

TAXATION

Online services for agents: ATO begins public beta rollout

ATO has started to rollout *Online services for agents* in a phased public beta. This is the new system agents will use to access services in the tax and BAS agent portals.

Home office running expenses and electronic device expenses

ATO released an updated practice statement on calculating and substantiating home office running expenses and electronic device expenses.

Genuine redundancy payments: Govt to align with Age Pension age

Government has announced that it will extend the concessional tax treatment for genuine redundancy payments to align with the Age Pension qualifying age.

Residency test guidance for foreign-incorporated companies

ATO has issued a practical compliance guideline relating to residency tests for foreign-incorporated companies.

Business analyst's income subject to PSI rules

AAT has affirmed that income of a business analyst was subject to the personal services income rules, as his company was not conducting a personal services business.

Garnishee notice: failure to comply does not lead to tax-related liability

Federal Court has held that the failure to comply with an ATO garnishee notice did not give rise to a tax-related liability.

TPB urges practitioners to rectify personal tax obligations

TPB has launched a new compliance strategy calling on registered tax practitioners to settle their outstanding tax obligations.

GIC and SIC rates – third quarter of 2018-19

ATO has released the GIC and Shortfall interest charge (SIC) rates for the third quarter of 2018-19 covering Jan-March 2019.

Corporate tax rate changes: ATO compliance approach for 2015-18

ATO has issued a practical compliance guideline outlining its compliance and administrative approaches for the 2015-16, 2016-17 and 2017-18 income years.

National Redress Scheme payments not assessable

The ATO has clarified that payments made under the National Redress Scheme to victims of institutional child sexual abuse are not taxable.

New reporting obligations for certain service entities

ATO has issued a draft guidance calling for comments on the extension of the taxable payments reporting system to entities providing certain services.

Federal Court affirms PAYG amounts "withheld" from salary or wages

Federal Court has confirmed that PAYG amounts were "withheld" from a taxpayer's salary or wages so that she was entitled to a tax credit.

No entitlement to full foreign tax offset for US capital gains

Federal Court has held that a taxpayer was not entitled to a full foreign income tax offset (FITO) for US tax paid on the sale of investments.

Profit on sale of mining shares assessable income and not a capital gain

AAT has decided that the profit on the sale of shares was assessable income and not, as contended by the taxpayer, a capital gain.

Family Court can substitute husband for wife as tax debtor

High Court has held that the Family Court can order the Commissioner to substitute a husband for the wife as a debtor.

GST assessments issued to brothel operator upheld

AAT has upheld ATO's claim for amended GST assessments issued to the operator of a brothel following an audit.

Courier driver carrying on an enterprise for GST purposes

A courier driver has been held to be carrying on his own enterprise, rather than working as an employee and the ATO's decision to cancel his GST registration was set aside.

GST on feminine hygiene products removed

Government has removed GST on specific feminine hygiene products, excluding feminine washes and wipes, from 1 January 2019.

Tax Practitioner Board - Further clarification to associations from the TPB re tax practitioner outstanding tax obligations

On the 22nd January 2019 the Tax Practitioners Board (TPB) emailed a letter to over 6,000 tax practitioners with outstanding tax obligations and asked them to contact the ATO to address these matters.

FINANCIAL SERVICES

FASEA education pathways policy finalised

Financial Adviser Standards and Ethics Authority (FASEA) has finalised its Education Pathways Policy as part of its revised standards framework for financial advisers.

FASEA approved degrees and qualifications

FASEA has approved various degrees for the purposes of the first education and training standard that financial advisers must meet.

CPD requirements for financial advisers

FASEA has set out the continuing professional development that financial advisers and planners must undertake to meet new standards.

Use of term "provisional financial planner"

FASEA has determined that a provisional relevant provider can use or assume the expressions "provisional financial planner" or "provisional financial adviser".

AFS licence cancelled for SMSF set-up and switching advice

ASIC has cancelled the AFS licence of a financial services business for failing to comply with several key licensee obligations.

Super early access scheme: financial planner permanently banned

ASIC has permanently banned a financial planner for dishonestly obtaining money from fund accounts under an early access scheme.

ASIC advice to AFS licensees about new standards requirements

ASIC has issued advice to AFS licensees about upcoming changes to education and training requirements.

FASEA accreditation process for professional designations

FASEA has invited industry associations to apply for accreditation for their respective professional designation programs.

