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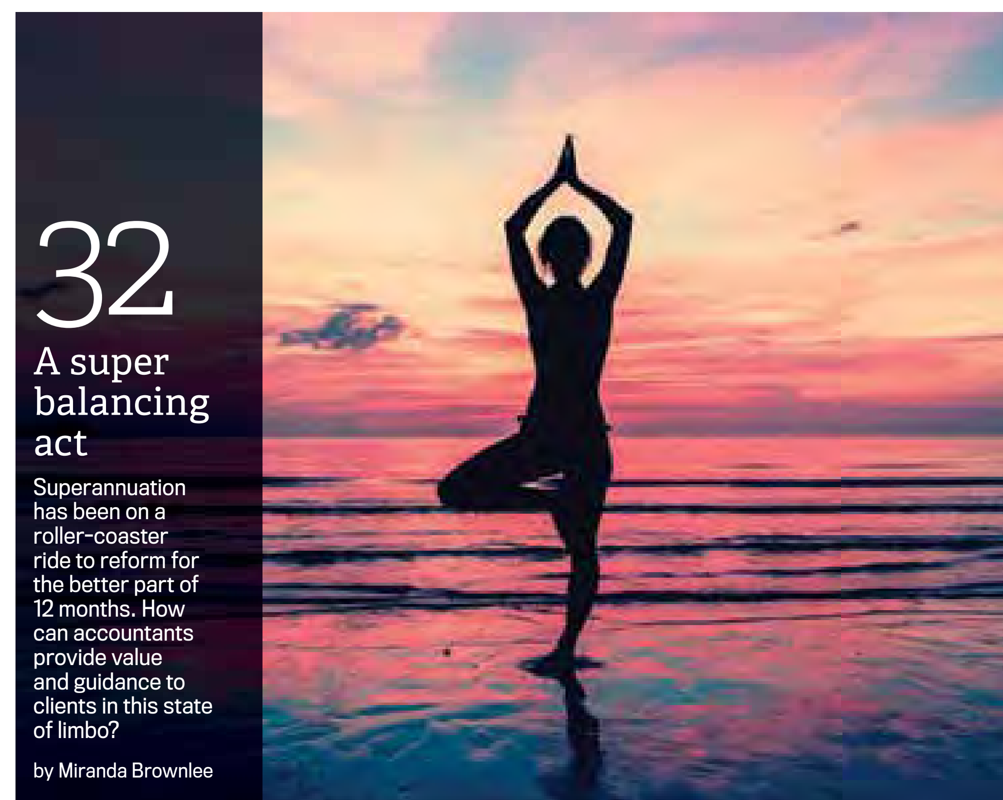

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In our last issue, we explored the steps accountants can take to integrate property advice into their practice. Now, we examine the problem areas accountants can jump on to better service existing clients and attract new ones.

Through a series of case studies, we also explore business opportunities in China. Taking advantage of this growing Asian powerhouse is not as difficult as you may think.

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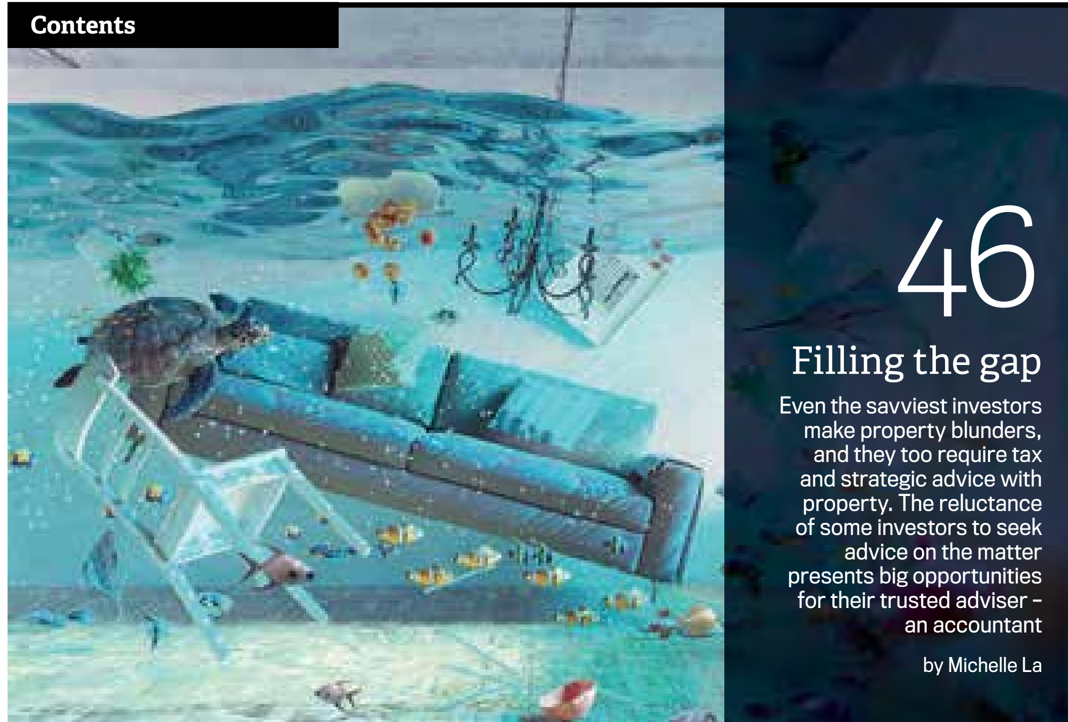

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President's report

Busy times for the IPA

While the year is fast drawing to a close, activity at the IPA continues to remain constant.

In October, IPA CEO Andrew Conway chaired the Professional Accountancy Organisation Development Committee (PAODC) of the Confederation of Asian and Pacific Accountants (CAPA) in India. The PAODC – a committee under the auspices of CAPA – has a mandate to promote and facilitate the establishment and strengthening of professional accountancy organisations in our region in support of public interest.

Also in October, the IPA sponsored Accountant Daily's Australian Accounting Awards where a number of IPA members and firms employing members made the finalists' list. Our congratulations go to Synergy Group Australia (Fast-Growing Firm of the Year), Power Tynan (Graduate Program of the Year), M.A.S. Accountants (Marketing Program of the Year) and Zak Robson (Accountant Student of the Year). The IPA was represented at the event by board members, Wayne Debernardi, IPA GM marketing, media and communications and Debbie Savann, NSW business development co-ordinator.

Participation in industry-based awards is a relevant and inexpensive way of extending the IPA brand. This year, Andrew Conway was a judge of The Adviser's Australian Brokers Awards and the Australian Real Estate Awards, while the IPA's executive general manager, advocacy and technical, Vicki Stylianou, was a judge of the Optus My Business Awards. This pays testimony to the fact that the IPA's expertise is being drawn upon to assess excellence in the small business and SME space.

November was also an exceptional month for us. I was pleased to be part of the roundtable that the IPA hosted on behalf of the Department of Foreign Affairs and Trade, the Australian Trade and Investment Commission and Australia's Export Credit Agency. The IPA hosted the roundtable of IPA members to gain their views on small business and SMEs utilising trade agreements with our biggest trading partners. The importance of trade, investment and exporting – especially by the small business sector – should not be underestimated. It is vital that we increase the quantity of exports by the small business/SME sectors if the Australian economy is going to realise the full potential of trade agreements.

Only a few weeks later, the IPA held its annual National Congress in Melbourne and I must say the IPA team did a splendid job. Having attended the event, I can say what a wonderful experience it was. The event again proved to be outstanding, comprising a well-balanced mix of education and social networking. I am already looking forward to next year's event.

As this is the last edition of Public Accountant for the year, I would like to wish all our members and readers a very Merry Christmas. I hope you enjoy a happy and safe holiday season, and I look forward to a prosperous 2017.

Wendy Leegel FIPA FFA

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From the CEO

Our advocacy effort continues – a super end to the year

I am pleased to report that the IPA's advocacy efforts have been solid throughout 2016 and they won't be slowing down moving into the new year.

I reported on much of our advocacy efforts in the last edition of Public Accountant. Since then, we have made a number of submissions to the government, including responding to the proposed superannuation reforms. In the first tranche of the reforms, we were pleased that the government scrapped the backdated limit of the $500,000 lifetime non-concessional cap on superannuation. We believe the government was eventually influenced by the advocacy on the proposed changes being retrospective.

However, this move came as a trade-off for other simplification measures such as the abolishment of the contribution works test for those aged 65 to 75. Removing the complexities associated with applying the work test for this age bracket would have simplified and improved the flexibility of the superannuation system.

While enshrining the objective of superannuation in legislation has been long advocated for by the IPA, we expressed concerns about the draft legislation. We believe that stating the prime objective as 'to provide income in retirement to substitute or supplement the age pension' places too much emphasis on the aged pension. Focus also needs to be on the other two pillars of our retirement system, namely superannuation and other voluntary savings.

In our submission to Treasury on the second and third tranches of the superannuation reform package, the IPA urged the government not to reduce the cap on concessional superannuation contributions. We do not support the reduction of the contributions cap to $25,000 and more so, we do not agree with the reduction of the current cap of $35,000 for individuals aged over 50 years.

Extending our advocacy efforts and credible voice for small business received an extra boost with the launch of the IPA Deakin SME Research Centre last month. The work program for the centre includes contribution to the IPA's pre-budget submission for 2017, a focus on past outcomes such as the Australian Small Business White Paper and the new 'evolution' of it also considering the expanded global footprint of the IPA with the IFA. Research will also focus on co-regulation, trade and investment policy, taxation, superannuation and integrated reporting. There will also be work with Deakin's cyber centre on commercial and policy issues relevant to SMEs. In addition, we will embark on groundbreaking research on crowdfunding here in Australia and the UK.

Our National Congress took place a couple of weeks ago and it was great to see so many members in attendance. I look forward to the 2017 National Congress which I am pleased to announce will be held at the RACV Royal Pines resort on the Gold Coast from 22 to 24 November.

In closing and on behalf of the entire IPA team, I wish you and all of your loved ones a very happy festive season. Stay safe and I look forward to working with you in 2017.

Andrew Conway FIPA FFA

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Exporting – opportunity for members and clients

The IPA has become increasingly involved in trade and investment policy, reflecting our growing global footprint and the globalisation of the accounting and finance professions

by Vicki Stylianou
executive general manager, advocacy and technical, IPA

In the last two years, Australia has signed free trade agreements (FTAs) with three of our biggest trading partners – China, Japan and Korea. Australia now has 10 FTAs covering two-thirds of our trade and is part of several multilateral agreements.

However, as we have often said, FTAs are of no benefit to the economy unless we utilise them. This position was articulated in the 2015 *Small Business White Paper*, produced by the IPA Deakin University SME Research Partnership (now the IPA Deakin University SME Research Centre). The IPA has long advocated that more needs to be done by all stakeholders to ensure that more sectors of the economy – including the services sector, small business and SMEs – realise the potential of trade agreements.

In order to raise awareness of the FTAs and to encourage businesses to utilise them, the government, through its agencies, has embarked on an outreach program. The Department of Foreign Affairs and Trade (DFAT), Austrade and Efic (the government's export credit agency for SMEs) have been travelling extensively around Australia talking and presenting to stakeholders, including the public.

Part of its program included a roundtable at the IPA last month which was attended by IPA members, most of whom have clients either involved in exporting or are 'export ready'. Some members had been on the inaugural IPA China delegation in 2016 and were interested in progressing their clients' interests.

There was a wide-ranging and robust discussion around many issues including the parameters of the FTAs (they deal with quotas and tariffs, and are not intended to replace commercial decision-making); finding reliable and trustworthy export partners; navigating changing rules and regulations in foreign countries, especially China; dealing with innovation and commercialisation; exporting wine and not having the same government support as that offered in Spain and Italy; the need to have more research and to better understand why small businesses do not export, which may require a paradigm shift by business and government; issues around exiting, including remittance of funds; what are the initial first steps and what barriers can be expected, and how to overcome them; the need for a 'bridge' and where to go for assistance when problems are encountered; the need for practical 'nuts and bolts' assistance; and trade agreements needing to consider SMEs more.

There was also a robust discussion around the role of government, with participants expecting that the government should be providing more resources for businesses wanting to export. However, as mentioned at the roundtable, the role of the government is not to replace commercial decision-making but to effectively 'open the door' to let business walk through. The government cannot push people through the door and that is not its role. There seemed to be a misconception and a need for greater understanding of what role the government plays, and what it cannot and will not do. For instance, Efic will only lend where a business cannot obtain finance from a commercial bank. It does not compete with the private sector, it fills a gap.

There is a huge amount of resources available to assist business and advisers in exporting, though many of these may not be well known. The new portal on FTAs on the DFAT website is a fabulous resource. In particular, there are grants, such as the export market development grant, which we urge you to investigate. There is the Efic app which provides a gateway to a plethora of information. There is even an international readiness indicator for ascertaining whether a business is 'export ready'. Refer to the list of resources below.

The IPA is keen to encourage members to explore whether they have clients who are exporting or should be exporting, and to consider how they can support their clients. Alternatively, there may be members who are CFOs or hold other positions within companies that are or should be exporting. In particular, we see great opportunities for SMEs wanting to export but recognise they need guidance to do so.

The IPA would like to support members through a variety of channels and programs which could be developed in the future. These might involve specialised CPD; 'amplification' by raising awareness of the existence of, and opportunities offered by, the FTAs and related government resources; helping to scale – and where practicable, to standardise – the exporting process; organising networking events for members to find business partners for their clients or businesses to buy/invest here in Australia (e.g. some members have Chinese clients in Australia who are looking for investments); more overseas IPA delegations; communications on government assistance, grants, list of referrals; and development over time of other technical resources.

The message from DFAT is that we need to tell clients to look out for trade opportunities. We can also assist by providing case studies to show businesses how they can start exporting and what to look out for, and encouraging them to begin their own exporting journey.

If you are interested in any of these activities or have case studies to share, please contact Vicki Stylianou by email – vicki.stylianou@publicaccountants.org.au.

For more government resources, please refer to:

- Australian businesses can express their interest in joining a ministerial-led overseas business mission.
- Australian Suppliers Directory contains thousands of Australian companies, their products and services.
- Austrade's Referrals Service provides lists of professional and business service providers to Australian exporters and education providers to assist them to navigate complex and unfamiliar international services markets.
- Navigate FTA-specific information via www.openforbusiness.gov.au.
- Apply for FTA Training Provider Grants for member-based organisations. www.austrade.gov.au/fta-tp

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- Specific, tailored advice such as customer/agent/distributor identification in various international markets is provided to thousands of internationally ready Australian companies each year at a rate of $275 per hour, based on a no-obligation quote in advance.
- Referrals to professional advisers such as legal, tax and specialised market entry or regulatory advisers are provided free of charge.

Austrade's services to Australian companies include:

- Advice on how to prepare for export, including the international readiness indicator, getting ready for export, export strategy, export pricing, freight and logistics, agents and distributors.
- Country and industry overviews, including advice on local practices and culture, market challenges, help with translation and interpreting, and logistical support.
- Austrade seminars and events across Australia and internationally.
- Export Market Development Grants (EMDG) scheme is a key Australian government financial assistance program for aspiring and current exporters.
- The Export Update Newsletter will keep you informed with export news, events, success stories and other information to help you do business around the world.

Trent McLaren,
senior BDM,
Intuit QuickBooks Australia

Is it time to move on from time-based billing?

Time-based billing is fast becoming an outdated, inconsistent method for pricing your service fees

by Trent McLaren

Time-based billing is a thing of the past, yet it's still the dominant billing method for accounting firms across Australia, with up to 90 per cent of firms still using timesheets to monitor chargeable hours. We're also seeing the average client fee nosedive for the second year in a row. Is it a coincidence that as accountants start to complete their jobs faster, they are beginning to earn less revenue per client?

These are some of the problems and themes starting to arise within accounting firms across the country. Today, clients want consistency in their fees. Team members are working more efficiently with technology and reducing billables as a result or they are taking too long to complete the work and clients are paying higher fees.

In an industry where change and disruption are appearing in every thought leader's blog and every software vendor's conference, why do we still see such a resistance to moving away from time-based billing? Some may cite lack of education, not knowing how to price differently or, better yet, not having any confidence in using other methods like value-based pricing.

Value pricing is a strategy that has appeared in the last couple of years. It is referenced by leading experts all over the world, including Ron Baker (director, VeraSage Institute, USA), Mark Wickersham (founder, Pricing In The Cloud, UK) and Andrew Robertson (founder and mentor, 26 Group, Australia).

What is value pricing?

Value-based pricing (also value-optimised pricing) is a pricing strategy that sets prices primarily, but not exclusively, on the value (perceived or estimated) to the customer, rather than on the cost of the product or historical prices.

Value pricing exists in everyday life. The key here is being able to tailor it to your clients' needs and wants. Mr Robertson is one of the few Australians who have found a way to position value-based pricing as the best fit for both their clients and their organisation.

"We started 26 Group as a specialist consulting firm. We were driven to help our clients and other accountants implement change in their pricing strategies. Pricing your fees by the minute is a backwards way of thinking, and is becoming a source of problems for all accountants and bookkeepers as their firm transforms into the future," he said.

Mr Baker has also weighed in on the issue, writing, "Accountant professionals need to have a value conversation with the customer", including the best opening statement to begin this conversation, "We will only undertake this engagement if we can agree, to our mutual satisfaction, that the value we are creating is greater than the price we are charging you. Is that acceptable?"

The suggested theory is that the client agrees that the perceived value is greater than the price that has been put forward. There is a mutual agreement in place and thus a positive engagement to carry out over the next 12 months. Remember your customer is king in today's wide world of business and customer-centric experiences.

Mr Wickersham said some accounting firms he works with are earning two to three times more on their compliance and value-added service fees by implementing a value-pricing strategy and moving away from time-based billing.

Implementing a value-pricing model can help your firm:

A) Get paid on time and more consistently, allowing for improved cash flow within the firm;

B) Give your clients a clear, consistent bill, with no hidden surprises; and

C) Increase charge-out fees, up to three times more than before.

Let's look at a few things to consider when implementing value pricing.

1. Price the customer, not the service

The most common pricing mistake among professional firms, alongside under-pricing, is pricing the service, not the customer. Studying elasticity, consumer surplus, demographics and psychographics is not the full story of a customer's perception of value. To establish an optimal price, you must understand the value drivers of your customers and what causes them to be more or less price-sensitive. This is not as precise as computing price elasticity, but is far more valuable when dealing with something as subjective as value.

Value pricing is different to the concept of elasticity since it is not concerned with how changes in price will affect revenue. It is more concerned with setting a price commensurate with the value you are creating for a flesh and blood customer, not some notion such as a 'market', to drive profit.

2. Understand the five Cs of value

- Comprehend value to customers;
- Create value for customers;
- Communicate the value you create;
- Convince customers they must pay for value; and
- Capture value with strategic pricing based on value, not costs and efforts.

These five components determine the wealth-producing capacity of any firm and will drive profits in the long run. Every job for every customer has value drivers and the firm's job is to comprehend what those are.

