess over 18,200
37,001 - 87,000	3,572 + 32.5% of excess over 37,000
87,001 - 180,000	19,822 + 37% of excess over 87,000
180,001+	54,232 + 47% of excess over \$180,000

The rates for the 2017-18 year (excluding the 2% Medicare levy) are:

2017-18	
Taxable income \$	Tax payable \$
0 - 18,200	Nil
18,201 - 37,000	Nil + 19% of excess over 18,200
37,001 - 87,000	3,572 + 32.5% of excess over 37,000
87,001 - 180,000	19,822 + 37% of excess over 87,000
180,001+	54,232 + 45% of excess over \$180,000

As reported in this *Bulletin*, the Government has proposed to increase the Medicare levy from 2% to 2.5% from 1 July 2019.

Low income tax offset

The currently legislated low income tax offset (LITO) rates have not changed and are:

- LITO amount - \$445.
- Lower withdrawal limit - \$37,000.

- Upper withdrawal limit - \$66,667.
- Withdrawal rate - 1.5%.

Foreign residents

The tax rates for foreign residents (including the 2% temporary budget deficit levy) for 2016-17 are:

2016-17	
Taxable income \$	Tax payable \$
0 - 87,000	32.5%
87,001 - 180,000	28,275 + 37% of excess over 87,000
180,001+	62,685 + 47% of excess over \$180,000

The tax rates for 2017-18 will be the same, except that the top marginal rate will be 45%, reflecting the removal of the 2% temporary budget deficit levy.

[564] Medicare levy to be increased to 2.5% from 1 July 2019

The Government will increase the Medicare levy to 2.5% from 1 July 2019 (up 0.5% from the current 2% Medicare levy) to ensure the National Disability Insurance Scheme (NDIS) is fully funded and to guarantee Medicare. Other tax rates that are linked to the top personal tax rate, such as the FBT rate, will also be increased.

Low-income earners will continue to receive relief from the Medicare levy through the low-income thresholds for singles, families, seniors and pensioners. The current exemptions from the Medicare levy will also remain in place.

The increase in the Medicare levy is estimated to raise \$8.2bn over the forward estimates, being the net impact across all heads of revenue, not just the Medicare levy. The Government said it will credit \$9.1bn to the NDIS Savings Fund Special Account when it is established.

Date of effect

1 July 2019

Source: *Budget Paper No 2 [pp 24-25]*

[565] Medicare levy low-income thresholds for 2016-17

For the 2016-17 income year, the Medicare levy low-income threshold for singles will be increased to \$21,655 (up from \$21,335 for 2015-16). For couples with no children, the family income threshold will be increased to \$36,541 (up from \$36,001 for 2015-16). The additional amount of threshold for each dependent child or student will be increased to \$3,356 (up from \$3,306).

For single seniors and pensioners eligible for the SAPTO, the Medicare levy low-income threshold will be increased to \$34,244 (up from \$33,738 for 2015-16). The family threshold for seniors and pensioners will be increased to \$47,670 plus \$3,356 for each dependent child or student.

As reported in this *Bulletin*, the Government has also proposed to increase the Medicare levy to 2.5% from 1 July 2019. However, relief from the Medicare levy will continue through the low-income thresholds for singles, families, seniors and pensioners.

Date of effect

The increased thresholds will apply to the 2016-17 and later income years. Note that legislation is required to amend the thresholds and a Bill will be introduced shortly.

Source: *Budget Paper No 2 [p 25]*

[566] Higher Education HELP changes announced: faster repayment and threshold changes

The Budget confirmed the announcement on 1 May 2017 by the Minister for Education and Training, Simon Birmingham, of a package of reforms to higher education – the [Higher Education Reform Package](#) - to take effect generally from 1 January 2018. The measures include:

- The maximum student contribution will increase from 1 January 2018.
- No up-front fees.
- No deregulation of fees.
- A new set of repayment thresholds will be introduced from 1 July 2018, affecting all current and future Higher Education Loan Program (HELP) debtors by changing the timing and quantity of their repayments.
 - Currently, HELP debtors are not required to start paying back their HELP loans until their annual incomes reach \$55,874 (in 2017-18), with individuals making repayments of 4% of their repayment income, rising to 8% for people with incomes above \$101,900.
 - The 2017-18 Budget confirmed the setting of the minimum repayment threshold at \$42,000 from 1 July 2018 with a lower 1% repayment rate, and a maximum threshold of \$119,882 with a repayment rate of 10% -see table below.
- Phasing in increased maximum student contributions by 1.8% each year between 2018 and 2021 cumulating to a 7.5% increase.
- From 1 July 2019, the indexation of HELP repayment thresholds, currently linked to Average Weekly Earnings (AWE), will be changed to align to the Consumer Price Index (CPI).
- From 1 January 2018, Commonwealth support will be available to students at public universities in approved sub-bachelor courses. To be eligible for a Commonwealth Supported Places (CSPs), the student must not have completed another higher

education qualification and the course must have been developed with a focus on industry needs and fully articulate into related bachelor programs.

- Restricting subsidies to Australian citizens only and certain Special Visa Category Permanent Residents from New Zealand and Humanitarian refugees. From 1 January 2018, subsidies for most Australian permanent residents and most New Zealand citizens enrolling in a CSP will be withdrawn, making them fee-paying students.

The Minister said that taxpayer funded student loans stand at more than \$52bn and, without changes to address this situation, around a quarter of that is expected to go unpaid.

HELP repayment rates and thresholds

The current and proposed repayment rates and thresholds for 2018-19 and 2019-20 are as follows:

HELP repayment rates and thresholds			
Repayment rate	Current 2018-19 thresholds	Proposed new 2018-19 thresholds	Proposed new 2019-20 thresholds (derived through CPI indexation)
1%	-	\$42,000	\$42,840
1.5%	-	\$44,520	\$45,410
2%	\$51,957	\$47,191	\$48,135
2.5%	-	\$50,022	\$51,023
3%	-	\$53,024	\$54,084
3.5%	-	\$56,205	\$57,329
4%	\$57,730	\$59,577	\$60,769
4.5%	\$64,307	\$63,152	\$64,415
5%	\$70,882	\$66,941	\$68,280
5.5%	\$74,608	\$70,598	\$72,377
6%	\$80,198	\$75,215	\$76,719
6.5%	\$86,856	\$79,728	\$81,323
7%	\$91,426	\$84,512	\$86,202
7.5%	\$100,614	\$89,852	\$91,374
8%	\$107,214	\$94,957	\$96,857
8.5%	-	\$100,655	\$102,669

9%	-	\$106,694	\$108,829
9.5%	-	\$113,096	\$115,358
10%	-	\$119,882	\$122,279

Thomson Reuters note: The current repayment rates and thresholds for 2018-19 were enacted by the *Budget Savings (Omnibus) Act 2016* (they were originally announced in the 2016-17 Federal Budget). A number of other higher education changes were also announced in the 2016-17 Budget: see 2016 WTB 18 [547]. That Budget also flagged the possibility of recovering debts from deceased estates but the Minister's 1 May 2017 announcement and the new package of measures did not mention that.

[567] Tax free payments to child sexual abuse survivors

Redress payments under the Commonwealth Redress Scheme for Survivors of Institutional Child Sexual Abuse (the Scheme) will be tax exempt. The Scheme will commence in March 2018 and start receiving applications from 1 July 2018 from people who were sexually abused as children in Commonwealth institutions.

Source: *Budget Paper No 2 [p 146]*

[568] Changes to FTB Part A payments

The Budget confirmed that, from 1 July 2017, Family Tax Benefit Part A supplement payments will be reduced by \$28 per fortnight for each child who does not meet the Government immunisation requirements.

