INSTITUTE OF FINANCIAL PROFESSIONALS AUSTRALIA

Outlook

30 June checklist

Strategies to help clients maximise their tax and superannuation position

- Taxpayer wins part IVA appeal
- Selling your home and partial CGT
- Super contribution caps to increase
- Using powers of attorney in super
- Australian financial services licences

ISSUE 30 | MAY/JUNE 2024

TAX AUSTRALIA

POWERED BY COLEMAN GREIG LAWYERS

TAXAUSTRALIA

The Institute of Financial Professionals Australia (IFPA) is proud to announce an exciting development in our consulting services. Tax Australia, a key component of IFPA's suite of member services, will now be operated by Coleman Greig Lawyers, offering formal, written tax advice from some of the industry's most knowledgeable tax consultants.

For further details or to make an enquiry, please contact the member services team at info@tax-aus.com.au or 03 8851 4555

Why Coleman Greig?

With a reputation for excellence and a comprehensive understanding of tax law, Coleman Greig stands out as a leader in tax consultancy. Their expertise ensures that IFPA members receive highly specialised, professional advice tailored to your unique needs.

Service features

- **Formal, written tax advice:** Receive detailed, bespoke tax advice to guide your financial decisions.
- **Expert team:** Coleman Greig's tax consultants bring a wealth of experience and insight, offering solutions that are both innovative and compliant.
- **Seamless service:** Accessing this service is straightforward. Enquiries can be made through our Membership Services team or directly via the Tax Australia website.

How to engage

For those seeking formal tax advice, start by contacting our Membership Services team or submitting an enquiry through the Tax Australia website. Your request will be directed to Coleman Greig for an initial discussion and quote preparation.

Our vision

This new phase for Tax Australia underlines our vision to provide IFPA members with access to the highest quality tax advice and services. Through our partnership with Coleman Greig, we aim to empower our members with the knowledge and solutions needed to navigate the complexities of tax law confidently.

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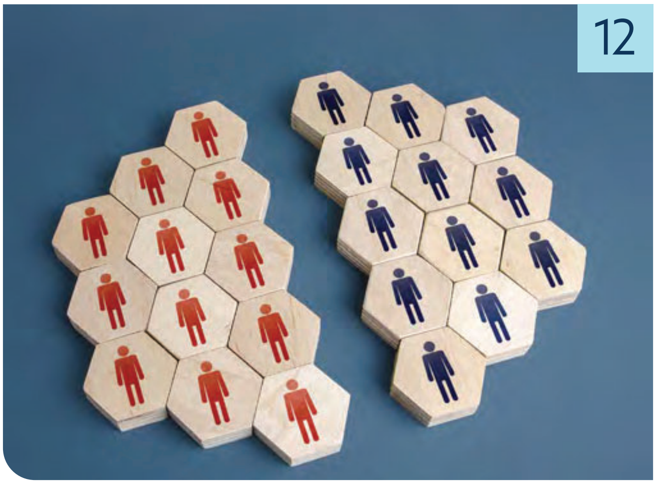

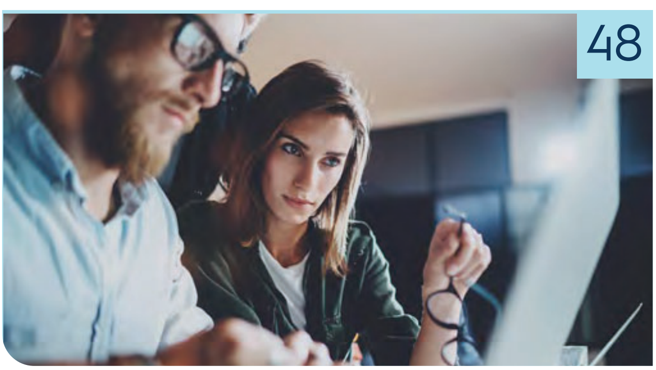

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Advocating for you

Our submission on objective of super – Second reading speech | *18/3/24*

On 18 March 2024, the second reading speech of the *Superannuation (Objective) Bill 2023* acknowledged our joint submission with Chartered Accountants Australia and New Zealand (CA ANZ) and the Institute of Public Accountants (IPA) on the objective of superannuation. It was recommended the government take this bill back to the drawing board and adopt the recommendations put forward by CA ANZ, IPA and IFPA. That is, that the government should create an objective for the entire retirement system – this would include housing, the age pension, superannuation and savings outside superannuation – rather than focus solely on superannuation.

Read our submissions

Senate Economic Legislation Committee public hearing on Division 296 tax | *18/4/24*

On 18 April 2024, IFPA was invited to appear before the Senate Economics Legislation Committee's public hearing as part of its inquiry into *Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023* (the Bill). With IFPA on the panel of witnesses to discuss the proposed tax were CA ANZ, CPA Australia and the IPA. The points raised by IFPA and the other joint bodies included:

- We oppose the proposed Division 296 measure as designed
- The unfairness and unprecedented nature of taxing unrealised gains
- The lack of refund for losses, and
- The lack of indexation on the $3 million threshold.

The Committee is due to issue its report on 10 May 2024.

Tax Update Notes

When our members told us that most information in the marketplace was not practical, was too complicated and is written in hard-to-understand language, we knew we had to provide a better solution.

Our Tax Technical and Design teams got together and developed a new product, Tax Notes. The notes provide the technical clarity you need to do your job, but in an easy-to-follow and visually appealing format.

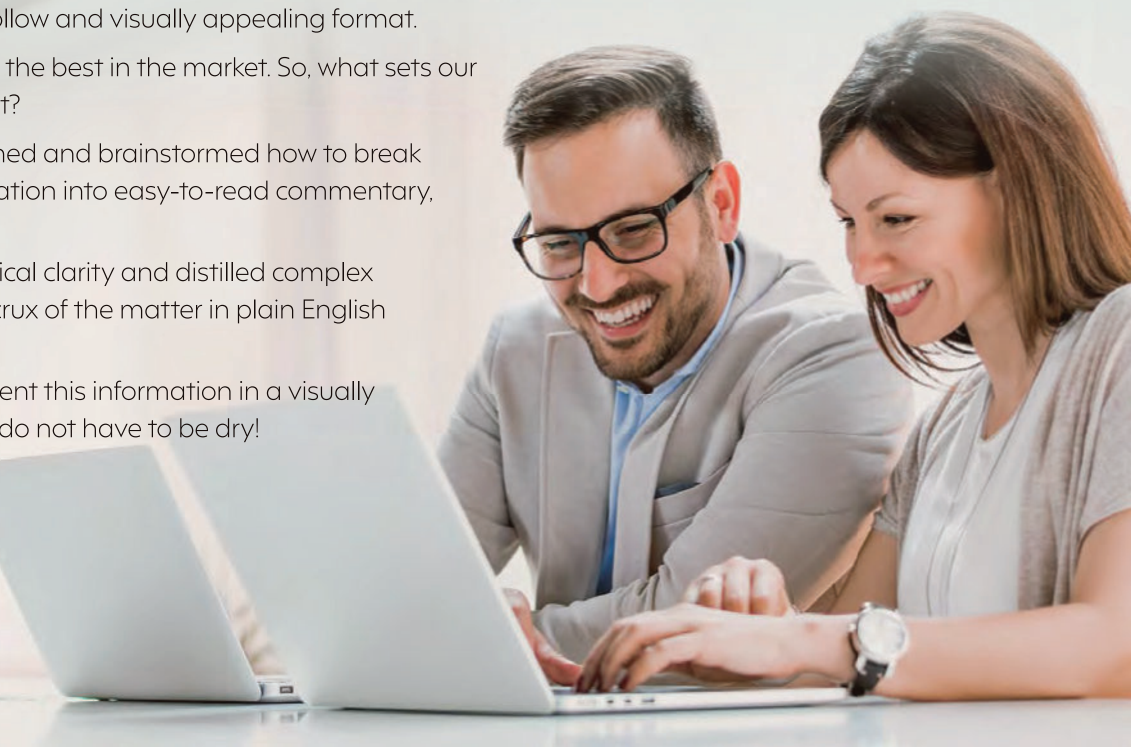
We now consider them to be the best in the market. So, what sets our Tax Notes apart from the rest?

- Our experts have researched and brainstormed how to break down complex tax information into easy-to-read commentary, diagrams and charts
- We have embraced technical clarity and distilled complex information to get to the crux of the matter in plain English (no jargon!)
- Our expert designers present this information in a visually appealing way. Tax notes do not have to be dry!

Scan code or go to ifpa.com.au for more information and to view a sample.

"These notes were just the best I've seen in a very, very long time."

David Krunic
DKP Chartered Accountants



In the media

Better Div 296 model is available
| *selfmanagedsuper, 26/2/24*

IFPA said the government can still meet its aim of implementing targeted superannuation concessions without taxing unrealised capital gains by using actual taxable income as a measure of earnings.

IFPA calls for sweeping changes to Division 296 tax | *Accountants Daily, 26/2/24*

IFPA has urged the government to make seven key amendments to its proposed Division 296 tax on superannuation balances above $3 million.

IFPA urges government to amend Division 296 legislation | *Super Review, 28/2/24*

IFPA said the Division 296 tax must not be legislated in its current form as other solutions exist to ensure a fairer and equitable superannuation system for all Australians.

Foreign super transferred to a local fund
| *Financial Standard Super, 4/3/24*

IFPA has issued a reminder that individuals who receive a lump sum from a foreign super fund within six months of becoming an Australian resident are generally exempt from paying any tax.

IFPA urges government to scrap super balances | *SMSF Adviser, 5/3/24*

IFPA remains opposed to the government's proposed Division 296 tax on super balances above $3 million and stated superannuation balances should not be capped as larger balances represent a small cohort of individuals – less than 2% of SMSF members.

AAT case shows foreign transfer difficulty
| *selfmanagedsuper, 7/3/24*

IFPA noted that conflicting superannuation and taxation rules between two countries can make foreign super transfers a difficult and complex process.

Key illegal access link quantified
| *selfmanagedsuper, 18/3/24*

Speaking at the IFPA annual conference, ATO's Peta Lonergan revealed the magnitude to which SMSF establishment is contributing to its most concerning area of compliance failure, being the illegal early access of super benefits.

New level of IFPA membership on offer
| *selfmanagedsuper, 18/3/24*

Members of IFPA are now able to access a premium level of membership that has just been launched.

Bring-forward rule timing important
| *selfmanagedsuper, 19/3/24*

IFPA has reminded practitioners about the applicability of the higher non-concessional contributions cap to be implemented on 1 July with regard to the bring-forward rules.

ATO SMSF investment role spelt out
| *selfmanagedsuper, 20/3/24*

Speaking at the IFPA annual conference, Michelle Griffiths has clarified the powers the ATO as regulator actually has over the appropriateness of an SMSF investment strategy.

IFPA slams retrospective CSLR levy | *IFPA media release, 22/3/24*

IFPA is deeply concerned about the retrospective aspect of the compensation scheme of last resort (CSLR) levy and the cost advisers will have to pay to fund the operation of the CSLR. IFPA has urged the government to fund all legacy complaints that occurred before the CSLR scheme was set up and remove the retrospective aspect of the CSLR levy by basing the levy on the date the claim is made rather than the date the claim was finalised.

Advice sector united against CSLR retrospectivity | *Financial Newswire, 25/3/24*

IFPA is the latest representative group to come out against financial advisers being asked to pick up the CSLR bill for cases which significantly pre-dated the underlying legislation, particularly those resulting from the collapse of Dixon Advisory.

CSLR shouldn't burden advisers with retrospective costs: IFPA | *IFA, 25/3/24*

IFPA shared its concern about the retrospective aspect of the CSLR levy and the impact the additional cost will have on advisers and clients.

CSLR levy cost will pass to consumers
| *selfmanagedsuper, 25/3/24*

"The retrospective nature of the CSLR levy runs counter to the government's Quality of Advice Review objective, which is to make advice more accessible and affordable for all Australians", Panagis said.

CPD events

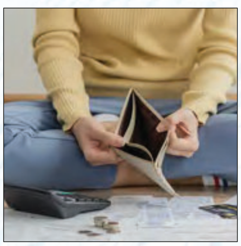
For more details and booking go to **ifpa.com.au** or call **03 8851 4555**

21 May | 12:30 – 1:30pm (AEST)

Winding up an SMSF

Presented by Shelley Banton

Winding up an SMSF is never as straightforward as it seems. Once the decision has been made, there are other considerations such as does the trust deed impose extra wind up conditions, can SuperStream impact the date and will the auditors be happy. In this webinar, Shelley will discuss winding up an SMSF by covering SMSF trustee requirements; getting the documentation right; avoiding trips and traps; what does the ATO want and a best practice wind up checklist.



28 May | 12:30 – 1:30pm (AEST)

Make sure you don't short change yourself: Minimum payments for super pensions

Presented by Graeme Colley

SMSFs in pension mode can attract generous tax concessions for the fund and the member. However, these concessions do come with conditions, one being satisfying the minimum pension amount required to be withdrawn each year. This session looks at the requirements and consequences of falling short.

6 June | 5 Sept | 5 Dec

Super Quarterly Update

Presented by Natasha Panagis

Presented by our Head of Superannuation and Financial Services, Natasha Panagis, this update will get you up to speed on the must-know developments in the superannuation sector over the past three months.

