SQUIRE PATTON BOGGS

Australian Investment Funds Update

September 2016

Here is a snapshot of recent events, global issues and regulatory developments affecting the investment funds space and a summary of the latest tax reforms that could affect your investment projects. In this edition we look at:

- **Brexit** – A Financial Services Update
- **Asian Region Funds Passport** – Are We There Yet?
- **New Company Flow** – Through Structures in Australia Coming in 2017
- **Update on Key Regulatory Issues and Reforms** (June/July/August)
- **2016 Post-Election and Budget Wrap Up** – Key Tax Outcomes

Brexit – A Financial Services Update

Brexit has created more questions than answers over the last two-plus months, when the citizens of the UK voted to leave the EU. The outcome of the referendum raises some immediate and general questions, such as:

- When will the UK invoke Article 50 of the Treaty of the EU (starting the withdrawal process), noting that it is not expected to be invoked this year?
- Will parliamentary ratification be required?
- What form will a post-Brexit UK/EU and UK/rest of the world relationship take?
- What proportion of EU regulations will be retained by the UK?
- Do any special "Brexit clauses" need to be inserted into contracts and documentation going forward?

After the initial market shocks, the ongoing uncertainty of Brexit has caused a downturn in UK economic activity, with the composite Purchasing Managers Index falling below 50 (to 47.3) in July 2016, the lowest level recorded since March 2009, with no growth expectations for the next three months. The IMF estimates that by 2017, UK GDP could be between 1% and 3.75% lower than if the UK had voted to stay in the EU. In the UK, business investment growth was already weak prior to Brexit and by these latest indications, will weaken further, at least until the nature of any future trade agreement with the EU (which is, by far, UK's largest export market with 44% of UK's exports going to the EU) is known. So, where to from here?

We do know that high profile law firm Mishcon De Reya is leading a legal challenge on behalf of a large number of businesses and social figures to challenge the Prime Minister's unilateral right to invoke Article 50, seeking a court determination that a mandatory parliamentary vote is required. The UK's High Court hearing is scheduled in October 2016, with any appeal to be heard by the Supreme Court in January 2017. With the majority of MPs voting to "remain", if this legal challenge is successful, it raises the question as to whether Brexit will be passed by parliament and whether a further referendum will be required. Further complexities arise from the fact that there is room for subsequent litigation on an EU level, since Article 50 provides that any decision to withdraw from the EU needs to be made in accordance with the constitutional requirements of the relevant member state. This is interpreted by some lawyers to mean that ultimately the European Court of Justice would decide on the issue whether a withdrawal notice is validly given or not.

As Brexit is unprecedented, we also know that – if Article 50 is triggered – the divorce negotiations will be highly complex as the new UK/EU relationship has to be negotiated with the remaining 27 member states and approved by them by:

- Qualified majority – insofar as the mere withdrawal agreement is concerned - over an ambitious two year period (which may only be extended by agreement of all member states)
- Unanimity of all member states insofar as any agreement on the future relationship between the UK and EU is concerned to the extent that it takes the form of an association agreement.

Post Brexit, it is likely that the UK will form a relationship with the EU similar to one of the structured relationships already in place between the EU and other countries (e.g. Switzerland, the EEA (Norway, Iceland and Liechtenstein), Turkey, Canada, etc.). However, the type of relationship agreed will be complex and result in differing levels and permutations of access to the EU single market, tariff levels and agreed commitment to adherence to certain EU rules and laws. The process required to unravel the unwanted EU laws and regulations from their operation in the UK is a gargantuan task the subject of constitutional legal expert publications such as Richard Gordon QC's "Brexit: The Immediate Legal Consequences, 2016".

There will be much work to do and while there is continuing uncertainty as to outcome, business and trade in the UK will inevitably be disrupted. In addition to the negotiations with the EU the UK, new trade agreements, open sky agreements and other agreements replacing the rights and obligations of the UK under existing agreements between the EU and the rest of the world, will need to be negotiated, as the rights and obligations of the UK in principle cease to apply once the UK ceases to be a member state of the EU.

