

TAXATION

ATO urges taxpayers to lodge only when “tax ready”

ATO has warned taxpayers to only lodge their tax return when their income statement is marked as “tax ready” or risk delays.

Nil withholding draft instrument: low income minors

A draft legislative instrument has been released which proposes to vary to nil the amount required to be withheld re payee who is a “low income minor”.

Former ATO employee in court for alleged corruption

ATO has report that two individuals, including a former ATO employee faced Court in relation to alleged corruption offences as a part of a joint-agency investigation.

Thresholds for charities increase from 1 July 2022

Government has issued a media release reminding readers that the small and medium charity thresholds increase from 1 July 2022.

Div 7A: ATO finalises its new approach

ATO has released a determination that finalises its approach to unpaid present entitlements and sub-trusts.

Top tips to renew tax or BAS agent registration: TPB

TPB has released a list of top tips to help tax practitioners renew their registration that cover both individual and partnership agents.

FINANCIAL SERVICES

Remuneration disclosure and reporting: APRA discussion paper

APRA has released a discussion paper on the proposed remuneration disclosure and reporting requirements for banks, insurers and super funds regulated by APRA.

ASIC legal action against wholesale AFS licensee

ASIC has commenced civil penalty proceedings against a wholesale AFS licensee for allegedly operating a “licensee for hire” business model.

ASIC action against Mercer Financial

ASIC has commenced civil penalty proceedings against Mercer Financial Advice (Australia) Pty Ltd for allegedly making false or misleading representations.

SUPERANNUATION

Government to review Your Future, Your Super changes

Government has announced it will review the Your Future, Your Super laws and pause for 12 months the extension of APRA performance tests to certain super products.

Early super release advice results in dishonest conduct charges

A financial adviser has been charged with dishonest conduct and providing unlicensed personal financial product advice re illegal early release of super.

ASIC action against SMSF auditors

ASIC has deregistered five SMSF auditors and imposed additional conditions on the registration of three others re alleged breaches.

Winding up a SMSF: ATO guide

ATO has published a guide setting out the obligations when winding up a SMSF, including a checklist.

Military invalidity benefits and super payments: draft instrument

ATO has released a draft legislative instrument proposing an alternative method for calculating tax free and taxable components of a super benefit paid to ADF members.

REGULATOR NEWS**Super calculator and retirement estimates: ASIC guidance**

ASIC has released guidance which explains what super calculator and retirement estimate providers need to do to rely on ASIC's recent conditional relief.

Joint Bodies letter to Assistant Treasurer on TASA reforms

The Joint Bodies have written to the new Assistant Treasurer, the Hon. Stephen Jones MP, urging the government to proceed with implementation of key recommendations made in the Report of the Review of the Tax Practitioners Board (TPB).

TAXATION

ATO urges taxpayers to lodge only when “tax ready”

The ATO has issued a [media release](#) warning that taxpayers risk delays to their tax refund (if any) or have their return adjusted if they lodge their tax return before their income statement is marked as "Tax ready", ie pre-filled with pertinent information from employers, banks, government agencies and health funds.

The ATO said that taxpayers are more likely to have their return adjusted or experience a delay for refunds if they lodge their return before all their income has been entered. In July 2021, over 140,000 taxpayers had their 2020-21 tax returns amended before the ATO issued their tax assessments.

"Waiting for the ATO to upload information means people don't have to roll the dice when they lodge, and it's less likely an amendment will need to be made later, which could result in a tax debt," Assistant Commissioner Tim Loh said.

The ATO also reminded taxpayers that, if pre-filled figures needed to be changed, they must have the appropriate records to support the adjustment. Taxpayers can fix errors or omissions in their tax return through the [ATO online amendment process through myGov](#), if required.

Nil withholding draft instrument: low income minors

The draft [Taxation Administration: Withholding Variation to Nil for Low Income Minors Legislative Instrument 2022](#) (LI 2022/D10) proposes to vary to nil the amount required to be withheld by a payer who makes relevant payments to a payee who is a "low income minor" and who does not provide a TFN declaration or quote an ABN. Further, it proposes to remove the requirement that low income minors provide a TFN declaration or quote an ABN when their earnings are below the tax-free threshold.