20 June | 12:30 – 1:30pm (AEST)

Paying super death benefits – direct to beneficiary or via estate?

Presented by Natasha Panagis

Many clients will nominate their spouse as beneficiary of their superannuation death benefits. However, for those clients who have separated or are widowed, the next in line will typically be their financially independent adult children. Using a case study, we explain why it may be worthwhile paying a superannuation death benefit to adult children via the member's estate rather directly from the member's superannuation fund.

5 July | 12 July | 19 July

Navigating the tax tide: A 3-part ATO insight series

Presented by Joshua Goldsmith

Each of these webinars is crafted to provide deep insights and actionable strategies, helping you and your clients manage ATO interactions more effectively. Join us to enhance your expertise and navigate the complexities of tax governance with confidence.

See page 27 for more details.

Second Tuesday of every month

Monthly Tax Update

These sessions keep you at the forefront of your profession, covering key new cases, legislation and regulator developments to provide practical insights into how these issues will affect you and your clients.

Key dates for Tax Professionals

21 APRIL

- Lodge and pay quarter 3, 2023–24 PAYG instalment activity statement for head companies of consolidated groups.
- Lodge and pay March 2024 monthly business activity statement.

28 APRIL

- Lodge and pay quarter 3, 2023–24 activity statement if electing to receive and lodge by paper and not an active STP reporter.
- Pay quarter 3, 2023–24 instalment notice (form R, S or T). Lodge the notice only if varying the instalment amount.
- Make super guarantee contributions for quarter 3, 2023–24 to the funds by this date.

30 APRIL

- Lodge TFN report for closely held trusts if any beneficiary quoted their TFN to a trustee in quarter 3, 2023–24.
- Lodge lost members report for the period 1 July 2022 to 31 December 2023.

15 MAY

- Lodge 2023 tax returns for all entities that did not have to lodge earlier (including all remaining consolidated groups) and are not eligible for the 5 June concession.
- Due date for companies and super funds to pay if required.

21 MAY

- Lodge and pay April 2024 monthly business activity statement.
- Final date to add new FBT clients to client lists to ensure they receive the lodgement and payment concessions for their fringe benefits tax returns.
- Lodge and pay fringe benefits tax annual return if lodging by paper.

26 MAY

- Lodge and pay eligible quarter 3, 2023–24 activity statements if electing to receive and lodge electronically.

28 MAY

- Lodge and pay quarter 3, 2023–24 Superannuation guarantee charge statement if the employer did not pay enough contributions on time.

5 JUNE

- Lodge tax return for all entities with a lodgement due date of 15 May 2024 if the tax return is not required earlier and both of the following criteria are met:
  - non-taxable or a credit assessment in latest year lodged
  - non-taxable or receiving a credit assessment in the current year.
- Lodge tax returns due for individuals and trusts with a lodgement due date of 15 May 2024 provided they also pay any liability due by this date.

21 JUNE

- Lodge and pay May 2024 monthly business activity statement.

25 JUNE

- Lodge and pay 2024 fringe benefits tax annual return for tax agents if lodging electronically.

30 JUNE

- Super guarantee contributions must be paid by this date to qualify for a tax deduction in the 2023–24 financial year.
- Note: taxpayers and their partners receiving Child Care Subsidy and Family Tax Benefit payments from Services Australia must lodge their 2022–23 tax return by 30 June 2024, regardless of any deferrals in place.

From the CEO

Membership 2024/25

It is that time of year again! I would like to take this opportunity to invite and encourage you to renew your membership with the Institute of Financial Professionals Australia for our 2024/25 year.

As you know, we have had plenty of change this year, and the most visible to you would be our new website and member portal. This has been designed with members in mind, to make your interactions with us easier and more engaging, plus it allows us to provide even more content to you in a more streamlined environment.

Our focus this year is to increase our tax content, with a greater number of webinars and a broader group of specialists to guide you through the technical and practice issues of the moment. Our tax discussion groups are also expanding, and we encourage you to participate – they are invaluable not only for technical knowledge, but the opportunity to hear from your peers. Share your challenges, celebrate your triumphs, and exchange ideas with fellow members who genuinely empathise with your professional journey.

Advocacy on behalf of all our members is a core objective of IFPA and we will be increasing our presence in forums, conferences and in the media.

Our New Platinum Membership

We have a new level of membership this year – the Platinum membership. This top-level membership tier provides all professional membership benefits, as well as unlimited webinars presented by IFPA, tax and superannuation discussion group attendance, the monthly client newsletter service to keep your clients informed, and a ticket to our annual conference. This enables you to achieve all your CPD requirements, plus add value to your own clientele.

We are offering this membership tier at $1200, or $100 per month, which is exceptional value.

We greatly appreciate your trust, support, and shared commitment over the past year to our mission of supporting tax, superannuation and financial advice professionals.

Renewing your membership not only bolsters your personal and professional growth but also elevates the collective influence and voice of IFPA. Together, we can shape policies, advocate for our industry, and champion the interests of financial professionals across Australia.

Thank you for your continuing commitment to IFPA. We welcome your continued partnership and look forward to engaging with you during the year.

With best wishes,

Pippa McKee Chief Executive Officer

Unlock Exclusive Insurance Solutions with 2BSure – Your Partner in Professional Excellence

At 2BSure Insurance Brokers Pty Ltd, we are acutely aware of the unique challenges and needs faced by professionals within the accounting and financial services industries. With a longstanding history of serving this sector, we pride ourselves on our deep understanding and tailored approach to insurance solutions that truly resonate with the intricacies of your profession.

Why 2BSure Stands Apart:

- **Specialised Industry Focus:** Our dedicated services for accounting firms and the financial services industry ensure that we speak your language, understand your risks, and offer solutions that align with your specific needs.
- **Streamlined Claim Services:** We recognise the stress and inconvenience associated with insurance claims. Our commitment to simplifying and supporting you through the claim process sets us apart, aiming to minimise anxiety and frustration.
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- **Flexible Premium Payments:** Enhance your cash flow with the option to pay insurance premiums monthly, freeing up capital and aligning with your financial planning.
- **Exclusive IFPA Member Benefits:** Enjoy a 10% discount on selected insurance products, specifically curated for IFPA Members, acknowledging your dedication to professionalism and excellence.

Our Key Insurance Offerings:

- **Professional Indemnity:** Essential coverage that protects you against claims of negligence or breach of professional duty.
- **Public Liability:** Guard against claims of injury or damage sustained by third parties as a result of your business activities.
- **Business Packages:** Customised solutions that bundle the essential coverages your business needs into one convenient package.
- **Directors Liability:** Protect your personal assets from the risks associated with making management decisions.
- **Cyber Insurance:** Safeguard your business against digital threats and data breaches.
- **Travel Insurance:** Comprehensive coverage for your professional and personal travel needs.
- **Audit Insurance:** Unique to clients of 2BSure, automatic audit cover is provided free for personal and entity tax returns managed by your accounting firm whilst you are a client of 2BSure.

Exclusive Offer for IFPA Members:

As a valued IFPA member, we invite you to leverage your membership with an exclusive 10% discount on selected insurance products tailored specifically for your needs. This is our way of contributing to the security and prosperity of your professional journey.

Join the Ranks of Protected Professionals with 2BSure

Embrace the peace of mind that comes with knowing your professional and personal assets are in capable hands. Visit the 2BSure stand at the IFPA conference or contact us directly to discover how our specialised insurance solutions can support your continued success in the accounting and financial services industry.

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P: 1300 IFPAGI

Taxpayer wins part IVA appeal on stapled arrangement

Frank Drenth, Tax Team, Institute of Financial Professionals Australia

In a decision that may help calm the nerves of some family businesses operating through trust structures, the Full Court of the Federal Court has overturned a decision at first instance that Part IVA ITAA 1936 can apply to the exercise of a trustee's discretion to make distributions to lower rather than higher taxed beneficiaries.

The Facts

Since 2002, the business of the Minerva Financial Group has involved the pooling of debt instruments into securitisation trusts, with the profit margin plus management fees being taxed at the corporate rate of 30%.

Based on external advice, the group undertook a restructuring process through 2007 and 2008 ahead of a planned IPO comprised of stapled securities. In effect, the group was restructured into separate corporate and trust silos, with companies in the corporate silo holding special units in a newly formed intermediate holding trust (IHT). Due to the impact of the GFC in 2008, the IPO was delayed for many years, but the restructure nevertheless went ahead as Minerva expected to enter the market using a stapled structure in an IPO at some point. This did not occur until 2020.

Following the restructure, new securitisation trusts were established under the IHT and the net interest income was distributed to the head trust, which in turn distributed the interest to the non-resident controllers. The trust deed empowered the trustee to make distributions to the corporate silo by way of the special units, but it largely refrained from doing so after the restructure. Following the restructure, the corporate silo continued to derive some management fees and other income, which remained subject to 30% tax.

Quite apart from the legal and commercial ramifications of the restructure, the upshot was that almost all of the group's net interest income was now subject to 10% withholding tax instead of 30% corporate tax, an outcome that was not much to the Commissioner's liking.

Part IVA determinations

The Commissioner identified three separate schemes to which he said Part IVA applied, although they can be conveniently regarded as two: firstly, the decision to restructure the business into the two silos and issue stapled shares and secondly, the trustee's failure to exercise its discretion to make distributions to the corporate side of the business in the income years ended 30 June 2012 to 2015.

In each case the Commissioner determined there was a scheme in connection to which someone obtained a tax benefit and that the dominant purpose for entering into or carrying out the scheme was to obtain that tax benefit.

Decision at first instance

The appellant conceded there was a scheme with a connected tax benefit but argued that neither scheme was entered into for the dominant purpose of obtaining a tax benefit.

O'Callaghan J at first instance ruled against the Commissioner in relation to the first scheme, finding that the restructuring clearly attracted commercial benefits as expert evidence established that having the silo structure with the stapled securities was likely to maximise the value of the upcoming IPO.

In relation to the second scheme, however, the court held that its dominant purpose was to benefit from the 20% reduction in tax imposed on the profits generated by the securitisation business. In making this finding, the court took the view there were no logical reasons, other than the tax benefit, for the trustee failing to make distributions to the corporate side of the group:

> *"The applicant was unable to provide any cogent reason, other than the tax benefit, why the decision was taken in each of the relevant years to direct no more than 2% of MHT's net income to the special unitholders."*
> *[Primary Judgment at 564]*

Minerva appealed to the Full Federal Court in respect of this decision.

Full Court decision

The Full Court observed that the Trial Judge had failed to consider evidence adduced by Minerva about the tangible commercial benefits that arose from directing the net interest distributions to the trust silo, having regard to the profile of likely investors and the fundamental changes in the commercial position of the group's corporate entities. And in searching for reasons for the trustee's failure to make distributions to the corporate silo the Full Court felt the Trial Judge strayed into the subjective motives of the decision makers, which is not what the law requires:

> *"(Section 177D(2))requires a conclusion about purpose to be drawn from the eight objective matters; it does not require or even permit any inquiry into the subjective motives of the taxpayer or others who entered into or carried out the scheme or any part of it: Hart at [65]." [at 60]*

The Full Court also ruled that the scheme or transaction has to be viewed in its entirety, including all the commercial and other consequences that flowed to Minerva and its associated entities as a result of the restructure:

> *"… the conclusion to be drawn under s 177D is not drawn by looking only at the consequences of what was done or by comparing the tax consequences of what was done with the tax consequences of another possible transaction that achieved different commercial outcomes. It is a conclusion to be drawn by reference to the eight factors applied to the totality of the scheme considered in its wider context." [at 61]*

Accordingly, the Full Court held that the requisite dominant purpose had not been established by the Commissioner and the Part IVA assessments could not be sustained:

> *"It was not disputed that a tax benefit had been obtained by the appellant. If distributions had been made differently more Australian tax would have been payable. But the identification of a tax benefit does not answer the question posited by s 177D. Nothing in the surrounding context objectively supports a conclusion that any party to any of the schemes*

either entered into or carried out any of the schemes for a dominant purpose of enabling the appellant to obtain a tax benefit." [at 123]

But beware a potential legislative 'fix'

It can be a little unnerving when taxpayers enjoy success before the courts on Part IVA matters. Back in 2013 the definition of a "tax benefit" was amended to overcome a series of setbacks the Commissioner suffered at the hands of the courts and there is a risk that the Commissioner will look for the Parliament to lower the purpose threshold to something less than dominant, heaven forbid. (It is understood the Commissioner has no plans to apply for special leave to appeal to the High Court.)

But for the moment, at least, the taxpayer should celebrate the win.

Implications for family trusts

At the time the decision at first instance was handed down in 2022 and following the earlier decision in *Guardian*, we voiced concerns about the Commissioner's use of Part IVA to attack the exercise of a trustee's discretion to make distributions of trust income in a particular way. Could your typical family trust be next in the firing line or does the Full Court's recent decision now take that off the table?

The best answer is probably that while the recent Full Court decision in *Minerva* is unlikely to make much difference either way, the Commissioner would face considerable political (rather than legal) obstacles in using Part IVA to attack the time honoured practice of loading up low income adult beneficiaries with trust distributions out of the family business (subject, of course, to the reimbursement agreement rules in s100A).

