

TAXATION

Div 7A benchmark interest rate for 2019-20

The ATO has confirmed that its benchmark interest rate for Div 7A purposes is 5.37% for the 2019-20 income year (up from 5.20% for 2018-19).

Personal tax cuts Bill passed without amendment, now law

The personal tax cuts Bill that fully implements the measures announced in this year's 2019-20 Federal Budget, has passed both Houses and become law.

ATO statement on administration of low and middle income tax offset

The ATO says it will ensure that taxpayers who have already lodged their 2018-19 tax returns will receive any increase to the LMITO they are entitled to.

Genuine redundancy and early retirement payments – draft legislation

The Government has released draft legislation to reform genuine redundancy and early retirement scheme payments.

Foreign residents CGT main residence exemption removal – Govt policy

The proposal to remove the entitlement to the CGT main residence exemption for foreign residents, announced in the 2017-18 Federal Budget, is apparently still in play.

New ATO data-matching program – overseas movement data

The ATO said it will acquire overseas movement data from the Department of Home Affairs for individuals with an existing HELP, VSL or TSL debt.

Farm Household Support Amendment Bill introduced

The *Farm Household Support Amendment Bill 2019* has been introduced in the House of Representatives.

FBT, taxi travel and ride sourcing – ATO clarification

FBT and taxi travel exemptions for businesses and NFPs are limited to travel in a vehicle that is licensed to operate as a taxi by the relevant State or Territory, says the ATO.

Reasonable travel and overtime meal allowance amounts for 2019-20

Taxation Determination TD 2019/11 has been issued, setting out the amounts the Commissioner treats as reasonable for travel and overtime meal allowance amounts.

Important things for tax agents to know this tax time – from the ATO

The ATO has developed a list of 10 important things tax agents need to know this tax time regarding new processes and deadlines.

Tax and BAS agent lodgment programs 2019-20 released

The Tax agent lodgment program 2019-20 and the BAS agent lodgment program 2019-20 have been released by the ATO.

STP reporting irregularities: ATO

The ATO has advised tax agents that it is currently emailing Single Touch Payroll enabled employers about reporting errors.

CGT improvement threshold for 2019-20

The ATO has determined that the CGT improvement threshold for the 2019-20 income year is \$153,093 (up from \$150,386 in 2018-19).

Employees guide for work expenses: ATO

The *Employees guide for work expenses* has been released by the ATO to help employees decide if their expenses are deductible, and what records they need to keep in support.

AAT rejects gold refiner GST claims; decision final

The AAT has rejected a taxpayer's claim for GST refunds in relation to their claim to be operating a gold refinery.

GST on low value goods – "very successful initiative", says ATO

The ATO says it has collected over \$250 million in additional GST since the GST on low value goods measure began on 1 July 2018, outstripping forecasts by \$180 million.

Tax Practitioner Stewardship Group – Tax Time meeting Key Messages

The Tax Practitioner Stewardship Group Tax Time meeting was held on Tuesday 09 July 2019. The topics discussed are outlined below to assist professional associations to communicate key messages to association members and tax practitioners. More information [here](#)

FINANCIAL SERVICES

Share trading activities did not amount to business

The AAT has concluded that a share trader was not carrying on a business and so was not entitled to claim or carry forward losses he had initially claimed in earlier income years.

Financial adviser jailed for theft from SMSF clients

ASIC has reported that a former Adelaide financial adviser has been sentenced in the District Court of South Australia to 10 years imprisonment.

Ending grandfathered conflicted remuneration Bill for introduction

The *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Bill 2019* is among the Bills proposed for introduction in Federal Parliament this year.

FinTech Sandbox regime – Bill reintroduced

The *Treasury Laws Amendment (2018 Measures No 2) Bill 2019* has been introduced in the House of Representatives.

SUPERANNUATION

SMSF related-party LRBAs: ATO interest rate for 2019-20

For SMSF related-party LRBAs used to acquire real property, the ATO has confirmed that its safe harbour interest rate is 5.94% for 2019-20 (up from 5.80% for 2018-19).

No discretion to remit excess transfer balance tax assessment

A taxpayer has been unsuccessful in seeking to overturn the ATO's decision not to remit a superannuation excess transfer balance tax liability.

Lump sum insurance payment largely assessable

The AAT has held that a lump sum settlement payment made by an insurer was apportionable, with the large part forming assessable income in the hands of the insured.