Changes to dollar income test taper

The Government will implement a consistent 30 cents in the dollar income test taper for Family Tax Benefit Part A families with a household income in excess of the Higher Income Free Area

(currently \$94,316) from 1 July 2018. This will ensure that higher income families are subject to the same income test taper rates.

Proposed Part A rate increase not proceeding

The Government will achieve savings of \$1.9 billion over four years from 2017-18 by not increasing the maximum rate of Family Tax Benefit Part A, which was announced as part of the 2015-16 MYEFO measure titled "Family Payment Reform -- a new families package".

Source: Budget Paper No 2 [pp 147; 150; 157]

[569] A standard tax deduction for work expenses? Not in this Budget

Talk of allowing individual taxpayers a standard tax deduction for work-related expenses (WRE) has been around for more years than we may care to remember. However, despite much speculation before the Budget, it was silent on such a proposal.

BUSINESS TAXATION MEASURES

[570] Major bank levy from 1 July 2017

The Government will introduce a major bank levy (the levy) for Authorised Deposit taking Institutions (ADIs), with licensed entity liabilities of at least \$100bn, from 1 July 2017. The \$100bn threshold will be indexed to grow in line with nominal gross domestic product.

The levy will be calculated quarterly as 0.015% of an ADI's licensed entity liabilities as at each APRA mandated quarterly reporting date (for an annualised rate of 0.06%).

Liabilities subject to the levy will include items such as corporate bonds, commercial paper, certificates of deposit, and Tier 2 capital instruments. The levy will not apply to the following

liabilities: additional Tier 1 capital and deposits of individuals, businesses and other entities protected by the Financial Claims Scheme.

The levy is expected to raise \$6.2bn over the forward estimates period, net of interactions with other taxes (principally corporate income taxes). The Government believes that this represents a fair additional contribution from Australia's major banks and will assist with budget repair.

To facilitate the introduction of the levy, the ACCC will undertake a residential mortgage pricing inquiry until 30 June 2018. As part of this inquiry, the ACCC will be able to require relevant ADIs to explain changes or proposed changes to residential mortgage pricing, including changes to fees, charges, or interest rates by those ADIs.

Source: Budget Paper No 2, p 24; Treasurer's media release, 9 May 2017

[571] Company tax rate: Govt re-commits to remainder of 10-year package to further reduce rate

As foreshadowed by the Treasurer recently, the Budget confirmed the Government's intention to re-introduce the remaining elements of its 10-year Enterprise Tax Plan (see 2017 WTB 17 [513]).

Legislative amendments already passed by the Senate will see the corporate tax rate reduced for companies with a turnover less than \$50 million (see 2017 WTB 14 [408]). These Senate amendments are set to be approved by the House of Reps as part of the Budget sittings. As part of the Budget, the Government said it remains committed to its 10-year Enterprise Tax Plan to eventually reduce the company tax rate to 25% for all companies.

Corporate tax rate (as amended by Senate)

The company tax rate changes, as amended by the Senate, are summarised in the following table. The changes have to be approved by the House of Reps.



Financial year	Aggregated turnover less than	Company tax rate
2016-17	\$10m	27.5%
2017-18	\$25m	27.5%
2018-19	\$50m	27.5%
2019-20 to 2023-24	\$50m	27.5%
2024-25	\$50m	27%
2025-26	\$50m	26%
2026-27+	\$50m	25%

In the 2016-17 financial year, the reduced corporate tax rate of 27.5% will apply for businesses with an aggregated turnover of less than \$10m; \$25m turnover in 2017-18; and \$50m turnover from 2018-19. This effectively implements the first 3 years of the Government's 10-year plan for company tax cuts.

As per the trajectory in the Budget, the corporate tax rate will also be further reduced in stages, starting from 1 July 2024, so that it will eventually fall to 25% by the 2026-27 financial year for businesses with an aggregated turnover of less than \$50m.

Small business measures

In addition to the reduced company tax rate, the Enterprise Tax Plan Bill, as passed by the Senate, includes measures to:

- increase the small business entity aggregated turnover threshold to \$10m from 1 July 2016 - but the threshold for accessing the CGT small business concessions will remain at \$2m; and
- increase the unincorporated small business tax discount from 5% to 16% over a 10-year period (see table below) - the threshold for accessing the discount will be \$5m (aggregated turnover).

The increase in the small business entity aggregated turnover threshold will enable a greater number of businesses to access concessions such as the simplified depreciation and trading stock rules and a 2-year (instead of 4-year) review period for amending assessments.

Small business discount

The small business discount rates, as amended by the Senate, are summarised in the following table. The amendments have to be approved by the House of Reps.

Financial year	Aggregated turnover less than	Offset rate	Cap
2016-17 to 2023-24	\$5m	8%	\$1,000
2024-25	\$5m	10%	\$1,000
2025-26	\$5m	13%	\$1,000
2026-27+	\$5m	16%	\$1,000

Payments to pensioners

To win the support of Senator Xenophon's team to pass the Enterprise Tax Plan Bill, the Government agreed to provide a one-off payment to recipients of the Aged Pension, the Disability Pension and the Parenting Payment - \$75 for single recipients and \$125 for couples. These payments were confirmed in the Budget, as reported in this *Bulletin*.

[\[572\]](#) Higher instant asset write-off threshold for SBEs extended

The Government will extend the current instant asset write-off (\$20,000 threshold) for small business entities (SBEs) by 12 months to 30 June 2018.

The threshold amount was due to return to \$1,000 on 1 July 2017. As a result of this announcement, SBEs will be able to immediately deduct purchases of eligible depreciating assets costing less than \$20,000 that are acquired between 1 July 2017 and 30 June 2018 and first used or installed ready for use by 30 June 2018 for a taxable purpose. Only a few

assets are not eligible for the instant asset write-off (or other simplified depreciation rules), for example horticultural plants and in-house software.

Assets valued at \$20,000 or more (which cannot be immediately deducted) can continue to be placed into the general small business pool (the pool) and depreciated at 15% in the first income year and 30% each income year thereafter. The pool can also be immediately deducted if the balance is less than \$20,000 over this period (including existing pools).

The instant asset write-off threshold and the threshold for immediate deductibility of the balance of the pool will revert to \$1,000 on 1 July 2018.

Note that when the SBE changes in the *Treasury Laws Amendment (Enterprise Tax Plan) Bill 2016* receive assent, the aggregated turnover threshold for a SBE will increase to \$10m (as from 2016-17): see 2017 14 WTB [408]. Accordingly, SBEs with aggregated turnover between \$2m and \$10m will benefit from the \$20,000 instant asset write-off concession.

Suspension of lock out rules extended

The suspension of the "lock out" rules for the simplified depreciation regime will be extended by 12 months until 30 June 2018. The "lock out" rules prevent SBEs from re-entering the simplified depreciation regime for 5 years if they opt out.

Source: Budget Paper No 2, pp 21-22

[573] CGT small business concessions: restricted to assets used in business

The Government will amend the small business CGT concessions to ensure that the concessions can only be accessed in relation to assets used in a small business or ownership interests in a small business.

Division 152 of ITAA 1997 provides 4 concessions to eliminate, reduce and/or provide a roll-over for a capital gain made on a CGT asset that has been used in a "small" business. These concessions are:

- the "15-year exemption" (Subdiv 152-B);
- the "50% reduction" (Subdiv 152-C);
- the "retirement exemption" (Subdiv 152-D);
- the "roll-over" concession (Subdiv 152-E).

The concessions are designed to assist owners of small businesses by providing relief from CGT on assets related to their business which helps them to re-invest and grow, as well as contribute to their retirement savings through the sale of the business.