Financial planner charged over transfers from SMSFs

ASIC has reported that a former financial planner has been charged with 13 dishonesty offences in relation to transfers of money from his clients' SMSFs.

SUPERANNUATION

SMSF auditor found negligent and liable for \$2m in damages

An SMSF auditor has been held liable for over \$2m in damages for failing to qualify an audit opinion in relation to an SMSF's loans and investments that were in default.

Super funds: proposed changes to non-arm's length income rules

ATO has issued a draft Law Companion ruling regarding the proposed amendment to the non-arm's length income rules.

Total superannuation balance and proposed LRBA changes

ATO has released draft changes to a Law Companion Ruling on calculating an individual's total superannuation balance.

Superannuation fees and costs disclosure – transition period extended

ASIC has extended the transition period for superannuation funds and managed investment schemes for certain fee and cost disclosures.

Super sole purpose test: ATO decision impact statement on Aussiegolfa

ATO has stated its reaction to the Federal Court decision that an investment by an SMSF in a managed investment scheme to acquire a fractional interest in a property did not breach the sole purpose test.

Social security valuation factors for defined benefit income streams

Government has updated the pension valuation factors used to determine the value of asset-tested income streams that are defined benefit income streams.

REGULATOR NEWS

ASIC action on unlicensed SMSF advice for property investments

ASIC is taking action against a former financial adviser for allegedly providing financial services without an AFS licence or authorisation.

Financial reporting and accounting changes: ASIC focus areas

ASIC has announced its focus areas for 31 December 2018 financial reports of listed entities and other entities of public interest.

ASIC cost recovery levies for 2017-18 finalised

ASIC has published the levies that regulated sectors will pay for 2017-18 as part of its new industry funding model.

Australian Financial Services Licence applications – Further information required

ASIC has recently reviewed its AFS licence application assessment requirements and has determined that forthwith, ASIC is requiring all applicants for a new Australian Financial Services Licence (AFSL) to provide the information specified below.

TAXATION

Online services for agents: ATO begins public beta rollout

The [ATO has advised](#) that it has started to roll out *Online services for agents* in a phased public beta. From now until late March 2019, it says agents may receive an email with information on how to participate in the public beta. *Online services for agents* is the new system agents will use to access services they currently use in the tax and BAS agent portals.

The ATO says the rollout will occur gradually from mid-January with all tax and BAS agents expected to have access by the end of March 2019. The ATO says it may decide to stop the gradual rollout and provide all agents with access to the system before the end of March. Once this occurs, it will update the tax and BAS agent portal login pages with an option to access *Online services for agents*. The existing tax and BAS agent portals will remain available during the beta.

Home office running expenses and electronic device expenses

The ATO has released an updated version of *Practice Statement PS LA 2001/6*, its guidance on calculating and substantiating home office running expenses and electronic device expenses. PS LA 2001/6 has been significantly rewritten and includes the following changes:

- the basic principles ("pre-requisites for deductions") have been amended to emphasise that a taxpayer must actually incur the expense and that there must be a real connection between the use of the home office or device and the taxpayer's income-producing work;
- there is new commentary on what type of evidence needs to be kept; and
- the cents per hour rate for home office running expenses has been increased from 45 cents to 52 cents per hour, effective from 1 July 2018.

The 52 cents per hour rate took effect on 1 July 2018.

Genuine redundancy payments: Govt to align with Age Pension age

The Government has announced it will amend the law to align genuine redundancy and early retirement scheme payments with the Age Pension qualifying age from 1 July 2019. The Age Pension age will be 66 on 1 July 2019, rising to 67 by 1 July 2023.

Currently, an individual must be below age 65 at the time their employment is terminated to qualify for a tax-free component on a genuine redundancy payment or an early retirement scheme payment. Where an individual is under age 65, and meets the other certain requirements, a base amount of \$10,399 (for 2018-19), plus \$5,200 for each whole year of service, is received tax-free.

Residency test guidance for foreign-incorporated companies

Practical Compliance Guideline PCG 2018/9 provides guidance to foreign-incorporated companies on applying Ruling TR 2018/5 (central management and control test of residency).

As finalised, the guidance extends from 13 December 2018 to 30 June 2019, the transitional period during which the ATO will not apply resources to review or seek to disturb the non-resident status of these companies.

