

AGENDA

FORUM MEMBERS

APRIL 2018

UNCLASSIFIED

FORMAT

AUDIENCE

DATE

CLASSIFICATION



Australian Government

Australian Taxation Office

Tax Practitioner Stewardship Group

MINUTES

For the meeting on 2 March 2018

Meeting held at:

ATO Latitude East office
52 Goulburn Street, Sydney, NSW
Commencing at 9:30am (AEDT)



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For further information or
questions, contact

Renee Bruce 0423 781 253

Audra Paskevicius 08 7422 2473

Attendee List

Erin Holland (<i>Chairperson</i>)	Deputy Commissioner, Intermediaries and Lodgment
Matthew Addison (<i>Chairperson</i>)	Executive Director, Institute of Certified Bookkeepers
John Dardo	Deputy Commissioner, Enterprise Solutions and Technology
David Diment	Deputy Commissioner, Client Account Services
Michael Hardy (for Will Day)	Assistant Commissioner, Private Groups and High Wealth Individuals
Deborah Jenkins	Deputy Commissioner, Small Business
Alison Lendon	Deputy Commissioner, Individuals
James O'Halloran	Deputy Commissioner, Superannuation
Colin Walker	Assistant Commissioner, Intermediaries and Lodgment
Joyce Correnza	Director, Intermediaries and Lodgment
Mark Chapman	Director of Tax Communications, H&R Block
Michael Croker	Chartered Accountants Australia and New Zealand
Debra Anderson	Tax Practitioner, Anderson Tax & Consulting
Scott Bailey	Taxation Consultant, ITP
Stephanie Caredes	Tax Counsel, The Tax Institute
Keith Clissold	Tax Practitioner, Metropolitan Taxation Services
Tony Greco	Senior Tax Advisor, Institute of Public Accountants
Phil McCann	Tax Practitioner, McCann Taxation Services
Warren Seeto	Tax Practitioner, Clarity Professional Group
Rodney Wilson	Tax Specialist, National Tax and Accountants' Association
Ian Taylor	Chairperson, Tax Practitioners Board

Presenters and guests

Grant Brodie	Deputy Commissioner, Strategy and Support
Phebe Tooma	Tax Practitioner, Network Accounting
Gavin Swan	Tax Practitioner, Absolute Accounting Services
Alex Adams	Deputy Commissioner, Enterprise Solutions and Technology
John Shepherd	Assistant Commissioner, Single Touch Payroll
Andrew Watson	Assistant Commissioner, Intermediaries and Lodgment

Apologies

Toby Meller	Tax Practitioner, T J Meller
Steven Inglis	Tax Practitioner, GPA Accounting
David Cantamessa	Tax Practitioner, Pacifica Chartered Accountants

Tim Dyce	Deputy Commissioner, Indirect Tax
Will Day	Deputy Commissioner, Private Groups and High Wealth Individuals
Robert Ravello	Deputy Commissioner, Debt
Michelle Crosby	Deputy Commissioner, Business Registration and Reporting
Mark Morris	Tax Professional, La Trobe University
David Ebdon	Tax and Super Australia
Gavan Ord	Manager, Business and Investment Policy, CPA Australia

Secretariat

Renee Bruce	Intermediaries and Lodgment
Audra Paskevicius	Intermediaries and Lodgment

ACTION ITEMS

Action items tabled at the meeting held on 1 December 2017.

Reference	TPSG – 0112/01
Agenda Topic	ATO digital products
Action item	<p>The ATO to raise awareness of the online services that are available for transactions that currently attract high volumes of phone calls. Consider whether the online services are sufficiently intuitive, easy to use and quick. Develop 'how to' products to share with tax professionals.</p> <p>Members are asked to tell the ATO about transactions that are an irritant so that the ATO can consider opportunities to improve online services.</p>
Responsibility	Colin Walker
Update	We are currently considering how to inform and encourage agents to utilise the online services as well as how to use these particular services. This also requires consideration of how these services may change in the future ATO online environment. This work is ongoing.
Status	Ongoing – a further status report will be provided at the next meeting.