However, the Budget papers state that some taxpayers are able to access these concessions for assets which are unrelated to their small business, eg through arranging their affairs so that their ownership interests in larger businesses do not count towards the tests for determining eligibility for the concessions.

The small business CGT concessions will continue to be available to small business taxpayers with aggregated turnover of less than \$2m or business assets less than \$6m.

Date of effect

The measure is proposed to start on 1 July 2017.

It is stated to be an integrity measure and has no impact on revenues, ie it is not anticipated to raise any additional funds.

Source: Budget Paper No 2 [p 38]

[574] Business to pay levy on certain skilled visas

From March 2018, businesses that employ foreign workers on certain skilled visas will be required to pay a levy that will provide revenue for a new Skilling Australians Fund.

Businesses with turnover of less than \$10m per year will be required to make an upfront payment of \$1,200 per visa per year for each employee on a Temporary Skill Shortage visa and make a one-off payment of \$3,000 for each employee being sponsored for a permanent Employer Nomination Scheme (subclass 186) visa or a permanent Regional Sponsored Migration Scheme (subclass 187) visa.

Businesses with turnover of \$10m or more per year will be required to make an upfront payment of \$1,800 per visa year for each employee on a Temporary Skill Shortage visa and make a one-off payment of \$5,000 for each employee being sponsored for a permanent Employer Nomination Scheme (subclass 186) visa or a permanent Regional Sponsored Migration Scheme (subclass 187) visa.

The levy will replace the current training benchmark financial obligations for employers of workers on Temporary Work (Skilled) (subclass 457) visas, which are being abolished, and permanent Employer Nomination Scheme (subclass 186) Direct Entry stream visas. The measure is estimated to have a gain to revenue of \$1.2bn over the forward estimates, which will be used to support the training and development of Australian workers.

Date of effect

March 2018.

Skilling Australians Fund

The Government will also provide \$1.5bn over 4 years from 2017-18 to establish a permanent Skilling Australians Fund (the Fund) to support the skilling of Australian workers. The Fund will prioritise apprenticeships and traineeships for occupations in high demand, occupations with a reliance on skilled migration pathways, industries and sectors of future growth, trade apprenticeships, and apprenticeships and traineeships in regional and rural areas. The Fund,

when matched with funding from the States, will support up to 300,000 more apprentices, trainees, and higher level skilled Australians over the next 4 years.

The Fund will support a range of projects which are focused on Commonwealth priorities and are designed to support growth in trade and non-trade apprenticeships and traineeships in target areas. Projects may include providing incentives for employers, pre-apprenticeship training, improving apprenticeship and traineeship retention and completion rates, and additional support for higher level apprenticeships.

Eligibility criteria for the Fund will be defined by the Commonwealth, with States' access to the Fund conditional on their agreement to meeting conditions including a requirement to focus on priority occupations, funding contributions matching Commonwealth funding, achieving outcomes, and providing up-to-date data on performance and spending.

Source: Budget Paper No 2 [pp 16, 89]

[575] Using stapled structures to re-characterise trading income – comment period for consultation paper extended

Treasury [released a consultation paper on 24 March 2017](#) seeking views from interested parties on potential policy options to address the re-characterisation of trading income derived through the use of stapled structures into more favourably taxed passive income. The Treasurer said this practice reduces the Australian tax paid by investors and may distort investment decisions and lead to reduced economic efficiency. "We are taking steps to eliminate this practice", he said.

Recognising the economic significance of stapled structures in the Australian economy and that this is a complex and sensitive issue, in the week leading up to the Budget, the [Treasurer announced](#) that the Government would not be responding to the issue in the 2017-18 Federal Budget. He said this will allow more time to formulate relevant options that minimise

unintended consequences. In this regard, the ***timeline for the review will be extended to the end of July 2017.***

The Property Council of Australia welcomed the Government's move, saying that it should provide certainty to the industry while ensuring that the integrity of the tax system is maintained. "The 14.1 million Australians with direct or indirect exposure to property through their superannuation funds need us to get it right", said Ken Morrison, Chief Executive of the Property Council. He said the Treasurer's decision to pursue an orderly process that allows rational decisions to be made "is sound". Mr Morrison said retention of the current tax framework for the property industry through the process "is essential in building confidence and certainty".

The consultation paper flagged that the Government was considering measures which would remove the tax advantages of stapled arrangements. Some options to remove these tax advantages could include:

- Disallowing certain deductions for cross-staple payments by companies or Div 6C trusts (including rentals, interest, royalties and synthetic equity payments) to Div 6 trusts (potentially treating the income as non-assessable non-exempt for the trust);
- Taxing the recipient of such payments (either the trustee or foreign investors) at a rate equivalent to the Australian company tax rate.

The paper also queried that if the tax advantages of stapled arrangements were removed, would Australia need a specific REIT regime to provide clarity for flow-through tax treatment for real estate investments?

The extended consultation period will allow further consideration of these and other issues.

[576] PRRT changes deferred

The Budget confirmed that changes to the Petroleum Resource Rent Tax (PRRT) scheme recommended by the Callaghan Review would be considered further and that Treasury would

report to the Government by the end of September 2017. The Government intends to conduct further consultation on the PRRT recommendations of the Callaghan review that was released on 28 April 2017 – see 2017 WTB 18 [536]. The review made 12 recommendations calling for scheme changes that impact beyond the current investment decision horizon - such as uplift rates, transferability and order of claiming deductions. The review has also called for PRRT taxpayers to be required to lodge annual returns at the time they start holding an interest in an exploration permit, retention lease or production licence. Currently, a PRRT taxpayer is only required to lodge an annual return with the ATO when a project starts producing assessable receipts from the project.

Only Recommendation 1 (re uplift rates, ordering of deductions, etc) relates to just new projects; the other recommendations relate to new and old projects. Recommendation 12 proposes that the PRRT anti-avoidance rule be brought into line with recent changes to the income tax anti-avoidance rule.

The Treasurer said the Government intends to consider the report outside the Budget to enable comments on the recommendations and provide a considered response "in the next few months". In considering the recommendations of the report, the Government said that it will take into account the need to ensure that the PRRT provides an equitable return from petroleum resources without discouraging investment in exploration and development.

The Treasurer has also requested additional work be undertaken in considering reforms. To this end, an additional consultation period will be run until the end of August 2017. Treasury will report back to Government by the end of September 2017. [Note that the PRRT was the subject of extensive discussion at a hearing in Perth on 28 April 2017 of the Senate Economic References Committee inquiry into tax avoidance and aggressive minimisation by corporations registered in Australia and MNEs operating in Australia.]

TAX COMPLIANCE AND INTEGRITY

[577] MAAL to apply to broader range of entities

The measures enacted in 2015 under the umbrella of the "multi-national anti-avoidance law" will be amended to negate the use of foreign trusts and partnerships in corporate structures to circumvent the law.

The MAAL will be enhanced so that it applies to:

- corporate structures that involve the interposition of partnerships that have any foreign resident partners;
- trusts that have any foreign resident trustees; and
- foreign trusts that temporarily have their central management and control in Australia.

Date of effect

The amendments will apply from 1 January 2016 (the commencement date for the MAAL).

Source: Budget Paper No 2 [p 39]

[578] Taxable payments reporting system extended to couriers and cleaners

The Government will extend the taxable payments reporting system (TPRS) to contractors in the courier and cleaning industries.

The reporting and identification verification system in Pt 5-30 in Sch 1 to the TAA imposes reporting obligations in relation to supplies specified in the TA Regs. Currently, the system only covers supplies of building and construction services to a purchaser who is carrying on a business that is primarily (over 50%) in the building and construction industry.

