

## **TAXATION**

### **STP: Grace period for correcting statements**

The *Taxation Administration - Single Touch Payroll - Grace periods for correcting statements* has been registered.

### **Commissioner's extension of period to dispose of deceased's dwelling**

The Commissioner's discretion has been exercised to extend the 2-year period for disposing of an inherited dwelling to qualify for the CGT main residence exemption.

### **PAYG withholding schedules for 2019 released**

The *Taxation Administration Act Withholding Schedules 2019* has been registered, making publicly available 15 updated withholding schedules.

### **Effective life of depreciating assets from 1 July 2019**

The Commissioner's annual ruling, TR 2019/5, on the effective life of depreciating assets has been released.

### **ATO correction to overdue lodgment emails to tax agents**

If tax agents, affected by ATO systems problems, have lodged returns due on 15 May by 11 June 2019, the ATO apologises if they have received an 'overdue lodgment' email.

### **Work-related car expenses under scrutiny: ATO**

The ATO has advised that it is making work-related car expenses a key focus again during Tax Time 2019.

### **New Tax return status report for tax agents coming soon**

The ATO has advised that it will soon start sending tax agents a weekly email which reports the specific action underway with the processing of their clients' tax returns.

## **Tax Time 2019 is under way**

The ATO will soon begin full processing of 2019 tax returns. It expects that from Tuesday 16 July 2019, taxpayers will start to receive refunds for 2019 tax returns.

## **Payments to subcontractors to install Foxtel exempt from payroll tax**

Payments by a taxpayer company to subcontractors engaged by the taxpayer to install equipment for Foxtel Subscription Television were not subject to payroll tax.

## **Incorrect bank account details: ATO**

From 1 July to 30 November 2019 the ATO will send SMS text messages to tax agents' clients if incorrect bank account details were included in their tax return.

## **Queensland chef convicted for cooking up fraudulent claims**

The ATO has advised that a 27-year-old chef was convicted of 3 criminal offences for fraudulently claiming travel and clothing expenses as work-related deductions.

## **Reporting Exemptions for Certain Entities Determination 2019**

The ATO has registered ***Taxable Payments Reporting System - Reporting Exemptions for Certain Entities Determination 2019.***

## **Family assistance payments – 2018 tax returns lodgment deadline**

The ATO has reminded tax agents that if their clients are entitled to or receive family assistance payments for 2017-18, they must lodge their 2018 tax returns by 30 June 2019.

## **FBT: benefits provided to religious practitioners – TR 2019/3**

***Taxation Ruling TR 2019/3*** has been issued, containing the ATO view on when benefits provided by religious institutions to religious practitioners are exempt from FBT.

## **'Cash in hand' worker payments no longer tax deductible: ATO**

The ATO has reminded employers that any 'cash in hand' payments made to workers from 1 July 2019 will not be tax deductible.

## **ATO reminds small businesses about some Tax Time 2019 tips**

The ATO has warned small businesses about three common issues that occur when small businesses lodge their tax returns.

## **Shortfall penalty remitted to 60% where taxpayer's tax agent at fault**

A taxpayer whose tax agent lodged a tax return which left out a net capital gain has had her shortfall penalty reduced from 75% to 60%: *Bosanac and FCT*.

## **Sale of townhouses eligible for margin scheme**

Despite a lack of documentary evidence, the AAT has accepted that the margin scheme had been applied to the sale of a property to the taxpayer.

## **Creditable purpose of acquisitions in a transaction accounts business**

The ATO has issued *Draft GSTR 2019/D1*, providing guidance to ADIs on determining the creditable purpose of acquisitions made in relation to transaction accounts.

## **FINANCIAL SERVICES**

### **ASIC cost recovery statement released – industry claims fees excessive**

ASIC has released its Cost Recovery Implementation Statement that responds to submissions on issues such as hikes in some of the costs associated with AFS providers.

### **Legacy complaints about financial firms to be investigated**

ASIC has approved changes to the Australian Financial Complaints Authority (AFCA) Rules to allow it to investigate certain complaints dating back to 1 January 2008.

## **SUPERANNUATION**

### **Last chance to continue Insurance in Super**

Under new laws starting on 1 July 2019, super funds will cancel the insurance on accounts that have not received any contributions for at least 16 months.

### **Thoroughbred racing club not employer of jockeys; no SG obligations**

The Federal Court has held that the Scone Race Club was not the employer of jockeys who rode in races and barrier trials conducted by the club.

