

TAXATION

ATO data-matching program with Home Affairs

ATO has registered a notice of a data-matching program to access data from the Department of Home Affairs on passenger movements.

TPB guidance: use of client TFN in emails

TPB has released a Practice Note providing guidance on the use and disclosure of a client's TFN and TFN information in email communications.

Higher Producer Offset rate to be retained

Government has announced changes to the Div 376 tax offset arrangements for Australian film production expenditure.

ASIC delegation of registry functions: legislative instrument

Government has registered a legislative instrument which permits ASIC to delegate certain registry functions to the Commonwealth registrars.

Application of promotor penalty laws

Practice Statement has been issued by the ATO which guides the ATO staff on applying the promoter penalty laws.

Scheme promoters ordered to pay penalties

Various scheme promoters have been ordered by the Federal Court to pay penalties totalling just over \$9.4m.

GST scrap gold case: special appeal refused

High Court has dismissed Commissioner's appeal from a Full Federal Court decision that unanimously upheld a gold refiner's claim for input tax credits totalling \$122 million.

FINANCIAL SERVICES

PAYG obligations for remediation payments: financial institutions

ATO has released a fact sheet on its Legal Database outlining the PAYG withholding and reporting obligations for financial institutions re remediation payments.

Internal dispute resolution for financial services firms

ASIC has published an article highlighting the significant legal issues to be addressed by financial services firms to meet the internal dispute resolution standards.

FASEA chair reappointed

Government has announced the reappointment of Catherine Walter as part-time Chairperson of the Financial Adviser Standards and Ethics Authority (FASEA).

ASIC extends RoA relief for COVID-19 financial advice

ASIC has extended until 15 October 2021 one of its temporary relief measures for the provision COVID-19 financial advice.

SUPERANNUATION

SMSF auditor independence: ATO guidance updated

ATO has updated its Auditor Independence guidance for approved SMSF auditors including reciprocal auditing arrangements.

Regulations to align with Reuniting More Super Act 2021

Government has registered a legislative instrument which aligns regulations with changes made through the Reuniting More Super Act.

Super funds and non-arm's length expenditure

ATO's transitional compliance approach for the non-arm's length expenditure rules set out in PCG 2020/5 has been extended to 2021-22.

REGULATOR NEWS

Board of Taxation CEO update

The interim CEO of the Board of Taxation has issued an update for April 2021 including various submissions to its CGT roll-over project.

Modernising Business Registers

The Modernising Business Registers (MBR) program, reached a key milestone with the announcement of a new modern whole-of-government registry platform, the Australian Business Registry Services (ABRS). When fully established, the ABRS will bring together 31 registers currently managed by ASIC and the Australian Business Register, managed by the Australian Taxation Office (ATO) on one system. The ABRS will progressively establish between 2021 and 2024. IPA was part of the consultation process and is pleased with this outcome which should assist all members.

Franchising: is it for you?

The ACCC has developed a new resource for those who are considering purchasing a franchise.

ACCC Small Business and Franchising Consultative Committee

The IPA is represented on this committee and for this committee and for the latest updates see below.

TAXATION

ATO data-matching program with Home Affairs

The ATO has registered a [notice of a data-matching program](#) to access data from the Department of Home Affairs on passenger movements during the 2016–17 to 2022–23 financial years. The notice provides that the objectives of the program are to:

- promote voluntary compliance and increase community confidence in the integrity of the tax and superannuation systems;
- improve knowledge of the overall level of identity and residency compliance risks including registration, lodgment, reporting and payment obligations;
- gain insights from the data to help develop and implement administrative strategies to improve voluntary compliance, which may include educational or compliance activities;
- identify ineligible tax and superannuation claims;
- refine existing risk detection models and treatment systems to identify and educate individuals and businesses who may be failing to meet their registration, lodgment and payment obligations and help them comply; and
- identify potentially new or emerging non-compliance and entities controlling or exploiting those methodologies.

The ATO estimates that approximately 670,000 individual records will be obtained each financial year.

For this program, data items include:

- full name;
- personal identifier (PID);
- date of birth;
- gender;
- arrival date;
- departure date;
- passport information; and
- status types (visa status, residency, lawful, Australian citizen).

TPB guidance: use of client TFN in emails

The Tax Practitioners Board (TPB) has [released](#) a Practice Note ([TPB\(PN\) 4/2021](#)) providing guidance on the use and disclosure of a client's TFN and TFN information in email communications.