Insurance in super opt-out – Bill reintroduced

The *Treasury Laws Amendment (Putting Members' Interests First) Bill 2019* has been introduced in the House of Representatives.

ATO guidance on transition to retirement income streams

An updated version of Super Guidance Note GN 2019/1, that expands the commentary on whether a member has retired, has been issued by the ATO.

SMSF rollovers in SuperStream to be deferred: Minister confirms

Government is to proceed with the 2019-20 Budget measure to defer the extension of SuperStream to SMSF rollovers from 30 November 2019 to 31 March 2021.

First Home Super Saver scheme: ATO guidance updated

The ATO has issued an Addendum to Law Companion Ruling LCR 2018/5, its guidance on the First Home Super Saver scheme.

Super downsizer contributions reach \$1 billion: Minister

The Assistant Treasurer has announced that older Australians downsizing from their family homes have contributed \$1 billion to their superannuation funds.

REGULATOR NEWS

Super member outcomes assessment: APRA update

APRA has published three FAQs on the development of Prudential Standard SPS 515 and the recent introduction of an "annual outcomes assessment" in s 52 the SIS Act.

Combating Illegal Phoenixing Bill reintroduced

The *Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019* has been introduced in the House of Representatives.

Australian Financial Services Licence applications

ASIC has today released a new information sheet, INFO 240 *AFS licensing – Requirements for certain applicants to provide further information*. A copy of [INFO 240](#) and a [media release](#) about the information sheet are available on ASIC's website.

Suggested amendment to AASB 1054 - statement of compliance with R&M in SPFS

ED 293 *Amendments to Australian Accounting Standards - Disclosure in Special Purpose Financial Statements of Compliance with Recognition and Measurement Requirements* was issued last week.

TAXATION

Div 7A benchmark interest rate for 2019-20

The ATO has confirmed that its [benchmark interest rate](#) for Div 7A purposes is 5.37% for the 2019-20 income year (up from 5.20% for 2018-19). This is the "Indicator Lending Rates - Bank variable housing loans interest rate" (being the rate published by the Reserve Bank for May immediately prior to the start of the relevant financial year). The ATO said it will no longer issue annual Taxation Determinations for the benchmark interest rate, as was its previous practice.

Thomson Reuters note: It was previously reported that the Div 7A benchmark interest rate was expected to be rounded down from 5.37% to 5.35% for 2019-20. However, as noted above, the ATO has confirmed that its benchmark interest rate is 5.37% for 2019-20.

Personal tax cuts Bill passed without amendment, now law

Federal Parliament's first week back after the Federal election saw the Government's tax cuts measures passed in full. The [Treasury Laws Amendment \(Tax Relief So Working Australians Keep More Of Their Money\) Bill 2019](#) was introduced, passed all stages without amendment and has received Royal Assent as Act No 52 of 2019. The Bill fully implements the personal tax cuts measures announced in this year's 2019-20 Federal Budget. While Labor has consistently argued against the Stage 3 tax cuts that would apply from 1 July 2024, it agreed to pass the Bill but said it will review Stage 3 closer to the next election. The Bill amends the income tax law to:

- increase the base and maximum amounts of the low and middle income tax offset (LMITO) to \$255 (up from \$200) and \$1,080 (up from \$530), respectively, for the 2018-19, 2019-20, 2020-21 and 2021-22 income years;
- increase the amount of the low income tax offset (LITO) from 2022-23; and
- reduce the tax payable by individuals in 2022-23 and later income years by increasing income tax rate thresholds and in 2024-25 and later income years by lowering income tax rates.

Parliament has now adjourned and is scheduled to resume on Monday, 22 July 2019.

ATO statement on administration of low and middle income tax offset

In the 2019-20 Federal Budget, the Government announced its intention to change and build on the Personal Income Tax Plan. The ATO says these changes, including tax rate and threshold changes and low income tax offset changes, are now law. This follows passage through Parliament without amendment and Royal Assent of the *Treasury Laws Amendment (Tax Relief So Working Australians Keep More Of Their Money) Bill 2019* (see item above). The [ATO announced](#) that it is implementing the necessary system changes so taxpayers that have already lodged their 2018-19 tax returns will receive any increase to the low and middle income tax offset (LMITO) they are entitled to. Any tax refund will be deposited in the taxpayer's nominated bank account.

