

TAXATION

Labour hire agencies in fruit industry targeted by ATO

The ATO has visited sites linked to labour hire agencies supplying workers in the fruit industry in Queensland as part of the ATO's efforts to deter black economy operators.

Get PAYG withholding right to claim a deduction: ATO reminder

The ATO has reminded businesses that they can no longer claim deductions for payments to workers if they haven't met their PAYG withholding obligations.

Remote area tax concessions for overhaul: Productivity Commission

The Productivity Commission has released a draft report on Remote Area Tax Concessions and Payments.

IGTO-ATO complaints handling and review guidelines

The IGTO has published operational and *complaints handling* guidelines between the IGTO and the ATO for the conduct of IGTO reviews.

Personal income tax progressivity: Treasury paper

Treasury has released a working paper entitled "Recent personal income tax progressivity trends in Australia".

Transfer pricing: Glencore's pricing arrangements at arm's length

The Federal Court has held the price paid by the Swiss parent company to an Australian subsidiary for copper concentrate to be at arm's length for transfer pricing purposes.

ATO response to Glencore transfer pricing case

The ATO is considering whether to appeal the recent Federal Court decision in *Glencore Investment Pty Ltd v FCT*.

Class rulings, product ruling and Erratum

The ATO has issued two Class Rulings and one Product Ruling and released an Erratum to *Taxation Ruling TR 2019/1* (on when a company carries on a business).

"Better as Usual": ATO's program to improve client experience

The Commissioner, Chris Jordan, has announced the launch of "Better as Usual", a new ATO program aimed at improving the client experience with the tax system.

IGTO releases its Corporate Plan 2020-23

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) has released its Corporate Plan 2020-23 which covers the period 2019-20 to 2022-23.

Early stage innovation companies: expenses incurred test

The ATO has issued Draft Taxation Determination on what expenses are taken into account in determining whether a company meets the requirements of an ESIC.

ATO claws back millions in R&D claims: Ombudsman investigates

The Australian Small Business and Family Enterprise Ombudsman is examining reports the ATO is demanding businesses repay the R&D Tax Incentive, often with penalties.

PSI: consultant's attempt to split income with spouse fails

The income from a consultant's skills, but split between the consultant and his wife via a third-party trust arrangement has been held to be assessable as his ordinary income.

Macquarie Geared Equities Investment plus – PR 2018/3 withdrawn

Product Ruling PR 2018/3 (tax consequences of investing in equities using the Macquarie Geared Equities Investment plus – 2018 Product Brochure) has been withdrawn.

Small business income tax gap: ATO update

The ATO has estimated the 2015-16 income tax gap for the small business sector to be approximately 12.5%, or \$11.1 billion.

AFCA power to name firms in complaints determinations

ASIC has approved changes to the Australian Financial Complaints Authority (AFCA) Rules to allow it to name financial firms in published determinations.

Fuel tax credits and road user charge – taxpayer's appeal dismissed

The Full Federal Court has dismissed the taxpayer's appeal and upheld the first instance finding that the road user charge applied in the relevant circumstances.

GST: supplies of intangibles connected with Australia – Draft GSTR

Draft GST Ruling GSTR 2019/D2 has been issued, explaining when the supply of intangibles is connected with the indirect tax zone (i.e. Australia).

FINANCIAL SERVICES

Govt grants extra time for FASEA transition

The Government will amend the law to provide additional time for existing financial advisers to meet the new qualification and examination requirements set by FASEA.

Mortgage broker reforms – draft legislation released

The Government has released exposure draft legislation proposing to introduce a best interests duty for mortgage brokers in response to the Banking Royal Commission.

SMSF loans: mortgage broker's ban reduced by AAT

The banning period for a former NSW mortgage broker has been reduced from 3 years to 18 months after the AAT found no dishonesty in relation to loan applications he made.

Financial advice barriers for consumers: ASIC report

ASIC has published a report, *Financial advice: What consumers really think* (REP 627), setting out the barriers faced by consumers when considering financial advice.

SUPERANNUATION

Super member outcomes test: APRA prudential standard finalised

APRA has finalised its revisions to *Prudential Standard SPS 515 (Strategic Planning and Member Outcomes)*.

