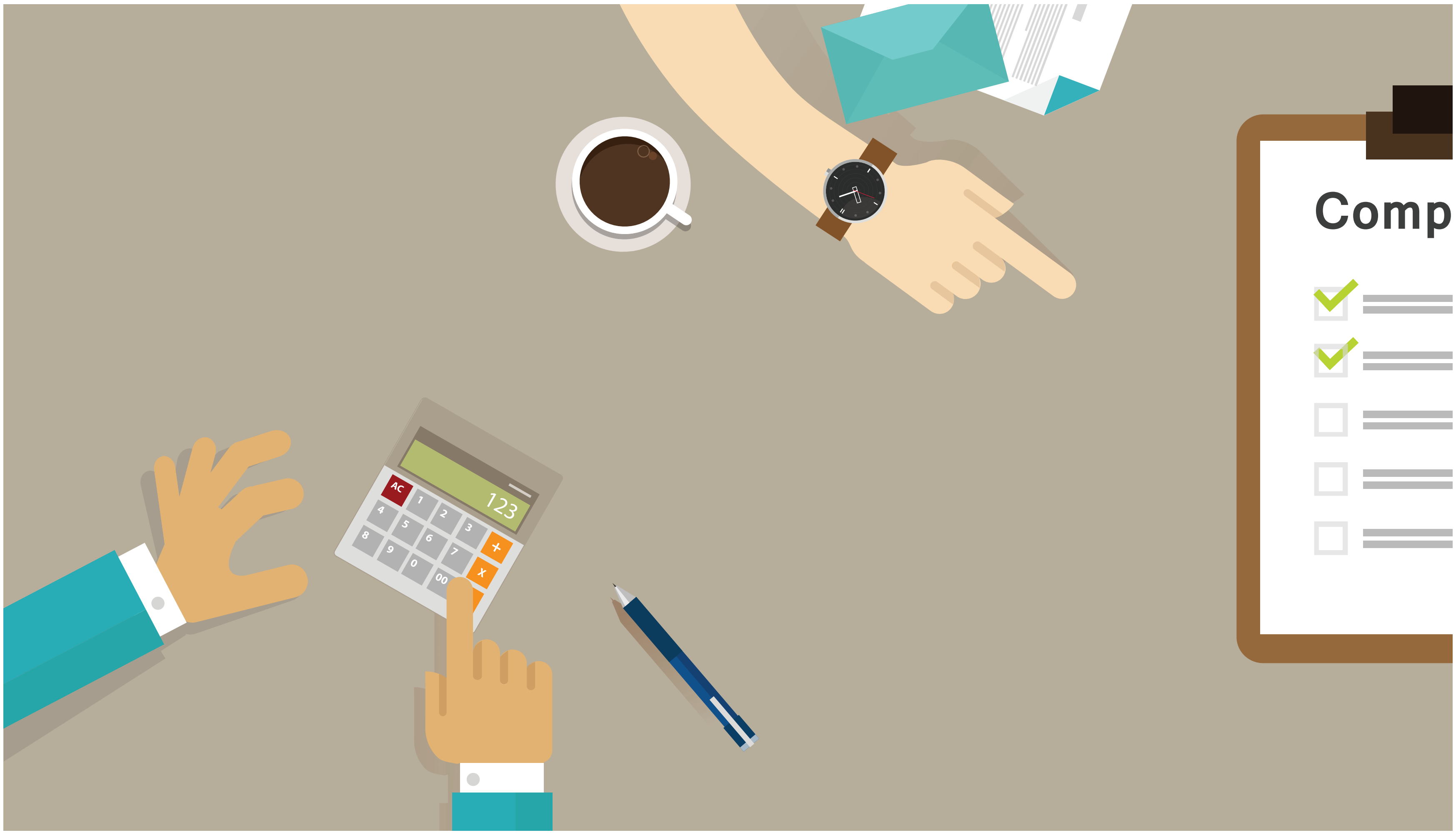


Understand or slip up

With ASIC and the ATO monitoring SMSFs, **Jassmyn Goh** finds out what the biggest issues in trustee and adviser compliance are.