Assessments for returns already lodged are expected to start to issue from Friday 12 July and into the following week, which is in line with the normal processing of refunds for this time of year, the ATO said. Those who are yet to lodge their tax return will have any offset they are entitled to taken into account during the normal processing of their return. The amount of the offset taxpayers may be entitled to, and the amount of any refund, will differ for everyone depending on individual circumstances such as income level and how much tax was paid throughout the year.

Genuine redundancy and early retirement payments – draft legislation

The Government has [released draft legislation](#) to reform genuine redundancy and early retirement scheme payments. The Assistant Treasurer said it will extend the concessional tax treatment for genuine redundancy and early retirement scheme payments to older Australians. Genuine redundancy payments are made when a job is abolished and early retirement scheme payments are made when a person retires early, or resigns, as part of a scheme put in place by an employer.

This measure was announced in the 2018-19 Mid-Year Economic and Fiscal Outlook (MYEFO) and will align the age below which a person can receive genuine redundancy and early retirement scheme payments with the Age Pension qualifying age from 1 July 2019. This will address concerns that some older Australians who, due to their age, cannot access either the Age Pension, the Assistant Treasurer said.

The law (Subdiv 83-C of the ITAA 1997) would be amended to extend the concessional taxation treatment to amounts paid for genuine redundancy and early retirement to individuals who are 65 or more years of age provided the dismissal or retirement occurs before they reach pension age. Submissions close on 1 August 2019.

Foreign residents CGT main residence exemption removal – Govt policy

The controversial proposal to remove the entitlement to the CGT main residence exemption for foreign residents, originally announced in the 2017-18 Federal Budget, is apparently still in play. [ABC News said](#) it asked the Treasurer if the Government proposals on the CGT main residence exemption will be revisited at some point in the future. The Treasurer responded, "this remains our Government's policy". He did not indicate when new legislation might be introduced, and whether there would be modifications, ABC News said.

The measure had come in for a number of criticisms and was originally introduced on 8 February 2018 in the *Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No 2) Bill 2018*. That Bill lapsed when Federal Parliament was prorogued for the 2019 Federal election. Among other things, it proposed to: (i) remove the entitlement to the CGT main residence exemption for foreign residents; and (ii) modify the foreign resident CGT regime to clarify that, for the purpose of determining whether an entity's underlying value is principally derived from taxable Australian real property, the principal asset test is applied on an associate inclusive basis.

New ATO data-matching program – overseas movement data

In a [Gazette notice](#), the ATO said it will acquire overseas movement data from the Department of Home Affairs for individuals with an existing HELP, VSL or TSL debt. The ATO will assess their status against ATO records and other data it holds to identify debtors that may not be meeting their registration, lodgment and/or payment obligations. The data matching program will be conducted for the 2019-20, 2020-21 and 2021-22 financial years.

Those living and working overseas with a Higher Education Loan Program (HELP), Vocational Education and Training Student Loan (VSL) and/or Trade Support Loans

(TSL) are required to update their contact details and submit an overseas travel notification if they have an intention to, or already reside overseas, for 183 days or more in any 12 months; and lodge their worldwide income or a non-lodgment advice.

Farm Household Support Amendment Bill introduced

The [Farm Household Support Amendment Bill 2019](#) has been introduced in the House of Representatives. It proposes to amend the *Farm Household Support Act 2014* (the FHS Act) to maintain the farm assets value limit at \$5 million and remove the CPI indexation. It will also amend the treatment of income from business such that allowable deductions can be claimed against related income, that is, either income from the farm enterprise (on-farm income) or income from a business other than the farm enterprise (off-farm) income earned by a Farm Household Allowance (FHA) recipient.

The farm assets value limit was set at \$5 million until 30 June 2019. However, from 1 July 2019, it is legislated to revert to \$2.685 million (CPI indexed). The Bill maintains the limit at \$5 million from 1 July 2019 and removes CPI indexation. The FHA program gives eligible farmers and their partners a maximum of 4 cumulative years income support to meet basic household needs while they make decisions about the future of their farm businesses and take action to improve their circumstances. It is paid at the same rate as other social security allowances.

FBT, taxi travel and ride sourcing – ATO clarification

The ATO has clarified a number of issues around FBT and taxi travel. The exemptions for businesses and NFPs are limited to travel undertaken in a vehicle that is licensed to operate as a taxi by the relevant State or Territory. The ATO says they do not extend to travel undertaken in a ride-sourcing vehicle or other vehicle for hire that do not hold such a licence.

