

TAXATION

IGT: independent ATO board required

The IGT has called on the Government to implement his recommendation to establish an independent management board to oversee the ATO.

Electronic sales suppression tools: period of grace

ATO has advised a period of grace for businesses which may have inadvertently purchased software with a sales suppression function.

ATO: tax consequences of receiving compensation for advice

ATO has outlined tax consequences where someone has personally received compensation from a financial institution.

ABR and unregistered business names

Government is giving businesses more time to register a business name by extending the display of trading names on ABN lookup for 5 years.

Business registers and director identification: more draft legislation

Second part of draft legislation proposing to modernise the Australian Business Register and the current 31 ASIC business registers has been released.

Anti-avoidance rules for circular trust distributions: draft legislation

Draft legislation has been released to extend a specific anti-avoidance rule for closely held trusts engaging in circular trust distributions to family trusts.

Deductions disallowed for vacant land: draft legislation

Draft legislation has been released to disallow deductions for expenses associated with holding vacant land.

Partnerships and rights to future income: draft legislation

Draft legislation has been released to remove access to the small business CGT measures for partners that alienate their income.

Labor proposes double fines under promoter penalty regime

Labor has flagged increases in fines under the promoter penalty regime if elected.

Tax avoidance taskforce: ATO report card

ATO has released details of the activities of the Tax Avoidance Taskforce including the amount of tax liabilities it has raised.

ASBFEO: guide to borrowing from fintech lenders

Australian Small Business and Family Ombudsman has released a guide to assist small to medium enterprise owners better understand borrowing from fintech lenders.

Small business corporate tax rates: Bill awaits Assent

Bill to implement the proposal to accelerate the reduction of the corporate tax rate for small businesses has passed the Senate and is awaiting assent.

Black economy measures: Bill receives Royal Assent

Bill to prohibit the production, distribution and possession of electronic sales suppression tools in relation to entities that have Australian tax obligations has received assent.

Company director jailed for \$1m GST refund fraud

ATO has advised that a company director has been sentenced to 4 years and 2 months jail for more than \$1m tax fraud.

Feminine hygiene products to be GST-free: discussion paper

Consultation paper has been released addressing the proposed definition of "feminine hygiene products" and the proposal to remove GST on such products.

GST: whether inbound tour operator acts as an agent

PCG 2018/6 sets out the circumstances in which the ATO will not apply compliance resources to check whether an inbound tour operator is acting as an agent.

Sale of properties subject to GST

A taxpayer has been unsuccessful in contesting default assessments which imposed GST on the sale of 4 properties.

Board of Taxation FBT Survey Now Open!

As you may be aware, the Board of Taxation is undertaking a review of compliance costs associated with Fringe Benefits Tax (FBT).

FINANCIAL SERVICES**ASIC to review ongoing fee disclosure by financial advisers**

ASIC has announced a review of compliance by financial advisers with their obligations to provide fee disclosure states and renewal notices every 2 years.

Financial adviser professional standards: ASIC instrument

ASIC has registered an instrument to give effect to its revised reporting dates for the financial adviser professionals standards regime.

Banks agree to end fees-for-no-service and grandfathered commissions

Australian Bankers' Association has announced that the Banking Code of Practice will be changed to end "fees for no service" and better manage customers' accounts upon death.

SUPERANNUATION**SMSF quarterly TBARs due 28 October**

SMSF trustees have been reminded that the quarterly pension transfer balance cap reporting schedule for events must be lodged by 28 October 2018.

ATO set to issue excess super contribution determinations

ATO will be issuing excess concessional contributions determinations for the 2017-18 financial year from mid-October 2018.

Super fund treatment of ineligible downsizer contributions

Super fund administrators have requested further advice from the ATO on the action required for downsizer contributions that are subsequently found to be ineligible.

ASIC recommends SMSF policy reforms

ASIC has put forward a range of policy solutions for SMSFs to be considered by the Parliamentary Joint Committee on Corporations and Financial Services.

Lost and unclaimed super

ATO has reported there is around \$17.5bn in lost and unclaimed superannuation waiting to be claimed across more than \$6.2m accounts.

ATO referral of SMSF auditors of ASIC

PS LA 2018/1 sets out the factors that ATO staff may need to consider when forming an opinion on whether an SMSF auditor should be referred to ASIC.

