

## **SMALL BUSINESS**

### **Key project updates**

Treasury had a great response from the community during the public consultation phase in 2018.

### **Small Business Disputed Tax Debts – Had any clients unfairly where the ATO has commenced early recovery**

Have you had any clients who have had early recovery of disputed tax debts?

## **TAXATION**

### **ATO small business benchmarks updated**

The ATO has released its latest small business benchmarks, providing over 100 different industries with average cost of sales and average total expenses.

### **Corporate Tax Transparency Code changes: Consultation Paper**

Board of Taxation is proposing amendments to the TTC which are outlined in the Consultation Paper that was released on 26 February 2019.

### **Great response to TPB tax practitioner compliance drive**

Over 2,000 tax practitioners have updated their outstanding lodgments and paid millions in debts since the Tax Practitioners Board launched their compliance drive in 2018.

### **Small Business Tax Division established within AAT – Regs**

New Regulations have created a dedicated Small Business Taxation Division within the AAT designed to be more conducive for small businesses to challenge ATO decisions.

### **Compensation for defective ATO administration: Govt review**

Robert Cornall will lead a review of the Scheme for the Compensation for Detriment Caused by Defective Administration (CDDA Scheme).

### **More tax relief for North Queensland flood victims**

ATO has announced that it has extended tax assistance for people impacted by the recent devastating floods in North Queensland.

### **ATO data matching of skilled visa program - notice corrected**

Government has re-published its data matching notice for the temporary skilled visa program.

### **Review of Tax Practitioners Board announced**

Government has announced an independent review of the effectiveness of the Tax Practitioners Board and the *Tax Agent Services Act*.

### **Computer networking student jailed for tax fraud**

ATO has advised that an Indian national who was in Australia studying computer networking has been sentenced to 2 years and 3 months jail for tax fraud.

### **Allocation of tax debts to RBAs: draft legislation released**

Exposure draft legislation proposes to amend the running balance account (RBA) rules to enable the ATO to account for more tax debts in RBAs.

### **Company losses "similar business" test: Bill becomes law**

New law makes amendments to supplement the "same business test" with a "similar business test".

### **Trading stock: standard value of goods taken for private use: 2018-19**

Taxation Determination TD 2019/2 has been released, setting out the standard value of goods taken for private use in 2018-19.

### **Workers' compensation payments were assessable income**

The AAT has confirmed that workers' compensation payments received by a taxpayer were assessable as ordinary income and not loans made to the taxpayer: *Keys and FCT*.

## **Taxpayer loses fuel tax credit case re road user charge**

AAT has dismissed a taxpayer's appeal and held that road user charge under the *Fuel Tax Act 2006* (FTA) applied in the relevant circumstances: *Linfox Australia Pty Ltd and FCT*.

## **Permanent place of abode outside Australia: taxpayer not a resident**

Full Federal Court has found that the taxpayer had a permanent place of abode in Bahrain, even though he lived in temporary accommodation: *Harding v FCT* [2019].

## **Costs of administering class action settlement scheme not deductible**

Federal Court has held that costs incurred in administering a scheme established when a class action on behalf of bushfire victims was settled were not deductible.

## **GST and supplies of interconnection services to foreign Telcos**

The ATO issued an Addendum to GST Determination GSTD 2012/7 on the GST treatment of supplies of interconnection services to foreign Telcos.

## **Tax Practitioner Stewardship Group meeting**

On 1 March 2019 a Tax Practitioner Stewardship Group meeting was held on to discuss topics to assist professional associations to communicate key messages to association members and tax practitioners.

## **FINANCIAL SERVICES**

### **ASIC directed to investigate grandfathered conflicted remuneration**

Treasure has directed ASIC to investigate progress of arrangements to end payments of grandfathered conflicted remuneration in relation to financial advice.

## **SUPERANNUATION**

### **Super Guarantee, STP Bill now law**

*Treasury Laws Amendment (2018 Measures No 4) Bill 2018* has received Assent, with changes to SG integrity package and extending the Single Touch Payroll to all employers.

### **Auditing an SMSF: updated ATO guidance for auditors**

ATO has released updated audit guidance for SMSF auditors to assist with annual SMSF financial and compliance audits.

### **Social security: retirement incomes Bill receives Assent**

Bill to implement the Government's 2018-19 Budget measures in relation to social security means tests for pooled lifetime retirement income streams has received Assent.

