

TAXATION

Deductibility of COVID-19 tests for individuals

The government has confirmed that it will introduce legislation to make it clear that work-related COVID-19 test expenses incurred by individuals will be deductible.

Top 1000 combined assurance review: guidance

ATO has released a practical guide for taxpayers to prepare for a combined assurance review.

New client identity verification guidelines released by ATO and TPB

ATO and TPB has issued a joint announcement highlighting the release of new guidelines on client identify verification to improve security.

Requirement to lodge 2022 tax and other returns

ATO has issued for consultation draft instruments which cover income tax returns and other lodgments.

New reporting guidelines: charitable fundraising during disasters

Government has announced guidelines for the reporting of charitable fundraising during natural disasters.

Revenue forgone from tax concessions: benchmarks and variations

Treasury has released the tax benchmarks and variations statement 2021 that provides annual information on revenue gains and other matters.

NSW: new business support and updates for COVID-19

NSW government has announced a number of support programs to assist business recovery in the State including the Small Business Support Program.

Enhancing Tax Integrity Bill 2022 introduced

Bills have been introduced into the House of Reps to implement a variety of tax-related measures including record-keeping courses and intangible asset depreciation.

Loss carry back and other Measures Bill pass Parliament

Bill to implement the loss carry back extension and other measures have passed Parliament without amendment and awaits Assent.

Commercial debt forgiveness: love and affection exclusion

ATO has finalised its position on the natural love and affection exclusion in the commercial debt forgiveness rules.

GST annual performance report 2020-21

ATO has released the 2020-21 GST administration annual performance report containing information on GST cash collections, expenditure, etc.

FINANCIAL SERVICES

APRA priorities for 2022 released

APRA has released its policy and supervision priorities for the next 12-18 months including a focus on new and emerging financial risks.

AFS licensee to pay \$6m penalty for failing to supervise adviser

Federal Court has ordered an advice group to pay a penalty for failing to take reasonable steps to ensure that a former authorised representative provided appropriate advice.

FAR and compensation scheme of last resort Bills

The Senate Economics Committee has held a public hearing as a part of its inquiry into financial accountability and compensation of last resort Bills.

SUPERANNUATION

Prohibition on super trustees paying fines with fund money

The House of Reps Standing Committee on Economics will hold a public hearing about how super trustees have responded to recent legislative amendments re fines.

Super fund fee design and setting: APRA expectations

APRA has told the House of Reps Standing Committee on Economics that it expects the design and level of super fund fees to be supported by appropriate evidence.

REGULATOR NEWS

Tax agent terminated for dishonesty: TPB release

In a media release, the TPB brought to attention a recent case of a tax agent whose registration was terminated due to dishonesty.

APRA annual super bulletin 2020-21

APRA has released its annual super bulletin for 2020-21 showing total super assets of \$3.307 trillion.

TAXATION

Deductibility of COVID-19 tests for individuals

The Assistant Treasurer has issued a [media release](#) confirming that the Government will introduce legislation to make it clear that work-related COVID-19 test expenses incurred by individuals will be tax deductible, which will include Polymerase Chain Reaction ("PCR") tests and Rapid Antigen Tests ("RATs").

The release notes that this will ensure that FBT will not be incurred by employers if they provide COVID-19 testing to their employees for work-related purposes.

This will take effect from the beginning of the 2021-22 tax year and will be in place permanently.

The ATO has [advised](#) that it will provide more detailed advice and guidance once the measure is enacted. However, in the interim individuals who have incurred expenses in relation to COVID-19 tests should keep a record of those expenses.

Top 1000 combined assurance review: guidance

The ATO has released its [Tax risk management and governance - a practical guide to prepare for a combined assurance review](#) (the "Document"), designed to assist Top 1000 taxpayers review their income tax risk management and governance frameworks and prepare for a Top 1000 combined assurance review.

The Document sets out the approach the ATO employs in a Top 1000 combined assurance review for assessing income tax governance. This includes how the ATO identifies key controls in initial focus areas to seek alignment with its "justified trust" objectives, the evidence of a "tax control framework" and how the ATO rates such frameworks. The Document builds on previously released guidance designed to assist large public and multinational businesses to review their income tax governance frameworks and should be read in conjunction with that guidance.