REGULATOR NEWS

ASIC winds up abandoned companies to unlock entitlements

ASIC has assisted employees gain access to the Fair Entitlements Guarantee Scheme by exercising its wind-up powers and appointing liquidators to 17 abandoned companies.

APRA information paper: banking executive accountability regime

APRA has released an information paper on implementing the Banking Executive Accountability Regime which came into force from 1 July 2018.

TAXATION

IGT: independent ATO board required

In a [parting speech](#), Mr Ali Noroozi, has called on the Government to implement his recommendation to establish an independent management board to oversee the ATO, he said such an independent board would address any concerns that too much power is concentrated in one individual - the Commissioner. He said the board should be headed by an independent Chair, and its membership should include the Commissioner and Second Commissioners, as well as private sector experts in information technology, communications, human resources and finance. The proposed board would report to the Government, via the Minister, and would be able to provide a frank assessment of the ATO's performance.

In terms of the other outstanding IGT recommendations, Mr Noroozi repeated his calls for the creation of a separate and dedicated appeals group within the ATO, led by a new Second Commissioner. He also called for the IGT to be renamed the Taxation Ombudsman. As is the case with the Auditor-General, he said the agency should be moved out of the Treasury portfolio and report directly to Parliament like the Australian National Audit Office.

Electronic sales suppression tools: period of grace

The ATO has [advised](#) of a period of grace for businesses which may have inadvertently purchased software with a sales suppression function. It is illegal to manufacture, distribute, possess, use or sell such software (often termed "phantomware" or "zappers"), with a potential penalty of up to 5,000 penalty units (ie over \$1 million). The ATO has found cases of taxpayers using such software to deliberately not report all their cash income, falsely report regular losses and/or manipulate their employee obligations.

However, businesses may have inadvertently purchased software with a suppression function. If the software was purchased before 9 May 2017 (the date the measures were announced), they have until 3 April 2019 to advise the ATO without penalty being applied. The ATO reiterated the need for taxpayers to keep detailed records of every transaction.

ATO: tax consequences of receiving compensation for advice

The ATO has [outlined the tax consequences](#) where someone has personally received compensation from a financial institution. The ATO outlines the tax treatment where compensation is received for inappropriate advice and/or advice that was not received. A payment can include compensation for the loss of an investment, a refund of fees or interest (or a combination). If the compensation is received for multiple investments, the tax consequences of any attributable compensation amount must be considered separately. When an individual disposes of the relevant investment, CGT event A1 happened. Capital gains or losses made from a CGT event are reported in the financial year the asset was disposed. The compensation can be treated as additional capital proceeds relating to the disposal of those investments. If the individual had more than one investment, the ATO says they will need to apportion the additional capital proceeds to each disposal.

If an individual has been compensated for investments they still own, the ATO says they need to reduce either the cost base or the reduced cost base by the compensation amount they received, depending on whether they make a loss or gain when they dispose of the investments. The compensation amount will need to be apportioned where it relates to more than one investment. A compensation payment may include an amount that is a refund or reimbursement of adviser fees. If the individual claimed a deduction for the adviser fees in a tax return, the amount they received as a refund or reimbursement will form part of their assessable income in the year they receive it. If the individual did not claim a deduction for the adviser fees, the refund or reimbursement does not form part of their assessable income. However, where the adviser fees were included in the cost base or reduced cost base of any investments you made, the individual must reduce the cost base and reduced cost base by the amount of the refund or reimbursement.

ABR and unregistered business names

The [A New Tax System \(Australian Business Number\) Amendment \(Display of Trading Names\) Regulations 2018](#) provides that trading names that were on the Australian Business Register (ABR) before 28 May 2012 can continue to be displayed there until 31 October 2023. A trading name is essentially an unregistered name that a business may use to conduct its business activities. The national Business Names Register was established in 2012. As part of transitional measures, unregistered business names could be displayed on the ABR until 31 October 2018 – this would allow businesses additional time for such names to be registered. This transitional measure has been extended for 5 years, as apparently "a large number of businesses" have still not registered their name on the Business Names Register.