Super assets total \$2.9 trillion at June 2019; \$748bn in SMSFs

APRA has released its *Quarterly Superannuation Performance* publication and the *Quarterly MySuper Statistics* report for June 2019.

SMSF auditors verifying market values of unlisted shares or units in trusts

Following some uncertainty expressed to the ATO by auditors about verifying the market value of unlisted assets, the ATO have published guidance on our website which we hope will assist auditors with this issue.

SMSF Auditors Feedback required on eSat

If you want to provide feedback on whether they find the eSAT reference material useful.

REGULATOR NEWS**APRA's Corporate Plan released**

APRA has released its Corporate Plan for 2019-2023 with a focus on regulating "non-financial risks", and a "constructively tough" enforcement approach.

ASIC Corporate Plan to address financial misconduct

ASIC has released its Corporate Plan for 2019-2023 setting out its regulatory priorities for the next 4 years.

Inspector General of Taxation and Taxation Ombudsman – Corporate Plan 2020-23

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) have released the [IGTO Corporate Plan 2020-23](#). The plan commenced on 1 July 2019 and spans four reporting periods ending 30 June 2023.

TAXATION

Labour hire agencies in fruit industry targeted by ATO

The ATO has [reported](#) that it has visited sites linked to labour hire agencies supplying workers in the fruit industry in Queensland as part of the ATO's efforts to protect honest businesses from unfair competition. ATO Assistant Commissioner Justin Untersteiner said labour hire businesses are a focus of the government's efforts to deter and disrupt illegal phoenix behaviour and black economy operators.

"The ATO follows up on all sources of intelligence and takes complaints and tip-offs seriously. The ATO seeks to protect and affirm the contribution of the majority of honest businesses within agricultural supply chains, while ensuring that workers who we believe are being exploited, receive their correct entitlements" Mr Untersteiner said. Businesses engaging in illegal phoenix activity cyclically create and liquidate companies in order to avoid paying taxes, creditors and employee entitlements. Illegal phoenix activity can occur in any industry or location. But it is prevalent in the labour hire industry, and is a major focus in our efforts to deter and disrupt illegal phoenix activity, the ATO said.

Get PAYG withholding right to claim a deduction: ATO reminder

The ATO has [reminded](#) businesses that, from 1 July 2019, they can no longer claim deductions for payments to workers if they haven't met their PAYG withholding obligations. In order to claim a deduction, businesses need to withhold the required amount (if applicable) before they pay their worker and report that amount to the ATO.

If a mistake is made, businesses won't lose the deduction if they withheld the wrong amount but lodge a voluntary disclosure in the approved form or correct the mistake as soon as possible when they withheld the right amount but made a mistake when reporting.

Remote area tax concessions for overhaul: Productivity Commission

The Productivity Commission has released a [draft report on Remote Area Tax Concessions and Payments](#). The Government tasked the Commission to assess the zone tax offset (ZTO), the remote area allowance (RAA) and the fringe benefits tax (FBT) remote area concessions. Commissioner Jonathan Coppel said that tax concessions and payments for residents and businesses in remote Australia are outdated, inequitable and poorly designed. Accordingly, the Commission has called for an overhaul of remote area tax concessions so they are better targeted and fairer.

Key points from the draft report include: the ZTO is an ineffective and blunt instrument; the RAA needs a refresh; and FBT remote area concessions should be redesigned to be consistent with the fundamental principle of equitable tax treatment while reducing the cost burden on taxpayers. Most significantly, concessions on employer-provided housing should change. The final report to Government is due by February 2020. Comments are due by 11 October 2019.

IGTO-ATO complaints handling and review guidelines

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) has published its [operational guidelines](#) with the ATO for: [Complaints Handling Guidelines](#) – handling tax complaints lodged with the IGTO; and [Review Operational Guidelines](#) – the conduct of IGTO reviews and investigations into ATO administrative matters. The IGTO is empowered to independently investigate actions taken by tax officials which relate to administrative matters under a taxation law. It also has the power to investigate (or "review") systems established by the taxation laws (or the ATO) dealing with administrative matters.

In terms of complaints handling, IGTO and ATO staff are both required to facilitate the resolution of complaints to improve the client experience (be they taxpayer, tax practitioner or other representative) with the administration of the tax system. In resolving complaints, both IGTO and ATO staff must act independently and seek to improve the client experience in a manner that minimises unnecessary delay or "run-arounds" for clients. IGTO case officers can seek information from any ATO officer (including external contractors) that is relevant to the issues.