The Document also sets out examples of the ATO's view of better practices in relation to income tax governance for different types of Top 1000 corporate entities, of which the ATO encourages other Top 1000 entity types to adapt for their purposes.

New client identity verification guidelines released by ATO and TPB

The ATO and the TPB issued a [joint announcement](#) highlighting the release of new guidelines on client identity verification that will also help improve security by circumventing identity theft. The guidelines are a part of the TPB and ATO's transition towards mandating minimum standards of client verification.

The TPB released practice note [TPB\(PN\) 5/2022: Proof of identity requirements for client verification](#) which sets out the TPB's proof of identity (POI) requirements for clients and representatives of clients. The PN provides practical guidance on minimum requirements for verifying a client's identity (required information, evidence to be sighted, etc) and steps to take where clients may not be able to provide the necessary identity documents due to extenuating circumstances. The PN also sets out guidance on POI frequency, record keeping (it is made clear that retaining identification documents is NOT recommended) and tips on recognising discrepancies.

To complement the TPB's PN, the ATO released [Strengthening client verification guidelines](#). The guidelines focuses primarily on verification methods, ie visual, comparing data against ATO systems and comparing data against government issued identity documents. Essentially the guidelines set out the application of the verification methods in combination to achieve a total of two separate POI documents – with examples.

It is recommended that both the ATO and TPB's guidances be read in conjunction with each other.

Requirement to lodge 2022 tax and other returns

The ATO has issued, for consultation, draft instrument [Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2022](#) (LODGE 2022/D1) which covers income tax returns and other lodgments for:

- franking account returns, including special rules for late balancing corporate tax entities that elect to use 30 June as a basis for determining their franking deficit tax liability;
- venture capital deficit tax returns;
- ancillary fund returns;
- trustees of SMSFs;

- member information statements by superannuation providers.

The draft also covers use of approved forms for lodgment, lodgment deferrals, lodgment exemptions, and penalties for non-lodgment.

The ATO also issued draft instrument [Notice of Requirement for Parents with a Child Support Assessment to Lodge a Return for the Income Year Ended 30 June 2022](#) (LODGE 2022/D2) for consultation. It requires liable and recipient parents under a child support assessment to lodge an income tax return for the income year, by the due date specified in the instrument. Such persons may not otherwise be required to lodge an income tax return.

Comments for both are due by 4 March 2022.

New reporting guidelines: charitable fundraising during disasters

The Government has [announced](#) guidelines for the reporting of charitable fundraising during natural disasters.

Charities can sometimes face intense public scrutiny during natural disasters about the timeliness of the distribution of donations. As a result, the Government has partnered with FIA to deliver a solution for improving transparency by way of a new [Practice Note](#) published on the Fundraising Institute Australia's (FIA) [website](#).

Revenue forgone from tax concessions: benchmarks and variations

Treasury has released the [Tax Benchmarks and Variations Statement 2021](#). The Statement provides annual information on Australian Government tax benchmarks and variations, as required by s 12 of the Charter of Budget Honesty Act 1998.

The majority of estimates included in the Statement are provided on a "revenue forgone" basis. Treasury advises that this is consistent with the approach taken by most OECD countries in their equivalent tax benchmarks and variations publications.

- The largest revenue gain variations relate to:
- exemption for foreign branch profits from income tax (B9);
- off-market share buy-backs (B26);
- income tax exemption for prescribed entities (B54);

- philanthropy – refund of franking credits for certain income tax exempt philanthropic entities (B60);
- statutory effective life caps (B76); and
- quarantining of capital losses (E22).

NSW: new business support and updates for COVID-19

The NSW government has [announced](#) a number of support programs to assist business recovery in the State, as follows.