Business registers and director identification: more draft legislation

The Government has released the second part of [draft legislation](#) proposing to modernise the Australian Business Register and the current 31 ASIC business registers onto a single platform. The platform will be administered by the Australian Business Registrar, within the ATO.

The first part of the draft legislation was released on 1 October 2018. The current release includes the remainder of the referrals of functions and consequential changes. The proposed amendments will allow ASIC's registry functions to be shifted to the ATO, via the Australian Business Registrar.

Date of effect: To be set by proclamation.

Submissions are due by 26 October 2018.

Anti-avoidance rules for circular trust distributions: draft legislation

The Government has released [draft legislation](#) to give effect to its 2018-19 Budget measure to extend a specific anti-avoidance rule for closely held trusts engaging in circular trust distributions to family trusts. Currently, where family trusts act as beneficiaries of each other in a "round robin" arrangement, a distribution can be ultimately returned to the original trustee in a way that avoids any tax being paid on that amount. The proposed changes will better enable the ATO to pursue taxpayers entering into these arrangements and impose tax on such distributions at a rate equal to the top personal tax rate. The definition of an excluded trust will be amended to remove: family trusts; a trust in relation to which an interposed entity election has been made and is in force in accordance with s 272-85 in Sch 2F of the ITAA 1936; and a trust that is covered by s 272-90(5) in Sch 2F.

Date of effect: The changes will apply from 1 July 2019.

Submissions are due by 31 October 2018.

Deductions disallowed for vacant land: draft legislation

The Government has released [draft legislation](#) to give effect to its 2018-19 Federal Budget measure to disallow deductions for expenses associated with holding vacant land. The proposed amendments to the ITAA 1997 will not apply to expenses associated with holding vacant land that is used by the owner or a related entity to carry on a business. For example, the measure will not apply to a business of primary production or to a property developer that is carrying on a business and is

holding land for the purpose of that business. The measure will also not apply to corporate tax entities, superannuation plans (other than SMSFs), managed investment trusts, public unit trusts and unit trusts.

Date of effect: The amendments will apply to losses and outgoing incurred on or after 1 July 2019, regardless of whether the land was first held prior to that date.

Submissions are due by 31 October 2018.

Partnerships and rights to future income: draft legislation

The Government has released [draft legislation](#) to give effect to its 2018-19 Budget measure to remove access to the small business CGT measures for partners that alienate their income by creating, assigning or otherwise dealing in rights to the future income of the partnership. It proposes to create an additional basic condition that must be satisfied in relation to a capital gain in order to obtain the small business CGT concession in Div 152. As a result of the new condition, the small business CGT concessions will only be available in relation to a CGT event that relates to a right or interest that entitles an entity to the income or capital of a partnership (or amounts calculated by reference to a partner's entitlement to distributions from a partnership) if the right or interest is a membership interest of the entity that has the entitlement. The new condition will apply to capital gains that arise from a CGT event that involves the creation, transfer, variation or cessation of a right or interest that entitles an entity to either:

- an amount of the income or capital of a partnership; or
- an amount calculated by reference to the partner's entitlement to an amount of income or capital of a partnership.

Date of effect: The changes will apply from 8 May 2019.

Submissions are due by 31 October 2018.

Labor proposes double fines under promoter penalty regime

Shadow Assistant Treasurer Andrew Leigh [has announced](#) that, if elected, a Labor Government would increase fines under the promoter penalty regime to allow courts to impose fines of up to \$2.1 million for an individual or \$10.5 million for a body corporate, or 3 times the consideration received or receivable, directly or indirectly, by the entity or its associates in respect of the scheme.

At the moment, the maximum penalties for promoting tax avoidance schemes are just over \$1 million for an individual, and \$5.25 million for a corporation. Mr Leigh

said the current civil and criminal penalties related to tax matters "do not match up to the penalties available in other areas of the law".

Tax avoidance taskforce: ATO report card

The ATO has released details of the activities of the Tax Avoidance Taskforce for both [2016-17](#) and [2017-18](#). Overall, an extra \$1.6 billion in tax has been collected in the 2 years since the Taskforce was set up, at the same time raising over \$10 billion in tax liabilities. In addition, over \$500 million in extra GST was paid in 2017-18, which the ATO attributes to "some global entities restructuring" as a result of the Multinational Anti-Avoidance Law (MAAL). Some 44 taxpayers have brought, or are bringing, their Australian sourced sales back onshore, the ATO says. There are 71 audits covering 67 multinational corporations currently underway, along with MAAL and Diverted Profits Tax (DPT) reviews. The Tax Office intends to have reviewed the top 1,000 public groups and top 320 private groups by June 2020.