Put simply, the Draft will mean that payers can make payments with no obligation to withhold tax to payees (or suppliers) who are aged under 18 and who have not quoted their TFN (or ABN) to the payer before the payment is made.

There is nothing new in the Draft, ie it maintains what has been the treatment since 2006. It is issued because the existing legislative instrument is due to sunset on 1 October 2022.

The consultation period closes on 14 July 2022 (contact details are in the Draft).

Former ATO employee in court for alleged corruption

The ATO has [reported](#) that two individuals, including a former ATO employee, faced Parramatta Local Court in relation to alleged corruption offences as part of a joint-agency investigation led by the Australian Commission for Law Enforcement Integrity (ACLEI).

It was alleged in court that the former ATO employee accepted a bribe of \$150,000 from a taxpayer the ATO was auditing to reduce personal and business tax debts in excess of \$6 million. Search warrants were executed at a number of residential and business premises in Sydney and surrounding suburbs on 9 June 2022.

The former ATO employee was charged with allegedly receiving a "corrupting benefit" as a Commonwealth public official, as well as unauthorised access to computer data under the Criminal Code Act 1995 (Cth). The ATO said a civilian associate, who also appeared at Parramatta Local Court, was charged with allegedly providing a corrupting benefit to a Commonwealth public official, and bribery of a Commonwealth public official.

Ms Jaala Hinchcliffe, the Integrity Commissioner and head of ACLEI, said the investigation (Operation Barker) has resulted in the first arrest of an ATO employee for corruption related offences since the ATO came within ACLEI's jurisdiction on 1 January 2021.

Thresholds for charities increase from 1 July 2022

The Assistant Minister for Competition, Charities and Treasury (Mr Leigh) has issued a [media release](#) reminding readers that the small charity and medium charity thresholds increase from 1 July 2022. The increase means that more charities will be included in the regulatory concessions that apply to such entities.

The following takes effect from 1 July 2022.

- The annual revenue threshold for small charities will increase from \$250,000 to \$500,000 annual revenue. This will impact 2,500 charities, removing their obligation to produce reviewed financial statements.

- The annual revenue threshold for medium charities will increase from \$1 million to \$3 million. This will impact 2,700 charities which will no longer need to produce audited financial statements.

Div 7A: ATO finalises its new approach

The ATO has released [Taxation Determination TD 2022/11](#) on the application of Div 7A in relation to unpaid present entitlements (UPEs) and sub-trusts. Specifically, TD 2022/11 sets out the ATO's revised draft views that a private company beneficiary provides "financial accommodation" to the trustee or a shareholder (a loan for Div 7A purposes) if:

- in relation to a UPE - the company has knowledge of an amount that it can demand immediate payment of but does not demand payment, thereby consenting to the trustee retaining that amount to continue using it for trust purposes; or
- in relation to a sub-trust held for the company's benefit - the company has knowledge that a shareholder (or shareholder's associate) is using all or part of the sub-trust funds. A Div 7A loan will arise in this situation even if the sub-trust fund is on commercial terms, with a return paid to the fund.

A company will be deemed to have the requisite knowledge if the company and trustee (or sub-trustee) "have the same directing mind and will".

Date of effect and compliance approach: TD 2022/11 applies to trust entitlements arising on or after 1 July 2022. For pre-1 July 2022 entitlements, the ATO undertakes not to devote compliance resources to sub-trust arrangements that correspond to the guidance in TR 2010/3 and PS LA 2010/4 (both now withdrawn with effect from 1 July 2022), even if the arrangements are put in place after 30 June 2022.

Top tips to renew tax or BAS agent registration: TPB

The TPB has [released](#) a list of top tips to help tax practitioners renew their registration. The tips cover both individual and partnership agents. The TPB also has a renewal video that outlines all renewal requirements.

FINANCIAL SERVICES

Remuneration disclosure and reporting: APRA discussion paper

APRA has released a [discussion paper](#) on the proposed remuneration disclosure and reporting requirements for banks, insurers and superannuation funds regulated by APRA. The proposed requirements will support the cross-industry Prudential Standard CPS 511 (Remuneration).

