CORRS IN BRIEF

11 MAY 2011

2011 FEDERAL BUDGET: SUPERANNUATION AND MANAGED FUNDS

The Government has handed down its 2011-2012 Federal Budget. Despite the anticipation of a tough Budget in order for the Government to reach its election promise of a return to surplus by 2012-2013, the Budget contains some key spending initiatives associated with a plan for a working nation and mental health. Amongst the Budget measures were several proposals which impact on the financial services industry. This Corrs in Brief highlights the key announcements regarding:

- Superannuation; and
- Managed Funds.

NEED TO KNOW

SUPERANNUATION

As part of the Budget, the Government has provided funding for its superannuation initiatives, and clarified a number of outstanding issues currently facing the superannuation industry. In brief, these measures include:

- Setting the concessional superannuation contributions cap for individuals aged 50 and over with total superannuation balances of less than $500,000, at $25,000 above the general concessional contributions cap;
- Allowing eligible individuals who have breached the concessional contributions cap to opt to have the excess contributions assessed as income taxed at their marginal rate, in order to avoid the penalties generally associated with the breach;
- Strengthening Infrastructure Australia (**IA**) by providing $36 million over four years, and promoting private and superannuation sector investment by allowing investment in projects listed on IA's National Priority List;
- Extending the temporary CGT loss relief for complying superannuation fund mergers by 3 months so that the relief expires on 30 September 2011;
- Extending the director penalty regime to include superannuation guarantee amounts, making directors of companies with superannuation obligations personally liable for their company's failure to pay superannuation guarantee contributions for employees;
- Allowing TFNs to be used by superannuation fund trustees and retirement savings account providers to locate and consolidate multiple member accounts;
- Providing $26.2 million over four years to the Australian Prudential Regulation Authority (**APRA**) and $3.7 million over four years to the Australian Securities and Investments Commission (**ASIC**) to introduce a simple, low cost default superannuation product called MySuper. This measure will be funded by an increase in the levy on APRA regulated superannuation funds;
- Providing $40.2 million over five years to the Australian Taxation Office (**ATO**) and $8.4 million over four years to ASIC to implement a range of measures relating to the self managed superannuation fund (**SMSF**) sector. The cost of this measure will be offset by a $30 increase to the SMSF levy with effect from the 2010-11 income year;
- Providing $2.8 million over two years to ASIC to develop a facility for the online registration of approved auditors of SMSFs from 1 July 2012;
- Extending until 2012-2013 the freeze on the income threshold above which the maximum superannuation co-contribution begins to phase out;
- Reducing the minimum payment amounts for account-based, allocated and market linked (term allocated) pensions by 25 per cent for 2011-12, which will return to normal minimum withdrawal amounts in 2012-13;

- Ensuring employees receive information on their payslips about the amount of superannuation actually paid into their account. Employees and employers will also receive a quarterly notification from their superannuation fund if regular payments cease, with effect from 1 July 2012;
- Ensuring that the scrip for scrip roll-over integrity provisions that apply to individuals and companies also apply to trusts, superannuation funds and life insurance companies;
- Removing the trading stock exception to the 'CGT primary code rule' for complying superannuation entities for specific assets, with effect from 7:30pm on 10 May 2011; and
- Amending the income tax law to ensure that life insurance policies, which are generally exempted from CGT, are not then taxed under the ordinary income provisions as a result of the removal of the primary code rule exception.

Managed Funds

- Extending the Investment Manager Regime (**IMR**) arrangements, which will prevent the ATO from raising assessments of certain investment income of a foreign managed fund that has never lodged a tax return, to 2010-11; and
- Deferring by 12 months the start date of the new tax system for managed investment trusts (**MITs**) from 1 July 2011 to 1 July 2012.

NEXT STEPS

The Budget announcements are designed to be introduced at various stages from 10 May 2011.

You need to consider the scope of the Budget announcements and how they may impact on your business. Corrs has financial services and tax teams with the skills and expertise to help with submissions and to assist you with the impact of the proposed reforms on your business.

Further, our position on the Federal Government's Tax Design Advisory Panel for our superannuation and tax expertise, coupled with our involvement with key industry associations, positions us well to potentially play a part in shaping the legislation supporting these Budget announcements.

OVERVIEW OF 2011-2012 BUDGET ANNOUNCEMENTS & COMMENTARY

SUPERANNUATION

- Setting the concessional superannuation contributions cap for eligible individuals aged 50 and over with total superannuation balances of less than $500,000, at $25,000 above the general concessional contributions cap. The general concessional contributions cap is $25,000.

  Comment: *This measure will apply from 1 July 2012. The Government also indicated that when the general concessional contributions cap of $25,000 is indexed, the higher cap will increase by the same dollar amount. This is a welcome clarification of the contributions cap for eligible individuals aged 50 and over, but somewhat disappointing given that the difference will become proportionally lower after indexation.*

- Allowing eligible individuals who have breached the concessional contributions cap to opt to have the contribution refunded and assessed as income taxed at their marginal rate, in order to avoid the higher tax penalties generally associated with the breach.

  Comment: *This applies to a maximum of excess contributions of $10,000 in a particular year, occurring in the year 2011-2012 or later, and only for the first time a breach occurs. This measure has no retrospective application, meaning those who have previously breached the cap won't be given any relief for those breaches. This measure purports to tidy up an unintended effect of the Simpler Super initiatives, and gives individuals a buffer zone between the concessional contributions cap and the associated tax penalty (a breach results in tax of 46.5% on the amount in excess of the cap). However, given that this exception can only be used once, and the buffer zone is quite small, it may be of limited use in some cases.*

- Strengthening of IA by providing it with $36 million over four years, and promoting private and superannuation sector investment through investment in projects listed on IA's National Priority List.