Personal income tax progressivity: Treasury paper

Treasury has released a [working paper](#) entitled "Recent personal income tax progressivity trends in Australia". The paper suggests that Australia's personal income tax system became more progressive over the 22 years between 1994-95 and 2015-16 based on an analysis of average personal income tax rates, and the distribution of personal income tax incidence.

The paper also notes that "choices by successive Australian governments have altered marginal personal income tax rates and extended tax thresholds in ways that have reduced the income tax incidence on lower income earners, and increased the income tax incidence on higher income earners. This has also seen an increase in income tax concentration, whereby a narrower proportion of high income earners pay a larger share of total Australian personal income taxes".

Transfer pricing: Glencore's pricing arrangements at arm's length

The Federal Court has held that the price paid by the Swiss parent company to an Australian subsidiary for copper concentrate was within an arm's length range for transfer pricing purposes: [Glencore Investment Pty Ltd v FCT](#) [2019] FCA 1432, Federal Court, Davies J, 3 September 2019. The taxpayer was the head of a multiple entry consolidated (MEC) group. One of the members of the group was Cobar Management Pty Ltd (CMPL), which managed and operated an Australian copper mine. CMPL sold 100% of the copper concentrate produced at the mine to its Swiss parent, Glencore International AG (GIAG). In February 2007, CMPL and GIAG entered into a new form of offtake agreement known as a "price sharing agreement". In general terms, the copper concentrate was priced using a method known in the industry as "quotational period optionality with back pricing". This involved averaging the London Metal Exchange price for copper grade "A" over "the quotational period" which, at GIAG's option, was linked to either the month of shipment or the month of arrival. A deduction was then made for treatment and copper refining charges (TCRCs) which, for the relevant years, were fixed at 23% of the copper reference price.

For the 2007, 2008 and 2009 income years, the ATO made determinations under former Div 13 of the ITAA 1936 and Subdiv 815-A of the ITAA 1997 negating transfer pricing benefits and issued amended assessments to the taxpayer, increasing its assessable income by \$241m in total. The ATO contended that the consideration

paid under the February 2007 agreement for the copper concentrate was less than the consideration that might reasonably be expected to have been paid in an arm's length dealing between independent parties. After reviewing all the evidence, Davies J was satisfied that the prices paid by GIAG to CMPL under the February 2007 agreement, including the 23% price sharing rate, were within an arm's length range. Her Honour also rejected the ATO's submission that an independent producer in the position of CMPL would have been able to secure substantial discounts to TCRC terms. Davies J applied the decision in *Chevron Australia Holdings Pty Ltd v FCT* [2017] FCAFC 62 (which both sides relied on) and said that the ATO's approach "impermissibly restructures the actual contract entered into by the parties into a contract of a different character". According to Davies J, *Chevron* does not provide authority for the ATO's proposition "that the hypothetical transaction, for the purposes of addressing the statutory questions directed by Div 13 and Subdiv 815-A in the present case, is to be identified as a wholly differently structured agreement for the sale of concentrate to the actual agreement which the parties entered into".

ATO response to Glencore transfer pricing case

The ATO is [considering](#) whether to appeal the Federal Court decision in *Glencore Investment Pty Ltd v FCT* [2019] FCA 1432. The case considered whether dealings between Swiss-based Glencore International AG and an Australian subsidiary breached the transfer pricing rules in relation to the sale and purchase of copper concentrate. ATO Deputy Commissioner, Jeremy Geale, said the ATO had argued that amendments made to an agreement between Glencore International AG and its Australian subsidiary were not arm's length dealings. As a result, the ATO had issued Glencore with 3 sets of amended assessments for the 2007 to 2009 years.

However, the Court allowed the taxpayer's appeal and set aside the assessments after rejecting aspects of the ATO's interpretation of the transfer pricing rules in Subdiv 815-A of the ITAA 1997. The Court found that the price at which the mine sold its entire copper concentrate production were "within an arm's length range". Mr Geale said the ATO is considering the decision and whether an appeal is appropriate.