The Confederation of British Industry, the UK's premier business organisation representing 190,000 UK businesses employing seven million people (one third of the UK's workforce) recently issued a report, "Shaping Our Future, Key Business Principles for the UK-EU Negotiation, 21 June 2016", making recommendations to the UK government in its approach to the Brexit negotiations on five key principles:

- Retain the ease of UK-EU trade that businesses get from the single market (in particular to keep UK-EU trade tariff free and to maintain the right of UK services companies to establish and provide services in other EU countries)
- Balance regulatory equivalence with the EU with flexibility and influence over the domestic environment, with a long term strategy for influencing new EU rules and standards that may still apply to UK businesses after exit
- Ensure that UK's migration system allows companies to access people and skills they need, while recognising public concerns (including grandfathering existing migrant rights in the UK and EU)
- Develop a clear strategy for international trade and economic agreements
- Protect the economic and social benefits of EU funded projects.

The key question will be whether and to what extent the EU is prepared to grant to the UK such rights and flexibility if the UK does not accept the principle of free movement of workers which currently applies under EU laws. The current negotiations between the EU and Switzerland in respect of the status of Switzerland vis-à-vis the EU which have been triggered by the Swiss Immigration Referendum of February 2014 (which must be implemented under Swiss domestic rules until February 2017) show that it is extremely hard to achieve fundamental market freedoms vis-à-vis the EU without accepting the principle of free movement of workers.

The UK financial services sector currently accounts for approximately 12% of the UK's GDP and employs over 1.4 million Britons. For financial services businesses from Australia, the US, Asia and other non-EU countries with operations in the EU that operate from the UK using pass-porting rights, the potential future loss of these rights could be hugely disruptive, resulting in a number of financial services firms operating out of the UK relocating to or opening additional licensed branches in the remaining EU member states ("**EU27**"), or at the very least scaling down their operations within the UK, resulting in job losses within the UK's financial services sector. Germany (where the European Central Bank is located), France and Ireland, as EU member states are currently promoting themselves as a replacement financial services hub. Further, the potential for regulatory divergence between a post-EU UK and the EU will increase the compliance burden on financial services companies seeking to operate both within the UK and the EU. At this stage, however, it is unknown what future relationship will be negotiated in respect of grandfathering or maintaining pass-porting rights and/ or on what conditions and it is unknown what financial services regulatory laws may apply post-Brexit in the UK and the EU.

So what should Australian financial services businesses operating in the UK using pass-porting rights to access the EU be doing right now? We recommend pro-active management and planning around understanding:

- The most cost-effective business structure for access to EU27 markets
- The most regulatory-effective business structures for access to all of the EU27 (and not only that one of the 27 Member States in which a branch may be opened)
- Workforce mobility issues which may arise post-Brexit
- Regulatory issues and European Central Bank related issues which may impact flows of capital and the provision of financial services in the UK v EU (e.g. the potential impact on pass-porting rights, the likely areas of regulatory divergence and the authorisations which may be required from different regulators)

- The tax implications to businesses arising from Brexit, in particular in respect of repatriation of profits and VAT
- Checking and considering existing and future contract documentation in respect of whether special Brexit related clauses are required and preparing for the contemplated requests from EU27 banks to insert Bail-In Clauses and other Brexit related clauses into contracts which are governed by English law or which provide for English courts to be the competent courts to decide any disputes, since, from the perspective of EU27 banks English law will become, upon effectiveness of Brexit, the law of a "third country" and English courts will become the courts of a "third country".

Our offices in the UK and the EU can assist clients understand the specific regulatory and legal issues that will affect their businesses.