On a strict legal basis, many family trust distribution practices would arguably be highly susceptible to the application of Part IVA. Almost any course of conduct is a scheme and there will be a tax benefit which arises from distributing income to low tax adult family members rather than to the controlling individuals with a higher marginal tax rate. That only leaves the dominant purpose box to be ticked and it is hard to see, when viewed objectively, that the annual trust distribution cherry picking process is done for any reason other than to minimise the overall tax paid by someone in the family. In most cases the practice would be unlikely to produce the sorts of commercial advantages the Full Court identified in *Minerva*.

So why isn't the ATO already pushing out Part IVA determinations by the dozen?

Political barriers

In theory, the Commissioner is an independent statutory officer who administers the law without fear or favour, regardless of the complexion of the government of the day. But decades of administrative practice have created well-established channels of communication between the ATO and the Treasurer's office, and it is inconceivable the ATO would embark on a Part IVA based attack on family trusts without first informing the Treasurer.

The scars from the 2019 Federal election, when Labor proposed a 30% minimum tax on trust distributions (among other contentious tax policies) remain relatively fresh, so it's unlikely the Labor government would encourage such a move, regardless of what they really want to do. For what it is worth, Labor formally ditched its 30% trust brainwave in the leadup to the 2022 election. And they'd never go back on something they've said, would they?

No ATO appetite for it

In the s100A debate that lasted for most of the first half of 2022, the ATO tried its best to reassure the tax and business community that its "beneficiaries must benefit" mantra would not in most cases be applied retrospectively, while its guidance material outlined some limited exceptions going forward by way of the ordinary family dealing carve-out.

There was also the following public comment from a senior ATO officer about making distributions to lower tax adult beneficiaries:

> *"That's fine, we accept or understand that that's a part of the tax landscape," Louise Clarke, a deputy commissioner at the ATO who runs the agency's private wealth division, said.*
> *What concerns the ATO is where the person who is in line to receive the money from the trust doesn't get the benefit of the distribution and it actually goes to another party, she said.*
> *[Source:* The Guardian *26 June 2022]*

While these comments are not legally binding on the ATO, it does reflect the ATO's practice over many decades of tolerating the tax focused distribution practices engaged in by many family trusts and it is difficult to see that changing absent a law change. But there is a new Commissioner in the job now, so who knows what might happen?

Section 100A will be the ATO's primary weapon

It seems clear the ATO will mostly rely on s100A and its "beneficiaries must benefit" principle to rein in what it sees as the inappropriate use of trusts.

By and large, s100A audits will look to establish that the appointment of trust income to low tax adult beneficiaries (and indeed, all beneficiaries) is actually paid out and applied to the benefit of those beneficiaries.

Practitioners should be familiar with the ATO guidance material on s100A that was issued in December 2022 – TR 2022/4 and PCG 2022/2. Of particular interest are the following paragraphs in the PCG:

» **Para 25(b)(i)**

There is no trustee retention of funds if the retention of funds ends within two years. In most cases the PCG applies to the appointment of present entitlements made on or after 1 July 2022, which for most family trusts will be the trust distribution resolutions made in June 2023. Those distributions will not be regarded as UPEs until June 2025, so trustees have until that time (if they wish) to work out how beneficiaries would like to settle their 2023 present entitlements.

The day of reckoning will arrive eventually, but the two-year rule effectively gives trustees up to two years of distributions that are available as working capital for the family business.

» **Para 50(d)**

The ATO can be expected to ask for details of how the present entitlement to trust income was satisfied and, where practical, used by the beneficiary. A useful checklist item when arranging for the 2024 trust distributions might be to ask how the beneficiaries used last year's distribution.

Celebrating the success of IFPA's 2024 Annual Conference & Expo

Ky Wilson, **Head of Marketing & Membership, Institute of Financial Professionals Australia**

The Institute of Financial Professionals Australia (IFPA) wrapped up its second successful Annual Conference & Expo on 15th March 2024, at the Sofitel on Collins. This event, celebrated for its sell-out status, brought together a wide array of professionals, exhibitors, and online delegates, all united by an interest in delving into the latest advancements and strategies across tax, superannuation, and financial services. The consensus among delegates of the pivotal role of IFPA in spearheading the evolution and integration of financial services, ensuring our community remains at the forefront of industry knowledge and practice.

From the onset, attendees were invited into a series of comprehensive sessions helmed by distinguished industry leading lights. The updates on legislation and regulations provided by Natasha Panagis and Joshua Goldsmith stood out, as they dissected the sector's dynamic landscape and its broader implications. Delegates applauded this segment for its relevance and depth, with one online participant expressing, *"Josh Goldsmith – you could put him on as a speaker for the whole day, and I would pay to come and listen! Not only was he engaging, but he was knowledgeable in a practical way."*

The conference's diverse agenda spanned two focused streams – tax and superannuation/financial services – affording attendees the luxury of tailoring their experience to align with their professional pursuits. Michelle Griffiths' presentation on super contribution strategies was especially noteworthy, offering pragmatic advice on maximising superannuation benefits before the EOFY. This session underscored the IFPA's dedication to furnishing its members with actionable, real-world solutions.

Attendees were particularly vocal about the rich variety and the high calibre of topics presented. A sentiment echoed by an attendee was, *"I found the topics very interesting and informative. Whoever selected the topics a big thanks."* Another added, *"Overall presentation, members and content was at a higher level – when compared to other bodies."*

The event was not just an academic or informational affair but also a vibrant networking hub, fostering meaningful connections amongst peers and industry leaders. The networking opportunities were a highlight for both in-person and online participants, who appreciated the dynamic and engaging environment facilitated by the event.

Praise for the event extended to sponsors and exhibitors, who commended the highly engaged audience and the synergy between their goals and those of the IFPA. This positive feedback was a testament to the event's significance and its adept organisation, with attendees unanimously affirming the informative nature and engagement of the schedule—100% of the delegates surveyed agreed the event schedule was informative and engaging.

Highlighting the event's success, delegates were unanimous in their commendation. A memorable quote from an attendee, *"I love the way you did it! The sessions were a good length, and the presenters excellent!"* and from another, *"Affordable conference with a great variety of topics covered, and I was very impressed with the structure and content on the day."*

In terms of overall satisfaction, the event scored admirably, with online attendees rating it an 8.8 out of 10, and in-person participants even higher, at 9 out of 10. The unanimous willingness to recommend this event to peers – 100% of respondents agreed – speaks volumes of its impact and value.

As we look towards 2025, the insights and feedback garnered from this conference are poised to shape future IFPA events, ensuring they continue to serve as pivotal platforms for professional growth, advocacy, and community within the financial sector. The overwhelming success of this year's Conference & Expo not only reinforces IFPA's pivotal role within the community but also cements its commitment to advancing the interests and expertise of its members and the broader industry.

In closing, we extend our gratitude to our valued sponsors, whose generous support played a pivotal role in the resounding success of this year's conference. Our Platinum sponsor again in 2024, AuditSave, set a remarkable standard with their commitment. 2BSure, as our Gold sponsor, added a layer of excellence, while inviva, our Silver sponsor for a second year in a row, and Employment Hero, our Bronze sponsor, contributed significantly to the fabric of the event. A special thanks goes to Foresters, our Networking sponsor, for facilitating invaluable connections among attendees. Our Programme sponsor, ATOmate, deserves recognition for their integral role, as does Thinktank, our Giftbag sponsor for the second time, for enhancing the delegate experience. Lastly, our Media sponsor, Selfmanagedsuper, was instrumental in amplifying our event's reach and impact. Together, these partnerships underscored the collaborative spirit and shared vision that underpin the IFPA Conference & Expo.

Thank you to all our members and delegates for your attendance and for being an integral part of our journey towards advancing professionalism and excellence within the sector.

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GST at settlement

The ATO has issued a timely reminder about the complexities surrounding GST at settlement in property transactions, shedding light on crucial obligations for both suppliers and purchasers. Understanding GST at settlement is pivotal, particularly for those involved in the sale or purchase of new residential premises or potential residential land..

What is GST at settlement and when does it apply?

Goods and services tax (GST) at settlement may apply to property sales of new residential premises or potential residential land when the supplier (who can be the seller or vendor) is registered for GST.

Suppliers and purchasers will need to determine if GST at settlement applies when they sell or purchase property.

The supplier must notify the purchaser in writing that GST at settlement applies and state the amount the purchaser needs to withhold.

For purchasers who don't have a withholding obligation, the supplier's notice must be clear that no withholding is required.

For purchasers who have a withholding obligation, instead of paying the supplier the full contract price, at settlement they must:

- withhold an amount to pay to the ATO (purchasers don't need to be registered for GST), and
- pay the balance of the sale price of the property, minus the withholding amount, to the supplier.

More information about the GST at settlement process is available on the ATO website, but here is an overview of the steps:

- Step 1: Supplier must notify purchaser
- Step 2: Purchaser or representative lodges Form one
- Step 3: Form one email confirmation
- Step 4: Purchaser or representative lodges Form two
- Step 5: Purchaser makes the payment
- Step 6: Payment email confirmation
- Step 7: Supplier credit and email confirmation
- Step 8: Supplier lodges business activity statement.

Who needs to report GST?

Suppliers who are registered, or required to be registered, for GST must report on their business activity statement (BAS):

- all property sales at label G1
- GST on these sales at label 1A.

Suppliers receive a credit for the GST amount withheld by the purchaser and paid to the ATO, which is held in their GST property credits account. When they lodge the relevant BAS, those GST credits will move into their activity statement account and offset against any GST liabilities reported on the BAS.

They can view their GST property credits account online through:

- Online services for business
- Online services for agents.

How does GST at settlement work with the margin scheme?

Suppliers may apply the margin scheme on certain property sales if they meet eligibility rules.

Generally, the GST for the margin scheme is based on the difference between the:

- price paid for a property when it was first purchased, and
- subsequent sale price of the property.

The supplier must obtain a written agreement from the purchaser before settlement, indicating that the margin scheme applies to the property sale, and notify the purchaser of their withholding obligation.

The purchaser will need to withhold 7% of the contract price (regardless of the GST amount payable on the property sale, or the usual one-eleventh of the contract price where it's fully taxable) and pay it to the ATO at settlement.

Visit the ATO's website for more information about GST and the margin scheme.

GST at settlement and foreign resident capital gains withholding

All suppliers who are Australian residents for tax purposes that sell real estate valued at $750,000 or more need to apply for a clearance certificate.

Having a clearance certificate means they won't have the 12.5% FRCGW amount withheld from the sale price by the purchaser at settlement.

Clearance certificates can take up to 28 days to process, so suppliers should apply as soon as they start thinking of selling property. The certificates are valid for 12 months and multiple sales.

Suppliers selling residential premises or potential residential land in Australia can be subject to both:

- GST withholding obligation (GST at settlement)
- foreign resident capital gains withholding (FRCGW).

They need to apply both processes separately when settlement occurs.

Selling your home?
Beware of a partial CGT liability.

Kirk Wilson, **Tax Team, Institute of Financial Professionals Australia**

With the opportunity for homeowners to cash in on spiralling house prices around Australia, it is important for them to turn their mind to whether they may only have a partial CGT main residence exemption, and not a full CGT exemption.

While it seems that the ATO doesn't actively chase up partial CGT main residence exemption matters, there may come a time when the revenue lost from this source may more than pique the ATO's interest.

In this regard it is also worth noting that in terms of the Government's statistics on foregone revenue from tax concessions, the application of the CGT discount to a partial main residence exemption usually generates the most amount of foregone revenue. So, it maybe that the partial exemption itself may one day be the object of some ATO project.

But from the homeowner's point of view, they may not even realise that they have a possible partial CGT liability in respect of their home.

So, what are some of the common (and not so common) ways that such a partial CGT liability may arise?

Didn't move in "as soon as practicable"

Firstly, when you bought your house you may not have been able to move into as "soon as practicable" pursuant to the rule in s 118-135 of the ITAA 1997.

The rule also operates as a two-edges sword to give you sufficient time to move into a dwelling to make it your home without jeopardising you full CGT main residence exemption. However, if you do not do so, it will on the other hand deny you an exemption for that period.

This "moving into a dwelling" rule simply reads:

> *"If a *dwelling becomes your main residence by the time it was first practicable for you to move into it after you * acquired your *ownership interest in it, the dwelling is treated as your main residence from when you acquired the interest until it actually became your main residence."*

And while in some case the adverse impact of the rule can be ignored, such as because of serious illness, in other "common" cases the Commissioner says it cannot be ignored.

For example, if you bought your home subject to an existing lease that still has to run its course, then you will be subject to a partial exemption under this rule for this period that you did not move into the home immediately.

In short, according to the Commissioner, the presence of an existing lease on your newly acquired home will not be a good enough reason to be able to use this rule favourably. (See the Explanatory Memorandum to the Bill that introduced s 118-135.)

Likewise, the rule will apply if for example you can't move into your new home as "soon as practicable" because of commitment to, say, an interstate job.

In these types of cases where the rule adversely applies, the partial exemption will be calculated on a pro-rata basis to reflect the period of time during which you owned the home that you did not live in it initially (per the calculation rule in s 118-185 dealing with the "partial exemption where dwelling was your main residence during part only of ownership period").