- For [businesses](#), taxi travel by an employee is an exempt benefit if the travel is a single trip beginning or ending at the employee's place of work. The ATO says taxi travel can also be an exempt benefit if it is a result of sickness or injury and the whole or part of the journey is directly between the employee's place of work; the employee's place of residence; and any other place that it is necessary, or appropriate, for the employee to go as a result of the sickness or injury.
- For [NFPs](#), depending on the type of NFP organisation, certain benefits they provide to employees may receive concessional treatment from FBT.

However, some benefits may be exempt from FBT altogether. For example, taxi travel by an employee is an exempt benefit if it's a single trip which begins or ends at the employee's place of work. It will also be exempt if it's the result of sickness or injury, as above.

Reasonable travel and overtime meal allowance amounts for 2019-20

Taxation Determination [TD 2019/11](#) has been issued, setting out the amounts the Commissioner treats as reasonable for the 2019-20 income year (only) in relation to employee claims for:

- overtime meal expenses – the reasonable amount is \$31.25;
- domestic travel expenses. Reasonable amounts are given for 3 salary levels for: (i) short-stay accommodation in commercial establishments like hotels, motels and serviced apartments; (ii) meals (breakfast, lunch and dinner). Separate reasonable amounts are given for truck drivers; and (iii) deductible expenses incidental to travel;
- overseas travel expenses. Reasonable amounts are provided for 3 salary levels for: (i) meals (breakfast, lunch and dinner); and (ii) deductible expenses incidental to travel. These reasonable amounts are shown for cost groups to which a country has been allocated. Where travel is to a country that is not listed, the employee can use the reasonable amount for Cost Group 1 in the table for the relevant salary range.

Important things for tax agents to know this tax time – from the ATO

The ATO has developed a [list of 10 important things](#) tax agents need to know this tax time. The list has tips and information regarding new processes and deadlines, including the following:

- Employers reporting through Single Touch Payroll (STP) are no longer required to provide payment summaries, and instead will finalise income statements for their employees. This information is available to tax agent clients through their myGov account (if they have one) linked to the ATO or agents can access it through Online services for agents, the Tax Agent Portal or through pre-fill in the agent's practice management software.
- This year, employers have until 31 July to finalise their employees' income statements. Employers don't need to wait, as they can do this as soon as the

information is ready. In future years, employers will need to finalise income statements by 14 July.

- If a tax agent client has their myGov account linked to the ATO, or they create a new one, the ATO says it will direct some communications to the taxpayer's myGov Inbox. Tax agents should continue to check Communication history in Online services for agents and the Client communication list function in the Tax Agent Portal to see copies of communications the ATO sends to agent clients. The ATO says tax agents should let their clients know that if they don't already have a myGov account, they do not need one for the agent to lodge their tax return.

Tax and BAS agent lodgment programs 2019-20 released

The ATO has released:

- the [Tax agent lodgment program 2019-20](#) detailing the concessional lodgment due dates for registered tax agents during the 12 months ending 30 June 2020. It also covers: obligation type; tax returns by client type; taxpayers with overdue tax returns; taxpayers with a lodgment prosecution; situations where ATO requests earlier lodgment; lodgment and payment dates on weekends or public holidays; and safe harbour; and
- the [BAS agent lodgment program 2019-20](#) including lodgment and payment concessions when an agent electronically lodges eligible quarterly BASs, and a lodgment concession for PAYG withholding payment summary annual reports.

STP reporting irregularities: ATO

The ATO has [advised](#) tax agents that it is currently emailing Single Touch Payroll (STP) enabled employers who have either ceased reporting for over 45 days; or have submitted employees under multiple payroll or BMS IDs. These reporting errors may cause their employees to see incorrect, incomplete or multiple entries in their income statements.

The ATO also advises tax agents that, if their business clients have been contacted by the ATO, they should encourage them to check their data is accurate; and remind them that they must finalise their employees' end of year payroll information before 31 July – even if employees have ceased working for them or they have dropped below the threshold for reporting.

CGT improvement threshold for 2019-20

The ATO [has determined](#) that the CGT improvement threshold for the 2019-20 income year is \$153,093 (up from \$150,386 in 2018-19). The improvement threshold is relevant to the following CGT provisions:

- s 108-70 of the ITAA 1997 on when a capital improvement to a pre-CGT asset represents a separate asset; and
- s 108-75 of the ITAA 1997 on capital improvements to CGT assets for which a rollover may be available.