3. You are what you charge

A business is what it charges for. More precisely, a business is the value it creates. Ultimately, it must offer a value proposition for which a customer is willing to pay. Since value is the ultimate arbiter of price, it is worth exploring how customers determine value.

Hourly billing creates a bad culture, focused almost exclusively on the convenience of the seller, not the customer. It is not how you purchase anything else in your life. You would not tolerate it for one minute if any other business tried to price this way. The first step to value pricing is eliminating the billable hour and timesheets, replacing them with more strategic tools for professional knowledge.

Time is not money (or value) and customers do not buy hours. Pricing by the hour is causing professional firms to focus on the wrong things, with consequences.

When you make hours important, the customer is bound to focus on hours, rather than on value. Professionals caught padding their timesheets, because they believe the value of what they create exceeds the price measured in hours, will lose the respect of their customers.

Value-based pricing is largely driven by creating valuable meaningful relationships between your firm and your client. As firms strive towards increasing value-added services, there needs to be a conscious effort to create and display value with your clients. This is not associated with the time it takes to complete a task. Instead, you should be looking at the type of work that needs to be completed, and pricing the work based on what is important to the client.

IPA in the media

The IPA has attracted media attention on a range of issues, including superannuation, trade and tax reform

SME research

The research will drive applied academic research in relation to small and medium enterprises with expanded reference to the growth of SMEs and their respective trade links globally.

– Andrew Conway, *Herald Sun*

Tax cuts

Despite Labor's opposition, we support the government proceeding with the bill and continue pragmatic negotiations to ensure it passes. If this means deferring tax cuts for larger entities to gain the opposition's support for tax cuts for smaller entities up to $10 million, it should be considered.

– Andrew Conway, AccountantsDaily

Work test

Removing the complexities associated with applying the work test for individuals aged 65 to 75 would have simplified and improved the flexibility of the superannuation system.

– Andrew Conway, *Professional Planner*

Purpose of super

Enshrining the objective of superannuation in legislation, which the IPA has long advocated for, is also an important step forward, however, we are concerned with the draft in its current state. The primary objective 'to provide income in retirement to substitute or supplement the age pension' places the focus of superannuation entirely on the age pension.

– Andrew Conway, *Self-Managed Super*

White paper

We have had significant success with our Small Business White Paper initiative in Australia. Rather than simply talking about small business as the 'engine room of the economy', we are providing an evidence base as the foundation of future policy.

– Andrew Conway, MyBusiness

Non-concessional cap

We are disappointed that the drop in the non-concessional cap has been traded off for other simplification measures that were proposed, such as the abolishment of the contributions work test for those aged 65 to 75.

– Andrew Conway, *Money Management*

Small employers

Pragmatic politics and fiscal budget circumstances may, for the short term, prioritise tax relief in favour of small employers who account for the largest share of total employment in Australia.

– IPA, *Australian Financial Review*

'One-chance' rule

The 'one chance' rule proposal is a clear sign that the ATO recognises that, in the past, it may have been too heavy-handed on taxpayers trying to do the right thing, by not taking into account individual circumstances.

– Andrew Conway, *Money Management*

Corporate tax

Reducing the corporate tax rate further for incorporated small businesses means that 2.3 million small businesses would miss out on similar tax relief as they are not operated through a company; approximately 70 per cent of small businesses are unincorporated.

– Andrew Conway, AccountantsDaily

Trusted advisers

Accountants really need to leverage and optimise their trusted adviser status, and not take it for granted so much.

– Vicki Stylianou, AccountantsDaily

ATO penalities

The reality is that the ATO remits a substantial number of penalties down the track after they are disputed, which normally involves a great deal of time, effort and stress ... Not levying the penalty in the first instance will result in a reduction in the administrative burden facing individuals and small business.

– Andrew Conway, AccountantsDaily

SME tax relief

While we support the change from $2 million to $5 million turnover threshold for the small business tax offset, we believe the $1,000 cap needs to be raised over time to mirror the tax relief available to incorporated entities, in line with the original policy intent.

– Andrew Conway, AccountantsDaily

Section 46

The proposed changes to section 46 as reflected in the exposure draft bill, represent a sensible and long overdue improvement to Australia's misuse on market power laws.

– Andrew Conway, *Herald Sun*

Advocacy

The research centre will generate the insights and base for our future policy positioning across a raft of subject matters and will help us with our advocacy work and our submissions to government. Having a strong research base will continue to enable us to drive a credible voice for small business.

– Wayne Debernardi, My Business

Competition vs competitors

Importantly, the shift of the focus to competition, rather than competitors, will help ensure that unilateral conduct by firms with market power cannot be permitted whether its design or effect is to substantially lessen competition.

– Andrew Conway, *Herald Sun*

Reform agenda

Moving the tax benefits up the food chain is likely to bring the economy substantial benefits. We believe there's a strong argument that, over time, you will see economic benefits that will hopefully exceed the cost [of the tax cut].

– Tony Greco, *The Australian*

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Govt called on for more small business representatives

In order to effect positive change for small business, small business representatives need greater prominence in government, according to a roundtable discussion hosted by Sage.

Experts on the panel said the government is often reliant on businesses for information on the issues of the day. Therefore, it is important to have a government that includes ministers who are small business owners.

Sage global chief executive Stephen Kelly said small businesses are the "engine room of the economy", with small businesses making up two-thirds of the economy. Last year alone, 280,000 new businesses started in Australia.

The panel identified several challenges impacting small businesses including the burden of red tape, high taxes, tax issues that prevent investors from investing in small business, and the need to navigate regulations across three tiers of government.

The experts questioned whether the government is doing enough to encourage start-ups.

While the government has acknowledged that tax is too high, the panel said it needs to implement strategies to lower the tax rate for small business over the next ten years.

The experts called on the government to work with Labor on simplifying policies and changes for business owners, cutting red tape at a federal level and cutting taxes.

They suggested funds could be unlocked from the Google tax and diverted to helping small businesses prosper, and boosting training and innovation.

Research reveals opportunities with SME services

Despite the high satisfaction levels SME clients have with their accountants, these clients still have unmet advice needs they are looking for an accountant to provide, according to a survey.

The survey conducted by Investment Trends of nearly 1,500 small and medium sized enterprises found that SMEs are much more likely than non-SMEs to have relationships with accountants for tax advice and investment advice.

Investment Trends research director Recep III Peker said SMEs also tend to be more satisfied with the relationship they have with their accountant, compared to the average person using an accountant.

"The areas where they're significantly happier is being able to access their accountant when they need them and tax planning," Mr Peker said.

"What might be happening is that when accountants provide their services, they make themselves more available to SME clients and that comes through in the satisfaction scores."

However, Mr Peker said there are still a number of areas where SMEs have unmet advice needs. He urged accountants to capitalise on this demand by broadening their services to SME clients or by having strong referral relationships with financial advisers.

"If you look at the unmet advice needs, the ones that really stand out are around buying or identifying undervalued assets, investing for regular income and investment strategies, so it's quite investment-related," he said.

"We also find that inheritance planning and retirement planning feature quite high among their unmet advice needs."

Traditional firm hierarchy set to lose prominence

The current hierarchical business models in the accounting space are set to have less significance in the next five to 10 years, as the next generation of accountants seek more flexible and less stressful workplaces.

The prestige of the partnership model will keep "buckling under stress", according to Connect Financial Service Brokers chief executive, Paul Tynan, who said new accounting industry hopefuls are not looking for additional risk or pressure given they are likely to have student and/or housing debts.

Similarly, Xero's head of accounting James Solomons said that while there is prestige associated with the partnership model, graduates are seeking more entrepreneurial opportunities and flexible working environments.

Many accountants eyeing senior roles and career progression would choose lower salaries over partner-type positions, Mr Solomons said.

"With the entrepreneurial spirit of the next generation of accountants, they may even forgo $50,000 on their salary to be able to work whenever they like, wherever they like, with the clients that they like."

ATO's one-chance rule positive for small business

The Institute of Public Accountants has welcomed the ATO's proposal of a one-chance rule to relieve individuals and small business of first-time tax penalties.

IPA chief executive Andrew Conway said the proposal is a clear sign that the ATO recognises it may have been too heavy-handed on taxpayers trying to do the right thing by not taking into account individual circumstances.

"In real life, mistakes can be made and people should be entitled to learn from their mistakes, especially if the individual circumstances are clear that the mistakes were inadvertently made," Mr Conway said.

"The ATO has the luxury of time and expertise so the balance of power is heavily weighted in their favour."

If someone has failed to take reasonable care or failed to lodge an activity statement or an income tax return on time, the proposed rule will give a first-time offender a break, Mr Conway said.

"This is a good sign for small business that is time-poor and drowning in regulatory responsibilities," he said.

"The reality is that the ATO remits a substantial number of penalties down the track after they are disputed which normally involves a great deal of time, effort and stress."

Not levying the penalty in the first instance will result in a reduction in the administrative burden facing individuals and small businesses, the IPA chief said.

"The ATO is to be commended for this approach and it is a positive sign that the working culture of the ATO is improving."

Survey highlights skills shortages in accounting industry

A survey by a recruitment firm has identified high demand for particular roles in accounting and finance.

Research compiled by Hays found that skill shortages have driven demand for roles such as accounts payable, assistant accountants, finance managers and financial controllers.

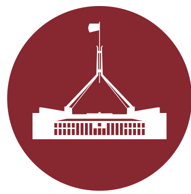
The survey found that employee churn has been a large contributor to recruitment activity, with staff turnover rising in 29 per cent of the population.

Hays Australia and New Zealand's managing director Nick Deligiannis said employees will be more willing to make job moves in the coming months.

"More employees will see a role elsewhere and issues of retention will become more prominent for organisations," Mr Deligiannis said.

New South Wales, Victoria and the ACT continue to be main hubs for jobs in professional services such as accounting, law and finance, the research showed.

CBA general manager of talent strategy and acquisition James Elliott weighed in on the matter, saying Sydney and Melbourne are still "hot talent markets and the competition is pretty fierce".



IPA submissions and views

The IPA's latest submissions span superannuation, tax and small business

Treasury Laws Amendment (Enterprise Tax Plan) Bill 2016

The IPA made a submission on Treasury Laws Amendment (Enterprise Tax Plan) Bill 2016. The bill amends the *Income Tax Rates Act 1986* to reduce the corporate tax rate for small businesses with an aggregated turnover of less than $10 million to 27.5 per cent for the 2016-17 financial year and progressively extends that lower rate to all corporate tax entities by the 2023-24 financial year, and further reduces the corporate tax rate in stages so that by the 2026-27 financial year, the corporate tax rate for all entities will be 25 per cent. The bill also amends *Income Tax Assessment Act 1997* to increase the small business income tax offset to 16 per cent of an eligible individual's basic income tax liability that relates to their total net small business income from the 2026-27 financial year, and enables small businesses with an aggregated turnover of less than $10 million to access most small business tax concessions, and small businesses with an aggregated turnover of less than $5 million to access the small business income tax offset.

The IPA does support the long-term move to more competitive tax rates for larger businesses and multinational companies to encourage such entities to invest, remain and expand in Australia. The 10-year plan to a 25 per cent tax rate still puts Australia slightly above the OECD average, assuming other countries do not further lower their corporate tax rates within the next ten years. For Australia to remain competitive as an investment destination, it cannot afford to completely abandon its corporate tax rate reduction plan when countries we compete with have a lower corporate tax rate.

Pragmatic politics and fiscal budget circumstances may, for the short term, prioritise tax relief in favour of small employers who account for the largest share of total employment in Australia. Having regard to the importance of small businesses in the Australian economy that employ some 44 per cent of total employment, we support the short-term compromise, if it means the bill can successfully progress through Parliament without granting tax relief for entities with turnover in excess of $10 million. Tax relief for large entities might have to wait as there seems little chance that these reforms will pass the Senate, and their inclusion in this bill will be at the detriment of the other tax relief measures for smaller entities.

The contribution of small businesses to productivity and economic growth is well recognised. Small businesses can exhibit greater flexibility and responsiveness to changing markets than large businesses. Small businesses can also be highly innovative and dynamic, tapping into niche markets, responding to changing consumer preferences and contributing to the development and diffusion of new technologies. We agree with the government that providing more tax relief to SMEs will generate a growth dividend to the economy in the form of potentially increased employment and higher wages, and removing disincentives to business growth caused by the turnover threshold. The current low threshold discourages growth as entities lose access to tax concessions once they pass the threshold.

Although small businesses are an important source of employment, small businesses with turnover of less than $2 million tend to be non-employing, have very few employees or are mainly operated by family members. According to ABS data, around 61 per cent of actively trading small businesses are non-employing, while around 28 per cent of actively trading small businesses have between one and four employees, and 10 per cent have between five and 19 employees. Moving the tax threshold for access to small business concessions to entities up to $10 million can potentially contribute to more employment as such entities are already employing entities. The revenue foregone is likely to be substantially covered by the economic benefits from increased employment, higher wages and lower compliance costs.

Small businesses face significant impediments to participation in economic markets due to high barriers to entry and exit, and difficulties in obtaining access to finance. Other challenges can arise from high compliance costs and regulatory burden which tend to disproportionately affect small businesses. The time and effort required to comply with tax obligations, in particular, are reported to account for a major portion of small businesses' total compliance costs. In addition, small businesses are typically more vulnerable than larger businesses to shocks and changes in economic conditions. For this reason, they have a higher failure rate in comparison to larger businesses. It is for these reasons that extending tax relief for SMEs is warranted.

Since 2007, when the $2 million turnover threshold was introduced, it has not been indexed ever since. The Board of Taxation recommended an increase to the threshold in their 2014 *Review of the Tax Impediments Facing Small Business*, stating that increasing the threshold would reduce the number of businesses that are at, or near, the current threshold and so face uncertainty as to their tax treatment. An increase to the threshold was also recommended in the *Australia's Future Tax System Review* (Henry review) in 2009.

Increasing the threshold would also assist businesses with a higher aggregated turnover, but low margins, to access the concessions. It is estimated that increasing the threshold would allow an additional 90,000 to 100,000 businesses access to the small business tax concessions, decreasing their compliance costs and increasing cash flow. This would enable greater reinvestment in small businesses and provide the opportunity for these businesses to increase employment and wages. It would also provide incentives for small businesses at, or near, the existing $2 million turnover threshold to grow, as currently they would lose these concessions once they pass the threshold.

Of particular interest to entities with turnover above the existing threshold limit is access to simpler depreciation rules, lower corporate tax rate and also the newly enacted small business rollover restructure relief. The simpler depreciation rules allow such entities to access the small asset write-off entitlements. Small business can immediately write-off and deduct most depreciating assets that cost less than $20,000 each that were bought and used or installed ready for use from 12 May 2015 until 30 June 2017. Depreciating assets costing $20,000 or more can be placed in a small business asset pool and the entity can claim:

- A 15 per cent deduction in the first year (regardless of when you purchased or acquired them during the year); and
- A 30 per cent deduction each year after the first year.

The small business restructure rollover (SBRR) allows small businesses to transfer active assets from one entity (the transferor) to one or more other entities (transferees) on or after 1 July 2016 without incurring an income tax liability. The SBRR is intended to make it easier for small businesses to adopt or evolve into a more appropriate legal structure when necessary, without incurring tax liability on the transfer.

The IPA supports allowing small businesses with aggregated turnover of less than $10 million having access to the small business tax concessions and small businesses with aggregated turnover of less than $5 million access to the small business income tax offset.

Increase to the tax discount for unincorporated small businesses (IPA signature policy)

Reducing the corporate tax rate further for incorporated small businesses means that 2.3 million small businesses

would not receive any similar tax relief as they are not operated through a company. Approximately 70 per cent of small businesses are unincorporated.

From the 2015-16 income year, the government introduced small business entity tax offset which provides unincorporated small businesses with a tax discount broadly equivalent to the small business company tax rate cut of 1.5 per cent that was also introduced in the same period. The small business tax offset entitles individuals who are small business entities, or who are liable to pay income tax on a share of the income of a small business entity, to a tax offset equal to 5 per cent of their basic income tax liability that relates to their total net small business income, capped at $1,000. The IPA was a strong advocate for the introduction of such an offset to address the regressive nature of compliance costs on small business entities.

Given further cuts to the small business company tax rate, it is entirely appropriate that further increases to the tax discount provided by the offset are made. This minimises tax distortions between the different entity types through which small businesses may be run and ensures that the many small businesses run through unincorporated entities also receive an increase in their cash flow from tax relief. The legal structures used by small businesses vary significantly. According to ATO statistics, around 36 per cent of identified small businesses operate as sole traders, around 13 per cent as partnerships, 23 per cent as trusts and 28 per cent as companies. The legal structure of a small business can significantly affect its tax obligations, interactions with the tax system and eligibility for available tax concessions.

The relationship between the changes in the discount rate and the corporate tax rate applying to small businesses are summarised in the following table:

Income year/s	Rate of small business income tax offset	Corporate tax rate applying to small businesses
2015-16	5 per cent	28.5 per cent
2016-17 to 2023-24	8 per cent	27.5 per cent
2024-25	10 per cent	27 per cent*
2025-26	13 per cent	26 per cent*
2026-27 and later income years	16 per cent	25 per cent*

* From 2024-25, the corporate tax rate will be the same for all corporate tax entities.

Further increases in the unincorporated tax discount for small businesses is consistent with the original policy intent for the small business tax offset.

By increasing the tax discount for unincorporated small businesses, it will provide increased cash flow to profitable unincorporated businesses. Unincorporated small business owners will have higher after-tax earnings which they will be free to reinvest in their businesses.

Unfortunately, although these increases in the offset will increase the amount of offset an eligible individual may claim, the offset will remain capped at $1,000. The small business tax offset of $1,000 needs to be raised over time to mirror the tax relief available to incorporated entities from further company tax cuts in line with the original policy intent for the tax offset.

Proposed changes to penalties for small business and individuals

The IPA made a submission on the consultation document

Proposed changes to penalties for small business and individuals. The consultative document proposes a one-chance opportunity to alleviate first-time tax penalties on individuals and small business. The one-chance rule will be restricted to penalties for failure to take reasonable care and failure to lodge an activity statement or an income tax return on time.

The IPA welcomes the new approach to the application of penalties for situations where the ATO considers that there has been a failure to take reasonable care or a failure to lodge on time. It is appropriate that penalties are not always applied on taxpayers who are making a reasonable effort to comply. Punitive penalties imposed automatically on taxpayers who misapply complex law or struggle to meet deadlines without much consideration of individual circumstances can do more harm than good. Tax penalties are still required as part of the overall package of measures that the ATO has at its disposal. However, when applied inappropriately, the penalties result in taxpayer resentment and the possibility of encouraging less voluntary compliance and engagement with the tax system. As research indicates, not imposing penalties in the first instance by giving people one chance has the potential to make positive behavioural change. It promotes willing participation, bolstering the prevention of non-compliance. It will not apply to taxpayers who demonstrate reckless or dishonest behaviour, and therefore we believe the relief proposed reduces some of the harshness and disproportionate nature of imposing penalties.