On a positive note, regardless of Brexit, Australia and the UK are continuing to engage in bilateral approaches with respect to financial services. For example, the Australian Securities and Investments Commission (ASIC) and the Financial Conduct Authority (FCA) announced in March 2016 that, as a result of the Cooperation Agreement executed between the two regulatory bodies, each regulator will refer to the other innovative businesses that seek to enter the other's market. This cross-referral will assist innovative businesses with regulatory assistance before, during and after the regulatory process, providing advantages to those innovative businesses that wish to expand into multiple jurisdictions. The ASIC media release can be accessed on the ASIC website. This can only be a good thing for Australia's venture and FinTech industries as the Australian economy remains relatively strong while the global uncertainty of Brexit continues.

Asia Region Funds Passport – Are We There Yet?

As a signatory to the Asia Region Funds Passport Memorandum of Co-operation (MoC or Passport) with Japan, Korea and New Zealand (effective from 30 June 2016), Australia now has up to 31 December 2017 to implement the necessary domestic legislation and regulations to enable the Passport to operate in accordance with the requirements (see APEC website for further information). The Passport aims to create a single market for regulated managed funds of certain asset classes, such that participating countries can market and sell those products cross-border within a streamlined and cohesive regulatory regime. Once the Passport is fully implemented, it will be the most significant multi-country 'open' trade arrangement for financial services in the Asia Pacific region.

The Passport will be activated upon two countries having implemented the necessary arrangements. The MoC provides for other countries to join at a later stage and it is expected Singapore, the Philippines and Thailand (as countries involved in the Passport's development) will follow in the near future.

Although many Australian fund managers will find the criteria for participation too narrow (eg, the fund must be a registered scheme in compliance with Chapter 5C of the Corporations Act, the fund operator must manage funds with financial assets of at least US$500 million, participating funds may only invest in restricted asset classes such as cash, bonds and equities with strict limits on derivatives and securities lending arrangements), the Passport is positively viewed as the first step towards creating a platform for an integrated cross-border regulatory regime for the promotion and issue of financial products in the Asian region.

Australia's plans for a flow-through collective investment vehicle (**CIV**) in the form of a body corporate to be introduced in 2017 may come just in time for the implementation of the Passport (see our article below. Upon the new CIV's introduction, the MoC will need to be amended since it presently only contemplates an Australian registered managed investment scheme as an eligible Australian fund structure. The new tax system for AMITs (see below) will also make Australian funds more competitive in the region and allow Australian funds to participate in the Passport. Although Singapore signed the Passport's 2013 statement of intent and contributed to the development of the Passport's framework, it is not yet a signatory to the MoC due to the Monetary Authority of Singapore (MAS) not being comfortable with the unequal tax treatment to apply to domestic Singapore funds compared to foreign funds. A MAS spokesperson was noted as saying: "*Singapore is therefore unable to sign…when there continues to be unequal tax treatment…which would not benefit fund managers in Singapore*." (Singapore U-Turns on fund passport regime due to unfair tax rule, Katherine Denham, International Advisor, 24 September 2015).

Co-operation has been reached with Singapore, however, in promoting cross-border FinTech businesses since MAS and ASIC signed the Innovation Functions Co-operation Agreement supporting the entry of FinTech startups in each country (for further information, see ASIC's media release).

New Company Flow-Through Structures in Australia Coming in 2017

Both the Financial Services Council (FSC) and the Australian Private Equity & Venture Capital Association (AVCAL) have been busy lobbying government in the past few years for the introduction of new flow-through fund vehicles for Australia. After data released in 2014 showed that foreign investment in Australian managed funds only accounted for 3.4% of funds under management, compared to more than 60% in Hong Kong and 80% in Singapore (FSC- Perpetual 2014 Australian Investment Managers Cross-Border Flows Report), the FSC has been driving for a simplified corporate collective investment vehicle (CIV) and a globally recognised limited partnership CIV, to enhance the competitiveness of Australian fund managers.

In the May 2016 Budget, Treasury responded by announcing there will be a new corporate CIV from 1 July 2017 and a new limited partnership CIV from 1 July 2018, each with a new tax and regulatory framework. In AVCAL's recent publication 'Funding the new economy: A 'scale-up' policy blueprint', AVCAL called on the government to accelerate the introduction of the new limited partnership CIV also from 1 July 2017.

