

## **TAXATION**

### **ATO Lodgment Program review – Your input is requested**

The [Lodgment Program Review Working Group](#) is currently undertaking a review of the Lodgment Program to identify gaps and opportunities to improve the administration of the lodgment program. The Working Group is looking to form a view of what agents consider are the main factors that contribute to the pressures and challenges of managing practice workload and meeting due dates. We are seeking your feedback by **Friday 15 January 2022** to a few questions.

### **IGTO announces reviews for ATO objection decisions**

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) has announced three new review investigations for 2022.

### **2022-23 pre-budget submissions**

Government is seeking submissions from various entities on their views and priorities for the 2022-23 Federal Budget.

### **ATO flags forthcoming changes to activity statements**

ATO has flagged that it will soon be making changes to activity statements and on demand reports.

### **Inheritances and wealth transfers: report**

Productivity Commission has released a search paper showing that over \$120bn in wealth was passed on in 2018, more than double of that in 2002.

### **New CPE policy to commence 1 July 2022**

TPB has issued a news article announcing its new continuing professional education policy which takes effect 1 July 2022.

## **Know your obligations Q&A**

TPB has compiled questions and answers during its webinar covering compliance, professional indemnity insurance, CPE, and registration.

## **Loss carry-back extension and other measures Bill**

Bill to implement the extension of the loss carry back rules by another 12 months has been introduced in the House of Reps.

## **Treasury draft miscellaneous legislation**

Treasury has released exposure draft legislation proposing a further round of miscellaneous and technical amendments covering income tax, super and FBT.

## **COVID-19 vaccination incentives ATO factsheet**

ATO has released a fact sheet for employers on the tax and super consequences of providing incentives or rewards to employees who get vaccinated against COVID-19.

## **GST-free supplies of certain beds, mattresses and overlays**

ATO has issued a determination that discusses specifically designed and not widely used tests in relation to GST-free supply of certain beds, mattresses and overlays.

## **FINANCIAL SERVICES**

### **Limited financial advice: ASIC guidance and examples**

ASIC has released an information sheet on limited advice and an example statement of advice to assist financial advisers and licensees.

### **Financial contingency planning: APRA draft standards**

APRA has released a discussion paper and two new draft prudential standards aimed at strengthening crisis preparedness.

## **ASIC financial advice webpage launched**

ASIC has launched a centralised Financial Advice Hub webpage setting out ASIC guidance relevant to the financial advice industry.

## **Financial risks of climate change: APRA guidance**

APRA has released its final prudential practice guide on climate change financial risks to assist banks, insurers, and super trustees.

## **ASIC commences multiple legal actions against Westpac**

ASIC has commenced six civil penalty proceedings against Westpac in the Federal Court for alleged breaches across multiple Westpac businesses.

## **SUPERANNUATION**

### **ASIC focus areas in super 2021-22**

ASIC has outlined its main priorities for the conduct regulator of superannuation in 2021-22.

### **Starting a SMSF: ATO lifecycle guide**

ATO has published a lifecycle guide to assist individuals in deciding if a SMSF is right for them.

### **Retirement income covenant: APRA expectations**

APRA has outlined its views on the proposed retirement income strategy covenant which provides opportunities for trustees to better serve their members.

### **Fees charged to deceased super members: ASIC criminal charges**

ASIC has filed criminal charges against a company in relation to the charging of fees to deceased super members.

**APRA imposes licence conditions on Christian super**

APRA has imposed additional licence conditions on the trustee of Christian Super to protect the best financial interests of the fund's members.

**REGULATOR NEWS****IGTO Q1 report released**

IGTO has released its Q1 reporting pack highlighting its activities for the quarter in FY2022.

**First review of ASIC: FRAA consultation paper**

Financial Regulator Assessment Authority (FRAA) has released a consultation paper on its first review of ASIC focusing on effectiveness and capability.

The IPA will be making a submission on the review of ASIC. Please refer to the questions in the Consultation Paper and send any comments to [vicki.stylianou@publicaccountants.org.au](mailto:vicki.stylianou@publicaccountants.org.au).