Employees guide for work expenses: ATO

The ATO has released an [Employees guide for work expenses](#) to help employees decide whether their expenses are deductible, and what records they need to keep to substantiate them. The Guide also provides some myths about work expense deductions.

The Guide says that not all expenses associated with employment are deductible and explains how to determine if an expense is deductible against an employment income; how to apportion expenses if they are only partly deductible; how to work out whether an employee can claim a deduction in the year the expense was incurred or whether he or she needs to claim a deduction for a decline in value over a number of years; and what records an employee needs to keep.

AAT rejects gold refiner GST claims; decision final

The ATO has announced that the AAT has rejected a taxpayer's claim for GST refunds in relation to their claim to be operating a gold refinery. The decision in [Very Important Business Pty Ltd and FCT](#) [2019] AATA 1120, 4 June 2019, is final, with the appeal period having now ended, the ATO said. Deputy Commissioner Jeremy Geale said the case forms an important part of the ATO's ongoing compliance activities in the precious metals industry.

In this case, the taxpayer was arguing that they had purchased gold as a gold refiner. The AAT found that the taxpayer was not a refiner at the relevant time. It was also not satisfied that the taxpayer had in fact acquired scrap gold. Mr Geale said it follows two other recent AAT decisions concerning GST that have affirmed the

Commissioner's decision to disallow input tax credits claimed by precious metal industry participants.

GST on low value goods – "very successful initiative", says ATO

The [ATO says](#) it has now collected over \$250 million in additional GST since the GST on low value goods measure began on 1 July 2018, outstripping forecasts by \$180 million. The legislation requires overseas businesses to charge Australian GST on their sales of low value goods to consumers in Australia. Over 1,000 overseas businesses have registered for GST, which includes all the known major suppliers and international platforms, the ATO said. This includes platforms that are collecting GST when these goods are sold through them – reducing the number of individual businesses that need to register.

According to the ATO, "GST collections on low value imported goods have exceeded initial expectations thanks to strong partnerships with the international business community and high levels of compliance". The measure resulted in \$81 million of GST being raised in the first quarter, which surpasses the \$70 million projected for the full year. These figures reflect a very strong overall level of compliance and the ATO says it is confident that the system is working well. As businesses do not need to register unless they meet the A\$75,000 GST turnover requirements, most small independent operators do not need to register and have not been affected by this measure.

FINANCIAL SERVICES

Share trading activities did not amount to business

The AAT has concluded that a share trader was not carrying on a business and so was not entitled to claim or carry forward losses he had initially claimed in the 2015, 2016 and 2017 income years: [Hill and FCT](#) [2019] AATA 1723, Griffiths M, 8 July 2019. The taxpayer had made a "very significant investment" in the share market in terms of the dollar amount. However, the overall impression was that the share trading activities were not carried out in a business-like manner, in that they were "very basic" and "lacked the sophistication to be a share trading business".

Factors relevant to this impression included: (i) the share trading was infrequent and characterised by numerous periods of no trading; (ii) the portfolio of shares held and traded was not extensive; (iii) the taxpayer was working full time in the aviation industry for 30 out of the 36 months, with the result that any share trading seemed to be a "side issue"; (iv) there was no incorporated trading entity, or registered business/trading name; (v) no professional assistance was obtained from stock brokers or financial planners despite the taxpayer's lack of qualifications; (vi) the research was "unsophisticated" with no records kept; (vii) lack of budgets; (viii) the business plan was also "unsophisticated", in that it lacked detail and was not updated for changed circumstances; (ix) the taxpayer's ABN was not used for share trading until the very last year; and (x) the profit and loss statements were incomplete and inaccurate.

Financial adviser jailed for theft from SMSF clients

ASIC has [reported](#) that a former Adelaide financial adviser has been sentenced in the District Court of South Australia to 10 years imprisonment (with a non-parole period of 7 years). The former adviser, and director of his own investment company, was convicted of theft and other dishonesty offences totalling \$4.88 million. ASIC said the adviser had previously pleaded guilty to all charges, which he committed between 20 August 2009 and 30 July 2016. At the time, he was a financial adviser, trusted by his clients to operate their self-managed superannuation fund (SMSF) accounts and open new accounts. In some cases, the adviser was given almost complete control of his clients' affairs which enabled him to conduct unauthorised transactions.