### **Draft super law changes to market linked pensions and death benefits**

Exposure draft legislation and regulations propose technical amendments to the superannuation tax law to address some "minor", but important issues.

### **Super Guarantee Amnesty not yet law - ATO to apply existing law**

ATO says if businesses have missed a payment or have not paid an employee's super on time, they are still required to lodge an SG charge statement.

### **Superannuation rates and thresholds for 2019-20**

While the concessional contributions cap will remain unchanged for 2019-20, some superannuation thresholds are set for a small boost from 1 July 2019.

## **REGULATOR NEWS**

### **ASIC refusal to grant limited AFS licence upheld**

The AAT has upheld ASIC's decision refusing to grant a limited AFS licence to Superannuation Warehouse Australia Pty Ltd (SWA).

## **SMALL BUSINESS**

### **Key project updates**

#### **Consultation on options to strengthen the ABN system**

Treasury had a great response from the community during the public consultation phase in 2018.

They received 181 submissions from a broad range of stakeholders, including small business owners, tax practitioners, industry associations, large firms and government agencies. Roundtables were also held with key stakeholders in Canberra, Melbourne and Sydney.

The consultation findings will inform the government's consideration of reforms to improve the ABN system.

### **e-invoicing**

#### **e-invoicing pilots**

We have been in the beta phase since mid-January 2019 to validate the [Digital Capability Locator \(DCL\)](#) and test the framework's interoperability between entities in a production environment. Four digital service providers and a government entity participated.

We are currently in the public beta, which will confirm the complete end-to-end e-invoicing transaction cycle in a production environment with multiple entities, including government. This means we could see a legitimate e-invoice sent through the network very soon!

### **Governance**

Until the end-state governance body is established, the ATO and New Zealand Ministry of Business, Innovation and Employment will manage interim governance arrangements to support early adopters and ensure successful network operations.

Following a ministerial industry consultation in December, last week the Australian and New Zealand Prime Ministers Scott Morrison and Jacinda Ardern [announced the](#)

[establishment of the Australia and New Zealand Electronic Invoicing Board \(ANZEIB\)](#). The board will set the e-invoicing direction and oversee the management and delivery of trans-Tasman e-invoicing arrangements.

The Australian and New Zealand Prime Ministers also announced e-invoicing will adopt the Pan European Public Procurement Online (PEPPOL) interoperability framework. Adopting the PEPPOL framework will integrate trans-Tasman e-invoicing with global standards for a truly connected global trading environment. The framework also allows extension to e-procurement.

The framework closely aligns with the Trans-Tasman framework and we will work with key stakeholders including digital service providers to understand what the transition plan to PEPPOL means for both government and industry.

[Read more about the e-invoicing project.](#)

## **Modernising Business Registers (MBR) and Director Identification Numbers (DINs)**

The ATO has worked with our partner agencies to develop options for streamlining registry functions and upgrading technology systems.

To inform these options, the government consulted on:

- potential policy and legislative changes;
- opportunities for enhancing business registry services;
- funding registry infrastructure; and
- establishing DINs.

The MBR options are currently being considered by the government. As the MBR work progresses, the government is committed to working closely with business, community and other government representatives, including end users of registry services.

The MBR and DIN legislation package was introduced in the House of Representatives on 13 February. The Assistant Treasurer, the Hon Stuart Robert MP, issued a [press release](#) outlining what passing this legislation could mean for the Australian Business Register.

## **Small Business Disputed Tax Debts – Had any clients unfairly where the ATO has commenced early recovery**

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO), has been requested by federal Minister for Small and Family Business, Skills and Vocational Education, Michaelia Cash, to examine the scope of instances where an SME has disputed an assessment by the ATO, and where the ATO has commenced early recovery action.

If you have examples of any clients who have had early recovery of disputed tax debts, can you please forward any details to [tony.greco@publicaccountants.org.au](mailto:tony.greco@publicaccountants.org.au).

## **TAXATION**

### **ATO small business benchmarks updated**

The ATO has [released](#) its latest small business benchmarks, providing over 100 different industries with average cost of sales and average total expenses.

Businesses can see clearly what the relevant benchmarks are for their industry. The benchmark data is drawn from over 1.5 million small businesses around the country.