And importantly this pro-rata will be calculated by reference to the amount you bought your home for – and not any larger subsequent market value. However, if you owned the home for more than 12 months, the 50% CGT discount will be available to reduce the partial gain.

Buying new home before the sale of old one

Another often overlooked way that you can trigger a partial CGT main residence exemption is where you buy a new home before selling the old one. (And no doubt this is common in the heated Australian home market.)

In this case, the rule in s 118-140 (*Changing main residences*) provides that a partial main residence exemption will apply if you have not sold your old home within six months of acquiring the new home.

> Another often overlooked way that you can trigger a partial CGT main residence exemption is where you buy a new home before selling the old one.

And in this case it seems "sold" means settled on the contract of sale – and not just entered into the contract of sale.

Again, the rule is a two-edged sword that concessionally gives you a maximum period of six months to treat both homes as your CGT exempt main residence.

But if this six month period is breached then the home which is not (as a question of fact) your actual main residence at the time will be subject to a partial CGT main residence exemption to reflect the period in excess of six months that it took to sell it.

Accordingly, in this case, the partial exemption will be calculated on a pro-rata basis to reflect the period of time during which that home was not your actual main residence – subject to an additional deemed main residence status of six months. (And the CGT discount will apply if that home was owned for more than 12 months.)

importantly, the rule is not available at all as a concession to treat both homes as your main residence for a maximum period of six months, unless both the following conditions are met:

» your old home was your main residence for a continuous period of at least three months in the 12 months ending when you sold it; and

» your old home was not used for the purpose of producing assessable income in any part of that 12-month period when it was not your main residence.

However, note that the absence concession in s 118-145 can be used for the old home to meet these requirements (see TD 1999/43).

Absent from home and renting it

Another key way that you can lose your full CGT exemption on your home is if you are absent from it for a period (eg, if you rent it while you live or work overseas) and you cannot use (or fully use) the "absence concession" in s 118-145 to continue to treat it as your home.

But again the absence concession rule is first and foremost a concession that allows you to continue treat your home as a CGT exempt main residence for up to six years if you rent or otherwise indefinitely if you don't rent it – or in both circumstances combined ie where you rent it for up to six years and then don't use it to produce assessable income.

The concession is extraordinarily generous and has enormous application across almost an endless range of circumstances (and may well be a factor in why there are some 22,000 vacant homes in Sydney as recently reported in the media).

However, a common scenario where the absence concession can be used, but still result in a partial CGT main residence exemption, is where you rent your home for more than six years (such as where you go overseas to live and work for say 8 years and then return or even sell the home before returning).

In this case, there will be a pro-rata calculation by reference to your home's market value when you start renting it (provided this is the first income use of the home) **and** a deemed acquisition of the home at this time. This is the effect of s 118-192 (first use to produce income rule).

As a result, in this case the pro-rata calculation will reflect a deemed ownership period of years (of which it has been your deemed home for six years, courtesy of using the absence concession) and a deemed cost base of its market value at first income use time.

This means that 2/8ths (1/4) of the prima-facie capital gain/loss arising by reference to its market value cost base will be subject to a partial CGT main residence exemption pursuant to the principle in s 118-185 for calculating a "partial exemption where dwelling was your main residence *during part only of ownership period*". And, of course, the CGT discount can apply.

A similar partial exemption may apply even if you rent your existing home for less than six years in circumstances where you own another home and make it your main residence in that overlapping period. In this case you will have to choose which home to apply the main residence exemption to and a partial or no exemption will apply on the other home.

But again note that any partial (or no) exemption calculated on the rented home will be calculated by reference to its *market value* when you start renting it (provided this is the first income use of the home) pursuant to the obligatory rule in s 118-192.

Importantly, this favourable market value calculation rule also applies where you rent a room a market rate or let out a granny flat at commercial rates for the first time.

However, it cannot apply if you home was previously subject to pro-rata exemption, for example, for it failing to be your home throughout your ownership period (eg, when it was rented before you lived in it or where you do not move in as "soon as practicable" after its purchase).

By way of summary, the interaction of the "absence concession" rules and any rental use of your home can give rise to a partial exemption calculation in circumstances where you may well think that the absence concession will protect you entirely.

Finally, it is worth emphasising that in order to use the generous absence concession, you must first establish the home as your main residence on a bona-fide basis. Bunking in for only a couple of weeks with a sleeping bag, a toaster and toothbrush will not suffice. And given the ATO extensive data matching programs this matter may not be hard to establish.

And this writer is aware of someone who received an automatic generated ATO notice to query whether the home was first established as their main residence before it was rented – and presumably it arose from ATO data matching with rental bonds and real property title records.

Use of part of home as a place of business

A partial main residence exemption will also apply if you have used part of your home to carry on a business – eg, consulting rooms or an office for a professional practice (such as an accountancy business!) or a shed or garage for a car detailing business, etc.

This partial exemption arises under s 118-190 and requires a reasonable attribution of the capital gain/loss made on the sale of the home that is attributable to that part of the home used to produce such income (and over the relevant period of time) – or more precisely, "to the extent to which you would have been able to deduct interest" for such income use of the home.

Importantly, such gain or loss is added to any assessable gain/loss attributable to the home not qualifying as your main residence throughout your period of ownership (eg, in some of the ways discussed above).

Of course, prima facie, any gain would be eligible for the CGT small business concessions if the conditions for are met. But here things can get a bit tricky.

For a start, the ATO seems to take the view (at least in some published Private Binding Rulings) that in order for a home to qualify as an "active asset", at least 50% of it must have been used in carrying on a business. And that appears to rule out that home office that only occupies say 10% of the floor space of a home!

Moreover, there seems to be some case law that supports the Commissioner's approach (see for example, *Rus and FCT* [2018] AATA 1854 where it was ruled that land on which a shed was located and from which the taxpayer ran a building and plastering business did not qualify as an active asset as only a small part of the land (10%) was used in carrying on a business).

Another problem is that if you are seeking to, say, apply the 15-year exemption to totally exempt the gain, then you must be 55 years or older and *retiring in connection with the sale of the asset*. And in the case of the sale of a home where part of it was used for business purposes some years before its sale you may not be able to say that you are *retiring in connection with its sale*.

But, again, the more pressing problem appears to be whether a home will qualify as an active asset when only a relatively small part of it is used for business purposes.

Suffice to say that this is probably a matter that you would need to iron out with the ATO before claiming any CGT small business exemption – as you may otherwise be subject to a partial CGT main residence exemption in this case (and may be subject to it anyhow, if all the gain cannot be exempted under the CGT small business concessions).

Knock down rebuild – rebuild not completed within four years

Due to the heated property market, there are plenty of knockdown-rebuilds occurring across the country.

And on the face of it a knockdown rebuild will give rise to a partial CGT main residence exemption on the sale of the new home. This is because the ownership period of the home that is sold begins when the land was originally acquired (see s 118-125) – and as the newly-built home was not on that land from the beginning a partial exemption prima facie arises.

However, the building concession in s 118-150 can be used to cure this problem by, in effect, treating the period between the knockdown of the old home and the building of the new one as a continuation of the existing main residence exemption.

But this period cannot be longer than four years (or such further time as the Commissioner allows). If it is longer, then a partial main residence exemption arises on a pro-rata basis by reference to the total period of ownership of the land and the period in excess of four years (or in excess of such further time the Commissioner allows).

It is also important to remember that the building concession will not be available at all to give this favourable outcome unless the new dwelling becomes your main residence as soon as practicable after it is completed and is occupied as such for at least three months.

This building concession rule will also traditionally apply to the acquisitor of vacant land on which your home is subsequently built – and will also give rise to a partial exemption if it is not so built within four years or such further time as the Commissioner allows

Two homes of spouses at the same time

Finally, something that is often forgotten is the rule that prevents spouses (including de-facto and same sex spouses) from each being able to claim a separate main residence exemption on different homes they own and live in during a period when they are considered to be "spouses".

In this case, under the rule in s 118-170, the couple will have to either nominate one of the homes as their CGT-free main residence for that period or, in effect, claim a half exemption on each home for that period. (And good luck with this if the couple cannot get on the same page!)

This rule can apply in a variety of situations such as where a young couple become partners, but each retain their own home and either each continue to live in their own home – or where they live together while retaining a prior home (which they continue to treat as their main residence).

And not just young people. If you stood on the sidelines of children's sport on a Saturday morning, there may well be widowed grandparents to whom this rule could, prima-facie, apply.

Suffice, to say the CGT rules in this area can be very complex depending on the circumstances to which they are applied – especially given the "choices" that can be made as to how to apply them in the particular circumstances. For example, the absence concession may be able to be used in connection with one of the homes in a favourable manner.

And while this area may not be one that the ATO looks at closely (and probably for very good practical reasons) it is still one that needs to be considered.

Also note that s 118-175 provides that you and a child of yours who is aged under 18 (and who is dependent on you economically) cannot each have separate CGT-free main residences at the same time. In this case, you must choose one of the homes as the main residence for the both of you.

But despite the rule in s 118-175 there appears to be nothing to stop a foreign resident whose economically dependent child is a resident for tax purposes (eg, is at school in Australia) from obtaining a CGT main residence exemption on home bought for them in Australia in their name.

Conclusion

Of course, these are not all the ways in which a partial CGT main residence exemption may arise. We have not even touched on the ways a partial CGT exemption may arise in respect of an inherited main residence. Nor have we really considered how these partial exemption rules can interact with each other in both a favourable and non-favourable way.

But the moral of the story is that if you are thinking of selling your home to cash in on spiralling house prices, it is important to consider these partial exemption issues because, if nothing else, maybe one day the Commissioner may look more closely at such issues (especially given his extensive data matching capability).

Finally, perhaps the current housing affordability crisis across Australia is also due in small part to such CGT rues and concessions – and not just the CGT discount. As pointed out, these rules that can give rise to a partial CGT main residence exemption are, in the first place, generous concessions that allow you to also preserve a full (or a larger) CGT exemption.

Changes to reporting requirements for not-for-profits

From July this year, non-charitable not-for-profits (NFP) with an active Australian business number (ABN) are required to lodge an annual *NFP self-review return* to self-assess as eligible for income tax exemption.

This new reporting requirement was announced in the 2021-22 Federal Budget. It aims to enhance transparency and integrity in the tax, super and registry system by ensuring only eligible NFPs access income tax exemption.

'It's important to us that not-for-profits understand the new reporting requirements and are prepared to lodge their first annual return come 1 July,' said ATO Assistant Commissioner Jennifer Moltisanti.

The first return needs to be lodged this Tax Time, between 1 July and 31 October 2024 and can be lodged online through Online services for business. Registered tax agents can lodge an NFP self-review return on behalf of an NFP through Online services for agents.

The NFP self-review return will guide NFPs to consider their purpose and activities against specific eligibility requirements under one of eight income tax exempt categories. It will not include questions that are financial in nature, but NFPs will be asked to estimate their gross revenue range as small, medium or large to indicate the size of the organisation.

Preparation is key

Work with your NFP clients to ensure they are ready. These are the steps they need to take to prepare for lodgement:

» conduct an early review of their eligibility by using the ATO's guide (QC 73717)

» check that all of their details are up to date, including authorised associates, contacts and their addresses t

» review their purpose and governing documents to understand the type of NFP they are, and

» set up myGovID and link it to the organisation's ABN using Relationship Authorisation Manager (RAM).

It's now easier for NFPs to update their contact details. A fillable PDF version of the *Change of registration details* form (NAT 2943 at QC 46370) is available for download from the ATO website, along with updated guidance that will assist NFPs to successfully complete and submit their change of details.

The *NFP self-review return* will be available to lodge in Online services for business. NFPs who encounter difficulty lodging through Online services for business will be able to submit their *NFP self-review return* using an Interactive Voice Response (IVR) channel. This will be available as an interim arrangement for the 2023-24 transitional year. The interim lodgement channel will not be available to larger NFPs that already report for GST or PAYG withholding.

What you can do to help NFP clients prepare for these changes

As a registered tax agent, you can lodge the *NFP self-review return* on behalf of your NFP clients in Online services for agents. You can find support and information about lodging a *NFP self-review return* on behalf of your client by searching QC 73184 on the ATO web site.

The ATO has released a recorded webinar to help NFPs prepare and assist them with their first lodgement. Access it in the "Not-for-profit" section of atoTV or by searching "self-review return" at tv.ato.gov.au. The webinar covers the following topics:

» what NFPs need to know about the new requirements

» how to set up myGovID and link to RAM

» how to update their organisation's ABN details, and

» lodging a *NFP self-review return* in Online services for business.

Web guidance is also updated regularly and can be accessed by searching QC 73184 and QC 73717 on the ATO website.

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Navigating the tax tide: A 3-part ATO insight series

Each of these webinars is crafted to provide deep insights and actionable strategies, helping you and your clients manage ATO interactions more effectively. Join us to enhance your expertise and navigate the complexities of tax governance with confidence.

Guiding principles: The essentials of ATO interaction

5 July 2024: 12:30-1:30pm

Join us for the first instalment of our illuminating three-part series, "Navigating the Tax Tide", designed to enhance your understanding of the Australian Taxation Office's (ATO) current priorities and your interactions with them. In this session, we'll dive into the essentials of tax governance, the management of tax affairs, and offer insights into ATO engagement strategies. Learn about managing rental properties, understand the foundational elements of tax governance, and gain a clearer picture of how the ATO communicates with taxpayers. This webinar is a must for professionals seeking to stay ahead in their tax management practices.