Class rulings, product ruling and Erratum

The ATO has [issued](#) two Class Rulings and one Product Ruling:

- **CR 2019/50** – *Helpten Pro* Vehicle Telematics Solution - use of FBT car logbook and odometer records;
- **CR 2019/51** – DuluxGroup Limited - Scheme of Arrangement and payment of interim and special dividends; and
- **PR 2019/5** – Taxation consequences of investing in the Westpac Protected Equity Loan.

An Erratum to *Taxation Ruling TR 2019/1* (on when a company carries on a business) was also released. The Erratum makes minor adjustments to a footnote.

"Better as Usual": ATO's program to improve client experience

The Commissioner, Chris Jordan, has announced the launch of "Better as Usual", a new ATO program aimed at improving the client experience with the tax system. In his [opening remarks](#) at the Council of Small Business Organisations Australia (COSBOA) National Small Business Summit in Melbourne, Mr Jordan said "Better as Usual" includes 4 work programs, to be led by Jeremy Hirschhorn, Second Commissioner of Client Engagement:

1. **Whole-of-system experience** – This aspect seeks to address the frustration felt by some taxpayers who may see many faces of the ATO, and sometimes feel like they have to start again when dealing with a new ATO area.
2. **Quality of feedback loops** – By better understanding and documenting past experiences, the ATO believes it can make better decisions in the future.
3. **Complex cases team** – The ATO has created a dedicated team to devote the time and the resources necessary to deal with "prickly and complicated" affairs that fall outside the ATO's normal processes.
4. **Procedural and cultural safeguards** – These will be introduced to reduce (and ultimately eliminate) any cases where ATO mistakes could have a severe impact on the client.

IGTO releases its Corporate Plan 2020-23

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) has released its [Corporate Plan 2020-23](#) which covers the period 2019-20 to 2022-23.

Over the next 4 years, the IGTO will focus on the following 5 strategic priorities: 1. Communicate clearly and effectively; 2. Be approachable, contactable and responsive; 3. Improve the skills, expertise and resilience of our people and organisation; 4. Independent thought leadership and expertise; and 5. Engage with stakeholders in the tax administration system.

Early stage innovation companies: expenses incurred test

The ATO has issued [Draft Taxation Determination TD 2019/D5](#) on what expenses are taken into account in determining whether a company meets the requirements of an early stage innovation company (ESIC). Taxpayers who invest in an ESIC are entitled to a tax offset. To qualify as an ESIC, the company must satisfy an early stage test and an innovation test. The early stage test includes a requirement that the company and its 100% subsidiaries (if any) incurred total expenses of not more than \$1 million in the previous income year.

In the ATO's view, "expenses" are amounts that are recognised as expenses under general accounting concepts. However, an expense is not "incurred" unless it is incurred in the tax sense. To alleviate the compliance burden associated with determining whether expenses are incurred, a company and its investors can rely on the amounts reported as "total expenses" in the company tax return, without separately identifying whether those expenses are "incurred". Proposed date of effect: retrospective. Comments are due by 11 September 2019.

ATO claws back millions in R&D claims: Ombudsman investigates

The Australian Small Business and Family Enterprise Ombudsman, Kate Carnell, [is looking into](#) reports the Government clawed back \$200 million in the 2018 financial year from businesses who have claimed the R&D Tax Incentive, and investigating the impact of the ATO's policy and enforcement practices on small businesses. "My office has received a number of complaints from small businesses about unfair treatment in relation to their research and development tax incentive claims by the ATO and AusIndustry," Ms Carnell said. "Of particular concern are audits going back

several years, which have resulted in the ATO demanding businesses repay the R&D Tax Incentive, often with a severe penalty applied."

"Unfortunately some of these businesses have been told to pay back the tax benefit years after the R&D has been completed. This is well after they received the refund from the ATO and reinvested that money back into the business." The Ombudsman also welcomed the recent decision by the Full Federal Court in the *Moreton Resources Limited v Innovation and Science Australia* which has provided greater clarity around the interpretation of the law. The case concerned the question of whether activities in relation to an underground coal gasification pilot facility were eligible for the R&D Tax Incentive. The court took a common-sense approach and found in favour of Moreton Resources, Ms Carnell said.