The purchaser is required to give the Commissioner a report (the "Taxable payments annual report") that specifies the supplier, the supplier's ABN (if known by the purchaser) and the total payments made to the supplier: s 405-10 of Sch 1 to the TAA. Failure to give a report attracts a penalty of 20 penalty units: s 420-5 of Sch 1 to the TAA.

The legislation requires quarterly reporting, although the Commissioner has varied this to annual reporting by the purchaser.

These changes were recommended in an interim report by the Black Economy Taskforce, which was released on Budget night. The final report is expected to be delivered in October 2017.

Date of effect

The measure is to commence from 1 July 2018. The first annual report for affected couriers and cleaners will be required in August 2019.

The net gain to revenue is estimated to be \$318m over the next 4 years.

[579] Extension of funding for black economy audits

The Government will provide \$32m for one year of additional funding for Tax Office audit and compliance programs which target the black economy. Note that this funding was to expire on 30 June 2017.

Specifically, funding will be provided for the "Strengthening Foundations" and "Level Playing Field" programs. Strengthening Foundations focuses on businesses with a turnover between \$2m and \$15m that have "disengaged" from the tax system. The Level Playing Field program targets small businesses with turnover below \$2m.

These programs focus on behaviours such as non-lodgement, omission of income and non-payment of employer obligations.

The Government will make decisions about the future of both programs beyond 2017-18 in light of the Black Economy Taskforce's final report. This report is expected to be delivered in October 2017. An interim report was released on Budget night which recommended an extension of funding.

Date of effect

The measure is to commence from 1 July 2017.

The net gain to revenue is estimated to be \$447m over the next 4 years.

Source: Budget Paper No 2 [p 35]; Minister for Finance's media release dated 9 May 2017

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[580] Prohibition on sales suppression software

The Government intends to prohibit the manufacture, distribution, possession, use or sale of electronic point of sale (POS) sales suppression technology and software.

Such technology and software allow businesses to understate their incomes by untraceably deleting selected transactions from electronic records in POS equipment. Income earned from these transactions and tax owing from this income is not reported to the Tax Office.

The revenue risks such technologies pose have been highlighted by the OECD and the Government states that these measures are in line with responses of other jurisdictions.

The prohibition was recommended in an interim report by the Black Economy Taskforce, which was released on Budget night. The final report is expected to be delivered in October 2017.

Date of effect

The prohibition will take effect from the date of assent of the relevant legislation.

In terms of its expected impact to revenue, this is stated as being "an unquantifiable gain" over the next 4 years.

Source: Budget Paper No 2 [p 36]; Minister for Finance's media release dated 9 May 2017

[581] Extra funds for ATO to target serious crime

The Government will provide \$28.2m to the ATO to target serious and organised crime in the tax system. This extends an existing measure by a further 4 years to 30 June 2021 and will enable the ATO to continue compliance work against serious and organised crime.

This measure is estimated to have a gain to revenue of \$408.5m and a net gain to the budget of \$380.3m over the forward estimates period.

Source: Budget Paper No 2 [p 20]

[582] OECD hybrid mismatch rules to be applied to regulatory capital

The Government has confirmed its intention (announced in the 2016-17 Budget) to implement the OECD hybrid mismatch arrangement rules in relation to regulatory capital.

It will clamp down on aggressive tax minimising structures used by banks and financial institutions by eliminating hybrid tax mismatches that occur in cross border transactions relating to regulatory capital known as Additional Tier 1 (AT1). This will be done by:

- preventing returns on AT1 capital from carrying franking credits where such returns are tax deductible in a foreign jurisdiction; and

- where the AT1 capital is not wholly used in the offshore operations of the issuer, requiring the franking account of the issuer to be debited as if the returns were to be franked.

This measure is aimed at multinational corporations that exploit differences in the tax treatment of an entity or instrument under the laws of 2 or more tax jurisdictions. It targets instances where tax is either deferred or not paid at all. For example, a loan from a parent company to its subsidiary may be treated as equity in one country's tax law and debt in another. This may allow the subsidiary to claim a deduction for interest payments made to its parent without the parent company being liable for tax on those payments.

Date of effect

Subject to transitional arrangements the measure will apply to returns on AT1 instruments paid from the later of 1 January 2018 or six months after Royal Assent.

Transitional arrangements will apply to AT1 instruments issued before 7.30 pm (AEST) on 9 May 2017 such that the measure will not apply to returns paid before the next call date of the instrument occurring after 7.30 pm (AEST) on 9 May 2017.

Source: Budget Paper No 2 [p 34]

GST AND INDIRECT TAXES

[583] GST measures in 2017-18 Federal Budget

There were 2 interesting GST measures contained in the 2017-18 Federal Budget, reported in more detail later in this Bulletin.

The first concerns the GST treatment of digital currencies. Practitioners will be pleased to hear that the Government intends to make changes to the way in which things like Bitcoin are currently treated, which gives rise to double taxation. The Government now intends to treat such currencies as money. This area of GST has been subject to some discussion and analysis and to that extent the announcement is not a surprise.

The Government will also require purchasers of new residential property to remit the GST liability on such sales directly to the Tax Office. This is somewhat unexpected (at least to this writer) and is a significant change.

Changes to treatment of precious metals

Budget Paper No 2 also reminds us about previously announced measures relating to gold and the precious metal industry, in particular:

- a proposed reverse charge mechanism for taxable supplies of precious metals; and
- amending the definition of "second-hand goods" in the GST Act to clarify that goods containing precious metal do not qualify as second-hand goods.

See 2017 WTB 14 [414] for further details. The Budget Papers remind us that these changes are an integrity measure and do not affect the overall amount of GST payable (or which should be payable) in this area.

[584] GST treatment of digital currency

The Government will align the GST treatment of digital currency with money.

The treatment of digital (or crypto) currency for GST purposes has been hugely challenging for the Government. Digital currency refers to things such as bitcoin, although there are apparently over 600 other currencies available. Tax Office rulings released in December 2014 (GSTR 2014/3; TD 2014/25; TD 2014/26; TD 2014/27 and TD 2014/28) set out the Tax Office view that bitcoin is neither money nor a foreign currency and the supply of bitcoin is not a financial supply for GST purposes. In its view, transacting with bitcoin is akin to a barter arrangement, with similar GST consequences.

The result is that trading with bitcoin can give rise to a form of double taxation for GST purpose – once on the purchase of the digital currency and again on its use in exchange for other goods and services subject to GST.

There have been 3 significant developments up to this point which deal with the treatment of digital currencies, namely:

- a Senate Economic References Committee report in 2015;
- the Government's "Backing Australian FinTech" statement in March 2016; and
- a Government discussion paper in May 2016.

Presumably the proposed changes are a result of these developments. The changes will be designed to ensure that purchases of digital currency are not subject to GST. There is no specific detail as to how this will be achieved, ie the legislative changes that are necessary.

Date of effect

The measure will come into effect 1 July 2017.

It is stated that it will have "a small but unquantifiable decrease in GST collections". In other words, there will be less GST collected – but not much.

Source: Budget Paper No 2 [p 22]

[585] New residential premises: purchasers to pay GST

Purchasers of newly constructed residential properties (or new subdivisions) will be required to remit the GST directly to the Tax Office as part of settlement.

Currently, GST is included in the purchase price and it is the developer who remits any GST. However, some developers are failing to remit the GST (despite having claimed GST credits on their construction costs).

The Budget Papers state that, as most purchasers use conveyancing services to complete their purchase, they should experience minimal impact from these changes. No mention, however, is made of the additional administrative cost to the conveyancers or indeed the purchasers.

Date of effect

The measure is proposed to start on 1 July 2018.

Interestingly, the net impact of this measure as stated appears quite significant. It is estimated to increase GST revenue by \$660m and associated payments to the States and Territories, net of administrative costs, by \$1.6bn (yes, billion) over the forward estimates period (which is 4 years). The difference is stated to be due to the timing of when GST is collected and recognised.