Assistant Commissioner Peter Holt said that businesses should use the benchmarks to gauge the strength of their business and keep an eye on their competition. The benchmarks also help the ATO identify small businesses that may be doing the wrong thing and not properly reporting some or all of their income. The ATO says that the quickest and easiest way to work out how a taxpayer compares is by using the business performance check tool in the ATO app.

### **Corporate Tax Transparency Code changes: Consultation Paper**

The Board of Taxation commenced a post-implementation review of the Corporate Tax Transparency Code (TTC) in 2018. Following consultation with a wide range of stakeholders, the Board is proposing amendments to the TTC which are outlined in the [Consultation Paper](#) that was released on 26 February 2019. The Code is a set of principles and "minimum standards" to guide disclosure of tax information by businesses. The TTC was developed to encourage large and medium-sized



businesses to publicly disclose their tax affairs to highlight those that are paying their fair share and to encourage all businesses not to engage in aggressive tax avoidance.

The Board is not proposing any changes to the current thresholds for "large businesses" (those with Australian turnover of \$500 million or more) and "medium businesses" (those with Australian turnover of greater than \$100 million but less than \$500 million) in the TTC. Submissions are due by Tuesday, 26 March 2019.

### **Great response to TPB tax practitioner compliance drive**

The Tax Practitioners Board (TPB) has [announced](#) that thousands of tax practitioners have updated their tax affairs since its compliance strategy was announced in December 2018. Over 2,000 tax practitioners have updated their outstanding lodgments, and millions in outstanding tax debts have been repaid, said Michael O'Neill, Secretary/CEO of the TPB. He said that 75% of Australians seek help from a tax practitioner, "and most receive great service".

Mr O'Neill said the TPB remains concerned about those tax practitioners who have failed to meet their own tax obligations and participate in other high-risk behaviours. High-risk practitioners include those who inflate work-related expenses, support the black economy, or who are involved in deliberate fraud and evasion activity. The TPB will also initiate around 30 investigations seeking to sanction those practitioners who fail to comply with their legal and ethical responsibilities.

### **Small Business Tax Division established within AAT – Regs**

The [Administrative Appeals Tribunal Amendment \(Small Business Taxation Division\) Regulations 2019](#) have created a dedicated Small Business Taxation Division within the AAT designed to be more conducive for small businesses to challenge ATO decisions. This new division will have procedural support, assistance through an expanded Outreach program, and a faster decision timeframe to ensure that the cost, time, or lack of understanding of the process does not prevent a small business from challenging an ATO decision. As a general rule the ATO will not be represented in the Small Business Taxation Division by external lawyers.

Importantly, the Small Business Taxation Division will have a reduced application fee of \$500 (instead of the standard application fee of \$920) in respect of an application for review of a small business tax decision, or for multiple applications where at least one of the applications are for review of a small business tax decision. Date of effect:



1 March 2019. Any indexation of the \$500 application fee for small business taxation matters will be delayed until 1 July 2020.

The Small Business Ombudsman, Kate Carnell, has also announced that after lodging an application with the AAT, the small business owner will be assigned a case manager from the new Small Business Taxation Division, and the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) will offer an additional hour with a lawyer, at no cost to the small business. Small business taxation decisions will be finalised within a turnaround time of 28 days from the date of a hearing at the AAT.

### **Compensation for defective ATO administration: Govt review**

The Government has [announced](#) that Mr Robert Cornall, a former Secretary of the Attorney-General's Department, will lead a review of the Scheme for the Compensation for Detriment Caused by Defective Administration (CDDA Scheme). The CDDA Scheme allows Commonwealth Government agencies (including the ATO) to pay discretionary compensation when a person or organisation has suffered detriment as a result of defective administration, but when there is no legal requirement to make a payment.

The Government said it commissioned the review to consider the operation by the ATO of the CDDA Scheme in relation to small business. Mr Cornall will report to the Government in early 2019.

### **More tax relief for North Queensland flood victims**

The ATO has [announced](#) that it has extended tax assistance for people impacted by the recent devastating floods in North Queensland. This means that impacted taxpayers who would normally be required to lodge and pay activity statements, income tax returns and FBT returns in February, March, April and early in May 2019, will now have up to 31 May 2019.

