

## **TAXATION**

### **Get ready - AUSKey ends on 30 March 2020**

AUSKey will be turned off on 30 March 2020. Are you ready for the new way to access ATO systems?

### **Offshore tax evasion: Australians under investigation**

ATO has confirmed it is investigating several hundred Australians over their involvement in suspected offshore tax evasion.

### **Bushfire-related payments/grants and other support**

The government has announced various support measures for people and businesses affected by the bushfires as well as volunteer firefighters.

### **FBT car parking benefits: ATO scrutiny**

ATO has announced it may contact employers in February to ensure they are correctly calculating the taxable value of FBT car parking benefits.

### **TPB: reasonable care in ascertaining a client's state of affairs**

Tax Practitioners Board has updated its "Reasonable care to ascertain a client's state of affairs" information sheet to include two examples about the Black Economy.

### **Government reminder: new measures operative from 1 Jan**

Government has reminded people that from 1 January 2020, a number of new measures came into effect including super and first home loan deposit scheme.

### **Disclosure of business tax debts by ATO – declaration made**

Declaration has been registered which set out the disclosure rules that apply in relation the disclosure of tax debt information of certain entities to credit reporting bureaus.

## **ATO consultations planned for Jan/Feb 2020**

ATO has updated its open consultation for potential advice and guidance on which they seek comment.

## **STP and automatic reporting of child support: draft legislation**

Government has released draft legislation to automate the reporting of employment income for social security purposes through Single Touch Payroll (STP).

## **Extension of transitional reporting arrangements for charities**

Government has further extended the ACNC transitional reporting arrangements for another five years.

## **DGR status proposed for community sheds: Draft Legislation**

Treasury has released draft legislation proposing to establish a DGR general category for men's sheds and women's sheds.

## **CPI: December quarter 2019 index number**

Australian Bureau of Statistics has released the CPI index number for the December quarter 2019 showing an increase from the September 2019 quarter.

## **Labor's franking credits policy change**

The Federal Opposition leader has stated the Labor won't be taking the same franking credits policy to the next election in 2022.

## **GST and scrap gold scheme: input tax credits disallowed**

AAT has upheld assessments disallowing input tax credits claimed by a precious metal refining company re acquisition and refining of scrap gold.

## **ATO fails to recover overpaid GST refunds from tax agent**

ATO has been unsuccessful in obtaining overpaid GST refunds from a tax agent.

## **Sale of unit by charity was GST-free**

A charity has been successful in arguing that the sale of a unit constituted a “supply of accommodation” and so qualified as a GST-free supply.

## **GST: determining extent of creditable purpose for car expenses**

ATO has issued an Addendum to its ruling on calculating the extent of creditable purpose and has withdrawn a previously issued GST Bulletin.

## **FINANCIAL SERVICES**

### **ASIC banning order: no stay for financial adviser selling his business**

AAT has refused to stay the publication of an ASIC banning order for a financial adviser in the process of selling his business.

### **Compensation scheme of last resort: discussion paper**

Government has released a discussion paper on the proposed compensation scheme of last resort which was one of the recommendations of the Hayne Royal Commission.

### **FASEA responds to feedback on code of ethics guidance**

Financial Adviser Standards and Ethics Authority (FASEA) has released a primary response to submissions re its guidance for financial planners and advisers.

## **SUPERANNUATION**

### **Super changes: ATO industry roadmap update**

ATO has updated its superannuation changes industry roadmap which provides an overview of changes affecting the super industry until the end of March 2021.

### **Super data transformation: second APRA discussion paper released**

APRA has released a second consultation package as part of its multi-year project to enhance its super data collection.

### **ASIC bans adviser for SMSF advice**

ASIC has banned a Perth-based adviser from providing financial services for five years re failure to meet best interest obligations when providing advice on SMSFs.

### **SMSF investment scammer charged by SA police**

A man has appeared in the Adelaide Magistrates Court charged with 69 counts of deception following a cybercrime investigation by SA police.

### **Transition to retirement income streams: ATO guidance**

ATO has issued an updated version of Practical Compliance Guideline PCG 2017/3 that sets out its approach for certain APRA-regulated funds during the transitional period.

## **REGULATOR NEWS**

### **ASIC reminder: whistleblower policies required by 1 Jan**

ASIC has reminded various companies and corporate trustees of superannuation that they are required to have whistleblower policies by 1 January 2020.