Source: Budget Paper No 2 [p 38]

[586] Diplomatic and consular indirect tax concessions extended

The Government has granted or extended access to refunds of indirect tax (including GST, fuel and alcohol taxes) under the Indirect Tax Concession Scheme.

New access to refunds has been granted to the diplomatic and consular representations of Belarus, Cuba, Zambia and Ethiopia. In addition, the diplomatic and consular representations of Mauritius and Thailand have had their access expanded.

These concessions are provided in accordance with Australia's international obligations in relation to diplomatic missions and consular posts.

Date of effect

Each of these changes will have effect from a time specified by the Minister for Foreign Affairs.

It is estimated to have a negligible cost to the budget.

Source: Budget Paper No 2 [p 23]

HOUSING AFFORDABILITY

[587] Housing affordability measures - overview

The 2017-18 Budget contained a number of measures designed to improve Australians' access to secure and affordable housing across the housing spectrum. These measures include:

- strengthening the CGT rules to reduce the risk that foreign investors avoid paying CGT in Australia;
- introducing a 50% cap on pre-approved foreign ownership in new developments;
- applying an annual charge to foreign owners who leave residential property unoccupied or not available for rent for 6 months or more each year;
- easing restrictions that are contributing to the supply of housing falling behind population growth and encouraging a more responsive housing market;
- improving outcomes in social housing and homelessness;
- assisting first home buyers to build a deposit inside superannuation; and
- allowing older Australians to contribute downsizing proceeds into superannuation.

These measures are discussed further in the Housing Affordability and Superannuation areas of this *Bulletin*.

[588] Annual charge on foreign owners of underutilised residential property

The Government will introduce a charge on foreign owners of residential property where the property is not occupied or genuinely available on the rental market for at least 6 months per year. The charge will be levied annually and will be equivalent to the relevant foreign investment application fee imposed on the property at the time it was acquired by the foreign investor.

The Government said that this measure is intended to encourage foreign owners of residential property to make their properties available for rent where they are not used as a residence and so increase the number of dwellings available for Australians to live in.

This measure, which will be administered by the ATO, is estimated to have a gain to budget of \$16.3m over the forward estimates period.

Date of effect

This measure will apply to foreign persons who make a foreign investment application for residential property from 7:30 pm (AEST) on 9 May 2017.

Source: Budget Paper No 2 [p 27]

[589] Restriction on depreciation deductions

From 1 July 2017, the Government will limit "plant and equipment" depreciation deductions to outlays actually incurred by investors in residential real estate properties.

The Budget Papers state that plant and equipment items are usually mechanical fixtures or those which can be "easily" removed from a property such as dishwashers and ceiling fans.

This is an integrity measure to address concerns that some "plant and equipment" items are being depreciated by successive investors in excess of their actual value. Acquisitions of existing plant and equipment items will be reflected in the cost base for CGT purposes for subsequent investors.

Investors who purchase plant and equipment for their residential investment property after 9 May 2017 will be able to claim a deduction over the effective life of the asset. However, subsequent owners of a property will be unable to claim deductions for plant and equipment purchased by a previous owner of that property.

This measure is estimated to have a gain to revenue of \$260.0m over the forward estimates period.

Existing investments grandfathered

These changes will apply on a prospective basis, with existing investments grandfathered.

Plant and equipment forming part of residential investment properties as of 9 May 2017 (including contracts already entered into at 7:30 pm (AEST) on 9 May 2017) will continue to give rise to deductions for depreciation until either the investor no longer owns the asset, or the asset reaches the end of its effective life.

Source: Budget Paper No 2 [pp 30-31]

[590] Housing affordability – unlocking supply

The Government will ease restrictions that are contributing to the supply of housing falling behind population growth and encouraging a more responsive housing market by:

- working with State and Territory governments to set housing supply targets and facilitate planning and zoning reform under a new National Housing and Homelessness Agreement;
- establishing a \$1bn National Housing Infrastructure Facility to address infrastructure
- chokepoints that are impeding housing development in critical areas of undersupply;
- establishing an online Commonwealth land registry that will provide more detailed information about Commonwealth land to external parties in a mapped format, allowing and encouraging proposals for higher value land use, including housing development proposals;
- releasing suitable surplus Commonwealth land; and
- kick-starting planning and zoning reform across 8 local government areas facing above average population growth and affordability pressures in Western Sydney through a new City Deal for Western Sydney.

Source: Budget Fact Sheet 1.1 "A Comprehensive Plan to Address Housing Affordability"

[591] No deduction for residential rental property travel expenses

Travel expenses related to inspecting, maintaining or collecting rent for a residential rental property will be disallowed from 1 July 2017.

The Government said that this is an integrity measure designed to address concerns that many taxpayers have been claiming travel deductions without correctly apportioning costs, or have claimed travel costs that were for private travel purposes. The Government hopes that this measure will provide confidence in the tax system by ensuring tax concessions are better targeted.

This measure will not prevent investors from engaging third parties such as real estate agents for property management services. These expenses will continue to be deductible.

Source: Budget Paper No 2 [p 29]

[592] Improving outcomes for social housing

The Government aims to improve outcomes in social housing and homelessness by:

- working with State and Territory governments to reform Commonwealth funding arrangements under a new National Housing and Homelessness Agreement, retaining current funding and indexation arrangements but requiring concrete outcomes;
- providing additional funding of \$375m over the next 4 years as part of the new National Housing and Homelessness Agreement to fund front line services to address homelessness;
- encouraging social impact investing to support innovative approaches to reduce homelessness;

- incentivising more private investment in affordable housing through tax incentives – these measures are reported earlier in this Bulletin; and
- establishing the National Housing Finance and Investment Corporation to operate an affordable housing bond aggregator to provide cheaper and longer-term finance for the community housing sector.

Source: Budget Fact Sheet 1.1 "A Comprehensive Plan to Address Housing Affordability Overview"

[593] Increased CGT discount for investments in affordable housing

From 1 January 2018 the CGT discount for individuals will be increased from 50% to 60% for gains relating to investments in qualifying affordable housing.

To qualify for the higher discount, housing must be provided to low to moderate income tenants, with rent charged at a discount to the private rental market rate. Tenant eligibility will be based on household income thresholds and household composition.

The affordable housing must be managed through a registered community housing provider and the investment held for a minimum period of 3 years. Any period before the time a property was purchased when it was used for affordable housing purposes will count towards the buyer's qualifying investment period (provided the previous owner did not claim the additional discount).

The additional discount will be pro-rated for periods where the property is not used for affordable housing purposes.

The higher discount will flow through to resident individuals investing in qualifying affordable housing through a managed investment trusts (as reported in this Bulletin).

The increased discount is not limited to investments in *new* affordable housing. This means that investors who elect to supply their existing properties for affordable housing will qualify for the additional discount provided the investment meets the eligibility requirements.

The Government will consult further on the implementation of this policy, including on the precise definition of affordable housing and tenant eligibility, and what qualifies as rent charged below the market rate.

Source: Budget Paper No 2 [p 29]

[594] MIT investment in affordable housing

To encourage investment into affordable housing, the Government will legislate to enable managed investment trusts (MITs) to invest in affordable housing.

Under the current law, the ATO has generally taken the view that investment in residential property is active, with a primary purpose of delivering capital gains from increased property values. This has meant that income from such investments is taxed at 30% as it is not eligible for the MIT tax concessions which apply to passive investments only.

Under the new rules:

- investors will receive concessional taxation treatment through an MIT if the affordable housing is available for rent for at least 10 years;
- MITs will be able to acquire, construct or redevelop a property, but must derive at least 80% of its assessable income from affordable housing;
- qualifying housing must be provided to low to moderate income tenants at a rental below the private rental market rate.