ASBFEO: guide to borrowing from fintech lenders

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) and theBankDoctor.org today [released](#) a guide to help small to medium enterprise (SME) owners better understand the 'ins and outs' of borrowing from fintech lenders. It provides answers to the questions asked by most potential borrowers: What is a fintech lender and how is it different to a bank? What products do they offer? How much can I borrow and what will that cost me?

It also explains lending terminology and provides information on the Online Code of Lending Practice. The Ombudsman points out that SME lending presents a huge opportunity for the fintech industry. However, to build trust with the SME sector, they must show leadership on transparency, disclosure and abide by the Online Code of Lending Practice.

Small business corporate tax rates: Bill awaits Assent

The [Treasury Laws Amendment \(Lower Taxes for Small and Medium Businesses\) Bill 2018](#) has passed the Senate and is awaiting assent. The Bill will implement the proposal to accelerate the reduction of the corporate tax rate for corporate tax entities that are base rate entities, ie corporate tax entities that derive no more than 80% of their income in passive forms and have an aggregated turnover of less than \$50 million.

Under the measures, the corporate tax rate for base rate entities will reduce from 27.5% to 26% in 2020-21, before being cut to 25% for the 2021-22 income year and

later income years. This means eligible taxpayers will have a tax rate of 25% in 2021-22, rather than from 2026-27 as currently legislated. In addition, the Bill proposes to increase the small business income tax offset rate to 13% of an eligible individual's basic income tax liability that relates to their total net small business income for the 2020-21 income year (ie unincorporated businesses). This offset rate will then increase to 16% for the 2021-22 income year and later income years. The small business income tax offset continues to be capped at \$1,000 per individual per year, ie it will not change.

Black economy measures: Bill receives Royal Assent

The [Treasury Laws Amendment \(Black Economy Taskforce Measures No 1\) Bill 2018](#) has received Royal Assent as Act No 121 of 2018. The measures prohibit the production, distribution and possession of electronic sales suppression tools (ESST) in relation to entities that have Australian tax obligations. The amendments commence from 4 October 2018.

The Bill also requires entities providing courier or cleaning services that have an ABN to report to the ATO information about transactions that involve engaging other entities to undertake those courier or cleaning services for them. This information must be reported to the ATO via the [Taxable payments annual report](#) (TPAR) by 28 August each year. The first TPAR for payments made to contractors from 1 July 2018 to 30 June 2019, is due by 28 August 2019.

Company director jailed for \$1m GST refund fraud

The [ATO has advised](#) that a 58-year old Reservoir man has been sentenced in the County Court of Victoria to 4 years and 2 months' jail for more than \$1 million of tax fraud committed while he was the director of a company. He was also ordered to pay tax, interest and penalties of \$884,496 to the ATO. ATO officers audited the man's transport company and uncovered more than \$1 million in fraudulent GST refund claims he made in BASs lodged between 2009 and 2015.

In order to legitimately accrue more than \$1 million in GST refunds, the ATO said the man would have had to have spent a minimum of \$11.9 million on goods or services needed to run his transport business. Despite the company appearing to have no commercial business activity, the man's GST claims grew over time to \$19,000 a month at their highest point in 2015. The Court found these claims to be entirely fraudulent, the ATO said.

Feminine hygiene products to be GST-free: discussion paper

The Government has released a [consultation paper](#) addressing the proposed definition of "feminine hygiene products". The Government proposes to remove GST on supplies of such products from 1 January 2019. This follows the unanimous vote of the Treasurer and State Treasurers at the meeting of the Council on Federal Financial Relations earlier this month. The paper provides a table setting out which products will be covered by the definition.

Submissions are due by 22 October 2018.