### **BoT: use registered tax agents and update**

Board of Taxation has recommended that taxpayers ensure that their agent is registered via the TPB register and has also released the latest update.

### **Financial regulators and information sharing: draft legislation**

Government has released draft legislation requiring ASIC and APRA co-operate and coordinate their roles more effectively.

## **TAXATION**

### **Get ready - AUSKey will be turned off at the end of March 2020**

**Webinar: Get ready for myGovID & RAM – Monday 10 February 2020 at 1 – 2 PM AEDT**

AUSKey will be turned off at the end of March 2020. Are you ready for the new way to access ATO systems?

There will be major changes in how you access ATO online systems. Mobile devices will be the new normal for accessing systems. How will practice owners monitor remote staff usage of ATO online systems under the new regime when access becomes 24/7?

This change not only impacts practitioners, it also impacts practitioners' clients.

**Tony Greco** of the IPA and **ATO staff** will provide a detailed overview of what you need to do before AUSKey is turned off.

This is a must attend session if you have not already engaged in preparing for the imminent changeover.

To view the article providing an overview of the transition from AUSKey to myGovID & RAM link [click here](#).

**REGISTER NOW**

### **Offshore tax evasion: Australians under investigation**

The [ATO has advised](#) that the J5 countries (Australia, UK, US, Canada and the Netherlands) have conducted a globally coordinated day of action against an international financial institution located in Central America to put a stop to the suspected facilitation of offshore tax evasion. The action, involving evidence, intelligence and information collection activities such as search warrants, interviews and subpoenas, has been undertaken across the UK, US, Canada, Australia and the

Netherlands. Significant information was obtained as a result and investigations are ongoing.

The products and services of the financial institution are believed to be facilitating money laundering and tax evasion for customers across the globe, the ATO said. According to the ATO, it is believed that through this institution, a number of clients may be using "a sophisticated system to conceal and transfer wealth anonymously to evade their tax obligations and launder the proceeds of crime". The international investigation started on information obtained by the Netherlands.

The ATO has [confirmed](#) that "several hundred Australians" are suspected of participating in these arrangements and it is currently proceeding with multiple investigations with the support of the Australian Criminal Intelligence Commission (ACIC). It has called for anyone with information about this investigation, or any similar arrangements, to make a tip-off to the ATO either [online](#) or tel: 1800 060 062.

## **Bushfire-related payments/grants and other support**

The government [has announced](#) it will enact legislation to ensure that disaster relief payments made to individuals and businesses impacted by the current bushfires are tax exempt. It will include Disaster Recovery Allowance payments made to individuals and grants or payments to small businesses and primary producers under Disaster Recovery Funding Arrangements. It also [announced](#) that volunteer firefighters will receive financial support from the government for loss of income. Further, the government said it will [provide](#) grant funding for disaster recovery and concessional loans for eligible small businesses that have suffered significant asset loss or significant loss of revenue.

The ATO has [announced](#) an extension of the tax assistance package for people impacted by the 2019-20 bushfires in NSW, Victoria, Queensland, South Australia and Tasmania. Businesses, individuals, and self-managed super funds (SMSFs) in the impacted local government areas will have until 28 May 2020 to lodge and pay BAS and income tax returns. In addition, ATO will also remit any interest and penalties applied to tax debts since the commencement of the bushfires and will not initiate any debt recovery action until at least 28 May 2020.

## **FBT car parking benefits: ATO scrutiny**

The ATO has [announced](#) that it may contact employers from February 2020 to ensure they are correctly calculating the taxable value of FBT car parking benefits. This is regardless of the method used and includes those who have engaged an arm's length valuer. The ATO says in some cases valuers have prepared reports using a daily rate that do not reflect the market value. This means, the taxable value of the benefits gets heavily discounted or even reduced to nil. The ATO reminds employers that it is their responsibility to confirm the basis on which valuations are prepared. They must also examine any valuation they suspect is incorrect or which considerably reduces their liability.

## **TPB: reasonable care in ascertaining a client's state of affairs**

Under the Code of Professional conduct, tax practitioners are required to take reasonable care in ascertaining a client's state of affairs, including black economy behaviour. The TPB (Tax Practitioners Board) has [updated](#) its "*Reasonable care to ascertain a client's state of affairs*" information sheet (TPB(I) 17/2013) to include two new examples about the Black Economy, examples 9 and 10.