Business analyst's income subject to PSI rules

The AAT has affirmed that income derived by a business analyst was subject to the personal services income (PSI) rules, as his company was not conducting a personal services business: *Fortunatow and FCT [2018] AATA 4621* (AAT, File No 2017/3954, Britten-Jones DP, 14 December 2018).

The taxpayer reviewed medium to large organisations (clients) with the aim of improving technology, processes, systems and people. The taxpayer did not include any of the income in his assessable income. He contended that this was not required as the company conducted a personal services business, claiming that his company passed two of the four tests to determine this status, namely the results test and the unrelated clients test.

The AAT held that the taxpayer failed both tests. The unrelated clients test required him to offer his services to the public at large. The tribunal rejected the taxpayer's argument that he satisfied this test by his active LinkedIn profile.

Garnishee notice: failure to comply does not lead to tax-related liability

The Federal Court has held on appeal that the failure to comply with an ATO garnishee notice did not give rise to a tax-related liability. As a result, the ATO was then unable to issue further notices to the debtors of the recipient of the first notice: *Fyna Projects Pty Ltd v DCT [2018] FCA 2041* (Federal Court, Thawley J, 21 December 2018).

A taxpayer had a tax-related liability of some \$777,000. The ATO issued a notice under s 260-5 of Sch 1 to the TAA to one of its debtors (the "applicant"). The applicant continued to make payments to the taxpayer after the s 260-5 notice was issued.

The Commissioner took the view, rejected by the Federal Court, that the failure by the applicant to comply with the s 260-5 notice gave rise to a tax-related liability by the applicant to the ATO.

TPB urges practitioners to rectify personal tax obligations

The Tax Practitioners Board has launched a new compliance strategy calling on registered tax practitioners (including tax agents, BAS agents and tax (financial) advisers) to settle their outstanding tax obligations. The TPB also issued a new [Information Sheet TPB\(I\) 34/2018](#) which outlines what is required of tax practitioners under Code Item 2 (complying with taxation laws in the conduct of personal affairs).

The TPB said that although there will be an opportunity to remedy outstanding tax obligations, firmer action will then be taken to enforce the laws, including investigations, prosecutions and proactive collection action where appropriate.

GIC and SIC rates – third quarter of 2018-19

The ATO has released the [GIC](#) and [Shortfall interest charge](#) (SIC) rates for the third quarter of 2018-19 covering Jan- March 2019. They are:

- GIC annual rate – 8.94%.
- GIC daily rate – 0.02449315%.
- SIC annual rate – 4.94%.
- SIC daily rate – 0.01353425%.
- IOP, IEP and DRI rate is 1.94%.

Corporate tax rate changes: ATO compliance approach for 2015-18

The ATO has issued *Practical Compliance Guideline PCG 2018/8* which sets out:

- the ATO's compliance approach for companies that accessed the lower corporate tax rate in the 2015-16 and 2016-17 income years; and
- an administrative approach for companies that issued incorrect distribution statements for frankable distributions in the 2016-17 or 2017-18 income year.

PCG 2018/8 applies from the first day of a corporate tax entity's 2015-16, 2016-17 or 2017-18 income year.

National Redress Scheme payments not assessable

The ATO has issued *Taxation Determination TD 2018/16* to clarify that payments made under the National Redress Scheme to victims of institutional child sexual abuse are not taxable.

New reporting obligations for certain service entities

Draft Law Companion Ruling LCR 2018/D8 discusses the extension of the taxable payments reporting system (in Subdiv 396-B of Sch 1 to the TAA) to entities providing the following services:

- road freight services, which have been added to item 12 in s 396-55 to form the combined courier and road freight services;
- security, investigation or surveillance services; and
- information technology services.

ABN holders who supply these services are required to advise the ATO of any payments (or other consideration) they make to contractors on or after 1 July 2019, where such consideration is wholly or partly for providing a service on their behalf. The first annual report is due by 31 July 2020.

Federal Court affirms PAYG amounts "withheld" from salary or wages

The Full Federal Court has confirmed that PAYG amounts were "withheld" from a taxpayer's salary or wages so that she was entitled to a tax credit, despite the amounts never being remitted to the ATO by her employers: *FCT v Cassaniti* [2018] FCAFC 212 (Full Federal Court, Greenwood, Logan and Steward JJ, 30 November 2018.)