## **TAXATION**

### **ATO Lodgment Program review – Your feedback is required**

The group first met on the 11 November to discuss the scope of the review and intent of the lodgment program. The group's next step is to identify pressure points under the lodgment program (obligation due dates) and understanding factors impacting on agent's ability to manage workload across the financial year.

Referring to the [Lodgment Program 2021-22](#) timeline please respond to:

- a. Where are the pressure points on the timeline (thinking also about the majority of agents, not just your individual situation)?
- b. In respect of those pressures
  - i. What are the causes of the pressure for that particular time (e.g. lots of obligations at once, external forces at that time of the year, staff availability at a particular point in the year, clients shutdown at that point in the year). If there are client-specific or practice-specific issues, please note them separately.
  - ii. Are there specific obligations that create greater pressure points?
  - iii. What client group are the most impacted (individuals, small business, large/medium, significant global entity, etc.) and the key factors that result in this impact?
  - iv. How are agents and their clients currently managing the pressure points?
  - v. Any other feedback or comments on the ATO Lodgment Program would be greatly appreciated

The timeline and due dates are based on the [due dates published on ato.gov.au](#).

Please send your responses to: [IPAGroupFeedback@publicaccountants.org.au](mailto:IPAGroupFeedback@publicaccountants.org.au).

### **IGTO announces reviews for ATO objection decisions**

The Inspector-General of Taxation and Taxation Ombudsman (IGTO), Ms Karen Payne has [announced](#) three new review investigations for 2022:

- ATO's Administration and Management of Objections – investigation into the ATO's timeliness in issuing objection decisions, the independence of objection decision makers and the objection decision making process, as well as the

interaction between objections processes and other initiatives in minimising or narrowing disputes. Submissions are due by 28 March 2022;

- Exercise of General Powers of Administration (GPA) – how broad-based GPA decisions (ie those affecting large groups of taxpayers) are identified and determined for the purpose of identifying particular areas that should be investigated (against case studies in the IGTO complaints investigation service). Submission are due by 28 February 2022; and
- Exercise of Commissioner's Remedial Powers (CRP) – centres on a perceived lack of clarity about how issues are raised for CRP consideration and whether the processes underlying consideration of these matters are sufficiently robust to take into account consideration of relevant factors and expert stakeholder views. Submissions are due by 28 February 2022.

The full terms of reference for all three review investigations, together with information on how to lodge a submission can be found on the [IGTO's website](#).

## **2022-23 pre-budget submissions**

The Government is seeking [submissions](#) from individuals, businesses and community groups on their views for priorities for the 2022-23 Federal Budget. Further information on how to lodge submissions is available on the [Treasury website](#).

To ensure views can be incorporated into the Budget process at an early stage, submissions are due by 28 January 2022, Assistant Treasurer Michael Sukkar [said](#). Note that the calendar for the 2022 Proposed Parliamentary sittings lists Tuesday 29 March 2022 as a possible date for the 2022-23 Budget.

## ATO flags forthcoming changes to activity statements

The ATO [has flagged](#) that it will soon be making changes to activity statements and on demand reports. There are three areas of change:

- new fields will be added to the On-demand Outstanding activity statement (current + previous three years) report, intended to allow users to easily identify where each AS has been delivered and by what channel;
- new fields will be added to the On-demand Income tax lodgment (current + previous three years) report to display whether each income tax period is eligible for flexible lodgment under disaster support arrangements and for the Substituted Accounting Period; and
- there will be new digital instalment noticed for PAYG and GST instalments.

## Inheritances and wealth transfers: report

The Productivity Commission has released a research paper, [Wealth transfers and their economic effects](#), showing that over \$120 billion in wealth was passed on in 2018, more than double of that in 2002. Inheritances have increased steadily in line with the growing wealth of older Australians with the average inheritance in 2018-19 being \$125,000 compared to \$8,000 for gifts.

The research also found that this growth in wealth has been uneven. At a time where retirees would be expected to be drawing down on their wealth to fund consumption, their wealth has actually increased. Most people are around age 50 when they receive an inheritance.

## New CPE policy to commence 1 July 2022

The TPB has issued a [news article](#) announcing its new continuing professional education ("CPE") policy which takes effect 1 July 2022 (ie next year). This new policy is the final outcome following submissions from the TPB's consultation back in February 2021.

Key changes include the following.