With the Asia Region Passport expected to be implemented by 31 December 2017 (see our article above), the FSC is requesting the government to release exposure draft legislation for the corporate CIV in 2016. Whether or not government will meet the announced timeframes is now being questioned, but work is underway by Treasury in consultation with key industry experts to devise the new regulatory regime.

The intention is for the new CIVs to meet similar eligibility criteria as MITs and AMITs (see our article below) such as being widely held and engaging primarily in passive investment. It will be interesting to see whether, in drafting the new legislation, each of the new CIVs will create equivalent tax and commercial outcomes as apply to existing registered managed investment schemes which are MITs (albeit without the complexities of trust law).

As each of the new corporate CIV and the new limited partnership CIV will be a new kind of entity which currently does not exist in Australia's regulatory regime, Australia has an opportunity to create "best-in-class" global fund vehicles learning from well-established precedents in other jurisdictions. For example, the Open Ended Investment Company (OEIC) which operates in the UK and the Societe d'Investissement a Capital Variable (SICAV) which operates in Luxembourg are two existing CIV models which should be used as a basis for Australia's new corporate CIV. The key issues to be resolved in developing the new corporate CIV will be related to board independence and whether it should be mandatory to appoint a custodian. It will also be important to ensure that the new corporate CIV is flexible enough to be used as a purely wholesale fund, which may not require the same features as a retail product.

Update on Key Regulatory Issues and Reforms (May/June/July)

MITs and AMITs

The legislation to provide for an attribution managed investment trust (**AMIT Regime**) started to apply from 1 July 2016. A trustee of a managed investment trust (**MIT**) can chose to apply the rules from 1 July 2015. The AMIT Regime is expected to result in compliance cost savings for managed funds which qualify as MITs with clearly defined rights, as well as tax benefits for unitholders of AMITs including:

- Providing for a system of "overs and unders" to correct errors in tax calculations
- Allowing unitholders to adjust the cost base of their units where taxable distributions exceed actual distributions
- The ability to treat income and assets relating to a specific class of assets as a separate trust (e.g. for "ring fenced" assets)
- Providing that all AMITs with clearly defined rights are treated as "fixed trusts" for tax purposes

The AMIT Regime also provides that trusts carrying on or controlling a trading business will no longer be treated as a public trading trust (taxable as a company) simply because superannuation funds own more than 20%.

Further, ASIC has granted relief to responsible entities of registered schemes:

- To allow them to make changes to their constitutions without holding a members' meeting to help them smoothly implement the new rules (if they make the choice to do so)
- From the duty to treat members who hold interests of the same class equally where responsible entities attribute part of a determined trust component to a member under the new rules

For further details please refer to our previous newsletter.

Tax Innovation Reforms

The Tax Laws Amendment (Tax Incentives for Innovation) Act 2016 commenced on 1 July 2016. This legislation is part of the Turnbull government's "Innovation Agenda", and aims to foster investment in eligible early stage Australian companies. The key features of this legislation include:

- 20% non-refundable carry-forward tax offset on investments in eligible early stage innovation companies (ESIC) – the tax offset is capped at AU$200,000 per investor per financial year
- No capital gains or losses on investment in eligible early stage innovation companies if the investment is held for more than 12 months but less than 10 years

To qualify for these tax incentives:

- Investors must have purchased new shares in a company that meets the requirements of an ESIC immediately after the shares are issued
- The shares must be issued on or after 1 July 2016

To qualify as an ESIC, a company must meet the 'early stage test' and either the 100-point innovation test or a principles based innovation test. The company must meet these requirements at the time shares are issued to an investor.

The requirements for an ESIC are as follows:

- The company must be incorporated in Australia or registered in the Australian Business Register
- The company (plus any wholly-owned subsidiaries of the company), must have total expenses of AU$1 million or less in the previous income year
- The company (plus any wholly-owned subsidiaries of the company), must have assessable income of AU$200,000 or less in the previous income year
- The company's shares are not listed on the Australian Securities Exchange or any stock exchange in a foreign country

To qualify under the 100-point innovation test, the company must obtain at least 100 points by meeting certain objective innovation criteria.