Reference	TPSG – 0112/02
Agenda Topic	ATO digital products
Action item	Members are asked to inform the ATO of transactions that are an irritant so that the ATO can consider opportunities to improve online services. Inform private beta pilot participants of the top practitioner calls that could be self-served and encourage testing and feedback from that group.
Responsibility	Colin Walker
Update	<p>Over 500 visits to tax and BAS agents have been conducted this financial year. These visits highlighted some of the irritants within existing portals. For example, the lack of historical return information, lack of real time running balance accounts and time consuming navigation in searching for and adding clients.</p> <p>The new online service for tax and BAS agents will improve a number of these irritants. The current private beta users have responded positively to the new design and over 100 items of feedback have been received in relation to the new online services.</p> <p>Feedback from association members in relation to current irritants has been directed to the Professional Services Reference Group for consideration.</p>
Status	Propose to close

Reference	TPSG – 0112/03
Agenda Topic	ATO digital products
Action item	Consider the possibility of having a dedicated social media channel that could be used for tips and links tailored for tax and BAS agents.
Responsibility	Colin Walker
Update	Following a pilot to test a similar social media channel concepts with small business, the ATO Digital Communities team will be considering how we may be able to apply a similar approach for tax professionals. Members will be advised of the outcomes of this potential opportunity.
Status	In progress

Reference	TPSG – 0112/04
Agenda Topic	Debt
Action item	The ATO will provide the professional associations with a comprehensive pack of information covering debt holding figures, answers to frequently asked questions, and a guide to how long it takes payments to reach the ATO systems and the external collection agency processes. This information can be used by the associations to assist their members in understanding the debt collection approach.
Responsibility	Secretariat
Update	Agenda papers including the Debt pack of information was distributed to members on 15 December 2017.
Status	Propose to close

Reference	TPSG – 0112/05
Agenda Topic	Work related expenses
Action item	The ATO to clearly communicate the functionality available in Practitioner Lodgment Service, the future functionality expected to be delivered in Practitioner Lodgment Service (including the prior year messaging for tax time 2018) and work with software developers to influence uptake of services and features such as the real time analytics.
Responsibility	Andrew Watson and Adam Kendrick
Update	<p>Prior year work related expense messaging is being included in the prefill report available in Practitioner Lodgment Service for Tax Time 2018.</p> <p>Real time compliance messaging that will be visible during the preparation of a return in Practitioner Lodgment Service has been designed with digital service providers. The ATO expects to build and release this functionality as an application programming interface (API) later in 2018.</p> <p>Indications from the digital service providers involved in the design are that this will be valuable functionality that would be a priority for them to include in practice management software.</p>
Status	Propose to close

Reference	TPSG – 0112/06
Agenda Topic	Work related expenses
Action item	The ATO and the Tax Practitioners Board will investigate the Tax Agent Services Act 2009 and the whistleblowing provisions and provide advice back to this group.
Responsibility	Colin Walker and Rosemary Holloway
Update	<p>Following discussions between the Tax Practitioners Board and Treasury in November 2017, the Tax Practitioners Board raised the following:</p> <ul style="list-style-type: none"> ▪ The scope of the proposed legislative definition of ‘eligible whistle-blowers’, will include only a portion of the tax practitioners (tax (financial) advisers) that are regulated by the Tax Practitioners Board. Given what the new regime is seeking to achieve, the Tax Practitioners Board suggested that it would be appropriate to include tax agents and BAS agents in the draft legislation. ▪ The operation of the draft legislation may conflict with the legislative obligations that apply to all tax practitioners under the Code of Professional Conduct as contained in the <i>Tax Agent Services Act 2009</i>. In particular, subsection 30-10(6) of the Code provides that a tax practitioner must not disclose information relating a client’s affairs to a third party unless they have their client’s permission or there is a legal duty to do so. Given that the draft legislation does not create a legal obligation to disclose, rather it provides relief for those who voluntarily choose to the blow the whistle, the Tax Practitioners Board is of the view that there is a conflict between the operation of the <i>Tax Agent Services Act 2009</i> and the draft legislation. Therefore, if a tax practitioner chose to disclose information about their client they could receive protection under the draft law, but be in breach of the subsection 30-10(6). A breach of the Code can lead to the imposition of administrative sanctions (not civil or criminal) including termination or suspension. <p>Treasury agreed with the matters raised by the Tax Practitioners Board and made the following amendments to the draft legislation:</p> <ul style="list-style-type: none"> ▪ added tax agents and BAS agents to the list of persons that will be eligible to receive disclosures from whistleblowers. The tax or BAS agent of the entity accused of the wrongdoing will be eligible to receive disclosures from whistleblowers. The tax or BAS agent of the whistleblower is not eligible to receive disclosures. ▪ In relation to the Code matter, extending the relevant provision to include immunity from ‘.....any civil, criminal or administrative liability (including disciplinary action) for making the disclosure.....’ The explanatory memorandum then goes on to provide a specific example in relation to Code item 6. The example is as follows: <p>Disclosure that qualifies for protection not actionable</p> <p>3.50 The new law ensures that eligible whistleblowers are not subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure, and that no contractual or other remedy may be enforced against them on the basis of the disclosure. [Schedule 1, item 15, paragraphs 14ZZX(1)(a) and (b)]</p> <p>3.51 This protection is commonly provided by whistleblower protection laws to ensure that an individual making a disclosure cannot be sued by an entity (such as his or her employer), for example, for a breach of a confidentiality clause in a contract. Providing immunity from administrative liability (including disciplinary action) will ensure that a registered tax agent or BAS agent that makes a protected disclosure about a client’s tax affairs will not be sanctioned for breaching the confidentiality obligations contained in the Code of Professional Conduct (contained in Division 30 of the Tax Agent Services Act). [Schedule 1, item 15, paragraph 14ZZX(1)(a)].</p>
Status	Propose to close

Agenda Item 1 – Welcome and introductions

The chairpersons noted apologies and welcomed two new members to the group.