PSI: consultant's attempt to split income with spouse fails

All the income derived from a consultant's skills, but split between the consultant and his wife via a third party trust arrangement, was assessable to the consultant as his ordinary income: [Ariss and FCT](#) [2019] AATA 2958, AAT, File Nos: 2017/5383, 2017/5384, 2017/5385, Evans SM, 23 August 2019. The taxpayer was a highly skilled IT specialist who in 2005 left his employment to become a consultant. He had a home office and his wife helped with research and administration, although legally she was not an employee, partner or contractor. For the income years in question (2010, 2012 and 2013) the taxpayer provided professional services to 4 separate clients. He had an arrangement with ARMS (a trust) whereby ARMS invoiced the clients who paid ARMS at the taxpayer's direction. The fees were apportioned 70:30 between the taxpayer and his wife and then paid to them (less a 3% commission and PAYG amounts). ARMS also issued "Distribution Statements" to the taxpayer and his wife.

The taxpayer and his wife returned the amounts received from ARMS (totalling just over \$1m) as trust distributions, but the ATO issued amended assessments based on the amounts being solely attributed to the taxpayer as salary and wages. The AAT concluded that the income was derived from the taxpayer carrying on a business as a "sole trader", in which he used his own intellect, skills and specialist expert knowledge. Accordingly, the distributions from ARMS were ordinary income of the taxpayer at the time the amounts were paid to ARMS by the clients and assessable to him under s 6-5 of the ITAA 1997. The AAT also concluded that the amounts paid by the clients to ARMS for the professional services provided by the

taxpayer were "personal services income" (PSI) within the meaning of s 84-15 of the ITAA 1987. In addition, the taxpayer failed the results, unrelated clients, employment and business premises tests and was therefore not carrying on a personal services business for the purposes of s 87-15. The AAT then decided that the 30% apportioned to the taxpayer's wife was not incurred in gaining his assessable income as he was not legally obliged to pay her and was therefore not deductible under 8-1. In addition, s 85-20 applied to deny a deduction for amounts paid to an associate.

Macquarie Geared Equities Investment plus – PR 2018/3 withdrawn

[Product Ruling PR 2018/3](#) (tax consequences of investing in equities using the Macquarie Geared Equities Investment plus - 2018 Product Brochure) has been withdrawn.

The withdrawal comes shortly after the release of an Addendum to PR 2018/3 to incorporate a novation agreement.

Small business income tax gap: ATO update

The ATO [has estimated](#) the 2015-16 income tax gap for the small business sector to be approximately 12.5%, or \$11.1 billion, with over \$7 billion (or over 64% of the total value of the gap) being attributed to black economy behaviour. To measure this income tax gap, the ATO used findings from their random enquiry program to estimate the difference between what the ATO expected to collect, and what was actually collected for the given year. Deputy Commissioner Deborah Jenkins said that almost 90% of income tax from small businesses is paid voluntarily or with little intervention from the ATO.

"Considering how much small businesses have on their plate, we're grateful for the level of work they put in to get their tax right." The ATO also stated that around 90% of small businesses use a registered tax professional to help them comply with their income tax obligations. "We recognise the important role that tax professionals have in helping small businesses get their tax right and we would not have been able to achieve this result without the support of our tax professionals", Ms Jenkins said.

AFCA power to name firms in complaints determinations

ASIC has [approved](#) changes to the Australian Financial Complaints Authority (AFCA) Rules to allow it to name financial firms in published determinations. ASIC believes that naming firms in determinations will enhance transparency and the accountability of firms in complaints handling.

To support the new Rules, AFCA will shortly issue updated operational guidelines which set out examples of the circumstances in which a determination naming a financial firm would not be published. This includes where naming may expose confidential information about a firm's systems or policies. Consumers who are party to a complaint will continue to be anonymised in all determinations.

Fuel tax credits and road user charge – taxpayer's appeal dismissed

The Full Federal Court has dismissed the taxpayer's appeal and upheld the first instance finding that the road user charge under the *Fuel Tax Act 2006* (FTA) applied in the relevant circumstances: [Linfox Australia Pty Ltd v FCT](#) [2019] FCAFC 131, Full Federal Court, Robertson, Kerr and Steward JJ, 21 August 2019. The taxpayer acquired taxable fuel for use in its trucking business. It contended that the toll roads its trucks travelled on are not "a public road" within the meaning of the FTA and, in particular, s 43-10(3) while the Commissioner argued that those toll roads are "a public road" within the meaning of the FTA. The taxpayer also argued that the fuel used to power the air conditioning units in the driver's cabins is not fuel acquired "for travelling on a public road".