The ATO will continue to remit any interest and penalties that have been applied to accounts since the floods for taxpayers in impacted regions. Likewise, refunds that are due to taxpayers will continue to be fast-tracked without applying for a deferral or a faster refund, the Commissioner said.

## **ATO data matching of skilled visa program - notice corrected**

The Government has [re-published](#) its data matching notice for the temporary skilled visa program. According to the Government, the original notice incorrectly described the role of the ATO in its data matching program with the Department of Home Affairs. As corrected, the data matching program provides that the Department of Home Affairs (including its independent operational arm, the Australian Border Force) will obtain data from the ATO to identify whether business sponsors are complying with their sponsorship obligations (eg paying visa holders correctly) and whether temporary skilled visa holders are complying with their visa conditions (eg to work only for an approved employer, and to work only in the approved occupation).

The ABF will provide biographical details (ie name, address and date of birth) of holders of 457 and 482 visas, along with their business sponsors. This will be matched with ATO records. Where there is a match, the ATO will provide income and employment data to the ABF. It is estimated that this will involve around 280,000 individuals, with the total number of records shared to be around 680,000.

## **Review of Tax Practitioners Board announced**

The Government [has announced](#) an independent review of the effectiveness of the Tax Practitioners Board and the *Tax Agent Services Act 2009* to ensure that tax agent services are provided to the public in accordance with appropriate professional and ethical standards.

The Review will provide another opportunity for the Government to address issues concerning the black economy arising from the Black Economy Taskforce's Final Report. The Government has released the terms of reference for the review and has appointed Mr Keith James as an independent expert to lead the review. Submissions are due by 12 April 2019.

## Computer networking student jailed for tax fraud

The ATO has [advised](#) that a 31-year-old Indian national who was in Australia studying computer networking has been sentenced to 2 years and 3 months jail for his involvement in a tax fraud and crime scheme committed while he was living in Hoppers Crossing, Victoria.

The ATO said that the man was sentenced in the County Court of Victoria on charges relating to attempting to obtain \$22,180 by deception in July 2013 and dealing with the proceeds of crime in respect of \$117,540 between October 2014 and October 2015. The scheme involved use of TFNs to obtain false tax refunds. It also involved his brother and a mutual friend, who were also Indian nationals and arrived in Australia on student visas in June 2008. They both departed Australia in August 2010.

## Allocation of tax debts to RBAs: draft legislation released

The Government has released [exposure draft legislation](#) proposing to amend the running balance account (RBA) rules to enable the ATO to account for more tax debts in RBAs. The draft legislation also proposes technical amendments to the superannuation tax law.

The Exposure Draft - *Treasury Laws Amendment (Miscellaneous Amendments) Bill 2019* will amend the TAA to permit the Commissioner to allocate to an RBA amounts that are the balance of multiple taxation liabilities or credits, and allow amounts within an RBA to be transferred to a different RBA. Submissions are due by 27 March 2019.

## Company losses "similar business" test: Bill becomes law

The [Treasury Laws Amendment \(2017 Enterprise Incentives No 1\) Bill](#) 2017 has received Assent. Originally introduced on 30 March 2017, the Bill makes amendments to supplement the "same business test" with a "similar business test" for the purposes of working out whether a company's tax losses and net capital losses from previous income years can be used as a tax deduction in a current income year.

As with the same business test, the business continuity test applies to the deductibility of tax losses, capital losses and bad debts. It also is relevant to whether a company joining a consolidated group can transfer its losses to the head company of the consolidated group. Like the same business test, the focus of the similar business test is on the identity of the business. It is not sufficient for the current business to be of a similar "kind" or "type" to the former business. Date of effect: The amendments apply to income years starting on or after 1 July 2015.

## **Trading stock: standard value of goods taken for private use: 2018-19**

[Taxation Determination TD 2019/2](#) has been released, setting out the amounts (excluding GST) that the Commissioner accepts for the 2018-19 income year as estimates of the value of goods taken from trading stock for private use by taxpayers in specified industries. These amounts are unchanged from 2017-18.

Taxation Determination TD 2013/3 (value of goods taken from stock for private use for the 2013-14 income year) was withdrawn on and with effect from 27 February 2019. Despite its withdrawal, the Determination remains legally binding on the Commissioner for the 2013-14 income year.