Agenda Item 2 – ATO systems update

The ATO introduced Alex Adams, Deputy Commissioner Enterprise Solutions and Technology to the meeting. The Deputy Commissioner role oversees all of the system applications from a production perspective, making sure all the systems are available as required for internal and external users. In what is considered best practice the ATO workforce in this area is made up of a combination of internal and external resources to deliver modern and contemporary digital services.

In relation to the previous system outages in December 2016 and February 2017, there have been 14 recommendations from the Australian National Audit Office. Twelve of the recommendations have been completed and the remaining two are nearing closure and completion.

Tax Time 2018 is a priority in terms of having programs in place to further enhance resilience in ATO digital channels. The members broadly discussed the backup activities and recovery plans that the ATO has in place to ensure data protection and continuity of services to the community.

The ATO drew on examples of modern services that utilise system architectures operating in a cloud environment compared to others that relied on a large combination of servers, mainframes and legacy systems to discuss the challenges and complexities of increasing access and availability of services such as the tax and BAS agent portals to be able to get to levels of shorter maintenance windows and improved system availability and stability.

Reference	TPSG – 0203/01
Agenda Topic	ATO systems update
Action item	At the next meeting the ATO will discuss the plans and proposed investment priorities to strengthen the resilience and availability of priority ATO systems for tax and BAS agents, recognising the expectations of tax professionals and the reality of the services may be able to be delivered beyond Tax Time 2018.
Responsibility	Alex Adams and John Dardo

Agenda Item 3 – Digital services

The ATO is transitioning current Tax and BAS Agent Portal services into the ATO Online services for agents. This means that all ATO Online services will be provided on the same IT platform (ATO Online) in the longer term. Access to functionality and services and to view information will depend on the user's role in the tax system and permissions to act on behalf of another entity. The view of information and access to functionality will be different for tax and BAS agents.

Existing tax and BAS agent functionality is being built into ATO Online. Currently around sixty percent of the Portal functionality is available in ATO Online. There will be a larger release of functionality into ATO Online occurring in late April 2018 that will see around ninety percent of the current Portal functions deployed into ATO Online.

The ATO is currently working with around 110 tax and BAS agents to test the new ATO Online services for agents in a private beta environment. The private beta gives participants access to ATO Online services for agents in a live production environment and the ability to see how the functionality performs. Following the next release in late April 2018, the beta participants will have access to a broader range of functionality and services to test in a 'live' production environment.

Participants have been providing feedback to the ATO on the functions that are currently available and the user guides that will help practitioners transition from using the current Portals to the ATO Online services for agents.

Members discussed a balanced approach to expanding the ATO Online private beta to more participants. At an appropriate time, the ATO will include more users that represent different practice types, are in regional locations, undertake a range of different transactions on different tax types and have varying levels of IT expertise. More users will also enable system capacity to be tested and monitored.

Current Tax and BAS Agent Portals will remain available until ATO Online is fully tested and stable.

Reference	TPSG – 0203/02
Agenda Topic	Digital services
Action item	The ATO will arrange a meeting with private beta participants to outline the features and functions that will be delivered in the April 2018 release.
Responsibility	Andrew Watson

Agenda Item 4 – Digital transition partnerships

The ATO outlined role of the [software industry strategic working group](#). The group has a role in assuring compliance with the operational framework and progress on key IT programs of work. Key ATO IT program leaders meet three times a year with the Australian Business Software Industry Association.

To support the strategic working group there are a number of smaller groups that focus on specific programs of work (for example Practitioner Lodgment Service). These groups meet more frequently with software developers and look at some of the tactical aspects of delivering digital services.

Members were interested in understanding when tax practitioners are engaged in these types of working groups to consider IT development from a business and user perspective.

The ATO noted that the strategic working group does not consider what providers do and do not build as a service offering. This group provides the software industry with the opportunity to tell the ATO what would make it easier for them to offer a broader range of services that take us to the future vision of practitioners being able to perform all tax and BAS services from within their software, completely removing the need to exit software and access online services in some other way. This remains the focus of this strategic working group. This working group enables the ATO to understand investment priorities, what needs to be done in order for the industry to deliver that capability.