- 2022 Small Business Support Program - available for eligible businesses with a turnover of between \$75,000 and \$50 million that experienced a minimum 40% decline in turnover in January 2022 and the first fortnight of February 2022. Employers will be eligible to receive 20% of weekly payroll as a lump sum for the month of February, with a minimum payment of \$750 per week and a maximum payment of \$5,000 per week. Non-employing businesses will receive \$500 per week, paid as a lump sum of \$2,000. This program is for the month of February only and application will be open from mid-February in 2022.
- Expanded small business fees and charges rebates - the existing rebate will increase from \$2,000 to \$3,000 in late March 2022. Eligible employing small businesses will also be able to use the rebate against the cost of rapid antigen tests (RATs) as well. Businesses who have already registered for the rebate will receive an automatic top-up of \$1,000 and newly registered businesses will receive a rebate of \$3,000. A full list of the eligible fees and charges (some 37 pages) can be found [here](#).
- Extending the Commercial Landlord Hardship grant – this grant has been extended until 13 March 2022 where grants of up to \$3,000 per month (GST inclusive) are available for eligible landlords who have provided rental waivers to affected tenants.
- Extending the NSW Performing Arts Relaunch Package – the Package will now be extended from 14 February 2022 to 30 April 2022.

Other business support includes:

- [Export Assistance Grants](#) of up to \$10,000 that is available for up to 1,000 export ready or export capable NSW businesses until 30 June 2022;
- [COVID-19 TechVoucher program](#) that provides support funding for technology-rich startups, scaleups or SMEs to accelerate the commercialisation of innovative R&D products and services that address health and economic disruptions caused by COVID-19; and

- [support payment arrangement](#) by Revenue NSW to help with payroll tax until 28 February 2022.

Enhancing Tax Integrity Bill 2022 introduced

The [Treasury Laws Amendment \(Enhancing Tax Integrity and Supporting Business Investment\) Bill 2022](#) and the accompanying [Income Tax Amendment \(Labour Mobility Program\) Bill 2022](#) has been introduced into the House of Reps. References to "the Bill" below are to the Enhancing Tax Integrity Bill, unless otherwise specified.

The Bill introduces a range of tax and tax-related measures, summarised below.

- It will amend the TAA 1953 to empower the ATO to direct an entity to complete an approved record-keeping course where it reasonably believes the entity has failed to comply with its tax-related record-keeping obligations as an alternative to existing financial penalties. The Commissioner will be able to issue a tax-records education direction to an entity three months after the day the Bill receives assent. This will implement a measure proposed in the 2019-20 MYEFO.
- Income tax exemptions will be provided from 1 July 2020 to 31 December 2028 for FIFA and an Australian subsidiary for the FIFA 2023 Women's World Cup to be held in Australia and New Zealand in 2023. This will operate from 1 July 2020 to 1 December 2028. It was announced in the 2020-21 MYEFO.
- The Bill will amend the ITAA 1997 to provide taxpayers with the choice to self-assess the effective life of certain intangible depreciating assets they start to hold on or after 1 July 2023, rather than using the statutory effective life currently specified in the law. The measure was announced in the 2021-22 Budget.
- The Bill will make grants received in relation to Cyclone Seroja under Category C of the Disaster Recovery Funding Arrangements 2018 non-assessable and non-exempt income for income tax purposes. It will apply to grants paid in 2021-22 and later income years. It was first announced in the 2021-22 MYEFO.
- The Bill (and the Labour Mobility Program Bill) will reduce the effective tax rate on certain income earned by foreign resident workers participating in the Australian Agriculture Worker Program or the Pacific Australia Labour Mobility scheme from 32.5% to 15%. It will apply to salary, wages, commission, bonuses or allowances paid to an employee under a relevant program on or after 1 March 2022. It was announced in the 2021-22 MYEFO.

The Bill also makes a number of what are termed "minor and technical amendments to various laws in the Treasury, Social Services and Veterans' Affairs portfolios". These have varying commencement dates.

Unrelated to tax, Sch 4 of the Bill will amend the *Competition and Consumer Act 2010*, Australian Consumer Law (as contained in Sch 2 of that Act) and the ASIC Act to strengthen and clarify the existing unfair contract terms provisions, to reduce the prevalence of unfair contract terms in consumer and small business standard form contracts. The amendments introduce a civil penalty regime prohibiting the use of and reliance on unfair contract terms in standard form contracts. The amendments also expand the class of contracts that are covered by the unfair contract terms provisions.

Loss carry back and other Measures Bill pass Parliament

The [Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021](#) has been passed by the Senate without amendment and awaits Assent.