At first instance, in *Linfox Australia Pty Ltd and FCT* [2019] AATA 222, the AAT held that the road user charge in s 43-10 of the FTA applied to fuel acquired for use in a vehicle for travelling on the toll roads in question, being the M2 Motorway, the Go Between Bridge, Eastlink, and the Sydney Harbour Tunnel. The AAT also held that the road user charge in s 43-10 of the FTA applied to fuel acquired for use in powering air conditioning units in the taxpayer's heavy vehicles. In dismissing the taxpayer's appeal, the Full Court said it could see no error of law in the AAT's conclusion.

GST: supplies of intangibles connected with Australia – Draft GSTR

[Draft GST Ruling GSTR 2019/D2](#) has been issued, explaining when the supply of intangibles is connected with the indirect tax zone (ie Australia). This draft is the final in a series of GST rulings that update the ATO's original ruling on supplies connected with Australia (**GSTR 2000/31**, which has been **withdrawn**). The other rulings are GSTR 2018/1 (supplies of real property connected with Australia) and GSTR 2018/2 (supplies of goods connected with Australia). While there are no changes to the ATO view, Draft GSTR 2019/D2 includes new content on digital supplies and incorporates recent law changes.

Draft GSTR 2019/D2 focuses on the operation of s 9-25(5)(a)-(c) of the GST Act. Section 9-25(5) is the "catch-all" provision for supplies connected with Australia. It applies to the supply of anything other than goods or real property (eg digital products such as streaming services, online games, mobile apps and e-books). Proposed start date: retrospective. Comments are due by 16 October 2019

FINANCIAL SERVICES

Govt grants extra time for FASEA transition

The Government has [announced](#) that it will amend the law to provide additional time for existing financial advisers to meet the new qualification and examination requirements set by the Financial Adviser Standards and Ethics Authority (FASEA). Assistant Minister, Senator Jane Hume, said the new arrangements will allow existing financial advisers (who were registered on the Financial Adviser Register before 1 January 2019) to complete the FASEA-approved exam by 1 January 2022 (an extra 1 year); and meet FASEA's qualification requirements by 1 January 2026 (2 additional years).

Note that the proposed extensions will not apply to new advisers registered after 1 January 2019. Senator Hume said the exam is currently only available in capital cities, and will not be available in regional areas until September 2019. The extension of the exam will ensure that all advisers, including rural and regional advisers, will have 2 years to sit the exam, as originally intended. The extension of the qualification requirements seeks to assist working parents, including those taking parental leave during the transition period, to have sufficient time to meet the

requirements, said Senator Hume. Further details are available on the [FASEA website](#).

Mortgage broker reforms – draft legislation released

The Government has released [exposure draft legislation](#) proposing to introduce a best interests duty for mortgage brokers as part of the Government's response to the Banking Royal Commission. The Draft Bill would require mortgage brokers to act in the best interests of their clients and to prioritise their clients' interests when providing credit assistance. It also provides for Draft Regulations to restrict the circumstances in which conflicted remuneration can be given or received in connection with credit services provided by mortgage brokers and intermediaries. For example, by requiring the value of upfront commissions to be linked to the amount drawn down by borrowers instead of the loan amount; banning campaign and volume-based commissions and payments; and capping soft dollar benefits.

The Draft Regs would also limit the period over which commissions can be clawed back from aggregators and mortgage brokers to 2 years and prohibit the cost of clawbacks being passed on to consumers. A breach of the proposed obligations would attract a civil penalty up to \$1.050m. Note that the Government rejected the Royal Commission's recommendation to ban upfront and trail commissions for mortgage brokers. Date of effect: 1 July 2020. Submissions are due by 4 October 2019.