An investor's entitlement to the tax incentives for the shares will not be affected if the company ceases to qualify as an ESIC.

The tax incentives are only available to investors who meet the definition of 'sophisticated investor' in the Corporations Act 2001. Investors who do not meet the definition of "sophisticated investor" under the Corporations Act 2001 can only access these tax incentives if their total investments in one or more ESICs do not exceed AU$50,000 in an income year. The new tax incentives apply to investments made on or after 1 July 2016.

Other key features of the legislation include a 10% tax offset on investments made by limited partners in an Early Stage Venture Capital Limited Partnership (ESVCLP) in a financial year (available to investments in ESVCLP's registered from 1 July 2016 onwards) and limited partners being exempt from capital gains tax on profits made by the ESVCLP.

Widening of Meaning of 'Eligible Investments' for the Venture Capital Act to Include FinTech

On 3 May 2016, the Treasury announced that it is seeking input on how to ensure that the tax concessions for ESVCLPs and VCLPs are available to venture capital investments in FinTech start-ups. Currently, investments into banking, insurance and securitisation (among others) are ineligible for the tax concessions. With the release of the government's FinTech Statement in March 2016 demonstrating the government's support for FinTech, the Treasury is focusing on how to align the government's FinTech priorities with Australia's taxation regime.

The government sought submissions on how to ensure venture capital tax concessions are available to FinTech startup activities. The Treasury identified amending the definition of 'ineligible activities' in the Income Tax Assessment Act 1997 (Cth) as one possible way of enabling FinTech startups to access the venture capital tax concessions. Consultation closed on 3 June 2016. As at the date of this publication, the Treasury has not announced a date to publish its report with respect to the submissions it received.

ASIC Regulatory Sandbox – Consultation Process Underway

In late July 2016, after attending ASIC Commissioner John Price's presentation at Stone & Chalk on the Regulatory Sandbox proposal for FinTech companies, Squire Patton Boggs provided submissions in response to ASIC's Consultation Paper 260 – *Further measures to facilitate innovation in financial services.* The Regulatory Sandbox proposes to provide a timeframe and framework within which FinTech start-ups may operate without being fully licensed under the Australian Financial Services License (**AFSL**) regime, recognising that speed to market, organisational competence and access to capital are issues faced by a number of FinTech start-ups. Striking the balance between 'looser' regulation and consumer protection is ASIC's greatest challenge and one of our suggestions is for those companies operating within the Regulatory Sandbox to complete and make available a short-form standardised risk matrix to consumers, identifying the key risks of using the relevant product or service.

In addition to introducing a new Regulatory Sandbox, the Consultation Paper identified other proposals as follows:

- Additional guidance as to how ASIC will assess the knowledge and skills of a proposed responsible manager under Option 5 of Regulatory Guide 105 – *Licensing: Organisational Competence*
- Modifying the guidance under Option 5 of RG 105 to allow third party sign-off on organisational competence for certain small-scale, heavily automated businesses (e.g. robo-advisors)

ASIC has stated that it expects the new regulatory guidance (and licensing exemptions) for the Regulatory Sandbox to be finalised by December 2016. Please contact us if you would like a copy of our submissions to ASIC or any further information.

New Stamp Duty/Land Tax Surcharges for Foreign Buyers in NSW, Victoria and Queensland

A number of States have recently introduced a stamp duty surcharge on foreign purchasers of residential property. A foreign purchaser includes an individual who is not ordinarily resident in Australia (unless they are an Australian citizen or certain NZ individuals). It also includes foreign controlled companies and trusts. The concept of residential premises is also very wide, and can include development sites for premises to be used for residential purposes including mixed commercial/residential premises.