The commissioner has the power to exercise his general powers of administration to bring about this change in approach for the betterment of the tax system. Given that we are dealing with small business and individuals, the savings in time and money will be greatly appreciated. The reality is that the ATO remits a substantial number of penalties anyway down the track after they are disputed, which normally involves a great deal of time, effort and stress. Not levying the penalty in the first instance will result in a reduction in the administrative burden facing individuals and small business.

Consultation on AML/CTF review reform project plans

The IPA made a submission to the Attorney-General's Department on the draft project plan which resulted from the review of the anti-money laundering/counter-terrorism financing regime.

1. The IPA welcomed the opportunity to comment on the draft project plan on the implementation of recommendations from the statutory review of the anti-money laundering and counter-terrorism financing (AML/CTF) regime.

2. Overall:
The IPA is in agreement with all the recommendations in chapter two – overarching issues. The IPA also agrees with recommendation 3.2 relating to the general principles of administration of the *Act*, and especially that compliance with the rules and regulations should be proportionate to the risks involved, which should be a guiding principle.

3. Regime scope: accountants:
The IPA's main area of interest is chapter 4.2 – regime scope: designated non-financial business and professions, and in particular, recommendation 4.6 relating to (a) the development of options for regulating, inter alia, accountants and (b) conducting a cost-benefit analysis of regulatory options for regulating, inter alia, accountants.

4. Options for regulation of accountants:
In terms of options for regulating accountants in order to become compliant with the international rules and regulations, the IPA believes more can be done around education, monitoring and enforcement of compliance with the AML/CTF rules and regulations. When the IPA undertook a members survey for the Financial Action Task Force (FATF) MEAT country assessment in 2014, we found members were largely compliant.

However, more can be done in terms of continuous professional development of accountants in this area and we have sought to implement this over the last two years since the FATF assessment. In addition, written guidance and checklists developed by government agencies such as AUSTRAC are very useful, including updates and alerts on what to look out for and the latest activities, similar to the ACCC's Scamwatch (which is well received by our members and the public). We note the AUSTRAC Compliance Guide, which is a practical and useful resource, should be promoted as widely as possible. The case studies on the website are also educational.

The outreach undertaken by AUSTRAC has been very welcome and our members have shown keen interest in engaging with AUSTRAC staff. However, the outreach program and more guidance material and updates need to be available on an ongoing basis in order to reinforce the AML/CTF requirements. We can all play a role in this.

A global voice for SMEs

The IPA-Deakin University SME Research Centre has been officially launched at a special event in Melbourne

The centre is an expansion of the Institute of Public Accountants and Deakin University SME Research Partnership that published the first ever *Australian Small Business White Paper* in 2015. The dedicated SME Research Centre is located in Deakin Business School and is set to drive the development of small businesses globally.

Andrew Conway, IPA CEO

The Hon Bruce Billson, chair of the Research Centre Advisory Group and Professor Mike Ewing, Deakin University

Professor Marc Cowling, University of Brighton

Andrew Conway, IPA CEO; The Hon Bruce Billson, chair of the Research Centre Advisory Group and Professor Mike Ewing, Deakin University

Vicki Stylianou, IPA executive general manager, advocacy and technical and Tim Reid, *Small Business Big Marketing* show host

Social media

What's on your mind?

What conversations are the IPA and its members having on social media? Get involved on Twitter via @ipaaccountants and join our group on LinkedIn

@ipaaccountants

We're delighted to partner with @Deakin to drive better policy for SMEs. This is a game-changing partnership driven by shared passion for SMEs

- 8 November, 2016

@ipaaccountants

We need to move away from government being seen as both the cause of small business pain and the panacea @Deakin @VCDeakin @deakinresearch

- 8 November, 2016

@DebernardiWayne

Andrew Conway: SMEs not just engine room; they are the entire plant and equipment @VCdeakin @ipaaccountants

- 8 November, 2016

@VickiStylianou

As a standalone economy, Australian state of NSW is the 22nd largest in the world – lunch with NSW premier Mike Baird and his cabinet

- 20 October, 2016

Shopping around

"I agree 100 per cent that clients 'are voting with their feet' and leave accountants who are not flexible. Numbers show that businesses are more technologically savvy than their accountants and it puts accountants on the back foot with client retention."

- Judit Nagy

Validated planning

"We have had significant success with our Small Business White Paper initiative in Australia. Rather than simply talking about small business as the 'engine room of the economy', we are providing an evidence base as the foundation of future policy."

- Andrew Conway

Small business growth

"Frankly as I talk to other practitioners, the accounting business adviser profession is booming especially for small business clients. Throw in the BAS income tax reporting which is no big deal, as long as we don't have to deal with government interference setting up clumsy technology."

- Mike Mooney

Credentials vs service

"Post nominals are for us within the industry, not our clients. I believe that clients do not understand nor do they care. 'Can you look after me in a professional manner' is yet to be put into a post nominal."

- Chris Craggs

Licence for SUCCESS

Licensing for Accountants chief executive Kath Bowler discusses how an unlikely start and a passion for the industry have kept her on the path to success

by Joshua McDonnell

"Frustration" is not a standard answer to "Why did you start your business?".

But frustration was exactly what drove Kath Bowler to start her business. Ms Bowler began her career with ASIC's predecessor, the Australian Securities Commission, and worked with accounting bodies.

During this time, she gradually became frustrated with the disconnect between professionals who were up-to-date on licensing and accountants left without information.

"It was taking such a long time to grasp and provide support for accountants. That's where the idea [for a business] was born," she says.

Ms Bowler started her business Licensing for Accountants (L4A) with the aim of helping people in the industry better understand the licensing frameworks and regulations that dictate how they practice.

"L4A is trying to put a practical spin on understanding those rules, and trying to find a way to turn them from just being a compliance burden and make it as accommodating as it can be," she says.

Ms Bowler's work with larger organisations also solidified her belief that there was a gap in the marketplace for this kind of business.

From the ground up

Most professionals in the accounting industry consider their place of business an office, cubicle or desk. Not Ms Bowler. She has successfully expanded her career path while working remotely from her home in Port Macquarie, New South Wales.

"I live in Port Macquarie and I didn't want to commute. It's something I have done on and off for a number of years. There was a personal decision there and it's worked very successfully. A lot of the business is remote, showing that you can work from anywhere."

Like anyone starting their own business, Ms Bowler encountered numerous challenges.

"We had a massive website issue. Because we are remote, we are very dependent on the website for the brand and building online service. We brought on a person who was developing it and they basically went MIA and we wanted to start in November 2014. We ended up having to source another developer at the last minute," she says.

Ms Bowler was aware that there would be hiccups in her business model and plan.

Leader profile

Leader profile

Remote but relevant

Operating out of her Port Macquarie home, Kath Bowler understands the need to strike a balance between remote communication and maintaining a physical presence.

"I have worked remotely since 2004, so for 12 years. I'm very familiar with that sort of environment. It can work but you still need to meet face-to-face," she says.

As with many people who operate outside a capital city, Ms Bowler utilises technology to drive her business. The use of video conferencing software and online webinars, for example, have been vital for client engagement.

"We are a massive user of GoToMeeting and GoToWebinar. I probably do six of those a week. A lot of it is phone-based too. I'm amazed that we did all of the members' query support by phone and GoToMeeting," she says.

Technology and innovation have been crucial for Ms Bowler and her team.

"We can set up anywhere for our business and I do, constantly, in a different city," she says.

Ms Bowler says an established online presence has been a key factor behind her young business' success. She believes that expanding organically, by way of useful online content, is one way to ensure client growth continues.

"That's constantly at the back of my mind whenever I'm producing content."

Keeping up the pace

With a unique background as a former regulator, accountant, planner, as well as working with both big institutions and small licensees, Ms Bowler believes there is a great opportunity for her to further influence and assist the industry in tackling the issues surrounding licensing.

"I think my relationship with the professional bodies, and working closely with them, is the best way to ensure we have an influence from a reputation and industry leadership point of view. We are also now starting to talk to the regulatory bodies directly. We have a lot to add and contribute to that space."

→ To overcome this, she adopted, early on, a flexible approach to the company's development.

"The advice I got was, 'What it will look like in the end is not what you think'. So I just tried to be a bit more fluid with what the business model was at the start. It was very fluid because I didn't know where the support would be needed. Therefore, I tried to do different things."

By focusing on her core idea – making licensing work for accountants – and taking any issues and challenges that arose in her stride, L4A was up and running by early 2015. Ms Bowler attributes part of her success to the hard work and support of L4A's head of sales and operations, Eloise Ramke.

"Well, I've seen it before and I couldn't agree more, it's very difficult to do something on your own. [It's important] to find somebody that you trust, who will tell you when to keep going and when to cut your losses."

> "I live in Port Macquarie and I didn't want to commute. It's something I have done on and off for a number of years. There was a personal decision there and it's worked very successfully. A lot of the business is remote, showing that you can work from anywhere"

While Ms Bowler did not have the benefit of Ms Ramke's expertise when she was starting out, she recommends that other entrepreneurs work with a trusted partner "right at the beginning".

An independent adviser

As the accounting industry continues to struggle and, in part, resist the push into financial advice, Ms Bowler saw an opportunity to assist those willing to take on new opportunities.

"I avoid using the term 'financial planning'. I prefer the term 'financial advisory'. Because I think the term financial planning rubs accountants up the wrong way. It also implies they want to be a planner when they don't want to be a planner. Some do [but] most just want to offer licensed advice and this seems to be the missing piece."

L4A provides accountants who want to enter the advisory space with a smooth transition to licensing. Ms Bowler saw this as a way to help accountants feel less pressure from certain segments of the industry.

"I couldn't see anyone helping accountants become what they wanted to be. It was always about turning them into something that worked for another reason," she says.

"The big factor is the independence. People like [the fact] that we are independent, we aren't attached to anyone ... because they find it hard to get advice from anywhere.

"We always think very carefully before we do anything so we know it's not going to infringe on that reputation and independence."

While Ms Bowler acknowledges that her model may not be for everyone, she believes there is a licensing solution for every professional.

"For those not embracing advice licensing, it is going to be very difficult to give a full range of advice to clients. Super advice is part and parcel for advising both small business and individuals," she says.

Simple goals, strong leadership

One of the key ways of growing her company is ensuring she has a strong, motivated team.

"It's a small team, constantly changing, so I think it's important to engage all the staff. It's about empowering everybody because it's a small and dynamic team," Ms Bowler says.

She adds that while L4A has some way to go before it achieves the kind of success she aspires to, having employees who are empowered and creative is crucial to her long-term goals. Ms Bowler says she encourages her staff to embrace new concepts and solutions, and bring their ideas to the table.

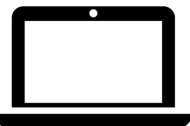
"It's just a very 'How can I?' approach to things. For the staff, it's about [me] asking, 'How can we do this? Who's got ideas? Let's hear them'," she says.

Ms Bowler is not content with just leading her own team. She is vocal about her views and does not hesitate to address any changes the industry is facing, as well as the issues confronting accountants.

"I've had discussions with all the accounting bodies about that. Because we are at the coalface of the issues and because of my background, [we ask] how we can support those bodies in identifying and coming up with solutions to these issues? We have quite a unique role in the leadership and lobbying space," she says.

Ms Bowler is aware of the power of having this voice and she uses it to encourage positive change in the industry.

She regards her discussions with regulatory bodies and associations like the IPA as opportunities to achieve the best outcomes for her clients and the industry.



Read this article online at pubacct.org.au

Re-thinking your FEE MODELS

With the new year just around the corner, it is now a good time to consider shaking up your fee model to ensure success in 2017

by Michelle La

The returns on compliance-based work are diminishing and as a consequence, there's been a shift for accountants in the relevance of time-based billing.

Time-based billing, traditionally suited to the bread and butter work of compliance, is now giving way to alternative billing methods, especially with the emergence of digital disruption and the changing expectations of clients.

Group managing director of Omniwealth, Matthew Kidd, believes the decline in compliance work is caused by offshoring and online-based tax agents, which is in turn reducing the price of basic tax returns.

"The cost pressures are massive," Mr Kidd says, adding that the dynamics of accountant-client relationships are also gradually transforming.

"In the not too distant future, your average person will be able to go online and do their tax return through a tax agent and not even have to meet with anyone," he says.

"You've got ITP and the other very basic tax accountants who are now starting to creep into the other accountants' work because they're advertising that they can now do more complicated work than just basic tax returns."

As the Australian market is squeezed by offshore accounting services as well as online agents who can offer lower prices, local accountants are increasingly finding themselves in an impossible situation.

"You're looking at a $150 tax return and if you're a professional in the CBD, you can't go anywhere near that," Mr Kidd says.

He says accountants need to tackle this price competition by diversifying the services they offer to clients.

"You need to add value. You need to be able to add more than just doing the tax return. It's a massive challenge."

CEO of Sky Accountants, Jamie Johns, has a different view on the future of compliance-based work.

He believes individual and business compliance work will remain an in-demand service, regardless of the decline in service value.

"Australia's one of the most taxed countries in the world. We've got

many taxes – income tax, GST, property taxes, the list just goes on," Mr Johns says, adding, "Compliance will be there, it'll be around forever."

According to Mr Johns, compliance work forms the foundations of an accountancy business.

"At the end of the day, when people buy and sell their accounting business, that's what they're buying ... that recurring passive income," he says.

"Compliance is the core, but then if you can add the icing to the cake and include all the advisory, that's even better."

The Institute of Public Accountants' executive general manager, Vicki Stylianou, also weighed in on the issue, pointing to the decline of compliance work.

"The IPA takes the position that compliance is not dead or necessarily even dying, but it is diminishing," she says, with reference to reducing profitability and lower perceived value by consumers.

Ms Stylianou views technology as a major influence on the decreasing returns of compliance work.

"It has definitely become commoditised and that's why it's becoming less and less valued by clients," she says.

"It becomes a case of a race to the bottom because it's so hard to compete on cost. If you can't do compliance work cost effectively, then you're going to lose clients over it."

The long game

The proliferation of financial technology services looks set to pave the way for long-term change in the marketplace.

For starters, the Australian Taxation Office is a major provider of fintech services, setting a benchmark for the industry.

"[The ATO] spends a lot of time and money building better systems so that people can do tax returns," Mayflower Consulting's managing director Sarah Penn says.

Ms Penn – who has worked with many accounting firms to grow their businesses – says it's "getting easier for people with absolutely no accounting training whatsoever to be able to do more and more of it themselves".

She believes that over time the automation of traditional compliance work will put pressure on accountants to offer more. And the push for expanded services will steer accountants towards new models of billing.

While the traditional six-minute incremental billing method works well for compliance work, Ms Penn says accountants need to begin thinking outside the box.

"If you want to start expanding into other parts – business advisory, SMSF advice, the outsource CFO model or a myriad of other things – then you need a different way to charge for those services. Otherwise, all you've really done is replace one job with another job."

According to Ms Penn, the need to evolve has been slow to take hold in the profession. She points to institutionalised accounting practices as the reason behind the lack of urgency to change.

"If you have an existing business that's running fine and you're making good money, it's really hard to change," she says.

"Where you see people changing ... [it] tends to be younger accountants, not because they're younger but because their businesses are newer and they're not so solidified in their ways."

Other businesses that are moving towards new billing models are multi-disciplinary practices. They are businesses that combine accounting, financial planning, mortgage broking, real estate services and asset management in the same place.

"Clients are receiving value at different points in their life for different services," Ms Penn says.

"[Businesses should be] looking to add the maximum amount of value to their clients by having all of those services in one spot, so value pricing is a natural outcome of that approach."

Exploring alternatives

With progressive accountancy firms finding success in diversifying their practices, what alternative models of billing are being utilised?

According to Mr Kidd, value pricing is the billing model used at Omniwealth. The Sydney-based financial services firm is a multi-disciplinary practice that offers a one-stop shop with services such as compliance, SMSF, legal, insurance, mortgages and financial planning.

"Instead of clients coming to see the financial planner and [us] charging money, then the accountant and charging money, we've bundled it," Mr Kidd says.

"They can ring us as many times as they want. It includes all their BAS, their financial planning costs... There's no other costs, it's just a monthly bill."

> "You need to add value. You need to be able to add more than just doing the tax return. It's a massive challenge"
>
> – Matthew Kidd, Omniwealth

The benefits of using a value-based, monthly flat-fee billing model is two-fold, and it also leads to improved cash flow for both clients and accountants, Mr Kidd says.

Without a surprise bill at the end of the year, value pricing gives clients certainty about their accounting expenses. It also allows accountants to plan their incoming and outgoing costs more efficiently.

In addition, Mr Kidd believes the value-based billing model forms the foundations of a superior and more holistic service.

"It's actually getting involved in their business and understanding how their business runs, and becoming their adviser," he says.

"Instead of just doing your $5,000 tax return, the accountant can totally do work that's worth $10,000, $20,000 to the business and they're really benefitting their clients."

Mr Kidd suggests that value-based billing works well for larger accounts.

"The bigger the client, the more service lines to look after that client, the better the opportunity is to get away from time-based and just have it as a monthly bill."

In the first year of operating under a monthly fee, a business can potentially struggle to price correctly the number of hours spent on the work. However, the problem is easily solved with fee adjustments, Mr Kidd says.

"By the second year, you should know exactly how much it's going to cost and how much you can bill. As long as there is really strong communication between the client and the accountant, it's no issue at all."

Another billing model to consider is fixed pricing, which Mr Johns successfully employs in Sky Accountants. He says the main benefit of this model is the ability to expand the business beyond the individual capability of the accountant.

"All of our products have a fixed price. When a product has a fixed price and you develop your services around the intellectual property – or as I call it, 'packaging it' – it gives scalability," Mr Johns says.

"Whereas the other models are more dependent on the partners or the leaders of the business, if you have a set price list of services, anyone at the firm can sell it."

For the client, fixed-priced billing provides upfront transparency.

"One of the worst things in the accounting industry is, 'I never know what it's going to cost'. You can design your business model around that to overcome it," Mr Johns says.

A roll-on effect of using fixed pricing is a push for businesses to drive efficiencies internally.

"We still do timesheets, but we only do them internally. We don't measure it for the purposes of the client, it's for our own accountability," Mr Johns says. "If you're [using] fixed pricing, you have to communicate to staff how much time they've got to do that job."

The hard conversation

Regardless of which billing model is used, its success comes down to the execution of the transition, Mr Johns says.

"It's not really what you do, it's how you do it. And the 'how' is in managing the client's expectations.

"That means that any one of those billing methods can work provided you don't give your client an unexpected bill or something they're surprised by."

Mr Johns moved his accounting business from a time-based model to the current fixed-price billing method around six years ago. During the transition, he spent 12 months sitting with clients to communicate the business' change in billing.

"Face-to-face is best because 55 to 60 per cent of communication is non-verbal. As a salesperson, and that's what you are, you've got to understand what methods of communication are best to show that you are genuine."

Mr Johns suggests packaging the conversation around a unique selling proposition to make it easier for clients to understand the change.

"You basically need to call every client that you have a relationship with [and] tell them that you're changing the model. And you've got to tell them why."

The shift at Sky Accountants saw most of its existing clients roll over to the new fixed-price billing model. Mr Johns estimates that the firm lost less than 5 per cent of established clients during the transition.