### **Beware new labels on 2019 SMSF annual return**

The ATO has advised that new questions have been added to the 2019 SMSF annual return regarding, eg Part A qualifications and Outstanding LRBA amount.

### **SMSFs: Quarterly TBARs due 28 July can be lodged on 29 July**

The ATO has advised SMSFs trustees that they can lodge the next quarterly transfer balance account reports on Monday 29 July without penalty.

### **Disqualification from being SMSF trustee upheld**

The AAT has upheld an ATO decision to disqualify an individual from being the trustee of an SMSF as he was involved in serious contraventions of the SIS Act.

## **REGULATOR NEWS**

### **Change in control of super licensees: APRA releases draft form/guide**

APRA has released for consultation a draft form and guide for applications to acquire a controlling stake in a registrable superannuation entity licensee.

### **ASIC amends fees and cost disclosure to align with Super Package laws**

ASIC has amended Class Order 14/1252 to reflect the PYSP ban on exit fees for certain products by eliminating the line allowing for disclosure of exit fees.

## **TAXATION**

### **STP: Grace period for correcting statements**

The [\*\*Taxation Administration - Single Touch Payroll - Grace periods for correcting statements\*\*](#) has been registered. Made under s 389-25 of Sch 1 to the TAA, this instrument prescribes grace periods for the correction of statements made in Single Touch Payroll (STP) reporting. Specifically, it establishes a grace period which allows an entity to correct an error within 14 days of the date on which the error is identified, or in their next regular STP report for that person, but in all cases no later than the 14th day after the end of the relevant financial year in which the statement was made.

Date of effect: 1 July 2018, to ensure all entities who have reported through STP from that date receive the benefit of the grace periods determined in the instrument.

### **Commissioner's extension of period to dispose of deceased's dwelling**

The ATO has issued [\*\*Practical Compliance Guideline PCG 2019/5\*\*](#) on the Commissioner's discretion to extend the 2-year period for disposing of an inherited dwelling in order to qualify for the CGT main residence exemption. The guideline sets out the factors (favourable or adverse) that the ATO considers in deciding whether to exercise the discretion. As a general rule, the discretion will be exercised if an inherited dwelling cannot be sold and settled within 2 years of the deceased's death due to reasons beyond the taxpayer's control, and those reasons existed for a significant portion of the first 2 years.

PCG 2019/5 also outlines a safe harbour compliance approach that allows trustees and beneficiaries to manage their tax affairs as though the Commissioner's discretion has been exercised for a period not exceeding 18 months (ie without formally applying to the ATO). When the guideline was issued in draft form (as Draft PCG 2018/D6), this maximum period was 12 months. Date of effect: retrospective.

### **PAYG withholding schedules for 2019 released**

The [\*\*Taxation Administration Act Withholding Schedules 2019\*\*](#) has been registered, making publicly available withholding schedules updated in accordance with the PAYG system. Withholding schedules specify the formulas and procedures

to be used for working out the amount to be withheld by an entity from a withholding payment covered by Subdiv 12-B, 12-C or 12-D of Sch 1 to the TAA.

The 15 withholding schedules in the instrument are made for the purposes of collecting income tax, Medicare levy and amounts of liabilities to the Commonwealth under the *Higher Education Support Act 2003*, the *Trade Support Loans Act 2014*, the *Social Security Act 1991* and the *Student Assistance Act 1973*. The schedules cover for example, calculating amounts to be withheld, tax table for actors, tax table for unused leave payments on termination of employment, tax table for commissions, tax table for seniors, tax table for superannuation lump sums, tax table for superannuation income streams. Date of effect: 1 July 2019.

## **Effective life of depreciating assets from 1 July 2019**

The Commissioner's annual ruling on the effective life of depreciating assets has been released. [Taxation Ruling TR 2019/5](#) includes new effective life determinations for assets used in the following industries and activities: banking, building society and credit union operations; creative and performing arts – performing dogs; residential property operators; retirement village and accommodation; scientific testing and analysis – mineral processing and metallurgical laboratory; and wholesale trade.

TR 2019/5 replaces TR 2018/4, which applied to the 2018-19 income year and has now been withdrawn. Date of effect: 1 July 2019.

