

TAXATION

JobKeeper reference date now 1 July 2020

Statutory Rules has been registered to change the JobKeeper employment reference date to 1 July 2020 from 1 March 2020.

Changes to JobKeeper August declaration

The ATO has reminded JobKeeper recipients that the August monthly business declaration is different as recipients will need to claim for three fortnights.

ATO update on the JobKeeper

ATO has stated that the recent changes to the JobKeeper employee eligibility rules mean that employers already enrolled in JobKeeper may be able to receive the payment.

Latest corporate tax transparency report to be released

ATO has advised that it is soon to release its 2018-19 report of entity tax information containing certain tax information about corporate tax entities.

COVID-19 and FBT: ATO updates advice

ATO has updated its information on COVID-19 and fringe benefits tax including information on work from home devices and protective equipment.

FBT: cars garaged at employee's home

ATO has published a fact sheet to assist employers in determining if they have a liability where cars are garaged at employees' home due to COVID-19.

Pandemic leave disaster payment extended to Tasmania

The government has announced the Pandemic Leave Disaster Payment will be extended to workers in Tasmania.

Fifth offender convicted in 19-year tax fraud investigation

ATO and the AFP have issued a media release on the winding up of a 19-year joint tax fraud investigation.

ATO scam report for July 2020

ATO has released its monthly report July 2020 ATO impersonation scam report containing data on scam reports and phishing scams.

Vic: land tax and other concessions

Victorian government has announced further land tax relief, as well as an extension of and enhancements to the commercial and residential tenancy relief schemes.

ATO releases corporate plan 2020-21

ATO has released its corporate plan for 2020-21 outlining the ATO's focus areas and priorities for the financial year.

JobKeeper amending legislation

The Bill to extend the end date of the JobKeeper scheme and amend tax secrecy provisions has been introduced into the House of Reps.

GST assessments upheld

The owner of a brothel has been unsuccessful in arguing that the only service it provided was room hire.

FINANCIAL SERVICES

Financial counselling for small businesses: AFS licensing exemption

An instrument has been lodged which provides an AFS licensing exemption for financial counselling services provided to small businesses with less than 100 employees.

ASIC commences legal action: fee for no service

ASIC has commenced civil penalty proceedings in the Federal Court against some entities which were subject to case studies before the Royal Commission.

ASIC legal action for inadequate systems

ASIC has commenced proceedings in the Federal Court against an AFS licensee for allegedly failing to have adequate cyber security systems.

Financial adviser featured in Royal Commission pleads guilty

ASIC has reported that a financial adviser has plead guilty to a dishonesty charge in relation to conduct that was revealed in a case study by the Royal Commission.

SUPERANNUATION

SMSF auditor number misuse: ATO mailout

ATO has released its finding on SMSF auditor number misuse mailout to SMSF auditors for SMSF annual returns lodged for the 2018 income year.

ASIC acts against SMSF auditors without recent experience

ASIC has cancelled or imposed conditions on a number of auditors of SMSFs for not maintaining an appropriate level of audit experience.

Downsizer super contributions from part disposal of home

A company has released administrative binding advice it has received from the ATO regarding the part disposal of a person's home and downsizer contributions.

APRA super statistics for June 2020

APRA has released its quarterly superannuation performance publication and the quarterly MySuper statistics report for the June 2020 quarter.

REGULATOR NEWS**TPB releases corporate plan for 2020-21**

TPB has unveiled its 2020-21 corporate plan outlining its purpose, vision and values for the coming year.

ASIC grants hardship relief for withdrawal from frozen funds

ASIC has announced new relief measures for operators of managed funds to facilitate withdrawals by members facing financial hardship during COVID-19.

TAXATION

JobKeeper reference date now 1 July 2020

The [Coronavirus Economic Response Package \(Payments and Benefits\) Amendment Rules \(No 7\) 2020](#), has been registered to change the JobKeeper employment reference date to 1 July 2020 (from 1 March 2020) for determining employee eligibility, with effect from 3 August 2020, as previously announced by the Treasurer.