He says the business that was lost comprised of clients who failed to pay their bills on time or didn't value Sky Accountants' offerings in the first place.

The key to confidently shifting to a new billing method is to retain clients who do not take accountants' hard work for granted.

"You want to surround your business with people who have the same values as you, and that includes your staff and your clients," Mr Johns says.

Meanwhile, Mr Kidd says an effective way to develop the transitional communication is to invest in an analysis of the firm, to define the true value of the business.

"Accountants [usually] just put their fees up every year by 5 per cent, but have they really analysed their clients?"

"That's the beauty about analysing your billing, analysing your hourly rate, where you are in the market and so on. You'll get a really clear picture as to how that business is looking," Mr Kidd says.

"[Omniwealth] did it and it was a really good process. It was cathartic. We knew where we were losing money, where we were making money and what we were going to do about it."

Completing a business analysis will enable accountants to define the value in their service offerings and to quantitatively justify the change in billing method, which will give clients confidence about the altered rates.

"Clients will try to push back on the fees to see if they can get away with it, but don't be afraid to put value on your business," Mr Kidd says.

A golden opportunity

Many accountants believe they are the most trusted adviser to their clients. Ms Penn says this level of trust gives accountants an opportunity to branch out beyond traditional compliance work.

She views the ability to move into broader advisory services and alternative methods of billing as a great strategy for accountants who want to build a business beyond being a sole trader.

There is a real market demand for accountancy advice far beyond compliance, she says.

"Accountants can add a lot of value to their clients by helping them structure, helping them organise tax, helping them work out how to run their businesses more efficiently and manage cash flow more effectively.

"People really want and need that service and advice, and accountants are the right people to give it to them," Ms Penn says.

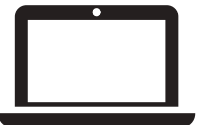
"But if they're too busy just doing tax returns, then they're not going to be that adviser."

Ms Stylianou agrees, pointing to major growth areas for accountants such as financial services, business advisory, succession planning, self-managed super funds, wealth management, forensic accounting, strategic tax planning, cyber security, import/export and e-commerce.

The IPA offers CPD educational sessions and training to transform accounting practices to accountants who need help accessing new skills and specialisations.

"With the advent of technology, billing clients should become a lot simpler," Ms Stylianou says in summary.

"I would urge all accountants to be transparent and upfront about their fees. Sometimes people don't like having conversations about money, but I find that it's definitely a lot easier if clients do not get a surprise at the end."



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A *super* BALANCING ACT

Superannuation has been on a roller-coaster ride to reform for the better part of 12 months. How can accountants provide value and guidance to clients in this state of limbo?

by Miranda Brownlee

For several years, superannuation has been a political football, trapped in the short-term budgetary cycle. But arguably, since the Costello years, advising on superannuation has never been less predictable or more problematic. The consistent tinkering of reforms often hit the accounting community hard, given their mantle as the trusted adviser with self-managed superannuation funds (SMSFs) in particular.

At the time of writing, three tranches of draft exposure, detailing the government's superannuation reforms, have been released. Some of the proposals represent massive backflips from what was originally put forward in this year's federal budget.

In mid-September, the Turnbull government made significant changes to its superannuation reform package, announcing it would scrap its plans for a lifetime cap of $500,000 on non-concessional contributions. According to SuperConcepts' executive manager, SMSF technical and private wealth, Graeme Colley, the $500,000 lifetime cap has essentially been replaced with the reduction of the non-concessional contributions to $100,000 per annum from the current $180,000.

Treasurer Scott Morrison also flagged that individuals with superannuation balances exceeding $1.6 million would be restricted from making further non-concessional contributions. For now, it looks like this is here to stay.

"We've also got the drop in the concessional contributions cap amounts from [the current] $30,000 or $35,000 for those over 49 down to $25,000 a year for everyone. That was in the original budget announcements though," Mr Colley says.

The $1.6 million superannuation balance transfer cap in the original announcement made it into draft legislation. The cap limits the amount of super money an individual can transfer into the pension phase to $1.6 million.

Addressing the reforms with clients

While the government's intended changes have now been mapped out in the draft legislation, it is still unclear whether there will be any more changes as the government attempts to pass the legislation through both houses. Without the details finalised in law, it can be difficult to know how to approach discussions about the reforms with clients.

Heffron SMSF Solutions' head of customer Meg Heffron says avoiding the discussion altogether with clients is not an option, even if some accountants may have decided this might be the safest course of action. While it is still too early to start implementing a lot of strategies, accountants need to begin having conversations with clients about their options.

"There's so much publicity about these reforms so it's going to be very difficult for accountants to keep saying 'do nothing' to their clients," Ms Heffron says.

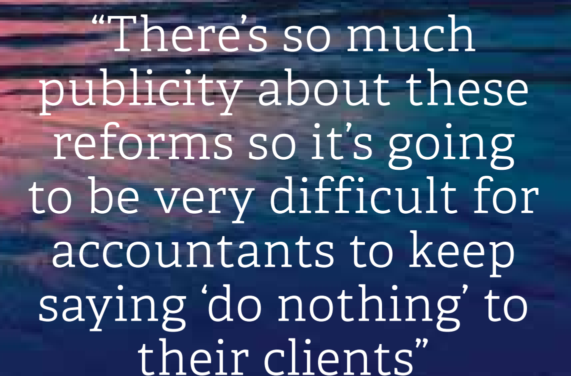
"These proposed reforms are in the paper every weekend so the most important thing is to make sure that their education is coming from a source that they can trust, and that they're being told the right things. The best way an accountant can control that is if they're the one doing the educating."

Failing to flag changes with clients could even place accountants at risk of providing negligent advice.

Allens partner Michelle Levy says if practitioners fail to mention the changes or discuss the client's options, this could result in the client missing out on certain opportunities they can take advantage of now.

"If an accountant failed to tell their client that they had a window in which to do something based on the announcements or draft legislation, I think there would be a good argument that they were negligent," Ms Levy warns.

The time constraints around these reforms is another reason it is necessary to start talking to clients now.



"Once the reforms are passed, we will probably only have a maximum of six or seven months and if it doesn't make it through before Parliament rises, then it won't be until February before the legislation goes through," Mr Colley says.

"This leaves a very short period to think about what to do, so by getting clients to think about their super now, at least you're ahead of the game."

What to act on now

While accountants should hold off on implementing any strategies with irrevocable consequences until after the legislation has been passed, there is some housekeeping practitioners can do now, Ms Heffron says.

Tidying up pensions and trust deeds will not negatively impact the client in any way and will make life easier when the changes are finally legislated. The types of strategies that an accountant can implement for the client will also depend on whether the accountant is operating under a limited licence.

Tidying up TRIS strategies

One area practitioners can address with their clients now is whether their transition to retirement income stream (TRIS) is actually still a TRIS, Ms Heffron says.

"I'll bet there are plenty of

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pensions around the country that are still classified as transition to retirement because the clients never thought to tell their accountant that they had actually fully retired or that their casual employment has ceased," she says.

Under the new rules, a transition to retirement income stream converts into a normal pension once the super member meets a condition of release like retirement.

"Regardless of whether the law that proposed to wind back tax concessions on TRIS comes in or not, there won't be any negative consequences with tidying things up and clarifying which pensions are transition to retirement and which are not," Ms Heffron says.

Making the most of existing caps

Encouraging clients to contribute under the higher concessional caps this year is also a sensible strategy to implement now, Perpetual's head of strategic advice, Colin Lewis, says.

With both the concessional and non-concessional contributions caps set to drop from 1 July 2017, Mr Lewis says accountants should ensure clients make the most of them now.

"This is especially important for those over the $250,000 income earning range that will have to pay additional contribution tax from 1 July next year," he says.

This financial year could also be the last opportunity for certain clients to contribute money to super on an after-tax basis.

Mr Lewis says accountants need to determine with their clients whether it's appropriate to contribute more money to super, and if it is if they should be using the bring-forward rule to maximise their position.

From 1 July 2017, the ability for clients to make non-concessional contributions will hinge on whether they've got less than $1.6 million in super, Ms Heffron says.

"If they've got $1.6 million in super now or they're particularly close, they may want to consider getting the money in now."

Adjusting trust deeds

Once the changes are implemented, Ms Heffron expects there will be many super members who will want to either add a reversionary beneficiary or take one away.

"There will be powerful drivers to go either direction, but ideally what you want is to be able to do that without stopping your pension. You want to be able to do that while it's still running," she says.

However, certain trust deeds will not allow this and accountants may want to update their clients' trust deeds now to allow clients to do this.

Ms Heffron says by making this adjustment now, when the legislation is passed and the client is potentially facing the decision of whether to add a reversionary beneficiary or to take one away, they can implement it quickly without needing to go through the process of changing the trust deed.

"Changing the trust deed is going to take a bit of time and will slow down the whole process," she says.

What to flag with clients

With some of the more serious changes, accountants should try to hold off on implementing strategies for clients until the legislation is passed. However, it is still important for accountants to start discussing options with their clients, as this will speed up the process once the changes come into effect.

> "If an accountant failed to tell their client that they had a window in which to do something based on the announcements or draft legislation, I think there would be a good argument that they were negligent"
>
> – Michelle Levy, Allens

Addressing estate planning

For clients with larger super balances but less money in their personal name, they may be better off transferring some of their superannuation money into their personal name, Mr Colley says.

"The client may find by investing in those assets personally, they may still fall under the tax-free threshold, rather than paying 15 per cent tax on earnings on the other side of things," he says.

Mr Colley advises accountants to have discussions with clients about whether it's worthwhile withdrawing money from super for estate planning purposes.

"For some, there will be advantages in keeping the money in super, while others may want to draw it out," he says.

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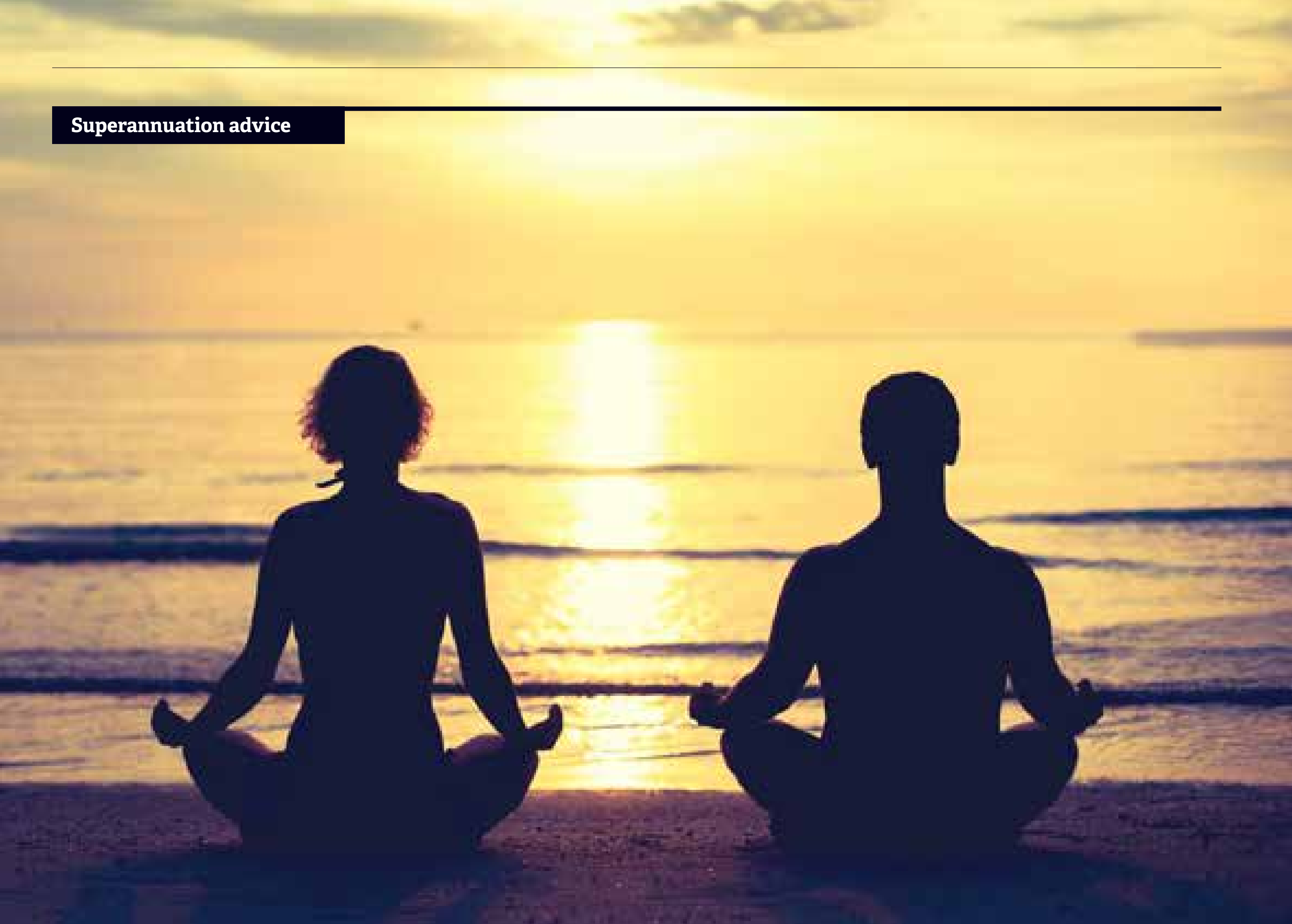

"I have seen some clients with around $2 million thinking, 'Well, should I draw that money out now and maybe gift it to the kids because it's going to go to them anyway?'"

Responding to the TRIS changes

With the proposals set to change the tax treatment of transition to retirement pensions, there may be clients who want to remove money from super to the extent that it exceeds the $1.6 million non-concessional cap restriction amount.

Ms Heffron says it is too early to be removing the money now, but accountants will need to address this with their clients by 1 July 2017.

Under the new rules, clients with transition to retirement income streams who have met a condition of release will be pushed into the retirement phase, Mr Colley explains.

"Accountants really need to have a look at that closely with clients, particularly where they have part-time jobs because of the potential impact of the TRIS pushing them into retirement phase."

Taking advantage of the transfer balance cap thresholds

A range of strategies will start to emerge from the super reforms as they come into play from next year, Mr Lewis says.

The thresholds with the $1.6 million non-concessional contributions cap, for example, present an opportunity for clients to maximise the amount they can contribute to super.

"If they are close to the $1.6 million cap, that will impact how much they are able to put in on an after-tax basis," Mr Lewis says.

However, because of the way the thresholds operate, if an accountant tells the client to fractionally reduce their super balance, this may enable the client to make a larger non-concessional contribution.

"For example, if someone has $1.41 million in superannuation, when the new rules come into play from July next year, somebody in that order will only be able to contribute $200,000 as a non-concessional contribution. Whereas if they have $1.39 million, they could put in $300,000," Mr Lewis says.

"It could be that a client who is eligible to start a TTR pension might do that to reduce their balance in order to be able to put in an extra $100,000 of non-concessional contributions."

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Offshore opportunities

Doing business in CHINA

The industry is aware of the opportunities in China, but how are businesses getting it done? We take a look at what local accounting firms have learned from their dealings with the Asian powerhouse

by Jack Derwin

Michael Derin, chief executive and founding partner, Azure Group

China was on the radar for Azure Group for some time, but it was the opening of an office in Shanghai that helped the firm sink its teeth into the Chinese market, Azure's chief executive and founder Michael Derin says.

"The most important thing we've done is build a significant service office set-up which means we can provide office space to foreign companies in China. That way, we can set them up with a physical space and then off the back of that, offer them accounting and tax services. It's a matter of having a broader offering," Mr Derin says.

"We saw a real opportunity as a firm to help establish foreign firms who wanted to target that market, as well as establish Chinese firms in Australia. Since then, we've helped clients establish in Australia, like China Telecom that makes Telstra look like a minnow."

"We also quickly realised the process for setting up an Australian business in China was more or less the same as for any foreign business, so we've broadened our target market accordingly."

One way Azure widened its target market was by embracing the cultural differences of operating a successful business in China.

"The main differences in the Chinese market, from what I can see, is that the Chinese typically see value in things like cars, houses, property and mining. They assign obvious value to those sorts of tangible assets and if you focus on those, that's when you start to find traction in the Chinese market," Mr Derin says.

"Going over with Australian businesses, we've found that there are certain products like wine and other core products that have done very well, while other types haven't."

While the opportunities are plentiful, firms should avoid getting ahead of themselves.

"Our expectations have changed as time has gone on. Initially there's the temptation to think that it's such a massive market, it would be very easy to grow a substantial business operation around the Chinese business strategy," Mr Derin says.

"What we've found is that the growth is steady rather than explosive. No one should really expect they can just go there and grow exponentially immediately. It takes time to develop relationships, to establish a presence, to build trust and a reputation, just as in any market."

Firms looking to expand into China need to get the fundamentals right.

"You have to be able to tick a lot of boxes to be successful in China and it's really important to have a trusted partner there. We're lucky to have a partner who is an international tax expert in terms of cross-border rules and who is also bilingual."

Alan Ling, partner, McLean Delmo Bentleys

Many Australians find the prospect of establishing a foothold in China daunting and Hong Kong-born Alan Ling was no exception.

"When you want to establish in China, the first thing you need to do is think of a Chinese name but even that's not as easy as it sounds. We finally found an appropriate one after 25 attempts, and I speak Chinese," Mr Ling says.

However, these challenges for businesses also offer enormous opportunities for firms that can facilitate that process.

"There's a real need for firms to help establish foreign businesses in China, given that the incorporation process in China can be quite difficult. One of the conditions of incorporation, for example, is that you have to have a physical office space before you can apply, which basically means paying two months in rent while you complete the paperwork," Mr Ling explains.

With Mr Ling chairing the new McLean Delmo Bentleys set to open an office in Guangzhou, southern China this December, it's a process he is familiar with.

He says the firm's strategy in China will focus on showcasing the opportunities China offers to Australian businesses.

"We initially want our clients to taste some success in China, at first by setting up some exporting relationships for example. As they see the savings and opportunities available to them, they will become more and more comfortable with China…" Mr Ling says.

"I would say that Australian businessmen are fairly conservative in so far as they are reluctant to set up in China. So rather than holding their

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"We want to take them to China but we don't want to force them to deal with them too abruptly. Maybe over the course of 12 months or 18 months we can convince many to go over."

Marco Carlei, managing partner, ShineWing Australia

Marco Carlei was head of Moore Stephens Australia when it joined with ShineWing International in February 2015.

The partnership allowed ShineWing Australia to access the Chinese market via a Chinese firm – the largest domestic accounting and consulting company in China.

"You can establish an office in a province and then try to penetrate the market that way, competing with established practices with existing relationship with firms, which I think is very difficult and very challenging to do. Yet, many firms do this," Mr Carlei says.

"What we're doing instead is relying on our ShineWing partners in China who have these relationships which puts us in a stronger position with who they're going to be dealing with in Australia."

Mr Carlei adds that it's important for Australian firms competing in China to find a point of differentiation.

