

## **TAXATION**

### **Whistleblower policies: ASIC draft guidance**

ASIC has released a consultation paper and guide on the obligation requiring companies and superannuation trustees to implement a whistleblower policy by 1 January 2020.

### **ATO data matching re motor vehicles before 2018**

The ATO has issued guidelines in relation to the Motor vehicle registries data matching program protocol.

### **Charities risk losing charity status, warns ACNC**

More than 2,000 charities are at risk of losing their charity status, after failing to submit their annual reporting to the national charity regulator.

### **ATO warns about scammers at tax time**

The ATO has warned taxpayers that there is a surge in scammers impersonating myGov and the ATO to trick people into giving them money or personal details.

### **Medicare levy payable on arrears of wages**

The AAT has held the Medicare levy was payable on arrears of underpaid wages, despite the taxpayer not being liable for the levy for some of the time to which the arrears related.

### **Federal Parliament adjourns, Bills await debate**

Federal Parliament is in recess for its Winter break until its scheduled resumption on Monday, 9 September 2019.

### **Tax Integrity No 1 Bill passes House of Representatives**

The *Treasury Laws Amendment (2019 Tax Integrity and Other Measures No 1) Bill 2019* has been passed by the House of Representatives without amendment.

### **Increased LCT refunds – draft legislation released**

The Government has released draft legislation regarding the provision of further relief to farmers and tourism operators by amending the luxury car tax (LCT) arrangements.

### **Payments under profit participation plan not exempt under s 23AG**

The Federal Court has held that payments under an employee profit participation plan which related to the period the taxpayer was employed in Switzerland were not exempt.

### **Review of Tax Practitioners Board – Discussion Paper released**

Further to the initial round of consultation, the Government has released a Discussion Paper regarding a review of the effectiveness of the Tax Practitioners Board.

### **Parliamentary committee to focus on regulation of auditing in Australia**

The Senate has agreed to request the Parliamentary Joint Committee on Corporations and Financial Services to inquire into the regulation of auditing in Australia.

### **Restriction on use of cash over \$10,000 – draft legislation released**

The Government has released for comment draft legislation to introduce criminal offences for transacting in cash in excess of \$10,000 from 1 January 2020.

### **DPNs validly served on company director**

The WA District Court has held that two director penalty notices were validly served by being posted to addresses obtained from ASIC records.

### **ATO releases its Corporate Plan 2019-20**

The ATO has released its Corporate Plan 2019-20 which covers the period 2019-20 to 2022-23.

### **CPI: June quarter 2019 indexation factor for FBT purposes**

The Australian Bureau of Statistics has released the CPI indexation factor for the June quarter 2019 showing a 0.7 increase from the March 2019 quarter to 114.8.

### **Company directors liable for unpaid PAYG amounts**

Two company directors have failed in their challenge to director penalty notices totalling almost \$10.3 million.

## **Unusual claims disallowed by the ATO**

The ATO has published some of the most unusual claims that it disallowed last financial year, including items such as dental costs, child care and even Lego sets.

## **ATO to visit 700 businesses in and around Broome**

The ATO is planning to visit around 700 small businesses in Broome, Cable Beach, Derby and Kununurra in WA in August as part of its work to tackle the black economy.

## **Farm Household Support Amendment Bill receives Assent**

The *Farm Household Support Amendment Bill 2019* has passed all stages without amendment and has now received Royal Assent.

## **Extending FTB to certain ABSTUDY recipients – Bill introduced**

A Bill has been introduced to extend Family Tax Benefit eligibility to ABSTUDY recipients aged 16 and over who study away from home.

## **Ex-gratia payments to former British child migrants: ATO guidance**

The ATO has released a fact sheet on the ex-gratia payment scheme for former British child migrants.

## **Remake of GST transition, WET and LCT regulations – drafts released**

The Government has released for comment draft regulations on the goods and services tax transition, the wine equalisation tax and the luxury car tax.

## **Jail time for false \$1.5m GST and WET refund claims**

The ATO has announced that a South Australian man has been sentenced to 2 years and 4 months jail for attempting to fraudulently obtain nearly \$1.5 million in refunds.

## **FINANCIAL SERVICES**

### **Parliamentary inquiry into Banking Royal Commission implementation**

The Government has asked for an inquiry into progress by relevant financial institutions in implementing the recommendations of the Banking Royal Commission.

### **Adviser banned for dishonestly borrowing from SMSFs**

ASIC has permanently banned a former financial adviser for allegedly engaging in misconduct including dishonestly borrowing money from his clients' SMSF accounts.

### **Ending grandfathered commissions for financial advisers: Bill**

The Bill proposing to ban grandfathered conflicted remuneration paid to financial advisers has been introduced in the House of Representatives.

## **SUPERANNUATION**

### **Compassionate release of super – verifying ATO approval letters**

The address on an ATO-issued approval letter for early release of super benefits on compassionate grounds need not match the address recorded in the super fund's system.

### **Super fund prohibition on employer kick-backs: ASIC guidance**

ASIC has issued Infosheet 241 to remind superannuation trustees that using improper inducements to influence employers in their choice of default fund is illegal.

### **SMSF trustee disqualified for loans to members amid natural disasters**

The AAT has disqualified a trustee/director of an SMSF for various contraventions of the SIS Act in relation to loans made to fund members impacted by natural disasters.

