

TAXATION

ATO 'black economy' visit to businesses in Port Macquarie region

The ATO is planning to visit about 500 businesses in the Port Macquarie and Wauchope region in late July and early August as part of its strategy to deal with the black economy.

Tax Integrity No 1 Bill referred to Senate committee

The *Treasury Laws Amendment (2019 Tax Integrity and Other Measures No 1) Bill 2019* has been referred to the Senate Economics Legislation Committee.

Tax agent registration termination confirmed

The AAT has confirmed the termination of a tax agent's registration and the restriction on him from re-applying for registration for a period of 12 months.

ATO reminder to lodge TPAR by 28 August 2019

The ATO has reminded businesses that they need to lodge a Taxable payments annual report by 28 August 2019 if they paid contractors during the 2018-19 financial year.

Tax agent fraudsters: ATO warning

The ATO has warned taxpayers to keep an eye out for people posing as tax agents who are not registered with the Tax Practitioners Board.

Taxpayer partially successful in claiming CGT loss on the sale of shares

A company has been allowed to claim a CGT loss on the sale of shares in one, but not another, related company.

Activities not 'R&D activities' as defined in ITAA 1997

The AAT has confirmed a decision of Innovation and Science Australia that none of the taxpayer's activities satisfied the definition of 'R&D activities' in the ITAA 1997.

Taxi plate buyback scheme in Perth: tax implications – ATO fact sheet

The ATO has released a *Fact sheet for Perth metropolitan taxi industry Voluntary Taxi Plate Buyback Scheme payments*.

Pension deeming rates cut from 1 July 2019

The Government will lower the social security deeming rate from 1.75% to 1.0% for financial investments up to \$51,800 for single pensioners and \$86,200 for couples.

Taxpayer's negligence claim against the Commissioner can proceed

The Federal Court has allowed a taxpayer to amend its pleadings to claim the Commissioner breached his duty of care to the taxpayer.

Loan through an interposed entity a Div 7A dividend

The AAT has upheld an ATO decision to treat a loan to a shareholder through an interposed entity as a dividend.

ATO system outages warrant compensation to tax practitioners: IPA

The IPA has expressed concern at the cost to tax practitioners of ATO system outages and has argued that some form of redress is warranted.

TPB puts its 72-hour complaint resolution trial on hold

The TPB it has heard what practitioners have had to say about the 72-hour complaint resolution process and has put the program on hold.

ATO continues to use external collection agencies

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Top 4 mistakes to avoid this tax time: ATO

The ATO says that errors at tax time range from honest mistakes to people deliberately over-claiming to increase their refund.

Letters of engagement – TPB releases new Practice Note

The TPB has released its Practice Note TPB(PN) 3/2019 dealing with Letters of engagement.

ATO will inform some tax agent clients their information is 'Tax ready'

If tax agent clients' employers report through STP and the clients are linked to the ATO through myGov, the ATO will let them know when their income statement is 'Tax ready'.

Tax Practitioner Board investigating 350 practitioners

The TPB has revealed that it is currently investigating more than 350 tax practitioners who are suspected of engaging in 'high-risk behaviour'.

Summary judgment for unremitted PAYG withholding amounts

The Federal Court has granted the ATO summary judgment for unremitted PAYG withholding amounts.

Taxpayer fails to prove assessments excessive

The Full Federal Court has unanimously dismissed the taxpayer's appeal from a Federal Court decision which held that amended assessments were not excessive.

GST assessments affirmed; no entitlement to ITCs

The AAT has affirmed GST assessments and penalty imposed on a taxpayer company that claimed it was entitled to input tax credits.

FINANCIAL SERVICES

ASIC bans financial adviser featured in Royal Commission

ASIC has banned a Sydney-based financial adviser for 3 years following an investigation into his conduct that was revealed in a case study by the Banking Royal Commission.

FASEA approves recognition of CAANZ and CPA coursework

FASEA has approved recognition of coursework from CAANZ and CPA as part of its education standards for financial advisers.

SUPERANNUATION

First Home Super Saver scheme: ATO guidance updated

The ATO has issued an updated version of *Super Guidance Note SPR GN 2018/1*, its general guidance on the First Home Super Saver (FHSS) scheme.

Super death benefit pensions – ATO view on breaches of pension rules

The ATO has confirmed that a super death benefit pension can continue to be paid in certain circumstances, despite a technical breach of the minimum annual pension rules.

Pension tax bonuses: ATO compliance approach for APRA funds

The ATO will not allocate compliance resources to review the calculation of a fund's exempt current pension income if the conditions set out in Draft PCG 2019/D2 are met.

Compensation payments to super funds: ATO fact sheets

The ATO has provided fact sheet guidance on the income tax, superannuation and GST consequences arising from compensation payments made to superannuation funds.