Fortifying your tax defences: Strategies for certainty and compliance

12 July 2024: 12:30-1:30pm

The second session focuses on empowering taxpayers with the knowledge to robustly defend their tax positions. Discover effective strategies for interacting with the ATO, preparing your documentation in anticipation of audits, and utilising ATO rulings to your advantage. This webinar will provide practical advice on ensuring your tax affairs are in impeccable order and how to achieve certainty in your dealings with the ATO. Whether you're seeking to bolster your compliance strategies or streamline your interactions with tax authorities, this session will equip you with the necessary tools and confidence.

Navigating penalties and past precedents: Lessons from the legal front

19 July 2024: 12:30-1:30pm

Concluding our series, Navigating the Tax Tide, this webinar addresses the critical aspects of managing and mitigating penalties in interactions with the ATO. Learn from past decisions and understand the different impacts of tribunal rulings versus court decisions. We'll discuss strategies for dealing with challenging ATO officers, the implications of default assessments, and the consequences of non-compliance. This session is invaluable for professionals looking to minimise risks and navigate the complexities of tax penalties with greater insight and effectiveness..

Presented by Joshua Goldsmith

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30 June 2024 Tax & Super checklist

With the end of financial year fast approaching, now is a great time to revisit your year-end obligations and look at tax and superannuation strategies to help clients maximise their tax and superannuation position.

This article is designed to be used as a checklist of action items to help you assist your clients in the lead up to 30 June 2024.

TAX CHECKLIST

Bad debts	Write-off bad debts by 30 June 2024. *For more information, see:* » IFPA *Tax Summary 2023-24:* **14.160**
Director fees and employee bonuses	Confirm commitments to pay director fees and employee bonuses are made by 30 June 2024 (eg, resolutions in place and employees notified). PAYG withholding must be withheld when paid. *For more information, see:* » IFPA *Tax Summary 2023-24:* **5.220; 5.301**
Donations	Bring forward planned donations (and have the highest earning member of the family pay for them) by 30 June 2024. Keep in mind donations cannot create a loss. Ensure receipts are retained. *For more information, see:* » IFPA *Tax Summary 2023-24:* **13.800**
Interest	Prepay interest on loans for income-producing assets by 30 June 2024 (see *Prepay deductible expenditure* below). *For more information, see:* » IFPA *Tax Summary 2023-24:* **10.700; 14.170**
Bring forward deductible expenditure	For example, repairs, stationery, consumables by 30 June 2024. Available to all entities, not just small business entities (SBEs). Deductions of this type are also available on the superannuation front – please see our *Superannuation Checklist* below. *For more information, see:* » IFPA *Tax Summary 2023-24:* **10.700; 13.050; 14.005; 14.170**
Prepay deductible expenditure	All taxpayers may claim deductible prepaid expenditure where the expenditure is below $1,000 (excluding GST) or the expenditure is required by law (eg, car registration fees). Where the expenditure is $1,000 or more, SBEs can deduct the full amount of prepaid expenditure if it relates to a period of 12 months or less. Note that this is also available to non-business expenditure of individuals (eg, work-related expenses or rental property expenses). *For more information, see:* » IFPA *Tax Summary 2023-24:* **10.700; 13.050; 14.005; 14.170**
Review stock	Identify any unusable or obsolete items and then write them off by 30 June 2024. *For more information, see:* » IFPA *Tax Summary 2023-24:* **14.200**

TAX CHECKLIST

Depreciation	Depreciating assets costing less than $20,000 and acquired from 1 July 2023 will be eligible for an immediate deduction where a business has an annual turnover of less than $10 million. The assets have to be used or installed ready for use by 30 June 2024. This measure is not yet law, but is expected to pass shortly. Review the existing depreciation schedule for plant and equipment that is still being depreciated but has been disposed of or is obsolete and can be scrapped. *For more information, see:* » IFPA *Tax Summary 2023-24:* **10.600**
Electric vehicles	Also on the depreciation front, with the electric vehicle FBT exemption now available, be mindful that where an employer provides such a vehicle to an employee, depreciation deductions should be available to the employer (subject to the car limit). *For more information, see:* » IFPA *Tax Summary 2023-24:* **25.320**
Defer income	If possible, defer income until after 30 June 2024 – eg, send out invoices slightly later. Keep in mind the resulting cashflow impact and the potential interaction with the personal services income (PSI) / personal services business (PSB) and non-commercial loss rules – see later. *For more information, see:* » IFPA *Tax Summary 2023-24:* **11.130**
Skills and training investment	Take advantage of the new SBE skills and training boost. Bonus 20% deduction. Ends on 30 June 2024. *For more information, see:* » IFPA *Tax Summary 2023-24:* **10.300** » ATO website: **QC 68791**
Energy incentive	Take advantage of the new SBE energy incentive. Bonus deduction of 20% (up to a $20,000 cap). Eligible assets include heat pumps and electric heating or cooling systems, and demand management assets such as batteries or thermal energy storage. Commences 1 July 2023 and ends on 30 June 2024. *For more information, see:* » ATO website: **QC 72422**
Crystalise capital losses	Subject to broader financial considerations, realise capital losses to offset current year capital gains by 30 June 2024. Be mindful of the "wash sales" prohibition. *For more information, see:* » IFPA *Tax Summary 2023-24:* **12.000; 17.900**

TAX CHECKLIST

☑ **Defer capital gains**	Again, subject to broader financial considerations, consider taking advantage of lower personal tax rates that apply in 2024-25 by deferring the realisation of capital gains beyond 30 June 2024.
☑ **Personal services income**	Confirm that the PSB requirements are met. *For more information, see:* » IFPA *Tax Summary 2023-24:* **16.000**
☑ **Non-commercial business losses**	Consider whether the non-commercial loss rules apply to quarantine an individual's business losses. Be mindful of any exclusions that may exempt your client from the rules and allow them to use their losses in the current income year – including the assessable income test, profits test, real property test, and other assets test. *For more information, see:* » IFPA *Tax Summary 2023-24:* **14.450 to 14.470**
☑ **Division 7A**	Shareholder loans from companies need to be properly documented and put on a commercial footing in line with the Division 7A tax rules. *For more information, see:* » IFPA *Tax Summary 2023-24:* **6.300**
☑ **Division 7A**	Make repayments required under loan agreements. If the shareholder and company have agreed to make repayments by way of dividends (ie, mutual off-set), ensure the company has sufficient franking credits and the dividends are legally declared and paid prior to 1 July (with appropriate documentation). *For more information, see:* » IFPA *Tax Summary 2023-24:* **6.300; 6.800**
☑ **Trust distributions**	Trustees of discretionary and family trusts must make valid distribution resolutions to effectively distribute trust income to eligible beneficiaries. Beneficiaries should be made aware of their entitlements and benefit from their distributions. Proceed cautiously, taking account of the ATO's new position on distributions and also recent court cases. *For more information, see:* » IFPA *Tax Summary 2023-24:* **7.000; 7.660**
☑ **Beneficiary TFN Report**	Prepare and lodge a TFN Report by 31 July for beneficiaries who quoted their TFN to the trustee in the June quarter. *For more information, see:* » IFPA *Tax Summary 2023-24:* **7.400**

TAX CHECKLIST

☑ **Logbook**	If your client has business use of a private vehicle and will want to claim motor vehicle expenses using the logbook method, have them commence keeping a logbook immediately. Whilst a logbook must be kept for 12 weeks, the 12 weeks may overlap two income years provided it includes part of the year. (Also have them make a record of their odometer readings.) *For more information, see:* » IFPA *Tax Summary 2023-24:* **13.240**
☑ **Private health insurance**	Ensure your client has adequate cover for all family members to avoid paying the Medicare Levy Surcharge, particularly where there has been a change in family circumstances (eg, new baby, separation, adult children aging out etc.) *For more information, see:* » IFPA *Tax Summary 2023-24:* **3.061**
☑ **Insurances**	Has your client's financial advisor reviewed whether their personal and business risks are adequately and appropriately covered? This can bring peace of mind at the same time as maximising their deductions (including prepaying subject to cashflow). *For more information, see:* » IFPA *Tax Summary 2023-24:* **13.050; 14.005**
☑ **Review business structure**	Consider whether your client's business structure remains suitable and efficient (eg, have commercial risks increased where a corporate or trust structure is warranted for increased protection; is a corporate beneficiary desirable; have family circumstances changed?). Consider available roll-overs and the appropriate timing of any restructuring. *For more information, see:* » IFPA *Tax Summary 2023-24:* **9.000; 12.450**

SUPER CHECKLIST

Track the contribution caps	Before clients make any further contributions prior to 30 June 2024, check their contribution caps to ensure they will not exceed their caps. Clients can also check their contribution information in myGov by navigating to ATO › Super › Information. Note – SMSFs are not required to report their superannuation information to the ATO as regularly as large APRA-regulated funds so a client's contributions (and their account balance) may not be up to date in myGov (as the ATO obtains information about SMSFs from the annual return each year). Thus, clients will need to check their SMSF records to track their contribution caps. *For more information, see:* » IFPA *Tax Summary 2023-24:* **19.020** » IFPA *SMSF Manual 2023-24:* **5.400**
Monitor your client's TSB	An individual's total superannuation balance (TSB) impacts eligibility for up to six favourable superannuation-related measures, including the bring forward non-concessional contribution (NCC) cap, carry forward concessional contributions, the super spouse tax offset, the government co-contribution, and more. Note, an individual's TSB for the current year is measured on 30 June of the previous financial year (ie, 30 June 2023). There are two main strategies to reduce a client's TSB before 30 June 2024: » Make pension payments and/or lump sum payments, provided the client has met a condition of release to receive such payments, and » Client to split their concessional contributions (CC) to their spouse (see later). *For more information, see:* » IFPA *Tax Summary 2023-24:* **19.040** » IFPA *SMSF Manual 2023-24:* **5.3000**
April to June SG contributions	Employer clients should consider making their 4th quarter employer superannuation guarantee (SG) contributions on behalf of their employees before 1 July and claim a year-end tax deduction. The contribution must be received by the employee's fund before this date to claim, except for contributions to the ATO's superannuation clearing house (where a contribution is instead deemed to be made when the contribution is accepted by that clearing house). *For more information, see:* » IFPA *Tax Summary 2023-24:* **19.500, 19.533, 19.565** » IFPA *SMSF Manual 2023-24:* **5.210**

SUPER CHECKLIST

☑ **Personal, after-tax, deductible contributions**	Clients wanting to grow their superannuation and claim a tax deduction should consider making a personal deductible contribution before 1 July 2024. Clients must be over 18, and those between 67 and 74 (inclusive) must meet the work test or work test exemption. If clients are aged 75, contributions must be made by the 28th day following the month that they turned 75. Clients must then provide their fund with a *Notice of intent to claim a deduction* (NOI) form and receive an acknowledgement from their fund before the earlier of: » The day they lodge their tax return for the year in which the contribution was made, or » The end of the next financial year following the year of the contribution. **If clients plan on making any full or partial withdrawals, rollovers, commencing a pension or splitting contributions with their spouse, they must lodge their NOI form and receive an acknowledgement from their fund prior to these events occurring.** *For more information, see:* » IFPA *Tax Summary 2023-24:* **19.014** » IFPA *SMSF Manual 2023-24*: **5.220**
☑ **Carry forward CCs**	This strategy can allow clients to carry forward any unused CC cap amounts that have accrued since 2018-19 for up to five financial years and use them to make larger CCs in excess of the general annual contribution cap (currently $27,500 in 2023-24). Clients who had a TSB of less than $500,000 on 30 June 2023 and have unused CCs from the previous five years may be able to make additional CCs using the carry forward rules. As unused CCs expire after five years, any unused CC cap amounts from 2018-19 will expire if not used by 30 June 2024. This strategy can provide for the client's retirement and enable them to claim larger tax deductions for their contributions in the year the contribution is made. Note – the stage 3 tax cuts from 1 July 2024 mean the financial value of voluntary CCs (including personal deductible contributions) will be impacted by a client's marginal tax rate this year relative to next financial year (2024-25). Thus, making CCs prior to 1 July 2024 may provide a greater tax benefit for clients with a taxable income between $45,000 and $135,000 or between $180,000 and $190,000. *For more information, see:* » IFPA *Tax Summary 2023-24:* **19.021** » IFPA *SMSF Manual 2023-24*: **5.411**
☑ **Spouse contribution splitting**	This strategy enables a client to split up to 85% of their prior year CCs (ie, 2022-23) to their spouse's account before 1 July 2024 if their spouse is under preservation age or between preservation age and 64 (inclusive) and not retired at the time the split request is made. This will not only boost the spouse's superannuation balance but will also equalise both client's TSBs which itself has a number of advantages (see later). *For more information, see:* » IFPA *Tax Summary 2023-24:* **19.075** » IFPA *SMSF Manual 2023-24*: **5.320**