By way of example, the ATO is currently looking at;

- better ways digital service providers can access a catalogue of Application Programming Interface specifications that updates their services automatically
- better roadmap of the services that will be released and when they will be available for production verification testing.

Members discussed the networks between the ATO and tax practitioners that will be utilised to ensure practitioners are engaged with digital software providers at the right point in time when developing software solution priorities.

Agenda Item 5 – Changes to the tax agent experience for compromised clients

There are a number of different control strategies used by the ATO to manage risk from identity theft. The mitigation and control strategies used, will relate to the level of risk assessed in relation to compromised identities from events. Where confirmed fraud has occurred on a client account or there is sufficient information stolen that will result in the client records being vulnerable, a compromised indicator will be used to protect the client account. Compromised indicators may have unintended consequences. For example, tax agents can add clients to their list but are unable to view pre-fill or lodge returns without contacting the ATO. Tax agents need to contact the ATO each time they want to transact on behalf of their client.

The ATO is exploring a change to the verification process conducted by the ATO that will allow tax agents ongoing access to client information without the need to contact the ATO to lift the indicator each time access to the client information is required. There will be a verification process applied by the ATO to ensure that the tax agent is authorised by the genuine client (not a fraudster) as their representative.

Tax agents will be asked to confirm the type of client identity information that was provided at the time the agent was engaged to represent the client to ensure the integrity of the client and that the tax agent knows that client. Once the agent is confirmed to be an authorised representative, they are able to interact in the same manner that they can for clients who do not have compromised identities for all tax and super products.

Client Account Improvements

The processing time and lack of communication around progress of requests for activity statement refunds through the portal has been identified as an irritant for tax practitioners and their clients. Most refund requests are processed automatically via the portal within the service standard of 14 days. Where there is an outstanding activity statement, an insolvency indicator, a debt on another account or no bank account details the refund requests are processed manually and can take longer to process with no communication to the tax practitioner.

Around mid-April 2018 changes will be made to allow more refunds to be processed automatically, reducing manual delays. Where a refund request is processed manually the ATO will improve communication through portal messaging to inform tax practitioners of the timeframes and reason for the delay.

The validation service will remain in place letting tax practitioners know upfront if there is an issue to be resolved before the refund can be processed. That is, if there is an outstanding BAS or no bank account details recorded. Once these have been rectified the refund request can be processed via the portal.

Statement of accounts

Feedback to the ATO has told us that paper statements of account that only reflect general interest charge transactions issue too frequently, in general are hard to explain to clients, cause an administrative burden to pass on to clients and do not add value. Full visibility of client accounts and a general interest charge forecast service is available via the Portals whenever this is required.

Paper statements that contain general interest charge only transactions make up approximately 45% of all that are issued. The key change being proposed is to reduce the frequency of how often general interest charge is brought up to date, which is the trigger for a statement of account to issue. Currently, the general interest charge is brought up to date monthly. Members were of the view that statements with general interest charge only transactions should only issue quarterly. This change is subject to final endorsement and is scheduled to commence in late April 2018.

Agenda Item 6 – Digital Identity Program

ATO is working with other agencies including Digital Transformation Agency (DTA), Department of Human Services (DHS) and Department of Home Affairs (DHA) to deliver a whole of government digital identity program. The initial focus is on the delivery of AUSid, an enrolment capability and a modern credential that securely identifies an individual. The focus is also on a solution that allows an individual or business to represent another business, known as the Relationship and Authorisation Manager (RAM).

The ATO will be working on staged releases and beta pilots to build and test authentication and authorisation solutions. Existing authentication credentials including AUSkey will continue to be available to tax and BAS agents. The first release will enable AUSid authentication for people representing a business and accessing ATO or Australian Business Register services.

Future releases will enable AUSid for individuals applying for a tax file number or using ATO and other whole of government services with facial verification enabled. Later releases will expand AUSid to a whole of government business services and will eventually replace AUSkeys. Consultation and user design have commenced.

The ATO is the largest government identity provider. Over 775,000 new tax file numbers are issued and there are 21.1 million active tax file numbers. Around 855,000 Australian Business Numbers are issued annually and there are 7.2 million active ABNs. A digital identity is a combination of identity enrolment strength and credential strength. This combination provides an overall level of confidence that a person is who they say they are. The future digital identity experience will allow an individual to establish identity once and is enabled for ATO and other agencies. There will be a suite of multi factor authentication credentials and an authorisation matrix. A user will be able to authenticate once to access all government services regardless of the channel used.

The ATO will continue to consult with members of this group in developing the future digital identity program.