ATO detects 1,445 instances of misuse of SMSF auditor numbers

The ATO warns that SMSF auditors should be aware that it takes a "proactive approach" to SMSF auditor number (SAN) misuse.

Change in control of super licensees: APRA form and guide finalised

APRA has released a new application form and instruction guide for parties seeking approval from APRA to own or control a stake greater than 15% in a RSE licensee.

REGULATOR NEWS

APRA remuneration standard to be strengthened – discussion paper

APRA has released a discussion paper and draft Prudential Standard proposing to clarify and strengthen the remuneration requirements for all APRA-regulated entities.

ASIC action on SMSF auditor misconduct

ASIC has acted to disqualify or add conditions to the registration of a number of approved SMSF auditors for allegedly failing to meet various requirements.

Govt to act on APRA capability review recommendations

The Government has released the APRA Capability Review, along with the responses of the Government and APRA.

TAXATION

ATO 'black economy' visit to businesses in Port Macquarie region

The ATO is [planning to visit](#) approximately 500 businesses in and around Port Macquarie and Wauchope in late July and early August as part of its strategy to deal with the black economy. As part of the visits, ATO officers will be providing information about recent changes, such as Single Touch Payroll (STP) and the extension of the Taxable Payments Reporting System to certain industries. Prior to the visits, the ATO invites local businesses and tax professionals to attend a one-hour information session at Rydges, 1 Hay Street, Port Macquarie on Monday, 29 July from 5.00pm–6.00pm that will explain the purpose of the visits, what to expect if visited, and how to avoid common mistakes.

Assistant Commissioner Peter Holt said: "Most businesses do the right thing. However, businesses who deliberately do the wrong thing – for example, pay cash in hand, or fail to lodge income tax returns or business activity statements – get an unfair advantage and make it harder for businesses who are doing the right thing. By detecting and addressing this behaviour, we're helping to ensure a level playing field for honest small businesses."

Tax Integrity No 1 Bill referred to Senate committee

The [Treasury Laws Amendment \(2019 Tax Integrity and Other Measures No 1\) Bill 2019](#) has been referred to the Senate Economics Legislation Committee for inquiry and report by 5 September 2019. The Bill contains amendments concerning:

- Small business CGT concessions – partner assignments of income.
- Circular trust distributions.
- Limiting deductions for vacant land.
- Disclosure by ATO of business tax debts to credit bureaus.
- Salary sacrifice cannot reduce SG.
- Electronic invoicing implementation.
- Taxation of Financial Arrangements amendments.

Tax agent registration termination confirmed

The AAT has confirmed the termination of a tax agent's registration and the restriction on him from re-applying for registration for a period of 12 months: [Shmuel and Tax Practitioners Board](#) [2019] AATA 2168, AAT, Groom SM, AAT File No: 2018/5535, 23 July 2019. The Tax Practitioners Board (TPB) had found the agent

was not a fit and proper person as required under s 20-5(1)(a) of the *Tax Agent Services Act 2009* (TASA). The TPB contended that the tax agent did not meet the fit and proper person requirement on several grounds including that he failed to comply with his taxation obligations, eg outstanding tax liabilities of over \$100,000 resulting from a DPN issued on the agent as a company director.

The AAT essentially agreed with the TPB's decision. The tax agent disputed the grounds, and also claimed that his health issues and those of his child and an employee were a contributing factor, but the Tribunal said the “absence of credible independent corroborating evidence” about the health issues meant it was not able to give that claim any great weight. It was satisfied on the evidence that the agent did not meet the fit and proper person test. The Tribunal noted that the agent had “not demonstrated any reasonable level of acknowledgment, contrition or remorse for his conduct”. The Tribunal said it was also satisfied that his conduct that gave rise to the decision to terminate his registration as a tax agent was “sufficiently serious to warrant a period of restriction in reapplying for registration” and that a 12-month restriction period was correct.

ATO reminder to lodge TPAR by 28 August 2019

The ATO has [reminded](#) businesses that they need to lodge a Taxable payments annual report (TPAR) by 28 August 2019 if they paid contractors during the 2018-19 financial year. The ATO also says that businesses that operate primarily in the building and construction industry need to lodge a TPAR, if they made payments to contractors for building and construction services and have an ABN.

The ATO finally reminds taxpayers that from 1 July 2018, businesses making payments to contractors for cleaning or courier services provided to their customers must complete a TPAR.

Tax agent fraudsters: ATO warning

The ATO has [warned](#) taxpayers to keep an eye out for people posing as tax agents who are not registered with the Tax Practitioners Board (TPB). Assistant Commissioner Karen Foat is concerned about a number of people claiming to be tax agents, often promising refunds that sound too good to be true, or providing discounted services much cheaper than legitimate registered tax agents.