GST: whether inbound tour operator acts as an agent

[Practical Compliance Guideline PCG 2018/6](#) sets out the circumstances in which the ATO will not apply compliance resources to check whether an inbound tour operator is acting as an agent for GST purposes. It finalises PCG 2018/D7 and contains the same views as the draft. Where an inbound tour operator makes a supply of agency services to a non-resident client, any commission charged will be GST-free to the extent that it relates to those agency services. However, if the operator is acting as a principal, the entire supply may be subject to GST. The administrative approach set out in PCG 2018/6 is confined to Australian resident entities who are registered for GST and enter into written agreements with non-residents to arrange the supply of Australian tour packages on their behalf (as their agent). PCG 2018/6 cannot be relied on by agents who adopt a different position (as to agency) for income tax purposes, or who also purport to be agents of the Australian product provider and charge the provider a fee for agency services.

Date of effect: Applies from 10 October 2018.

Sale of properties subject to GST

A taxpayer has been unsuccessful in contesting default assessments which imposed GST of \$265,296 on the sale of 4 properties: [SM Ho & Ors and FCT \[2018\] AATA 3911](#) (AAT, O'Loughlin DP, 16 October 2018).

The taxpayer had included development costs into the acquisition cost for the purposes of the margin scheme for 2 of the properties. This had resulted in the GST payable being nil in both cases. The AAT agreed with the Commissioner that the acquisition cost does not include development costs.

The taxpayer had treated the sale of a partially tenanted third property as fully GST-free. The AAT agreed with the Commissioner that this should be apportioned at

50/50. In terms of the final lot, the AAT accepted the Commissioner's evidence that the premises sold were new residential premises and so the supply subject to GST. Again, there was insufficient evidence to support the taxpayer's argument that the supply was of residential premises and so input taxed. However, the AAT reduced the default penalty by 50% to avoid what it termed an "unjust outcome".

Board of Taxation FBT Survey Now Open!

As you may be aware, the Board of Taxation is undertaking a review of compliance costs associated with Fringe Benefits Tax (FBT). The Board is now gathering evidence through online surveys with assistance from ORIMA Research, an independent research company and is seeking feedback from tax advisers and agents. You can volunteer to participate in the survey at <https://www.orima.com.au/FBTconsultation>.

It is only with your feedback that the Board can make recommendations to the Australian Government on ways to make it easier for you to assist clients in meeting their FBT obligations.

Further information about the survey is available on the Board's website at <http://taxboard.gov.au/consultation/fringe-benefits-tax-compliance-cost-review/>.

FINANCIAL SERVICES

ASIC to review ongoing fee disclosure by financial advisers

ASIC has [announced](#) a review of compliance by financial advisers with their obligations to provide fee disclosure statements (FDSs) and renewal notices to get clients to opt-in for ongoing fee arrangements every 2 years. ASIC noted that the fees-for-no-service failings in the advice industry have highlighted the importance of FDSs and renewal notices. It said it has received a number of breach reports from AFS licensees which indicate they may have failed to comply with the FDS and renewal notice requirements that were implemented as part of the FoFA reforms.

The volume and range of breach reports indicates a significant risk of systemic non-compliance, ASIC said. Therefore, it will undertake a project to examine the extent to which advice licensees issue FDSs and renewal notices (within the time limits) to customers with ongoing fee arrangements. ASIC will also check FDSs to ensure the content is accurate and describes what customers are charged for and what services customers have received. Appropriate procedures must also be in place to ensure fees for ongoing services are discontinued when the arrangements are terminated as

a result of licensees failing to comply with the FDS or renewal notice requirements. It said it will take enforcement action where breaches are substantiated.

Financial adviser professional standards: ASIC instrument

ASIC has registered the [ASIC Corporations \(Professional Standards - Transitional\) Instrument 2018/894](#) to give effect to its revised reporting dates for the financial adviser professional standards regime. It also makes minor technical amendments.

A key change is that ASIC has pushed back the timing for licensees to notify of new advisers who are joining the industry for the first time after 1 January 2019. New "provisional relevant providers" can only be added to the Financial Advisers Register (FAR) from 15 November 2019. Financial advisers who are listed on the FAR between 1 January 2016 and 1 January 2019 will be recognised as an "existing provider" under the new professional standards. If a person is an "existing provider", they have until 1 January 2021 to pass the exam, and 1 January 2024 to complete an approved qualification. Without recognition as an "existing provider" an adviser must pass an exam and complete an approved qualification by 1 January 2019.