## **Workers' compensation payments were assessable income**

The AAT has confirmed that workers' compensation payments received by a taxpayer were assessable as ordinary income and not loans made to the taxpayer: [Keys and FCT](#) [2019] AATA 238, AAT, Boyle DP, 27 February 2019. The weekly payments were made in respect of an injury as a result of a motor vehicle accident that occurred in the course of his employment. The payments were made firstly by the taxpayer's employer and then from his worker's compensation insurer. Additionally, the taxpayer commenced an action in the District Court of Western Australia against the driver of the vehicle in the accident. The taxpayer was awarded by the District Court with lump sum damages.

In affirming the Commissioner's decision, the AAT found that the compensation payments were assessable income under s 6-5 of the ITAA 1997 and not loans made to the taxpayer. As for the award of damages, the AAT held that they represented "compensation or damages for a wrong or injury ... [the applicant] suffered in ... [his] occupation" for the purposes of s 59-30(3) of the ITAA 1997. Accordingly, the AAT affirmed the decision under review.

## **Taxpayer loses fuel tax credit case re road user charge**

The AAT has dismissed a taxpayer's appeal and held that road user charge under the *Fuel Tax Act 2006* (FTA) applied in the relevant circumstances: [Linfox Australia Pty Ltd and FCT](#) [2019] AATA 222, AAT, Jagot DP, AAT File No: 2017/4041, 22 February 2019.

The primary facts were not in dispute. The taxpayer has a fleet of heavy vehicles that have air conditioning available in the driver's cabin. To power an air conditioning unit, the engine needs to deliver extra torque to it, using more fuel than it would do otherwise. Section 43-10(3) of the *Fuel Tax Act 2006* (FTA) requires the fuel to be acquired to use in a vehicle and the fuel to be acquired for travelling on a public road. Under s 43-10(3), the amount of the fuel tax credit for the fuel is reduced by the amount of the road user charge for the fuel. The taxpayer 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" 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 including s 43-10(3).

### **Permanent place of abode outside Australia: taxpayer not a resident**

Full Federal Court has found that the taxpayer had a permanent place of abode in Bahrain, even though he lived in temporary accommodation, and therefore allowed his appeal against a decision that he was a resident of Australia: [Harding v FCT](#) [2019] FCAFC 29 (Full Federal Court, Logan, Davies and Steward JJ, 22 February 2019). The Full Federal Court looked at the legislative history of the definition of "resident" and concluded that the phrase "place of abode" is not a reference only to a person's specific house or flat or other dwelling. Consequently, the phrase "place of abode" also refers to a town or country.

Their Honours said that the rationale of the exception to the test of residency based on domicile is that a person domiciled in Australia is not to be made subject to federal income tax when they have abandoned in a permanent way their Australian residence. The evidence in this case showed that the taxpayer had abandoned Australia as a place to live and work and that, in the 2011 income year, his permanent place of abode was in Bahrain. Accordingly, he was not a resident of Australia. Further Davies and Steward JJ also held that the quality and nature of the taxpayer's objective connections with Australia, such as his Australian citizenship, the maintenance of a bank account, the maintenance of Australian private health insurance and the purchase of an investment property, were insufficient to overcome the significance of his intention to leave indefinitely.

## **Costs of administering class action settlement scheme not deductible**

The Federal Court has held that costs incurred in administering a scheme established when a class action on behalf of bushfire victims was settled were not deductible: [\*Watson as trustee for Murrindindi Bushfire Class Action Settlement Fund v FCT\*](#) [2019] FCA 228, Federal Court, Middleton J, 28 February 2019. In May 2015, a class action commenced on behalf of the victims of 2009 bushfires in Victoria was settled and \$300m was paid to a Reserve Fund. The taxpayer was appointed administrator of the Settlement Distribution Scheme (SDS) and trustee of the Fund. He had a team (mostly lawyers) to assist him, but also engaged third parties such as legal counsel, medical practitioners and loss adjusters. The bulk of the Fund (\$280m) was invested in a series of term deposits and other interest-bearing bank accounts.

During the relevant income year, the taxpayer (as trustee) derived \$8.35m in interest income and incurred \$4.34m in administration costs. Those costs were approved by the Supreme Court and, under the terms of the SDS, paid out of the interest income. The issue was whether the taxpayer could claim a deduction under s 8-1 of the ITAA 1997 for the administration costs. The Federal Court held that the administration costs related to the distribution of the Fund, not to the derivation of income from bank deposits, and therefore were not incurred in gaining or producing the assessable income of the Fund. In addition, the taxpayer was not carrying on a business, largely because his activities were not commercial in nature, and therefore the administration costs were not necessarily incurred in carrying on a business for income-producing purposes. Finally, although not necessary to do so, the Court said that the administration costs were of a capital nature.