The ATO says that unregistered preparers often use a taxpayer's personal login details to access their ATO Online account through myGov to lodge tax returns. A

legitimate tax practitioner will never ask for the myGov credentials - they use dedicated ATO online services to lodge returns for their clients. Finally, the ATO says that to protect and keep personal information safe, it is important to check with the TPB to see if an agent is registered by looking at an agent's registration online at TPB.gov.

Taxpayer partially successful in claiming CGT loss on the sale of shares

A company has been allowed to claim a CGT loss on the sale of shares in one, but not another, related company. [*SDRQ and FCT*](#) [2019] AATA 2003, AAT, File No: 2015/6796, 2016/3747, Molloy DP, 19 July 2019. The taxpayer was a member of a group of companies. In January 1989 the taxpayer acquired all the shares in 2 members of the group, Company A and Company B, from Mr P (who controlled the group) and members of his family. The taxpayer paid \$3m for each parcel of shares. The group encountered financial difficulties and in 1991 the taxpayer transferred its shares in Company A to Mr P and its shares in Company B to Company C (the trustee of a family trust) for nominal amounts, generating CGT losses of almost \$6m. In the 2011 income year, the taxpayer applied the remaining CGT losses it had carried forward (almost \$4.64m) against capital gains of \$4.36m. However, the ATO disallowed the losses.

Whether there were losses to use in 2011 depended on the market value of the Company A shares when the taxpayer acquired them and the market value of the Company B shares when the taxpayer disposed of them (market value applied under the relevant provisions of the ITAA 1936 because the parties were not dealing at arm's length). As regards the Company A shares, the AAT preferred the discounted cash flow analysis of the ATO's expert witness and was not satisfied that the shares had any market value when acquired (and therefore the taxpayer did not make a loss). On the other hand, the AAT was satisfied the taxpayer made a loss on the sale of the Company B shares as they had a nil market value when sold. The key factor was that Company B had given a guarantee that it was liable for all of the debts of the group and contemporaneous business records indicated that the group was more than \$12m in debt at the time the shares were sold. Thus, they had no value to a hypothetical purchaser.

Activities not 'R&D activities' as defined in ITAA 1997

The AAT has confirmed a decision of Innovation and Science Australia that none of the taxpayer's activities registered under s 27A of the IR&D Act for the 2013-14 financial year and the 2014-15 financial year satisfied the definition of 'R&D activities' in s 355-20 of the ITAA 1997: [Ultimate Vision Inventions Pty Ltd and Innovation and Science Australia](#) [2019] AATA 1633, Maryniak QC M, 27 June 2019. The taxpayer's registered activities for the relevant years were all registered in respect of "UV1001: Design and Development of an Integrated Health and Fitness program and Cloud based Decision Support Systems". These activities consisted of claimed core and supporting activities.

After a thorough analysis of the documentary evidence together with consideration of the oral testimony, the Tribunal found that insufficient evidence existed to indicate that any of the registered core R&D activities were conducted. Much of the material relied on by the taxpayer was, in the Tribunal's view, irrelevant to its review. The Tribunal also concluded that the evidence did not disclose any experimental activity, of the type described in the registrations, was carried out by or on behalf of the taxpayer. "[Innovation and Science Australia's] case was that there was no evidence that anything was created, let alone implemented, as a result of activities that were conducted in accordance with the Applicant's registrations for the registered activities. The Tribunal agrees." It therefore affirmed the decision under review.

Taxi plate buyback scheme in Perth: tax implications – ATO fact sheet

The ATO has [released](#) a *Fact sheet for Perth metropolitan taxi industry Voluntary Taxi Plate Buyback Scheme payments*. The factsheet explains the tax implications for Perth metropolitan taxi plate owners who received a Voluntary Taxi Plate Buyback Scheme payment from the Western Australian State Government.

Current and former plate owners who receive a payment under the Scheme may hand in their taxi plates or choose to continue to display the taxi plates under the *Transport (Road Passenger Services) Act 2018*. However, the taxi plate itself will no longer provide the owner with an exclusive right to operate a taxi.

Pension deeming rates cut from 1 July 2019

The Government has [announced](#) that it will lower the social security deeming rate from 1.75% to 1.0% for financial investments up to \$51,800 for single pensioners and \$86,200 for pensioner couples. The upper deeming rate of 3.25% will be cut to 3.0% for balances over these amounts. The Minister for Families and Social Services, Senator Anne Ruston, said the changes would benefit about 630,000 age pensioners and almost 350,000 people receiving other payments. Under the new rates, age pensioners whose income is assessed using deeming will receive up to \$40.50 a fortnight for couples, \$1053 extra a year, and \$31 a fortnight for singles, \$804 a year, Senator Ruston said. The deeming rate changes will also benefit people receiving other income tested payments including the Disability Support Pension and Carer Payment, and income support allowances and supplements such as the Parenting Payment and Newstart.