The legislation implements the following amendments:

- loss carry back extension: the Bill will extend the loss carry back rules by 12 months, allowing eligible corporate tax entities to claim a loss carry back tax offset in the 2022-23 income year;
- retirement income covenant: the SIS Act will be amended to include a new retirement income covenant that will require trustees of RSEs to develop a retirement income strategy for beneficiaries who are retired or are approaching retirement;
- employee share schemes: cessation of employment will be removed as a taxing point for ESS interests which are subject to deferred taxation;
- corporate collective investment vehicles (CCIVs): the Bill will establish the tax and regulatory frameworks for CCIVs to be used for funds management. The CCIV tax framework seeks to ensure that the CCIV is taxed on a flow-through basis, with the objective that the general tax treatment of CCIVs and their members align with the existing tax treatment of AMITs;
- DGRs: update specifically listed deductible gift recipients in the ITAA 1997; and
- minor amendments: the Bill will make a number of miscellaneous and technical amendments to various Treasury laws.

Commercial debt forgiveness: love and affection exclusion

[Taxation Determination TD 2022/1](#), finalises the ATO's position on the "natural love and affection" exclusion in the commercial debt forgiveness rules. Pursuant to s 245-40(e) ITAA 1997, Div 245 does not apply if a creditor forgives a debt for reasons of natural love and affection. The key point in TD 2022/1 is that the creditor must be a natural person because the "reasons of natural love and affection" must be those of the creditor.

The ATO's views on this issue have evolved over time. In ATO ID 2003/589 (withdrawn on 6 February 2019), the ATO concluded that the exclusion applied where the love and affection emanated from the directors of a corporate creditor. In Draft TD 2019/D9, however, the ATO categorically stated that the creditor must be a natural person. The finalised Determination now says the exclusion may be available in "limited" circumstances where the natural person is acting in a trustee capacity or as a partner in a partnership. Further, the exclusion can apply where the debtor is not an individual (eg if a parent forgives a debt owed by their child's company).

Date of effect: retrospective. However, the ATO will not devote compliance resources to apply its revised view in relation to debts forgiven before 6 February 2019 that would have been covered by ATO ID 2003/589.

GST annual performance report 2020-21

The ATO has released the [2020-21 GST administration annual performance report](#), a requirement under the GST Administration Performance Agreement.

Its GST cash collections were \$73.1 billion, up from \$60.2 billion in 2019-20 (or 21.3% higher) – which was some 4.7% above the revised budget estimate. This included \$1 billion in GST for supplies of digital products and services, and low value imported goods (ie the "new" GST taxes). It also included \$1.1 billion from compliance and lodgment enforcement activities as part of the "GST compliance program" and \$0.5 billion in compliance liabilities raised from its "high-risk refund" case work.

Expenditure on GST administration for 2020-21 declined to \$538.2 million, some \$37.6.2 million (or 6.5%) below 2019-20.

The Deputy Commissioner, Small Business, Ms Deborah Jenkins, stated that the ATO "applied several administrative levers" in terms of the impact of the pandemic, including:

- deferrals of payments;
- quicker access to GST refunds; and
- options to enter low-interest payment plans for existing or future tax debts.

FINANCIAL SERVICES

APRA priorities for 2022 released

APRA has released its [Policy and Supervision Priorities](#) for the next 12-18 months based around the strategic themes of "protected today" and "prepared for tomorrow". The two information papers set out APRA's agenda for banks, insurers and superannuation trustees to prepare to engage with APRA on key areas.

APRA said its latest priorities focus on new and emerging financial risks, practices and business models that are testing traditional regulatory boundaries amid a "digital evolution". For the super industry, APRA's policies will look to strengthen strategic planning and member outcomes and implement the proposed Financial Accountability Regime (FAR). In the area of supervision, APRA's top priorities will focus on cyber risk preparedness; risk culture; insurance sustainability; sub-standard industry practices in super; and eradicating unacceptable product performance.

AFS licensee to pay \$6m penalty for failing to supervise adviser

The Federal Court has [ordered](#) RI Advice Group Pty Ltd to pay a \$6 million penalty for failing to take reasonable steps to ensure that its former authorised representative, John Doyle, provided appropriate financial advice, acted in his clients' best interests and put clients' interests ahead of his own. The conduct was examined as part of the Banking Royal Commission.