## **GST and supplies of interconnection services to foreign Telcos**

The ATO has issued an [Addendum](#) to GST Determination GSTD 2012/7 on the GST treatment of supplies of interconnection services to foreign Telcos.

The Addendum updates GSTD 2012/7 for recent amendments to s 38-190(3) of the GST Act. These amendments seek to ensure that table item 2 in s 38-190(1) (GST-free supplies to foreign residents) can apply if intangible supplies are made to non-residents who are outside Australia and the supplies are then provided to an Australian-based business recipient.



## **Tax Practitioner Stewardship Group meeting**

The Tax Practitioner Stewardship Group meeting was held on Friday 1 March 2019.

The topics discussed are outlined below to assist professional associations to communicate key messages to association members and tax practitioners.

[Click here](#) to view the key messages.

## **FINANCIAL SERVICES**

### **ASIC directed to investigate grandfathered conflicted remuneration**

The Treasurer has registered an [Instrument](#) directing ASIC to investigate the extent to which persons who are giving or accepting grandfathered conflicted remuneration in relation to financial advice are changing their arrangements to end this payment. This follows the Government's response to the Hayne Banking Royal Commission in which the Government agreed to end the grandfathering of commissions from 1 January 2021.

The Instrument also directs ASIC to investigate the extent to which the benefit of ending the payment of grandfathered conflicted remuneration from 1 January 2021 is passed on to clients, whether through direct rebates or otherwise. Date of effect: 1 July 2019.

## **SUPERANNUATION**

### **Super Guarantee, STP Bill now law**

[Treasury Laws Amendment \(2018 Measures No 4\) Bill 2018](#) has received Royal Assent and makes a number of amendments including the Government's Superannuation Guarantee integrity package and other omnibus measures, such as extending Single Touch Payroll (STP) to all employers, regardless of the number of employees, from 1 July 2019. The Tax Commissioner said the ATO understands that many small businesses and other small employers do not currently use commercial payroll software and there will be circumstances where more time is needed to implement STP or lodge reports.



The Bill also gives the ATO new tools to identify and prosecute employers who are not paying super for their employees. In cases where employers defy directions to pay their superannuation guarantee liabilities, the ATO will be able to apply for court-ordered penalties, including up to 12 months' imprisonment. The legislation also gives the ATO new enforcement and collection powers, including strengthened arrangements for director penalty notices. The Bill will also ensure that a reversionary transition to retirement income streams will always be allowed to automatically transfer to eligible dependants upon the death of the primary recipient.

### **Auditing an SMSF: updated ATO guidance for auditors**

The ATO has [released updated audit guidance](#) for SMSF auditors to assist with annual SMSF financial and compliance audits. The trustees must appoint their SMSF auditor no later than 45 days before the annual return is due to be lodged and provide the auditor with all relevant documentation to conduct and finalise the audit.

If the auditor requests more information from the trustees, the ATO says they must provide it to the auditor within 14 days of written request. A financial and compliance audit must be completed before a fund's SMSF annual return can be lodged.

### **Social security: retirement incomes Bill receives Assent**

The [\*Social Services and Other Legislation Amendment \(Supporting Retirement Incomes\) Bill 2018\*](#) has received Assent. The Bill implements the Government's 2018-19 Budget measures in relation to the Pension Loans Scheme, Work Bonus and social security means tests for pooled lifetime retirement income streams. The Bill establishes new social security means test rules to accommodate the development of "innovative superannuation income streams". It also increases the Work Bonus from \$250 to \$300 per fortnight from 1 July 2019 and extends it to cover income earned from remunerative work that involves personal exertion, including self-employment and work undertaken by contractors or consultants.

The Bill also expands the Government's existing reverse mortgage scheme, the Pension Loans Scheme, so that everyone over Age Pension age (rather than just part-rate Age Pensioners) can receive a Government loan in the form of additional fortnightly income stream payments. The maximum top-up fortnightly income stream will also be increased to 150% of the Age Pension rate (up from 100%). Date of effect: 1 July 2019.