The taxpayer was an office clerk in a tax and accounting firm, and was employed by three service companies. But, as these companies had not remitted or notified any PAYG withholding amounts to the ATO in respect of the taxpayer, the Commissioner denied her claim for withholding tax credits in her income tax return.

At first instance, the Federal Court accepted the taxpayer's evidence, which suggested that the salary payments were "net pay" amounts. On appeal, the ATO questioned the truth of the evidence. However, the Full Court upheld the first instance decision as it was open for the primary judge to accept the taxpayer's evidence as truthful and authentic.

No entitlement to full foreign tax offset for US capital gains

A taxpayer was not entitled to a full foreign income tax offset (FITO) for US tax paid on the sale of investments, as only half the capital gain had been included in his assessable income: *Burton v FCT* [2018] FCA 1857 (Federal Court, McKerracher J, 27 November 2018).

The taxpayer was an Australian resident who owned high value assets in the US. He sold the assets which were subject to tax in the US. As an Australian resident, the sales were subject to CGT. The gain was discounted by 50% and included in assessable income. The taxpayer sought a FITO for the full amount of US tax paid. The Commissioner partially denied the FITO against his Australian tax liability, to the extent of half of the US tax which was paid.

The Federal Court agreed with the Commissioner that the taxpayer was only entitled to a FITO in proportion to the amount of the capital gain included in his assessable income, ie 50% of the US tax paid.

Profit on sale of mining shares assessable income and not a capital gain

The AAT has found that the profit on the sale of shares was assessable income and not, as contended by the taxpayer, a capital gain: *Ransley and FCT* [2018] AATA 4359, AAT, File Nos 2015/5453 and 2015/5454, Jagot DP, 21 November 2018.

Between 2007 and 2010 the taxpayer acquired and sold shares in two mining companies, receiving a final amount of just over \$10.1m. The taxpayer treated the gains from the sale of shares as capital gains and applied the 50% CGT discount.

The Commissioner, however, issued amended assessments on the basis that the profits on the sale of the shares were assessable income and not a capital gain.

The AAT has upheld the amended assessments, concluding that the taxpayer's intention at all material times was to realise a profit.

Family Court can substitute husband for wife as tax debtor

The High Court has unanimously dismissed the Commissioner's appeal and found that under s 90AE of the *Family Law Act 1975*, the court has power to order the Commissioner of Taxation to substitute one party to a marriage for the other in relation to a debt owed to the Commonwealth for income tax: *FCT v Tomaras* [2018]

HCA 62 (High Court, Kiefel CJ, Gageler, Keane, Gordon and Edelman JJ, 13 December 2018).

The first respondent ("the wife") and the second respondent ("the husband") married in 1992 and separated in 2009. During their marriage, the appellant ("the Commissioner") issued various assessments requiring the wife to pay, among other things, income tax. The wife failed to pay the amounts assessed and in 2009, the Commissioner obtained default judgment against the wife. In 2013, the husband was declared bankrupt.

The wife then commenced proceedings against the husband in the Federal Circuit Court, seeking an order pursuant to s 90AE(1)(b) that, in respect of the wife's indebtedness to the Commissioner, the husband be substituted for the wife as the debtor, and the husband be solely liable to the Commissioner for the debt.

The Federal Circuit Court stated a question of law for the opinion of the Full Court of the Family Court. The latter court held that 90AE(1)-(2) granted the Federal Circuit Court power to make the order sought by the wife.

The Commissioner appealed to the High Court, which unanimously affirmed the decision of the Full Court of the Family Court.

GST assessments issued to brothel operator upheld

The operator of a brothel has unsuccessfully challenged GST assessments: HKYB and FCT [2018] AATA 4770 (AAT, File No: 2017/2746, Logan DP, 31 October 2018, updated 11 January 2019).

The taxpayer operated a brothel with 19 rooms. It acquired the business in June 2013. Following an audit, the ATO issued amended GST assessments for each of the quarterly tax periods during the period from 1 July 2013 to 30 June 2015, totalling just over \$1.7m.

The amended assessments were issued on the basis that each time a sexual service was provided at the brothel, there was a single supply by the taxpayer of a sexual service to a client. The taxpayer, however, contended that the supply for GST purposes of the sexual service was by the relevant sex worker and that it provided only the facility where that service was conducted. Based on the taxpayer's business model, the AAT decided in favour of the ATO.