SMSF loans: mortgage broker's ban reduced by AAT

The AAT has reduced the banning period for a former NSW mortgage broker from 3 years to 18 months after finding that there was no dishonesty in relation to loan applications he submitted on behalf of SMSF clients. [Wilkins and ASIC](#) [2019] AATA 2946, Taylor SM, 22 August 2019. The mortgage broker had submitted more than 60 SMSF loan applications to Westpac in 2010. The loan applicant was listed as the individual who had contracted to purchase the property, rather than the SMSF corporate trustee. The relevant Westpac bank manager processing the loans treated the loan applications as "consumer loans" (allegedly to maximise his own incentive payments). This was contrary to Westpac's internal requirements which required SMSF loan applications to be processed in a "business channel". Nevertheless, Westpac ultimately re-assessed and granted alternative loans to the corporate trustees of the SMSFs of some of the previously approved loan applicants.

In January 2018, ASIC banned the mortgage broker from providing financial services for 3 years after alleging that he acted dishonestly and/or improperly towards clients by completing loan application forms on behalf of clients. ASIC also alleged that the mortgage broker got his clients to sign incomplete forms, and hide from Westpac that the loans were for SMSFs. While the AAT accepted ASIC's contention that the mortgage broker had put information that was "false in a material particular" in the loan documents, it ruled that there was insufficient evidence to make a finding of dishonesty in relation to the client forms or the nature of the loans. For this reason, the AAT reduced the banning order from 3 years to 18 months.

Financial advice barriers for consumers: ASIC report

ASIC has published a report, *Financial advice: What consumers really think* ([REP 627](#)), setting out the barriers faced by consumers when considering financial advice. The research found that consumers generally seek financial advice for investments such as shares and managed funds, retirement income planning, growing their superannuation and budgeting or cash flow management. While 41% of those surveyed intended to get personal financial advice in the future, the research found that many of them will not proceed because of perceived barriers such as high costs, significant distrust of the industry and a perception that financial advice is only for the wealthy. Interestingly, it highlighted that the use of digital advice (also known as robo-advice) is still very low (1%). However, 19% said they were open to getting digital advice once it was explained to them.

The research found that 27% of those surveyed had received financial advice in the past, and 12% received advice in the past 12 months. On a positive note, the research showed that a significant majority of consumers sought financial advice because they felt advisers had expertise in financial matters and could recommend products that they, as consumers, could not normally find on their own. Furthermore, those consumers who had recently received financial advice had more positive attitudes towards financial advisers than those who had not. Although not all people need financial advice, ASIC Commissioner, Danielle Press, said it is imperative that people wanting advice when making critical financial decisions are able to access high quality advice and feel confident that the advice is in their best interests.

SUPERANNUATION

Super member outcomes test: APRA prudential standard finalised

APRA has finalised its revisions to [*Prudential Standard SPS 515 \(Strategic Planning and Member Outcomes\)*](#) for how superannuation licensees must make a member outcomes assessment to comply with the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 1) Act 2019*. APRA also released a finalised [*Prudential Practice Guide SPG 515*](#), and a [*draft SPG 516 \(Business Performance Review\)*](#) for a 6-week consultation period. APRA said it has substantially revised draft SPG 516 to better support the final version of SPS 515.

In a response to industry submissions, APRA Deputy Chair, Helen Rowell, confirmed that SPS 515 will require all RSE licensees to perform an annual Business Performance Review to assess whether they are delivering sound, value-for-money outcomes for members. Where the outcomes assessment requires RSE licensees to assess member outcomes at a product level at a point in time, APRA's Business Performance Review also requires them to assess outcomes across a broader range of metrics for different member cohorts. Further, licensees must consider whether they will continue to deliver quality outcomes for all their members into the future, and take action if they identify areas needing improvement. Where trustees of underperforming funds fail to address any weaknesses promptly, Mrs Rowell said APRA will not hesitate to use its new directions power to protect the interests of members. Date of effect: SPS 515 will come into force from 1 January 2020. Submissions on draft SPG 516 are due by 10 October 2019.

Super assets total \$2.9 trillion at June 2019; \$748bn in SMSFs

APRA has released its [*Quarterly Superannuation Performance*](#) publication and the [*Quarterly MySuper Statistics*](#) report for June 2019. As at 30 June 2019, superannuation assets totalled \$2.871 trillion (up 6.2% from \$2.7 trillion in June 2018) of which, total assets in MySuper products amounted to \$756bn (up 11.6% from \$678bn in June 2018).