Once he controlled the accounts, ASIC said he went on to steal his clients' funds to prop up his business, pay his own credit card debts, pay himself and staff a salary and for gambling. ASIC Commissioner, Danielle Press, said an investigation revealed that the adviser had deliberately withheld information from clients to avoid detection. Commissioner Press said financial advisers should always allow clients to access information about their own investments, and clients should be concerned if this is not occurring.

Ending grandfathered conflicted remuneration Bill for introduction

The Government has [released](#) a list of Bills that are proposed for introduction in Federal Parliament's 2019 Winter and Spring Sittings, which are scheduled to

conclude on 5 December 2019. These Bills are among those proposed for introduction and passage during 2019:

- ***Currency (Restrictions on the Use of Cash) Bill 2019*** – to introduce criminal offences for transacting in cash in excess of \$10,000. Was announced in the 2018-19 Federal Budget and proposes to introduce an economy-wide cash payment limit of \$10,000 to help tackle the black economy.
- ***Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Bill 2019*** – to turn off the grandfathering provisions that allow financial advisers to receive conflicted remuneration under legacy remuneration arrangements and require entities that previously paid grandfathered conflicted remuneration to financial advisers to redirect the payment to consumers.

FinTech Sandbox regime – Bill reintroduced

The [*Treasury Laws Amendment \(2018 Measures No 2\) Bill 2019*](#) has been introduced in the House of Reps (a 2018 Bill of the same name lapsed when Federal Parliament was prorogued for the Federal election) and proposes to:

- Amend the *Corporations Act 2001* and *National Consumer Credit Protection Act 2009* to expand the regulation-making powers to allow the regulations to provide for exemptions from the Australian Financial Services Licence and Australian Credit Licence requirements for the purposes of testing financial and credit products and services under certain conditions. Date of effect: The amendments would take effect the day after Royal Assent.
- Amend the ITAA 1997 venture capital and early stage investor tax concession provisions to make minor changes to ensure that the provisions operate as intended, eg clarifying the treatment of valuation year capital gain; consequential amendments re MITs; and amend the definition of public trading trust. Date of effect: The amendments would generally apply on and from 1 July 2018.

SUPERANNUATION

SMSF related-party LRBAs: ATO interest rate for 2019-20

For SMSF related-party limited recourse borrowing arrangements (LRBAs) used to acquire real property, the ATO has confirmed that its safe harbour interest rate is 5.94% for 2019-20 (up from 5.80% for 2018-19). Practical Compliance Guideline PCG 2016/5 sets the safe harbour interest rate according to the Reserve Bank Indicator Lending Rates for banks providing standard variable housing loans for investors (being the rate published for May immediately prior to the start of the relevant financial year). This Indicator Lending Rate for May 2019 is 5.94%. Accordingly, the ATO's safe harbour interest rate is 5.94% for 2019-20 (7.94% for listed securities).

If an LRBA is structured in accordance with PCG 2016/5, the ATO will accept that the LRBA is consistent with an arm's length dealing and the non-arm's length income (NALI) rules (45% tax) will not apply to the income generated from the LRBA asset. If an LRBA does not meet the safe harbour rules, the SMSF trustees will need to otherwise demonstrate that their arrangement is consistent with an arm's length dealing: see Determination TD 2016/16.

Thomson Reuters note: It was previously reported that the safe harbour interest rate was expected to be rounded up from 5.94% to 5.95% for 2019-20. However, as noted above, the ATO has confirmed that its safe harbour interest rate is 5.94% for 2019-20.

No discretion to remit excess transfer balance tax assessment

A taxpayer has been unsuccessful in seeking to overturn the ATO's decision not to remit a superannuation excess transfer balance tax liability: [*Jacobs and FCT*](#) [2019] AATA 1726, Grigg M, 9 July 2019. The taxpayer had a Commonwealth Superannuation Scheme (CSS) capped defined benefit annuity valued at \$477,958 as at 1 July 2017. He also had another superannuation income scheme valued at \$1,152,236, which gave him a current excess capital amount of some \$30,194.53 (ie, in excess of the \$1.6 million cap). The taxpayer had incorrectly self-assessed his balance prior to year end and was advised by the ATO in January 2018 of the excess, which he transferred in February 2018.

However, he had excess transfer balance earnings of \$1,735, which gave rise to an assessment of some \$260 (ie $\$1,735 \times 15\%$). There were transitional provisions which allowed taxpayers in similar predicaments to make transfers with no penalty before 31 December 2017, but these were not available as the taxpayer had made the transfer outside of this period. The taxpayer contended that he had not been treated fairly by the ATO, that there had been poor communication of the new rules and that he had done the best he could in difficult circumstances. The AAT gave this short shrift, stating that the taxpayer had made an error and that information was available to him – and that the ATO had referred him to this information. In addition, there was no discretion in the legislation to waive the tax liability where the taxpayer made a minor error and was not aware of the transitional provisions.