Banks agree to end fees-for-no-service and grandfathered commissions

In response to the Royal Commission interim report, the Australian Bankers' Association (ABA) [announced](#) that the Banking Code of Practice will be changed to end "fees for no service", and better manage customers' accounts when they have died. Once notified of a customer's death, banks will proactively identify fees that are for products and services that can no longer be provided in the circumstances, and stop charging those fees and refund any paid.

The ABA said it will also seek changes to the Future of Financial Advice (FoFA) reforms to remove all legislative provisions that allow grandfathered payments and trail commissions in financial advice. ABA CEO, Anna Bligh, said these initiatives address 2 of the strongest concerns raised by the Royal Commission's interim report, and are the first of several key changes.

SUPERANNUATION

SMSF quarterly TBARs due 28 October

The ATO has also [warned](#) that, if a trustee fails to lodge a TBAR that is due by 28 October 2018, the member's transfer balance account will be adversely affected, the member may be penalised and there may be reverse workflow for the trustee to take care of. Of course, if no transfer balance account event occurred between 1 July 2017 and 30 September 2018, there is nothing to report, the ATO said. However, earlier reporting timeframes apply if a member has exceeded their transfer balance cap.

The ATO reminded SMSF trustees that they can choose to report events as they occur. In some instances, the ATO recommends reporting events as they occur to avoid potentially negative consequences. For example, the ATO recommends lodging a TBAR earlier than required if a member is planning to roll over their benefit to an APRA-regulated fund to start a new retirement phase income stream there. In this situation, the ATO says the commutation should be reported via a TBAR as it occurs, or no later than at the time of the rollover, to avoid double-counting of the member's income streams in the ATO's records.

ATO set to issue excess super contribution determinations

The ATO is set to start issuing excess concessional contributions (ECC) determinations for the 2017-18 financial year from mid-October 2018. At the [Superannuation Administration Stakeholders Group \(SASG\) meeting on 12 September 2018](#), the ATO said super funds should prepare for an influx of engagement and queries from members who receive these ECC determinations. Taxpayer may also receive an amended income tax return assessment together with the ECC determination. This is because any excess concessional contributions are included in the taxpayer's assessable income for the corresponding financial year (and subject to an interest charge). The taxpayer is also entitled to a 15% tax offset for the tax already paid by the super fund. A taxpayer has 60 days from receiving an ECC determination to elect to release up to 85% of their excess concessional contributions from their super fund. The ATO said it will also start issuing excess non-concessional contributions (ENCC) determinations for 2017-18 from mid-to-late October 2018. The non-concessional cap from 2017-18 is \$100,000 (or \$300,000 over 3 years for those under 65), provided that they have a total superannuation balance (TSB) less than \$1.6m at 30 June of the prior year.

Super fund treatment of ineligible downsizer contributions

Super fund administrators have requested further advice from the ATO on the action required for downsizer contributions that are subsequently found to be ineligible contributions. At the [Superannuation Administration Stakeholders Group \(SASG\) meeting on 12 September 2018](#), the ATO said super funds have started reporting to it downsizer contributions received from members. Individuals aged 65 or over can make additional non-concessional contributions up to \$300,000 from the proceeds of selling a home after 1 July 2018.

However, the super industry has expressed concern about the 13-month turnaround for the ATO to determine ineligible downsizer contributions. It has therefore requested further ATO advice on subsequent actions that funds are required to take in terms of returning the money to members (including where the account has been converted to an income stream) and re-reporting obligations.

ASIC recommends SMSF policy reforms

ASIC has put forward a range of policy solutions for self-managed super funds (SMSFs) to be considered by the Parliamentary Joint Committee on Corporations and Financial Services. In [response to Questions on Notice](#) following the ASIC Oversight hearing, ASIC said the following policy solutions could be considered by the Committee in terms of:

- **Member education** - consumers could be required to undertake SMSF trustee education prior to setting up an SMSF. At the moment, training is available, but is not compulsory.
- **Financial advice** - while the new training and education standards to be set by the Financial Adviser Standards and Ethics Authority (FASEA) should improve the quality of financial advice, ASIC has further suggested that it might be appropriate to require specialist training for persons providing advice to set up an SMSF.
- **SMSF establishment and LRBAs** - consideration could be given to prohibiting limited recourse borrowing arrangements (LRBAs) and/or mandating a minimum SMSF balance. ASIC said consideration could also be given to extending the proposed design and distribution obligations regime for financial products to the establishment of SMSFs. This could involve imposing an obligation on SMSF promoters to consider the type of consumer whose needs would be addressed by establishing the SMSF and the channel best suited to distributing the SMSF as a product class. ASIC noted that the Council of Financial Regulators is currently considering LRBAs and is due to report to Government by the end of 2018.