- Tax agents should complete a minimum of 120 hours of CPE over a three-year period (up from 90 hours).

- BAS agents should complete a minimum of 90 hours of CPE over a three-year period (up from 45 hours).
- Both tax and BAS agents should complete a minimum of 20 hours of CPE each year (up from 10 hours and 5 hours respectively).
- Under the new policy, members of a recognised professional association will be able to align their CPE period with the CPE period of their professional association.

## Know your obligations Q&A

The TPB has compiled [questions and answers](#) (Q&A) during its webinar – Know your obligations. The Q&A covers topics relating to (i) compliance; (ii) professional indemnity insurance; (iii) CPE; (iv) registration; (v) engagement letters; and (vi) supervision and control.

## Loss carry-back extension and other measures Bill

The [Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021](#) has been introduced in the House of Reps and has since been referred to the Senate Economics Legislation Committee with a report due by 3 February 2022. It proposes the following amendments:

- Loss carry back extension: the Bill will extend the loss carry back rules by 12 months, allowing eligible corporate tax entities to claim a loss carry back tax offset in the 2022-23 income year.
- Corporate collective investment vehicles (CCIVs): the Bill will amend the ITAA 1997 and Corporations Act 2001 to establish the tax and regulatory frameworks for CCIVs as a new type of a company limited by shares that is used for funds management. The amendments will give effect to the core CCIV tax framework to ensure that the CCIV is taxed on a flow-through basis, with the objective that the general tax treatment of CCIVs and their members align with the existing tax treatment of AMITs (and their members). Date of effect: 1 July 2022.
- Employee share schemes: cessation of employment will be removed as a taxing point for ESS interests which are subject to deferred taxation. Date of effect: This measure will apply to ESS interests for which the ESS deferred taxing point occurs on or after the beginning of the financial year starting after assent to the Bill.
- Retirement income covenant: the SIS Act will be amended to include a new retirement income covenant that will require trustees of RSEs to develop a



retirement income strategy for beneficiaries who are retired or are approaching retirement. Date of effect: 1 July 2022.

- DGRs: the list of deductible gift recipients will be amended to include the Greek Orthodox Community of New South Wales Ltd, Australian Associated Press Ltd, Virtual War Memorial Limited and SU Australia Ministries Limited. The DGR listing will also be extended for Cambridge Australia Scholarships Limited and Foundation 1901 Limited, while the listing will be removed for the East African Fund Limited (with the fund remaining endorsed as a DGR under another category).
- Minor amendments: the Bill will make a number of miscellaneous and technical amendments to various Treasury laws, including tax amendments in relation to the Seasonal Labour Mobility Program tax regime, working holiday makers, and the disclosure of TFNs to certain registrars.

## Treasury draft miscellaneous legislation

Treasury has released [exposure draft legislation](#) proposing a further round of miscellaneous and technical amendments to Treasury portfolio laws covering income tax, superannuation, FBT and insolvency.

The [Draft Bill](#) proposes to amend ss 5B and 57A of the FBTAA to fix an unintended outcome affecting income tax exempt not-for-profit private health insurers operating hospitals. The amendments propose to replace the concept of "rebatale employer" in cases where a FBT exemption is provided to employees by an employer that is a society or association carrying on a private hospital. DATE OF EFFECT: will apply retrospectively from the 2017-18 FBT year.

The [Draft Regs](#) propose to amend the SIS Regs and Income Tax Assessment (1997 Act) Regulations 2021 to correct unintended outcomes in relation to pension transfer balance accounts and the commutation of certain capped defined benefit income streams commenced on or after 1 July 2017. [Draft amendments](#) to the Insolvency Practice Rules (Corporations) 2016 also propose minor changes in response to virtual meetings undertaken as part of the 2020 corporate insolvency reforms.

**Comments** are due by 15 December 2021.

## COVID-19 vaccination incentives ATO factsheet

The ATO has released a [fact sheet](#) for employers on the tax and superannuation consequences of providing incentives or rewards to employees who get vaccinated against COVID-19. Specifically, the ATO reminds employers that they have PAYG withholding and super obligations in relation to cash payments and paid leave to employees for getting vaccinated. Employers should contact the ATO without delay if they have failed to withhold tax, as the ATO will consider remitting any applicable penalties.