The Practice Note clarifies that its purpose is not for the administration of any specific legislation relating to the use and disclosure of TFNs, as the administration of those laws are covered under the TFN Rule issued under the Privacy Act. However, the TPB states that it expects practitioners to consider the relevant legislation and guidance, and in particular the TFN Rule, when including TFNs in email communications, and whether such record or disclosure is appropriate and secure in the circumstances. The TPB sets out the steps to consider when using and disclosing a client's TFN information in emails, noting that there is always a risk of emails being intercepted by third parties.

The TPB also [conveyed](#) its appreciation for submissions it received on its [draft continuing professional education \(CPE\) policy](#) which was released in February 2021. The TPB said it received 95 submissions, 82 of those from individual tax practitioners, and is in the process of reviewing them before finalising its position on the matter. The TPB also said that it may consult further, if required.

Higher Producer Offset rate to be retained

The Minister for Communications, Urban Infrastructure, Cities and the Arts, Mr Paul Fletcher, has [announced](#) changes to the Div 376 tax offset arrangements for Australian film production expenditure.

Specifically, the Government will retain the Producer Offset rate at 40% for feature films with a theatrical release. The rate was otherwise scheduled to decrease to 30% on 1 July 2021. The Government also announced the extension of the \$50 million Temporary Interruption Fund (TIF) for a further 6 months, to provide coverage for productions that commence principal photography prior to 31 December 2021.

ASIC delegation of registry functions: legislative instrument

The Government has registered legislative instrument [Australian Securities and Investments Commission Amendment \(Delegation\) Regulations 2021](#) which permits ASIC to delegate certain registry functions to the Commonwealth Registrars, ie the Commonwealth Registrar, Business Names Registrar, Corporations Act Registrar and the National Consumer Credit Protection Registrar.

Date of effect: 2 April 2021.

Application of promotor penalty laws

[Practice Statement PS LA 2021/1](#), guides ATO staff on applying the promoter penalty laws. These rules seek to deter two types of conduct: (1) the promotion of tax avoidance schemes and tax evasion schemes; and (2) the implementation of schemes promoted on the basis of a product ruling, where the scheme implemented is materially different from that described in the product ruling. PS LA 2021/1 also considers the superannuation rules dealing with illegal early release schemes.

PS LA 2021/1 focuses on the indicators of potential promoter behaviour, the decision-making process and the remedies available to the ATO where these rules are breached.

Date of effect: 8 April 2021.

PS LA 2021/1 consolidates two earlier Practice Statements on the promoter penalty laws - PS LA 2008/7 (tax exploitation schemes) and PS LA 2008/8 (schemes involving product rulings) - both of which were withdrawn on 8 April 2021. The withdrawn Practice Statements included numerous examples and flowcharts, which are absent from PS LA 2021/1.

Scheme promoters ordered to pay penalties

A solicitor, accountant and financial planner have been ordered to pay penalties totalling just over \$9.4m for promoting tax exploitation schemes: [FCT v Rowntree \(No 3\) \[2021\] FCA 306](#) (Federal Court, Rares J, 12 March 2021).

In *FCT v Rowntree* [2020] FCA 1322, the Federal Court found that a solicitor (Dr R), a chartered accountant (Mr D) and a financial planner (Mr M) were promoters of tax exploitation schemes in breach of the promoter penalty rules in Div 290 in Sch 1 to the TAA. The schemes involved the sale of interests in carbon or REDD credits in each of the 2009, 2010, 2011 and 2012 income years (REDD is an acronym for "reducing emissions from deforestation and forest degradation").

The Court has now imposed the following pecuniary penalties:

- Dr R - \$7.75m in total, covering all four scheme years (2009 to 2012);
- Mr D - \$210,000 in total, covering 2011 and 2012; and
- Mr M - \$1.45m in total, covering all four scheme years (2009 to 2012).

The penalties varied between 62.5% and 64% of the maximum penalties that could be imposed. The largest penalties were imposed on Dr R because he was considered to be "central to" the creation, operation, marketing and derivation of profit from the schemes.

The Court wanted to send a loud and clear message that "engaging in the promotion and marketing of tax schemes involving tax avoidance and tax evasion ... cannot be tolerated by the community", particularly where professional lawyers, accountants and financial planners are involved.

The "aggressive" marketing of the schemes and the "calculated and deliberate attempt to gain profit for the promoters at the expense of both the investors and the public purse" were also relevant factors in setting the penalties (Mr D's profit was, of course "of a more modest nature"). However, the lack of contrition or remorse on the part of the promoters was not relevant.

A case study by the ATO

The ATO released a [case study](#) article outlining the seriousness of tax exploitation schemes and their promotion, as demonstrated in the case. The ATO said the

penalties handed down reflects on the severity of the actions of the trio of professionals who showed little regard for their clients who trusted their advice.