The Information Sheet is designed to assist registered tax agents and BAS agents to understand their obligations under subs 30-10(9) of the *Tax Agent Services Act 2009* (TASA) Code of Professional Conduct (Code) item 9. Code Item 9 requires registered agents to take reasonable care" in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement they are making or a thing they are doing on behalf of the client.

## **Government reminder: new measures operative from 1 Jan**

The [Treasurer has reminded people](#) that, from 1 January 2020, a number of new measures came into effect across government including:

- Unscrupulous employers will no longer be able to short-change employees who make salary sacrificed superannuation contributions. From 1 Jan 2020, employers will no longer be able to use salary sacrificed contributions to satisfy their superannuation guarantee obligations.
- Federal government agencies will start paying e-Invoices within five days or pay interest on any late payments. The five-day e-Invoicing payment policy will apply to contracts valued up to \$1 million, where a supplier and a



Commonwealth agency both use the internationally established framework for delivering and receiving invoices in an electronic form.

- Students will now have a single HELP loan limit that combines FEE-HELP, VET Student Loans, VET FEE-HELP and new HECS-HELP incurred on or after 1 January 2020. The HELP loan limit will increase to \$106,319 for most students and to \$152,700 for students studying medicine, dentistry, veterinary science and eligible aviation courses. Additionally, a new web portal called *myHELPbalance* launched on 1 January 2020 to make it easier for students to track their loan and repayment history.
- The First Home Loan Deposit Scheme which will help eligible first home buyers to purchase a modest home with a deposit of as little as 5%. The Scheme provides up to 10,000 guarantees to eligible first home buyers each financial year and applications can be made as part of the standard home loan application process through participating lenders.

### **Disclosure of business tax debts by ATO – declaration made**

ATO officers are permitted to disclose tax debt information of certain entities to credit reporting bureaus, following the enactment of legislation in late 2019. Such bureaus are able to use the information when preparing, updating or issuing credit worthiness reports in relation to the entity. However, this only applies to the tax debt information of an entity that is in the class of entities declared by the Treasurer. The [Taxation Administration \(Tax Debt Information Disclosure\) Declaration 2019](#) has been registered which sets out that the disclosure rules apply in relation to certain entities.

**Date of effect:** The declaration was registered on the Federal Register of Legislation on 23 December 2019. It takes effect 60 days after this, ie 21 February 2020.

### **ATO consultations planned for Jan/Feb 2020**

The ATO has updated its [open consultation](#) webpage for potential advice and guidance on which they seek comment. This is in addition to previously announced planned consultations for January and February 2020. This list is subject to change:

- [Personal services income – meaning of personal services business](#)
- [Employee share schemes – what constitutes a 'genuine disposal restriction'](#)
- [Income tax exempt sporting clubs](#)
- [Hybrid instruments - market value](#)
- [Professional firms - allocation of profit guidelines and Everett assignment.](#)

## **STP and automatic reporting of child support: draft legislation**

Treasury has released [draft legislation](#) which, if implemented, will automate the reporting of employment income for social security purposes through Single Touch Payroll (STP). The measure was first announced in the 2019-20 Federal Budget.

**Submissions** are due by 5 February 2020.

## **Extension of transitional reporting arrangements for charities**

Assistant Minister for Finance [has announced](#) that the Government will further extend the Australian Charities and Not-for-profits Commission (ACNC) transitional reporting arrangements. This additional extension will be in place for the next five years, covering the 2019-20, 2020-21, 2021-22, 2022-23 and 2023-24 financial years. The previous extension of the transitional reporting arrangements applied until the 2018-19 financial year. These transitional reporting arrangements aim to reduce the reporting burden on charities that are required to report to multiple regulators by allowing the ACNC to use its discretion to accept documents that were originally prepared for another regulator.

## **DGR status proposed for community sheds: Draft Legislation**

The Treasury has released [exposure draft legislation](#) proposing to establish a DGR general category for men's sheds and women's sheds. The Draft Bill proposes to add "community sheds" to the deductible gift category in s 30-20 of the ITAA 1997 subject to it satisfying certain conditions. If a shed wants to seek DGR endorsement, it will need to be registered with the ACNC. If a shed is already registered with the ACNC, then from the commencement of the proposed DGR shed legislation, it will be able to apply directly to the ATO for DGR endorsement. DGR status for community sheds will allow donors of these organisations to claim a deduction for gifts of \$2 or more.

