

Dentons reflects on the Federal Budget 2017

Currency	Rate 1	Rate 2
USD	0.7368	0.7376
GBP	0.5118	0.5124
EUR	0.6495	0.6495
NZD	1.0621	1.0666
JPY	80.0530	81.3370
HKD	5.8350	5.8955
SGD	0.9903	0.9929
THB	25.6920	25.7200
INR	N/A	49.4220
IDR	9217.90	N/A
MYR	2.8305	N/A
PHP	32.4760	N/A
FJD	1.49	30
CAD		

The Devil-in-the-detail reveals some Budget nasties

The Federal Treasurer Scott Morrison has delivered a Budget that promotes infrastructure spending and a raft of new tax measures, with a headline grabbing bank tax stealing the limelight. Dentons has taken a closer look at some of the budget announcements, well-removed from the budget lock-up, here are some of the measures that Dentons sees as having far reaching implications.

Government turns GST on its head for new property sales

By Cameron Steele, Steve Healy and Jon Denovan

Among the tax measures is a proposal for a radical plan that will change the way GST is accounted for on new property sales that will have major ramifications for developers and lenders.

The Budget proposal would shift responsibility of accounting for GST from property developers to purchasers, meaning purchasers must remit the GST directly to the Australian Taxation Office (ATO) as part of the settlement process.

Although the full impact will depend on the final form of the legislation, it may present cash-flow and funding issues for developers, or more significantly may end up with them having to pay for miscalculations on GST by the purchaser.

The new proposal also has ramifications for lenders, affecting their loan security because the developer's final and forecast GST liability may be different to that paid by the purchaser. Under this proposal it will be harder for such a discrepancy to be refunded and therefore repaid to a lender.

The proposal is currently scheduled to commence on 1 July 2018. All new contracts that may complete after 1 July 2018 should be reviewed before exchange.



Foreign ownership restriction and regulation on property investment

By Cameron Steele, Steve Healy and Jon Denovan

In what may be a major blow to property developers and foreign investors alike, the Government proposes to introduce a new cap that will limit foreign investment in new developments to 50%. This is intended to ensure that a minimum level of new housing stock is reserved for local buyers.

There are also changes to Capital Gains Tax for foreign residents with an increase in the withholding rate and a change in the main residence exemption for CGT from June 2019.

New integrity rules will also be introduced to ensure that foreign tax residents cannot avoid CGT by disaggregating indirect interests in Australian real property.

Annual charge on foreign owners of underutilised residential property

Foreign buyers of residential properties who apply for FIRB approval after budget day will risk an annual charge if their properties are not occupied or genuinely available on the rental market for at least six months per year. The tax will be equivalent to the FIRB application fee imposed on the acquisition of their property.

Investing in affordable housing through Managed Investment Trusts

The Government will encourage investment into affordable housing by enabling Managed Investment Trusts (MITs) to invest in affordable housing from 1 July 2017. Investors may receive concessional taxation treatment through a MIT if the affordable housing is available for rent for at least 10 years. The MIT will be able to acquire, construct or redevelop the property but must derive at least 80 per cent of its assessable income from affordable housing.



Get ready for open data

Ruth Neal, Partner

By June 2018, banks must give competitors access to their customer data in a move which will have a wide range of implications for the banking industry.

It is intended that allowing open access to such data will assist the broader policy objective of improving competition in the banking sector, by offering consumers more choice, lower prices, and the ability to switch banks more easily.

In general the implications fall into three main areas of privacy, security and systems.

Privacy

When it comes to privacy, there are numerous questions that you need to ask yourself that go beyond whether or not your customers will be comfortable with their data being shared. These include:

- How will you protect your customers' privacy in a world where information about the products they hold, their transactions, and the fees you're charging them can be shared among institutions? And how will you accomplish this while still complying with the Privacy Act?
- Will you need to obtain consent before such sharing occurs?
- If you're obtaining data from other banks, how will you comply with Australian Privacy Principle (APP) 5, which requires you to notify individuals of certain matters upon collecting their personal information?
- Will there be restrictions on the use of data obtained in this way for direct marketing purposes?

Security

By definition, open data will mean sharing more information than ever before, most likely through application programming interfaces (APIs). Ensuring that your customers' data remains secure in the process will be of the utmost importance. And that responsibility will apply not just when transferring customer data, but also while storing it. For smaller institutions and new entrants to the market, such as fintechs, part of the challenge will lie in gaining customers' trust in order to win them away from the larger institutions.