Land tax surcharges have also been introduced, which in some States impact on all landholdings (not just residential)

In Summary

NSW

- 4% surcharge on the purchase of residential property by foreign purchasers
- 0.75% annual land tax surcharge on residential property owned by foreign owners with no land tax threshold

Victoria

- a 7% surcharge on the purchase of residential property by foreign purchasers
- 1.5% annual land tax surcharge for foreign property owners for all types of land

Queensland

- 3% surcharge on the purchase of residential property by foreign purchasers

AUSTRAC Beneficial Owner Assessments – Be Ready

In May 2014, the Australian Transaction Reports Analysis Centre (**AUSTRAC**) issued the Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2014 (No. 3.) (**AML/CTF Instrument**). The AML/CTF Instrument introduced new requirements for the collection and verification of information on the "beneficial owner" of a customer receiving a "designated service" (as defined in the Anti-Money Laundering and Counter-Terrorism Financing Act 2006). The AML/CTF Instrument commenced on 1 June 2014, with AUSTRAC stating that it would not commence civil penalty proceedings against a reporting entity for failure to comply with the requirements of the AML/CTF Instrument until 1 January 2016[1].

We are currently seeing instances of AUSTRAC undertaking compliance assessments of reporting entities' AML/CTF programs and policies, focussing on compliance with beneficial owner and customer due diligence information. Reporting entities should ensure that the requirements from the AML/CTF Instrument are adequately reflected in their AML/CTF programs and policies, as well as confirming that the AML/CTF programs and policies are current.

1 *AUSTRAC supervisory approach to compliance with the additional customer due diligence requirements* (5 March 2014).

Crowd Funding Legislation – Where Is This At?

Many foreign clients ask us if Australia has crowd funding laws. The answer is "no". In case you missed it (with all of the election hype earlier in 2016); the Corporations Amendment (Crowd-sourced Funding) Bill that passed the lower house in February 2016 lapsed before it could be passed by the Senate. The Australian start-up community was generally critical of the bill due to the lack of consultation and the resulting legislation being too restrictive in only applying to unlisted public companies (with less than AU$5 million in annual revenue and less than AU$5 million in assets) and limiting an investor's investment to AU$10,000 per company per year. It therefore also did not allow for crowd funding through crowd funding platforms or for companies to crowd fund through a unitised trust structure.

We now expect that Australia may not have any crowd funding laws materialise until 2017. In the meantime, any person raising equity from retail clients must comply with the Australian Financial Services License (**AFSL**) regime and disclosure requirements in the Corporations Act to produce a prospectus or product disclosure statement (as applicable to whether funds are raised in a company or managed investment scheme), unless operating within the AU$2 million/12 months/20 clients small scale offer exemption. Crowd funders such as VentureCrowd are successfully crowd funding in the wholesale market, where a regulated disclosure document is not required.

Changes to FIRB Tax Conditions

In May 2016, the Federal government finalised its amendments to the standard tax conditions imposed on foreign investors. In the three months since, we have seen the Foreign Investment Review Board (**FIRB**) impose these tax conditions on foreign investors and foreign government investors. We are still waiting for the FIRB guidance as to how it will interpret these tax conditions and how foreign investors may seek to amend the standard tax conditions. In this update, we highlight some key impacts of these tax conditions.

1. Ongoing compliance of the investors with Australia's tax laws

Foreign investors will be required to ensure that they (and their control group) comply with all Commonwealth tax laws. The Federal government has further clarified that FIRB will not pursue action against an investor where it has taken reasonable care to comply with the requirements and has a reasonably arguable position in relation to its tax position.

2. Provision of tax documents to the Australian Tax Office

Under this condition, a foreign investor shall use its best endeavours to ensure that it provides information or documentation requested by the ATO in connection with the application or potential application of Australian tax laws. Further guidance has been issued which clarifies that the ATO is limited only to requesting information that the ATO is empowered under Australian tax laws to request.

3. Investor to ensure compliance of its control group with Australian tax laws

Foreign investors are now required to use their best endeavours to ensure that the investment entity, as well as all other entities within the investor's control group (including parent entities), comply with Australian tax laws. Foreign investors which are subsidiaries of state owned enterprises or sovereign wealth funds will likely face difficulties with this form of standard tax condition. We await further guidance from FIRB as to how these investors will be treated with respect to this tax condition.