**Date of effect:** The amendments would apply in relation to gifts and contributions made on or after 1 July 2020.

**Submissions** are due by 14 February 2020.

## **CPI: December quarter 2019 index number**

The Australian Bureau of Statistics (ABS) has [released](#) the CPI index number for the December quarter 2019 showing a 0.8 increase from the September 2019 quarter to 116.2. This CPI index number is used to index certain tax and superannuation amounts under Subdiv 960-M of the ITAA 1997. The index number is also used for FBT purposes concerning remote area benefits (under ss 60 and 60AA of the FBTAA).

## **Labor's franking credits policy change**

Federal Opposition Leader Anthony Albanese has [stated](#) that Labor won't be taking the same franking credits policy to the next election in 2022. However, Mr Albanese declined to rule out any changes to franking credits for the 2022 election. Rather, he said Labor will go through the detail of the policy area and make a decision down the track.

## **GST and scrap gold scheme: input tax credits disallowed**

The AAT has upheld assessments disallowing \$122m in input tax credits claimed by a precious metal refining company in relation to a scheme involving the acquisition and refining of scrap gold: [ACN 154 520 199 Pty Ltd \(In Liq\) and FCT \[2019\] AATA 5981](#) (AAT, File No: 2016/6242, McCabe DP and Lazanas SM, 20 December 2019).

The taxpayer, a "refiner of precious metal", claimed it was entitled to GST input tax credits because it paid a GST-inclusive price when it acquired scrap gold for the refinery from third-party suppliers. The taxpayer processed the scrap gold into investment-grade bullion with a metallic fineness of at least 99.5%. It then made what it claimed were GST-free supplies of "precious metal" to bullion dealers, relying on s 38-385 of the GST Act. For the 2014 financial year, the taxpayer's turnover surged to \$746m. The taxpayer claimed input tax credits under Div 11 with respect to the GST that was paid on the acquisition of the scrap gold during 2012 to 2014. At issue was whether the taxpayer was entitled to treat its supply of precious metal to the dealers as GST-free supplies under Div 38 of the GST Act.

In upholding the assessments to deny the input tax credits claimed by the taxpayer, the AAT agreed with the Commissioner that there was no "creditable acquisitions" by the taxpayer within the meaning of s 11-5 of the GST Act. Therefore, the AAT held the taxpayer had no entitlement to input tax credits because it could not satisfy the "no refining issue" in Div 38. Specifically, the taxpayer failed to satisfy the

requirement in s 38-385(a) that the supply of "precious metal" would be GST-free if "it is the first supply of that precious metal after its refining by, or on behalf of, the supplier" as the taxpayer was not refining the scrap gold it acquired. This was because the scrap gold in question had already been refined to the requisite standard of at least 99.5% fineness (see definition of "precious metal" in s 195-1 of GST Act) before it was delivered to the taxpayer's refinery.

In the alternative that the AAT was wrong, and the taxpayer could satisfy Divs 11 and 38, the AAT nevertheless upheld the Commissioner's declarations applying the anti-avoidance provisions under Div 165 of the GST Act to deny \$73m of the claimed input tax credits. The AAT concluded that there was a "scheme" for the purposes of s 165-10(2)(a) of the GST Act involving a carousel type arrangement based on supplying gold for refining after deliberately altering its form. In addition, the AAT upheld the additional \$58m of administrative penalties imposed by the ATO for the false or misleading statements made by the taxpayer in its BASs. The ATO has issued a [media release](#) welcoming the decision.

### **ATO fails to recover overpaid GST refunds from tax agent**

The ATO has been unsuccessful in obtaining overpaid GST refunds from a tax agent: [DCT v MWB Accountants Pty Ltd \[2019\] VCC 1516](#) (County Court of Victoria, Marks J, 20 September 2019).

The agent prepared various draft BASs for a client which recorded amounts owing to the ATO, which the client duly paid. However, the agent then lodged different BASs on behalf of the client which showed amounts owing by the ATO to the client (due to GST entries). Over the 2013-2016 period, the ATO made nine refund payments, amounting to some \$228,711. The amounts were paid into the agent's bank account, not the client's, as the client had nominated this account for ATO purposes. The client never received any of the payments, ie they were retained by the agent. The client subsequently engaged a new tax agent who lodged correct returns and the full amount of tax was paid. The ATO then allocated the overpaid refunds to the agent's RBA, which gave rise to the agent having an RBA deficit debt of \$228,711, which the Commissioner sought to recover under s 8AAZN of the TAA.