SUPER CHECKLIST

Super spouse tax offset	If a client's spouse is not working or earns a low income, they should consider making a NCC to their spouse's superannuation account. This strategy could benefit both clients by boosting the spouse's superannuation account, and enable the client to qualify for a tax offset of up to $540. *For more information, see:* » IFPA *Tax Summary 2023-24:* **19.016** » IFPA *SMSF Manual 2023-24:* **5.310**
Government co-contribution	If the client is a low or middle-income earner earning less than $58,445 in 2023-24 and at least 10% is from their employment or carrying on a business, the client may wish to consider making a NCC to superannuation before 1 July 2024. By doing so, the government may make a "co-contribution" of up to $500 into the client's superannuation account. *For more information, see:* » IFPA *Tax Summary 2023-24:* **19.076** » IFPA *SMSF Manual 2023-24:* **5.910**
Low-income super tax offset (LISTO)	Where a client's adjusted taxable income is less than $37,000, a LISTO contribution will be paid to their superannuation fund which is 15% of their CCs, capped at $500. Just like the co-contribution, if the client qualifies, the ATO automatically pays the amount to the client's superannuation fund. *For more information, see:* » IFPA *Tax Summary 2023-24:* **19.077** » IFPA *SMSF Manual 2023-24:* **5.920**
First home super saver scheme (FHSSS)	Since 1 July 2017, individuals can make voluntary CCs and NCCs into superannuation and have them released to help pay for their first home. Contributions that can be released under the FHSSS are limited to $15,000 per year and $50,000 across all years (plus associated earnings). If clients are considering saving using the FHSSS, there may still be time to make a voluntary contribution before 30 June 2024, as it will now take over three years of voluntary contributions to reach the $50,000 limit. *For more information, see:* » IFPA *Tax Summary 2023-24:* **19.1310** » IFPA *SMSF Manual 2023-24:* **5.1010**

SUPER CHECKLIST

☑ Monitor Division 293 income	Consider monitoring your client's income with a view to keeping it below the Division 293 income threshold ($250,000) if possible. For background, individuals are liable to pay an extra 15% on certain superannuation contributions if their Division 293 income plus CCs exceeds this amount. Staying under that threshold may involve bringing forward deductible expenditure to the current financial year, deferring income to the following financial year, or re-considering trust distributions at year-end. *For more information, see:* » IFPA *Tax Summary 2023-24:* **19.380** » IFPA *SMSF Manual 2023-24:* **5.700**
☑ Maximise NCCs by using the bring forward NCC cap	The bring forward rules allow clients under age 75 to make up to three years' worth of NCCs (up to $330,000) in a single year. Note – eligibility to access the bring forward rules also depends on the client's TSB at the previous 30 June (ie, 30 June 2023). For example, a client must have a TSB of less than $1.68 million on 30 June 2023 in order to use the three year bring forward cap of $330,000 in 2023-24. **As the NCC cap will increase on 1 July 2024 to $120,000 (or up to $360,000 under the bring forward rules), clients wanting to maximise their NCCs using the bring forward rule may wish to consider restricting their NCCs this year to $110,000 or less so they do not trigger the bring forward rule this year. Clients could then make an NCC of up to a maximum of $360,000 on or after 1 July 2024, taking advantage of the increased cap provided their TSB on 30 June 2024 is less than $1.66 million.** *For more information, see:* » IFPA *Tax Summary 2023-24:* **19.030** » IFPA *SMSF Manual 2023-24:* **5.421**
☑ Meet the minimum pension requirements	If your client has a pension in place, make sure the minimum payment requirements will be met. This is particularly important if the client takes annual payments right at the end of the financial year. There are a number of income tax consequences if clients fail to draw the minimum amount required before 30 June each year; eg, the pension will be taken to have ceased at the start of the financial year. This means the client's fund won't receive the concessional tax treatment on investment earnings from assets that support their pension for the entire financial year! *For more information, see:* » IFPA *Tax Summary 2023-24:* **19.1100** » IFPA *SMSF Manual 2023-24:* **7.910, 7.930**

SUPER CHECKLIST

Take more than the minimum pension as a lump sum	If your client has a pension(s) and wishes to withdraw more than the minimum payment requirement, they should consider taking any additional amounts as lump sum withdrawals rather than pension payments. This is because lump sum withdrawals create a debit to the client's transfer balance account (TBA) and therefore reduce their TBA balance. This strategy could therefore enable clients to: » Transfer additional accumulation benefits to a tax-free pension, or » Receive a higher amount of their deceased spouse's superannuation death benefit as a death benefit pension in the future. *For more information, see:* » IFPA *Tax Summary 2023-24:* **19.830** » IFPA *SMSF Manual 2023-24:* **8.300, 8.320**
Review TTR pensions	Clients who have a transition to retirement (TTR) pension and have satisfied a condition of release (ie, retirement) during the financial year should notify their fund trustee as a TTR pension can be converted to a retirement phase pension. This means the earnings on the assets supporting the TTR pension will become tax-free and the fund becomes eligible to claim exempt current pension income. **Before the client completes the required trustee notification, ensure the client's TTR pension balance is less than $1.9 million in 2023-24 otherwise they will exceed the transfer balance cap.** **For clients turning 65, avoid an excess transfer balance amount prior to their 65th birthday as a TTR pension will automatically enter retirement phase on this date. Clients in this situation may wish to commute all or part of their TTR pension (if possible) to avoid paying excess tax.** *For more information, see:* » IFPA *Tax Summary 2023-24:* **19.340, 19.820** » IFPA *SMSF Manual 2023-24:* **4.300, 7.920, 8.100**
Market valuations for SMSFs	If your client has an SMSF, make sure they record and report all assets at market value at the end of the financial year. *For more information, see:* » IFPA *Tax Summary 2023-24:* **19.207** » IFPA *SMSF Manual 2023-24:* **3.800**

Super contribution caps to increase from 1 July 2024

Colonial First **State, FirstTech Team**

The recent release of average wages data means the caps and thresholds for 2024/25 have been confirmed.

Following the release of the latest average wages data for the December 2023 quarter, the concessional and non-concessional contribution caps will increase on 1 July 2024 as follows:

Concessional contributions cap	$30,000
Non-concessional contributions cap	$120,000

Non-concessional contributions cap using bring-forward rules

The increase in the annual non-concessional contributions (NCCs) cap also means a person's NCC cap under the bring forward rules will increase to a maximum of $360,000 from 1 July 2024.

Reduced Total Superannuation Balance thresholds for bring-forward NCCs cap

It is important to note that the Total Superannuation Balance (TSB) thresholds that apply to determine eligibility to utilise the bring-forward rule, as well as the bring-forward period that applies, will reduce from 1 July 2024 due to the general transfer balance cap (TBC) remaining at $1.9m and the standard annual NCCs cap increasing to $120,000.

The new reduced thresholds are as follows:

> As a result of the increased contribution caps, advisers may need to review their clients' super contribution strategies.

As a result, it will be important to double check a client's TSB at 30 June 2024 before triggering the bring-forward rule next year, to avoid inadvertently exceeding their NCCs cap due to the reduced thresholds.

Advisers looking to recommend contribution strategies for clients that involve making an NCC of up to $110,000 in the lead up to 30 June and then a larger NCC under the bring forward rules next year, should be mindful of the reduced thresholds and limit any NCCs made this year to ensure they do not cause a client to exceed one of these TSB thresholds on 30 June and therefore impact their ability to make larger NCCs next year.

Other advice implications

As a result of the increased contribution caps, advisers may need to review their clients' super contribution strategies.

The matrix on the facing page provides a summary of what needs to be considered for a range of different clients.

Total super balance (at 30 June 2024)	Bring-forward period	NCCs Cap
Less than $1.66m*	3 year bring-forward period	$360,000
$1.66m* to less than $1.78m#	2 year bring-forward period	$240,000
$1.78m# to less than $1.9m	No bring-forward applies	$120,000
$1.9m or more	N/A	Nil

* $1.66m TSB threshold is calculated by subtracting twice the standard NCC cap of $120,000 from the general transfer balance cap of $1.9m

$1.78m TSB threshold is calculated by subtracting the standard NCC cap of $120,000 from the general transfer balance cap of $1.9m

WARNING: The NCCs cap increase does not apply to clients who have previously triggered the bring-forward rule and are still within their bring forward period.

Please note that the increase to the NCCs cap under the bring forward rules will not apply to clients who have already triggered the bring-forward rule in either this year (2023-24) or last year (2022-23) and are still in their bring forward period.

For these clients, their NCCs cap for the remainder of their bring-forward period will be based on their standard NCCs cap when they triggered the bring-forward rule (less their NCCs during that period).

For example, a client with a TSB of less than $1.48m on 30 June 2022 that triggered the three-year bring-forward rule in 2022-23 (Year 1), will have had an NCCs cap in that year of $330,000. Assuming their TSB is less than the general TSB at the previous 30 June, their cap in the following two years will be calculated as:

» Year 2 (2023-24): $330,000 less NCCs made in Year 1

» Year 3 (2024-25): $330,000 less NCCs made in Year 1 + Year 2*

As a result, clients wanting to maximise their NCCs using the bring-forward rule may wish to consider restricting their NCCs this year to $110,000 or less, so they do not trigger the bring-forward rule this year. They could then make an NCC of up to a maximum of $360,000 on or after 1 July 2024, taking advantage of the increased cap provided that their TSB on 30 June 2024 is less than $1.66 million.

* Assuming TSB just prior to start of Year 2 and Year 3 is less than general TBC that applies in that year

Super contribution strategy matrix

Client type	Relevant change	Strategy considerations
Employees who salary sacrifice or make personal deductible contributions up to concessional cap. Note – this could include employees who don't currently salary sacrifice or make personal deductible contributions up to the concessional cap but who will be able to afford to do so from 1 July 2024 due to the stage 3 tax cuts.	Increase in concessional cap to $30,000.	Review salary sacrifice or personal deductible contribution levels from 1 July 2024 considering increases to: » concessional cap » SG increasing to 11.5%, and » effective tax-free threshold increasing to $22,575[1] due to stage 3 tax cuts.
Self-employed/retirees making personal deductible contributions up to concessional cap. Note – this could include self-employed/retiree clients who don't currently make personal deductible contributions but who will be able to afford to do so from 1 July 2024 due to the stage 3 tax cuts.	Increase in concessional cap to $30,000.	Review recommended personal deductible contribution levels from 1 July 2024 considering increased concessional cap and increased effective tax-free thresholds. Note – if member has an SMSF and uses contribution reserving strategy, they could also take into account increased concessional cap from 1 July 2024 when determining personal deductible contribution levels in June.
Clients who will be under age 75 on 1 July 2024 who have not already triggered the bring-forward rule in 2022-23 or 2023-24 and who want to maximise NCCs under bring-forward rule.	Increase in NCCs caps under bring-forward rule to $360,000 or $240,000.	Consider delaying triggering the bring-forward rule by not making total NCCs this year exceeding the standard NCCs cap ($110,000). The client can then make total NCCs of up to $360,000 from 1 July 2024 (subject to their TSB at 30 June 2024). Note – clients with large TSB balances may need to limit any NCCs this year to ensure the contribution does not cause the client's TSB on 30 June 2024 to exceed a bring-forward threshold and limit their ability to make large NCCs next year.
Client who turns 75 in June 2024 (ie, will be 75 on 1 July 2024) but will still be able to make NCCs up until 28 July 2024.	Increase in NCCs caps under bring-forward rules to $360,000 and $240,000.	Consider triggering the bring forward rule by making total NCCs of up to a maximum of $330,000 prior to 1 July 2024, as client will not be eligible to trigger the bring-forward rule next year due to their age and will be limited to NCCs of only up to the standard NCCs cap of $120,000.

1 Assumes a single person or member of a couple who is not eligible for the Seniors and Pensioners Tax Offset (SAPTO).

Who's running the show?

Using powers of attorney in superannuation

Phil Broderick, **Principal, Sladen Legal**

In the second of a three-part article series on keeping control of an SMSF, we explore how to effectively use powers of attorney in relation to superannuation.

Introduction

In the first article of this series on keeping control of an SMSF, we explored the importance of a fund's deed and company constitution and what role they may have in determining a replacement trustee. We also addressed how significant the role of shareholder of an SMSF corporate trustee can be when it comes to succession of trustees and the control of an SMSF.

In this second instalment, we explain how to effectively use powers of attorney in relation to superannuation and address the implications of breaching the member and trustee requirements in the SIS Act. Also included is a checklist of action items to consider when appointing trustees.

Effectively using powers of attorney in relation to superannuation

For the purpose of this article, the use of powers of attorney is examined in a superannuation context. It should not be read as an exhaustive review of powers of attorney including the requirements to make powers of attorney or the roles, responsibilities and liabilities of an attorney.

Powers of attorney and SMSFs

The importance of effective succession planning and providing a direction of payment of superannuation benefits upon death is just as important as addressing the succession of a superannuation fund during a member's life.

Having a financial enduring power of attorney in place can assist in dealing with those situations where a member is unable to make decisions in relation to the SMSF themselves. As a general rule every member of an SMSF must also be a trustee, or director of the corporate trustee, of the SMSF.

> Each Australian state and territory has their own legislative requirements in relation to preparing powers of attorney.

However, one exception to this rule is that a member's legal personal representative (which is defined to include an attorney appointed under an enduring power of attorney[1]) may act as trustee/director in place of the member.