"Our major market is state-owned and privately-owned Chinese enterprises in Australia, as well as Australian businesses wanting to break into China. We don't want to focus on SMEs or those markets that the second tiers are focusing on" he says.

"We have been positioning ourselves in sectors and industries that are aligned with China – agribusiness, education, tourism, property and construction, to name a few. Focusing on these in particular will give us an advantage because that is where the opportunities are going to be inbound and outbound."

> "I think if you're a professional association that doesn't have exposure to China, you're doing your members a disservice"
>
> – Andrew Conway, IPA

By targeting specific markets, Mr Carlei believes ShineWing Australia is well-placed to take advantage of any opportunities that arise as investment in and out of China grows.

"There is substantial upside in the supply chain that we should take advantage of. We're not doing that as well as we should be … and we're seeing that, for example, the agribusiness sector is being properly exported from Australia so we've seen China looking at the distribution chain.

"We're now well-placed to utilise our relationships to help them do that and partner with Australian businesses accordingly," he says.

"We are clearly playing in a smaller market but it's a substantial one, and we think we can target them better than anyone else considering we have the largest domestic Chinese network, the largest in Beijing and we have Zhang Ke at the head of ShineWing, who is recognised as the most important accountant in China. That reputation and that level of connection gives us a real edge over our competitors."

Tory O'Brien, member, IPA

Tory O'Brien was one of 25 accountants who were part of the IPA's delegation to China in June to learn about doing business with the world's second biggest economy.

"It was an incredible trip and my first time in China. It was a really varied experience, having done some dealings with business wanting to break into the Chinese market … there were some really important lessons in there," Ms O'Brien says.

She says the five-day trip – which served as an introduction to Chinese culture and business – was an invaluable experience.

"I think the most important opportunity was to be able to network, to form those crucial relationships and understand how to connect Australian businesses with the appropriate organisations in China," Ms O'Brien says.

"Navigating the foreign business and legal framework can be time-consuming and can lead to delayed results… It's so important to have that knowledge so that, as an accountant, we can represent our clients."

Ms O'Brien believes accountants can tackle the challenges of operating in China by being prepared to forge good relationships.

"There are so many obstacles, so in order to represent a client, it's important to have someone in China to represent the client, to have a partnership and to have a network there," she says.

Ms O'Brien says the biggest surprise of her trip was learning that the Chinese are just as interested in doing business with Australia.

"The Chinese wanted to learn so much about how we do business here in Australia as well, so I think there's really a lot of opportunity to form partnerships."

Andrew Conway, chief executive, IPA

Andrew Conway – who has travelled to China more than 30 times in the last decade – has witnessed firsthand the massive transformation the country has undergone.

Mr Conway says the objective of the IPA's trip in June was to give members an opportunity to see how much China has opened up.

"What we wanted to do with the delegation was open up the door for our members to China and say, 'Here's some of our contacts and our experience with China', and hope they learned what enormous opportunities can come about from having good relationships and understanding the nuances of doing business there."

Even he was surprised by how successful the trip was.

"A good example of that came from our networking, where our Chinese and Australian members got together and a few actually organised a few deals while we were over there which wasn't an element we were expecting, so it was a real eye-opener that there is a real hunger to do business," Mr Conway says.

The trip came as the IPA continues to grow its relationship with China.

"Over the last seven or eight years, we've restructured our approach to China as we lead with education rather than membership.

"We ask Chinese accountants whether they want to learn about international accounting standards and have developed provincial agreements accordingly," Mr Conway says.

"So far we've secured around 15 or 16 agreements with those provinces, which opens those markets up for us to offer education."

Mr Conway says the Chinese market has its distinctions and these can drive success if firms and accountants are tapped into them.

"It can be a complex market, but one of the benefits of it being a planned economy is that you know what you're up against. For example, we're benefitting from the fact that the [Communist Party] Central Committee has got a very strong policy in support of training CFOs in international accounting, so they recognise that it will benefit their economy."

Mr Conway says Australia and China have a solid two-way relationship, one that the IPA is keen to continue facilitating.

"We have run around half a dozen delegations of Chinese nationals and senior CFOs to Australia where we run educational courses, and that educational focus is based on what the Chinese are telling us they need," he says.

He adds that no professional association can avoid engaging and doing business with China.

"I think if you're a professional association that doesn't have exposure to China, you're doing your members a disservice. I see the IPA's role as building a bridge to China and then it being up to members whether or not they want to cross it. For us, it's about the transfer of professionals between Australia and China."

With the IPA's Chinese base growing each year, it's likely that the relationship will continue to flourish.

"It's a really exciting place to do business. From our point of view, we have over 3,000 members there and that's grown over 25 per cent year-on-year over the last few [years]."

Even the savviest investors make property blunders, and they too require tax and strategic advice with property. The reluctance of some investors to seek advice on the matter presents big opportunities for their trusted adviser – an accountant

by Michelle La

> "People spend $100 to get a car checked out, but they won't spend $1,000 for a half a million-dollar investment. Everyone is surprised by that, but that's just the nature of what people do"
>
> – Antony Chung, Chung Lawyers

As professional advisers are well aware, many property buyers are falling short of obtaining the appropriate taxation advice to properly plan their investment strategy.

The myriad of legislation and strategic pathways around investing can be confusing for even the most experienced investors, and it is not uncommon for clients to make errors related to property and tax.

While accountants are generally across property taxation issues, there are opportunities for them to further their knowledge, and allow new and existing clients to tap into their expertise.

Principal of Chung Lawyers, Antony Chung, is a solicitor and conveyancer who specialises in property developments and commercial leasing. All too often, he comes across clients who do not seek professional advice before buying a house.

He says clients often only get professional services – whether this is from an accountant or a lawyer – to action work after they've made a decision to purchase. However, in some cases, this turns out to be too little, too late.

"As a result, accountants and lawyers are provided with a contract from the clients asking, 'I've bought something, is it good or not?' which often is too late or we have to go through the trouble of getting things changed around," Mr Chung says.

"People spend $100 to get a car checked out, but they won't spend $1,000 for a half a million-dollar investment. Everyone is surprised by that, but that's just the nature of what people do."

Why do some property buyers fail to see the necessity of seeking pre-purchase legal or taxation advice when they are dealing with such large sums of money? Mr Chung attributes it partly to a lack of awareness and partly to the way clients are billed.

"Traditionally, law firms and accounting firms bill by time so your work is reflective of the time you spend on the transaction," he says.

"That creates a relationship where people are reluctant to spend the time to discuss things because it immediately costs money."

Mr Chung says alternate methods of billing, such as a value-based model, are becoming more common among practitioners who want to encourage investors to work closer with an advisor from the very beginning of the purchase journey. He suggests that accountants who are considering furthering their work and expertise in this field should reconsider, and eventually revamp, their billing model to secure long-term clients.

"It's about developing the closer relationship with your client so that they tell you things, so that they don't feel scared that you're going to charge them for the time that you spend with them," Mr Chung says.

Considering the need for pre-purchase guidance and investment strategy, the opportunities available for professionals who specialise in property tax advice are numerous, and understanding individual client needs will go a long way in avoiding some common mistakes.

Where do clients go wrong?

When it comes to property tax advice, there are certain things that clients routinely get wrong. Given the long-term nature of property investment, these gaps of knowledge in clients' planning and strategies represent an extensive advice opportunity.

A closer look at negative gearing

Among the tax breaks available for property buyers, negative gearing is a commonly used, but often misunderstood, area of taxation.

A uniquely Australian rule regarding property, negative gearing has been around for a long time. So long that Peter Adams, managing director of accountancy training firm Augmentor, believes property buyers have become accustomed to utilising negative gearing as an investor entitlement.

While negative gearing can deliver a tax benefit in terms of deductions, Mr Adams flags new tax laws that have altered the way losses are treated. Many clients are unaware of this when they are searching for investment property and remain unaware even after they have settled.

In the last couple of years, taxation laws have changed to calculate negative gearing losses as part of adjustable income.

"What becomes important now for accountants is that not only do they have to manage the taxable income of their clients to pay less tax, but they now also need to manage the clients' adjusted taxable income," Mr Adams says.

The incorporation of negative gearing losses into income testing means that calculations for adjusted taxable income may be higher than the client expects, he says.

With the increase in adjusted taxable income, people may lose rebates such as health insurance benefits or they may incur higher rates for payments like child support. This is problematic when clients are basing their expectations on negative gearing as a pure tax deduction and subsequently missing out on the assumed benefits of the losses.

Managing director of property buyers' agency Momentum Wealth, Damian Collins, says an over-reliance on the tax benefits of property investment, such as negative gearing, is where many buyers go wrong. A practicing accountant, as well as the founder of the full-service property firm, Mr Collins has come across buyers who purchase property in order to reduce their taxable income.

"The issue with that is, while negative gearing does reduce your tax, people need to realise that before depreciation comes into it, when you make a loss on a property, that's real cash out of your pocket," he cautions.

When over-prioritising the tax benefits of a property purchase, buyers end up discounting the quality of the investment.

"In residential property, negative gearing only makes sense if the property is going to go up in value," Mr Collins says, adding "If you negatively gear a dud property and it doesn't go up in value, you're actually losing money."

He advises investors to look for the best quality investment as a first priority, with any tax benefits they get "a bonus, but they shouldn't be the driving force in your reason to buy an investment property".

"The tax should be secondary. It's the wealth you're going to create first."

The lack of due diligence when seeking quality investments is an error seen regularly by real estate agent Craig Tweed.

Mr Tweed, managing director of Tweed Sutherland, has worked in real estate for more than 40 years. During this time, he has witnessed investors making overpriced purchases without even inspecting the properties.

"They might have bought them for say $300,000 and 12 months later, they might get a bit sick of it or they lose their job. Then they decide to sell it and the property is only worth $260,000 because they haven't done their homework," he says.

Mr Tweed also encourages investors to prioritise quality properties over potential tax benefits. He says this is a crucial message that needs to get through to clients looking to make what is often the biggest investment decision of their life.

"Advisers may say to you, 'You need to buy this property because you've got this tax problem', and you're not aware of the fact you're buying it because they've been set up by these builders to sell these properties," he warns investors.

Nuances of capital gains tax

Common problems around capital gains tax (CGT) arise from the nuances of the calculations. This particular area of taxation provides advice opportunities for accountants, as even shrewd clients can find it difficult to get their heads around how to incorporate CGT into their planning.

Mr Collins says many property buyers miss minor details in the technicalities around CGT, resulting in costly errors. Although it seems obvious, one frequently overlooked aspect of the tax by investors is the date of the financial year it falls under.

"Capital gains tax is based on the contract date, not the settlement date. People need to be aware of that," Mr Collins says.

"You might sell a property on the 29th of June and not settle for a long time after that, but it's still going to be a tax liability in that particular financial year."

Another calendar technicality is the need to own a property for 12 months to be eligible for the 50 per cent CGT discount. This technicality is well known to accountants, but often missed by property investors.

Again, this is calculated from contract date as opposed to settlement date. Mr Collins has seen property sellers miscalculate the length of their ownership tenure due to this.

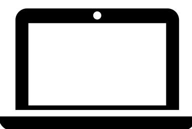
"I see people selling properties at 11 months because they think they've been on the title for longer than 12 months," he says.

"But because CGT is based on the contract date, they end up getting no discount on their capital gains."

Another common CGT error occurs when individuals or couples misunderstand the tax implications of their purchase intention.

Mr Adams points to the fine line between 'ordinary' assessable income and capital gains, saying there is much confusion about property purchase for development and property purchase for rental.

"You have mums and dads who



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aren't property developers but they have a bit of capital. They decide to buy property, develop it, put two townhouses on it and are going to sell that for a profit," he says.

"People generally trip up in how they structure these things for capital gains tax purposes."

What's in a name?

A common mistake that regularly takes lawyers by surprise occurs when the buyer, under pressure to sign on the dotted line, overlooks the importance of the name that goes on the property title.

Mr Chung notes that property buyers, especially those who do not seek professional guidance, often give little thought to the entity in which the purchase is made.

"It can be something as simple as whether or not to put their partner on [the] title," he says.

The decision on entity is a crucial factor prior to settlement for considerations such as CGT, negative gearing and stamp duty.

Mr Collins recalls situations where he has seen couples assign a property title 50/50 while one partner is not working. He says if one partner is not earning an income, it can result in the benefits of strategies such as negative gearing diminishing.

"The other thing I've seen is people buying in company names, which [can be] a bad structure for property investment," he says.

"If you buy in your own name but then you want to put it in your family trust, that's considered another transfer and that's potentially double stamp duty.

"It's just, again, not seeking the right advice upfront from their accountants about which is the right entity."

The right credentials

There are clearly prevalent and pervasive advice gaps in the marketplace, and as a consequence, plenty of room for trusted advisers to expand their services to clients who are eyeing, or already hold, property investments.

Just as it's important that investors are up-to-date on their knowledge, professionals should ensure they are too before they explore a property advisory arm in their practice.

Mr Adams, who runs accounting training and mentorship programs at the IPA, helps accountants stay up-to-date with best industry practices.

While accountants are expected to understand the nuances of property taxation, specialised knowledge requires further training.

"I'm teaching property seminars and all the attendees are accountants. I'm talking to them about these things and they don't necessarily have a handle on all these elements. It's about having that knowledge base to be able to do it," Mr Adams says.

"I think part of my role with accountants is to provide that special counsel to them in terms of specialist expertise on these issues so they can serve their clients better."

Mr Adams believes this knowledge and expertise will enable accountants to become more involved in the pre-purchase stage of property buying.

"There are opportunities for accountants not just to be tax return preparers, but to actually add value to their clients," he says.

"To be on the front foot and proactive as and when their clients engage in these transactions, not at the back end of something that has already happened."

"They might have bought them for say $300,000 and 12 months later, they might get a bit sick of it or they lose their job. Then they decide to sell it and the property is only worth $260,000 because they haven't done their homework"

– Craig Tweed, Tweed Sutherland

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Name: Adam Goldstien
Company: Skeggs Goldstien
IPA status: Associate member
Location: Sydney

Ahead of the CURVE

Not one to rest on his laurels, IPA member Adam Goldstien has helped turn Skeggs Goldstien into a dynamic firm of the future

by Joshua McDonnell

It was almost by accident that Adam Goldstien entered the world of finance. When Mr Goldstien realised he had little interest in becoming a landscaper, a job he had taken after leaving school, he decided to go in a completely different direction.

"I was working in a career that I didn't really enjoy and I thought I would like to try something different. It was just a matter of going to Vinnie's and buying a suit for $100 and giving something a go," Mr Goldstien recalls.

More than 20 years later and he is now a director of the firm he helped build, Skeggs Goldstien. The journey began with his mentor, the now-retired Neil Skeggs, who gave Mr Goldstien the tools and skills to help him develop as a financial planner.

Over the years, the pair worked closely together to grow the business. In 2000, Mr Goldstien purchased the company from his mentor, who stayed on as a board member until 2010. It was from then that Mr Goldstien morphed the business into the multi-service firm it is today.

New avenues

As Mr Goldstien's ambitions grew, he acquired more financial planning firms which were incorporated into the Skeggs Goldstien banner. He found himself in a strong position to expand into other sectors, something many IPA members are being encouraged to consider.

"The majority of our business was all small business owners. We were finding our offering to those individuals was limited in that financial planning space, so we made a conscious effort to get more education in business advisory and accountancy," Mr Goldstien says.

He wanted to ensure he could uphold his belief in 'extracting value' for his clients. Coming from an SMSF background and working closely with small business, he understood that many clients needed assistance in realising their biggest retirement asset – their business.

"They look at their business as being their retirement strategy, but very few of them had addressed the process of eliciting value and how they are going to do that."

Mr Goldstien – who viewed the move to accountancy and advisory as a "natural progression" – sought out additional education and professional development. Joining the IPA seemed to be a good move.

"I have had the chance to attend some master classes and some intensive workshops. I found them very productive and informative. They've also given me a bit of guidance on continuing with further education, and I just like learning so I think everything they provide is very positive for the industry."

As a former NSW chair of the

SMSF Association, Mr Goldstien is aware of the importance of industry associations and the vital role they play in furthering a professional's development.

Mr Goldstien's participation in the IPA's classes and workshops helped pave the way for his company to offer more financial advice and solutions. This meant he was in a position to not only expand his client base, but to also improve his existing clients' portfolios.

"SMSF clients who had been with our financial planning team are now all accounting clients also and that's been important for our client base. These accounting acquisitions were the quickest way to develop. It meant that we needed to be focused on bedding down relationships as quickly as we could and swiftly provide value back."

Holistic advice

Mr Goldstien is a true holistic adviser, tapping into his expertise and experience across accountancy and advice-related work. These areas of practice have worked together to boost Skeggs Goldstien.

"I found the financial planners asked more questions and the accounting side gave more answers. So the combination of those two skill sets brings the best outcome for the client," he says.

Understanding and embracing both industries have played a significant role in Skeggs Goldstien's business development or as Mr Goldstien says, it's been the "differentiator".

While he acknowledges there will always be a need for both dedicated accountants and financial planners, advisers who excel at holistic advice will soon become essential. This is where Mr Goldstien sees the true value in what he provides for his clients.

"Clients are expecting this advice from their accountants and if they can't [provide it], those people will go somewhere else, and the same applies to financial planning," he says.

An 'orange business'

Mr Goldstien and his team remain true to the idea of 'a foot in both camps'. However, instead of keeping the two camps separate, he champions a more inclusive business model which he calls the 'orange business'.

The colour red has been assigned to the financial planning sector and yellow to accounting. By combining the two colours, Mr Goldstien has created an offering that he believes is unique and value-adding.

"When we talk, all of our staff are talking about 'building orange', and that's the focus of what we are trying to build here, which is not just an accounting practice or servicing a financial planning business or vice versa. It's about building a different type of business that combines the best of the two. This is the orange," he says.

Mr Goldstien now spends most of his time dedicated to building a client base around this model and ensuring that constantly shifting client expectations are met.

"There's growth in the markets we work in so there is no need to change. We have fairly clear client value propositions. We are in the areas of business advisory, wealth management, tax and accounting. We then run the business advisor model, which is the orange model," he explains.

Embracing innovation

The role of technology in advice remains open to debate, with some believing embracing tech has merit, while others fear it will damage their practice.

Mr Goldstien is a strong advocate for the adoption of innovative technology.

"I love it. I think pricing pressures on all industries at the moment mean the only way to get ahead is to embrace a bit of innovation," he says.

While Mr Goldstien is aware that technology is not the be all and end all for accounting and financial planning, he says it's an area the industry cannot ignore. Technology has helped boost Skeggs Goldstien's efficiency in its advice delivery to clients.

"You have to be more efficient with the way you deliver your services and the only way to do so is through technology. You can keep charging similar rates. You aren't charging them any more or any less but you're providing a much better service," he says.

On top of embracing technological advances, Mr Goldstien has also developed a media presence, frequently appearing as a financial commentator on Sky News' business channel.

"We obviously talk about being SMSF specialists and working in accounting and financial planning, so that's been really good for us in promoting what we are trying to achieve."