GST scrap gold case: special appeal refused

The High Court has dismissed the Commissioner's appeal from the Full Federal Court decision in ACN 154 520 199 Pty Ltd (in liquidation) v FCT [2020] FCAFC 190. It [stated](#) that the application "would not enjoy sufficient prospects of success to warrant the grant of special leave to appeal".

The Full Federal Court had unanimously upheld a gold refiner's claim for input tax credits totalling \$122 million, although the issue of the possible application of the anti-avoidance provisions was remitted back to the AAT.

FINANCIAL SERVICES

PAYG obligations for remediation payments: financial institutions

The ATO has released a [fact sheet](#) on its Legal Database outlining the PAYG withholding and reporting obligations for financial institutions that may arise from making remediation payments.

Financial institutions may make remediation payments to customers who have suffered a loss or detriment caused where a systemic issue caused by misconduct or other compliance failure in relation to the services they provide. The intention is to place affected customers in the position they would have been in had the misconduct or other compliance failure not occurred.

To the extent the remediation payment relates to a Part VA investment, PAYG withholding is required to be made from the payment where the payment is income for the investor and they have not, by the time the payment is made:

- quoted a TFN or ABN in connection with their investment; or
- informed the financial institution that they are exempt from quoting a TFN.

Internal dispute resolution for financial services firms

ASIC has published an [article](#) highlighting the "significant legal issues to be addressed" by financial services firms to meet the internal dispute resolution standards set out in RG 271 which takes effect on 5 October 2021. Jane Eccleston, ASIC Senior Executive Leader, Superannuation, said that the updated obligations of RG 271 are "more comprehensive" than the existing requirements and focus with more granularity on the internal operations of the financial service provider.

ASIC said that the standards in RG 271 will likely require trustees to thoroughly review existing processes, systems and resources. Accordingly, ASIC said trustees should not squander the time between now and October 2021 to ensure they are up to mark. This means ensuring processes, staffing and systems are in place to achieve the 45-day complaint response timeframe (or 90 days for death benefit objections) stipulated with the expectation that:

- the issues the complainant has raised have been identified and addressed;
- the response is tailored and includes facts that support the findings; and
- sufficiently detailed reasons are given which are proportionate to the complexity of the complaint so that the complainant can understand the decision.

ASIC also highlighted the importance of trustees having the right governance arrangements and operational transparency in place and RG 271's emphasis on identifying and managing systemic issues using complaints data. In addition, ASIC is proposing to implement requirements for internal dispute resolution data reporting.

FASEA chair reappointed

The Assistant Minister for Superannuation, Financial Services and the Digital Economy, Senator Jane Hume, has [announced](#) that Catherine Walter has been re-appointed as the part-time Chairperson of the Financial Adviser Standards and Ethics Authority (FASEA).

The release also advises of the previously announced changes to FASEA, ie that its standard-making functions would be moved into Treasury and the remaining elements of FASEA's role, including administering the adviser examination, will be incorporated into the Financial Services and Credit Panel within ASIC.

Ms Walter has been reappointed from 11 April 2021, and as Chairperson of FASEA will continue to work with the Board consulting on and refining the Standards for Financial Advisers that remain under FASEA's responsibility until the organisation is wound up. No timeframe for this is provided in the release.

ASIC extends RoA relief for COVID-19 financial advice

ASIC has registered the [ASIC Corporations \(COVID-19 - Advice-related Relief\) Instrument 2021/268](#) which extends until 15 October 2021 one of its temporary relief measures for the provision COVID-19 financial advice. The original Instrument provided 3 temporary relief measures until 15 April 2021 to facilitate retail clients receiving financial product advice in relation to COVID-19.

ASIC [said](#) it will further extend until 15 October 2021 the relief measure that allows financial advisers to provide existing clients with a record of advice (RoA), rather than a statement of advice (SoA), for financial advice due to COVID-19. The other 2 measures set out in the original ASIC Instrument will not be extended as the Early Release of Super Scheme concluded on 31 December 2020 and the "urgent advice measure" is no longer necessary.

The Instrument specifies that an SoA is not required to be provided in relation to COVID-19 advice until 15 October 2021 where all of the following are satisfied:

- the providing entity reasonably considers the advice is required because of the adverse economic effects of COVID-19;
- the client must be an existing client who was previously given an SoA by the providing entity or an "associated providing entity" (eg an authorised representative of the AFS licensee); and
- the COVID-19 advice being provided must be in relation to one or more classes of financial product(s) in relation to which the client was previously given personal advice by the providing entity (or associated providing entity). For example, if the client was previously only given personal advice about managed investments, they cannot now be given personal advice about risk insurance in an RoA under this relief.

