

## **TAXATION**

### **ATO update: Rulings on trust reimbursement agreements**

ATO has issued a media release which flags the status of its proposed new guidance on trust reimbursement agreement.

### **Tax return time: ATO priority areas**

ATO has advised that it will be focusing on four areas in terms of individual tax returns for 2021-22.

### **Fake green bonds scam: ASIC alert**

ASIC has issued an article warning investors of the existence of a number of fake green bonds.

### **Non-commercial losses: ATO draft practical compliance guideline**

ATO has released a draft practical compliance guideline which proposes a safe harbour for qualifying individuals who made non-commercial business losses due to disasters.

### **ATO cautions about serious GST fraud**

ATO advises that it has identified and is taking strong action to respond to significant fraud involving participants inventing fake businesses and claiming false refunds.

### **GST issues for buy-now, pay-later providers**

ATO has released a guide to help buy-now, pay-later providers determine their entitlement to input tax credits on related costs.

## **FINANCIAL SERVICES**

### **AFS licensee obligations for cybersecurity risks**

ASIC has reminded AFS licensees that they must adequately manage cybersecurity risks following a recent Federal Court decision.

## **SUPERANNUATION**

### **SMSF auditor number misuse linked to late SMSF lodgments**

ATO has reported that more than a third of instances involving the misuse of SMSF auditor numbers relate to late lodgments of SMSF annual returns.

### **Super trustee issued with APRA directions**

APRA has issued directions to a super trustee aimed at improving its governance after a governance review.

### **Super early access for first home buyers: Coalition proposal**

The Coalition has proposed to allow first home buyers to release up to \$50,000 of their super to purchase a first home.

## **REGULATOR NEWS**

### **TPB impersonation warning**

TPB has issued a warning for tax practitioners to be aware of an emerging impersonation email scam.

## **TAXATION**

### **ATO update: Rulings on trust reimbursement agreements**

The ATO has issued a media release which flags the status of its proposed new guidance on trust reimbursement agreements, entitled an [Update on draft guidance on trust reimbursement agreements and unpaid present entitlements](#). The guidance on s 100A of the ITAA 1936 is contained in Draft TR 2022/D1 and Draft PCG 2022/D1.

ATO Deputy Commissioner Louise Clarke makes two key points in the release.

- First, the ATO's position is that if the beneficiary of the trust gets the benefit, s 100A has no role to play. The ATO is not concerned about ordinary family trusts where the relevant family members benefit from the distributions.
- Second, the ATO is not concerned when profits from the family business are distributed to members of the family who work in the management of the business and then that family member chooses to reinvest the profits in the business.

The media release also seeks to reassure the tax adviser community that the ATO "won't have a retrospective element". It states that the ATO will not be pursuing taxpayers that entered into arrangements between 1 July 2014 and 30 June 2022 where, in good faith, they concluded that s 100A did not apply to them based on the previous 2014 guidance.

### **Tax return time: ATO priority areas**

The ATO has [advised](#) that it will be focusing on four areas in terms of individual tax returns for 2021-22:

- record-keeping – the ATO states that people who lodge in July may forget to include bank interest, dividends and payments from other government agencies and private health insurers. This will be pre-filled in tax returns from the end of July;
- work-related expenses – the ATO advises that one in three returns involved claims relating to working from home. The ATO states that it would expect to see a corresponding reduction in car, clothing and other work-related expenses such as parking and tolls;

- rental income and deductions – all income received from rental in in tax returns should be declared, including short-term rental arrangements, insurance payouts and rental bond money that has been retained; and
- capital gains from crypto assets, property and shares – the ATO is expecting to see more capital gains or capital losses reported in tax returns this year and reminds taxpayers that they cannot offset crypto losses against their salary and wages.

### **Fake green bonds scam: ASIC alert**

ASIC has issued an [article](#) warning investors of the existence of a number of fake green bonds, ie bonds that are used to finance new and existing projects that offer climate change and environmental benefits.