Looking to the future

Looking ahead, Mr Goldstien sees areas for improvement in

> "Clients are expecting this advice from their accountants and if they can't [provide it], those people will go somewhere else, and the same applies to financial planning"

the accounting and financial planning sectors.

He says, for example, professionals should be more reactive, whether it is responding to legislative changes, technology or shifting client expectations. The latter, especially, is crucial to success and growth.

"It's about providing a combination of the two [services] and not just one. There's a need to speak to clients to understand their concerns and achieve their outcomes."

Mr Goldstien says it is also important to be aware of impending changes and trends in both industries.

"I do believe that on both sides of the business there needs to be awareness of the changes that are coming. It's consumer driven and there is no doubt that what has been spoken about in the short term will come around in the long term," he says.

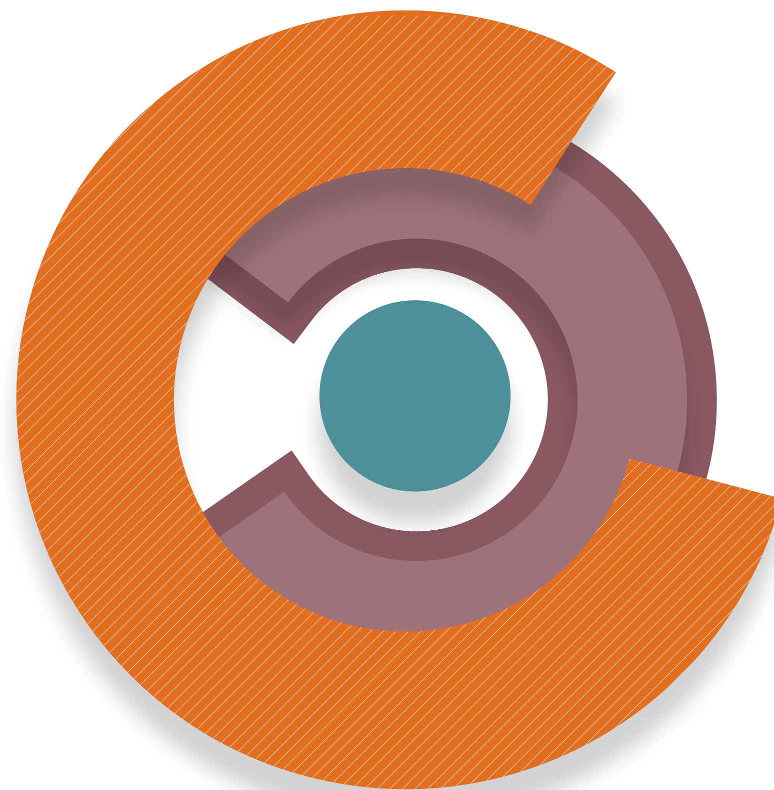
At Skeggs Goldstien, regardless of the nature of any new regulations and changes, the focus remains firmly on the firm's clients.

Being prepared and ready to work for their clients is what sets successful professionals apart, Mr Goldstien says.

"These changes may not happen immediately but they will happen, and businesses need to be prepared for that, particularly in using them effectively to benefit our clients."

360 DEGREES

"Have you noticed a decline in demand for income tax services this financial year?"



Debra Anderson
executive director, Anderson Tax & Consulting

Adapting to environment

Absolutely not. If anything, the demand for tax services has increased as people's financial lives become more complex, with employee share schemes, investment properties, share portfolios, the popularity of SMSFs and a growing number of people taking the leap into small business.

Although I believe compliance is far from dead, it is obvious that accountants will no longer be able to rely on the traditional compliance-only model unless they are one of the bulk lodgers, and even the bulk lodgers have been adapting their business models and targeting small business clients.

I deal predominately with small businesses and, over the past couple of years, there has been a noticeable shift towards being able to provide a much broader range of services and more touchpoints. And the two big ones for me have been – for no additional cost and wanting everything done now.

The challenge for accountants moving forward, depending on your market of course, isn't that the demand for income tax services will decline, but rather what our clients perceive as compliance. What value are we providing? How can we provide more value? And what do clients need from us?

We have to constantly review and refine our service offerings, rethink our business models, have quality referral and professional networks and, of course, manage our pricing structures. With fixed and value pricing now entrenched in our profession and with clients increasingly wanting more, we need to be conscious of what we are – and are not – providing within the scope of those fees and the value we are delivering.

Hagar Lipa
director, P&L Accounting

Adding value

We are noticing an increase in quantity, quality and revenue attached to tax services. However, the demand for income tax services as a primary need this financial year by new customers or incoming leads has slightly declined.

The market today around tax services for individuals, sole traders and small companies is highly competitive because of the number of players but it's also due to the latest improvements and proactive activities from the ATO such as self-service tools like MyTax.

For a few years now, I have been coaching my staff to treat tax services as a component of the value-add service we provide. Today, we offer a variety of services and, after years of study and professional induction, I personally believe accountants, in some cases, serve as their customers' external CFO and business consultant.

Tax services preparation requires the customer to share and disclose information, and gives us the opportunity and permission to ask questions. By investing the time in my clients' tax preparation, I learn a lot about their businesses, goals and activities. This allows me to offer complementary products and consulting.

Today, many of the incoming referrals to my practice come from happy customers who see beyond the tax return service we provide. I think that anyone who promotes their practices' value solely on income tax services does not fully understand what clients want. It's because of this reason that we've changed our approach and have witnessed a trend of growth as a result.

John Gibson
owner, JBG Accounting

Addressing clients' needs

Decline? What decline? For ages, accountants have been hearing doom and gloom prophets decrying the state of the accounting profession, with the death knell sounding on compliance and basic tax services.

My practice growth over the past year gives lie to the accepted wisdom. JBG Accounting is experiencing excellent growth. There are some reasons for this:
1) People in general are overwhelmed by the rapid expansion of knowledge and technology, and they want to assign tasks to qualified service professionals.
2) Baby Boomers are heading towards retirement and are downsizing by liquidating assets. Many of them have rental properties, direct shares and other investments. Capital gains tax is a serious issue as the tax consequences of sales can severely impact future plans.
3) The rise in SMSFs and financially savvy clients are driving demand for tax services.
4) Cloud software and Small Business Reporting (SBR) will create demand for accountant and tax service assistance.
5) With an aging population, more adult children are taking responsibility for their parents' financial affairs, health and living circumstances. They face huge tasks and tax servicing goes hand in hand with this.

Accountants are in an ideal position to assist in innumerable ways if they are prepared to be flexible and adaptable. I will be active in the profession for at least another 10 years and I am more excited by the prospect now than I was five years ago when the prognosis appeared bleak.

Timothy Munro
director and chief executive, Change Accountants and Advisors

Income tax services rising

No, it's been just the opposite. The demand for our income tax services has increased this year. Yes, technology is helping to vastly reduce the work of collating and classifying financial information. However, the complexity of the tax system means that demand for good tax agent services will keep growing.

My firm is a 100 per cent cloud software-only firm, which allows us to save so much time. And if our clients have great bookkeepers, they probably wouldn't need us. Anyone can have good financial statements prepared faster these days.

Enter Div 7A loan accounts, GST, CGT, FBT, PSI, UPEs, PAYG payments, payroll tax, trust distribution resolutions and all of a sudden our clients are in a heap of trouble unless we're there to advise them. There are so many tax areas that affect our clients that it's actually taking longer for us to prepare and review year-end tax returns, even if it's just ensuring that a client is not affected by a certain tax law.

The key here is communication. How can accountants better communicate with their clients? Here's an idea that we use in our firm.

We use the information we have in our cloud practice manager software and create a client structure diagram. An accountant can use this diagram to explain to a client where they made profits, which entities will be taxed on the profits, why problems exist if loans are taken from their companies, etc.

Great advice now can save our clients thousands of dollars in tax in future years, and save them from the stress and pain of a tax audit that turns nasty.

We see demand for income tax services continuing to increase in future years.

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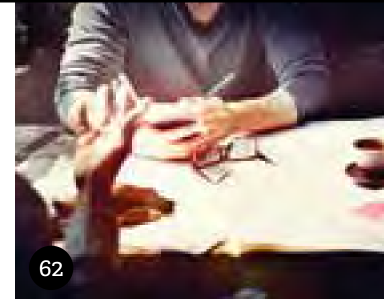

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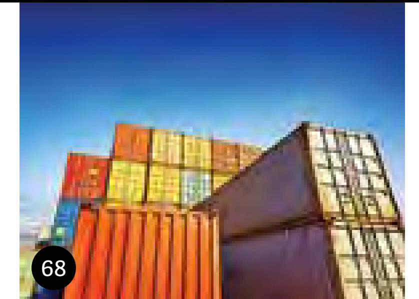

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Technical | Reform agenda

Super reforms announced in federal budget coming to fruition

A wrap of where we are and where we might end up with superannuation after the 2016 federal budget

Tony Greco FIPA, general manager of technical policy, IPA

by Tony Greco

The first tranche of the superannuation reforms announced as part of the May 2016 federal budget was unveiled on 7 September 2016 when the government released draft legislation. Even before the token nine-day consultation period ended on 16 September, the government made further changes to measures included in the draft legislation. The contentious backdating of the $500,000 non-concessional cap (which is not part of the first tranche) has now been dropped, but unfortunately one of the simplification measures announced in the first tranche was used as a bargaining chip in order to gain the support of the Labor Party on the remaining superannuation reform package as announced on budget night.

In total, three tranches of draft legislation will cover the entire proposed superannuation reforms announced on budget night and this article will review each tranche. Given the start date is 1 July 2017, we understand the pressure is on the government to finalise the legislation in order to give stakeholders a chance to implement the necessary changes by this deadline. While we appreciate that the clock is ticking, all the superannuation reform measures are significant in nature and require adequate consultation time. The consultation period in relation to all three tranches were far too short to enable adequate consideration and responses. This has the potential to lead to poor legislative outcomes and the introduction of unnecessary legislative complexity.

Unfortunately, the government needs to achieve budgetary savings and this seems to be the driving force behind the rush to expedite legislation through Parliament. As superannuation changes impact people's retirement plans, the government also wants to restore clarity and certainty, especially as there has been much debate over the proposed changes since they were announced on budget night. In an environment that is becoming increasingly reliant on Australians to self-fund their retirement, it is vital that we have certainty and confidence in our superannuation system.

Tranche one

The proposed changes in the first tranche includes, for the first time, the significant step of defining in the legislation what the principal purpose of our compulsory superannuation system is meant to be. We all agreed that this was a good idea, but remember the old adage "be careful what you ask for" as it seems that where the government has landed with respect to the primary objective of super may not be to everyone's liking. More on this later.

All up, the first tranche includes the following five superannuation measures:

- Harmonising contribution rules for those aged 65-75;
- Tax deductions for personal superannuation contributions;
- The objective of superannuation;
- Improving superannuation balances of low-income spouses; and
- Introducing a Low Income Superannuation Tax Offset (LISTO).

Harmonising contribution rules for those aged 65-75

This measure was intended to improve the flexibility for superannuation contributions for those aged 65 to 75. We support this simplification measure and commend the government for proposing to remove the work test. In our experience, taxpayers and their advisers have continually found the 'gainful employment' definition difficult to understand and apply in practice. This is compounded by the lack of interpretative guidance.

An individual aged 65 or over, but under 75, must currently meet a work test before their superannuation fund can accept voluntary contributions from them. This proposed change effectively means that individuals aged 65 or above, but under 75, are treated in the same way as individuals aged below 65.

Unfortunately, as stated in the opening paragraph, the government announced on 15 September 2016 that it would not proceed with this policy measure. We understand that the removal of the work test was one of the simplification measures scrapped in favour of not proceeding with the introduction of a backdated lifetime cap of $500,000 on non-concessional contributions.

Tax deductions for personal superannuation contributions

Currently, individuals are not able to deduct personal contributions for an income year and have them treated as concessional contributions unless the individual satisfied a number of requirements, such as the '10 per cent rule'. The 10 per cent rule requires less than 10 per cent of the sum of the individual's assessable income, reportable fringe benefits total and reportable employer superannuation contributions where attributable to employment or similar activities. This measure removes the requirement of the income tax law that an individual must earn less than 10 per cent of their income from employment-related activities for the individual to be able to deduct a personal contribution for superannuation contributions. The removal of the 10 per cent rule improves the flexibility and fairness of the superannuation system so that more individuals can make personal contributions to superannuation as concessional contributions.

The IPA, like many others, has long advocated for this change and is pleased that the government has finally decided to proceed and remove this anomaly from the tax system once and for all.

Employees and employers have solved this inconsistency by offering salary sacrifice arrangements so that employees can tax-effectively save towards their retirement. By removing this anomaly, it will definitely make the superannuation system more flexible.

This restriction disadvantaged individuals who do not work for employers that allowed them to make salary sacrificed concessional superannuation contributions or those who are substantially self-employed but received 10 per cent or more of their income from employment. This ensures that individuals receiving employment income are not dependent on whether their employers offer salary sacrifice arrangements should they wish to make contributions to their superannuation from, effectively, their pre-tax income. We have a cap on concessional contributions and an individual's circumstances should not preclude access to this entitlement.

Objective of superannuation

The government's decision to enshrine the primary objective of the superannuation system in draft legislation is an important, positive announcement in the evolution of our superannuation system. It would have been less than ideal if the proposed significant budget measures to superannuation went ahead without first enshrining the primary objective of the superannuation system. A simple, transparent objective for superannuation can act as a cornerstone for good policy for the superannuation system and protect it from constant tinkering and budgetary raids. While we support defining an objective for superannuation, we have concerns about the proposed objective as drafted in the legislation. As it stands, the draft legislation defines the primary purpose of superannuation as follows – "to provide income in retirement to substitute or supplement the age pension". We are concerned about the limitations of this objective as we believe it is too vague and does not address the adequacy issue of encouraging self-provision in retirement to provide a comfortable lifestyle. There is nothing about self-sufficiency in retirement and what the phrase "substitute or supplement the age pension" actually means. Does it mean $1 more or $50,000 more than the age pension?

In some ways, the government had to set the bar low in order to justify a reduction in the concessional contribution from $35,000 to $25,000, which is part of tranche two of the superannuation reforms.

Improve superannuation balances of low-income spouses

Increasing the cut-off threshold for this measure is long overdue.

The current threshold is far too low and has not changed since 1 July 1999. Based on average

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wage increases over this period, its real value has fallen by about 50 per cent.

We support the amendments to the tax law to encourage individuals to make superannuation contributions for their low-income spouses. This is achieved by increasing the amount of income an individual's spouse can earn before the individual ceases to be entitled to a tax offset for making superannuation contributions on behalf of their spouse.

The threshold for the total of the spouse's assessable income, reportable fringe benefits amounts and reportable employer superannuation contributions (total spouse income) increases from $13,800 to $40,000 as a result of the amendments.

Low income superannuation tax offset

This proposed change extends the Low Income Super Contribution (LISC) beyond its legislated expiry date of June 2017. The only major change is that it will be renamed as the Low Income Superannuation Tax Offset and commences on 1 July 2017. We support this measure on equity and fairness grounds. The LISC compensates low-income individuals for the tax that concessional contributions bear in the hands of their superannuation fund. Concessional contributions are generally 'before tax' contributions that include an employer's superannuation guarantee contributions, contributions made under a salary sacrifice arrangement and an individual's personal contributions that are deductible. The LISTO seeks to effectively return the tax paid on concessional contributions by a person's superannuation fund or retirement savings account provider. Low-income earners are defined as individuals with an adjusted taxable income of $37,000 or less. The maximum amount payable is $500 per year for each eligible individual. The LISTO will normally be paid to a superannuation account of an individual.

While we support the measure, we acknowledge that it is estimated that it will cost $1.6 billion over the forward estimates and the cost will be offset against the proposed reduction in the concessional cap and the proposed lower threshold for the higher income earners tax. The lowering of the concessional caps is one measure we do not support.

There is strong argument that those on lower incomes, especially those who have lower salaries throughout many years of their working life, will be eligible for the aged pension which replaces a very high percentage of a low-income earner's pre-retirement income. The cost for the LISTO is being funded by mostly higher income earners, many of whom, with appropriate incentives, can save sufficient money to be independent of the government in retirement. Given our aging population and significant budgetary challenge this represents, you would think the government needs to encourage as many taxpayers as possible to self-fund their retirement income needs and not rely on the age pension.

The reality is that Australians who are most likely to achieve this outcome are those earning more than approximately 120 per cent of average weekly earnings. It is taxpayers in this cohort who are impacted the most by the proposed reduction in the concessional cap and the lower threshold for higher income earners.

Tranche two and three complete the super measures announced as part of the 2016-17 federal budget

The government has now released tranche two and three, both

with similarly short consultation time frames.

Tranche two principally covers the introduction of a $1.6 million transfer balance and the reduction in the concessional contribution caps to $25,000, as well as allowing the catch-up of concessional contributions for those with balances less than $500,000. Tranche two alone comprises some 220 pages of exposure draft and explanatory memorandum dealing with significant and complex material associated with the above-mentioned changes. Tranche three covers the lowering of the annual non-concessional contributions cap to $100,000 and restricting eligibility to make non-concessional contributions to individuals with superannuation balances below $1.6 million.

Transfer cap

The administration path chosen to introduce a balance cap is unduly complicated and alternative systems have not been examined. One of the secondary objectives drafted of the superannuation system is to make it simple and, therefore, any proposed changes need to be judged on this basis.

While it has been emphasised that only a minority will be directly impacted by the transfer balance cap, adding considerable complexity to the superannuation system with its ongoing administration will need to be borne by all super fund members. To achieve cost efficiencies, a regulatory environment that is not overly complex is required. The proposed transfer cap is adding more complexity instead of making the system less convoluted. The demise of the reasonable benefits system in 2006 should serve as a reminder of the administrative issues a cap introduces. The government needs to keep front of mind the disproportionate cost imposed on all trustees relative to the number of individuals ultimately impacted by the proposed changes.

There are significant structural, transitional and implementation issues associated with implementation of this policy measure. Those who have been around for some years remember the reasonable benefits limit system which was removed on 30 June 2006. It was noted at the time that there were many reporting problems not envisaged when the law was developed. The ATO acknowledged at the time that the overall effort required to administer reasonable benefits limits (RBL) appeared disproportionate to the number of individuals ultimately affected by the rules.

The transfer balance cap provisions seem to be heading in the same direction as the RBL system and we need to assess whether there are simpler alternative ways of achieving the government's objectives of restricting access to the super tax concessions. The government's policy settings preclude looking at alternative models such as leaving existing systems intact and dealing with limiting the tax concessions when the super benefits are paid to recipients. The benefit of this model, while not devoid of its own issues, allows existing tax structures for superannuation funds and pensions to continue unaffected without overlaying complex arrangements on the system.

One of the other significant issues is dealing with a realistic scenario of a significant fall in the value of an account balance due to a sharp downturn in financial markets or poor investment. The explanatory memorandum states that changes to the value of a superannuation interest that supports a superannuation income stream after the initial valuation are effectively ignored. There is also the issue of how relevant information from different funds and accounts will be drawn together so adjustments can be made to balances to comply with the proposed transfer balance cap and the new limits on non-concessional contributions. Accountants, financial advisers, trustees, super funds and regulators will need to come to terms with complex rules associated with the transfer cap provisions.