## **ATO correction to overdue lodgment emails to tax agents**

The [ATO says](#) tax agents may have received an email from it with the subject 'Your clients' overdue lodgments'. The email included a list of tax agent clients with outstanding obligations.

After systems problems on 4 June 2019, the ATO said it provided deferrals to 11 June 2019 for tax agent clients' unlodged returns that were due on 15 May. The ATO said if agents lodged these returns by 11 June 2019, it considers them to be lodged on time. The ATO apologised to tax agents if its email caused them any inconvenience or confusion.

## **Work-related car expenses under scrutiny: ATO**

The ATO [has advised](#) that it is making work-related car expenses a key focus again during Tax Time 2019. This follows warnings by the ATO last year that work-related

car expenses would face greater scrutiny. Assistant Commissioner Karen Foat said, over 3.6m people made a work-related car expense claim in 2017-18, totalling more than \$7.2b.

"While some people do make legitimate mistakes, we are concerned that many people are deliberately making dodgy claims in order to get a bigger refund. We see taxpayers claiming for things like private trips, trips they didn't make, and car expenses their employer paid for or reimbursed them for," Ms Foat said.

### **New Tax return status report for tax agents coming soon**

The ATO [has advised](#) that it will soon start sending tax agents a weekly email which reports the specific action underway with the processing of their clients' tax returns. The new Tax return status email will replace the current 30-day delayed report. The ATO says tax agent clients will first appear on the Tax return status report 10 days after lodgment, and their return's status will be included in the email each week until the ATO finishes processing their returns.

The new report will give tax agents information that may help them answer client queries about the progress of their return. It will provide details about what might be causing processing delays, including: bankruptcies and debt agreements; the taxpayer's relationships to other entities (such as directors, trustees or partnerships); and current or non-pursued debts with the ATO or other government agencies, such as Centrelink.

### **Tax Time 2019 is under way**

The ATO [says](#) that during the period 24 June to Friday 5 July 2019, it will be checking 2019 tax returns received during this period to ensure it processes them correctly.

Then on Friday 5 July, the ATO will begin full processing of 2019 tax returns. It expects that from Tuesday 16 July 2019, taxpayers will start to receive refunds for 2019 tax returns.

### **Payments to subcontractors to install Foxtel exempt from payroll tax**

In a lengthy judgment, the NSW Supreme Court has found that payments by a taxpayer company to third party subcontractors engaged by the taxpayer to install



equipment for Foxtel Subscription Television at the premises of Foxtel customers were not subject to payroll tax: [\*Downer EDI Engineering Pty Ltd v Chief Comr of State Revenue\*](#) [2019] NSWSC 743, NSW Supreme Court, Payne J, 21 June 2019. The Chief Commissioner of State Revenue had amended the taxpayer's payroll tax assessments for the financial years ended 30 June 2010, 2011, 2012 and 2013 in relation to the subcontracts. The taxpayer's objections were disallowed.

The Court said the issue in dispute was whether the subcontracts were excluded from being "relevant contracts" by ss 32(2)(a) or 32(2)(d)(i) of the *Payroll Tax Act 2007* (NSW), with the result that the payments were exempted from payroll tax. The Court said that "payments for installation services, properly understood, were only a fraction of the total payments made under the subcontract". According to the Court: "The "conveyance", as that term was defined in Smith's [*Smith's Snackfood Company Limited v Chief Comr of State Revenue (NSW)* [2013] NSWCA 470], was the lion's share of the activities required by the subcontract. The installation services provided under the subcontract were ancillary to the conveyance of goods." The Court concluded that the installation services supplied under the subcontract were ancillary, in the sense of supplemental or auxiliary or accessory, to an identified circumstance or event, being the supply of goods under the subcontract. The Court allowed the taxpayer's appeal and ordered that the payroll tax assessments in question be revoked.

### **Incorrect bank account details: ATO**

The ATO [has advised](#) tax agents that from 1 July to 30 November 2019 it will send SMS text messages to their clients if incorrect bank account details were included in their tax return and they are entitled to a refund.

The ATO says that taxpayers have 7 days after receiving the SMS to contact the ATO and correct the bank details. If that happens, a refund will be issued electronically. If taxpayers do not provide their correct details within the 7 days, the ATO will send them a cheque.