Courier driver carrying on an enterprise for GST purposes

A courier driver has been held to be carrying on his own enterprise, rather than working as an employee. The ATO's decision to cancel his GST registration was therefore set aside: *Qian and FCT* [2019] AATA 14 (AAT, File Nos 2017/3327 and 2017/3323, Taylor SM, 9 January 2019).

The taxpayer purchased a van in 2016 and entered into an agreement with HF Express to work as a courier driver. The taxpayer claimed that he was a self-employed professional driver and lodged his June 2016 BAS on this basis. The ATO contended that the taxpayer was an employee and so not entitled to be registered for GST. In its view, he was therefore unable to return income as an independent contractor and claim related input tax credits.

The AAT held that a "reasonable inference" from the contract documents and payment summary information was that HF Express operated as a type of labour hire firm or "payment intermediary".

GST on feminine hygiene products removed

The [*A New Tax System \(Goods and Services Tax\) \(GST-free Health Goods\) Determination 2018*](#), registered on 28 November 2018, removes GST on feminine hygiene products from 1 January 2019.

The goods that are covered are "maternity pads, menstrual cups, menstrual pads and liners, menstrual underwear, tampons, and other similar products specifically designed to absorb or collect lochia, menses or vaginal discharge".

Other goods that will *not* be covered by the Determination include feminine washes, feminine deodorants, intimate wipes marketed for feminine hygiene; and supplements and vitamins marketed for use during menstruation and/or pregnancy.

Tax Practitioner Board - Further clarification to associations from the TPB re tax practitioner outstanding tax obligations

On the 22nd January 2019 the Tax Practitioners Board (TPB) emailed a letter to over 6,000 tax practitioners with outstanding tax obligations and asked them to contact the ATO to address these matters.

We have since received several enquiries from professional associations and tax practitioners about the letters and we have prepared information to assist you and your members.

Background

On 11 December 2018 the TPB issued a [media release](#) urging tax practitioners to rectify outstanding personal tax obligations. This followed a meeting with many of you on 10 December 2018, where we briefed the professional associations about the launch of this compliance strategy.

We sought your assistance to call on all tax practitioners to review, and if necessary, address any outstanding tax obligations they might have. We had also advised that under the strategy, we would give tax practitioners six weeks to get their tax affairs in order. If tax practitioners failed to address this within this time, firmer action will be taken to enforce the laws, including TPB investigations, ATO prosecutions and proactive collection action where appropriate.

To assist tax practitioners, we also released a new [information sheet](#) which provided guidance on Code item 2 (complying with the taxation laws in the conduct of personal affairs).

Requested assistance

As some of your members may have been contacted by the TPB, we would appreciate your assistance in communicating the following information:

1. *What your members need to do*

- review their tax obligations to determine if any of these obligations are outstanding; and
- where tax practitioners have identified outstanding tax obligations, they commence immediate action to rectify these outstanding matters. This could include:
 - lodgements of outstanding relevant returns and statements; and/or
 - from a debt perspective, payment of outstanding debts, or entering into an agreed payment arrangement with the ATO.

2. *The TPB's next steps*

Over coming weeks, the TPB will refresh its ATO data on tax practitioners who have outstanding tax obligations.

We will then contact those tax practitioners who still have outstanding tax obligations, advising them to contact the ATO to address any unresolved tax obligations.

If matters remain unresolved after this further contact, the TPB is likely to commence an investigation into their conduct.

The [TPB website](#) will be updated with information about the debt and lodgement project.

3. *Answers to some questions your members may have*

What to do if you received an 'Overdue personal tax lodgements and debts' email from the TPB

Situation	What to do
You have a question about the status of your outstanding tax obligations.	Contact the ATO on 13 72 86. Do not contact the TPB as it is unable to assist.
You have confirmed your status with the ATO and you do not have any outstanding tax obligations.	No action is required and you should disregard the TPB's letter of 22 January 2019.
You had an outstanding debt with the ATO, but have now entered into an agreed payment arrangement.	No action is required, but it is important that you continue to meet your obligations under the payment arrangement.
You have outstanding tax obligations with the ATO.	For lodgement, you need to file the outstanding returns or statements. For debt, you need to make the payment, or contact the ATO regarding payment arrangement options.
You have contacted the ATO to discuss your situation and you are waiting for a response from the ATO (for example, to see	No further action is required at this stage. However, you must ensure that as soon as you hear back from the ATO you take

if a request for a payment arrangement is approved).	the necessary steps to settle your outstanding tax obligations.
All your tax affairs are up to date, but you have not yet lodged your 2018 income tax return, because it is not yet due under your tax agent's lodgement program.	No further action is required as your 2018 income tax return is not outstanding.
You have concerns about how your registration as a tax practitioner with the TPB may be impacted.	Contact the TPB via the ' Contact us ' form on our website.