Concessional superannuation contributions

The IPA does not support the reduction of the contribution caps to $25,000 and in particular, the reduction of the current cap of $35,000 for individuals aged over 50. People aged over 50 should be encouraged to make further superannuation contributions, especially when they have the capacity to do so, to address any super balance shortfall.

The situation is further exacerbated as the government has also announced the deferral of the proposed catch-up measure until 1 July 2018, which effectively means the first catch-up will not be available until the 2019-20 financial year. The deferral was a budgetary decision to partially offset the cost of reintroducing an annual non-concessional contributions cap. The current annual concessional contributions cap for over-50s – which is $35,000 – is less than a third of what the cap was 10 years ago. The May 2010 Henry tax review supported a higher contribution cap for Australians aged 50 or over.

Catch-up concessional contributions and innovative income streams

We welcome these policy initiatives. The catch-up facility allows members who may not have had the capacity in previous years to increase their superannuation account balances to a level commensurate with that which they would have enjoyed if the concessional cap had been fully utilised. The main issue we have in relation to the catch-up contribution proposal is account balance requirement. The catch-up is conditional on the basis that the member has an account balance of less than $500,000. This precondition is problematic especially when an individual has multiple superannuation accounts, has unfunded public sector accounts or has a combination of pension and accumulation accounts. The Labor Party attempted to introduce a concessional cap for the over 50s based on a $500,000 balance, but gave up on the idea when it realised the sizeable administrative issues the industry faced in trying to deal with such a proposal.

In relation to innovative income streams, we support measures to encourage innovative retirement income products by removing some of the tax barriers to the development of such products. This is one of the missing links in our retirement system and we look forward to the government making the necessary changes to the pension and annuity regulations to affect these changes.

Non-concessional contributions cap

We are pleased that the government scrapped its original proposal to introduce a $500,000 lifetime cap on non-concessional contributions. In its place is the proposal to introduce an annual $100,000 non-concessional cap. The new proposal has addressed the contentious aspect as individuals nearing retirement are no longer compromised by retrospective policy. The measure will be problematic for a small number of individuals who have high superannuation balances. Anyone with more than $1.6 million in super will not be able to make non-concessional contributions or make non-concessional contributions that would mean they exceeded the $1.6 million amount in super. The $1.6 million threshold for making non-concessional contributions will be based on an individual's balance as at 30 June of the previous financial year. We assume this means, for example, that if you plan to make non-concessional contributions in March 2018, the superannuation account balance will be measured as at 30 June 2017. There will be some practical issues in tracking exact balances especially for Australians with multiple superannuation accounts and the valuation of assets at 30 June each year could be problematic. There will also be some transitional issues with the old and new bring-forward rules and the $1.6 million eligibility threshold that will lead to confusion and errors. Again, taxpayers who inadvertently breach the rules should be treated fairly during the transition period.

Warning: superannuation is considered financial product

With all these superannuation changes in the pipeline, clients are interested in how the changes will impact on their retirement aspirations. It is not a good time for accountants who have not opted to pursue any of the AFSL licencing options to assist clients, as superannuation is considered a financial product. Unlicensed accountants can only talk about the factual information surrounding a financial product and they need to be careful not to overstep their mark.

Technical | Superannuation

A superannuation action plan

What do fund members and professionals need to know about the proposed superannuation changes before 1 July 2017?

by Rebecca James

Rebecca James, special counsel, DBA Lawyers

Planning for the proposed superannuation changes

With the proposed changes to superannuation taking shape, it is important to be proactive in advising clients on what needs to occur before 1 July 2017 as discussing and implementing various strategies are likely to take some time.

This article highlights some of the key factors to consider in formulating and implementing an action plan with self-managed superannuation fund members over the next few months.

Contributions to superannuation

It will be important that fund members are fully appraised of the reduced contribution caps from 1 July 2017 to prevent excess contributions being made to superannuation.

Based on the draft legislative provisions, the contributions permitted to be made to superannuation by eligible members are:

Concessional contributions	Non-concessional contributions
$25,000 per annum	$100,000 per annum (or $300,000 for members eligible to utilise the bring-forward provisions)

Transitional provisions will apply for members who have triggered the bring-forward provisions in the 2016 and/or 2017 financial years, but who have not fully exhausted their non-concessional contributions cap prior to 1 July 2017 as follows:

Trigger event – bring-forward provisions	Transitional cap
FY2016	$460,000 (Annual cap of $180,000 in FY2015-2017 and $100,000 in FY2018)
FY2017	$380,000 (Annual cap of $180,000 in FY2017 and $100,000 in FY2018 and FY2019)

The ability to make non-concessional contributions will be capped at $1.6 million, calculated as at 30 June in the previous year. Thus, the bring-forward provisions will operate as follows:

Member balance	Bring-forward amount
<$1.3M	$300,000 (3 years)
$1.3M to <$1.4M	$300,000 (3 years)
$1.4M to <$1.5M	$200,000 (2 years)
$1.5M to <$1.6M	$100,000 (1 year)
$1.6M+	Nil

Key action items

Given the ongoing debate surrounding the proposed superannuation changes, it is important to highlight the practical issues that members should consider before 1 July 2017 to ensure they are ready for the introduction of the superannuation changes.

The key action items are as follows:

- Consider whether the reduced contribution caps have an impact on future contributions to superannuation, the fund's cash flow and the trustee's ability to meet any fund liabilities as and when they fall due, including minimum pension payments;
- Consider whether members are in a position to maximise their non-concessional contributions before 1 July 2017;
- Identify whether future non-concessional contributions will be limited by the proposed $1.6 million threshold;
- Ensure that members are aware that from 1 July 2017, they can make personal deductible contributions to superannuation. Members may wish to modify or cease any salary sacrifice arrangements with their employer;
- Ensure members are aware that a rolling five-year concessional contributions cap will apply for those with superannuation benefits of less than $500,000 as at 30 June the previous financial year; and
- Are relevant members aware that the threshold at which high-income earners pay additional tax will be reduced from $300,000 to $250,000?

Retirement transfer balance cap

It is proposed that from 1 July 2017, the amount a member can transfer to (or retain in) the retirement phase will be $1.6 million (indexed). There will be no restrictions on subsequent earnings. However, members will not be permitted to top up the amount in retirement phase as a result of losses or drawdowns.

The balance exceeding $1.6 million can be transferred to the accumulation phase or withdrawn from superannuation if a relevant condition of release has been satisfied. Notional earnings on amounts exceeding a member's relevant transfer balance cap will be taxed at 15 per cent, ratcheting up to 30 per cent where the retirement transfer balance cap is exceeded multiple times.

Excess amounts will be disregarded, however, where:

- The excess amount is less than $100,000; and
- The excess amount is transferred to the accumulation phase (or withdrawn from superannuation where permitted under superannuation law) within 60 days.

The draft legislation provides that SMSF trustees cannot use the segregated method to calculate the exempt current pension income of the fund where one or more members have an interest in the retirement phase and a total superannuation balance that exceeds $1.6 million. Thus, fund trustees must use the non-segregated proportioning method.

Fund trustees will also need to start thinking about whether they will elect to apply the CGT relief for assets transferred from the retirement phase to the accumulation phase to ensure each member's retirement transfer balance cap does not exceed $1.6 million as at 1 July 2017.

For fund trustees that currently utilise the non-segregated proportioning method, a notional capital gain on the proportion of the asset not supporting the liability to pay the pension can be deferred until the earlier sale of the asset or 30 June 2027. The asset will revert to its original cost base if not disposed of within 10 years.

For fund trustees that currently utilise the segregated method, there will be no tax implications where a segregated asset is transferred to accumulation phase before 1 July 2017.

Key action items

- For members currently receiving a transition to retirement pension, have they retired or otherwise met a condition of release that would allow the pension to be converted to an account-based pension?
- For members receiving an account-based pension that exceeds $1.6 million, do they intend to commute the excess and roll it back to accumulation phase before 1 July 2017? Or would the member prefer to have the excess paid to them as a lump sum or pension payment prior to 1 July 2017?
- For spouses who have a superannuation balance exceeding $1.6 million – either individually or on an aggregated basis – the remaining spouse will have six months to determine how the death benefits, and their member benefits, will be structured before penalty tax provisions apply. Members may wish to consider whether they intend to:
  - ☐ Commute any pension they are receiving;
  - ☐ Roll the balance to accumulation phase; and
  - ☐ Elect to receive death benefits as a pension up to their applicable retirement transfer balance cap, with any remaining amount being cashed as a lump sum.

Finally, advisers should ensure that any advice given is consistent with the scope of their authorisation under the Australian financial services licensing regime.

Taxing the supplies of low-value imported goods

The new taxation issues arising with imported goods are complex and involve a number of key stakeholders. Accountants should be well-versed on the consequences for taxpayers

by Suzanne Kneen and Claire Harrington-Johnson

Suzanne Kneen, director, PwC

Claire Harrington-Johnson, senior consultant, PwC

As with many technical issues on the reform agenda at the moment, there is a likelihood of changes after the time of writing. However, professionals should be well across the key issues surrounding the changes to taxing the supplies of imported goods.

On 21 August 2015, the government announced an intention to introduce legislation which will require non-residents – overseas suppliers – to remit GST for sales of goods to Australian customers i.e. a vendor collection model. This was also contained in the 2016 federal budget papers. Broadly, the measures provide that from 1 July 2017, non-resident suppliers with an Australian GST turnover of $75,000 or more will be required to register for, collect and remit GST for goods sold to Australian consumers. At the time of writing, draft legislation has not yet been released.

These announcements coincide with other measures to deal with the digital economy such as the application of GST to digital products and services supplied by non-residents to Australian consumers. Unlike intangibles, in relation to the taxing of goods, there are border controls and various intermediaries that can assist in the process of the collection of tax for the sale of goods. However, the growth in online sales has meant that tax collection mechanisms may not be working as effectively as intended. These challenges were addressed in a recent OECD report:

"The exemptions for low-value imports have therefore become increasingly controversial in the context of the growing digital economy. The difficulty lies in finding the balance between the need for appropriate revenue protection, avoidance of distortions of competition and the need to keep the cost of collection proportionate to the VAT/ GST collected on imports of low-value goods. As the VAT/GST exemption thresholds in many jurisdictions were established before the advent and growth of the digital economy, countries may need to review their policies on taxing e-commerce to ensure that they are still effective."

When the proposal was announced, then-treasurer Joe Hockey expressed the view that administering a vendor collection model will have a relatively low cost compared with lowering the $1,000 LVT and taxing goods on importation. The 2016 federal budget measures stated that this measure should also ensure that Australian and foreign suppliers of goods are treated equally under the GST law. Furthermore, imposing GST on the foreign supplier, rather than on the entry of the goods into Australia, should ensure that goods are not unduly delayed during customs clearance procedures.

Only vendors with an Australian turnover of $75,000 or above will need to register and account for GST. Subject to these registration limits, this will mean that all goods sold into Australia will be subject to GST. This will be a significant change for online retailers and could present a number of practical issues including pricing and determining whether a sale is made to an Australian customer.

Given the registration threshold, it should not impact smaller retailers selling into Australia unless an intermediary or platform model is introduced, i.e. requiring an online marketplace to account for the GST rather than the underlying supplier. The proposed commencement date of 1 July 2017 coincides with the application of GST to the importation of digital content/ services by Australian consumers, so it is possible that the goods measures will take a similar approach i.e. impose tax obligations on the intermediaries.

If there is alignment between the two measures, it may well result in a number of online platforms and other intermediaries in the supply chain becoming liable for GST on goods imported into Australia. Such intermediary measures may mean that a smaller supplier is not required to remit GST on direct sales but the same goods will be subject to GST when sold through a marketplace.

Enforcement

A key challenge of the vendor collection model is to ensure compliance by non-resident vendors. This model could increase the revenue risks for tax authorities given that it may move away from the traditional customs process of collecting the VAT/GST at the current point of entry i.e. at the border.

Compliance can be facilitated and encouraged by simplifying procedures. While we do not have any details yet, it seems likely that the government will consider a simplified registration model similar to the Limited Registration Entities provided for in Schedule 1 to the digital changes in the Tax and Superannuation Laws Amendment (2016 Measures No 1) Act 2016). Further, we expect that the government will seek to harness technology to support compliance and administration.

Other jurisdictions

Other jurisdictions are also looking at whether reform is required in relation to the sale of goods by offshore suppliers.

European Union

On 6 May 2015, the European Commission announced its strategy for the EU digital single market. The strategy will seek to remove the VAT exemption for the importation of small consignments from suppliers in third countries and extend the one-stop shop mechanism to EU and non-EU countries' online sales of tangible goods to final consumers. The EU Action Plan for implementing this strategy was announced on 7 April 2016 and proposes a future VAT system where VAT is charged under the rules of the originating country on sales that are made across borders to another country in the EU, at the rate applicable in the country of consumption. The VAT on a cross-border sale of goods will be collected by the tax authority of the originating country and transferred to the country where the goods or services are ultimately consumed.

The VAT Action Plan also sets out plans to remove the VAT exemption for the import of small consignments from suppliers in third countries. With around 150 million parcels imported free of VAT into the EU each year, this system is open to massive fraud and abuse, and creates major distortions against EU business. In future, VAT on imports of small consignments will, to a large extent, be collected through the single web portal, by sellers or intermediaries acting on their behalf.

United Kingdom

In the 2016 budget, the Chancellor of the Exchequer proposed to impose new obligations on non-EU e-commerce businesses. The legislative changes proposed work in two limbs. First, the existing rules will be altered to allow Her Majesty's Revenue and Customs (HMRC) to compel an overseas entity to appoint a VAT representative with joint and several liability. Second, a new provision will be introduced which will enable HMRC to hold an online marketplace jointly and severally liable for any unpaid VAT of an overseas entity that sells goods into the UK via that marketplace.

HMRC does not plan to apply these new provisions automatically, but will instead target them against the highest risk cases to tackle non-compliance. HMRC considers that any increase in the compliance burden will be small, as the online marketplace population is small, and these businesses often already have existing processes in place for the removal of sellers that break the rules of the marketplace. It is anticipated that by 2021 HMRC will be able to collect an additional £365 million (AU$639 million) VAT per year.

Summary

These are complex issues that a number of stakeholders – purchasers, domestic and non-resident suppliers, marketplaces, transporters, financial intermediaries, border control, tax administrators – and the Treasury department will have to work through. However, it will be important that draft legislation is released and understood soon to ensure that taxpayers are compliant by the proposed start date. It will also be worthwhile to monitor other jurisdictions and reforms in this space.

Technical | SMSFs

The ins and outs of winding up an SMSF

SMSFs are not a set and forget, and professional advisers should be keeping a close eye on the pros and cons of leaving their clients' funds open

by Peter Hogan

Peter Hogan, head of technical, SMSF Association

You don't hear much about the number of SMSFs winding up each year. This is probably because of the consistent numbers of new funds being established year-on-year. For example, for the year ended 30 June 2015, ATO statistics reveal that 34,000 new funds were established. However, more than 11,000 were wound up.

These numbers show that even though running an SMSF may have been a good idea at the outset, it doesn't necessarily stay that way. Over time, members' needs and circumstances can change and, as a result, an SMSF may no longer be suitable for them.

Key trigger events that could warrant closing the fund include:

- Insufficient assets;
- Declining mental or physical capacity of a trustee;
- Death of a key trustee;
- Realisation that trustees have insufficient time to meet their obligations; or
- A trustee deciding to move overseas indefinitely.

It's important that SMSF advisers are familiar with these triggers and keep a close eye on when an SMSF may be approaching its use-by date for the members.

But closing a fund is a big decision that should not be made without a full assessment of the pros and cons. There are a number of reasons why the members may want to retain the fund for a longer period if circumstances allow. It may also be possible for the members to exit their SMSF without having to incur the hassle and costs of closing the fund, simply by bringing in new members.

Why wind up?

Insufficient assets

One of the more common reasons for winding up an SMSF is insufficient assets in the fund. This could come about because:

- Members have rolled over to an alternative super arrangement or taken lump sums;
- The last remaining member has reduced the capital in the fund by drawing a pension or lump sum payments; or
- Members have died and death benefit lump sum payments have been made.

Lack of capacity

The number of SMSFs paying pensions has increased. Recent research shows that more than half of all pension assets in Australia are held in SMSFs. However, as trustees age, the risk of physical or mental impairment increases and this could result in the loss of capacity to act as an SMSF trustee.

An incapacitated person can remain a member of the fund if another person who holds an enduring power of attorney acts as trustee on their behalf. However, this person must be prepared to take over all the responsibilities as trustee on behalf of the person who granted the enduring power of attorney.

Where a loss of capacity occurs and there is no one to take over the role of trustee, the only alternative – if the incapacitated person is the only member of the SMSF – is for the fund to be wound up.

Death of a key member

It is not unusual for couples to be members of their own SMSF. It is also quite common for one of them to be more involved in the running and administration of the fund. However, on the death of that person, the surviving spouse may have no interest in continuing the SMSF and may prefer to close the fund and move their money to a simpler superannuation arrangement where they have no trustee responsibilities.

Lack of time

At the time of setting up their SMSF, members may have underestimated the time required to carry out their trustee duties. Alternatively, their employment or other circumstances may change, leaving little time to devote to their fund.

Moving overseas indefinitely

Moving overseas indefinitely can cause an SMSF to fail the residency test requirements in the superannuation legislation. One of the requirements of the residency test is that the central management and control of the SMSF must remain in Australia. For this to occur, a majority of fund trustees – 50 per cent or more – must be permanently residing in Australia.

While there is a two-year window for trustees to be absent overseas without failing the central management and control test, that test requires that the absence be temporary.

The consequences of failing the residency test are severe as the fund will be made non-complying in the year the trustees leave Australia. The net assets (less member financed contributions) of the previous financial year are included in assessable income and, along with all other income of the fund, are taxed at the top marginal rate.

This penalty is usually reserved for funds that have had serious and multiple breaches of the superannuation rules. However, as the tax concessions are limited to Australia-based super arrangements, any fund that fails the residency test will be penalised in the same way as funds that have done the wrong thing.

One option is to wind up the fund and roll over to an alternative arrangement where they are not trustees and where they live becomes irrelevant. If this is the best course of action, it is critical that the SMSF is completely wound up before they depart.

Reasons to keep an SMSF for existing members

As we've just addressed, winding up an SMSF may be necessary in some circumstances. But before clients make a voluntary decision to close their fund, it's important to consider some of the reasons for keeping it running.

Large unrealised gains

When considering winding up the fund, trustees must decide what they intend to do with the assets. Do they wish to make an in-specie transfer to a new superannuation arrangement? Do they want to purchase certain assets from the SMSF and roll over cash to their new fund? Do they want to sell everything in the fund and roll over the cash? Or, if eligible, do they want to receive the assets or cash as a lump sum benefit?