The District Court dismissed the Commissioner's claim. The tax agent never became the recipient of the administrative overpayment within the meaning of s 8AAZN. This meant that the allocation of the amounts to the agent's RBA was "an error" and therefore ineffective. The Commissioner in fact intended to pay the client, not the agent. The client was therefore the recipient for the purposes of the TAA.

## Sale of unit by charity was GST-free

A charity has been successful in arguing that the sale of a unit constituted a "supply of accommodation" and so qualified as a GST-free supply: [Melbourne Apartment Project Pty Ltd \(as Trustee for Melbourne Apartment Project\) v FCT \[2019\] FCA 2118](#) (Federal Court, Kerr J, 19 December 2019).

The case revolved solely around the question of whether a supply of a freehold title to a unit was a "supply of accommodation" for the purposes of s 38-250(1)(b)(i) of the GST Act. That provision relevantly provides that a supply of accommodation by a qualifying charity is GST-free if the consideration for the supply is less than 75% of the GST-inclusive market value of the supply. The charity purchased units from the family trust which had built them. The purchase price of each unit aligned with the amount paid by the trust for the purchase of the land and the construction costs (ie it was sold at cost). The charity then sold units to purchasers who had been identified as suitable purchasers by the Melbourne City Mission and who were then living in social housing. The sale price listed on the sale contract was market value (ie at the time of signing). However, at settlement the purchaser paid the charity an amount equal to what the charity had paid the family trust. This was less than 75% of the market value. The remaining amount, ie the difference between the contract price and the settlement payment, was secured under an "advance agreement". This required the purchaser to repay the debt at the earlier of 99 years or when the purchaser sold the relevant unit (although there was scope for debt reduction within 4 years for some sales). Further, the charity assigned all interest and estate in the agreement and the associated debt to a PBI (as a gift).

The Federal Court found in favour of the charity. It rejected the view that the term "accommodation" as used in 38-250(1)(b)(i) could exclude a place that is used by a person as their place of residence due to an "inherent temporal limitation". Rather, the term included a unit in which a person resides, whether their right of residency is conferred by licence, lease or ownership. In the context of the meaning of a "supply of accommodation", there was nothing in s 38-250(1)(b)(i) that would flag a difference between the transfer of a bundle of rights that constitute a freehold estate (which the Commissioner contended fell outside the meaning of a supply of accommodation) and the transfer of a bundle of rights that constitutes a leasehold estate (which the Commissioner accepted was within the meaning). In other words, there was nothing in s 38-250(1)(b)(i) which justified treating the lease of a unit as a GST-free supply, but not the sale of a unit.

## **GST: determining extent of creditable purpose for car expenses**

The ATO has issued an [Addendum to GSTR 2006/4](#), its ruling on calculating the extent of creditable purpose. GSTR 2006/4 has been updated to include methodologies for determining the extent of creditable purpose for car expenses. These methodologies were previously in GST Bulletin GSTB 2006/1, which has now been [withdrawn](#).

The two methods that may be used under income tax law to calculate deductions for motor vehicle expenses – the cents-per-kilometre method and the logbook method – can also be used to determine the amount of the input tax credit for GST purposes. Either method may be adopted and there is no requirement to have the GST method correspond to what is used for income tax purposes. Further, while the cents-per-kilometre method for income tax purposes is limited to the first 5,000 business kilometres in an income year, there is no such restriction for GST purposes (provided the entity's records are sufficient to show that the extent of creditable purpose is a fair and reasonable approximation of the actual use of the car).

**Date of effect:** The Addendum applies from 22 January 2020.

## **FINANCIAL SERVICES**

### **ASIC banning order: no stay for financial adviser selling his business**

The AAT has refused to stay the publication of an ASIC banning order for a financial adviser in the process of selling his business: [Cassidy and ASIC \[2020\] AATA 66](#) (AAT File No: 2019/7601, McCabe DP, 23 January 2020)

On 14 November 2019, ASIC banned the Adelaide-based financial adviser for six years for allegedly breaching ss 946A, 946B and 1041G of the Corporations Act 2001. As a result of the banning order, the adviser is prevented from providing financial services. The adviser has asked the AAT to review the banning decision. In addition, he applied for orders to stay the implementation of the ASIC banning order under s 41(2) of the Administrative Appeal Tribunal Act 1975 until the conclusion of the review process.