A legal personal representative of a member of a fund can be the trustee of the fund (or a director of the corporate trustee) in the following situations:[2]

» The member of the fund is under a legal disability, or

» The legal personal representative has an enduring power of attorney in respect of the member of the fund.

The SIS Act defines a legal personal representative to include a person who holds an enduring power of attorney granted by a person.[3]

The ATO's view on when a legal personal representative may be appointed as a member/trustee is set out in SMSFR 2010/2. The ATO has expressed that only an enduring power of attorney will satisfy the requirements of section 17A(3)(b) of the SIS Act[4] and therefore a general power of attorney will not be effective in these circumstances.

It is important to note that each Australian state and territory has their own legislative requirements in relation to preparing powers of attorney and such requirements must be followed to ensure that the power of attorney is effective both at the time of making the power of attorney as well as continuing to be effective during the time the attorney has been appointed.

Appointing an attorney as a trustee of the SMSF

A common scenario where a member may appoint an attorney in their place as trustee, or director of corporate trustee, of the SMSF is when such member moves overseas for a prolonged and/or undefined period of time which would cause the fund to be non-complying.

Where an SMSF has a member who will be based overseas, the SMSF must continue to satisfy the definition of an Australian superannuation fund[5]. Whilst it's beyond the scope of this article to go through each of those conditions, an important consideration for the purpose of this article is that the central management and control of the SMSF must be in Australia. Whilst the term "central management and control" is not defined in legislation, case law suggests that this relates to the location where the SMSF's operations are administered and directed[6].

On this basis, when a member of an SMSF is moving overseas for a period of time which would cause the SMSF to cease being an "Australian superannuation fund", the member must either:

» Appoint an attorney in their place as trustee of the SMSF, or

» Roll out their member benefits to a public offer fund.

When appointing an attorney, and in order to comply with section 17(3)(b)(ii) of the SIS Act, it's important to note that the attorney must be appointed as a trustee/director. This means that the member must appoint the attorney as trustee/director in their place, and the member must cease to be a trustee/director. For this reason, an attorney will not automatically become a trustee, or a director of a corporate trustee, simply because they hold an enduring power of attorney.[7]

1 Section 10(1) SIS Act 1993
2 Section 17A(3)(b) SIS Act 1993
3 Section 10(1) SIS Act 1993
4 SMSFR 2010/2
5 Section 295-95(2) ITAA 1997
6 *Koitaki Para Rubber Estates Limited v FCT* [1941] 64 CLR 241, 248. See also TR 2008/9
7 This was confirmed in the Western Australia Court of Appeal decision of *Ioppolo v Conti* [2013] WASC 389

Member loses capacity to make decisions

Another common scenario where an enduring power of attorney is an important tool for succession of an SMSF is where a member becomes incapacitated and is no longer able to make decisions themselves.

Under section 17(3)(b)(i), a legal personal representative is able to act as an individual trustee or a director of a corporate trustee of an SMSF where a member becomes legally incapacitated. On this basis, where a member holds an enduring power of attorney, such attorney may become the member's legal personal representative. However, it is important to note that section 17(3)(b)(i) does not automatically appoint the attorney and therefore it must be determined under the SMSF trust deed how the attorney can be appointed. This could be problematic, for example, where the incapacitated member has the sole power to appoint/remove trustees/directors. However, in such a situation it may be possible that the attorney could exercise such a power in their capacity as attorney for the member.

What if more than one attorney is appointed?

Where a member makes an enduring power of attorney in favour of more than one person, each of the nominated attorneys would satisfy the definition of legal personal representative under section 10(1) of the SIS Act. As such, one or more of those attorneys can be appointed as trustee, or director of the corporate trustee, in place of the member. A person may also be an attorney (and therefore a legal personal representative) for more than one person.

It is also worth mentioning that an existing member of an SMSF is able to be appointed as a trustee, or director of the corporate trustee, in place of another member of the same SMSF.

What can the attorney do?

In general, an attorney is able to exercise all or any powers that the donor themselves would otherwise exercise themselves. It is important to take note of any express conditions contained in the power of attorney as the attorney's powers may be limited on this basis.

Acting in a trustee capacity, an attorney can do all acts that the trustee is empowered to do under the SMSF trust deed. Such acts, in an SMSF context, generally include[8]:

- Signing off on financial accounts
- Making decisions in relation to SMSF investments
- Making a decision as to whether a member can access their benefits
- Making a decision in relation to the payment of a deceased member's death benefits (this would include either following a BDBN made by the member, or in the absence of a BDBN, determining who the death benefits should be paid to).

As well as acting as the trustee, or a director of the corporate trustee, an attorney also acts as a representative for the member and therefore can make decisions that the member would have otherwise made themselves. This can include requesting:[9]

- Withdrawal of benefits
- Commencement or cessation of a pension
- Changes to pension payments
- A roll over or transfer of benefits to another superannuation fund
- A change in investment options.

As outlined above, these powers will always be dependent upon any restrictions set out in the power of attorney and any relevant provisions contained in the SMSF trust deed.

Attorneys and BDBNs

There continues to exist considerable debate in relation to the ability of an attorney to make, revoke or amend a BDBN on behalf of the donor member. There is nothing in the SIS Act or the SIS Regs that specifically prohibits an attorney from doing so however it has been argued that the making of a BDBN is a personal power and therefore must be done by the member themselves (ie, akin to the making of a will which cannot be done by an attorney of a person).

The following are examples of where an attorney may wish to action a member's BDBN:

- An attorney prepares a BDBN to refresh a lapsed BDBN in the same manner that the lapsed BDBN had directed
- An attorney prepares a completely new BDBN inconsistent with the member's previous BDBN (which has now lapsed)
- An attorney revokes an existing BDBN and makes a new nomination inconsistent with the member's existing BDBN and such nomination is not in favour of themselves
- An attorney revokes an existing BDBN and makes a new nomination inconsistent with the member's existing BDBN and such nomination is in favour of themselves.

A 2008 decision of the Superannuation Complaints Tribunal[10] (SCT) acknowledged that an attorney (under an enduring power of attorney) could make a BDBN on behalf of the member. Specifically, the SCT stated that:

> *"...the Enduring Power of Attorney would have permitted the Complainant to complete and sign the Binding Death Benefit Nomination".*

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8 Please also see Louise Ricardo, *"Superannuation fund control – planning for incapacity and death"* January/February 2015, *Retirement & Estate Planning Bulletin*

9 Please also see Heather Gray, *"Enduring powers of attorney – issues for trustees"* November 2012, *Australian Superannuation Law Bulletin*; Louise Ricardo, *"Superannuation fund control – planning for incapacity and death"* January/February 2015, *Retirement & Estate Planning Bulletin*

10 SCT Determination No D07-08\030

In light of the above comment, the SCT determined that the BDBN was not a valid determination as it was unclear in what capacity the complainant was nominated on the form (and therefore did not have to make a direct determination in relation to the validity of the attorney making the BDBN).

That an attorney can make a BDBN has been supported by the Queensland Supreme Court decision of *Re Naramon* (discussed in part three of this series – July/August 2024 *Outlook* edition).

If an attorney is to make a BDBN on behalf of a member then it would be preferable that the power of attorney specifically empowers the attorney to make, amend or revoke BDBNs and if desired by the member that the attorney be empowered to make BDBNs in favour of the attorney. In addition, it would be preferable that the trust deed specifically empower the trustee to accept BDBNs from attorneys.

Checking the attorney's powers under the SMSF trust deed

It is important to examine if there is a clause in the SMSF trust deed that permits a member's legal personal representative (which includes their attorneys) with the power to amend, alter or otherwise change the member's binding nomination while they are alive or at any time before the death benefit is paid. If the deed does permit such actions by the attorney, then it is important that the choice of attorney is appropriate and it is intended that the attorney have such power. If not, then either the deed should be amended or the enduring power of attorney should state that the attorney does not have such a power.

What if an incapacitated member does not have enduring power of attorney?

Section 10 of the SIS Act defines "legal personal representative" to mean *"the executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person."*

The "the trustee of the estate of a person under a legal disability" will include a person who is appointed as the member's administrator or guardian under the particular laws of the member's state. So, in Victoria, that will include a person appointed as a member's administrator by the Victorian Civil and Administrative Tribunal (VCAT). That administrator will have all of the SIS and trustee powers that we referred to above in the discussion of attorneys.

How is the fund taxed if a breach of the required number of trustees appointed occurs?

A breach of the member / trustee requirements in the SIS Act would be grounds for the SMSF to become non-complying unless the breach were to be rectified. The ATO states in SMSFR 2010/2:

The fund ceases to satisfy the definition of an SMSF

66. *If a fund ceases to satisfy the definition of an SMSF in section 17A, the Commissioner of Taxation will retain powers of administration as regulator of the fund until a registrable superannuation entity (RSE) licensee is appointed as trustee. The trustee must notify the Commissioner within 21 days of the fund ceasing to be an SMSF.*

67. *Funds that no longer meet the definition of an SMSF need to:*
    - *Restructure the fund to again meet the SMSF conditions*
    - *Appoint an RSE licensee as trustee and become regulated under APRA, or*
    - *Wind up the fund.*

68. *If the trustees of the fund do not rectify the situation, the fund's complying status may be removed. A non-complying fund is taxed at the highest marginal tax rate (currently 45%) on its income and the market value of assets just before the start of the year in which it is made non-complying rather than only on the income of the fund at the concessional rate of 15%.*

The consequences of becoming a non-complying superannuation fund are set out in section 295-325 of the *Income Tax Assessment Act 1997* which in simplistic terms means that the market value of the SMSF's assets less non-concessional contributions received by the SMSF over the years is taxed at 45%.

Checklist of action items to take for trustee appointment

The way modern SMSF fund deeds are drafted, these should have clear mechanisms to be relied on in the event that a member and trustee / director becomes unable to act, due to the numerous examples where an SMSF may become stuck without a party to exercise the required powers to re-establish the function and compliant status of the SMSF upon the incapacity, ineligibility or death of a member / trustee / director.

As a result, having the fund deed updated at least every seven years to a reputable fund deed format would be a first step in ensuring the SMSF has adequate provisions to deal with sudden but foreseeable events following retirement of the SMSF member. Note that all different fund deed formats vary and an experienced advisor will be able to explain those minute differences and the effects they could have upon updating your fund deed so that an intended feature is not overridden and unintentionally removed.

Once the outcomes of the chosen trustee replacement mechanism is well understood, those roles can be pre-chosen so that the intended person takes over the intended role upon such future event (eg, choosing who the enduring attorney for the member should be for incapacity, who the executor of the member's estate should be for death, and whether there should be a second director for a sole member SMSF or alternate director in case they are required to step in).

On incapacity of a member

» Check whether other members of the SMSF remain to carry out necessary steps to resolve any potential non-compliance with SIS Act section 17A.

» For individual trustees: whether the SMSF holds real property and requires an exempt transfer of land to replace the ceased trustee, and whether the transfer can be registered where the registered proprietor has lost capacity to sign.

» Check the SMSF trust deed:

  » Whether trustee and member voting is by majority or requires unanimous or special resolution.

» Whether the member may have to cease as a member upon ceasing as a trustee (or if this occurs automatically).

» For individual trustees:

  » Whether the members of the SMSF have the power under the SMSF trust deed to appoint a replacement trustee.

  » Whether there is a power for members or their legal personal representative to automatically step into the voting power of the corresponding trustee.

» For corporate trustee:

  » Whether the shareholders of the corporate trustee have capacity to vote to replace the director by themselves or by an attorney, or

  » Whether the members must replace the corporate trustee to resolve any potential non-compliance with SIS Act section 17A.

» Whether there is a power for members to delegate their powers by enduring power of attorney.

On death of a member

Sometimes the SMSF trust deed has exactly the same mechanisms on the death of a member as for the incapacity of a member. Often however the SMSF trust deed is clearer when dealing with the death of a member than with a member's incapacity on the assumption that the incapacity is temporary and that the member will recover and return to legal capacity in the short term. This circumstance can render the SMSF incapable of continuing where the sole remaining member and individual trustee / director has lost capacity due to terminal illness and the SMSF cannot act leading to the death of that member unless a court intervention is successful to vary the SMSF trust deed.

To be continued ... The third and final instalment in this series will revisit lessons learned from case law and key takeouts of what to avoid and how to implement a successful succession plan.