FINANCIAL SERVICES

FASEA education pathways policy finalised

The Financial Adviser Standards and Ethics Authority has finalised its [Education Pathways Policy](#) as part of its revised standards framework for financial advisers.

The policy (FPS001) details a range of education pathways for new entrants and existing advisers including a defined recognition of prior learning (RPL) framework for existing advisers. Under the policy, the maximum requirement will be an approved bachelor degree of 24 subjects for a new entrant and a graduate diploma of 8 subjects for an existing adviser.

FASEA approved degrees and qualifications

The Financial Adviser Standards and Ethics Authority has registered the *Corporations (Relevant Providers Degrees, Qualifications and Courses Standard) Determination 2018* to approve various bachelor and higher degrees, and equivalent qualifications, for the purposes of the first education and training standard that financial advisers must meet.

Under the standard, financial advisers are required to complete a bachelor or higher or equivalent qualification. The Determination includes a list of current and historical degrees approved by FASEA.

CPD requirements for financial advisers

The Financial Adviser Standards and Ethics Authority has registered the *Corporations (Relevant Providers Continuing Professional Development Standard) Determination 2018* setting out the continuing professional development (CPD) that financial advisers and financial planners must undertake to meet the fourth of the education and training standards.

Each responsible AFS licensee, and each licensee that is a relevant provider, must have a CPD policy and CPD plan about how it meets its CPD obligations. The policy and plan must be adopted and be in place before the start of the licensee's first CPD year (subject to a transition period to 31 March 2019).

Use of term "provisional financial planner"

The Financial Adviser Standards and Ethics Authority (FASEA) has registered the *Corporations (Provisional Relevant Providers - Expressions) Determination 2018* so that that a provisional relevant provider can use or assume the expressions "provisional financial planner" or "provisional financial adviser".

Under s 923C(9) of the *Corporations Act 2001*, a provisional relevant provider may assume or use the expressions "financial planner" or "financial adviser" (or terms of like import) if they are or are part of expressions determined by FASEA.

AFS licence cancelled for SMSF set-up and switching advice

ASIC has cancelled the AFS licence of a financial services business for failing to comply with several key licensee obligations in relation to advice given to clients to set up an SMSF and invest their superannuation with the company.

ASIC alleged that the entity had failed to adequately monitor and supervise its representatives and manage conflicts of interest. It further alleged that the entity:

- failed to do all things necessary to ensure that the financial services covered by their licence were provided efficiently, honestly and fairly;
- did not have in place up to date policies and procedures to ensure representatives understood their obligations to act in clients' best interests;
- did not lodge annual financial statements and auditor's reports; and

- did not meet licence conditions requiring them to maintain base-level financial requirements.

Under the terms of cancellation, the entity was required to wind down its financial services business by 20 December 2018.

Super early access scheme: financial planner permanently banned

ASIC has permanently banned a Victorian financial planner for dishonestly obtaining money from client retail superannuation fund accounts for the purposes of operating a scheme providing clients with illegal early access to their superannuation.

The banning decision follows an investigation into the financial planner's conduct as an authorised representative of an AFS licensee and through his own business.

ASIC alleged that the man had breached various financial services laws during 2017, including engaging in dishonest conduct on approximately 164 separate occasions by illegally obtaining funds, by falsifying figures and details in client statements of advice, and failing to act in the best interests of his clients.

ASIC advice to AFS licensees about new standards requirements

ASIC has issued advice to AFS licensees ([in 18-378MR](#)) about upcoming changes to education and training requirements.

From 1 January 2019, new professional standards requirements for financial advisers will progressively replace training standards in Regulatory Guide 146 *Licensing: Training of financial product advisers* (RG 146).

RG 146 sets out the minimum training standards for financial advisers. RG 146 will not apply to new entrants to the industry seeking to become a relevant provider from 1 January 2019. They will need to meet the new professional standards requirements.