The Minister made a determination – the *Social Security (Deeming Threshold Rates) Determination 2019* – to give effect to the announcement. The Determination is effective from 1 July 2019. Retrospective commencement of the Determination means the reduced below threshold rate of 1% and the above threshold rate of 3% will apply to income from financial investments from 1 July 2019. As a result, any increase that may apply to the rate at which individuals receive social security and veterans' affairs pensions and allowances will apply from this date. Date of effect: The reduced deeming rates have been backdated to 1 July 2019. Any additional pension payment will flow through into pensioners' bank accounts from the end of September 2019 in line with the regular indexation of the pension.

Taxpayer's negligence claim against the Commissioner can proceed

The Federal Court has allowed a taxpayer to amend its pleadings to claim that the Commissioner was in breach of his duty of care to the taxpayer by not warning him of his tax agent's potentially fraudulent activity that the ATO was investigating, and in continuing to pay refunds to a bank account controlled by the tax agent: [Farah Custodians Pty Limited v FCT](#) (No 2) [2019] FCA 1076, Federal Court, Wigney J, 12 July 2019. In the latest instalment of an ongoing dispute between the applicant and the Commissioner, the applicant sought to amend its pleadings to add a claim for negligence. The applicant also applied to add the Commonwealth as a party to the proceedings on the basis that it was vicariously liable for the breach of the duty of

care allegedly owed by the ATO officers who were engaged in the relevant audits and investigations.

After considering the parties' submissions, the Court concluded that, at this relatively early stage of the proceedings, it could not be said that the applicant's negligence claim was not reasonably arguable. Further, according to the Court, if the Commissioner had breached a duty of care owed to the applicant, it was at least reasonably arguable that the applicant suffered loss and damage. Finally, the Court agreed that the Commonwealth should be added as a party to the proceedings.

Loan through an interposed entity a Div 7A dividend

The AAT has upheld an ATO decision not to exercise the discretion to overlook the operation of Div 7A, thus affirming the decision to treat a loan to a shareholder through an interposed entity as a dividend: [Howard and FCT](#) [2019] AATA 1910, AAT, File No: 2017/5035, Molloy DP, 11 July 2019. The taxpayer controlled a cargo handling and stevedoring company (Services) and a company that was the trustee of Finance Trust. The trust was a shareholder in Services. The taxpayer was a primary beneficiary of the trust. A loan agreement dated 26 May 2010 recorded a loan of \$3.646m by Finance Trust to the taxpayer, which was secured by a second mortgage over a property in Sydney (the first mortgage was held by a bank). The ATO treated Finance Trust as an interposed entity and applied Subdiv E of Div 7A ITAA 1936 to deem 95% of the loan to be an unfranked dividend paid by Services to the taxpayer (the target entity).

The first issue was a purely evidentiary one – whether the loan was made on 30 June 2009 (ie in the 2008-09 income year), as alleged by the taxpayer, rather than in May 2010. The AAT was satisfied it was not made in 2008-09. The next issue was whether the ATO should have exercised the discretion in s 109RB to disregard the operation of Div 7A, or allow the dividend to be franked, in circumstances where there was an "honest mistake or inadvertent omission". The problem for the taxpayer was that the loan agreement did not comply with s 109N, which provides that a dividend is not deemed to be paid if a written loan meets certain criteria, because the market value of the Sydney property (less the amount of the bank loan secured by the first mortgage) was not at least 110% of the amount of the Finance Trust loan. The AAT rejected the taxpayer's argument that this was because of an honest mistake or inadvertent omission. The evidence showed that deliberate steps were taken by the taxpayer based on professional advice and an awareness of the

statutory provisions. The AAT also upheld the administrative penalty and shortfall interest charge imposed on the taxpayer.

ATO system outages warrant compensation to tax practitioners: IPA

The Institute of Public Accountants (IPA) [has expressed concern](#) at the cost to tax practitioners of ATO system outages and has argued that some form of redress is warranted. The IPA says that while it is not uncommon in the commercial world when customers are unexpectedly inconvenienced for compensation to be offered, "it's time for the ATO to recognise the damage caused by technology outages". ATO system downtimes such as those experienced recently come at a "huge expense for many of our members and quite simply, a mere apology doesn't go far enough", said IPA chief executive officer, Andrew Conway.