### **Family law superannuation valuation not required if no splitting order**

As a super splitting order had not been sought, a trial judge did not have to value a non-commutable military super pension according to the prescribed statutory method.

**Article on diversification requirements**

ATO Superannuation is concerned some SMSF trustees haven't given due consideration to diversifying their fund's investments as required by regulation 4.09 of the *Superannuation (Industry) Supervision Regulations 1994*. This can put the fund's assets at risk.

**REGULATOR NEWS****Tax accounting issues flagged in ASIC review**

ASIC has queried 3 entities about their tax accounting treatment following a review of the 31 December 2018 financial reports of 125 entities.

**APRA update on Royal Commission recommendations**

APRA has provided an update on its implementation of the Banking Royal Commission recommendations.

**APRA's new Data Collection system for reporting entities**

APRA has released its Data Collection Solution Implementation Plan updating reporting entities on the system to replace the "Direct to APRA" reporting tool.

**ACCC Digital Platforms report: tax changes to support journalism**

The ACCC has released the final report of its Digital Platforms Inquiry. The report contains 23 recommendations.

**Participate in the ACSC Small Business Survey on cyber security**

As part of our work in seeking to protect small businesses against scams, we want to let you know about the Australian Cyber Security Centre (ACSC) Small Business Survey.

**Business Funding Guide**

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) in partnership with Scottish Pacific Business Finance have recently released a Business Funding Guide that was developed by ASBFEO.

## **TAXATION**

### **Whistleblower policies: ASIC draft guidance**

ASIC has released a [consultation paper \(CP 321\)](#) and [draft regulatory guide](#) on the obligation requiring companies and superannuation trustees to implement a whistleblower policy by 1 January 2020. This requirement in s 1317AI of the *Corporations Act 2001* applies to public companies, large proprietary companies and corporate trustees of registrable superannuation entities (RSEs). It was introduced as part of the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019*.

The Proposed Regulatory Guide explains how companies can establish, implement and maintain a policy. It covers the information that companies must include in their whistleblowers policy, including how they will support and protect whistleblowers, and handle and investigate whistleblower disclosures. ASIC is also seeking feedback about exempting public companies that are small not-for-profits or charities from the requirement to have a whistleblower policy. Comments are due by 18 September 2019.

### **ATO data matching re motor vehicles before 2018**

The ATO has [issued](#) guidelines in relation to the Motor vehicle registries data matching program protocol. By doing so, the ATO complies with the Guidelines on data matching in Australian Government administration (2014) published by the Office of the Australian Information Commissioner (OAIC). Under this program, the ATO will continue to acquire information during the 2013-14, 2014-15 and 2015-16 financial years on vehicles that have been transferred or newly registered where the purchase price or market value is equal to or greater than \$10,000.

Data will be acquired from the 8 State and Territory motor vehicle registry authorities. The ATO estimates that the total number of transactional records that will be obtained is 2 million per annum, identifying approximately 2.8 million individuals (some transactions will involve more than one individual).

### **Charities risk losing charity status, warns ACNC**

More than 2,000 charities registered with the Australian Charities and Not-for-profits Commission (ACNC) are at risk of losing their charity status, after failing to submit their annual reporting to the national charity regulator. Registered charities must submit an Annual Information Statement to the ACNC, which contains information

about their activities and operations. Charities that fail to submit two Annual Information Statements will have their charity status revoked, ie removing access to Commonwealth charity tax concessions.

ACNC Commissioner the Hon Dr Gary Johns [says](#) that "the vast majority of charities registered with the ACNC have done the right thing, and met their obligations". However, Dr Johns said that a small percentage of charities have failed to meet their requirements under the ACNC Act. "These organisations will lose their registration as a charity if they do not submit their outstanding Annual Information Statements by 26 August," he said.

### **ATO warns about scammers at tax time**

The ATO has [warned](#) taxpayers that there is a surge in scammers impersonating trusted brands like myGov or the ATO to trick people into giving them money or personal details. These scams can come through as emails, text messages and fake myGov login pages. In June 2019, the ATO received 6,444 reports of tax-time scams that impersonated the ATO. Emails with links to fake myGov login pages were the biggest email scam in that month.

The trend in scammers demanding "debt" payments via gift cards is also on the rise, with Australians aged 18-44 years making the majority of iTunes payments to scammers (\$94,420 in June alone), closely followed by Google Play cards (\$27,993). The ATO reminds people that if someone is unsure about the validity of a tax related message or phone call, contact the ATO Scam Hotline on 1800 008 540.

### **Medicare levy payable on arrears of wages**

The AAT has confirmed that the Medicare levy was payable on arrears of underpaid wages, even though the taxpayer was not liable to pay the Medicare levy for some of the period to which the arrears related: [Biswas and FCT](#) [2019] AATA 2372, AAT, File No: 2019/0643, Ehrlich SM, 5 August 2019. In 2016-17 the taxpayer received a lump sum payment of almost \$62,000 representing arrears of underpaid wages. The Medicare levy was imposed on all taxable income including the lump sum. However, for much of the period to which the arrears of wages related the taxpayer was exempt from paying the Medicare levy.

Unfortunately for the taxpayer, the law is clear – the levy is imposed on taxable income and the taxpayer's taxable income for 2016-17 included the lump sum in arrears. Even though the AAT acknowledged that it was unfair that he was, in effect, required to pay the Medicare levy for a period when he was exempt, the 2016-17



assessment could not be set aside on grounds of unfairness. The AAT also rejected an argument that Subdiv AB of Div 17 of the ITAA 1936, which provided a rebate of income tax on the arrears of wages, operated to recalculate the amount of the taxable income.