FASEA accreditation process for professional designations

The Financial Adviser Standards and Ethics Authority (FASEA) has [invited](#) industry associations to apply for accreditation for their respective professional designation programs. This follows the release of FASEA's revised Education Pathways and Program and Provider Accreditation policies.

Existing advisers who have completed approved coursework in relation to approved designations will be entitled to up to 2 units credit into the graduate diplomas contemplated by FASEA's new education framework for advisers.

Financial services industry associations with a relevant professional designation program are invited to submit their curriculum content to FASEA for approval as soon as practicable.

Financial planner charged over transfers from SMSFs

ASIC has reported that a former financial planner has been charged with 13 dishonesty offences in relation to transfers of money from his clients' self-managed super funds (SMSFs).

ASIC alleged that in 2015 the financial planner engaged in dishonest conduct on six occasions when he transferred funds between his clients' SMSFs to three separate companies of which he was the sole director, and to a super fund of which the financial planner's business was the administrator. ASIC also alleged that on a further seven occasions in 2015, the financial planner dishonestly transferred shares owned by his clients' SMSFs to a company of which he was sole director.

The matter was adjourned for committal mention on 31 January 2019 at the Melbourne Magistrates Court, ASIC said.

SUPERANNUATION

SMSF auditor found negligent and liable for \$2m in damages

An SMSF auditor has been held liable for over \$2m in damages for failing to qualify an audit opinion in relation to an SMSF's loans and investments that were in default.

In awarding the plaintiff \$2.260m in damages (subject to a 10% reduction for contributory negligence), the court found that the auditor had breached the duties owed to the SMSF trustee at common law and under the audit retainer.

The court considered that the SMSF auditor had failed to exercise reasonable care and skill to ensure that the investments were valued at net market value, and failed to exercise judgment in assessing the reasonableness of the values disclosed.

Super funds: proposed changes to non-arm's length income rules

Draft Law Companion Ruling LCR 2018/D10 discusses the proposed amendments to the non-arm's length income (NALI) rules in s 295-550 of ITAA 1997 where a superannuation fund incurs non-arm's length expenditure under a scheme.

These changes are contained in the *Treasury Laws Amendment (2018 Superannuation Measures No 1) Bill 2018*, which is still before the Senate. The draft ruling includes seven practical examples to demonstrate the application of the proposed amendments.

When finalised, the ruling will apply from the date the amendments take effect. As introduced into Parliament, the amendments apply to income derived from the 2018-19 income year, regardless of when the scheme was entered into.

Comments on the draft are due by 22 February 2019.

Total superannuation balance and proposed LRBA changes

The ATO has released draft changes to *Law Companion Ruling LCR 2016/12*, its ruling on calculating an individual's total superannuation balance.

The *Treasury Laws Amendment (2018 Superannuation Measures No 1) Bill 2018* (currently before the Senate) amends the definition of "total superannuation balance" (in s 307-230 of the ITAA 1997) to include an SMSF member's share of the outstanding balance of certain limited recourse borrowing arrangements (LRBAs).

The draft changes to LCR 2016/12 incorporate this proposed measure into the ruling and include two new examples.

Comments are due by 22 February 2019.

Superannuation fees and costs disclosure - transition period extended

ASIC has, again, extended the transition period for superannuation trustees and responsible entities of managed funds and other managed investment schemes to comply with the updated fee and cost disclosure rules for periodic statements and product disclosure statements (PDSs).

To allow for further consultation, *ASIC Corporations (Amendment) Instrument 2018/1088* has further amended Class Order [CO 14/1252] to extend the transition dates by a further 12 months to equivalent dates in 2020. In the interim, ASIC still

expects funds to provide accurate information about fees and costs in PDS and periodic statements, focusing on the key aim of ensuring that consumers are not misled.

Super sole purpose test: ATO decision impact statement on Aussiegolfa

The ATO has issued a [Decision Impact Statement](#) on the Full Federal Court's decision in the *Aussiegolfa* case.

The Federal Court held that an investment by an SMSF in a managed investment scheme to acquire a fractional interest in a property did not breach the sole purpose test.

The ATO warned that the case should not be read as authority for the proposition that a SMSF trustee can never contravene the sole purpose test when leasing an asset to a related party simply because market-value rent is received. Rather, the ATO considered that the Court's finding turned on its particular facts.

Social security valuation factors for defined benefit income streams

The [Social Security \(Pension Valuation Factor\) Determination 2018](#) updates the pension valuation factors used to determine the value of asset-tested income streams that are defined benefit income streams under s 1120 of the *Social Security Act 1991*.