He noted that the Scheme for Detriment caused by Defective Administration (CDDA) is currently under review by the Government, and that the existing framework provides little scope for intermediaries such as tax agents to make a claim: "It is not fit for purpose, especially in light of accountants facing rising costs from increased regulation and compliance requirements." Practitioners who lose productivity time need to be compensated and consideration should also be given to blanket redress arrangements in the event of a future digital disruption, he said.

TPB puts its 72-hour complaint resolution trial on hold

The Tax Practitioners Board has been conducting a trial of its 72-hour complaint resolution process. When the Board receives a complaint from a client of a tax practitioner, it will assess the complaint. If the complaint is suitable for a referral, the TPB says it will be subject to a designated process. The Board would assess complaints from a client of a tax practitioner, determine if it was suitable to be referred back to the practitioner, before then directing the practitioner to resolve the complaint within 3 business days.

The [Board says](#) it has heard what practitioners have had to say about the 72-hour complaint resolution process and has put the program on hold. Under its existing process, the TPB says it will continue to encourage complainants to resolve complaints directly with their tax practitioner in the first instance. Where required, the Board will continue to engage the practitioner and the complainant to assist in working through the specifics of the complaint.

ATO continues to use external collection agencies

The ATO is continuing to use external collection agencies to obtain overdue lodgments on its behalf. The ATO says it currently uses Probe Group Pty Ltd. External collection agencies focus on income tax and activity statement lodgments.

The [ATO says](#) that in late July 2019, tax agents may receive an email with a list of their clients who have overdue lodgment obligations. The ATO says it will contact these clients and may refer them to an external collection agency.

Top 4 mistakes to avoid this tax time: ATO

The [ATO has revealed](#) some of the most common mistakes people make at tax time. Assistant Commissioner Karen Foat said that errors range from honest mistakes to people deliberately over-claiming to increase their refund.

The ATO says the top 4 mistakes to avoid are: lodging before all prefill data is available or failing to report all income; claiming the wrong thing – work-related expenses is one area where people commonly make mistakes; forgetting to keep receipts; and claiming for something never paid for – the Assistant Commissioner said taxpayers need to have spent the money themselves and be able to show the ATO how they've worked out their claim.

Letters of engagement – TPB releases new Practice Note

The Tax Practitioners Board (TPB) has [released its *Practice Note TPB\(PN\) 3/2019*](#) dealing with Letters of engagement. It provides practical guidance and assistance to registered tax agents, BAS agents and tax (financial) advisers (collectively referred to as tax practitioners) to understand the TPB's position in relation to the provision of letters of engagement to clients.

The Practice Note covers the following: What is a letter of engagement and what can it cover? Are letters of engagement required by the *Tax Agent Services Act 2009*? It also suggests matters to include in letters of engagement, covers the TPB's position in relation to recurring or ongoing engagements and where to find further information, and considers the use of template or example letters of engagement. TPB(PN) 3/2019 was released in draft form in May 2019 and replaces *TPB(I) 01/2011: Letters of engagement*.

ATO will inform some tax agent clients their information is 'Tax ready'

The [ATO says](#) if tax agent clients' employers report through Single Touch Payroll (STP) and the clients are linked to ATO online services through myGov, the ATO will send them a myGov Inbox message to let them know their end of year payment summary (income statement) has been marked by their employer as 'Tax ready' and can be used in their tax return. They can access their income statement in ATO online services through myGov, or the tax agent can give them the information. In either case, they do not need to give the tax agent their personal myGov login details to access their information.

If tax agent clients do not already have myGov accounts, the ATO says agents should let them know they do not need one for the agent to lodge their tax return. Tax agents can access their employment data and lodge their return once their information is 'Tax ready'.

Tax Practitioner Board investigating 350 practitioners

The TPB has issued a [media release](#) revealing that it is currently investigating more than 350 tax practitioners who are suspected of engaging in "high-risk behaviour".

Such behaviour includes: failing to meet personal tax obligations; over-claiming work-related expenses; egregious conduct which is considered black economy behaviour; and failure to comply with CPE requirements and lodge annual declarations. A number of the cases were referred to it by the ATO, with whom the TPB "continues to work closely". The media release also lists the penalties which have been imposed on tax practitioners in recently resolved investigations.

Summary judgment for unremitted PAYG withholding amounts

The Federal Court has granted the ATO summary judgment for unremitted PAYG withholding amounts, comprehensively rejecting an attempt to overturn the notice of the estimated amounts and a director penalty notice (DPN): [CLK Kitchens & Joinery Pty Ltd v FCT](#) [2019] FCA 1086, Fed Ct, Derrington J, 12 July 2019. Mr K was the sole director and shareholder of CLK Kitchens, which operated a kitchen joinery business, and CLK Services which provided workers to CLK Kitchens. During the relevant period (1 March 2016 to 31 January 2017), CLK Kitchens paid the workers who performed the services, amounts equal to the wages due to be paid by CLK Services, net of PAYG withholding amounts. In July 2017 the ATO issued a notice to

CLK Kitchens of the estimated PAYG withholding amounts for the relevant period which had not been remitted. The estimated amount was just over \$587,000.