INSTITUTE OF FINANCIAL PROFESSIONALS AUSTRALIA – WEBINARS

1: Introductions to ethics – foundation principles

30 May 2024 from 12:30 – 1:30pm (AEST)

Moral awareness and ethical thinking are critical components of ethical decision making. In this webinar, we examine some key ethics principles including ethics theories and framework, and their application in practice:

- Ethics theories and their application
- The Ethical Decision-Making Framework (EDMF)
- The role of code of ethics
- Behavioural biases awareness

2: Biases and ethics – awareness and mitigation

2 June 2024 from 12:30 – 1:30pm (AEST)

Our biases have significant impacts on decisions we make and face daily. They are particularly relevant in formulating our views on ethical issues and how we deal with these issues:

- Recognising the different biases and their impact
- Recognising biases as an impediment to ethical behaviour
- Understanding the impact of biases on ethical decision making

3: Code of ethics and professional standards

late August 2024 from 12:30 – 1:30pm (AEST)*

Ethics plays a significant role in shaping and strengthening a profession. In this webinar, we will look at the influence of the professional code of ethics in raising ethical and professional standards in the ethical decision-making process:

- Ethics and moral awareness
- Code of ethics and professional standards role
- The application of the EDMF

4: Ethics In Practice – case study applications

late November 2024 from 12:30 – 1:30pm (AEST)*

Practical ethics case studies and the possible impacts for practitioners and advice practices when facing an ethical issue. We will briefly revisit ethical principles and biases impact on ethical behaviour:

- A review of ethical theories and principles
- A review of biases impact on ethical behaviour
- The application of the EDMF
- Applying theories, principles and the EDMF to a case study

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Presenter:
Nidal Danoun
Executive Director of Prosperity Financial Services

Nidal provides advice and training in the areas of financial services regulation compliance, ethics, corporate governance and culture. Nidal is a lecturer at University of New South Wales Business School and the Australian Graduate School of Management in leadership, wealth management, estate planning and ethics. He is also a Certified Ethics Trainer with the CFA institute. Nidal holds a Master of Commerce; he is a Chartered Accountant, a Fellow CPA Financial Planning Specialist, a Certified Financial Planner, Chartered Tax Adviser, a member of the CFA Institute. Nidal has over 25 years' experience in the financial services industry.

Thinking about self-licensing?

A guide for obtaining an Australian financial services licence

Sean Graham, Managing Director, Assured Support

We recently learnt that 98%[1] of the new advice licensees that commenced operation in 2023 were 'micro-licensees'—that is, licensees with fewer than ten advisers. Despite the media attention, this is not a new trend. In fact, it is the inevitable, and desirable, response to conflicted industrialised advice models and vertically integrated businesses.

1: According to Wealth Data, www.wealthdata.com.au

Following the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, the reality is that there are more than a few 'boutique-licensees'—comprised of 5 to fifteen advisers — that operate more efficiently, and more effectively, than their larger competitors, and with a much smaller regulatory-risk footprint.

The push towards professionalism, and the push against product distribution, has driven this significant industry change. While we are strong advocates of independent self-licensed advice businesses, we know, based on our data, that not every adviser, or practice, has the competence or capability to hold an Australian financial services (AFS) license and comply with the laws and their license conditions. Some cannot comply, some will not comply, and others simply do not bother. Complying with the law, like providing exceptional advice, requires consideration and conscious effort. It also requires time, resources and focus. Compliance can be challenging for smaller licensees, but history shows us that even large, well-resourced licensees can struggle to do this [as was seen in *ASIC Report 515 Financial advice: Review of how large institutions oversee their advisers* (REP 515), released in March 2017].

> *Licensees are advisers willing to work 120 hours a week in their own business to avoid working 40 hours a week for a product issuer.*

For advisers who find themselves in the position of trying to find a path forward, understand that those advising you might have their own reasons for their recommendations. We predominantly support self-licensed businesses, so we are equally conflicted, but do our best to objectively lay out the choices, costs and implications.

Understanding your options

1. *Authorisation*

It may seem counter-intuitive to respond to your ejection from a (collapsing) licensee by joining another licensee, but it is not always a matter of 'any port in a storm'. Some exceptional licensees have the resources, leadership and expertise to provide you with the authority, support and assistance to continue to provide financial product advice. However, it is crucial to choose carefully and avoid any that see compliance as a problem to be avoided, have inadequate resources or restrict you to in-house products.

A good licensee will provide advisers with the leadership, compliance and competent services they need to prosper. It should also provide advisers with time and convenience by removing from them the burdens of running a licensee in a complex and complicated regulatory environment.

Costs

The costs of an authorisation tend to sit at around $40,000 per annum per authorised representative, but this depends on the licensee, the services provided and whether professional indemnity insurance is included.

2. *Employment*

It may not suit every adviser, but there are a number of highly competent licensees that have chosen to manage the risks and costs of intermediated distribution by employing, and directly managing, advisers. Industry funds, accounting practices and some small to medium licensees are operating using this model. While they may be more restrictive than other licensees, they are often better resourced and possessed of a more realistic risk appetite. They will either employ highly experienced risk and compliance staff or engage professional firms to provide objective advice and support. These salaried positions cost you nothing but your willingness to operate efficiently, honestly and fairly as an employee of the licensee.

3. *Self-licensing*

Being a good adviser does not necessarily equip you to run an efficient business nor does it necessarily prepare you to manage a licensee. An AFSL is not a cash-cow anymore—regulatory expectations, costs and obligations continue to increase, and the financial costs of non-compliance remain significant.

On the other hand, if you are an ethical professional with management skills and appropriate education, resources and experience, this may be an option. Just do not choose this option if your motivation and focus is purely financial. Few licensees make a profit, and with the loss of conflicted remuneration and product rebates, more licensees will struggle to deal with increasing requirements and declining margins.

Scaling generates opportunities but, as has been demonstrated, can often generate significant liabilities. These risks and costs can dissuade some, but there are ways to mitigate these costs—such as by outsourcing, implementing a shared-services model with other advisers, making lateral shifts, or embracing technology.

Self-licensing can be challenging, but with a growth mindset, stable revenue and an analytic approach, this may well be the best option.

The road to self-licensing

For anyone considering self-licensing, the starting point is to read ***ASIC Regulatory Guide 36*** *Licensing: Financial product advice and dealing* and ***Regulatory Guide 244*** *Giving information, general advice and scaled advice*. You should read these even before assessing your competence and capacity—including your proposed representatives—or designing your structure.

If you do not obtain professional legal or accounting advice at this point, at least undertake a cost/benefit analysis to assess your choices and their costs.

Although it may be tempting to delegate regulatory compliance to an external expert, it is critical that you read and understand the following regulatory documents:

» ***Regulatory Guide 104*** *Licensing: Meeting the general obligations*. This Guide addresses compliance and risk management, monitoring and supervision, training and the technological and human resources needed to demonstrate compliance with your general obligations.

» ***Regulatory Guide 105*** *Licensing: Organisational competence*. This Guide addresses organisational competence and introduces Responsible Managers—those persons on whom the licensee will rely to operate efficiently, honestly and fairly. You will need to nominate appropriate Responsible Managers to cover the authorisations you will seek for your licence, so understand who and what you will need before you commence your application.

» ***Regulatory Guide 126*** *Compensation and insurance arrangements for AFS Licensees*. This deals with insurance and compensation requirements. You should also read ***Regulatory Guide 167*** *Licensing: Discretionary powers* to understand ASIC's position on security bonds and professional indemnity insurance.

» ***Regulatory Guide 146*** *Licensing: Training of financial product advisers*. This may be under review but it addresses the skills, training and education required by financial advisers. Remember that ASIC has a significant interest in adviser competence and acceptable professional development.

» ***Regulatory Guide 271*** *Internal dispute resolution*. Like most advisers, you have probably never received a complaint, but this may be due mainly to luck or poor classification. Read ***Regulatory Guide 267*** *Oversight of the Australian Financial Complaints Authority*, alongside ***Regulatory Guide 271*** *Internal dispute resolution*, to understand your Australian Financial Complaints Authority (AFCA) membership obligations so that you are not unpleasantly surprised.

» ***Regulatory Guide 166*** *Licensing: Financial requirements*, deals with solvency, cashflow and capital adequacy. A sustainable business needs to be both solvent and compliant so make sure you have got the financial resources to obtain and maintain your licence.

» ***Regulatory Guide 168*** *Product Disclosure Statements (and other disclosure obligations)* and ***Regulatory Guide 169***, *Disclosure: Discretionary powers*, both provide useful insights into ASIC's expectations of how licensees should approach conduct and disclosure issues. They are both important.

» ***Regulatory Guide 175*** *Licensing: Financial product advisers–Conduct and disclosure*, is the most critical Guide for advisers and advice businesses. Do not overlook the importance of REP 515 either. It may focus on large licensees, but the appendices contain a trove of useful information for compliance-focused licensees. It is worth scanning ***Regulatory Guide 182*** *Dollar disclosure*, at this point too.

» ***Regulatory Guide 181*** *Licensing: Managing conflicts of interest*, outlines the principles for managing conflicts of interest in a way consistent with the law and your licence obligations. It may be inconsistent with the Financial Planners and Advisers Code of Ethics 2019 (Code of Ethics), but it is still the best regulatory guide for managing the perennial issues plaguing the financial services industry.

» ***Regulatory Guide 234*** *Advertising financial products and services (including credit): Good practice guidance*, might not have an immediate application, but it will become important once you start to contemplate your marketing and media strategy.

Of course, the more determined applicants will also try to familiarise themselves with the relevant international standards, set by the International Organization for Standardization (IOS), [an independent, non-governmental international organisation with a membership of 170 national standards bodies]. ISO 37301:2021, *Compliance management systems*, and ISO 31000 *Risk management*, are the most relevant.

It is at this point, and hopefully after taking professional advice, that you will contemplate the most effective way to manage your application.

Even for novices, the application process is manageable but using an external provider may save you time, stress, and unnecessary aggravation. For instance, we will also help you design a compliance framework that is likely to ensure your compliance with your obligations under section 912A of the *Corporations Act 2001*.

Indicative costing

The indicative costs listed below are based on client feedback and our research. They are only approximations and may only reflect the cost of services provided to small and medium firms by established businesses in key capital cities.

It is important to be aware that the costs for single-adviser licensees and medium to large licensees may be significantly different to the approximations listed below and these costs can vary enormously between providers.

Professional fees: AFSL application

Approximately $8,000-$20,000: Costs are subject to the nature, scale and complexity of the proposed business and the level of project management and advice required. It is worth noting that when selecting providers, do not confuse cost with value. Some providers will manage and submit your application without providing you with the framework documents you will require to support your application.

Professional indemnity insurance

Approximately 2.2% of revenue: This is a variable cost based on cover, activity and history. Assume a minimum premium of $16,000 per annum.

ASIC levy

$1,500 plus $2,818 per adviser in 2023. This levy will vary over time. The ASIC website page, *Regulatory costs and levies: Summary of actual levies*, provides further information.

AFCA membership

The cost of AFCA membership is $187.77 to 31 March 2024, which includes the application fee and base levy.

Statutory lodgement costs: AFSL application fees These fees range from $2,233-$11,305, subject to size, structure and complexity.

Financial audit

The cost of audit is approximately $4,000-$6,000 per annum. These costs will depend on the provider engaged and the size and complexity of the advice business.

Adviser reviews: Compliance audits

The cost of this compliance audit is approximately $2,200-$2,800 per adviser/year, depending on review scope, report quality and reviewer capability.

Licensee review

The cost of licensee review is approximately $13,500-$25,000. This review provides a compliance 'health-check' and assurance of the licensee's compliance and compliance arrangements. It is recommended that licensees undertake this review every 3-5 years.

External compliance support

This may cost approximately $6,000-$12,000 per annum for small licensees with few representatives. This independent, expert support will ensure you continue to comply with the financial services laws. Again cost will vary according to the AFS licensee's specific needs, numbers and activities.

Bear in mind that, depending on your provider there may be additional compliance services available to you, such as pre-vetting, training or access to compliance technology that are only provided for an additional cost. The development of your compliance framework—the measures, processes and procedures that ensure your compliance with the laws—may also come at an additional cost.

It is important to be wary of compliance manuals offered as part of the licensing application process or support contract. In our experience, these tend to be generic documents that simply restate the legislation and regulation. A compliance manual that is not customised to your business exposes you to increased regulatory risk.

Statutory fees: ASIC charges

There are no fees to lodge financial statements such as form FS70 *AFSL profit and loss statement and balance sheet*, or form FS71 *Auditor's Report for AFS Licensees*.

The cost of appointing an Authorised Representative is $57. The cost of amending an Authorised Representative's details or ceasing an Authorised Representative is $36. Note that after your AFS licence is first approved, you have 10 business days during which you can appoint Authorised Representatives without incurring any fees.

Technology: Online training, research and planning software

The cost of these services depends on the provider, the number of users and the scope of the services they are required to provide. Thankfully, the presence of alternative providers helps to keep costs competitive. In addition, it is possible to obtain discounts through groups such as the Boutique Financial Planning Principals Association.

With the increase of regulatory expectations and the commencement of regular reporting to ASIC, we would suggest that a self-licensed business will not be sustainable over the long-term unless it embraces 'reg-tech', [regulatory technology involving digital tools and processes that improve the way organisations manage their increasing regulatory compliance commitments]. There are a range of options to consider from single-purpose internal dispute resolution (IDR) systems to integrated compliance platforms that automate and operationalise the entirety of your risk management and compliance obligations.

Final thoughts

Self-licensing is not for everyone, but if you are an ethical, organised advice professional with a sustainable and profitable practice, self-licensing may be the best way to protect your functional independence, your personal brand and your clients' interests.

The financial commitment aside, even if you partner with a firm like Assured Support, becoming self-licensed will change the way you approach advice. Managing an AFS licence well will require a lot of the time, energy and focus you previously dedicated to your clients. Making the trade-off can deliver significant benefits, but there are always costs, so you need to consider self-licensing with your eyes wide open.

Sean Graham
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Sean specialises in financial services law, compliance and risk management. In addition to consulting and policy roles with Suncorp, BT, ASFA and Mills Oakley Lawyers, Sean has held senior executive roles with Millennium3 Financial Services Group, CBA and CFS.

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