## **Federal Parliament adjourns, Bills await debate**

Federal Parliament is in recess for its Winter break until its [scheduled](#) resumption on Monday, 9 September 2019. Progress on tax legislation was slow in Parliament's last sitting week, although 2 major new tax Bills were introduced, the *Treasury Laws Amendment (2019 Tax Integrity and Other Measures No 1) Bill 2019* (see more below) and the *Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2019*.

Both Bills were passed by the House of Representatives without amendment and were introduced in the Senate on 1 August 2019 and debate was adjourned.

## **Tax Integrity No 1 Bill passes House of Representatives**

The [\*Treasury Laws Amendment \(2019 Tax Integrity and Other Measures No 1\) Bill 2019\*](#) has been passed by the House of Representatives without amendment and now moves to the Senate.

The Bill proposes a number of amendments, including changes: to prevent the small business CGT concessions in Division 152 of the ITAA 1997 from being available for assignments of the income of a partner and other rights or interests in the income or capital of a partnership that are not a membership interest in the partnership; to extend to family trusts the anti-avoidance rule that applies to other closely held trusts that undertake circular trust distributions; to deny deductions for losses or outgoings incurred that relate to holding vacant land; and to allow taxation officers to disclose the business tax debt information of a taxpayer to credit reporting bureaus when certain conditions and safeguards are satisfied, among other amendments. The Bill had previously been referred to the Senate Economics Legislation Committee for inquiry and report by 5 September 2019.

## **Increased LCT refunds – draft legislation released**

In the 2019-20 Budget, the Government announced that it would provide further relief to farmers and tourism operators by amending the luxury car tax (LCT) arrangements. The Government has [released draft legislation](#) for amendments that would give effect to this Budget announcement. Under these new arrangements,



eligible primary producers and tourism operators will be able to apply for a refund of any LCT paid, up to a maximum of \$10,000, for vehicles acquired on or after 1 July 2019. Currently, primary producers and tourism operators may be eligible for a partial refund of any luxury car tax paid on eligible 4-wheel or all-wheel drive cars, up to a maximum of \$3,000.

The eligibility criteria and types of vehicles eligible for the current partial refund will remain unchanged under the new arrangements. As a result of the proposed amendments to the *A New Tax System (Luxury Car Tax) Act 1999*, the current refund of 8/33rds of LCT with a maximum cap of \$3,000 would be increased to a full refund of LCT subject to a new maximum cap of \$10,000 per claim. The proposed amendments would commence on the first day of the first quarter after the day the Bill receives Royal Assent. The amendments would apply to cars supplied or imported on or after 1 July 2019. The comment period will close on Wednesday, 14 August 2019.

### **Payments under profit participation plan not exempt under s 23AG**

The Federal Court has dismissed a taxpayer's appeal from an AAT decision which held that that payments under an employee profit participation plan which related to the period the taxpayer was employed in Switzerland were not exempt under s 23AG of the ITAA 1936: [Lochtenberg v FCT](#) [2019] FCA 1167, Federal Court, Robertson J, 2 August 2019. The taxpayer worked with Glencore Australia from 1993 to July 2001 and then moved to Switzerland to work with Glencore International (GIAG). He ceased to be an Australian tax resident and became a Swiss tax resident. In late 2004 he ceased employment with Glencore and returned to Australia. Between 1 April 2005 and 1 January 2009, while a resident of Australia, he received quarterly instalments from GIAG representing his entitlements under the Glencore employee incentive profit participation plan. In accordance with an agreement with GIAG, the amounts were apportioned into the AU Component (relating to the time he was employed in Australia) and the CH Component (relating the time he was employed in Switzerland).

In *Lochtenberg and FCT* [2018] AATA 4667, the AAT rejected the taxpayer's argument that s 23AG of the ITAA 1936 (as then in force) operated to exempt from Australian income tax payments relating to the CH Component as those amounts were derived from his service as an employee of GIAG in a foreign country (Switzerland). The Federal Court has upheld that decision, concluding that the AAT did not make an error of law in finding that the taxpayer did not "derive" the relevant amounts from service in a foreign country as they were not due to him for service in

a foreign country. As found by the AAT, the payments represented deferred compensation payable to the taxpayer, regardless of where he worked for the Glencore Group, because of the terms of the profit participation plan.

## **Review of Tax Practitioners Board – Discussion Paper released**

Further to the initial round of consultation following the Government's announcement in March 2019 of an independent review into the effectiveness of the Tax Practitioners Board (TPB), and based on feedback received during the initial consultative phase, a [Discussion Paper](#) has now been released. It is intended to highlight the key considerations that will be taken into account by the review. The Paper covers issues such as: whole of Government interactions; TPB governance; community awareness; registration, education and qualifications; Code of Professional Conduct; sanctions; unregistered agents; safe harbour; Tax (Financial) Advisers; and relationship with Professional Associations.

The main issues on which feedback is sought have been identified in the Consultation Points that are highlighted throughout the Discussion Paper. Responses to these points will assist the review in its preparation of a Final Report which is due to be provided to the Government by 31 October 2019. As part of its establishment phase, it was considered efficient for the TPB to sit within the ATO due to the administrative obligations that would otherwise apply to it as a separate agency. However, as envisaged, the Paper says it was intended that there would be a "post-implementation review to assess whether this arrangement remains appropriate and satisfactory". Submissions on the Paper are due by 30 August 2019.