Agenda Item 7 – Aggressive tax planning assurance for the tax practitioner community

The ATO and the tax profession have a shared interest in understanding when aggressive tax planning behaviours occur and to protect the community from attraction to or involvement in those behaviours. The ATO will seek to ensure that the community has confidence in the integrity of the tax system and to maintain a level playing field by taking action on those that take unfair advantage of the system. This includes protecting honest tax practitioners from actions of others involved with aggressive tax schemes.

The ATO outlined some scenarios that expose tax practitioners to tax avoidance schemes, artificial arrangements, aggressive tax positions or promoter penalties.

- A client may engage another advisor such as a research and development specialist to provide advice or to prepare schedules to be lodged with the ATO. If the ATO has queries about the information lodged the tax agent will be contacted to provide information in relation to disclosures on the schedule.
- A client may approach a tax practitioner to seek their services to apply accounting treatments that are in fact artificial arrangements. Tax practitioners may feel under pressure to apply such accounting treatments in order to retain the services of that client.
- There may be a partner in an accounting firm or a branch of larger firms that attracts additional high value clients by promoting schemes to clients. An action by the ATO against the partner has implications for the whole of the firm.

These are not the only scenarios representing situations where tax practitioners may be exposed to aggressive tax planning behaviours. Aggressive tax planning behaviours are observed in all market segments, across all taxes and in the superannuation area. In the past, lawyers, accountants and tax agents have been identified as intermediaries in aggressive tax planning arrangements, however mortgage brokers, research and development consultants and financial planners are emerging as new types of intermediaries involved with aggressive tax positions.

The ATO aims to inform and educate the community, including the practitioner community, about the risks of aggressive tax planning arrangements. The ATO would like to reduce the community's tolerance for participation in such arrangements.

Some key activities to support tax professionals in understanding our approach to aggressive tax planning activities and behaviours are:

- broad based webinars for the professional communities
- [‘What attracts our attention’ on ato.gov.](#)
- taxpayer alerts
- focused engagements with industry bodies
- assurance visits with key agents
- collaboration visits with professional bodies
- network and relationship based case selection
- integrated engagement.

In order to protect the community, the ATO will take action to correct the behaviours of those promoting or participating in aggressive tax planning arrangements.

Agenda Item 8 – Single Touch Payroll

As employers, tax professionals and digital service providers get ready for single touch payroll reporting the ATO is preparing a suite of products to assist the community make the necessary changes to their payroll reporting. These have been co-designed with our industry readiness group which includes tax practitioners.

On 1 April 2018 employers will need to do a headcount to determine if they have 20 or more employees. On 1 July 2018 employers with 20 or more employees need to start reporting year to date figures for salary and wages, pay as you go withholding and superannuation liabilities on each pay event.

The draft super guarantee package will extend Single Touch Payroll to all employers and also remove the Single Touch Payroll requirement for the employer to report superannuation contributions paid to superannuation funds. Superannuation contributions will be reported by the superannuation funds. The ATO expects more frequent reporting of superannuation contribution with the introduction of the Member Account Transaction Service being introduced from 1 July 2018, replacing the Member Contributions Statement. Single Touch Payroll does not include any change to payment due dates.

There are a small number of employers now sending payday reports for Single Touch Payroll through five different payroll software solutions. This information is being displayed to employees in ATO Online and employers and tax agents in their portals. The ATO is reviewing this data and providing feedback to the digital service provider to refine their processes before they roll out their payroll products to all employers. The focus for the next 12-18 months is to help and assist employers to report correct data and to ensure that we minimise unnecessary follow up with employers.

The ATO continues to work with digital service providers to prepare for the reporting requirements from 1 July 2018. Almost all digital service providers are indicating that they will have their products ready and communication to their customers about single touch payroll products has increased since February 2018 with many announcing plans at conferences and seminars.

Although the ATO will not be extending the due date for starting Single Touch Payroll there is the ability for digital service providers to apply for deferrals for their employers where they are not ready for the reporting deadline. This flexibility is based on their circumstances. [The ATO website](#) has more information.

The ATO is assisting employers and tax practitioners to understand the reporting requirements by producing a range of help products including:

- [ATO Website](#)
- [Factsheet](#)
- [Checklist](#)
- [Tax practitioners pack](#)
- [Webinars](#)
- [ATOtv](#).

The ATO continues to attend speaking events for large employers and work in collaboration with industry partners A public relations company has been engaged to support the 'get ready' message for 1 July 2018.

Draft legislation to extend single touch payroll to employers of 19 or fewer employees has been out for comment as part of the superannuation guarantee integrity package. The ATO has started to see some concerns raised about the potential cost and complexity of this for small businesses. Work has been progressing to ensure there are alternate reporting solutions for small business. This has included meetings with a number of banks and other possible solution providers. Some superannuation funds and others are contemplating low cost or no cost low complexity solutions. Tax practitioners and other intermediaries will be consulted on the alternate reporting framework as the ATO increases focus on low cost solutions for small employers.