### **Queensland chef convicted for cooking up fraudulent claims**

A 27-year-old chef has been convicted of 3 criminal offences for fraudulently claiming travel and clothing expenses as work-related deductions as well as claiming fraudulent charity donations in her 2016 to 2018 financial year income tax returns. The ATO [has advised](#) that the woman was convicted in the Brisbane Magistrates Court on 21 June 2019 for making false statements in her Income Tax Returns when



she claimed refunds over 3 years amounting to more than \$45,000 from the ATO. The chef was also ordered to pay a fine of \$3,000 as well as an additional \$20,000 payment to the Taxation Commissioner and court costs.

The ATO says that the woman was employed as a chef at a Queensland Hospital where she was supplied with a full work uniform including personal protective equipment and tools by her employer. In her capacity as a chef, Ms Feulufai was not required to travel or use her own motor vehicle in the course of her employment. She also attempted to claim charitable donations to an organisation not registered as a Deductible Gift Recipient in order to obtain refunds to which she was not entitled.

## **Reporting Exemptions for Certain Entities Determination 2019**

The ATO has registered [Taxable Payments Reporting System - Reporting Exemptions for Certain Entities Determination 2019](#). Made under s 396-70(4) of Sch 1 to the TAA, it exempts entities that meet specific criteria from having to prepare and lodge reports relating to payments to third party contractors for courier, cleaning, information technology, security, investigation, surveillance, or road freight services under s 396-55 of Sch 1 to the TAA.

Date of effect: 1 July 2019.

## **Family assistance payments – 2018 tax returns lodgment deadline**

The ATO [has reminded](#) tax agents that if they have clients who are entitled to or receive family assistance payments for the 2017-18 financial year, they must lodge their 2018 tax returns by 30 June 2019. Also, if the clients are entitled to family assistance but did not receive any payments last financial year, they will also need to lodge a lump sum claim with the Department of Human Services (Centrelink) by 30 June 2019.

The ATO says that taxpayers who do not lodge or advise they do not need to lodge in time, could miss out on a top-up or supplement payment. They may even have to pay back family assistance amounts they received last financial year.

## **FBT: benefits provided to religious practitioners – TR 2019/3**

[Taxation Ruling TR 2019/3](#) has been issued, containing the ATO view on when benefits provided by religious institutions to religious practitioners are exempt from FBT. The ruling is a rewrite of TR 92/17, which was withdrawn on 11 July 2018 (when TR 2019/3 was issued in draft form). There are no substantive changes to the

ATO view. Rather, TR 2019/3 updates the Commissioner's position to take into account the requirement that a religious institution must be an ACNC-registered charity to qualify as a provider of exempt fringe benefits; and changes in the nature of contemporary religious practice which have occurred since the 1992 release of the previous ruling.

TR 2019/3 explains the three requirements for an FBT exemption: First, the benefit needs to be provided by a "registered religious institution". Second, the benefit must be provided to an employee religious practitioner, or the employee's spouse or child. TR 2019/3 focuses on the meaning of "religious practitioner", which is a defined term. Third, the benefit must be provided principally in respect of the employee's pastoral duties or directly-related religious activities. Date of effect: TR 2019/3 applies before and after its date of issue.

### **'Cash in hand' worker payments no longer tax deductible: ATO**

The ATO [has reminded](#) employers that any 'cash in hand' payments made to workers from 1 July 2019 will not be tax deductible. The ATO says that 'cash in hand' refers to cash payments to employees that do not comply with pay as you go (PAYG) withholding obligations. Payments made to contractors where the contractor does not provide an ABN and the business does not withhold any tax will also not be tax deductible from 1 July.

Assistant Commissioner Peter Holt said the new rules have a dual purpose of levelling the playing field for honest businesses that are doing the right thing by their workers as well as tackling the black economy. This new measure will take effect for payments made to workers from 1 July 2019 for income tax returns lodged for the 2020 income year onwards and is part of the government's response to recommendations from the Black Economy Taskforce.

### **ATO reminds small businesses about some Tax Time 2019 tips**

The ATO [has warned](#) small businesses about the following 3 common issues that occur when small businesses lodge their tax returns: failing to report all of their income; not having the necessary records to prove small business expenses claims; and claiming private expenses as business expenses.

Assistant Commissioner Peter Holt said the ATO understands that small businesses have a lot on their plate with the day-to-day running of their business. "That's why we're focusing on addressing common issues we see when small businesses lodge

their returns so that we can support them to get it right." The ATO also says that they have developed fact sheets to help small businesses claiming 3 of the most common expenses: motor vehicle expenses; business travel expenses; and home-based business expenses.