The IPA is preparing a submission on this inquiry and welcomes Member feedback and comment. Please send these to [onevoice@theipagroup.org](mailto:onevoice@theipagroup.org).

## **Parliamentary committee to focus on regulation of auditing in Australia**

The Senate has agreed to a resolution requesting the Parliamentary Joint Committee on Corporations and Financial Services to [inquire](#) into and report by 1 March 2020 on the regulation of auditing in Australia.

The inquiry will make particular reference to a number of matters, eg the relationship between auditing and consulting services and potential conflicts of interests; other potential conflicts of interests; the level and effectiveness of competition in audit and related consulting services; audit quality, including valuations of intangible assets; the extent of regulatory relief provided by ASIC through instruments and waivers; the

adequacy and performance of regulatory, standards, disciplinary and other bodies; and the effectiveness of enforcement by regulators.

The IPA is preparing a submission on this inquiry and welcomes Member feedback and comment. Please send these to [onevoice@theipagroup.org](mailto:onevoice@theipagroup.org).

### **Restriction on use of cash over \$10,000 – draft legislation released**

The Government has released for comment draft legislation [Currency \(Restrictions on the Use of Cash\) Bill 2019](#) to introduce criminal offences for transacting in cash in excess of \$10,000 from 1 January 2020 and for certain AUSTRAC reporting entities from 1 January 2021. In the 2018-19 Budget, the Government announced it would introduce an economy-wide cash payment limit of \$10,000 for payments made or accepted by businesses for goods and services. Transactions equal to, or in excess of this amount would need to be made using the electronic payment system or by cheque.

The draft Bill creates new offences that apply if an entity makes or accepts cash payments with a value that equals or exceeds the cash payment limit. However, the offence does not apply if the payment is made in the course of a transaction of a kind specified in the draft *Currency (Restrictions on the Use of Cash – Excepted Transactions) Instrument 2019*. Note that while digital currency is included in the definition of cash, given ways in which digital currency is presently used in Australia, it is expected that the Treasurer will exempt most transactions involving digital currency for the cash payment limit. Comments are due by 12 August 2019.

### **DPNs validly served on company director**

Two director penalty notices (DPNs) were validly served by being posted to addresses obtained from ASIC records: [DCT v Lim](#) [2019] WADC 106, District Court of Western Australia, Melville PR, 26 July 2019. The DPNs were issued in respect of unpaid superannuation guarantee charge (SGC). The first one was posted in November 2014 and the second one in October 2015. Although the director did not receive the DPNs, they were posted to addresses obtained from ASIC records. The fact the director no longer resided at those addresses when the DPNs were posted did not help him, as s 260-50 of Sch 1 to the TAA dictated that they were validly served. The director should have updated the ASIC records.

In trying to resist the ATO's application for summary judgment for the amount specified in the DPNs, the director said that he had resigned as a director around the end of 2013. However, there was no ASIC record corroborating his resignation and

no ASIC record of the appointment of a replacement director. Since the evidence showed the director continued to be involved in running the company, the WA District Court was satisfied that he continued as a de facto director at least.

### **ATO releases its Corporate Plan 2019-20**

The ATO [has released](#) its Corporate Plan 2019-20 which covers the period 2019-20 to 2022-23. It covers matters such as: ATO's overview, strategic objectives (eg building community trust by reducing the tax gap, providing a better tax and superannuation system to make it easy to comply, and use of digital services to deliver a contemporary client experience), performance and organisational capability.

In releasing the plan, the Commissioner said, "this year, we will deliver some major projects in our 2024 road map. This includes the final stages of Single Touch Payroll, the renewed government commitment to taskforces, such as black economy and corporate tax avoidance, and ABN reforms".

### **CPI: June quarter 2019 indexation factor for FBT purposes**

The Australian Bureau of Statistics [has released](#) the CPI indexation factor for the June quarter 2019 showing a 0.7 increase from the March 2019 quarter to 114.8. This CPI indexation factor is used for FBT purposes concerning remote area benefits (under ss 60 and 60AA of the FBTAA). The ABS said inflation was running at 1.6% through the year to June quarter 2019.

The most significant price rises this quarter were automotive fuel (+10.2%), medical and hospital services (+2.6%), international holiday travel and accommodation (+2.7%) and tobacco (+2.4%). These rises were partially offset by falls in fruit and vegetables (-2.8%), domestic holiday travel and accommodation (-1.5%) and electricity (-1.7%).

### **Company directors liable for unpaid PAYG amounts**

Two company directors have failed in their challenge to director penalty notices (DPNs) totalling almost \$10.3 million: [DCT v Lee \(No. 2\)](#) [2019] NSWSC 954, NSW Supreme Court, Davies J, 31 July 2019. The DPNs were for unpaid PAYG withholding amounts, estimates of unpaid PAYG withholding amounts and unpaid superannuation guarantee charge amounts. Although the directors caused the relevant company to go into liquidation, that happened after the expiry of the 3-month period specified in s 269-15 of Sch 1 to the TAA. As a result, the only defence

available to the directors was that they took all reasonable steps to ensure that they caused the company to comply with its obligations (under s 269-35(2)(a) of Sch 1 to the TAA).