There were 599,678 SMSFs with assets totalling \$748bn (up 1.7% from June 2018). The number of industry funds and retail funds remained unchanged at 37 and 115, respectively, at 30 June 2019. Assets in industry funds grew 6.1% to \$719bn, while public sector funds were up 7.3% to \$511bn. Retail fund assets were flat at \$626bn.

For APRA funds with more than 4 members, the industry-wide rate of return (ROR) was 7.3% for 2018-19.

SMSF auditors verifying market values of unlisted shares or units in trusts

Following some uncertainty expressed to the ATO by auditors about verifying the market value of unlisted assets, the ATO have published guidance on our website which we hope will assist auditors with this issue.

You can access the guidance material on the ATO [website](#).

The guidance should be read as supplementing any material already contained in *Guidance Statement GS009 Auditing Self-Managed Superfunds* and the *Valuation guidelines for self-managed super funds*.

SMSF Auditors Feedback required on eSat

If you want to provide feedback on whether they find the eSAT reference material useful.

Send your feedback on the eSAT reference material by **COB 30 September**, to ATOSMSFauditorteam@ato.gov.au.

REGULATOR NEWS

APRA's Corporate Plan released

APRA has released its [Corporate Plan for 2019-2023](#) with a sharpened focus on regulating "non-financial risks" (such as culture and accountability), and a "constructively tough" enforcement approach. The plan sets out a roadmap for safeguarding financial stability, while lifting APRA's capabilities to address emerging and future challenges.

APRA Chair, Wayne Byres, said the plan has been influenced by the findings of 6 separate reviews and inquiries over the past 18 months that examined aspects of APRA's performance, including the Banking Royal Commission and APRA Capability Review. In response, APRA's new Corporate Plan has identified 4 areas of strategic focus: 1. Maintaining financial system resilience; 2. Improving outcomes for

superannuation members; 3. Improving cyber-resilience across the financial system; and 4. Transforming governance, culture, remuneration and accountability across all regulated financial institutions.

ASIC Corporate Plan to address financial misconduct

ASIC has released its [Corporate Plan for 2019-2023](#) setting out its regulatory priorities for the next 4 years. The plan sets out how ASIC will use its suite of regulatory tools to address financial misconduct and improve consumer outcomes. It also explains how ASIC will bolster its capabilities by expanding its use of data and technology. ASIC has identified the following 7 strategic priorities: High-deterrence enforcement action; Prioritising the recommendations and referrals from the Banking Royal Commission; Delivering as a conduct regulator for superannuation; Addressing harms in insurance; Improving governance and accountability; Protecting vulnerable consumers; and Addressing poor financial advice outcomes.

As the primary regulator of conduct in superannuation, ASIC said it will focus on whether trustees are acting in the best interest of consumers. In relation to financial advice, ASIC will be closely monitoring the potential harms that may result from larger institutions departing from the sector as it shifts towards "general advice" models. For 2019-20, ASIC has flagged various projects in relation to ending grandfathered commissions, a review of financial advice quality and developing SMSF red flags. ASIC Chair, James Shipton, said the regulator has prioritised 45 matters arising from the Banking Royal Commission. These comprise 13 referrals for possible misconduct (with proceedings already commenced for one of them), and 32 matters under investigation from the case studies at the Royal Commission hearings. Mr Shipton said proceedings have commenced in one of the case study matters, and briefs for two of these matters have been referred for prosecution.

Inspector General of Taxation and Taxation Ombudsman – Corporate Plan 2020-23

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) have released the [IGTO Corporate Plan 2020-23](#). The plan commenced on 1 July 2019 and spans four reporting periods ending 30 June 2023.

The purposes of the plan are:

- to improve the administration of taxation laws for the benefit of the community;
- to provide independent advice and assurance (to individual taxpayers, agencies or the community in general) through investigation, review and reporting that Australian taxation administration laws are operating effectively and consistent with community expectations.

The plan also includes the IGTO's performance framework, which is intended to inform Parliament and other stakeholders of their activities and to ensure they are accountable to the Australian community.

The IGTO's strategic priorities sit atop the framework and outline the areas of focus to meet their objective of improving tax administration for the benefit of the Australian community. Key performance areas (KPA's) and indicators assess their performance in achieving these priorities.

The IGTO is now seeking broad community feedback. Interested members can register your comments directly through this link: <http://igt.gov.au/community-feedback/>.