The ATO then issued a DPN to Mr K in respect of the estimated amount. Mr K later made a statutory declaration under 268-40 of Sch 1 TAA. That section provides that the amount of the estimate is reduced or revoked if the statutory declaration is to the effect that a specified lesser amount is the unpaid amount or that the underlying liability never existed, as appropriate. In the course of proceedings by the ATO for summary judgment, CLK Kitchens and Mr K (the applicants) sought judicial review of the decisions to issue the notice and the DPN. The Federal Court held that when CLK Kitchens paid the wages to the employees of CLK Services, the former was obliged to withhold amounts and remit them to the ATO. This followed from s 12-35 of Sch 1 TAA, which makes it clear that the obligation to withhold is imposed upon the entity which makes the payment of wages, even if not the employer of the persons receiving the wages. The Court also held that the statutory declaration given by Mr K did not satisfy the requirements of s 268-40. After rejecting a number of other submissions by the applicants, the Court concluded that they had no reasonable prospects of successfully challenging the relevant decisions or conduct of the ATO and therefore allowed the application for summary judgment.

Taxpayer fails to prove assessments excessive

The Full Federal Court has unanimously dismissed the taxpayer's appeal from a Federal Court decision which held that amended assessments were not excessive. The taxpayer did not lodge returns for the 2006 to 2013 income years until after an audit was commenced. The ATO eventually issued amended assessments for those years totalling almost \$3.64m. 75% shortfall penalties were also imposed, increased by 20% for preventing or obstructing the ATO from finding out about a shortfall amount: [Bosanac v FCT](#) [2019] FCAFC 116, Greenwood, Burley and Colvin JJ, 15 July 2019.

At first instance, the taxpayer failed to prove assessments were excessive, largely because he failed to keep adequate records: *Bosanac v FCT* [2018] FCA 946. The taxpayer appealed the decision, on some 17 grounds. The Full Court dismissed the appeal on all grounds. The Full Court held that the primary judge was correct to approach the matter in the manner that he did. The taxpayer failed to adduce sufficient evidence to prove his income, both as to its sources and amount. Failing to do this meant that it was not possible to demonstrate that the assessments were excessive. As result, the taxpayer failed to demonstrate that the findings of the

primary judge were in error. The assessments stood, as did the imposition of penalty tax.

GST assessments affirmed; no entitlement to ITCs

The AAT has affirmed GST assessments and penalty imposed on a taxpayer company: [Byron Pty Ltd and FCT \[2019\] AATA 2042](#), AAT, Lazanas SM, AAT File No: 2016/3546, 17 July 2019. The taxpayer claimed to be engaged in the business of construction material crushing, as well as quarrying services including machine hire, although the Tribunal said, "whether any such activities were occurring in the Relevant Tax Periods remains a mystery". The taxpayer challenged the Commissioner's objection decisions regarding its objections to certain GST assessments and notices of administrative penalty. It claimed it was entitled to claim input tax credits (ITCs) of \$349,350 for purchases of vehicles and equipment it says it made in 3 quarterly tax periods ending 30 June 2014, 30 September 2014 and 31 December 2014.

The Commissioner audited the company and determined that it did not make creditable acquisitions. Additionally, the Commissioner said the company didn't have the capacity to pay for the vehicles and equipment and did not provide consideration nor was it liable to provide consideration. The key GST issue for determination was whether the taxpayer was entitled to claim the ITCs. After careful and lengthy review, the Tribunal said it was not satisfied that the taxpayer made "creditable acquisitions", as it claimed to have done, from the related party and accordingly was not entitled to claim the ITCs. In upholding the penalty imposed, the Tribunal said the taxpayer was reckless in claiming ITCs.

FINANCIAL SERVICES

ASIC bans financial adviser featured in Royal Commission

ASIC has [banned](#) a Sydney-based financial adviser for 3 years following an investigation into his conduct that was revealed in a case study by the Banking Royal Commission. ASIC allegedly found that the adviser had failed to act in the best interests of his clients, provide appropriate advice and to prioritise his clients' interests when providing personal financial advice. ASIC said this led to clients either losing money or being at risk of losing money. In one example, ASIC said the adviser had failed to adequately investigate and assess his clients' existing deferred benefit superannuation products. This resulted in a financial loss of several thousand dollars to one client when they rolled over their deferred benefit. Another client, who did not

roll over their deferred benefit, would have incurred a \$500,000 loss had they implemented his advice.