Agenda Item 9 – Superannuation

The ATO provided an update on some key superannuation matters.

Self managed superannuation funds

The ATO has granted a blanket lodgment deferral for the 2016-2017 self managed superannuation funds annual report. The deferred due date for lodgment is now 30 June 2018. As the deferred due date of 30 June 2018 falls on a Saturday, lodgment of the 2016-2017 SARs can be made on the next business day, Monday, 2 July, without penalty. The extended due date has been made in recognition of the crucial considerations and decisions that self managed superannuation funds and their advisers are making following significant superannuation reforms that commenced from 1 July 2016. The additional time to lodge should reduce some of the compliance burden, particularly on advisers.

The extended due date also means that all self managed superannuation funds that are eligible for transitional capital gains tax relief as a result of the \$1.6 million transfer balance cap, will have additional time to consider and make relevant elections before the due date of their 2016-2017 annual report. The extended due date for lodging 2016-2017 annual reports also applies to the due date for payment of any relevant 2016-2017 income tax liability.

Reversionary Transition to Retirement Income Stream

Currently, a reversionary transition to retirement income stream cannot transfer to a dependant if the dependant themselves has not satisfied a condition of release. The superannuation industry has raised this issue a number of times recently, and Treasury released a consultation paper in February 2018. Draft legislation should ensure that a reversionary transition to retirement income stream will always be allowed to automatically transfer to eligible dependants upon the death of the primary recipient. The changes will take effect from 1 July 2017 and is considered to be wholly beneficial to members.

Superannuation Taxation Integrity Measures

The integrity measures consist of two distinct amendments to:

- non arm's-length income provisions
- calculation of member's total super balance to include the outstanding balance of any limited recourse borrowing arrangement that commenced after 1 July 2018.

A consultation paper was released on 11 January 2018 and closed 9 February 2018. There were 8 submissions received from individuals, advisers and industry associations.

Early release of superannuation benefits

Exposure draft regulations in relation to the early release of superannuation benefits on compassionate grounds were released on 21 February 2018. These regulations provide the necessary administrative changes to reflect the transfer of responsibility for early release of superannuation benefits on compassionate grounds from the Department of Human Services to the ATO.

Legislation giving effect to this transfer was introduced into Parliament on 7 February 2018. The draft regulations will also improve the integrity of current processes and aim to expedite the release of funds to successful applicants. These changes will cut the administrative burden for superannuation trustees and will help successful applicants receive their authorised funds sooner.

Members queried whether an objection against decisions made in relation to the compassionate release of superannuation funds attracts the tax administrative framework for appeal and review processes such as the review provisions under the Tax Administration Act and appeal rights to the Administrative Appeals Tribunal.

The overall framework for eligibility under the scheme, including how these decisions are administered, including review rights will not change. Any decision made in the compassionate release cases under the Superannuation Industry (Supervision) Regulations 1994 is a determination

by the Regulator, and is not categorised as a tax assessment by the Commissioner of Taxation. For these reasons, the applicant cannot object to the decision in the same manner as a taxpayer objects to a tax assessment made by the Commissioner.

The applicants can request an informal review of the decision. If the applicant is unsatisfied after the review they can then lodge a complaint with the ATO. Subsequent avenues of recourse are then available via the Inspector General of Taxation. Decisions on compassionate release of superannuation benefits are not subject to *Administrative Decision (Judicial Review) Act 1977*. This is the case with the current decisions made by the Department of Human Services and will also be the case when the administration moves to the ATO.

Small Business Superannuation Clearing House

The small business superannuation clearing house is now available through the Tax and BAS Agent Portals and to employer users via ATO Online and the Business Portal. The transition of the clearing house from the Department of Human Services to the ATO took place on Monday 26 February 2018. In the lead up to this transition the ATO undertook communication campaigns to notify all users of the move to ATO Online services. The ATO continues to assist clients that haven't registered for a credential to access the new clearing house. All businesses with a turnover threshold of up to \$10 million or under 19 employees will be able to access and use the service.

The clearing house bank account details have changed. The new details are available on the 'Payment Options' screen when completing a 'Payment Instruction'. Users need to update any saved BPAY payment references in internet banking or other banking services.

Further information on the Small Business Superannuation Clearing House can be found on [the ATO website](#).