The RoA must include, among other things, a brief explanation of the changes in the client's relevant personal circumstances since the previous personal advice. Note that the client is no longer required to expressly instruct the adviser that the personal advice is required because of the adverse economic effects of COVID-19. ASIC said

it will continue to monitor the appropriateness of this temporary relief for RoAs and further extend it, if appropriate.

SUPERANNUATION

SMSF auditor independence: ATO guidance updated

The ATO has updated its [Auditor Independence guidance](#) for approved SMSF auditors. Specifically, the reciprocal auditing arrangements and referral source issues for firms when re-structuring.

The guidance (updated to 1 April 2021) clarifies that the ATO will not consider it an independence threat if the fees generated from one referral source is less than 20% of a firm's total fees, where the firm is well established and mainly derives its income from providing auditing services. The guidance also makes clear that despite the 20% "threshold", other factors may still be relevant in evaluating the level of any threats to independence. In some cases, the ATO says a lower or greater threshold may be appropriate.

If the fees generated from one referral source are greater than 20% of the firm's total fees, depending on the circumstances, the ATO considers that the independence threats may be significant enough to warrant the firm implementing appropriate safeguards to reduce those threats to an acceptable level.

Regulations to align with Reuniting More Super Act 2021

The Government has registered legislative instrument [Treasury Laws Amendment \(Reuniting More Superannuation\) Regulations 2021](#). The instrument basically aligns regulations with the changes made through the Treasury Laws Amendment (Reuniting More Superannuation) Act 2021 (the "Act").

The regulations affected are the Superannuation (Unclaimed Money and Lost Members) Regulations 2019, the Retirement Savings Accounts Regulations 1997 and the Superannuation Industry (Supervision) Regulations 1994.

The amendments introduced in this legislative instrument are mostly machinery in nature and support the Act by:

- no longer requiring or permitting superannuation providers to transfer certain amounts to eligible rollover funds; and
- enabling the Commissioner to pay interest on amounts received from eligible rollover funds or other voluntary payments received from superannuation providers.

Super funds and non-arm's length expenditure

The ATO's "transitional compliance approach" for the non-arm's length expenditure (NALE) rules set out in [PCG 2020/5](#) has been extended to 2021-22. The transitional compliance approach was otherwise due to apply to the 2018-19, 2019-20 and 2020-21 income years only.

Practice Compliance Guideline PCG 2020/5 established the transitional compliance approach as the ATO recognised that super trustees may not have realised that the amendments apply to non-arm's length expenditure of a general nature that has a sufficient nexus to all ordinary and/or statutory income derived by the fund in an income year.

REGULATOR NEWS

Board of Taxation CEO update

The interim CEO of the Board of Taxation, Ms Kathryn Davy, has issued the [CEO Update – April 2021](#). The Board received 23 written submissions in response to its [Second Consultation Paper](#) for the CGT roll-over project.

The update also provides details on its new Sounding Board platform, [Sounding Board+!](#). This is intended to provide a public platform where users can submit ideas for tax law simplification and regulatory reform, without the need to go through a registration and log-in process. The next meeting is to be held in Brisbane on 16 April 2021.

Modernising Business Registers

The Modernising Business Registers (MBR) program, reached a key milestone with the announcement of a new modern whole-of-government registry platform, the Australian Business Registry Services (ABRS). When fully established, the ABRS will bring together 31 registers currently managed by ASIC and the Australian Business Register, managed by the Australian Taxation Office (ATO) on one system.

The ABRS will progressively establish between 2021 and 2024. The high-level milestones are:

- establish the foundations for the new registry service
- introduce director identification numbers
- transition the companies register to the new registry service
- transition the business names register to the new registry service
- transition Australian business numbers to the new registry service
- transition professional and historical registers to the new registry service.

On 15 April 2021, the first transition towards establishing the ABRS will see ASIC registry staff transfer to the ATO. Initially, this will include assisting ASIC perform statutory registry functions and exercise its powers as a delegate of ASIC. At a later stage the Registrar will assume primary responsibility for those functions under law.

ASIC Registry branding and technology will continue to be used until services are transferred to the new registry platform administered by the Registrar.

What does this change mean for you?

During this first transition, there will be no change to the:

- services that are provided by the ASIC Registry
- data that is made available by the ASIC Registry
- arrangements you may have in place with the ASIC Registry for contact or escalation.

Handling of registry data will continue to meet existing requirements for the collection, storage, integration and management of data, with a clear separation between the ATO and registry functions.