The changes do not affect any entitlements payable under the existing JobKeeper rules, ie for JobKeeper fortnights ending on or before 2 August 2020.

The extension and changes to the rules bring the estimate of JobKeeper payments overall to \$101.3 billion.

The other changes that have previously been announced will be dealt with in separate amendments, namely:

- the extension of JobKeeper payments to 28 March 2021 (otherwise due to finish on 27 September 2020);
- changes to the turnover test (ie from projected turnover (ie prospective) to actual turnover (retrospective)); and
- the two-tiered payment system.

Eligibility expanded

As stated above, for JobKeeper fortnights beginning on or after 3 August 2020, the reference date for determining certain employee eligibility conditions has changed from 1 March 2020 to 1 July 2020. However, the amending Rules preserve the existing eligibility of employees for JobKeeper payments. Under the amendments, these are termed "1 March 2020 employees".

As a result, for JobKeeper fortnights beginning on or after 3 August 2020, an individual can be an eligible employee if he or she:

- meets the eligibility requirements with reference to the new 1 July 2020 date; or
- qualifies as a 1 March 2020 employee.

Accordingly, where all other eligibility criteria are met, for JobKeeper fortnights that began on or after 3 August 2020, the JobKeeper scheme can apply if an employer:

- employed a new employee by 1 July 2020, even if that employee has previously been an eligible individual for another entity under the JobKeeper scheme (whether as an employee or business participant) provided that the employee was not employed or actively engaged in the business of the other entity by 1 July 2020;
- had existing employees who were not eligible due to the former reference date of 1 March 2020, but become eligible employees under the new 1 July 2020 reference date;
- had existing employees who were eligible prior to the commencement of the instrument and they continue to be employed without any termination in employment and are not excluded from being eligible employees; or
- qualified for JobKeeper payments in respect of an eligible employee prior to the amendments commencing, and the employee ceased to be employed after 1 March 2020 but was later re-employed by the same employer. However, this only applies if no other entity qualified for JobKeeper payments in respect of that individual for any JobKeeper fortnight.

Employees who have moved to a new employer by 1 July 2020 can re-nominate with a new employer.

The existing notification requirements for entities that first start to participate in the JobKeeper scheme continue to apply. In addition, the amending Rules require employers that have already elected to participate in the JobKeeper scheme give a notice to **all** employees, other than:

- employees that the entity has previously given a notice in writing advising that the entity has elected to participate in the JobKeeper scheme;
- employees that had previously provided the employer with a nomination form in relation to the JobKeeper scheme;
- individuals who the entity reasonably believes does not satisfy the 1 July 2020 requirements; and
- for employers that are ACNC-registered charities that have elected to disregard certain government and related supplies and the individual's wages and benefits are funded from such government and related sources.

Date of effect: The amending Rules commenced on 15 August 2020 and apply to JobKeeper fortnights that began on or after 3 August 2020, ie they are retrospective.

Changes to JobKeeper August declaration

The August JobKeeper monthly business declaration is due by 14 September. The ATO [has reminded](#) JobKeeper recipients that the August declaration is "different", as recipients will need to claim for the following three fortnights:

- Fortnight 9 – commencing 20 July;
- Fortnight 10 – commencing 3 August; and
- Fortnight 11 – commencing 17 August 2020.

The declaration should include employees that are newly eligible and employed as at 1 July 2020, ie as a result of the change in the reference date. This can be done as part of the monthly declaration, however newly eligible employees as at 1 July can only be included from fortnight 10. This is because the reference date of 1 July 2020 takes effect from 3 August.

For fortnights 10 and 11, employers have until 31 August to meet the wage condition for all new eligible employees included in the JobKeeper scheme, under the 1 July eligibility test.

ATO update on the JobKeeper

The ATO has [stated](#) that the recent changes to the JobKeeper employee eligibility rules mean that employers already enrolled in JobKeeper may be able to receive the JobKeeper payment for more of their employees.