Members asked if the ATO has a view on the potential for the Small Business Clearing House being used for other purposes. The ATO noted that there has been some observations in the Productivity Commission 'Superannuation: alternative default models (draft report)' released in March 2017. A draft recommendation for public comment (draft recommendation 3.2) was that the Australian Government should establish a centralised online service for members, employers and the Government that builds on existing functionality of myGov and Single Touch Payroll. These matters are a matter for government. A final report from the Productivity Commissioner is due for release in 2018.

Superannuation guarantee integrity measures

Draft legislation aimed at protecting employees' superannuation entitlements was released on 24 January 2018. The draft bill introduces measures that will modernise the system and along with the legislation, the ATO is improving administration by:

- raising visibility of superannuation guarantee
- improving the support the ATO offers
- strengthening the ATO's ability to recover unpaid superannuation guarantee.

The package includes the following measures that affect employers:

- The ATO will have the ability to seek court-ordered penalties in the most extreme cases of non-payment including employers who repeatedly fail to pay superannuation guarantee charge liabilities.
- The Commissioner will have discretion to direct employers to undertake an approved education course where they fail to comply with their superannuation guarantee obligations, including the ability to seek a court imposed penalty where an employer fails to comply with the direction.
- Allow the ATO to disclose information to employees regarding the non-payment of superannuation guarantee and the ATO efforts to recover outstanding amounts.
- Exceptions to the disclosure provisions will be expanded to include all employees, even where the employee has not reported non-payment to the ATO.

- Strengthening arrangements for director penalty notices and security deposits for superannuation and other tax-related liabilities.
- From 1 July 2019, extend single touch payroll to all employers including those with fewer than 20 employees.

Members asked if there is non-corporate equivalent in relation to the penalty in the new superannuation guarantee law. The *Treasury Laws Amendment (2018 Measures No. 4) Bill 2018* introduces two new directions powers:

- education directions
- direction to pay superannuation guarantee charge.

These directions will be issued to the employer. An employer may be a corporate or non-corporate entity. If an employer fails to comply with an education direction they are liable to an administrative penalty. A failure to comply with an education direction is also an offence that can result in criminal penalties. Failure to comply with a direction to pay superannuation guarantee charge is an offence that can result in criminal penalties.

Excess transfer balance determinations

During January 2018, the ATO issued 3,000 excess transfer balance determinations to individuals that exceeded their transfer balance cap. Under the transitional arrangements, if an individual with only pre-1 July 2017 income streams exceeded their cap by no more than \$100,000 they had until 31 December 2017 to rectify without also having to remove the excess transfer balance earnings or pay tax. The ATO identified approximately 3,000 individuals in this category. Two thousand rectified in time and in full. The remaining 1,000 individuals were sent excess transfer balance determinations in late January 2018.

At the end of January 2018, a further 7,000 individuals exceeded the cap due to income stream with commutation restrictions, such as lifetime pensions, known as 'capped defined benefit income streams'. These individuals were limited in the steps they could take to reduce the value of their income streams prior to 1 July 2017. Excess transfer balance determinations are not sent but the individuals may need to include more of their pension income in their assessable income.

Most excess transfer balance determinations are based on information reported by Australian Prudential Regulation Authority funds, however as at 31 January 2018 approximately 900 self managed superannuation funds had voluntarily provided transfer balance account information, and this information has been taken into consideration when excess transfer balance determinations.

Individuals have been able to view their transfer balance account details on line through myGov since January 2018. During January 2018, 147 users had done so. Individuals can download their transfer balance account transaction history and email it to their tax practitioner or financial planner.

A webinar was held on 15 February 2018 for Australian Prudential Regulation Authority funds to help them understand the excess transfer balance determination process and how to support members.

Upcoming events

To help tax practitioners support their clients the ATO will schedule a webinar to provide information on the following:

- the excess transfer balance determinations being sent to individuals that have exceeded their transfer balance cap
- preparing clients who receive lifetime pensions and other capped defined benefit income streams for the Tax Time 2018 changes
- the new label on the income tax return and how to calculate what must be included in assessable income.

First Home Super Saver Scheme

The legislation for the *First Home Super Saver Scheme* received Royal Assent on 13 December 2017. This measure allows individuals to increase their savings for their first home by allowing them to save inside superannuation. Individuals may still be eligible even if they have previously owned property in Australia, where the Commissioner determines that they have suffered a financial hardship that resulted in the loss of the property. The scheme will apply to voluntary superannuation contributions made since 1 July 2017. Individuals can apply from 1 July 2018 to withdraw up to \$15,000 per year and \$30,000 in total of these contributions, along with deemed earnings (at the rate of the shortfall interest charge), towards a home.

Once an individual requests a release, they are unable to submit further requests under this scheme. Pre-tax contributions are taxed at 15 per cent; withdrawals will be taxed at marginal tax rates less a 30 per cent offset. If individuals do not purchase a home within 12 months, they can either:

- ask for an extension of a further 12 months, or
- re-contribute the required amounts into superannuation, or
- retain the money and pay a tax equal to 20 per cent of the assessable released amount.