Mr Doyle was ordered by the Court to pay an \$80,000 penalty for inappropriately advising clients to invest in complex structured financial products for which he received upfront and ongoing commissions. ASIC said these complex products were

not suitable for the clients who were approaching retirement. The Court found that RI Advice, as an AFS licensee, did not have any adequate processes to identify when advisers were avoiding internal advice quality checks or recommending non-approved financial products. Although RI Advice's conduct was not deliberate, and it had compensated clients, the Court said the breaches were serious.

FAR and compensation scheme of last resort Bills

The Senate Economics Committee has held a [public hearing](#) as part of its inquiry into the Financial Accountability Regime Bill 2021, Financial Sector Reform (Hayne Royal Commission Response No 3) Bill 2021 and Financial Services Compensation Scheme of Last Resort Levy Bill 2021.

The FAR Bill proposes to extend the Banking Executive Accountability Regime (BEAR) to all APRA-regulated entities. The Bills will also establish the framework for a Compensation Scheme of Last Resort (CSLR) which will facilitate the payment of up to \$150,000 in compensation for eligible consumers who have received a relevant determination from the Australian Financial Complaints Authority (AFCA) which remains unpaid.

The Committee released the various [submissions](#) from industry bodies and professional associations which have raised concerns with aspects of the proposed measures. For example, the professional bodies have called for the CSLR to address issues surrounding professional indemnity insurance and run-off cover where a financial services business ceases to operate.

SUPERANNUATION

Prohibition on super trustees paying fines with fund money

The House of Reps Standing Committee on Economics will hold a [public hearing](#) about how superannuation trustees have responded to recent legislative amendments that seek to prevent fund money from being used to pay for fines. The hearing will be conducted as part of the Committee's ongoing Review of the Four Major Banks and other Financial Institutions.

In response to the Banking Royal Commission, the Government amended ss 56 and 57 of the SIS Act to prevent super trustees from being indemnified out of the assets of the fund for certain breaches and penalties from 1 January 2022. Committee Chair, Jason Falinski, said there have been reports of super funds seeking judicial opinions in response to these new provisions [eg Application by NGS Super Pty Ltd atf NGS Super [2021] NSWSC 1694]. The Committee will hear from APRA, ASIC, Treasury and UNSW Associate Professor Scott Donald as to how these new provisions are being applied.

Super fund fee design and setting: APRA expectations

APRA has [told](#) the House of Reps Standing Committee on Economics that it expects the design and level of superannuation fund fees to be supported by appropriate documentary evidence.

Appearing at a recent public hearing, APRA said it made relevant Court submissions where super trustees sought judicial advice to amend their trust deeds in response to legislative amendments that seek to prevent fund money from being used to pay for fines. APRA Member Margaret Cole said the regulator ensured the Courts were fully appraised of all relevant legal matters. Ms Cole said the Courts concluded that the deed amendments to allow for the charging of certain fees were not inconsistent with ss 56(2) and 57(2) of the SIS Act.

REGULATOR NEWS

Tax agent terminated for dishonesty: TPB release

In a [media release](#), the TPB brought to attention a recent case of a tax agent whose registration was terminated due to dishonesty. In *Cerrah and Tax Practitioners Board [2022] AATA 7*, the Victorian tax agent failed to overturn the TPB's decision to terminate her registration, although her "ban" was reduced from five to four years.

In that case, the tax agent was alleged to have failed to comply with various provisions of the Code of Conduct such as:

- making several misrepresentations to multiple federal government agencies, and received higher government benefits than she may have otherwise been entitled to;
- failing to advise the ATO that she was required to lodge income tax returns for multiple years, and misrepresenting her assessable income in those years;
- misled the TPB by making a number of false declarations, including declaring that she had no outstanding personal tax obligations, in an attempt to maintain her tax agent registration; and
- misled the TPB about meeting the continuing professional education (CPE) requirements.

APRA annual super bulletin 2020-21

APRA has released its [Annual Superannuation Bulletin for 2020-21](#) showing total super assets of \$3.307 trillion (of which \$907bn was held in MySuper products). A total of \$822bn was held in 597,900 self-managed super funds (SMSFs) as at 30 June 2021. The average SMSF account balance was \$709,000 (while MySuper had an average of \$59,768).