In the event of a data breach, there is also the question of how liability would be apportioned between institutions.

The House of Representatives Standing Committee on Economics has recommended the sharing of data take place under a binding framework. Whether such a framework is ultimately implemented, and if so, what it might look like, remain to be seen.

Systems

To facilitate the sharing of new types of data at scale, you'll need to build and adopt new technology. While that will require a significant investment of time and resources for all, making the upgrades required in the timeframes prescribed will be particularly onerous for smaller institutions.

Greater AFP funding remains a missed opportunity

Ben Allen, Partner

The Federal Government has also placed greater emphasis than expected on national security, with an announcement of over \$300 million in much needed funding over four years for the Australian Federal Police (AFP). While a large part of that funding has been earmarked for counter terrorism measures and enhanced technical capabilities, it's a welcome boost that will have flow on effects for the Government's response to serious financial and organised crime.

A lack of any funding for the AFP to specifically tackle bribery and corruption is, however, a worrying concern. It is only with the establishment of well-funded and properly resourced measures specifically aimed at targeting anti-bribery that will result in Australia being taken seriously in its efforts to stamp out corruption. This should be similar to measures such as the 2015 establishment of the Serious Financial Crime Taskforce, following the success of Project Wickenby and the Cyber Security Advisory Office, which is set to receive a \$10.7 million funding boost according to Budget documents.

2017 also holds the promise of a new legislative regime for anti-bribery and corruption with a range of proposed reforms to Australia's anti-bribery legislative regime on Parliament's agenda. These reforms include a proposal to introduce long-awaited Deferred Prosecution Agreement legislation and guidance notes. If introduced, the AFP will be required to take its place as a leading regulator of Australian corporate activity whenever organisations deal with foreign public officials in the region. To match the capabilities of its US counterpart, the Department of Justice, will require serious funding for the AFP and this year's Budget was a missed opportunity in that regard. Australia's nearest geographic trading partners represent some of the most high risk jurisdictions from a corruption

perspective for doing business, and much like this week's global cyber attack has demonstrated, it's only a matter of when, not if, Australian businesses will be exposed.

Australia needs to step up and take its place as the regional enforcer of anti-bribery measures to avoid further OECD criticism about the lack of enforcement activity and to avoid a serious scandal going unpunished.



More accountability for banking executives

Brendan Milne, Director

The Turnbull Government plans to overhaul the Australian financial services system announcing that it will bring forward a comprehensive package of reforms aimed at strengthening accountability and competition within the banking industry.

Part of the reforms will include a new 'Banking Executive Accountability Regime' that will apply to all banks, or authorised deposit-taking institutions.

Whilst the particular details of the Regime are yet to be announced, it is likely that it will have a number of similarities to the Senior Managers and Certification Regime (SMCR) that applies in the United Kingdom. Such a regime would have substantial implications for banks, with some implications perhaps not yet considered by the Government.

Banks would be required to register senior executives, or directors with APRA and breaches of an as yet undetermined regime, would result in de-registration. Variable and incentive remuneration may also be regulated and de-registration could result in senior executives and directors forfeiting a portion of this remuneration.

Banks would have to review all their contracts with senior executives to ensure that they were compliant with any new regime, but that would only be the beginning.

Any prospective senior executives would need to be more carefully considered, including whether they had been disqualified from the Regime register in the past.

Any executive removed from the register by APRA would also have to be terminated and any variable remuneration not paid.

This would require a whole raft of new processes for the banks, ranging from training about how the regime works, to a major overhaul of performance based components of remuneration.

Of course, there remains many unanswered questions, including:

- When would a bank be required to report a suspected breach and what investigation will be required beforehand?
- Will a breach by a director automatically disqualify the director from his or her directorship, or will the bank be required to take the ordinary steps required to remove the director from that position?
- If an executive is terminated following a breach of the regime is the bank still liable to the executive for the early termination of his or her contract of employment?
- What will happen to existing contractual entitlements if those entitlements are inconsistent with the remuneration requirements of the regime and will it invalidate those entitlements?

Whatever is introduced, it carries many risks, not just for the banking sector but potentially for the whole economy.

Further information about the SMCR can be found [here](#).

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