ASIC also found that the adviser did not properly document or investigate his clients' existing products, failed to provide advice that was relevant to their specific goals and recommended the use of in-house products without providing product comparisons or justifying why the in-house products were better than his clients' existing products. ASIC said its banning order will be recorded on the Financial Advisers Register and Banned and Disqualified Register. ASIC said its investigation into the adviser's conduct is continuing, even though he retired from the financial planning industry in June 2018.

FASEA approves recognition of CAANZ and CPA coursework

The Financial Adviser Standards and Ethics Authority (FASEA) has [approved](#) recognition of coursework from Chartered Accountants Australia and New Zealand (CAANZ) and Certified Practising Accountants (CPA) as part of its education standards for financial advisers. The awarding of credits for coursework to attain the CPA and CAANZ designations provides appropriate recognition to existing advisers who have undertaken these further studies, said FASEA Chief Executive Officer, Stephen Glenfield. FASEA said advisers who have completed coursework to attain the Chartered Accountant (CA) designation in or after 1972, offered by CAANZ, have been awarded 1 credit as recognition for prior learning (RPL). Since 1972, the CA Program has required a degree plus postgraduate studies.

Advisers who have completed coursework to attain the CPA designation in or after 1989, offered by CPA Australia, have also been awarded 1 credit for RPL. In addition, advisers who completed specific financial planning electives as part of the study to attain the CPA designation have been awarded 2 credits for RPL. The specific financial planning electives are detailed in the Approved Recognition of Prior Learning List. CAANZ Financial Advice Leader, Bronny Speed, said the next step is to continue to engage with FASEA to clarify what studies will count for further credits. FASEA said it is continuing to assess coursework to attain Professional Designation applications that have been received from Professional Associations. The full list of approved recognition of prior learning courses can be found on the FASEA website.

SUPERANNUATION

First Home Super Saver scheme: ATO guidance updated

The ATO has issued an updated version of [Super Guidance Note SPR GN 2018/1](#), its general guidance on the First Home Super Saver (FHSS) scheme. The guidance note has been updated to reflect 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.

Super death benefit pensions – ATO view on breaches of pension rules

The ATO has [confirmed](#) that a superannuation death benefit pension can continue to be paid in certain circumstances, despite a technical breach of the minimum annual pension rules. The ATO reminded trustees that cashing a death benefit in the form of a pension only satisfies the compulsory cashing requirements as long as the interest continues to be cashed in that form. Therefore, if the pension ceases because the minimum annual pension amount hasn't been paid, the trustees may have contravened the SIS Regs.

Where the underpayment is small, or the result of an error, the ATO says the trustee may be able to self-assess whether they can apply the exception to treat the fund as having continuously paid the pension, despite the underpayment. If the exception can be applied under the ATO's powers of general administration (GPA), the fund has not breached the SIS Regs: see ATO website (search ref: QC 47661). Where a contravention has occurred, the ATO says trustees need to act swiftly to prevent further possible contraventions by ensuring the death benefits can still be considered to be cashed "as soon as practicable" under reg 6.21 of the SIS Regs.

Pension tax bonuses: ATO compliance approach for APRA funds

The ATO has issued [Draft Practical Compliance Guideline PCG 2019/D2](#), setting out the proposed compliance approach for large APRA-regulated superannuation funds that, due to system constraints, are unable to incorporate the value of a pension tax bonus into the opening balance of a new RP superannuation income stream. The ATO does not intend to allocate compliance resources to review the

calculation of a fund's exempt current pension income if the conditions set out in the Draft Guideline are met.

These conditions include: incorporating the value of the pension tax bonus in the member's pension account balance for the following income year; informing the ATO of the correct value of the superannuation interest supporting the income stream for the purposes of the member's transfer balance credit; notifying APRA of the potential breach of the minimum pension payment standards; and deploying a full system solution by 30 June 2020 to address the system constraints. Proposed date of effect: 1 July 2017 to 30 June 2020. Comments on the draft are due by 14 August 2019.

Compensation payments to super funds: ATO fact sheets

The ATO has provided [fact sheet guidance](#) on the income tax, superannuation and GST consequences arising from compensation payments made to superannuation funds for the benefit of members in the wake of the Banking Royal Commission. This follows earlier ATO guidance issued in October 2018.

The ATO fact sheets cover the following topics and scenarios: Compensation received by super funds; Fees where no service provided; Deficient financial advice; Overcharged insurance premiums; Interim use of reserves; and Payments where no right to seek compensation.