## **Shortfall penalty remitted to 60% where taxpayer's tax agent at fault**

A taxpayer whose tax agent lodged a tax return which left out a net capital gain has had her shortfall penalty reduced from 75% to 60%: [Bosanac and FCT](#) [2019] AATA 1240, AAT, File No 2016/3419, Boyle DP, 10 June 2019. The taxpayer's 2013 tax return, prepared and lodged by her tax agent, omitted to disclose a net capital gain made on the sale of a property. The tax agent knew about the sale of the property. Previously, the taxpayer had failed to complete an ATO questionnaire which included a question about the purchase and sale of any property. The ATO issued an amended assessment for 2013 including the net capital gain in assessable income and imposed a tax shortfall penalty of 95%. This was comprised of a 75% for intentional disregard of the law (s 284-90 in Sch 1 TAA), increased by 20% for obstruction (failing to complete the questionnaire).

The matter went to the AAT and then the Federal Court, which returned it to the AAT to consider whether the 2013 shortfall penalty should be remitted under s 298-20 in Sch 1 TAA. The AAT decided that, having regard to the "taxpayer's personal circumstances" (her lack of financial understanding and the lack of actual intent to lodge a false or misleading tax return), it was "appropriate" to remit the penalty to 60%. In the AAT's view, the penalty should not be reduced to a level below the level of base penalty that would have applied had the lower level of culpability on the part of the tax agent been found (50% for recklessness).

## **Sale of townhouses eligible for margin scheme**

Despite a lack of documentary evidence, the AAT has accepted that the margin scheme had been applied to the sale of a property to the taxpayer: [The Trustee for the Seabreeze Estate Unit Trust and FCT](#) [2019] AATA 1395, AAT, File No: 2018/2661, Lazanas SM, 21 June 2019. In January 2005, the taxpayer (as trustee for a unit trust) acquired a property in NSW from two unrelated companies who were carrying on business as a partnership. The partnership had acquired the property 15 months earlier for \$120,000 more than it sold it for. The taxpayer was not registered for GST at the time, but became registered with effect from 1 January 2006. The taxpayer eventually built 4 townhouses on the land and sold 2 of them in late 2015.

The key issue for determination in this case was whether the supplies of the 2 townhouses were eligible for the margin scheme. That depended on whether the partnership chose to apply the margin scheme in working out the GST on the supply of the property to the taxpayer. There was no written evidence (in particular the contract of sale) showing whether the partnership had applied the margin scheme. Despite the lack of documentary evidence, the AAT was prepared to accept that the partnership had chosen to apply the margin scheme. In particular, the AAT inferred that if the supply to the taxpayer had been a taxable supply where the margin scheme had not been used, the taxpayer would have almost certainly registered for GST so as to claim an input tax credit for the GST charged.

### **Creditable purpose of acquisitions in a transaction accounts business**

The ATO has issued [Draft GSTR 2019/D1](#) ***Goods and services tax: determining the creditable purpose of acquisitions in relation to transaction accounts***, providing guidance to ADIs on this issue regarding, eg savings and deposit accounts, including those with overdraft facilities.

The draft includes 13 examples covering a range of acquisitions, including interchange services for cash out via EFTPOS, branch network costs, call centre services, advertising services from a product comparison website, scheme services, processing services, card production services, mobile payment services, IT services to maintain a mobile application for online banking and payment switching services. Proposed date of effect: the tax period starting after the final ruling is issued. Comments on the draft are due by 9 August 2019.

## **FINANCIAL SERVICES**

### **ASIC cost recovery statement released – industry claims fees excessive**

ASIC has [released](#) its Cost Recovery Implementation Statement (CRIS) setting out the estimated industry sector levies for 2018-19, as well as details on how ASIC allocated its regulatory costs in 2017-18. The indicative levies published in this final CRIS aim to help industry better plan for the actual levy which will not be billed until January 2020. ASIC said the indicative levies are a guide and the amounts are likely

to change when ASIC's actual regulatory costs are known and published in December 2019, and the actual business activity metrics for each subsector are provided by regulated entities.

The final CRIS includes detail on some of the key issues that arose out of the submissions received during consultation in March 2019. For example, CAANZ highlighted that there have been significant increases in some of the costs associated with listed entities and Australian financial services providers. CAANZ also believes that the largest component of ASIC's costs – enforcement costs – should be borne by the entities and individuals who are the subject of the enforcement actions, not by the sector as a whole.