Where a defined benefit income stream is subject to the social security assets test, its value is determined by multiplying the annual payments that are payable to the person by the relevant pension valuation factor. In each case, the relevant pension valuation factor listed in Schedule 2 of the Determination is the factor that corresponds to the age of the person following the beginning of the relevant year, and the indexation factor for the person's income stream.

REGULATOR NEWS

ASIC action on unlicensed SMSF advice on property investments

ASIC has commenced proceedings in the Supreme Court of Queensland against a former financial adviser and Advanced Wealth Financial Services Pty Ltd for allegedly providing financial services without an AFS licence or authorisation. ASIC alleged that the former adviser had recommended clients establish an SMSF to facilitate the purchase of a newly constructed investment property. The adviser also recommended to clients the developers or builders to construct specific properties for development (from whom the adviser allegedly received substantial commissions). However, ASIC said Advanced Wealth Financial Services and the former adviser were not licensed or authorised to provide financial services.

ASIC said it is seeking final orders to restrain the adviser and Advanced Wealth Financial Services from carrying on a financial services business unless authorised.

Financial reporting and accounting changes: ASIC focus areas

ASIC has announced its focus areas for 31 December 2018 financial reports of listed entities and other entities of public interest. ASIC said both full-year and half-year reports at 31 December 2018 must comply with new accounting standards on revenue recognition (AASB 15) and financial instrument values (including hedge accounting and loan loss provisioning).

ASIC said it will be reviewing more than 85 full year financial reports at 31 December 2018 and selected half-year reports.

ASIC cost recovery levies for 2017-18 finalised

Ahead of issuing its final industry cost recovery invoices in January 2019, ASIC has published the levies that regulated sectors will pay for 2017-18 as part of its new industry funding model.

ASIC has calculated the levies payable by industry to recover its total regulatory costs of \$236.6m for 2017-18. Some ASIC-regulated entities will pay a flat levy, with the cost of regulating a subsector shared equally among the entities in that subsector, while others will pay a graduated levy. A summary of the 2017-18 levies is available on the [ASIC Website](#).

Australian Financial Services Licence applications – Further information required

ASIC has recently reviewed its AFS licence application assessment requirements and has determined that forthwith, ASIC is requiring all applicants for a new Australian Financial Services Licence (AFSL) to provide the information specified below.

This additional information will be required for all new and all current AFSL applications (i.e. not AFSL variation applications).

Good fame and character of responsible officers (s913B(3)((a)(i) of the Corporations Act, 2001)

Where a body corporate applies for an AFSL, ASIC now requires the applicant to:

- (a) confirm who the applicant's responsible officer or responsible officers are, and indicate whether they are or are not also the applicant's nominated responsible manager or responsible managers; and
- (b) if the responsible officers are not also the same responsible managers, to provide ASIC with a national criminal history check and solvency check for all responsible officers who are not responsible managers.

A "responsible officer" is defined in section 9 of the Corporations Act, 2001 (Act) as being an officer of the applicant who would perform duties in connection with the holding of an AFSL.

An "officer" is also defined in section 9 of the Act and includes:

- (a) a director or secretary of the Applicant;
- (b) a person who makes, or participates in making decisions that affect the whole, or a substantial part, of the Applicant's business, or who has the capacity to significantly affect the Applicant's financial standing; and
- (c) a person in accordance with whose instructions or wishes the directors of the Applicant are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the Applicant).

(1) **Directors, secretaries and Australian Business Number** (Corporations Regulation 7.6.03)

Previously ASIC has obtained the names and addresses of directors and secretaries from our registers and given body corporate applicants the option to provide either their ABN or their ACN (noting that an ABN for a body corporate is typically derived from its ACN).

Going forward, we will require that body corporate applicants provide this information directly. That will require all applicants to advise ASIC of:

- (a) confirmation of the names and addresses of each director and secretary of the applicant; and
- (b) confirmation of the applicant's Australian Business Number (ABN) if it has an ABN, but provided ASIC with the applicant's Australian Company Number rather than its ABN.

The information ASIC requires all applicants to now provide is set out in the [attached pro forma](#).

If you have any questions please send an email to asiclicensingliaison.melbourne@asic.gov.au

Kind regards

Australian Securities and Investments Commission