The NSW Supreme Court had little trouble disposing of that defence. Setting up one trust "preferring any employment related tax payments" and another trust for payroll administration did not constitute taking "reasonable steps", in particular where external solicitors were the sole arbiters of when money should be paid from one of those trusts. Obtaining legal and accounting advice and believing others would be responsible for the company's tax obligations also did not constitute "reasonable steps". The real problem for the directors was that they did not appear at the hearing, nor were they represented. As a result, the NSW Supreme Court had to rely on their affidavits, but most of the material in them was "irrelevant" and "inadmissible form".

### **Unusual claims disallowed by the ATO**

The ATO [has published](#) some of the most unusual claims that it disallowed last financial year. The ATO says that almost 700,000 taxpayers claimed almost \$2 billion of "other" expenses including non-allowable items such as dental costs, child care, and even Lego sets. Assistant Commissioner Karen Foat said that a systematic review of claims had found, and disallowed, some very unusual expenses. "A couple of taxpayers claimed dental expenses, believing a nice smile was essential to finding a job – and was therefore deductible. It isn't and their claims were disallowed. Another taxpayer claimed the Lego sets they bought as gifts for their children. Unsurprisingly, this claim was disallowed."

"Other" deductions section of the tax return is for expenses incurred in earning income that don't appear elsewhere on the return – such as income protection and sickness insurance premiums. However, the ATO review found that some taxpayers were incorrectly claiming a range of private expenses such as child support payments, private school fees, health insurance costs and medical expenses, all of which are not allowable. Finally, the ATO reminds taxpayers that in order to claim an "other" deduction, the expenses must be directly related to earning income, and taxpayers need to have a receipt or record of the expense. If the expense relates to a taxpayer's employment, it should be claimed at the work-related expenses section of the return.

## ATO to visit 700 businesses in and around Broome

The ATO [has advised](#) that it is planning to visit around 700 small businesses in Broome, Cable Beach, Derby and Kununurra, Western Australia in August as part of the ATO's work to tackle the black economy and protect honest businesses from those doing the wrong thing. Assistant Commissioner Peter Holt said that black economy signs that the ATO is looking out for are things like not being registered for GST or PAYG withholding, lifestyle and assets far exceeding reported business income, or a lack of merchant payment facilities like EFTPOS.

"Another reason we're heading to Broome, Cable Beach, Derby and Kununurra is because we've received intelligence from the community that some businesses aren't playing by the rules, such as paying their workers cash in hand and keeping them off the books," Mr Holt said. The ATO also says that prior to the visits, local businesses and tax professionals are invited to attend a one-hour information session that will explain the purpose of the visits, what to expect if visited, and how to avoid common mistakes. Single Touch Payroll information sessions will also be offered in both locations.

## Farm Household Support Amendment Bill receives Assent

The [\*Farm Household Support Amendment Bill 2019\*](#) has passed all stages without amendment and has now received Royal Assent. The Bill amends *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 also amends 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.



## Extending FTB to certain ABSTUDY recipients – Bill introduced

The [Family Assistance Legislation Amendment \(Extend Family Assistance to ABSTUDY Secondary School Boarding Students Aged 16 and over\) Bill 2019](#) has been introduced in the House of Representatives. It proposes to implement the 2019-20 Federal Budget measure to extend Family Tax Benefit (FTB) eligibility to ABSTUDY recipients aged 16 and over who study away from home. Upon its commencement, the Bill will extend FTB eligibility to the families of ABSTUDY secondary school students who are aged 16 or over, and are required to live away from home to attend school.

Under Family Assistance Legislation, families of Indigenous boarding students aged under 16 are generally eligible for both ABSTUDY and FTB. ABSTUDY for these students is paid directly to the school and boarding provider to cover tuition and boarding costs, while FTB is paid to the family to help with the cost of raising children. The Bill is designed to ensure that families of ABSTUDY boarding students aged 16 to 19 are eligible for FTB until the student completes year 12. The Bill has been referred to the Senate Community Affairs Legislation Committee for report by 5 September 2019.

## Ex-gratia payments to former British child migrants: ATO guidance

The ATO has [released](#) a fact sheet on the ex-gratia payment scheme for former British child migrants. The ATO accepts that the compensation payments proposed by the UK Government under this scheme will not be subject to income tax or CGT. The ATO notes that while the right to seek compensation is a CGT asset, a compensation payment will not be subject to CGT for 2 independent reasons:

- the right arose before 20 September 1985 (ie it is a pre-CGT asset); and
- the compensation will be paid for personal injury and will therefore be exempt from CGT.

## Remake of GST transition, WET and LCT regulations – drafts released

The Government has released for comment the following draft regulations. Comments are due by 13 August 2019.

- [A New Tax System \(Goods and Services Tax\) Amendment \(Transition\) Regulations 2019](#) to facilitate the application of the goods and services tax to supplies made under contracts entered into prior to 1 July 2000.



- [\*\*A New Tax System \(Wine Equalisation Tax\) Regulations 2019\*\*](#) to ensure the ongoing operation of the Tourist Refund Scheme as it applies to Wine Equalisation Tax (WET) and ensure continuity in the definitions of wine, fruit wine and mead used for WET purposes.
- [\*\*A New Tax System \(Luxury Car Tax\) Regulations 2019\*\*](#) to ensure the ongoing operation of various Luxury Car Tax exemptions and refunds.