Lump sum insurance payment largely assessable

The AAT has held that a lump sum settlement payment made by an insurer was apportionable, with the large part forming assessable income in the hands of the insured: [YCNM and FCT](#) [2019] AATA 1592, Hespe SM, 1 July 2019. The taxpayer was an employee covered by his employer's salary continuance/group insurance policy. The taxpayer became unable to work in 2003 and received payments from the insurer. Due to ongoing and severe difficulties with the insurer over more than a decade, the taxpayer signed a deed of release in 2014 and was paid a lump sum. The ATO included the amount in his assessable income and the taxpayer sought a review, contending among other things that the payment related to giving up rights to potential claims for damages.

The AAT found largely in favour of the ATO. It stated that the lump sum was received as compensation for the discharge by the taxpayer of both a monthly salary continuance claim and a superannuation continuance claim. However, the taxpayer had some success as the AAT held that, while compensation for the monthly salary continuance was income, the compensation for the super continuance was not. On this basis, 88.2% of the lump sum should be included as assessable income. No CGT liability arose as the capital gain made by the taxpayer was from a CGT event relating to compensation or damages received by the taxpayer for a wrong, injury or illness suffered by the taxpayer personally – and so was exempt under s 118-37 of the ITAA 1997.

Insurance in super opt-out – Bill reintroduced

The [Treasury Laws Amendment \(Putting Members' Interests First\) Bill 2019](#) has been introduced in the House of Representatives. It proposes to amend the SIS Act to prevent insurance within superannuation from being provided on an opt-out basis for: (i) account balances less than \$6,000; and (ii) members under 25 years old (who begin to hold a new product on or after 1 October 2019). In all circumstances, the member will be able to opt in to insurance offered by the trustee by making a direction to the trustee. The Bill had been originally introduced in February 2019 but lapsed when Federal Parliament was prorogued for the Federal election.

Under the proposed amendments, trustees will only be able to provide insurance to a member of a choice or MySuper product if directed by the member where the member is under 25 years old and begins to hold a product on or after 1 October 2019; or holds a product with a balance less than \$6,000 and where the balance has not been \$6,000 or more on or after 1 July 2019. The new insurance rules do not apply to SMSFs or small APRA funds. Date of effect: The measure will impact insurance arrangements that are in place before 1 October 2019. Generally, the amendments will apply to members who are under 25 years old and who start to hold a choice or MySuper product on or after 1 October 2019.

ATO guidance on transition to retirement income streams

The ATO has issued an updated version of Super Guidance Note [GN 2019/1](#).

This document contains general information on the 2017-18 changes to the tax treatment of transition to retirement income streams. The Guidance Note has been updated to expand the commentary on whether a member has retired.

SMSF rollovers in SuperStream to be deferred: Minister confirms

The Assistant Minister for Superannuation, Senator Jane Hume, [has confirmed](#) that the Government is proceeding with the 2019-20 Budget measure to defer the extension of SuperStream to SMSF rollovers from 30 November 2019 to 31 March 2021. As part of the 2019-20 Budget measure to bring electronic release authorities into SuperStream, the extension to SMSF rollovers was deferred to March 2021. This deferral means that system changes to update SuperStream will only need to be undertaken once, for both sets of changes, the Minister said.

The deferral reduces administrative costs for funds and allows for a more integrated design of SuperStream. The extension of SuperStream to SMSF rollovers allows SMSF members to initiate and receive rollovers electronically between an APRA fund and their SMSF. Currently, only rollovers between APRA funds can be transferred electronically using SuperStream. The inclusion of release authorities into the SuperStream standard will allow the ATO to send electronic requests to superannuation funds for the release of superannuation, further reducing administrative costs. The Minister said regulations to give effect to the deferral will be made as soon as practicable.

First Home Super Saver scheme: ATO guidance updated

The ATO has issued an [Addendum to Law Companion Ruling LCR 2018/5](#), its guidance on the First Home Super Saver (FHSS) scheme. LCR 2018/5 is updated to incorporate a recent amendment to the law.

The amendment allows an eligible individual to enter into a contract to purchase or construct residential premises as soon as an FHSS determination has been received.