### **Legacy complaints about financial firms to be investigated**

ASIC has [approved](#) changes to the Australian Financial Complaints Authority (AFCA) Rules to allow it to investigate certain complaints dating back to 1 January 2008. This follows the Government's direction to AFCA to consider such legacy complaints about financial firms covering the same period as the Banking Royal Commission final report. AFCA will consider eligible legacy complaints between 1 July 2019 and 30 June 2020. To be eligible, a legacy complaint must not have been dealt with by AFCA, its predecessor schemes, courts or tribunals.

AFCA Chief Ombudsman and CEO, David Locke, said AFCA has identified thousands of complaints that could potentially be made to it, based on those that were previously lodged but deemed outside the jurisdiction of previous schemes. There will also be many matters that were never lodged with a tribunal that may now be brought to AFCA, Mr Locke said. AFCA said it will accept complaints from 1 July 2019 and follow its usual practice of referring them back to the financial firms to resolve them. AFCA expects financial firms to proactively resolve these legacy matters themselves where possible. If firms are unable to satisfactorily resolve the complaints, Mr Locke said AFCA will start investigating these matters from 1 October 2019.

## **SUPERANNUATION**

### **Last chance to continue Insurance in Super**

Under new laws starting on 1 July 2019, super funds will cancel the insurance on accounts that have not received any contributions for at least 16 months unless the member elects to continue the cover. In addition, inactive accounts with balances under \$6,000 will be transferred to the ATO. If the ATO can establish a person has another active fund, the ATO will merge the funds. If not, the ATO will keep the superannuation safe. The new laws are designed to stop people from paying unnecessary insurance premiums, which can erode retirement savings.

Super funds across Australia are contacting members who will lose their insurance to explain the changes. "You can choose to keep your cover if you want it – but you need to tell your fund before the end of June" [said](#) Gerard Brody, CEO of the Consumer Action Law Centre. Most people who have superannuation also have some life and disability insurance cover as part of their super fund.

### **Thoroughbred racing club not employer of jockeys; no SG obligations**

The Federal Court has held that the Scone Race Club was not the employer of jockeys who rode in races and barrier trials conducted by the Club: [Scone Race Club Limited v FCT](#) [2019] FCA 976, Federal Court, Logan J, 21 June 2019. Between 1 July 2009 and 30 June 2014, the Scone Race Club paid fees to jockeys who rode in horse races and barrier trials. The ATO contended that the Club was the employer of the jockeys for superannuation guarantee (SG) purposes. Since the Club had not made any superannuation contributions in relation to the riding fees paid to jockeys, there was a SG shortfall and the ATO issued assessments for unpaid SG charge.

The parties agreed that thoroughbred racing is a sport and that riding fees are a payment to a jockey for participating in that sport. The issue, therefore, was whether the Club was the person "liable to make the payment" in terms of s 12(8)(a) of the SGAA. If so, the Club would be the employer for SG purposes. The Federal Court looked at the relevant rules of racing and the custom and practice in the NSW racing industry during the relevant period and concluded that the Club (nor any other race club) engaged a jockey to ride in a race. Instead, it was the trainer, on behalf of the owner(s), who engaged the jockey. The contract to ride was made between the owner (via the trainer) and the jockey. Therefore, the Club was not "the person liable



to make the payment" (of the riding fees). Accordingly, the Club was not the jockeys' employer and therefore it had no SG shortfall during the relevant period.

### **Beware new labels on 2019 SMSF annual return**

The ATO [has advised](#) that new questions have been added to the 2019 SMSF annual return:

- *Part A qualifications*: The ATO says trustees must now answer 'yes' if the audit report (that gives the auditor's opinion on whether the fund's financial statements are fairly presented) was qualified at Part A and/or Part B, regardless of the auditor's reasons for the qualification.
- *Outstanding LRBA amount*: A new label has also been added to the Member sections of the 2019 SMSF annual return to report the outstanding LRBA amounts for each member.
- *Downsizer contributions*: These will also now be reported in the Member sections on the 2019 SMSF annual return.
- *Crypto-currency*: Previously reported at the 'Other overseas assets' label, crypto-currencies will now be reported at a dedicated Crypto-currency label.