It is no secret that self-managed super funds (SMSFs) take time and effort, with compliance by both advisers and trustees vital.

On the trustee side, they need to understand the ins and outs. Many people do not necessarily understand all aspects and can slip up, according to H&R Block director of tax communications, Mark Chapman.

"There's a certain degree of complexity there that some people don't necessarily understand. There are issues on the administration side, fund auditing, and with ATO [Australian Taxation Office] rules around lodging returns – those are areas a lot of people don't necessarily appreciate and slip up with," Chapman said.

"The other issue is people potentially dipping into their SMSF illegally, which often trips them up with the ATO – it happens more than you think. It was one of the big risk areas for the ATO."

Chapman noted there were some people who were using SMSFs as a personal money box and caused unintended consequences.

"There are always occasionally people who break the rules for the sake of it but by and large, it is inadvertent and due to a lack of knowledge," he said.

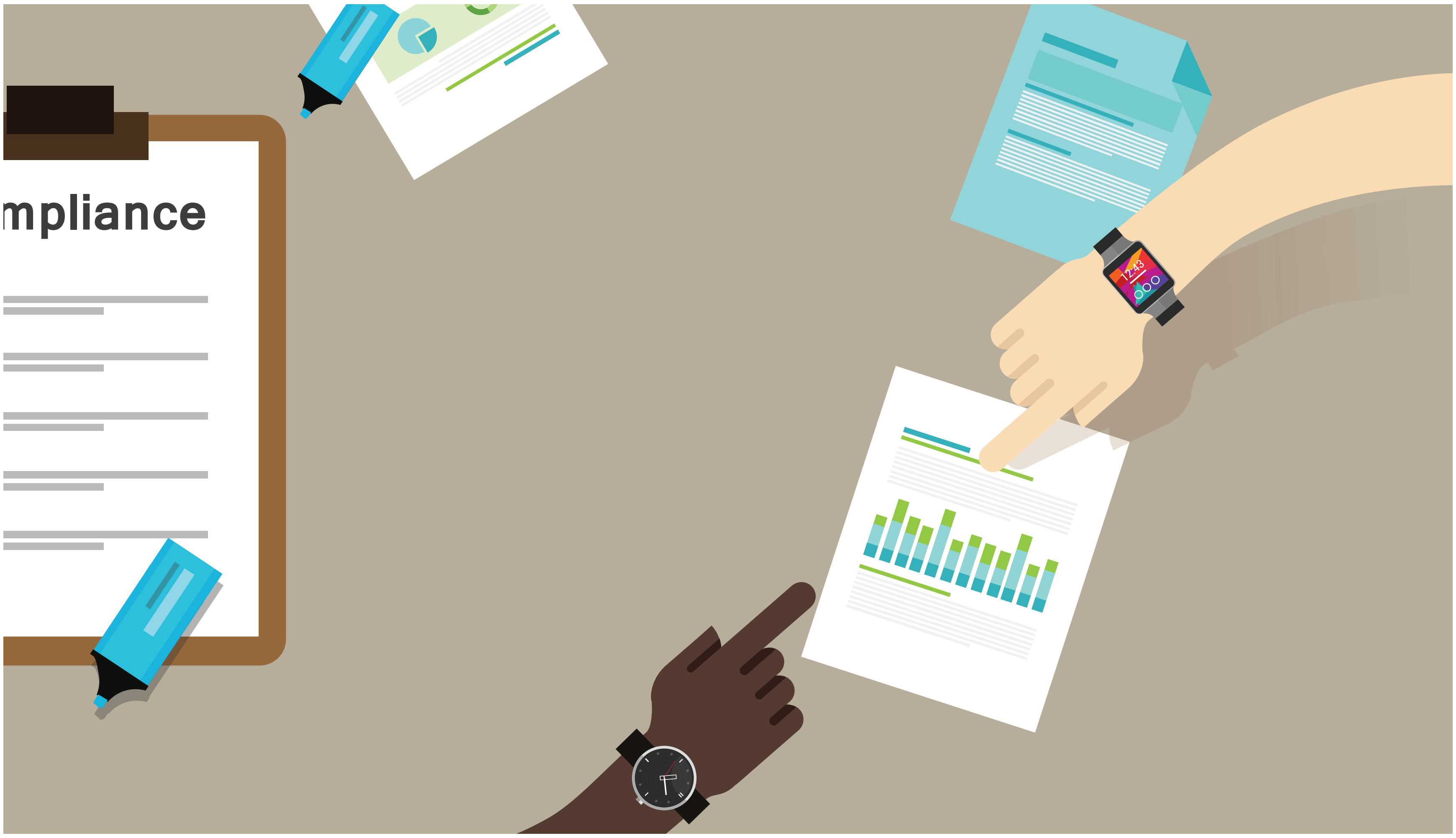
Chapman also said there were many mistakes made in terms of property and SMSFs.