The key date for assessing which employees are eligible for JobKeeper is now 1 July 2020, rather than 1 March 2020. The ATO states that employers should start paying new eligible employees a minimum of \$1,500 per fortnight from the JobKeeper fortnight 10, which commenced on 3 August. However, for the fortnights commencing on 3 August 2020 and 17 August 2020, the ATO is allowing employers until 31 August 2020 to meet this wage condition for all new eligible employees included in the JobKeeper scheme under the 1 July eligibility test.

Employers can commence claiming for JobKeeper for the new eligible employees from 1 September, when they can lodge their August monthly declaration claim. The ATO also said that announcements made by the Government regarding other changes to JobKeeper (including the extension) are subject to the passage of

legislation. These changes will not impact JobKeeper payments until after 28 September 2020.

Latest corporate tax transparency report to be released

The ATO [has advised](#) that it is soon to release its 2018-19 Report of entity tax information. The ATO is required to do this annually, ie publish certain tax information about corporate tax entities. It covers an Australian public or foreign owned entity with a total income of \$100m or more; an Australian resident private company with a total income of \$200m or more; and an entity reporting PRRT payable.

The published report will set out each entity's total income, taxable income, and total tax payable (based on tax returns). Entity details for 2016-17 or 2017-18 tax returns will be included if they were lodged or processed after 1 September 2019 and the information has not been published previously. These details will be taken directly from tax returns and will not include any ATO-initiated amendments. Entities that would expect to be included which haven't been advised by the ATO by 6 October 2020 should contact the ATO.

COVID-19 and FBT: ATO updates advice

The ATO has updated its [COVID-19 and fringe benefits tax](#) webpage.

The webpage states that not-for-profits may provide salary-packaged meal entertainment to their employees to take advantage of an exempt or rebatable cap. Arrangements to provide meals may qualify as salary-packaged meal entertainment, depending on the facts and circumstances of the meal and how the meal is provided. This will be relevant for hospitals and aged care facilities, and the like.

Given the "unprecedented circumstances brought about by COVID-19", the ATO will not apply compliance resources to scrutinise expenditure under these arrangements for the:

- FBT year ending 31 March 2021 – where meals are provided by a supplier that was authorised as a meal entertainment provider as at 1 March 2020; and
- FBT year ended 31 March 2020 – when restaurants and public venues were closed.

Other topics

The webpage also states that an employer may incur an FBT liability for the provision of items of protection, such as gloves, masks, sanitisers and anti-bacterial spray. However, the webpage goes on to say that these benefits may be exempt from FBT under the emergency assistance exemption, eg for work including medical, cleaning, hairdressing, retail, restaurants etc.

Other topics addressed include:

- working from home devices;
- garaging work cars at employees' homes;
- log books;
- emergency accommodation, food and transport;
- emergency health care;
- flu vaccinations for employees working from home;
- COVID-19 testing; and
- cancelled events.

FBT: cars garaged at employee's home

The ATO has published a [fact sheet](#) to assist employers in determining if they have a liability where cars are garaged at employees' homes because of COVID-19. The fact sheet explains that where employers use the operating cost method, they may not have an FBT liability where the car has not been driven, or has only been driven briefly for maintenance purposes, during the period it has been garaged at the employee's home. It also explains how an employer can use logbooks where driving patterns are impacted by COVID-19 and comply with the legislative requirements.

Pandemic leave disaster payment extended to Tasmania

The Prime Minister has [announced](#) that the Pandemic Leave Disaster Payment – which has been available to Victorian workers – will be extended to workers in Tasmania, effective from 22 August 2020.

The payment is a one-off, \$1,500 lump sum payment to help workers during their 14-day self-isolation period. Individuals may be eligible if they:

- are instructed by a health official to stay home from work;
- have used up all their sick leave entitlements (including any special pandemic leave);
- are not receiving income, earnings or salary maintenance from work; and
- are not receiving the JobKeeper Payment or other forms of Australian Government income support.