### **SMSFs: Quarterly TBARs due 28 July can be lodged on 29 July**

The ATO [has advised](#) trustees of SMSFs that as the next quarterly transfer balance account report (TBAR) due date is 28 July, which falls on a weekend, they can lodge TBARs on Monday 29 July without penalty. Quarterly reporting of TBAR events applies to SMSFs that have any members with total superannuation balances of \$1 million or more on 30 June in the year before any member starts their first retirement phase income stream, the ATO pointed out.

Also, if a member of an SMSF had TBA events during the April-June quarter, the trustee needs to report these to the ATO as this information is not captured in the SMSF annual return. If no TBA event occurred, the trustee has nothing to report, the ATO said.

### **Disqualification from being SMSF trustee upheld**

The AAT has upheld an ATO decision to disqualify an individual from being the trustee of an SMSF as he was involved in serious contraventions of the SIS Act: [Brooks and FCT](#) [2019] AATA 1236, AAT, File Nos 2018/1059 and 2018/4384, Evans SM, 5 June 2019. In early 2011 the applicant established an SMSF (the Fund). He and his then wife (Ms A) were members of the Fund. They were also the



shareholders and directors of the corporate trustee. Between June 2011 and June 2012, the Fund lent just over \$257,000 to the applicant and Ms A, the bulk of which they used to buy a farm property in their own names, to undertake renovations on the property and to finance a margin lending account. Ms A ceased to be a director and a shareholder of the corporate trustee in January 2015, after repaying her share of the loan (that amount was then rolled over to another superannuation fund in accordance with Family Court consent orders).

Auditor's reports for the 2011-12 to 2015-16 financial years recorded breaches of s 65 of the SIS Act due to a loan being made to members (or, in the case of the 2014-15 and 2015-16 reports, the only member). The reports also noted that the member(s) aimed to rectify the breach by paying back the loan in full. The AAT upheld the ATO decision to disqualify the applicant from being the trustee of an SMSF as the contraventions of the SIS Act were serious. These included making loans to members, investing more than 5% of the Fund's assets in related parties and maintaining the Fund for a purpose other than the provision of benefits. The AAT was also concerned that there was a risk of future non-compliance by the applicant.

## **REGULATOR NEWS**

### **Change in control of super licensees: APRA releases draft form/guide**

The Australian Prudential Regulation Authority (APRA) [has released for consultation](#) a draft form and guide for applications to acquire a controlling stake in a registrable superannuation entity (RSE) licensee. From 5 July 2019, any party seeking to acquire greater than a 15% stake in an RSE licensee must apply to APRA for approval. The new process stems from the passage in April this year of *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 1) Act 2019*, and brings APRA's change of ownership powers in superannuation in line with the banking and insurance sectors.

Deputy Chair Helen Rowell said APRA actively sought these powers to better protect the interests of superannuation members. "APRA has held longstanding concerns about the ability of parties to gain control of a superannuation licensee through the 'back door', without meeting the requirements of a stringent approval process," Mrs Rowell said. She said these concerns were heightened after this loophole

contributed to the fraud that precipitated the collapse of Trio Capital in 2009. "The closure of this legislative gap will ensure anyone seeking to acquire a substantial stake in an APRA-regulated superannuation licensee is subject to rigorous regulatory scrutiny." Submissions: A 2-week consultation period is now open and closes on 5 July 2019.

## **ASIC amends fees and cost disclosure to align with Super Package laws**

ASIC has advised (in [19-149MR](#)) that it has amended Class Order 14/1252 (CO 14/1252) to ensure it is consistent with the *Treasury Laws Amendment (Protecting Your Super Package) Act 2019* and Regulations (PYSP), which ban exit fees from 1 July 2019. CO 14/1252 modifies the *Corporations Act 2001* and *Corporations Regulations 2001* to set out requirements for the disclosure of fees and costs in Product Disclosure Statements (PDSs) for superannuation and managed investment products.

The amendment made is technical only and applies to disclosure concerning superannuation products. It reflects the PYSP ban on exit fees for these products by eliminating the line allowing for disclosure of exit fees. The amendment does not otherwise make any change to the requirements set out in CO 14/1252. ASIC is reminding product issuers that as part of their implementation of PYSP, they need to take care that, from 1 July 2019, PDSs do not suggest that exit fees will be charged on superannuation products. They should also implement any changes necessary to ensure that no exit fees are charged in practice.