ASIC makes clear that green bonds are not directly available to the general public or retail investors in Australia. Any website or entity claiming otherwise is a scam. Other things to look out for includes:

- people claiming to be from well-known companies who offer green bonds;
- people or entities that offer investment opportunities in "environmentally sustainable green bonds" via social media or websites;
- fake investment materials and disclosure documents.

### **Non-commercial losses: ATO draft practical compliance guideline**

The non-commercial loss rules may operate to prevent an individual's losses from non-commercial business activities being offset against other assessable income in the year the loss is incurred. The Commissioner has a discretion not to apply these rules if the business activity was or will be affected by special circumstances outside the person's control. The discretion is exercisable on application by the individual.

[Draft PCG 2022/D2](#) proposes a safe harbour for qualifying individuals who made non-commercial business losses in 2019-20, 2020-21 or 2021-22 due to flood, bushfire or certain COVID-19 impacts (a government-imposed lockdown, business closure and/or restriction). If the business generated a tax profit in the preceding income year, the individual's tax affairs can be managed as though the Commissioner has exercised the discretion (ie without applying for a private ruling).

**Proposed date of effect:** 2019-20, 2020-21 and 2021-22 income years only.

**Comments** on the draft are due by 21 June 2022.

## **ATO cautions about serious GST fraud**

The ATO [advises](#) that it has identified and is taking strong action to respond to significant fraud involving participants inventing fake businesses and claiming false refunds.

The ATO's Operation Protego is investigating around \$850 million in potentially fraudulent payments made to around 40,000 individuals, with the average amount fraudulently claimed being \$20,000. The fraud involves offenders inventing fake businesses and ABN applications, many in their own names, then submitting fictitious BASs in an attempt to gain a false GST refund.

Sophisticated risk models deployed by the ATO, coupled with intelligence received from banks including through the AUSTRAC-led Fintel Alliance and the Reserve Bank of Australia, identified a recent spike in suspicious refunds. The ATO is working with financial institutions who have frozen suspected fraudulent amounts in bank accounts.

## **GST issues for buy-now, pay-later providers**

The ATO has released a [guide](#) to help buy-now, pay-later providers determine their entitlement to input tax credits on related costs. Generally, these entities make input taxed supplies of credit to consumers and taxable supplies of services to merchants in exchange for merchant fees.

The guide makes the following key points:

- Buy-now, pay-later providers need to consider other supplies they make (eg in relation to how the business is funded) in determining the creditable purpose of their acquisitions, including in the treatment of enterprise costs.
- The ATO expects providers to analyse their acquisitions to determine their creditable purpose, rather than apportion all acquisitions on the assumption that they all relate to mixed supplies. The methodology and analysis of acquisitions should be well-documented.
- The use of a revenue-based apportionment methodology will attract the ATO's attention as there is a significant risk of overclaiming input tax credits. Even if this methodology is only applied to acquisitions that relate to both supplies,

the ATO will carefully consider whether this is a fair and reasonable measure of the objective use of those acquisitions. The ATO accepts that a revenue-based method will be fair and reasonable if the assumption holds that there is a proportionate relationship between the revenue used to measure the supplies made, and the use of the acquisitions that the revenue method applies to.

- Where cards issued in four-party credit card networks are offered on buy-now, pay-later terms, but the product is in substance a credit card facility, the ATO will apply Schedule 1 of PCG 2019/8 (ATO compliance approach to GST apportionment of acquisitions that relate to certain financial supplies).

## **FINANCIAL SERVICES**

### **AFS licensee obligations for cybersecurity risks**

ASIC has published an [article](#) reminding AFS licensees that they must adequately manage cybersecurity risks. This follows the recent Federal Court decision which found that RI Advice Group Pty Ltd breached its AFS licence obligations by failing to have systems to adequately manage its cybersecurity risks.