People may also be eligible if they are the parent or guardian of a child aged 16 or under who is a close contact or has tested positive for COVID-19. Although designed as a one-off payment, the press release states that "the payment can be claimed again should an extended quarantine period longer than 14 days be instructed by health officials".

Affected individuals should call 180 22 66 or contact the Services Australia [website](#). The PM notes that, in Victoria, more than \$8.8 million has been paid for almost 6,000 granted claims since 6 August.

Fifth offender convicted in 19-year tax fraud investigation

The ATO and the Australian Federal Police (AFP) have issued a [media release](#) on the winding up of a 19-year joint tax fraud investigation, ending with the conviction of a man in the District Court of Queensland.

The 60-year-old man, sentenced to six years jail, was referred to as a "key promoter of an intricate tax evasion scheme" designed to strip Australian companies of their assets and leave them in a position where they were unable to pay their tax liabilities. The illegal scheme concocted a way for companies to transfer all assets of the company to its previous controllers which is then followed by the appointment of new straw directors and shareholders before the company was wound up leaving the entities with no means to pay the tax liabilities.

Assistant Commissioner Aislinn Walwyn said the investigation resulted in almost \$4.5 million of lost revenue being recovered. The civil audit commenced in April 2000 as a result of a tip off from a tax agent. The case was referred to the AFP in December 2000 which commenced criminal investigations in early 2001. Four other men have already been sentenced as part of the investigation. This latest conviction marks the fifth and final conviction, bringing the two-decade joint investigation to an end.

ATO scam report for July 2020

The ATO has released its monthly report [July 2020 ATO impersonation scam report](#). It notes the following, ie that during July 2020 there were:

- 2,175 scam reports recorded via the ATO's dedicated phone line;
- the ATO received 2,943 online scam reports;
- 280 phishing scam emails were reported to (email: reportemailfraud@ato.gov.au).

Overall, \$172,540 was reported as being paid to scammers. In addition, there were 352 clients who provided scammers with sensitive personal identifying information in July.

Vic: land tax and other concessions

The Victorian Government has [announced](#) further land tax relief, as well as an extension of and enhancements to the commercial and residential tenancy relief schemes.

There are two components to the land tax relief announced:

- an increased 50% waiver of the property's 2020 land tax and deferral to 31 March 2021 for landlords of residential and commercial properties, who provide eligible tenants with a 50% or more outright rent waiver for at least three months; and
- owner-occupiers of commercial properties can obtain a 25% waiver of the property's 2020 land tax, and payment of the remaining tax can be deferred to 31 March 2021, if they would be eligible under the Commercial Tenancy Relief Scheme as if they were a tenant.

The current ban on evictions and rental increases [will be extended](#) to the end of the year. The eviction moratorium applies to both commercial and residential tenancies, until 31 December.

ATO releases corporate plan 2020-21

The ATO has released its [corporate plan](#) for 2020-21. This outlines the ATO's focus area and priorities for the financial year.

The Commissioner, Chris Jordan, states that the ATO will continue to deliver on "core functions" – such as Tax Time 2020, the Black Economy Program, and the Tax Avoidance and Serious Financial Crime taskforces – and strengthen superannuation systems and services, while delivering significant outcomes across eight strategic initiatives, including the unlocking of the ATO's "data potential".

The report also highlights progress made before the impact of COVID-19. For example, the successful deployment of a single client accounting system (ASFP). The Commissioner proudly noted that this was one of the largest and most complex data conversions in Australian Public Service history, resulting in a "whole-of-client account view".

JobKeeper amending legislation

The [Coronavirus Economic Response Package \(Jobkeeper Payments\) Amendment Bill 2020](#) has been introduced into the House of Reps. It proposes to:

- extend the end date of the JobKeeper scheme from 27 September 2020 to 28 March 2021;
- amend the tax secrecy provisions to allow tax officers to disclose otherwise protected information relating to JobKeeper; and
- extend certain provisions of the Fair Work Act implemented to deal with the COVID-19 pandemic, as well as creating two categories of employers for the purposes of that Act.