The one thing in common with all these scenarios is that they potentially result in the realisation of a capital gain or capital loss for the SMSF, where tax is payable if the fund is in accumulation phase. The question trustees need to consider is whether it is worth triggering an early capital gains tax liability on an asset they would otherwise have been able to retain in the fund for many years to come. This can be particularly important where the members are approaching retirement and can use their superannuation to start a pension. Once in pension phase, no CGT will be paid when assets that are supporting pension payments are sold by the SMSF.

Capital losses

Realised capital losses which cannot be utilised prior to winding up the fund can also be a concern, as they are trapped within the SMSF and will be lost on wind up.

These realised capital losses may be unused carried forward capital losses from previous years or capital losses realised on the sale or transfer of assets as part of the fund wind up. This can be a significant impediment to winding up the fund.

Revenue losses

The same issues apply where the fund is in a net loss position for the year of wind up or has significant unused carry-forward revenue losses.

Revenue losses, like capital losses, are trapped within the trust structure of the SMSF and cannot be transferred or distributed out of the fund. Any unused revenue losses of the fund will be lost on wind up.

Asset protection and business real property

Generally, superannuation accounts of all kinds are protected from the creditors of the members under bankruptcy law. What an SMSF offers is the opportunity to own and protect business assets such as business real property used in the members' business.

In addition, owning business real property in an SMSF provides the opportunity for the business to pay rent to the SMSF for the use of the building which is fully deductible to the business. It is another source of income to the SMSF to help build the members' retirement savings and does not count towards the contribution caps.

Benefits of adding new members

Underlying the superannuation and tax legislation that applies to all funds is an assumption that members change over time.

Consequently, the alternative of adding new members to an SMSF should not be overlooked when considering a fund wind up. These new members, which could be children, other relatives or business associates of the current members, can take advantage of the ongoing tax benefits of the fund.

In family businesses, the continuity of ownership and use of business real property can be an important consideration. The introduction of family or business associates as new members may enable the SMSF to pay retirement benefits to the current members while retaining the property in the fund.

Lastly, the costs of winding up the SMSF for existing members are avoided if new members take on the fund as their own. The new members, in turn, are saved the costs of setting up a new fund.

Technical | Property

A look at new tax withholding on property purchases

Accountants need to be across a new foreign resident capital gains tax collection mechanism which came into effect on 1 July 2016

by Mark Friezer

Mark Friezer, partner, Clayton Utz

It impacts upon purchasers of direct interests in property but is also relevant for purchasers of shares in non-listed property-rich companies and purchasers of units in unlisted property trusts.

This is not a new tax. It's a collection mechanism for existing taxes levied on non-residents. For many years, non-resident vendors have been liable for Australian capital gains tax on disposal of real property assets located in Australia. The difficulty has been in collecting the tax by assessment as the foreign vendor may not have lodged an Australian tax return. These new rules impose a withholding obligation on purchasers, and thus back up the longstanding liability of the non-resident vendors to Australian capital gains tax.

Property acquisitions

If you are a purchaser of property for more than $2 million, you must withhold unless the vendor gives you a clearance certificate or a variation certificate. It is not a defence to say that the vendor was actually an Australian resident. An exemption is available where the vendor is in financial distress as defined (e.g. administration). Property is broadly defined and includes:

- Real property – vacant land, buildings, residential and commercial property;
- Mining, quarrying or prospecting rights (where minerals are in Australia);
- Lease premiums over real property in Australia; and
- Company title interests (where a company has the right to use property due to their ownership of the landholding company).

The practical advice for any Australian vendor of property is that they should apply online to the ATO to get a clearance certificate immediately when a sale of relevant property is contemplated. It should only take a few days to issue. The clearance certificate is not property specific. The ATO has stated that the clearance certificate will have effect for 12 months, although there is no express time limit in the law. If the vendor commonly sells properties, it would be sensible to apply online and simply renew every 12 months. If a corporate group sells properties out of different entities, each separate entity should apply, even if the group is consolidated for tax purposes.

The legislation prescribes that the clearance certificate should be valid for a period that covers the date of contract. It should also be valid at the date it is provided to the purchaser. There is no requirement for the clearance certificate to be valid at the time of settlement. This is potentially relevant for contracts for sale with extended settlement terms.

The withholding obligation is not limited to Australian resident purchasers. Non-residents of Australia who purchase relevant interests must also comply with the new rules. This aspect differs from other withholding obligations which are confined to either Australian residents or non-residents operating in Australia through a branch here (for example, contrast the dividend and interest withholding rules).

The withholding amount must be paid to the ATO on or before the day the purchaser becomes the owner of the property. This will generally mean it is payable on the settlement date or earlier. The ATO commissioner has said that, as an administrative practice, taxpayers will be granted a short period of grace. This might be useful where settlement occurs in a different jurisdiction and the time zone makes a same-day remission problematic.

Foreign vendors, who would otherwise be subject to withholding, may apply to the ATO for a notice of 'variation' on the grounds that the tax they expect to pay on the gain, if any, will ultimately amount to less than 10 per cent of the purchase price. The effect of the variation may be to reduce the withholding required to nil or some other amount. This might be the case, for example, where the property is being sold for a loss, the vendor has carried forward tax losses or rollover relief is available. Unlike the clearance certificate, the variation is property specific and may take up to a month to obtain. Therefore, it should be applied for as early in the sale process as possible. If successful, the vendor will receive a notice of variation from the ATO.

Acquisitions of shares or units in property-rich companies and trusts

Purchasers of shares or units might also have to withhold. An indirect interest requires a holding of 10 per cent or more in an entity such as a company or trust where the value of the entity's assets principally comprise Australian property. These are referred to as "indirect Australian real property interests". There is no need to withhold where the transaction occurs on an approved stock exchange.

Once again, the withholding regime applies even if the purchaser is a non-resident and can apply to interests in foreign companies and trusts which indirectly own Australian real property. One would expect that there may be similar compliance problems to those currently being experienced, where transactions are non-resident to non-resident, particularly in circumstances where there has been a sale of shares in a foreign, land-rich company.

The procedure in order to avoid withholding is different from direct property sales. There is a declaration mechanism that can be used by both Australian and foreign vendors. The clearance certificate is not relevant. There is no need to approach the ATO. The vendor should give the purchaser a declaration that either the vendor is an Australian resident or, in the case of a foreign resident, that the shares or units that the vendor holds do not amount to an indirect interest in property. The ATO has released a pro forma declaration which can be provided as a standalone document. It is also acceptable if the declaration is provided by way of a warranty clause in the contract for sale.

In each of these instances, the $2 million threshold which applies for direct property interest is not applicable.

The production of a declaration by the vendor automatically alleviates any requirement on the purchaser to withhold. However, it is possible to avoid withholding on the sale of an indirect interest test, where there are reasonable grounds to believe the vendor is an Australian resident. Given the stiff penalties which may be imposed by the ATO on a purchaser for failure to withhold, extreme caution should be used where the knowledge exception is sought to be relied on.

As is the case for direct property sales, a variation can be applied for by the vendor to reduce the withholding rate.

Options

The withholding rules can also apply to options over property and options over shares or units in land-rich companies or trusts so there is withholding on any premium paid to acquire such options.

In the case of options, the $2 million threshold is not relevant. Withholding applies to option premiums of less than $2 million. But further to this, an options premium paid in respect of a property valued at less than $2 million would be potentially subject to withholding. This is an odd result given a direct purchase of the underlying property would not be subject to the new rules.

How to calculate the withholding amount

The withholding amount is calculated as 10 per cent of the so called 'first element' of the CGT cost base. Generally, this will be the purchase price under the contract of sale.

Because the 10 per cent amount is based on a tax concept (i.e. cost base), it does not necessary equate to 10 per cent of the cash consideration. As such, it is somewhat misleading to use the label 'withholding tax'. For example, if a purely property for property exchange occurs, the purchaser may be required to pay 10 per cent of the market value to the ATO notwithstanding there is no cash payment as part of the sale transaction.

Another consequence of the referencing back to the cost base and fixing liability at settlement is that the timing of payments under the contract is irrelevant. A purchaser who is acquiring property will be liable to remit the full withholding amount on settlement to the ATO notwithstanding the contract sum may be payable by instalments over an extended period.

In the case of options, there is a double counting rule so that on exercise of an option to acquire a direct property or indirect property interest, any option premium previously paid is deducted from the purchase price in calculating the amount on which to apply to 10 per cent withholding.

Technical | Licensing

When is an AFSL required to raise money?

We have put together clients' frequently asked questions on the tricky topic of whether they need a licence to raise money

by Jon Denovan

Jon Denovan, partner, Gadens

The law is quite complex and there are many exemptions and special requirements, but here is an attempt at a simple guide.

1. What is a managed investment scheme?
A managed investment scheme is usually structured as a unit trust. It is defined by section 9 of the *Corporations Act* as having the following features:
(a) People (investors) that contribute money or money's worth (members) as consideration to acquire rights to benefits produced by a scheme (interests);
(b) The contributions are pooled or used as a common enterprise;
(c) The contributions produce financial benefits or benefits consisting of rights or interests in the property for the members; and
(d) The members do not have day-to-day control over the operation of the scheme.

2. If I operate a managed investment scheme, do I need to register it with ASIC?
Generally, a managed investment scheme must be registered under s601ED(1) of the *Corporations Act* if:
(a) It has more than 20 members, even if the promoter is not in the business of promoting schemes; or
(b) It has 20 members or less but ASIC has determined that the managed investment scheme is part of a closely related scheme in which the total number of members of all related schemes exceeds 20; or
(c) It was promoted by a person in the business of promoting managed investment schemes, unless all the issues of interests in the scheme that have been made would not have required the giving of a product disclosure statement (PDS).

Examples of categories of issues that do not require PDS include small-scale personal offers that do not breach the 20 investors/$2 million ceiling and offers that to wholesale investors (see below on the wholesale exemption).

3. How does the 20-member limit work?
To work out whether a managed investment scheme has reached the 20-member limit:
(a) Its foreign members who were offered interests in the managed investment scheme in the same way as its Australian members are counted;
(b) Joint holders of an interest count as one member; and
(c) If an interest is held on trust for several beneficiaries, each beneficiary will count as a member if they are presently entitled under the terms of the trust to the interest or if they are in a position, alone or with others, to control the trustee (e.g. the appointor of the trust – section 601ED(4)(b) of the *Corporations Act*).

4. What is the 'wholesale' investor exemption?
A PDS is not required unless the investors to whom interests are being offered or issued are retail clients for the purposes of chapter 7 of the *Corporations Act*.
Section 761G of the *Corporations Act* states that all clients are to be classified as retail unless the licensee can prove that you provided the service to them as a wholesale client.
The tests for classifying a client as wholesale include:
(a) Price/value test. The price or value of the product is at least $500,000;
(b) Small business test. The product is provided to a business that is not a small business. A small business is a business employing less than 20 employees or in the case of a business that includes the manufacture of goods, that employs less than 100 employees;
(c) Net assets/net wealth test. The product is not provided for use in connection with a business and the person who acquires the product provides a certificate from a qualified accountant which states that the person:
(i) Has net assets of at least $2.5 million (including SMSFs – see ASIC 14-191MR statement on wholesale and retail investors and SMSFs); or
(ii) Has a gross income of at least $250,000 for each of the past two years.
(d) Professional investor test. Examples of professional investors include an investor:
(i) Holding an AFSL;
(ii) Regulated by APRA (other than a trustee of a superannuation fund, an approved deposit fund, a pooled superannuation trust or a public sector superannuation scheme);
(iii) Who is the trustee of:
(A) A superannuation fund;
(B) An approved deposit fund;
(C) A pooled superannuation fund; or
(D) A public sector superannuation fund, within the meaning of the *Superannuation Industry (Supervision) Act*.

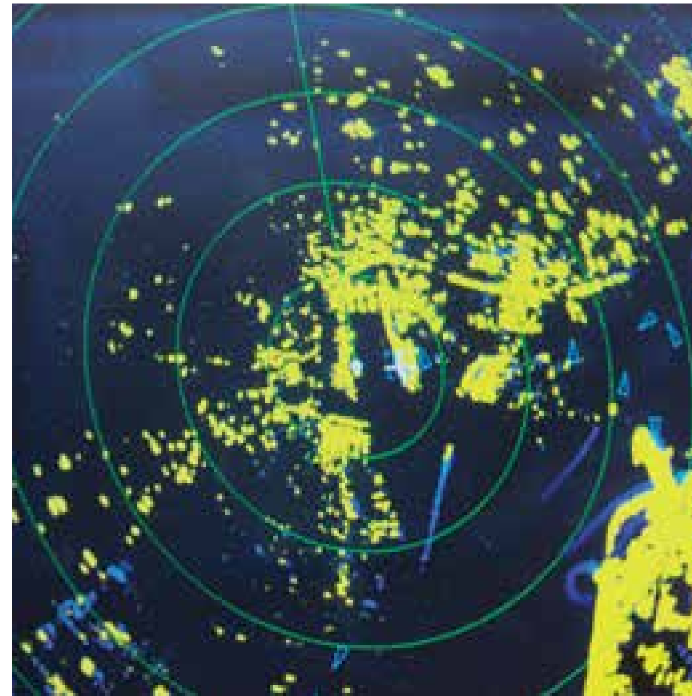
And the fund, trust or scheme has net assets of at least $10 million:
(iv) Controlling at least $10 million;
(v) Who is a listed entity or a related body corporate of a listed entity;
(vi) Who is an exempt public authority; or
(vii) Who is a body corporate or an unincorporated body that carries on a business of investment in financial products, interests in land or other investments, and for those purposes invests funds received following an offer or invitation to the public where the terms of the offer provided for the funds subscribed to be invested for those purposes.
(e) Sophisticated investor test. Where a financial services licensee is satisfied that a person has previous experience in using financial services and investing in financial products that allows the person to assess the merits, value and risks of the investment among other things, the licensee gives the person a written statement of its reasons for being satisfied as to those matters. The person signs an acknowledgment that the licensee will not be treating the client as a retail client or giving them the retail disclosure documents. The product or service must not be provided in connection with a business; or
(f) Related body corporate of a wholesale client.

5. Do I need an Australian Financial Services Licence?
A licence is required to operate all registered schemes. In addition, an operator of an unregistered managed investment scheme also provides a financial service – and therefore requires an AFSL which authorises them to deal in a financial product or provide financial product advice – if the assets or interests in an unregistered scheme are financial products.
An interest, or a right or option to acquire an interest, in an unregistered scheme will be a financial product if the scheme:
(a) Has more than 20 members; or
(b) Has 20 members or less but ASIC has determined that the managed investment scheme is part of a closely related scheme in which the total number of members of all related schemes exceeds 20; or
(c) Was promoted by a person or their associate who was, when the managed investment scheme was promoted, in the business of promoting managed investment schemes.

A scheme may not be required to be registered if all of the interests are offered to wholesale investors. However, the operator may require an AFSL which authorises them to deal in interests in a managed investment scheme, because, for example, there are more than 20 members in the scheme.
Schemes that have fewer than 20 members and are not promoted by a person or an associate of a person in the business of promoting managed investment schemes, and schemes that are not one of a number of schemes that ASIC has determined to be a closely related scheme do not need to register the scheme and the operator will not need an AFSL because an interest in such a scheme is not a financial product.

From the regulators

What is on the ATO and ASIC's regulatory radar? The IPA brings you important updates from the tax office



Auditors

ASIC and the ATO are particularly honing in on SMSF auditors at the moment as they are one of the very few necessary touchpoints an SMSF trustee has with a professional adviser.

In particular, the ATO will be upping its focus on SMSF auditors who have a questionable reliance on automation, and guarantee cheap prices and quick turnarounds.

"There can be lots of different things at play. There's competitive market pressures, there's automated processes, there's offshoring, economies of scale, which can all lead to reduced prices in the SMSF audit space. And sometimes auditors might advertise a low fee, but really there's a sliding scale of fees as the audit gets more complex," the ATO's Kasey Macfarlane said.

SMSF auditors who promise a guaranteed low fixed fee, regardless of the complexity of the fund – particularly when coupled with a guaranteed short turnaround time – raises red flags with the ATO.

The regulator is also concerned by auditors who are relying too heavily on automation to complete their SMSF audits.

"What would concern us is if we see SMSF auditors not necessarily providing their skill and judgement, just relying on the automated process to do the finance checks, and then not actually turning their mind to the regulatory issues," Ms Macfarlane said.

An emerging issue which threatens SMSF auditor independence has also captured the ATO's attention.

"One of the areas that we've seen emerging recently that we will be looking at is reciprocal audits. So you've got two SMSF auditors, they have their own SMSF and they come to an arrangement to audit each other's fund," Ms Macfarlane said.

"Now that isn't specifically covered in independence guides or standards. But ATO and ASIC's view is that there are clearly in that situation issues of familiarity, potential threats and intimidation that [can't] be safeguarded against."

Industry-specific activity

The ATO announced in early November that it will be contacting businesses in the building and construction industry about their overdue taxable payments annual reports.

"Some of these businesses may be your clients," the ATO said in a note to tax agents.

"If your clients have not lodged their 2016 or any prior year taxable payments annual reports, now is the time to get them back on track to avoid penalties," the ATO added.

The ATO reminded tax agents that regardless of where their clients claim their contractor expenses in their tax returns, if they have paid contractors for building and construction services, they need to lodge a taxable payments annual report.

Further, depending on your clients' circumstances, they may have claimed expenses at the contractor, commission and sub-contractor expense label, cost of sales expenses label or other expenses label.

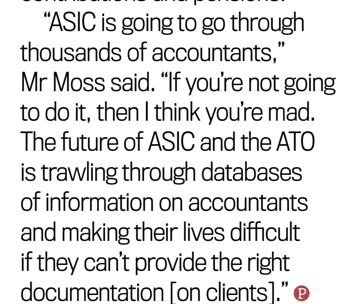
Licensing

ASIC has upped its record-keeping expectations of advice professionals and accountants are being told that, buoyed by an increased budget, the regulators are set to check in on thousands of accountants.

Accountants are being warned that ASIC will expect documentation of new licensees, in particular, to be in good order, with the regulator set to start visiting firms operating in the AFSL environment.

Speaking at a Merit Wealth event in Sydney, director David Moss said accountants should start "cleaning their books", particularly in relation to SMSF advice clients.

For example, in the form of file notes, accountants should be identifying and recording the current advice strategies in place for clients, such as concessional and non-concessional contributions and pensions.



"ASIC is going to go through thousands of accountants," Mr Moss said. "If you're not going to do it, then I think you're mad. The future of ASIC and the ATO is trawling through databases of information on accountants and making their lives difficult if they can't provide the right documentation [on clients]."

After the success of two South Australia based symposiums, the SA/NT Division have decided to head north and hold their annual event in the beautiful top end. The forum will be held over four days, consisting of a welcome event, two formal Professional Development days, a gala dinner, panel discussion and an informal closing event. The program will be aimed at the SME sector and provide both technical and nontechnical updates.

For more information or to register your interest please contact the SA/NT Division on **(08) 8227 2255 or sadivn@publicaccountants.org.au**

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