Under the MIT withholding tax regime, foreign resident investors are generally subject to a reduced rate of tax if they are a resident of a country with which Australia has an exchange of

information treaty. Foreign resident investors are generally subject to a 15% withholding tax rate on fund payments from the MIT.

Individual resident investors in affordable housing MITs will continue to be taxed on investment returns at their marginal tax rates, but capital gains will be eligible for the increased CGT discount (as reported above/below).

Under the existing MIT tax rules up to 20% of the income of the MIT may be derived from other eligible investment activities. If this threshold is breached, or less than 80% of the MIT's income is from affordable housing in an income year, a foreign resident investor will be liable for withholding tax at the rate of 30% on investment returns for that income year. A property held for rent as affordable housing for less than 10 years will be subject to a 30% withholding tax rate on the capital gain arising from its disposal.

Date of effect

This measure will apply for income years starting on or after 1 July 2017.

Source: Budget Paper No 2 [p 26]

[595] CGT changes for foreign investors

Australia's foreign resident capital gains tax regime will be extended by:

- denying foreign and temporary tax residents access to the CGT main residence exemption from 7:30 pm (AEST) on 9 May 2017 (with existing holdings being grandfathered until 30 June 2019);
- increasing the CGT withholding rate for foreign tax residents from 10% to 12.5% from 1 July 2017; and
- reducing the CGT withholding threshold for foreign tax residents from \$2m to \$750,000 from 1 July 2017.

In addition, the integrity of the foreign resident CGT regime will be improved by applying the principal asset test on an associate inclusive basis from 7:30 pm (AEST) on 9 May 2017 for foreign tax residents with indirect interests in Australian real property. This will ensure that foreign residents cannot avoid a CGT liability by disaggregating indirect interests in Australian real property.

Source: Budget Paper No 2 [p 27]

[596] Foreign ownership in new developments limited to 50%

A cap of 50% will be applied to foreign ownership in new developments through a condition on New Dwelling Exemption Certificates.

New Dwelling Exemption Certificates are granted to property developers and act as a pre-approval allowing the sale of new dwellings in a specified development to foreign persons without each foreign purchaser seeking their own foreign investment approval. Relevant developments have to be multi-storey and have at least 50 dwellings.

The current certificates do not limit the amount of sales that may be made to foreign purchasers.

Date of effect

The cap will be included as a condition on New Dwelling Exemption Certificates where the application is made from 7:30 pm (AEST) on 9 May 2017.

Source: Budget Paper No 2 [p31]

SUPERANNUATION

[597] No major new super measures, but 1 July super reforms loom large

The Government did not announce any new major superannuation measures in the Budget. This will be a welcome relief for the super industry which already has enough on its plate with major reforms set to start on 1 July 2017. As is the case with any large-scale changes such as the 1 July 2017 super reforms, refinements are often necessary to address unanticipated consequences as part the implementation process.

Super changes announced

A range of superannuation measures were announced in the Budget, including:

- the current tax relief for merging superannuation funds will be extended until 1 July 2020;
- the non-arm's length income provisions will be amended from 1 July 2018 to reduce opportunities for members to use related-party transactions on non-commercial terms;
- limited recourse borrowing arrangements will be included in a member's total super balance and the \$1.6m pension transfer balance cap from 1 July 2017;
- a person aged 65 or over to make a non-concessional contribution of up to \$300,000 from the proceeds of selling their home from 1 July 2018; and
- a first home super saver scheme will allow future voluntary contributions to superannuation to be made by first home buyers from 1 July 2017 to be withdrawn for a first home deposit, along with associated deemed earnings.

These super measures are discussed in further detail in this *Bulletin*.

[598] Merging super funds: tax relief extended until 1 July 2020

The Government will extend the current tax relief for merging superannuation funds until 1 July 2020 to remove tax as an impediment to fund mergers and industry consolidation.

Since December 2008, tax relief has been available for APRA regulated superannuation funds under Div 311 of the ITAA 1997 to transfer capital and revenue losses to a new merged fund, and to defer taxation consequences on gains and losses from revenue and capital assets. This tax relief was due to lapse on 1 July 2017. It will now be extended until 1 July 2020.

The Government said that this tax relief for merging funds will be temporarily extended as the Productivity Commission completes a review into the efficiency and competitiveness of the super industry. According to the Government, extending this relief will ensure super fund members' balances are not reduced by tax when superannuation funds merge.

Date of effect

Merger tax relief will apply until 1 July 2020.

Thomson Reuters comment

Note that the Government also released exposure draft legislation on 13 April 2017 (see 2017 WTB 16 [480]) proposing to expand the tax relief available to superannuation funds when mandatorily transferring assets as part of the transition to the MySuper rules (generally by 1 July 2017).

Source: Budget Paper No 2 [p 21]

[599] Super fund related-party transactions - non-arm's length income rules to be amended

The non-arm's length income provisions for super funds will be amended from 1 July 2018 to reduce any opportunities for members to use related-party transactions on non-commercial terms to increase superannuation savings.

Specifically, the non-arm's length income (NALI) provisions in s 295-550 of the ITAA 1997 will be amended to ensure expenses that would normally apply in a commercial transaction are included when considering whether the transaction is on a commercial basis. A super fund's non-arm's length income (also known as "special income") is taxed at 47% instead of the 15% concessional rate.

The measure will seek to ensure that the super reform legislation operates as intended. Essentially, it appears to be aimed at preventing individuals from using non-arm's length arrangements with their superannuation fund to circumvent the pension balance cap and total superannuation balance threshold.

Date of effect

1 July 2018.

Source: Budget Paper No 2 [p 34]

[600] Super borrowings - LRBA integrity measure for pension cap

As an integrity measure, the use of limited recourse borrowing arrangements (LRBAs) by superannuation will be included in a member's total superannuation balance and for the purposes of the \$1.6m pension transfer balance cap from 1 July 2017.

According to the Government, LRBAs can potentially be used to circumvent contribution caps and effectively transfer growth in assets from the accumulation phase to the retirement phase

that is not captured by the \$1.6m pension transfer balance cap. From 1 July 2017, the outstanding balance of a LRBA will be included in a member's annual total superannuation balance. In addition, the repayment of the principal and interest of a LRBA from a member's accumulation account will be a credit in the member's pension transfer balance account. The measure is expected to save only \$4m over the forward estimates.

Date of effect

1 July 2017.

Source: Budget Paper No 2 [p 33]

[601] Super contributions of proceeds up to \$300,000 from downsizing a home

The Government will allow a person aged 65 or over to make a non-concessional contribution of up to \$300,000 from the proceeds of selling their home from 1 July 2018. These contributions will be in addition to those currently permitted under existing rules and caps and they will be exempt from the existing age test, work test and the \$1.6m total superannuation balance test for making non-concessional contributions (which applies from 1 July 2017).

The measure will apply to sales of a principal residence owned for the past 10 years or more. Both members of a couple will be able to take advantage of this measure for the same home. The measure seeks to reduce a barrier to downsizing for older people to enable more effective use of the housing stock by freeing up larger homes.

Note that the proceeds from downsizing a home in this manner are not proposed to be exempt from the Age Pension assets test.

Date of effect

1 July 2018.

Source: Budget Paper No 2 [p 28]

[602] First home super saver scheme

The Government will encourage home ownership by allowing future voluntary contributions to superannuation made by first home buyers from 1 July 2017 to be withdrawn for a first home deposit, along with associated deemed earnings.

Concessional contributions and earnings that are withdrawn will be taxed at marginal rates less a 30% offset. Combined with the existing concessional tax treatment of contributions and earnings, this will provide an incentive that will enable first home buyers to build savings more quickly for a home deposit.