The extension of the end date was announced by the Prime Minister on 21 July 2020, along with other changes. While the changes to the JobKeeper employment reference date have been implemented by Statutory Rules (now 1 July 2020, rather than 1 March), the changes relating to the split payment rate and retrospective testing of eligibility have yet to be made.

Extension to the JobKeeper scheme

JobKeeper is now scheduled to run until 28 March 2021. Any further extension will require separate amending legislation.

Date of effect: day of assent.

Amendments to the secrecy provisions

Section 355-65 of Sch 1 to the TAA permits a taxation officer to make a disclosure of protected information if an item in the table covers the making of the disclosure.

The amendments will facilitate information sharing at the request of a State or Territory agency, provided such disclosures are for a purpose relating to COVID-19. In effect, the changes will simply fine tune existing exemptions which also allow disclosures to an Australian government agency that are necessary for the purpose of preventing or lessening a serious threat to an individual's life, health or safety, or a serious threat to public health or public safety.

Date of effect: day of assent.

JobKeeper-related provisions of the Fair Work Act 2009

The Bill proposes to extend the operation of the otherwise temporary JobKeeper provisions in Pt 6-4C of the Fair Work Act until 28 March 2021, in line with the extended end date of the JobKeeper scheme (above). However, the provisions in Pt 6-4C concerning annual leave will still be repealed at the start of 28 September 2020, as per the original repeal date.

The Bill will also create two broad categories of employers who can access particular Pt 6-4C flexibilities in certain circumstances from 28 September 2020:

- employers who are eligible for JobKeeper payments after 28 September 2020 ("qualifying employers"); and
- employers who did receive one or more JobKeeper payments in the period prior to 28 September 2020, but no longer qualify for a payment after 28 September 2020 ("legacy employers").

Qualifying employers will retain access to the full range of flexibility measures in Pt 6-4C in the extended period of operation of the provisions (with the exception of annual leave provisions being repealed on 28 September 2020).

Legacy employers who have a certificate stating they have experienced a 10% decline in turnover will have access to modified flexibility measures from 28 September 2020.

Date of effect: (i) the JobKeeper enabling directions or agreements under the existing provisions of Pt 6-4C for qualifying employers will automatically be extended from the date of assent; (ii) the changes relating to legacy employers will commence on date of assent, to allow them (and their employees) to put arrangements in place for any new JobKeeper enabling directions or agreements made under the new provisions to be in effect from 28 September 2020.

GST assessments upheld

The owner of a brothel has been unsuccessful in arguing that the only service it provided was room hire. GST assessments had been issued on the basis the taxpayer was liable to pay GST on the full amount paid in connection with the supply of sexual services: [Zhang and FCT \[2020\] AATA 3008](#) (AAT, McCabe DP and Mitchell M, 27 July 2020).

The dispute related to BASs issued during 2015 and 2016. This taxpayer did not include any of the fees paid by clients to individual sex workers operating from the premises in its returns. Rather, the BASs only recorded monies received in connection with what the taxpayer said was the "room hire fee" component of services provided. It claimed any sexual services were provided by independent contractors, who dealt separately with their own clients. The AAT found in favour of the ATO. The taxpayer's evidence was inconsistent and inconclusive to discharge the onus of proof. The AAT had particular concern with the website used by the brothel, which told "a quite different story" to what the taxpayer contended. It had pictures and profiles of workers that suggested the taxpayer was running a "conventional brothel". It ran counter to the taxpayer's argument that this was merely "bait advertising", that it only provided a "sex-on-premises" venue where individual workers and clients – having struck their arrangements independently – agreed to meet.