ATO detects 1,445 instances of misuse of SMSF auditor numbers

The ATO warns that SMSF auditors should be aware that it takes a "proactive approach" to SMSF auditor number (SAN) misuse. If they detect instances of misuse, the ATO says they should reply to its mailout. So far, [the ATO says](#) it has detected 1,445 instances of potential fraud. In May 2019, the ATO completed a mailout to 5,446 SMSF auditors providing them with a list of funds who reported their SAN on SMSF annual returns for the 2017 income year. To date, 2,739 auditors have responded, the ATO said. Of these, 2,319 confirmed no SAN misuse. The other 420 auditors reported 1,445 instances of potential SAN misuse involving 626 tax practitioners.

The ATO said it is currently contacting these practitioners to determine whether they've deliberately misreported a SAN. Some practitioners have fraudulently charged clients for audits that didn't occur and some have prepared false audit reports with forged auditor signatures. The ATO proposes to refer these matters for criminal prosecution. The ATO said while it assumes the auditors who haven't yet

responded didn't detect any problems with the use of their SAN, the ATO still encourages them to contact it to confirm this was the case. They can do this by emailing ATOSMSFauditorteam@ato.gov.au.

Change in control of super licensees: APRA form and guide finalised

APRA has [released](#) a new [application form](#) and [instruction guide](#) for parties seeking to request approval from APRA to own or control a stake greater than 15% 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 *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. Before granting approval to a new applicant, APRA must be satisfied the revised ownership structure will not impede the ability of the RSE licensee to meet its obligations under the SIS Act, including by prioritising the best interests of members.

Applicants are encouraged to discuss any proposed application with APRA before lodging an application. APRA said it received 4 submissions on the draft form and guide. As a result of this feedback, APRA said it has revised the application form to streamline the assessment of changes in directors where the beneficial owner of the shareholding does not change. At this point, APRA said it does not intend to provide any examples of scenarios where the 15% controlling stake trigger for approval will be met. Rather, APRA said it will work with stakeholders to clarify any uncertainties relating to the need to seek approval as well as the information required in any application and the assessment process.

REGULATOR NEWS

APRA remuneration standard to be strengthened – discussion paper

APRA has released a [discussion paper and draft Prudential Standard \(CPS 511\)](#) proposing to clarify and strengthen the remuneration requirements for all APRA-regulated entities. The proposed remuneration framework seeks to address recommendations 5.1 to 5.3 of the Banking Royal Commission. The proposed measures are materially more prescriptive than APRA's existing remuneration requirements.

Among the key reforms, APRA is proposing to elevate the importance of managing non-financial risks; also, minimum deferral periods for variable remuneration of up to 7 years will be introduced for senior executives in larger, more complex entities; and boards must approve and actively oversee remuneration policies for all employees, and regularly confirm they are being applied in practice to ensure individual and collective accountability. Submissions are due by 23 October 2019. Date of effect: APRA intends to release the final prudential standard (CPS 511) before the end of 2019, with a view to it taking effect in 2021 following transitional arrangements.

ASIC action on SMSF auditor misconduct

ASIC has [acted](#) to disqualify or add conditions to the registration of a number of approved SMSF auditors for allegedly failing to meet various requirements, including the auditor independence standards, auditing standards, minimum CPD hours, lodging annual statements, and fit and proper person criteria. Most of the matters were referred to ASIC by the ATO.

ASIC disqualified 3 SMSF auditors for several reasons, including the following: not being a fit and proper person – this followed the person being deregistered from a statutory role by another regulator and ASIC's consideration of the reasons for that decision; and failing to obtain sufficient appropriate audit evidence in the audit of an SMSF in relation to a property and investments in unlisted trusts being reported at market value, borrowings including compliance with limited recourse borrowing arrangements (LRBAs), the purchase of properties, lease agreements, transactions with related parties, liabilities and expenses, and failing to comply with CPD requirements. ASIC also imposed conditions on a further 14 approved SMSF auditors as summarised in an attachment to the ASIC release.

Govt to act on APRA capability review recommendations

The Government has released the [APRA Capability Review](#), along with the responses of the Government and APRA. The Review was commissioned by the Government in response to the Banking Royal Commission and a recommendation of the Productivity Commission. The Review, led by Graeme Samuel, made 24 recommendations, with 19 directed to APRA and the remaining 5 directed to the Government.

The Review found that APRA has developed a culture that is "unwilling to challenge itself, slow to respond and tentative in addressing issues that do not entail traditional financial risks. In combination with APRA's organisational structure, these factors limit its ability to deliver on the breadth of its mandate and adapt to new challenges". Accordingly, the Review has called for changes to ensure that APRA can respond to growing complexity and emerging risks in banking, insurance and superannuation. The Treasurer said the Government will take action on all 5 of the recommendations directed to it and the regulator said it supports all 19 of the recommendations directed to it, and that it is already implementing a number of them.