Under the measure up to \$15,000 per year and \$30,000 in total can be contributed, within existing caps. Contributions can be made from 1 July 2017. Withdrawals will be allowed from 1 July 2018 onwards. Both members of a couple can take advantage of this measure and combine savings for a single deposit to buy their first home together.

This measure is expected to have a cost to revenue of \$250m over the forward estimates. The Tax Office will be provided with \$9.4m to implement the measure.

Date of effect

1 July 2017.

Source: Budget Paper No 2 [p 28]

Thomson Reuters note

A previous scheme, the First Home Saver Accounts (FHSA) scheme, was abolished from 1 July 2015, although people still have until 30 June 2017 to make claims for government contributions. The scheme operated on the basis that people made contributions to a FHSA which then resulted in a government contribution, the amount of which depended on how much

the individual's personal contribution was. To claim a government contribution, the person must have been a resident of Australia for tax purposes.

The main features of that FHSA were:

The government made a 17% contribution on the first \$6,000 a person deposited each financial year. For example, a personal contribution of \$1,000 would result in a government contribution of \$170.

The interest a person earned on their account was only taxed at a rate of 15%.

The person had to save at least \$1,000 each year over at least 4 financial years before they could withdraw the money. The 4 years did not have to be consecutive.

The maximum account balance was capped at \$90,000. After savings reached this level, only interest and earnings could be added to the balance.

Source: Budget Paper No 2 [p 30]; Treasurer's media release, 9 May 2017

OTHER MEASURES

Reducing red tape for small business

States and Territories continue to impose a wide range of regulatory restrictions that prevent small businesses from growing and innovating. These State regulations impede job growth and entrepreneurship.

For example, many small trucking businesses struggle to master all the different regimes they must comply with when they cross State borders. And it can take up to 18 months to set up a café because of local council regulations.

Through its National Partnership on Regulatory Reform, the Government will therefore provide up to \$300 million to States and Territories that remove unnecessary barriers.

[603] Govt agrees with Ramsay Review - new one-stop shop for financial complaints

The Government has released its response to the Ramsay Review and accepted all 11 of its recommendations to overhaul the financial system's external dispute resolution (EDR) framework.

The Government agreed with the Review Panel, Chaired by Professor Ramsay, that there should be a single EDR body for all financial disputes to replace the existing framework of the Financial Ombudsman Service (FOS), Credit and Investments Ombudsman (CIO) and Superannuation Complaints Tribunal (SCT). To this end, the Government said that it will create a new one-stop shop - the Australian Financial Complaints Authority (AFCA) - to be established by 1 July 2018 to replace the FOS, CIO and SCT.

The Government intends to consult on exposure draft legislation that will require all financial firms (including superannuation funds) to be members of this approved one-stop shop and comply with its determinations. The Government will also ensure that the AFCA has the monetary limits and compensation caps recommended in the Ramsay Review, including further consultation on the caps for mortgage and general insurance products.

According to the Government, the AFCA will be able to hear financial disputes of a higher value so that more consumers and small businesses can access fair compensation if they have wrongly suffered a loss. ASIC will also be provided with stronger powers to oversee the AFCA and to require financial firms, including super funds, to report on their internal dispute resolution activity.

Currently, when a consumer has a complaint or dispute with a financial firm, avenues for redress include accessing complaints handling by the financial firm (internal dispute resolution (IDR)), accessing industry-specific EDR framework through FOS, the CIO or the SCT, or commencing legal action through the court system.

The Review [released its Interim Report](#) on 6 December 2016. Among other things, it found that the current monetary limit for the FOS and CIO of \$500,000 and compensation cap of \$309,000 are no longer fit-for-purpose and bear little relationship to the value of some financial products (eg mortgage balances) that may give rise to disputes.

Note that a final report on the Ramsay Review's additional terms of reference has been deferred until the end of June 2017 (see 2017 WTB 6 [177]). The Government also said that the Ramsay Review will report on the issues involved in providing access to redress for past disputes in the second half of 2017.

Source: Treasurer's media release, 9 May 2017

[604] Changes to the financial system

The 2017-18 Budget contains a number of measures designed to overhaul the financial system and strengthen accountability and competition. Many of these measures are in response to the Coleman Report.

The measures include:

- a one-shop stop to deal with all financial disputes, including superannuation disputes;

- a new Banking Executive Accountability Regime;
- reducing regulatory barriers to entry to the banking system for new and innovative entrants;
- a major levy for ADIs;
- an enhanced regulatory sandbox to facilitate more innovation, promote greater competition and increase choice;
- removing the double taxation of digital currency; and
- credit card reforms.

One recommendation of the Coleman Report not accepted by the Government would require the major banks to engage an independent third party to undertake a full review of their risk management frameworks and make recommendations aimed at improving how the banks identify and respond to misconduct.

Dispute resolution

A new one-stop shop will deal with all financial disputes, including superannuation, and provide access to free, fast and binding dispute resolution.

The new body – the Australian Financial Complaints Authority (AFCA) – will be able to hear disputes of a higher value so that more consumers and small businesses will have their disputes heard, and if they have wrongfully suffered a loss, access fair compensation. Financial firms will be required to be members of AFCA, and its decisions will be binding on all firms.

AFCA will be governed by an independent board, with an independent chair and equal numbers of directors with industry and consumer backgrounds, and be wholly funded by industry.

AFCA will commence operations from 1 July 2018. The existing dispute resolution bodies will continue to operate after 1 July 2018 to work through their existing complaints.

ASIC will be provided with stronger powers to oversee the new one-stop shop. ASIC will have a general directions power to ensure AFCA complies with legislative and regulatory requirements.

To increase accountability, the Government will also legislate to require financial firms to report ASIC on internal dispute resolution outcomes.

Accountability

Senior executives and directors of authorised deposit taking institutions (ADIs), including all banks, will be required to be registered with APRA. The ADI will have to advise APRA prior to making a senior appointment. This will mean APRA will have visibility of all ADI senior appointments prior to them being made. Where senior executives have been found not to have met expectations they will no longer be able to be registered or employed in senior roles.

ADIs will be required to provide APRA with accountability maps of senior executives' roles and responsibilities to enable greater scrutiny at the time of each person's appointment and oversight of problems that emerge under their management.

APRA will be given stronger powers to remove and to disqualify senior executives and directors of all institutions regulated by APRA. Persons removed or disqualified under these powers would have to appeal to the AAT Tribunal to have a decision reviewed.

The new regime will establish expectations on how ADIs and their executives and directors conduct their business consistent with good prudential outcomes. These expectations would cover matters such as conducting business with integrity, due skill, care and diligence and acting in a prudent manner.

A new civil penalty will be created with a maximum penalty of \$200m for larger ADIs, and a maximum penalty of \$50m for smaller ADIs, that fail to meet these new expectations, increasing incentives for ADIs to put in place processes to ensure they conduct their operations appropriately. APRA will also be able to impose penalties on ADIs that do not appropriately monitor the suitability of their executives to hold senior positions.

The Government will mandate that a minimum of 40% of an ADI executive's variable remuneration – and 60% for certain executives such as the CEO – be deferred for a minimum period of 4 years. This will increase the financial consequences – by preventing bonuses being paid – for decisions which may take a long time to materialise. Executives will place greater focus on long-term outcomes than when there are shorter deferral periods.

APRA will also be given stronger powers to require ADIs to review and adjust their remuneration policies when APRA believes such policies are not appropriate.

Competition

The Government will increase consumer choice and improve competition in banking by giving customers access to and control over their banking data by introducing an open banking regime in Australia.