He said the major issues related to purchasing a property from a member where the property was a residential property or holiday home, then letting the member use the property, and developing a property.

AMP head of policy and technical for SMSF, Peter Burgess said the new refunding rules around excess non-concessional contributions had triggered some strategies that breached the non-concessional contribution cap.

"There are now strategies where individuals deliberately set out to breach the non-concessional contribution cap to wash away their taxable component that they may have in their fund," Burgess said.

"We're only talking about isolated cases where funds are used inappropriately. There is a relatively small number of funds that have participated in dividend stripping



"The other issue is people potentially dipping into their SMSF illegally, which often trips them up with the ATO – it happens more than you think."

– Mark Chapman

or have entered into these types of arrangements."

By and large, Burgess noted that it was not right to say there is a tax compliance issue with SMSFs.

"The underlying theme is to ensure SMSFs are used appropriately and not for any aggressive tax minimisation purposes," he said.

"There is a need for trustees to be conscious and diligent of their own tax personal affairs, because what they do with their own personal tax affairs can have implications on their tax and their SMSF. The ATO can disqualify you as a trustee if you've got a poor compliance history with your own tax affairs."

Beware the property spruikers

In 2012, the Australian Securities and Investments Commission (ASIC) started its SMSF Taskforce, as it was concerned the sector might be a target by scammers and get-rich-quick promotions.

The corporate regulator's commissioner, Greg Tanzer, said the top two issues the taskforce had recently been focusing on were property spruikers on the virtues of investing in property through SMSFs, and misleading advertising.

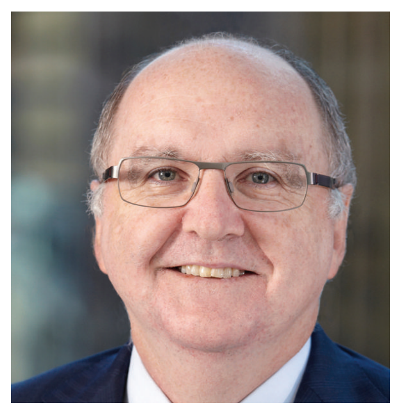
"We have made it clear both in public statements and in speeches made and by writing directly to the real estate institutes around Australia that investing in property doesn't necessarily attract the licensing provisions of the *Corporations Act* specifically from the financial services licensing regime," Tanzer said.

"But if you are offering advice to clients about superannuation or setting up an SMSF, it counts as a financial product and you need a licence for that or you're breaking the law."

With advertising, ASIC has already given a number of infringement notices for misleading or deceptive advertising.

"What we're keen to do is make sure people are making claims about SMSFs, either that they're a good investment or a bad investment, but the claims must be accurate. We've been especially tough on people who represent they can do things for free when they are not actually free," Tanzer said.

"The most recent case was in



Greg Tanzer

regards to Superannuation Warehouse Australia. They've been ordered by the federal court to pay a penalty of $25,000 for false or misleading advertising. It made a claim that the set up was free when in fact it wasn't.

"The SMSF sector is growing and is a very important part of the super landscape, as it provides a real choice for investors who want to take the time and put their skills, effort and energy into managing their own super. It's important they're not subject to misleading advertising or advice." **SR**