The taxpayer had sought to have its related income tax assessments remitted for reconsideration if its GST contentions were unsuccessful, ie on the basis that the full payment should be assessed in its hands. (This might have had implications for penalties and also for franking credits.) This was also unsuccessful. The books and records were in an "unsatisfactory state", such that it was "impossible to be confident in the story they tell". As the onus of proof was not satisfied, the objection decision in relation to the amended income tax returns was affirmed. The taxpayer also scored an unwanted trifecta when it came to penalties. The evidence, "such as it was", did

not support a finding that the taxpayer merely failed to take reasonable care. Penalties had been imposed on the basis of intentionally disregarding the law and there was no reason for remission.

FINANCIAL SERVICES

Financial counselling for small businesses: AFS licensing exemption

[ASIC Corporations \(Amendment\) Instrument 2020/635](#), provides an AFS licensing exemption for financial counselling services provided to small businesses with less than 100 employees.

The Instrument amends the existing [ASIC Corporations \(Financial Counselling Agencies\) Instrument 2017/792](#) which provides an AFS licensing exemption for financial counselling agencies providing free financial product advice (in limited circumstances). The Instrument extends this exemption so that it applies where financial counselling services are provided to small businesses (with less than 100 employees) as well as individuals.

Date of effect: 15 August 2020.

ASIC commences legal action: fee for no service

ASIC has commenced civil penalty proceedings in the Federal Court against StatePlus Super, BT Funds Management and Asgard for allegedly charging fees for no service (FFNS). This brings to four the number of enforcement action commenced by ASIC concerning FFNS activity. These matters were the subject of case studies before the Banking Royal Commission.

The [concise statement](#) for the action against State Super Financial Services Australia Limited (StatePlus) alleges that at least 36,592 members were charged fees for financial advice that StatePlus promised it would provide but did not provide. ASIC also alleges that StatePlus failed to fulfill its promise of an annual financial planning review and to contact members as part of the annual review. The maximum civil penalty for the contraventions ASIC has alleged are between \$1.7m and \$2.1m

per contravention of s 12DI(3) of the ASIC Act. For its part, StatePlus has already remediated over \$100m to affected members. (Source: [ASIC media release 20-189MR, 20 August 2020](#).)

The [concise statement](#) for the action against Asgard Capital Management Limited (Asgard) alleges that 404 customers were charging adviser fees for financial advice that was not provided. It also alleges that Asgard and BT Funds Management Limited made misleading representations in half-yearly or annual account statements regarding the charging of the adviser fees. The Royal Commission found that BT and Asgard charged around 767 members fees for financial product advice that was not provided. The Westpac Group has remediated \$634,490 to affected members. (Source: [ASIC media release 20-190MR, 20 August 2020](#).)

ASIC legal action for inadequate systems

ASIC has [commenced](#) proceedings in the Federal Court against an AFS licensee, RI Advice Group Pty Ltd (RI Advice), for allegedly failing to have adequate cyber security systems to guard against, and respond to, a "brute force" cyber-attack.

ASIC's action follows a number of alleged cyber breach incidents at certain authorised representatives (ARs) of RI Advice, including an alleged cyber breach incident at Frontier Financial Group Pty Ltd, as trustee for The Frontier Trust (Frontier) from December 2017 to May 2018.

ASIC alleges that Frontier was subject to a "brute force" attack whereby a malicious user successfully gained remote access to Frontier's server and spent more than 155 hours logged into the server, which contained sensitive client information including identification documents. FFG did not detect the FFG breach until more than 3 months after it had commenced. ASIC alleges that RI Advice failed to have implemented (including by its ARs) adequate policies, systems and resources which were reasonably appropriate to manage risk in respect of cybersecurity and cyber resilience.

Until 1 October 2018, RI Advice was a wholly owned subsidiary of the ANZ Banking Group. It subsequently became a wholly owned subsidiary of IOOF Holdings Limited. As at 1 May 2020, RI Advice had 293 ARs, comprising 191 individuals and 102 corporate entities.

ASIC claims that many of the cybersecurity documents were ANZ-developed documents specific to the ANZ and its IT environment, and were not tailored to RI Advice and its ARs' requirements. Further, ASIC alleges that RI Advice and its ARs had not implemented and operationalised these ANZ-developed documents as part of RI Advice's governance and management of cybersecurity resilience and risk management.