### **Jail time for false \$1.5m GST and WET refund claims**

The [ATO has announced](#) that a South Australian man has been sentenced to 2 years and 4 months jail for attempting to obtain nearly \$1.5 million in refunds he wasn't entitled to. The ATO said the man used his accounting knowledge to set up a fake business. He obtained an ABN, and later registered for goods and services tax (GST) and Wine Equalisation Tax (WET), claiming he sold cigars. On 31 March 2016, he lodged 5 BASs, claiming he was entitled to GST and WET refunds of \$1,444,069.

This attracted the ATO's attention. ATO systems flagged this claim initiating an audit almost immediately. The man subsequently rang the ATO almost a dozen times asking for his refund, and during the audit claimed his paper and electronic records had been stolen. The ATO said detailed investigations could find no evidence of business activity, nor evidence of the man's claims that all of his paper and electronic records had been stolen. The man was charged in Adelaide District Court with 6 counts under s 11.1 and s 134.2(1) of the *Criminal Code 1995* as he attempted, by deception, to dishonestly obtain a financial advantage from the Commonwealth. Acting ATO Assistant Commissioner David Mendoza said the strong sentence "was a fitting result for such an audacious attempt to cheat the tax system".

## **FINANCIAL SERVICES**

### **Parliamentary inquiry into Banking Royal Commission implementation**

The Treasurer [has announced](#) that the Government has asked the House of Representatives Standing Committee on Economics to inquire into progress made by relevant financial institutions in implementing the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. The inquiry's remit has also been expanded to include other major relevant financial institutions and leading financial services associations. It will complement the continuation of the broader inquiry into the 4 major banks which the Government announced in 2016, Mr Frydenberg said.

The Royal Commission highlighted widespread misconduct across the financial sector. The Treasurer said Commissioner Hayne made clear that primary responsibility for misconduct in the financial sector lies with the institutions concerned and their boards and senior management. Of the 76 recommendations made by Commissioner Hayne, 10 were directed to the financial services industry. The Government has asked the inquiry to commence as soon as possible, the Treasurer said.

### **Adviser banned for dishonestly borrowing from SMSFs**

ASIC has permanently [banned](#) a former financial adviser for allegedly engaging in misconduct which included dishonestly borrowing money from his clients' SMSF accounts. ASIC alleged that the former Melbourne adviser had engaged in dishonest and misleading and deceptive conduct by procuring loans from 4 of his clients' SMSF accounts totalling \$204,000. ASIC said the loans were used for his own personal expenditure which included staving off bankruptcy, paying private school fees, gambling and general expenses.

ASIC also made a number of allegations including that the former adviser: failed to disclose commissions on financial investments that he recommended and implemented on behalf of clients; recommended financial investments without disclosing that a conflict of interest existed; failed to prioritise his clients' interests ahead of his own; failed to act in the best interest of his clients in relation to loans procured from clients and recommending high-risk investments which were contrary to clients' risk appetites; failed to provide clients with statements of advice (SoA), product disclosure statements (PDS) and fee disclosure statements; and engaged in unlicensed financial advice beyond the cessation of his authorisation as a financial adviser.

### **Ending grandfathered commissions for financial advisers: Bill**

The [Treasury Laws Amendment \(Ending Grandfathered Conflicted Remuneration\) Bill 2019](#) has been introduced in the House of Representatives proposing to ban grandfathered conflicted remuneration paid to financial advisers. The Bill will implement the Government's response to recommendation 2.4 by the Banking Royal Commission, removing the grandfathered arrangements that currently provide an exception from the ban on accepting and giving conflicted remuneration in respect of arrangements entered into before 1 July 2013. The Bill will also end the grandfathering of volume-based shelf space fees and asset-based fees to retail clients on borrowed amounts under arrangements entered into before 1 July 2013.

The Bill proposes to go further than the Royal Commission recommendation by including an obligation on AFS licensees and financial product issuers to rebate customers for any grandfathered conflicted remuneration that they are legally obliged to pay after 1 January 2021. The Bill will enable regulations to provide for a scheme to rebate conflicted remuneration to affected "product holders" (ie customers). The regulations may also provide for the timeframe in which rebates must occur, a method of determining rebate amounts and a method of making payments or providing monetary benefits (eg reduced fees). Civil penalties will apply for failing to pay an amount or monetary benefit as required. Date of effect: 1 January 2021.

## **SUPERANNUATION**

### **Compassionate release of super – verifying ATO approval letters**

The ATO has advised super funds that the address on an ATO-issued approval letter for the early release of benefits on compassionate grounds does not need to match the address recorded in the fund's system. In [CRT Alert 041/2019](#), the ATO said a number of funds have failed to release benefits to their members when presented with a Compassionate release of super (CRS) approval letter issued by the ATO due to the address being different to that in the fund's system. As a result, some individuals in financial difficulty are waiting longer than necessary to access their super to pay for urgent expenses. The ATO noted that these individuals often have tax agents appointed to manage their taxation affairs and as a result will have a different address recorded with the ATO, as to what is held by their fund.

The ATO says funds should complete their own proof of identity processes to verify an individual who presents a CRS letter issued by the ATO. The address doesn't need to match the address on your fund's system in order to release the super, the ATO said. Rather, the ATO says funds should use the ATO fund notification letter issued via the portal to validate the approval letter. If the approval letter and fund notice don't match, email: [SuperCRT@ato.gov.au](mailto:SuperCRT@ato.gov.au) and the ATO will investigate these cases and advise what action to take.