While the adviser has already ceased providing financial services, he is in the final stages of completing the sale of his firm and is concerned that adverse publicity of the ASIC banning order may complicate the handover. The sale of business contract includes a provision whereby the price paid to the applicant will be reduced if the business has lower billings than projected. According to the applicant, that may occur if his clients are "spooked" by news of regulatory action against him. In rejecting the application to stay the publication of the banning order, the AAT ruled that the interest of clients and the wider public in being informed outweighed the applicant's interests.

Subsequently, ASIC [published](#) a media release about the banning of the Adelaide financial adviser for six years. ASIC alleged that the adviser acted dishonestly by concealing from his AFS licensee the recommendations he gave to 54 clients to invest in the start-up company Bux Global Limited. In making these recommendations, ASIC alleged that he failed to act in his clients' best interests and to provide them with a statement of advice.

### **Compensation scheme of last resort: discussion paper**

Treasury has released a [discussion paper](#) on the proposed Compensation Scheme of Last Resort (CSLR). The Hayne Royal Commission final report recommended the establishment of a CSLR for consumers and small businesses.

The Government will establish the CSLR to ensure that consumers and small businesses receive compensation where a financial service provider is found to have engaged in misconduct and the provider is unable to pay. The discussion paper seeks views on the following four aspects of a CSLR: coverage, beyond personal advice; funding arrangements; compensation to be paid; and managing scheme evolution.

**Submissions:** closes on 7 February 2020.

### **FASEA responds to feedback on code of ethics guidance**

The Financial Adviser Standards and Ethics Authority (FASEA) has released a [Preliminary Response to Submissions](#) in relation to its Financial Planners and Advisers Code of Ethics 2019 Guidance ([FG002](#)). FASEA received 26 submissions from organisations and individual financial advisers which highlighted some key

themes regarding compliance with the Code from 1 January 2020. FASEA's preliminary response seeks to clarify questions raised in relation to the interpretation and application of the Code, including:

- implementation timeframe;
- assessing conflicts of interest;
- referral fees;
- client consent;
- ability to provide scaled advice and intra-fund advice;
- application of the Code to business structures; and
- forms of advice beyond personal advice on retail products (including wholesale and general advice).

FASEA said further consultation will be conducted in 2020 to clarify these issues and provide additional responses on other areas of concern, including perceived inconsistencies between the Code legislative instrument, explanatory statement and the guidance (specifically related to Standard 3 - conflicts of interest). Stakeholders have also requested additional examples to provide positive case studies to demonstrate behaviour that would satisfy the Code requirements.

## **SUPERANNUATION**

### **Super changes: ATO industry roadmap update**

The ATO has updated its [Superannuation changes industry roadmap](#) which provides an overview of changes affecting the superannuation industry until the end of March 2021. Items listed include:

- Super Guarantee amnesty - subject to pending legislation, the Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019, in February 2020, the ATO said it is planning to raise super guarantee charge (SGC) assessments for periods from 1 July 1991 where an employer voluntarily discloses an SG shortfall and meets the SG amnesty provisions. The SG amnesty will cease 6 months after royal assent to the Bill. Note that in the absence of law to implement the amnesty, the ATO must continue to apply the existing law: see ATO Website (ref: [QC 55626](#));



- Single Touch Payroll (STP) - from April 2020, the ATO Online employee onboarding changes will include selecting a super account for employer contributions;
- myGovID to replace AUSKey from 1 April 2020;
- Contributions for older Australians - subject to pending legislation, the ATO says it has begun to deploy a build to increase the non-concessional contributions bring-forward period for those aged 66 years. Draft amendments proposed for s 292-85 of the ITAA 1997 in relation to the bring forward rule are yet to be introduced. From 1 July 2020, super funds will also be able to accept the following contributions for individuals: (i) aged 65 and 66 making voluntary contributions without meeting the work test; (ii) under 75 receiving contributions made by another person on their behalf if they meet the work test. This 2019-20 Federal Budget measure is subject pending legislation yet to be released.