Date of effect: The Addendum applies from 1 July 2019.

Super downsizer contributions reach \$1 billion: Minister

The Assistant Treasurer Michael Sukkar [has announced](#) that older Australians downsizing from their family homes have contributed \$1 billion to their superannuation funds. The Downsizer Measure, which commenced on 1 July 2018, allows older Australians choosing to sell their home and downsize or move from homes that no longer meet their needs, to contribute the proceeds from the sale of their home into superannuation up to \$300,000.

He said key recent data shows that 4,246 individuals have utilised the Downsizer measure; 55% of contributions have been made by females and 45% from males; and individuals from every state and territory have made Downsizer contributions with the top three states being, NSW (31%), Vic (26%) and Qld (24%).

REGULATOR NEWS

Super member outcomes assessment: APRA update

APRA has published three [frequently asked questions](#) (FAQs) on the development of Prudential Standard SPS 515 (Strategic Planning and Member Outcomes) and the recent introduction of an "annual outcomes assessment" in s 52 the SIS Act (replacing the MySuper scale test). [Prudential Standard SPS 515](#) sets out how the member outcomes assessment interacts with APRA's requirements for registrable superannuation entity (RSE) licensees to undertake an annual Business Performance Review, having regard to the outcomes achieved for different cohorts of members.

Effective from 1 January 2020, SPS 515 sets out the requirements for RSE licensees to document the methodology applied in undertaking the annual member outcomes assessment, including how the RSE licensee has determined "comparable choice products" and separately considered the impact of scale and the operating costs of its business operations on the financial interests of members that hold the product. The FAQs focus on APRA's expectations for RSE licensees undertaking their first annual outcomes assessment, and APRA's timeline for finalising SPS 515 and engaging with RSE licensees on its implementation.

Combating Illegal Phoenixing Bill reintroduced

The [Treasury Laws Amendment \(Combating Illegal Phoenixing\) Bill 2019](#) has been introduced in the House of Representatives. The Bill had been introduced earlier in 2019 but lapsed when Federal Parliament was prorogued for the Federal election. It proposes to:

- introduce new phoenixing offences to prohibit creditor-defeating dispositions of company property, penalise those who engage in or facilitate such dispositions, and allow liquidators and ASIC to recover such property. Date of effect: The day after Royal Assent.
- ensure directors are held accountable for misconduct by preventing directors from improperly backdating resignations or ceasing to be a director when this would leave the company with no directors. Date of effect: The day 12 months after Royal Assent.
- allow the Commissioner to collect estimates of anticipated GST liabilities and make company directors personally liable for their company's GST liabilities in

certain circumstances. Date of effect: The first day of the quarter following Royal Assent.

Australian Financial Services Licence applications

ASIC has today released a new information sheet, INFO 240 *AFS licensing – Requirements for certain applicants to provide further information*. A copy of [INFO 240](#) and a [media release](#) about the information sheet are available on ASIC's website.

The information sheet outlines changes to clarify the licence assessment process for applicants that are:

- a body corporate
- Australian Prudential Regulation- (APRA) regulated bodies
- proposing to offer certain financial services or to operate in specific circumstances.

The approach outlined in INFO 240 in relation to body corporate applicants is consistent with our earlier email dated 11 January 2019 indicating ASIC's approach. The additional core proofs for APRA regulated bodies and non-core proofs in support of applications proposing to offer certain financial services or to operate in specific circumstances are being requested upfront, rather than later, to reduce the time involved in completing an assessment.

Please note, that ASIC will not reject an application for lodgement solely because it does not include the required information. However, ASIC will require the information in order to complete its assessment, which as you would appreciate, will slow assessment of the application down.

Consequential amendments to INFO 86 *How do RSE and AFS licensing application processes work together* have also been made to reflect the requirements that apply to applicants that are APRA-regulated bodies.

If you have any questions please email:
asiclicensingliaison.melbourne@asic.gov.au.

Suggested amendment to AASB 1054 - statement of compliance with R&M in SPFS

ED 293 *Amendments to Australian Accounting Standards - Disclosure in Special Purpose Financial Statements of Compliance with Recognition and Measurement Requirements* was issued last week. It can be obtained from the AASB website [here](#). AASB staff have also prepared a high level summary to assist with understanding these proposals that can be obtained [here](#).

Registration link [here](#) for a webinar which AASB staff are running on 25 July from 12.00pm – 12.45pm to discuss the proposals.