In ASIC v RI Advice Group Pty Ltd [2022] FCA 496, the Court noted that RI Advice had numerous inadequate risk management practices across its network including failure to update antivirus software, system backups, email filtering or quarantining, and poor password practices. Inadequacies in its cybersecurity risk management resulted in a number of cyber incidents affecting clients over a six-year period.

ASIC said it expects AFS licensees to adopt good cybersecurity risk management practices to reduce potential harm to consumers. ASIC also expects AFS licensees to act quickly in the event of a cyber incident to minimise the risk of ongoing harm. Regular assessment of cyber risks in relation to detection, mitigation and response measures should also be conducted.

ASIC also encouraged AFS licensees to report cyber incidents to the Australian Cyber Security Centre (ACSC) and consider if any obligation arises to report the incident to ASIC. Even though ASIC does not prescribe technical standards nor provide expert guidance on operational aspects of cybersecurity, it expects licensees

to address cyber risk as part of their AFS licence obligations, including risk management.

## **SUPERANNUATION**

### **SMSF auditor number misuse linked to late SMSF lodgments**

The ATO has [reported](#) that more than a third of instances involving the misuse of SMSF auditor numbers (SANs) relate to late lodgments of SMSF annual returns (SARs).

The ATO said it issued each auditor with a list of SMSFs that lodged a SAR for any income year that reported them as an auditor with an audit completed date between 1 July 2020 to 30 June 2021. In response to this September 2021 mailout, auditors reported 1,896 instances of SAN misuse with 1,230 instances (65%) relating to SARs for the 2020 income year. The data also showed that SAN misuse was connected to 683 tax agents and 24 trustees (self lodgers).

### **Super trustee issued with APRA directions**

APRA has [issued](#) directions to NESS Super Pty Ltd (NESS) aimed at improving its governance. The directions follow an APRA governance review and an independent review conducted by NESS that identified skills gaps and alleged deficiencies on the NESS Board. According to APRA, the directions will ensure that NESS makes the necessary amendments to its constitution so that it can appoint a second independent director, which will achieve an equal composition of employee, employer and independent directors on a six-person board.

### **Super early access for first home buyers: Coalition proposal**

The Coalition has proposed to allow first home buyers to release up to \$50,000 of their superannuation to purchase a first home. The Prime Minister [said](#) eligibility for the proposed Super Home Buyer Scheme would be restricted to first home buyers who have separately saved 5% of the deposit. No income or property caps will apply.



The maximum amount able to be invested under the scheme would be the lower of \$50,000 for each individual or 40% of their total superannuation balance. The Prime Minister said the scheme would apply to both new and existing homes with the invested amount to be returned to their super fund when the house is sold, including a share of any capital gain. The Scheme would start by 1 July 2023. (Source: [Prime Minister joint media release, 15 May 2022](#).)

### **Downsizer contributions eligibility age to be reduce to 55**

The Coalition has also proposed that, if re-elected, the minimum eligibility age to make downsizer contributions into super would be lowered to age 55 (down from 60). The proposed reduction in the eligibility age would mean that individuals aged 55 or over could make an additional non-concessional contribution of up to \$300,000 from the proceeds of selling their home outside of the existing contribution caps.

Currently when an older Australian sells their home, the proceeds of the sale are also exempt from the pension assets test for one year. The Prime Minister said the Coalition would double this time limit to two years from 1 January 2023. (Source: [Prime Minister joint media release, 15 May 2022](#).)

The Opposition leader [said](#) Labor would back this policy to extend downsizer contributions from age 55.

## **REGULATOR NEWS**

### **TPB impersonation warning**

The TPB has issued a [warning](#) for tax practitioners to be aware of an emerging impersonation email scam. The scam email is sent from a fake email address (noreply@tpb.gov.au), seeking tax practitioners to verify their details by clicking a link in the email to ensure their RAN remains active.

The TPB makes clear that it will never ask for information verification via a hyperlink. The TPB article also includes guidance on what to do when receiving suspicious emails and contacts if help is required.