## **Draft super law changes to market linked pensions and death benefits**

The Government has released [exposure draft legislation](#) and regulations proposing technical amendments to the superannuation tax law to address some "minor", but important issues, as part of the ongoing implementation of the super reforms.

The proposed amendments, contained in the *Exposure Draft - Treasury Laws Amendment (Miscellaneous Amendments) Bill 2019* and Draft Regulations, relate to market-linked pensions, defined benefit pensions, death benefit rollovers involving insurance proceeds and innovative income streams. Date of effect: The amendment will apply from 1 July 2017 (the start date of the super reforms). Submissions are due by 27 March 2019.

## **Super Guarantee Amnesty not yet law - ATO to apply existing law**

The [ATO says](#) businesses should be aware that under the current law, if they have missed a payment or have not paid an employees' super on time, they are required to lodge an SG charge statement. Until law giving effect to the proposed Superannuation Guarantee Amnesty is enacted, the ATO says it will continue to apply the existing law, including the application of the mandatory administration component (\$20 per employee per period) to SG charge statements lodged by employers.

The Bill containing the amnesty - the *Treasury Laws Amendment (2018 Superannuation Measures No 1) Bill 2018* - had not been enacted when Parliament concluded on 22 February 2019 (it had been passed by the House of Reps without amendment and was before the Senate). The Bill was introduced into Parliament on 24 May 2018. If passed into law, the proposed amnesty will be a one-off opportunity for employers to self-correct past SG non-compliance without penalty.

## **Superannuation rates and thresholds for 2019-20**

While the concessional contributions cap will remain unchanged for the 2019-20 financial year, certain other important superannuation thresholds are set for a small boost from 1 July 2019. Calculations using the latest indexation factors published by the Bureau of Statistics show that the CGT cap amount for non-concessional contributions will increase to \$1.515m for 2019-20 (up from \$1.480m for 2018-19). The concessional contributions cap will remain unchanged at \$25,000 for 2019-20.

While the super guarantee is frozen at 9.5% until 1 July 2021, the "maximum contribution base" will rise to \$55,270 per quarter from 2019-20 (up from \$54,030 for 2018-19). An employer is not required to provide the minimum super guarantee support for that part of an employee's ordinary time earnings (OTE) above the quarterly maximum contribution base.

The superannuation lump sum low rate cap and "ETP cap" will increase to \$210,000 for 2019-20 (up from \$205,000), while the untaxed plan cap will increase to \$1.515m.

## **REGULATOR NEWS**

### **ASIC refusal to grant limited AFS licence upheld**

The AAT has upheld ASIC's decision refusing to grant a limited AFS licence to Superannuation Warehouse Australia Pty Ltd (SWA): [Superannuation Warehouse Australia Pty Ltd and ASIC](#) [2019] AATA 88, Forgie DP, 31 January 2019.

SWA had applied for a limited AFS licence in 2014 to provide financial product advice in relation to self-managed superannuation funds (SMSFs). After assessing the application, and providing SWA with a right to make submissions and be heard, ASIC determined that SWA's application must be refused. ASIC said it was not satisfied that it had "no reason to believe" that SWA was likely to contravene the obligations that would apply under s 912A of the Corporations Act 2001 if the AFS licence were granted. In upholding ASIC's decision, the AAT found that the sole director and nominated responsible manager of SWA, Mr Johann Heinrich Preller, failed to demonstrate an adequate understanding of the general obligations that would apply to a licensee; and failed to disclose matters that the AAT considered were materially relevant; including a failure to disclose past breaches of other laws to ASIC.

When looking at the overall actions of Mr Preller's and SWA, the AAT said it had reason to believe that SWA was likely to contravene the obligations that apply under s 912A if the licence was granted. In coming to that conclusion, the AAT noted that SWA had also contravened the ASIC Act in relation to "Free SMSF Setup" representations made on its website. The AAT's decision also took into account information referred to ASIC from the ATO about audits of certain SMSFs undertaken by Mr Preller as an approved SMSF auditor. ASIC considered that Mr Preller had failed to identify and report to the ATO a number of contraventions of the



SIS Act by certain SMSFs. While there was no evidence that Mr Preller had since breached his obligations as an SMSF auditor, the AAT said the information was relevant to its consideration of whether a licence should be granted or refused.