Non-cash benefits to employees such as vouchers and competition prizes may attract FBT (unless an exemption or reduction applies). The provision or payment of transport to and from the vaccination centre is exempt from FBT. There are no FBT consequences if benefits are provided to the general public (eg discounts for the vaccinated).

## GST-free supplies of certain beds, mattresses and overlays

The supply of an adjustable bed, pressure management mattress or pressure management overlay is GST-free if the product is specifically designed for persons with an illness or disability and it is not widely used by other persons. [GST Determination GSTD 2021/2](#) has been issued to discuss the "specifically designed" and "not widely used" tests. It also outlines a practical compliance approach (in recognition of the practical difficulties suppliers of these products may face in applying the widely used test).

The ATO undertakes not to apply compliance resources in the following circumstances:

- in the case of a supplier - less than 25% of sales by volume of the particular product are supplied to "standard" bed retailers;
- in the case of a bed retailer - the supplier has confirmed in writing that it supplies less than 25% of the particular product by volume to standard bed retailers;
- in the case of factory direct sales - less than 25% of the manufacturer's sales by volume are standard beds.

**Date of effect:** retrospective.

Where supplies of the relevant product are currently being treated as GST-free, the ATO will not seek to disturb this approach for tax periods starting before 8 December 2021, or commencing within three months of this date (unless there is evidence of avoidance, fraud or evasion).

## **FINANCIAL SERVICES**

### **Limited financial advice: ASIC guidance and examples**

ASIC has released an information sheet on limited advice ([INFO 267](#)) and an [example statement of advice \(SOA\)](#) to assist financial advisers and licensees when providing limited personal advice to retail clients.

INFO 267 provides tips on giving limited advice and summarises the relevant guidance from RG 175 and RG 244 (general advice and scaled advice). It includes information on what advice providers can do to meet their obligations, including the best interests duty (and the "safe harbour" in s 961B(2) of the Corporations Act 2001), and the Financial Adviser Standards and Ethics Authority (FASEA) Code of Ethics.

### **Financial contingency planning: APRA draft standards**

APRA has released a [discussion paper](#) and two new draft prudential standards aimed at strengthening crisis preparedness for banks, insurers and superannuation trustees.

- [Draft CPS 190 \(Financial Contingency Planning\)](#) will seek to ensure all APRA-regulated entities have plans for responding to severe financial stress.
- [Draft CPS 900 \(Resolution Planning\)](#) proposes to require large APRA-regulated entities to take pre-emptive actions for the possible event of their failure.

**Date of effect:** CPS 190 would commence on 1 January 2024 for banks and insurers (and 1 January 2025 for super); and 1 January 2024 for CPS 900.

**Submissions** are due by 29 April 2022.

## **ASIC financial advice webpage launched**

ASIC has launched a centralised [Financial Advice Hub](#) webpage setting out ASIC guidance relevant to the financial advice industry. The Hub has been designed as a one-stop access point for guidance and information impacting financial advice licensees, advisers, and relevant stakeholders. It includes information on how ASIC regulates financial advice, obligations when giving financial advice, educational requirements and running a financial advice business.

## **Financial risks of climate change: APRA guidance**

APRA has [released](#) its final prudential practice guide on climate change financial risks. This follows its earlier consultation on Prudential Practice Guide CPG 229 Climate Change Financial Risks which was released in April 2021.

The guide is intended to assist banks, insurers and superannuation trustees to manage the financial risks of climate change. While no new regulatory requirements or obligations are imposed, it will instead assist APRA-regulated entities to manage climate-related risks and opportunities within their existing risk management and governance practices. APRA said that it will be undertaking a survey to help gauge the alignment between institutions' management of climate change financial risks next year.

## **ASIC commences multiple legal actions against Westpac**

ASIC [has](#) commenced six civil penalty proceedings against Westpac in the Federal Court for alleged breaches across multiple Westpac businesses in relation to everyday banking, financial advice, superannuation and insurance. ASIC Deputy Chair, Sarah Court, said it is unprecedented for ASIC to file multiple proceedings against the same respondent at the same time but "these were exceptional circumstances". The six matters filed against Westpac concern:

- fees for no service and deceased customers;
- inadequate fee disclosure for financial advice and ongoing contribution fees;
- commissions charged on insurance in super;
- duplicate general insurance policies;
- deregistered company accounts; and
- debt on-sale with incorrect interest rates.