### **Super data transformation: second APRA discussion paper released**

APRA has [released](#) a second consultation package as part of its multi-year project to enhance its superannuation data collection. The package (discussion paper and draft reporting standards) forms part of Phase one of the Superannuation Data Transformation (Breadth), which will address the most urgent gaps in APRA's data collection, particularly for choice products and investment options. The two topics dealt with in the second consultation package are: performance (which will facilitate the assessment of member outcomes and performance for choice products etc) and member accounts (which will provide more granular information on member demographics data). The first consultation package, which was released in early November 2019, outlined the scope and objectives of APRA's super data transformation.

**Submissions** on these proposals will close on 14 February 2020.

### **ASIC bans adviser for SMSF advice**

ASIC has [banned](#) a Perth-based adviser from providing financial services for five years for failure to meet best interests obligations when providing advice on SMSFs. It found that the adviser had recommended that his clients set up SMSFs with low superannuation balances. As a result of this advice, the clients were exposed to financial harm because the ongoing SMSF costs were higher than the costs of their existing superannuation fund.

According to ASIC, the adviser failed to make reasonable enquiries to ascertain his clients' relevant personal circumstances before giving advice and failed to conduct a reasonable investigation into alternative products before he recommended that his clients establish SMSFs and, among other things, invest in the Bateau Global Opportunities Fund. The adviser was the ultimate owner and beneficiary of the SMSF administration service he recommended and the investment manager of Bateau Global. In addition, the adviser also failed to disclose his interests in entities related to him and the associated benefits and remuneration he would receive that could influence the advice he provided.

### **SMSF investment scammer charged by SA police**

A 33-year-old man has [appeared](#) in the Adelaide Magistrates Court charged with 69 counts of deception following a cybercrime investigation by SA Police. The man was allegedly involved in the management of victim's self-managed superannuation funds (SMSFs) and was acting as their investment manager. SA Police said the victim's investments were sent to overseas locations and initially provided strong returns. However, they subsequently could not be accessed by the victims and their funds were lost. The victims were then asked to provide further funds to recoup their losses. SA Police warned people looking to invest their superannuation in investment schemes at overseas locations to be extremely vigilant.

### **Transition to retirement income streams: ATO guidance**

The ATO issued an updated version of *Practical Compliance Guideline PCG 2017/3* (Supporting the implementation of the changes to the taxation of transition to retirement income streams). This Guideline sets out the ATO's compliance approach in 2017-18 for certain APRA-regulated superannuation funds that faced practical difficulties in complying with the super reform measures during the transition period. The Guideline has been updated to reflect recent amendments to the law.

## **REGULATOR NEWS**

### **ASIC reminder: whistleblower policies required by 1 Jan**

ASIC has issued a [media release](#) reminding public companies, large proprietary companies and corporate trustees of superannuation entities regulated by APRA that they are required to have a whistleblower policy and make it available to their officers and employees by 1 January 2020.

ASIC plans to survey whistleblower policies from a sample of public companies, large proprietary companies, and corporate super trustees during 2020 to review compliance with the legal requirements and the extent to which these companies are implementing good practices.

### **BoT: use registered tax agents and update**

The Board of Taxation has issued a [media release](#) recommending that taxpayers ensure that their tax agent is registered (via the [TPB register](#)). It has also [released](#) its latest update. The update was largely a look back on the Board's achievements for 2019. This included the [release](#) of four Board reports on [residency](#), [small business tax concessions](#), [asset merger rollover relief](#), and [income tax treatment of certain forms of deferred consideration](#). The update also noted: the publication of the consultation paper forming the second phase review of the corporate tax residency rules; announcement of a review into CGT rollover rules; and that as at December there were 179 signatories to the voluntary code, with 168 of those organisations having published at least one report. The next Board meeting will be in February 2020.

### **Financial regulators and information sharing: draft legislation**

Treasury has released [draft legislation](#) which will require ASIC and APRA to co-operate and co-ordinate their roles more effectively. This was a recommendation of the Hayne Royal Commission final report. The Treasurer [says](#) that the new rules will oblige ASIC and APRA to: co-operate with one another; share information to the maximum extent practicable; and notify the other whenever it forms the belief that a breach of the law for which the other regulator has enforcement responsibility has occurred.



These obligations are supplemented by the release of the updated Memorandum of Understanding between APRA and ASIC, which implements Recommendation 6.10 of the Hayne Royal Commission. The exposure draft legislation will also implement recommendation 6.11 by making amendments to formalise the meeting procedures which apply to ASIC, bringing them in line with those that apply to APRA.