ASIC's [concise statement](#) is seeking civil penalty orders from the Federal Court and declarations that RI Advice contravened ss 912A(1)(a), (b), (c), (d) and (h) and (5A) of the Corporations Act 2001. It is also seeking compliance orders for RI Advice to implement systems that are reasonably appropriate to adequately manage risk in respect of cybersecurity and cyber resilience. A report will also be required from a suitably qualified independent expert confirming that such systems have been implemented.

For its part, IOOF said RI Advice has indicated a willingness to work co-operatively with ASIC in respect of these matters.

Financial adviser featured in Royal Commission pleads guilty

ASIC has [reported](#) that a Sydney-based financial adviser has pleaded guilty in the Downing Centre Local Court to a dishonesty charge in relation to his conduct that was revealed in a case study by the Banking Royal Commission. ASIC said the former adviser pleaded guilty to one "rolled up" charge of dishonest conduct (s 1041G of the Corporations Act 2001) and two counts of making a disclosure document available to a person knowing it to be defective (s 952D(2)(a)(ii) of the Corporations Act).

ASIC alleged that the former adviser, between 2010 and 2017, whilst the CEO, director and senior financial adviser of his own firm, engaged in the dishonest conduct when he made false representations that he had a Master of Commerce when he did not hold that qualification. The former adviser will be sentenced on 13 October 2020.

SUPERANNUATION

SMSF auditor number misuse: ATO mailout

The ATO has [released](#) its findings on SMSF auditor number (SAN) misuse mailout to SMSF auditors for SMSF annual returns (SAR) lodged for the 2018 income year.

The findings included:

- 2,062 responses received from auditors, a 40% response rate; and
- 137 auditors confirmed 832 instances of SAN misuse connected to 832 funds and 230 tax agents.

The ATO said that it is in the process of investigating the tax agents who prepared the 2018 SAR for the 832 funds to determine whether the misuse was deliberate or inadvertent. So far, of the 832 funds, the ATO found 358 received no audit whilst the rest had varied circumstances such as error in reporting SAN misuse, funds audited after the original SAR was lodged, etc. The ATO also stipulated its concern where in relation to the 2018 SAR mailout, a number of auditors later confirmed that they had initially reported SAN misuse in error after the tax agent confirmed they were the correct auditor on the SAR.

The ATO has [advised](#) that it will commence in early September its SMSF auditor number (SAN) misuse mailout for SMSF annual returns (SAR) lodged for the 2019 income year. SMSF auditors will once again be issued a client list from the ATO asking them to confirm they conducted the audit. The mailout aims to identify instances of SMSF auditor details being incorrectly reported on the SAR, or where the SAR is being lodged prior to audit completion.

ASIC acts against SMSF auditors without recent experience

[ASIC has](#) cancelled, or imposed conditions on, a number of auditors of self-managed super funds (SMSFs) for not maintaining an appropriate level of audit experience.

Following a recent review, ASIC said it has cancelled the registration of 36 approved SMSF auditor and imposed conditions on a further six auditors. All 42 of these SMSF auditors had not issued any SMSF audit reports over the past five years. Accordingly, ASIC considered that they did not have the necessary practical experience required to perform SMSF audits.

In relation to the six auditors who had conditions imposed on them, ASIC said it was satisfied that it would be an appropriate alternative to cancellation considering the auditor's individual circumstances and other relevant (non-SMSF audit) experience. The various conditions imposed across these auditors included independent reviews, education and a competency exam.

Downsizer super contributions from part disposal of home

DomaCom Limited has reported that it has received confirmation from the ATO that a part disposal of a person's home can be eligible for making a superannuation downsizer contribution. Previously, it was generally considered that a person aged 65 or over had to sell or dispose of their entire interest in their home (held for 10 years or more) to be eligible to make a downsizer contribution under s 292-102 of the ITAA 1997.