  Comment: *There has been considerable debate about the role to be played by superannuation funds in terms of Australia's infrastructure needs. By this measure the Government hopes to provide incentives for the superannuation industry to invest in long term* *high priority infrastructure projects. These incentives are designed to encourage both the private and superannuation sectors to invest up to a cap of $25 billion by removing tax impediments to invest in projects listed on IA's National Priority List. The devil will be in the detail and superannuation funds will still need to consider their existing regulatory and general law duties in considering such investments. Although it is an important factor, tax is not the only consideration for a trustee in terms of its investment strategy.*

- Extending the temporary CGT loss relief for complying superannuation fund mergers by 3 months so that the relief expires on 30 September 2011.

  Comment: *This is a welcome move from the Government which will allow the superannuation industry some additional time to complete the mergers currently in progress as part of the trend towards rationalisation in the industry and in the lead up to the Stronger Super reforms. Some elements of the industry have called for this relief to be a permanent feature of the tax laws and there is merit in such a proposal.*

- Extending the director penalty regime to superannuation guarantee amounts, making directors of companies with superannuation obligations personally liable for their company's failure to pay employee superannuation.

  Comment: *This measure is part of the Government's initiative to counter fraudulent phoenix activity. This is a welcome measure for the superannuation industry, as it provides greater security to superannuation fund members from the actions of rogue directors. However, at the same time, it is a stern warning of the potential risks faced by directors in the Australian corporate landscape.*

- Allowing TFNs to be used by superannuation fund trustees and retirement savings account providers to locate and consolidate multiple member accounts.

  Comment: *This measure will take effect from 1 July 2011, and will allow superannuation fund trustees to make greater use of TFNs to locate member accounts and to allow for the consolidation of multiple member accounts. This is a welcome measure which will increase the efficiency of superannuation fund administration. Industry will be consulted on whether the process of consolidation of funds is to be on an opt-in or opt-out basis, in order to ensure that the process works efficiently in practice. Questions remain as to whether a data collection and management standard will be required across the industry to facilitate this measure.*

- Providing $26.2 million over four years to APRA and $3.7 million over four years to ASIC to introduce a simple, low cost default superannuation product called MySuper. This measure will be funded by an increase in the levy on APRA regulated superannuation funds.

  Comment: *Industry has commented for some time on the large expected cost of the MySuper reforms advocated by the Cooper Review. This proposed increase in the APRA levy is indicative of some of the costs to be borne by the industry as a consequence of the MySuper reforms.*

- Providing $40.2 million over five years to the ATO and $8.4 million over four years to ASIC to implement a range of measures relating to the SMSF sector. The cost of this measure will be offset by an increase in the SMSF levy from $150 to $180 with effect from the 2010-11 income year. SMSF auditors will also be required to pay a registration fee to be introduced from 1 July 2012 which will help finance the regulation of the SMSF sector. ASIC will also be provided with funding of $2.8 million over 2 years to develop a facility for the online registration of approved auditors of SMSFs from 1 July 2012.

  Comment: *These reforms are largely aimed at exerting a measure of control over, and improved regulation of, the SMSF sector, which is by far the largest and fastest growing sector (by asset growth and number of funds) of the superannuation industry.*

- Extending until 2012-2013 the freeze on the income threshold above which the maximum superannuation co-contribution begins to phase out.

  Comment: *The Government currently provides a matching contribution of up to $1000 for post-tax contributions by individuals earning up to $31,920 a year. The amount of the co-contribution declines until an individual's annual income reaches $61,920 at which points it cuts out. The indexation of these income levels was frozen for the 2010-2011 and 2011-2012 income years. This measure will extend the so-called freeze until 2012-2013. Whilst this may be met with disapproval by low income earners, they are set to benefit from legislation later this year which will introduce a tax rebate of up to $500 for individuals earning less than $37,000 and the rebate will be paid into their superannuation account.*

- Reducing the minimum payment amounts for account-based, allocated and market linked (term allocated) pensions by 25 per cent for 2011-12, which will return to normal minimum amounts in 2012-13.

Comment: *As a result of the GFC, retirees were provided pension drawdown relief over the past 3 financial years by halving the minimum payment requirements. The minimum drawdown requirements were introduced to prevent retirees from using the concessional tax environment of superannuation as an estate planning tool instead of funding their own retirement needs. This relief is intended to be phased out entirely by 2012-2013 when the usual minimum payment requirements will be reinstated.*

- Ensuring employees receive information on their payslips about the amount of superannuation actually paid into their account. Employees and employers will also receive quarterly notification from their superannuation fund if regular payments cease, with effect from 1 July 2012.
- Ensuring that the scrip for scrip roll-over integrity provisions that apply to individuals and companies also apply to trusts, superannuation funds and life insurance companies.
- Removing the trading stock exception to the 'CGT primary code rule' for complying superannuation entities for specific assets, with effect from 7:30pm on 10 May 2011.
- Amending the income tax law to ensure that life insurance policies, which are generally exempted from CGT, are not then taxed under the ordinary income provisions as a result of the removal of the primary code rule exception.

Managed Funds

- Extending the IMR arrangements, which will prevent the ATO from raising assessments of certain investment income of a foreign managed fund that has never lodged a tax return, to 2010-11.
- Deferring by 12 months the start date of the new tax system for MITs from 1 July 2011 to 1 July 2012.

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