Downsizing contributions into superannuation

The legislation for the downsizing measures received Royal Assent on 13 December 2017. From 1 July 2018 individuals aged 65 years or older, who sell their main residence that they have owned for at least 10 years can contribute up to a maximum of \$300,000 into superannuation. Both members of a couple can take advantage of this measure, even if only one of them is listed on the title. Individuals can only access this scheme once, from the sale of one home. A downsizer contribution will not count towards an individual's contributions caps or affect their total superannuation balance test in the year that the contribution is made. However, it will count towards an individual's total super balance and transfer balance cap, currently set at \$1.6 million. The transfer balance cap applies when superannuation savings are moved into retirement phase.

From 1 July 2018, to make a downsizer contribution, eligible Individuals will obtain an approved form from ato.gov.au, or most likely, from their superannuation provider and within 90 days of receiving the proceeds from the sale, send their completed approved form and downsizer contribution/s to their superannuation provider. An individual may seek an extension of time to make contributions from the ATO if they can't make their contributions within 90 days of receiving the proceeds.

Superannuation providers will receive the approved form and downsizer contribution, accept the downsizer contribution (if their rules or Trust Deed allows) and report the downsizer contribution to the ATO via normal member contribution reporting. The ATO will assess extension of time requests, provide phone and written advice and check eligibility. Where contributions do not satisfy the requirements of a downsizer contribution the ATO will notify individuals and superannuation providers.

The ATO has already published web content to provide individuals, superannuation funds and intermediaries with guidance on eligibility for the scheme. The ATO will publish more technical based guidance (Law Companion Ruling and Guidance Note) on the eligibility, application and financial hardship processes that will be of particular assistance to tax practitioners.

In closing the discussion, the ATO highlighted a few points for the tax profession to note. In addition to some of the integrity measures that will improve superannuation guarantee administration, the ATO is working towards improving data analytical activities to increase the number of ATO initiated compliance enquiries into unpaid superannuation obligations, in comparison to commencing enquiries that are triggered by complaints or employee notifications. Where employers that have previously failed to meet their superannuation obligations, the ATO will undertake review activities to gauge changes in compliance behaviours. Early intervention in managing superannuation guarantee debts will be increased to work in parallel to the changes that allow improvements to issue director penalty notices for superannuation guarantee debts in the right circumstances.

Agenda Item 10 – Other business

Open forums

During the upcoming Open Forums the ATO will be discussing a range of topics including:

- digital initiatives
 - single touch payroll
 - ATO online services for agents
 - identity authentication and authorisation as a future replacement for AUSkey
 - Small Business Superannuation Clearing House
- work-related expenses
- recent superannuation changes
- employer obligations including the extension of the taxable payments reporting system to new industries
- helping clients engage with the ATO to prevent debt and manage their tax and superannuation obligations
- disclosure of business tax debts.

The Tax Practitioners Board will also partner with the ATO and attend 16 of the 23 Open Forums and will be discuss the notifiable data breaches scheme, authorisations to lodge, conflicts of interest, and cyber security.

Survey results have shown the most popular topic is single touch payroll. Other areas of particular interest were the Tax Time update, work related expenses, employer obligations and debt.

From our survey results it is clear that tax practitioners like the format of the Open Forums, with 99.5% indicating they would attend another Open Forum in the future. Tax and BAS agents particularly enjoy:

- hearing from knowledgeable, honest speakers, who are willing to take questions throughout the forum,
- the open and friendly atmosphere which is conducive to discussion (“I got just as much out of the questions asked as the official content”)
- the diversity of speakers and topics
- the ATO’s willingness to listen and be open to suggestions and changes

Tax practitioner consultations

From July 2017 to the end of January 2018 the ATO has consulted with the practitioner community on 29 matters with over 400 tax practitioners participating in those consultation activities. Some of the matters recently consulted on include:

- communication preferencing
- improving digital services for tax professionals
- statements of account
- understanding the financial planner experience
- single touch payroll screens in ato online
- improving the experience of regional and rural clients.

The ATO will discuss the consultation opportunities at the open forums and encourage attendees to leave their contact details so we can register their interest in any future consultation activities. Since we commenced this process 12 months ago almost 400 tax practitioners have registered their interest in being involved in consultation.

Agenda Item 9 – Forward agenda items and meeting close

Forward agenda items:

- Update on superannuation guarantee
- ATO system investment priorities
- Taxable payments reporting system

Proposed meeting schedule for 2018:

- Friday 18 May 2018
- Friday 17 August 2018
- Friday 16 November 2018