ASIC said Westpac has admitted the allegations in each of the proceedings and will remediate \$80 million to customers. Subject to Court approval, ASIC and Westpac will submit that combined penalties of \$113 million are appropriate. Each matter will now be separately considered and determined by the Court.

## **SUPERANNUATION**

### **ASIC focus areas in super 2021-22**

In an [article](#) published by ASIC, its Senior Executive Leader Jane Eccleston has outlined ASIC's main priorities for the "conduct regulator for superannuation" in 2021-22. Ms Eccleston acknowledged that there has been a lot of change set by law reform which provides the context for ASIC's "reasonable approach to enforcement" for the early stages of the October 2021 reforms. However, she notes that ASIC's "approach" only extends to instances that are in essence technical or inadvertent breaches rather than acting in bad faith.

### **Starting a SMSF: ATO lifecycle guide**

The ATO has published a lifecycle guide, [Starting a self-managed super fund](#), to assist individuals in deciding if a SMSF is right for them. The ATO guide covers: what is an SMSF; choosing a structure; an outline of SMSF trustee obligations; registering a SMSF; and getting professional advice. The ATO said there will be three guides in this set for SMSFs. The other guides will cover running a SMSF and winding up a SMSF.

### **Retirement income covenant: APRA expectations**

APRA Executive Director of Superannuation, Suzanne Smith, has outlined the regulator's views on the proposed retirement income strategy covenant. In a recent [speech to the 29th Annual Colloquium of Pensions and Retirement Research](#), Ms Smith said the retirement income covenant provides opportunities for trustees to better serve their members, and they should look beyond just the regulatory issues.

APRA said it will not be issuing guidance on the intent of the new law. Rather, Ms Smith said trustees should look to the Explanatory Memoranda accompanying the

Bill. Over the coming months, trustees will need to start to formulate a retirement income strategy in anticipation of the covenant becoming law from 1 July 2022. APRA expects trustees to be asking themselves questions about what membership data they need, and how their product governance could be invigorated. Before taking that step, APRA believes it will be necessary for trustees to consider whether they have the resources in place.

### **Fees charged to deceased super members: ASIC criminal charges**

ASIC has [filed](#) criminal charges against Avanteos Investments Limited in the County Court, Melbourne, in relation to the charging of fees to deceased superannuation members. This conduct was revealed in the Banking Royal Commission and is the first criminal prosecution for defective disclosure documents under s 1021J(1) of the *Corporations Act 2001*.

### **APRA imposes licence conditions on Christian super**

APRA has [imposed](#) additional licence conditions on the trustee of Christian Super to protect the best financial interests of the fund's members. APRA said the new conditions seek to address concerns from an APRA investigation into Christian Super's investment oversight, governance and strategic decision-making. They are also aimed at rectifying Christian Super's persistent investment underperformance, which culminated in the fund's MySuper product failing the first annual performance test.

Under the terms of the new licence conditions, Christian Super is required to implement a strategy to merge with a larger, better performing fund by 31 July 2022. In doing so, Christian Super is required to engage an independent expert to ensure the merger is consistent with its duties under superannuation law.

## **REGULATOR NEWS**

### **IGTO Q1 report released**

The IGTO has released its [Q1 reporting pack](#) highlighting its activities for the quarter in FY2022. The pack provides updates against the IGTO Corporate Plan, covering topics such as:

- Complaint investigations - top five complaints for the quarter, complaint investigations received and closed; method of complaint lodgments etc;
- Results and tracking of IGTO's KPI and KPA performance - IGTO review investigation reports and the number of implemented Business Improvements from complaint investigations; and
- Updates on meetings, briefings and conferences attended by the IGTO.

### **First review of ASIC: FRAA consultation paper**

The Financial Regulator Assessment Authority (FRAA) has released a [consultation paper](#) on its first review of ASIC which will focus on ASIC's effectiveness and capability in strategic prioritisation, planning and decision-making, its surveillance function, and licensing function.

**Submissions** are due by 28 January 2022.