The leadership of the ASIC Registry will move from Rosanne Bell as Executive Director, ASIC Registry, to Michelle Crosby Deputy Registrar and Deputy Commissioner, Commonwealth Business Registry Service. A small number of registry staff will remain at ASIC including Greg Finn, Kristina Penny and Rosanne Bell. They will be points of contact within ASIC during the transition. Margaret Boothman and her leadership team, including Rob Hayes, and others, will be moving to the ATO, and will also remain key contacts.

You can continue to refer your ASIC registry queries to Rob Hayes (Robin.Hayes@asic.gov.au) until otherwise advised.

You will be notified in advance of any changes that may affect you, including arrangements, contracts, agreements or how you contact the registry team.

You can also visit asic.gov.au/mbr for ASIC registry updates or ato.gov.au/mbr for ongoing MBR program updates.

ACCC Small Business and Franchising Consultative Committee

Recent updates and key developments re COVID-19

ACCC grants interim authorisation for 7-Eleven stores to adapt to Covid conditions

- The ACCC [has granted interim authorisation](#), subject to conditions, allowing 7-Eleven to continue to enter arrangements with its franchisees to either temporarily close or reduce the trading hours of certain stores, either operated by those franchisees, or through its sister entity, Convenience Holdings Pty Limited.
- [The arrangements are a continuation](#) of those authorised by the ACCC last year in the context of the ongoing difficulties faced by 7-Eleven and its Franchisees due to reduced consumer demand as a result of the COVID-19 pandemic. This authorisation would have expired on 31 March 2021 and 7-Eleven seeks authorisation for a further 6 months.
- As this is an interim decision the ACCC will now consult with interested parties and continue with its assessment process.

Other updates relevant for small business and franchising**New ACCC resources for prospective franchisees**

- [The ACCC has published new resources](#) for prospective franchisees, which we encourage you to share through your own networks.
- Asking the question 'Franchising: Is it for you?', the page outlines some of the risks and challenges that come with operating a franchise, offers tips for prospective franchisees, and shares examples based on real reports to the ACCC.
- We welcome feedback from SBFCC on this resource. If you would like to discuss in more detail how you can promote the resource, please let us know.

Payment redirection scams cost Australian businesses \$14 million

- [Australian businesses reported over \\$14 million in losses to Scamwatch](#) due to payment redirection scams last year, and average losses so far in 2021 are more than five times higher compared to average losses in the same period last year.
- In a payment redirection scam, also known as business email compromise scams, scammers impersonate a business or its employees via email and request that money, which usually is owed to the legitimate business, is sent to a fraudulent account.
- "It can be difficult to recover money lost to a payment redirection scam, so prevention is really important. We recommend organisations ensure their staff are well trained in the company's payment processes and remain aware of payment redirection scams," ACCC Deputy Chair Delia Rickard said.
- More information and advice is available on the [Scamwatch website](#).

Superfone to pay \$300,000 for making unsolicited calls and misleading consumers

- [The Federal Court has ordered telecommunications provider Superfone to pay \\$300,000](#) in penalties for making false and misleading representations and breaching laws designed to protect consumers from unsolicited telemarketing sales, in proceedings brought by the ACCC.
- The Court found that Superfone's customer base tended to show that Superfone targeted vulnerable consumers, or at least was only successful in securing unsolicited agreements with vulnerable consumers who were less capable of protecting their consumer rights. More than 1400 consumers, including many elderly people, were contacted by Superfone's telemarketing agents.

- “All businesses must comply with the Australian Consumer Law provisions dealing with unsolicited calls and door to door sales, including the ten-day cooling-off period and termination rights. These laws exist to protect consumers when dealing with cold callers, and give them the opportunity to change their minds about a purchase or agreement they have made as a result,” ACCC Deputy Chair Delia Rickard said.
- The ACCC has guidance about selling to consumers using telemarketing and door-to-door sales [on our website](#).

***Measuring Broadband Australia* report finds better internet speed performance in December 2020**

- Consumers on NBN fixed-line connections experienced [strong speed performance in December last year](#), according to the ACCC’s 12th quarterly [Measuring Broadband Australia report](#) found.
- “In December, consumers received the highest overall speeds since the ACCC began monitoring broadband performance in 2018, and internet service providers delivered a higher percentage of maximum plan speeds in the busy evening hours,” ACCC Commissioner Anna Brakey said.

New franchising resources from Department of Industry, Science, Energy and Resources

- The Department of Industry, Science, Energy and Resources has [updated the franchising information](#) on their business.gov.au pages.

The pages feature information about franchising, conducting due diligence, the importance of profession advice, the Franchising Code of Conduct, and legal and tax obligations.