Privacy – Mandatory Breach Reporting

The office of Attorney-General George Brandis has given its strongest indications yet that new laws mandating data breach reporting by business will be introduced to the Federal parliament in 2016. The Privacy Amendment (Notification of Serious Data Breaches) Bill 2015 (**Bill**) was prepared based on the recommendation of a report tabled by the Australian Law Reform Commission in 2015 to strengthen privacy protections for individuals. With support across the aisle, we set out the likely impact of the Bill on your business once enacted into law.

"Serious data breach"

The Bill will require all APP entities (e.g. government agencies, and businesses with an annual turnover in excess of AU$3 million) and any overseas entities engaged by an APP entity to report "serious data breaches" to the Privacy Commissioner and individuals affected by the serious data breach. The Bill defines "serious data breach" broadly to mean any unauthorised access, or disclosure of information which will result in a 'real risk of serious harm' to any person to whom the information relates, or where information is lost in circumstances where unauthorised access or disclosure which may result in a 'real risk of serious harm' is likely to occur. Categories of information that are likely to fall within this scope include:

- Personal information that would enable identify theft or identity fraud
- Credit reporting information
- Credit verification information

Consequence of serious data breach

Once an entity is aware or ought reasonably to suspect that there has been a serious data breach, the entity must as soon as practicable prepare a statement setting out the details of the breach, and notify the Privacy Commissioner and individuals affected by the breach by providing the statement. The statement must include a description of the breach, the kinds of information concerned, and recommendations regarding steps the individuals should take in response to the breach. A failure to comply with the notification requirements of the Bill is expected to attract significant civil penalties of up to AU$1.8 million.

Mitigating serious data breach risks

The Office of the Australian Information Commissioner (**OAIC**) has provided strategies for APP entities to manage and mitigate serious data breach risks. In particular, the OAIC has stressed the importance of having sufficient internal policies and procedures in place to prevent and mitigate the impact of data breaches, outlining four key steps to consider in the case of a breach:

- Containing the breach and conducting a preliminary assessment
- Evaluating the risks associated with the breach
- Notifying affected parties and the OAIC where applicable
- Reviewing existing security and notification procedures to prevent further recurrences

We will provide further updates on the Bill as it develops in parliament.

2016 Budget – Key Tax Outcomes

The government has indicated that it will be seeking to pass legislation for all of these key tax reforms, but whether they are passed is yet to be seen. Watch this space, in particular, the superannuation reforms – as it is evident from recent public debate that the retrospectivity of the AU$500,000 lifetime contribution cap may be amended.

Small Business Tax Benefits

The current cap on eligibility to be classified as a "small business" will be increased from AU$2 million per annum to AU$10 million per annum, effective 1 July 2016. This will enable more companies to access a number of tax concessions available for small business. However, the capital gains discount for small business will only be available for companies that have an annual turnover of AU$2 million or less.

Company Tax Rate Decreasing

Companies meeting the definition of a "small business" will pay tax of 27.5% from 1 July 2016. From 1 July 2017 onwards, the threshold for companies eligible for the 27.5% tax rate will be increased so that all companies will be subject to this rate by 2023-24. As of 1 July 2024, the company tax rate will be reduced by 1% each financial year until it reaches 25% in 2026-2027.

Snapshot of Key Super Changes

A number of changes to the superannuation system were included in the budget. Key changes include amendments to concessional contributions thresholds, the introduction of a retrospectively applied (back to 2007) lifetime contribution cap of AU$500,000, and a AU$1.6 million cap on transfers into a tax free retirement account (with any additional amounts to be kept in the accumulation account and remain subject to a 15% tax rate).

GST on Imported Goods

The existing AU$1,000 threshold for GST on imported goods will be removed from 1 July 2017. From this date, suppliers of goods with an annual turnover of AU$75,000 or more will need to register for, collect and remit GST to the ATO.

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