Increased access to data will improve the information available to consumers and better enable innovative business models to create new products tailored to individuals.

The Government will commission an independent review to recommend the best approach to implement the open banking regime to report by the end of 2017.

In addition, as reported elsewhere in this *Bulletin*, the Government has tasked the Productivity Commission to report to the Government on the state of competition in the financial system by July 2018.

Credit card reforms

To protect consumers from poor practices in the credit card market, the Government will:

- require that affordability assessments be based on a consumer's ability to repay the credit limit within a reasonable period;
- prohibit unsolicited offers of credit limit increases;
- simplify how interest is calculated; and
- require online options to cancel cards or to reduce credit limits.

The Government said that this delivers the first phase of reforms outlined in the Government's response to the Senate inquiry into the credit card market.

Other measures

Other measures announced in the 2017-18 Budget include:

- a major levy for ADIs – this is reported elsewhere in this *Bulletin*;
- reducing barriers for innovative new entrants into the banking sector by addressing significant obstacles that currently exist, eg the limitation on closely-held ownership,
- the prohibition on the use of the word "bank" by certain ADIs and burdensome bank licensing processes;
- legislating an enhanced regulatory sandbox that allows more businesses to test a wider range of new financial products and services without a licence, including providing more holistic financial advice, issuing consumer credit, offering short-term deposit or payment products and operating a CSEF intermediary; and
- removing the double taxation of digital currency – this is reported in the GST and Indirect Taxes section of this *Bulletin*.

Source: Budget Fact Sheets "A more accountable and competitive banking system" and "Australia as the innovation and FinTech nation"; Treasurer's media release, 9 May 2017

[605] Competition in financial system: Productivity Commission inquiry announced

Ahead of the Budget, the Treasurer announced on 8 May 2017 that the Productivity Commission has been tasked to hold an inquiry into competition in Australia's financial system. The inquiry forms part of the Government's response to the Murray Financial System Inquiry which highlighted the importance of competition in terms of deliver better outcomes for consumers and small businesses.

The Treasurer said the Productivity Commission will look at how to improve consumer outcomes, the productivity and international competitiveness of the financial system and

economy more broadly, and support financial system innovation, while balancing financial stability objectives. In doing so, it will consider the level of contestability and concentration in key segments of the financial system, including the degree of vertical and horizontal integration. It will also examine competition in the provision of personal deposit accounts and mortgages and services and finance to small and medium businesses, Mr Morrison said.

The Inquiry will commence on 1 July 2017 and is due to report to the Government by 1 July 2018. Further information and the terms of reference will be set out on the [Productivity Commission's website](#).

Source: Treasurer's media release, 8 May 2017

[606] Simpler framework for foreign investment framework

The Government will introduce a range of amendments to clarify and simplify Australia's foreign investment framework.

This package of amendments will enhance and streamline the operation of the foreign investment framework by reducing red-tape and simplifying the fee framework. Decreasing the number of fee-tiers will reduce complexity and achieve more equitable fee outcomes. In addition, implementing more standardised fees for acquisitions of similar values and legislating current fee waiver principles will provide a more transparent and consistent approach.

In particular, the simplified outcome for the framework will be achieved by:

- refining the type of developed commercial property subject to the lower \$55 million threshold by removing low sensitivity applications from the meaning of sensitive land;
- improving the treatment of residential applications by allowing failed off the plan purchases to be considered as new;

- overcoming limitations with the existing exemption certificate system for individual residential real estate purchases and amending the treatment of residential land used for a commercial purpose;
- streamlining and simplifying foreign investment business application fees, including legislating existing fee waiver arrangements;
- introducing a new exemption certificate that applies to low risk foreign investors;
- clarifying the treatment of developed solar and wind farms; and
- restoring the previous arrangement whereby companies with significant foreign custodian holdings (that is, legal rather than equitable interest holders) are not subject to notification requirements.

Date of effect

The amended framework will apply from 1 July 2017.

Source: Budget Paper No 2 [p 32]

[607] Extending crowd-sourced equity funding

The Government released with the 2017-18 Budget draft legislation to extend crowd-sourced equity funding (CSEF) to proprietary companies. This will open up CSEF for a wider range of businesses and provide additional sources of capital. Note that the Government legislated a CSEF framework for public companies in March 2017.

Proprietary companies using CSEF will be able to have an unlimited number of CSEF shareholders. Shareholders will be protected by the higher governance and reporting obligations that CSEF proprietary companies must meet. These obligations include:

- a minimum of 2 directors;
- financial reporting in accordance with accounting standards;
- audit requirements;
- restrictions on related party transactions; and

- minimum shareholder rights to participate in exit events.

The Government said that these measures will complement earlier measures such as:

- the 2016 tax incentives for early stage investors and amendments to the venture capital measures;
- limiting the requirement for ESS disclosure documents lodged by start-ups with ASIC to be made public (see 2016 WTB 50 [1731]);
- relaxing the "same business test" by introducing a "similar business test" (see 2017 13 WTB [378]); and
- allowing taxpayers to self-assess the effective life of most intangible depreciating assets (see 2017 13 WTB [379]).

Source: Budget Fact Sheet "Australia as the innovation and FinTech nation"; Treasurer's media release, 9 May 2017

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[608] 457 visa changes confirmed: accountants/tax practitioners still on list

The Budget confirmed the 457 visa changes the Government announced on 18 April 2017. The Government announced that the Temporary Work (Skilled) visa (subclass 457 visa) will be abolished and replaced with the completely new Temporary Skill Shortage (TSS) visa in March 2018.

The TSS visa programme will be comprised of a Short-Term stream of up to 2 years and a Medium-Term stream of up to 4 years and will support businesses in addressing genuine skill shortages in their workforce and will contain a number of safeguards which prioritise Australian workers. For further details, see 2017 WTB 16 [471].

On 19 April 2017, 200 occupations were removed entirely from the Short-term Skilled Occupation List. Only certain occupations are approved for use under Australia's permanent and temporary skilled visa programmes. Eligible skilled occupations include accountants

(general) and taxation accountants – the assessing authority is CPA/CAANZ/IPA, barristers, company secretaries, finance brokers, financial investment advisers, internal auditors.

[609] Changes to social security measures

New JobSeeker payment to replace current working age payments

A new JobSeeker Payment will be introduced as the main working age payment, from 20 March 2020. As a result, the following 7 current working age payments will be consolidated or ceased:

- Newstart Allowance;
- Sickness Allowance;
- Wife Pension;
- Partner Allowance;
- Bereavement Allowance;
- Widow B Pension; and
- Widow Allowance.

Other measures

Other announced measures to affect social security include:

- from 20 September 2018, a new, more coherent set of mutual obligation requirements will be progressively introduced for job seekers and parents who receive working age income support;
- from 1 July 2017, a suite of measures will be progressively implemented to prevent welfare payments being used to fund drug and alcohol addictions;
- from 1 January 2018, 5,000 new recipients of Newstart Allowance and Youth Allowance (Other) will be required to undertake random drug tests for illegal drugs in 3 locations;

- from 1 January 2018, the Government will close loopholes which allow welfare recipients to be exempt from mutual obligation requirements solely due to drug or alcohol abuse;
- from 1 July 2017, the Cashless Debit Card will be expanded to 2 new locations over 2 years, and Income Management will be extended by a further 2 years;
- to ensure people claiming working age payments support themselves if they have the means to do so, the maximum length of the Liquid Assets Waiting Period will increase; and
- from 1 July 2018, a new demerit point-based system will put the onus on jobseekers to be responsible for complying with the requirements attached to the payments received. In addition, those affected by drug and alcohol abuse will be required to take action to address their problem in order to continue to receive welfare.

Source: Minister for Social Services media release dated 9 May 2017