## Super fund prohibition on employer kick-backs: ASIC guidance

ASIC has issued [Infosheet 241](#) to remind superannuation trustees that using improper inducements to influence employers in their choice of default fund is illegal. Section 68A of the SIS Act prohibits a trustee, or its associates, from using goods or services to influence employers to nominate a default superannuation fund for employees, or to encourage employees to choose or retain a particular superannuation fund. The ASIC guidance (INFO 241) draws attention to the recent amendments to s 68A and illustrates how the employer kick-back prohibition applies to super trustees in common scenarios including: corporate hospitality (breach of s 68A); free educational seminars relating to the payment of super contributions to a fund (no breach); and discounted premiums on business insurance policies (breach).

Civil penalties enforceable by ASIC apply for breaches of s 68A from 6 April 2019. This reflects a recommendation made by the Banking Royal Commission so that a breach can attract a civil penalty, in addition to a choice of fund penalty under the Super Guarantee legislation.

## SMSF trustee disqualified for loans to members amid natural disasters

The AAT has disqualified a trustee/director of an SMSF for various contraventions of the SIS Act in relation to loans made to fund members impacted by natural disasters: [Fitzmaurice and FCT](#) [2019] AATA 2217 (AAT, File No: 2017/2533, Britten-Jones DP, 26 July 2019). The applicant and her husband were the directors of the corporate trustee of their SMSF. The corporate trustee was also the trustee of the applicant's family discretionary trust. The primary asset of the fund is a property at Dundee Beach, Northern Territory. The corporate trustee of the SMSF entered into a lease agreement with the family discretionary trust to use the land for short-term accommodation cabins. The applicant executed the lease in her capacity as director of both the landlord and tenant and set the rent at \$5,160 per year. After a storm caused significant damage to the Dundee property the applicant used money from the SMSF to engage contractors for repairs. The money was eventually repaid to the SMSF via the family trust when it received an insurance payout in relation to the damaged cabins.

The applicant's family home was then destroyed by fire and \$22,174 was withdrawn from the SMSF as "emergency funds". The SMSF was later reimbursed for these expenses from insurance payments for the fire. After an audit, the ATO disqualified the applicant for a number of contraventions while she was a responsible officer of

the corporate trustee, including: lending money to a member and breaching the sole purpose test; early release of benefits; failure to make and maintain investments at arm's length; and late lodgment and failure to lodge SMSF annual returns. The AAT upheld the ATO's decision to disqualify the applicant after finding that the payments from the SMSF to the member's personal bank account were "loans" in advance of the insurance payout to the family trust (and not the SMSF). The AAT rejected the applicant's argument that the withdrawals from the SMSF were allowable as an early release due to severe hardship. The AAT also ruled that the applicant breached the sole purpose test, and that the lease agreement with the family trust was not maintained on an arm's length basis. It also ruled that the applicant was not a "fit and proper person" to be a trustee, and that she had insufficient understanding of the purpose of the SMSF.

### **Family law superannuation valuation not required if no splitting order**

The Full Court of the Family Court has ruled that a trial judge was not required to value a non-commutable military superannuation pension according to the prescribed statutory method as a superannuation splitting order had not been sought by the parties: [Carron & Laniga](#) [2019] FamCAFC 115 (Family Court of Australia, Full Court, Aldridge, Kent & Austin JJ, 8 July 2019). The parties separated in 2015. The trial judge found the parties had a notional asset pool of \$1,343,539. The Federal Circuit Court judge ordered a property settlement 55% to the wife and 45% to the husband. The parties' dispute had been complicated by the wife's superannuation interests in the Military Superannuation Benefits Scheme (MSBS). In making the property settlement order, the trial judge mistakenly attributed the value of \$123,293 to the wife's MSBS pension, instead of to her MSBS interest in the growth phase. The husband appealed and argued that the trial judge had understated the notional property pool value, resulting in an unjust gain for the wife by omitting a significant asset in the wife's possession. The husband further submitted that the trial judge erred in relation to his rent-free occupation of the family home and his wife's legal fees.

While the Full Court held that the trial judge had erred in relation to the values attributed to the wife's superannuation interests, it ruled that this error caused no disadvantage to either party. The Full Court rejected the husband's submission that the trial judge was required to value the wife's MSBS pension according to the prescribed statutory method. Nevertheless, the Full Court allowed the husband's appeal on the grounds that the trial judge had erred in relation to the add-backs for

his wife's legal fees and the rent he saved from living in the family home. Therefore, the Full Court set aside the property settlement orders and remitted it for re-hearing.

### **Article on diversification requirements (Super News)**

ATO Superannuation is concerned some SMSF trustees haven't given due consideration to diversifying their fund's investments as required by regulation 4.09 of the *Superannuation (Industry) Supervision Regulations 1994*. This can put the fund's assets at risk.

Lack of diversification or concentration risk, can expose the SMSF and its members to unnecessary risk if a significant investment fails.

At the end of August we will be contacting about 17,700 SMSF trustees and their auditors where our records indicate the SMSF may be holding 90% or more of its funds in one asset or a single asset class.

We recently published an article informing trustees and SMSF professionals about this mail out and the requests we will be making of trustees.

You can access the article [here](#).

