



12 March 2021

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Australian Securities and Investments Commission
Level 7, 120 Collins Street, Melbourne, 3000
By email: remediation@asic.gov.au

Dear Amanda

Consultation on ASIC CP 335 Consumer remediation

PART ONE – FEEDBACK ON TAX TREATMENT

The Australian Institute of Superannuation Trustees (AIST) is responding to the request for feedback on the key issues we have identified for updating *Regulatory Guide 256 Client review and remediation conducted by advice licensees*

As agreed, AIST is providing feedback in two parts, the first focusing on any tax issues in relation to remediation and superannuation.

Feedback from AIST member funds

Overall, issues in relation to taxation treatment largely relate to remediation received from external financial advice providers, rather than internally focussed remediation.

Examples below

Variations in the method of calculating remediation and tax treatment of adviser fee payments.

- For example, where AFS licensees are providing an advice fee refund and a remediation payment.
 - The calculation of the interest / TVM component may change between each licensee (e.g. RBA + x% or based on a balance investment option returns or against the specific member's investment option.)
- In addition, how the fund treats (from a fund tax perspective) adviser fee payments from members accounts (noting it is the individual that has the arrangement with the adviser – not the fund) will vary from fund to fund and will have tax implications for the fund. Some funds will claim the advice fee as a tax deduction and this will impact the fund's tax position when monies are refunded for these payments.

Fund receives an amount from a licensee where the original advice fee payment was not sourced from the member account (i.e. member has rolled out of fund that deducted the advice fee)

- If this occurs, the fund is unable to treat the payment as an advice fee refund. If the monies are transferred to current fund for the purpose of being allocated to a member's account, the current fund is required to treat the monies as a contribution.
 - The member experiences a detriment, i.e. impact on contribution caps
 - If the current fund were to accept the payment it is unclear if payment is a non-concessional or concessional contribution
- When requests of this nature are received the fund generally advises the AFS licensee that they are unable to allocate the monies as an advice fee refund.

Proposal - AFS licensee's to be better educated that the monies should be returned to the fund from which it was deducted

Incomplete information to determine the original payment source or type (i.e. receive monies and no context around why the payment has been sent or what the payment relates to – advice fee, lost earnings, insurance premium repayment etc).

- This occurs regularly and before the fund can allocate the monies, further information must be sought from the AFS licensee so they can understand what the purpose of the refund was (if it is not the result of fee for no service, there are different tax implications).
- In a recent example, a fund received an email noting that monies would be transferred to the fund for an advice fee refund but a reason for the refund was not given. Before the fund could process the refund, they needed further information from the AFS licensee as to the purpose of the refund.
 - An additional challenge at times the AFS licensee is uncomfortable providing such information. Example - a request recently where when prompted, the only information given was 'due to an internal review'.

Proposal – it would be beneficial for AFS licensee's to be required to provide a standard set of data with payments which identifies the elements of the payment. This could align with the tax categories as outlined on the [ATO website](#) as below

- [Fees where no service is provided](#) (not counted as a super cont. but may have GST implications)
- [Deficient financial advice](#) (not counted as a super cont.)
- [Overcharged insurance premiums](#) (not counted as a super cont.)

For further information regarding our submission, please contact _____ at _____

Yours sincerely,

Chief Executive Officer

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The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$1.4 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.