In an [ASX media release](#), DomaCom said it has received ATO administrative binding advice (ABA) confirming that a person aged 65 or over can sell a part interest in their home and make a super downsizer contribution up to \$300,000 per person. While a residential property cannot be sold by an individual to their SMSF, DomaCom says the ATO advice means that a part interest in a home could potentially be sold to a home equity release provider. The capital proceeds received from such a disposal could then be contributed to a superannuation fund (including an SMSF) as a downsizer contribution, subject to the other conditions in s 292-102. As always, appropriate professional advice should be obtained.

Downsizer contributions do not count towards an individual's non-concessional contributions cap. Such contributions are also exempt from the contribution rules for people aged 67 and older, and the restrictions on non-concessional contributions for people with total superannuation balances above \$1.6m. A downsizer contribution is non-deductible and must be made within 90 days after the change in ownership of the home.

APRA super statistics for June 2020

APRA has released its [Quarterly Superannuation Performance](#) publication and the Quarterly MySuper Statistics report for the June 2020 quarter showing that total superannuation assets were down -0.6% to \$2.864 trillion over the year to 30 June 2020. MySuper total assets were \$731bn (down -3.3%). Self-managed

super fund (SMSF) assets totalled \$722bn as at 30 June 2020 (down -2.1% from June 2019 but up 5.1% from March 2020).

Benefit payments for the year to June 2020 were 31.2% higher than to June 2019. Quarterly benefit payments were \$37.4bn, significantly higher than the March 2020 quarter (\$21.1bn) and the June 2019 quarter (\$20.5bn) due to payments under the COVID-19 early release scheme which came into effect on 20 April 2020. Amounts transferred to the ATO as inactive low balance accounts are also counted in the June 2020 figure.

Contributions in the June 2020 quarter were \$33.6bn, which was an increase of 17% from the March 2020 quarter but 1.4% less than in the June 2019 quarter. Personal contributions for the June 2020 quarter (\$7.8bn) were particularly soft, recording the lowest June quarter figure since June 2016. Total contributions for the year ending June 2020 were \$120.6bn.

REGULATOR NEWS

TPB releases corporate plan for 2020-21

In a [media release](#), the TPB unveiled its [2020-21 corporate plan](#) in conjunction with its 10th anniversary, outlining its purpose, vision and values for the coming year. TPB Chair, Ian Klug AM in his introductory message spoke to the importance of the profession's role in upholding the integrity of the tax system as well as implementing government reform initiatives. "The way we achieve our purpose, as set out in this plan, includes supporting honest practitioners, who make up the large majority, through registration services, complaint resolution, investigations of alleged misconduct and, where appropriate, sanctions," Mr Klug said.

Mr Klug also referred to the TPB compliance program, modified to target high risk tax practitioners, particularly those who have attempted to defraud government stimulus measures where he said 2020-21 will see an increased focus on those high-risk tax practitioners and unregistered advisers.

ASIC grants hardship relief for withdrawal from frozen funds

ASIC has [announced](#) new relief measures for operators of managed funds to facilitate withdrawals by members facing financial hardship during the COVID-19 pandemic.

The conditional relief, to be implemented by the [ASIC Corporations \(Hardship Withdrawals Relief\) Instrument 2020/778](#), will apply to all responsible entities (REs) of registered managed investment schemes (MIS) that have become "frozen funds". The relief measures will ease some of the statutory restrictions on REs and improve access to investments by members who meet specific hardship criteria. ASIC previously granted hardship relief to REs of frozen funds on a case-by-case basis only. ASIC has also issued Information Sheet [INFO 249](#) to provide updated guidance about frozen funds.

To be eligible to make hardship withdrawals from frozen funds, a member must meet at least one "hardship criteria" such as severe financial hardship, unemployment for over three months, compassionate grounds or permanent incapacity. An eligible member may: (i) withdraw up to a total of \$100,000 of their investment per calendar year; and (ii) receive up to four withdrawals per calendar year.