## **REGULATOR NEWS**

### **Tax accounting issues flagged in ASIC review**

ASIC has [queried](#) 3 entities about their tax accounting treatment following a review of the 31 December 2018 financial reports of 125 entities. ASIC said it made enquiries of 3 entities concerning their accounting for income tax, including the adequacy of tax expense, and whether it is probable that future taxable income will be sufficient to enable the recovery of deferred tax assets relating to tax losses. The review covered full year financial reports and half year reports with a focus on the application of major new accounting standards on revenue and financial instruments. Overall ASIC made inquiries of 26 entities on 40 matters. The largest number of inquiries continue to relate to impairment of non-financial assets and inappropriate accounting treatments.

ASIC said directors and auditors should continue to focus on values of assets and accounting policy choices in 30 June 2019 financial reports. ASIC also followed up 12 matters concerning the recognition of revenue, particularly contracts that involve multiple performance obligations (eg sale of goods and provision of services) where one or more obligations are still to be met. In one instance, ASIC said it appeared



that the tax effect of a change in revenue recognition had not been taken into account. ASIC also identified instances where revenue was not disaggregated with regard to how the nature, amount, timing and uncertainty of revenue and cash flows are affected by economic factors, as is now required for both full year and half year reports.

### **APRA update on Royal Commission recommendations**

APRA has provided an [update](#) on its implementation of the Banking Royal Commission recommendations. Of the 10 recommendations requiring its attention, APRA said 9 would be completed by the end of 2020 and, of those, 4 would be completed in 2019.

APRA said it is on track to meet all of its indicated timelines. These are set out in a Table on the APRA website which provides an update on each of the recommendations assigned to it. In terms of the 12 matters referred to it by Commissioner Hayne for consideration of criminal or civil proceedings for possible misconduct by individual entities, APRA said its examination of each matter is "advanced". It will continue to liaise with ASIC and other relevant agencies to promptly address the matters identified.

### **APRA's new Data Collection system for reporting entities**

APRA has released its updated [Data Collection Solution Implementation Plan](#) setting out guidance for reporting entities on the new system which is set to replace the "Direct to APRA" (D2A) reporting tool. The plan has been updated to include additional information about the extended project, technical specifications and timeframes. APRA said it is working closely with the ATO for the rollout of the new whole-of-government authentication method (myGovID) to align timelines and reduce risk for the testing and go-live. The new system will use the Government's Standard Business Reporting (SBR) reporting taxonomies. The original go-live date of March 2020 has now been deferred until later in 2020, while the test environment will be available in the first quarter of 2020.

APRA expects reporting entities to register for a webinar in mid-August for a demonstration of the new solution features. APRA also encourages users within reporting entities to register for myGovID. In the coming months, APRA said it will provide additional information about myGovID authentication, submission methods, including application programming interfaces (APIs) and a module to facilitate executive accountability regime requirements.



## **ACCC Digital Platforms report: tax changes to support journalism**

The ACCC has [released the final report](#) of its Digital Platforms Inquiry. The report contains 23 recommendations. The [Treasurer said](#) the Government accepts the ACCC's overriding conclusion that there is a need for reform – to better protect consumers, improve transparency, recognise power imbalances and ensure that substantial market power is not used to lessen competition in media and advertising services markets. Recommendation 11 of the report proposes that the tax settings should be amended to encourage philanthropic support for journalism. Tax settings should be amended to establish new categories of charitable purpose and deductible gift recipient (DGR) status for not-for-profit organisations that create, promote or assist the production of public interest journalism.

The Treasurer said the precise form of the reforms and a detailed Government response to the report's recommendations will be informed by a public consultation process, led by Treasury and involving the Department of Communications and the Arts as well as the Attorney-General's Department. The consultation process will run for 12 weeks (closing 12 September 2019) and will enable all interested stakeholders to provide feedback on the report and its implementation. Following these consultations, the Government intends to finalise its response to the report by the end of the year. The Government has formally invited submissions on the Report and is seeking stakeholder comments on the ACCC's findings and recommendations. In particular, the Government said it would welcome views on practical options for implementation, timing and any impediments or challenges.

## **Participate in the ACSC Small Business Survey on cyber security**

As part of our work in seeking to protect small businesses against scams, we want to let you know about the Australian Cyber Security Centre (ACSC) Small Business Survey. This survey aims to measure the attitudes and approaches to cyber security among Australia's small business owners and operators.

If you're a small business employing up to 20 staff, you're encouraged to take part in the [Cyber security survey for small business](#) to share your views and insights on what cyber security means to you and any issues you may have experienced.

The results from the survey will be used by the ACSC to identify trends in cyber security risk and practices, further develop and refine its information and advice for small businesses, and improve cyber security for all Australians.

## Business Funding Guide

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) in partnership with Scottish Pacific Business Finance have recently released a Business Funding Guide that was developed by ASBFEO. The guide has been provided online in 2 formats:

- The [Business Funding Guide](#) - this guide is primarily written for accountants, bookkeepers, brokers and other financial advisers because of the key role they play in helping small businesses with financial decisions.
- The [FitsMe – Essential Guide to business funding](#) – gives small business operators the most important information they need to know about the types of funding available and outlines the steps to increase their chance of securing funding.

A new video featuring the Ombudsman Kate Carnell with Scottish Pacific CEO Peter Langham discussing the brand new Business Funding Guide is also available to view <https://youtu.be/eV6B64ITCBw>.