- **Compliance/oversight** - ASIC said it is continuing its focus on poor quality SMSF advice and is investigating enforcement action against a number of SMSF one-stop-shops.

ASIC's recommendations follow its reports (REP 575 and 576) which found that a large number of advice providers were not complying with the best interests duty when providing personal advice to retail clients to set up an SMSF. ASIC also found that some SMSF members lacked a basic understanding of their obligations as SMSF trustees.

Lost and unclaimed super

The ATO has [reported](#) that there is \$17.5 billion in lost and unclaimed superannuation waiting to be claimed across more than 6.2 million accounts, including a single account of over \$2.2 million in NSW. While the total amount of lost super was reduced by over \$420 million in 2017-18, the ATO said it is determined to help people find their super. The ATO recommends that people should engaged with their super fund through all stages of their career, not just when they are ready to retire.

An individual's super account details, including any that have been lost or forgotten, can be viewed and consolidated any time by linking their myGov account to ATO online services. In the last year over 530,000 active, lost and unclaimed super accounts worth almost \$3.2 billion were consolidated using myGov, the ATO said. Individuals who are unsure whether to consolidate their accounts, should check with their super fund who can advise on issues such as insurance that may be attached to a super account. See the ATO website at <https://www.ato.gov.au/checkyoursuper> and <https://www.ato.gov.au/lostsuper>.

ATO referral of SMSF auditors of ASIC

[Practice Statement PS LA 2018/1](#) sets out the factors that ATO staff may need to consider when forming an opinion as to whether an SMSF auditor:

- is not a fit and proper person to be an approved SMSF auditor;
- has contravened the SIS Act or SIS Regs in conducting an SMSF audit; or
- has failed to perform any required duties and functions adequately and properly.

The Practice Statement notes that because the decision to refer an auditor to ASIC is not reviewable, the decision should be fair and reasonable and be made in accordance with the ATO's good decision-making model.

Date of effect: 18 October 2018.

REGULATOR NEWS

ASIC winds up abandoned companies to unlock entitlements

ASIC has [assisted](#) employees gain access to the Fair Entitlements Guarantee scheme (FEG) by exercising its wind-up powers and appointing liquidators to 17 abandoned companies in the 12 months to 30 September 2018. ASIC said the appointment of liquidators means that the 32 employees of these companies can now apply to recover more than \$570,000 in unpaid employee entitlements. The appointment of liquidators also facilitates a full and proper investigation into why the companies failed, and allows recovery of any voidable or unreasonable director-related transactions that can potentially be returned to creditors.

Note that the [Corporations Amendment \(Strengthening Protections for Employee Entitlements\) Bill 2018](#), introduced on 20 September 2018, proposes to amend the *Corporations Act 2001* to strengthen enforcement and recovery options for company directors who attempt to avoid liability for employee entitlements in insolvency. The Bill will also implement the Government's reforms to stop corporate misuse of the FEG scheme. **Date of effect:** The day after Royal Assent.

APRA information paper: banking executive accountability regime

APRA has released an [information paper](#) on implementing the Banking Executive Accountability Regime (BEAR) which came into force for the largest banks from 1 July 2018. It will apply to all other authorised deposit-taking institutions (ADIs) from 1 July 2019. The information paper is based on APRA's experience in implementing the regime for the largest banks and their most senior executives and directors.

APRA Chairman Wayne Byres said the information paper clarifies APRA's expectations on identifying and registering accountable persons, and establishing a remuneration policy with a portion of variable remuneration deferred for a minimum of 4 years. The information paper also includes questions and answers on common issues. APRA said enforcement-related issues, including the disqualification of accountable persons and civil penalties under the BEAR, will be addressed in a subsequent paper.