APRA has proposed to require APRA-regulated institutions to publicly disclose information on how their remuneration arrangements are designed, and how risk is factored into remuneration outcomes for key executives. Large and complex financial institutions will also be required to disclose how they have placed a material weight on non-financial metrics (such as risk management and conduct) and remuneration outcomes for the CEO, other key executives and material risk-takers.

Date of effect: The proposed requirements will take effect after the implementation of CPS 511 in 2023 for large entities (and 2024 for smaller entities).

Submissions are due by 7 October 2022.

ASIC legal action against wholesale AFS licensee

ASIC has [commenced](#) civil penalty proceedings against a wholesale AFS licensee for allegedly operating a "licensee for hire" business model and failing to have adequate risk management systems and failing to supervise its representatives.

ASIC has alleged that the AFS licensee - Lanterne Fund Services Pty Ltd (Lanterne) - conducted a business of authorising other financial services providers to operate as corporate authorised representatives (CARs) or authorised representatives (ARs) under its AFS licence. Around 62 to 69 CARs operated under Lanterne's AFSL in the relevant period, with up to 205 ARs operating under those CARs. Lanterne itself did not provide financial services directly to clients but instead charged the CARs an upfront fee of \$5,000 to become authorised under its AFSL, and ongoing fees of \$3,000 per month. The total funds under management of all CARs reached \$1.658 billion.

ASIC alleged that Lanterne operated a wholly deficient business, with no compliance staff and almost no risk management processes in place. ASIC further alleged that Lanterne breached s 912A(1) of the Corporations Act 2001 by failing to do all things necessary to ensure that the financial services were provided efficiently, honestly, and fairly. ASIC has asked the Court to impose penalties and appoint an independent expert, and for Lanterne to implement a risk management and compliance program.

ASIC action against Mercer Financial

ASIC has [commenced](#) civil penalty proceedings against Mercer Financial Advice (Australia) Pty Ltd for allegedly making false or misleading representations to its customers about fees charged and services that were not provided, and for failing to provide fee disclosure statements.

ASIC's [concise statement](#) in the Federal Court alleges that Mercer made false or misleading representations on more than 5,500 occasions between 2016 and 2019 by claiming that it had provided all of the services it was required to provide, when it had not. ASIC acknowledged that Mercer has already completed a remediation program for more than 3,400 customers and paid \$45m in compensation.

SUPERANNUATION

Government to review Your Future, Your Super changes

The Government has [announced](#) that it will task Treasury to review the Your Future, Your Super laws (YFYS laws) and pause for 12 months the extension of APRA performance tests to Choice products. The Government said it is aware of concerns that the YFYS laws have the potential to create "perverse or unintended" outcomes by discouraging certain investment decisions or certain infrastructure investments.

The review will take place after the second round of MySuper performance tests by August 2022. The Assistant Treasurer, Stephen Jones, said the review will consider whether the performance test has had any significant unintended consequences for MySuper products and assess how the test should be applied to other superannuation products. In the meantime, the Government will pause the

extension of the APRA performance test beyond MySuper to Choice products for 12 months to provide time to consider and consult on any changes.

In addition, the review will consider if there have been any unintended consequences from other YFYS reforms. In particular, it will consider concerns relating to the regulatory complexity of the best financial interests duty. However, the Assistant Treasurer said the review will not look to unwind the "stapling" measures which seek to reduce duplicate accounts, nor remove the requirement for trustees to meet high performance and probity standards.

The Government also said it will release Exposure Draft legislation to implement its election proposal to adjust the performance test for faith-based products, and to amend the annual members' meetings disclosure rules in the SIS Regs.

Early super release advice results in dishonest conduct charges

A Victorian financial adviser has been [charged](#) with dishonest conduct and providing unlicensed personal financial product advice in relation to the illegal early release of superannuation. ASIC said the adviser, an authorised representative of an AFS licensee, allegedly encouraged 15 consumers to tell their super funds that they were not working, had permanently retired, or were working less than 10 hours per week to enable them to access their super when they were not entitled to.

ASIC action against SMSF auditors

ASIC has [deregistered](#) five SMSF auditors and imposed additional conditions on the registration of three others in respect of alleged breaches of the auditing and assurance standards and independence requirements (eg by auditing an SMSF for which the auditor had prepared the financial statements). In one case, ASIC imposed additional conditions on an auditor for not obtaining sufficient appropriate audit evidence about the market value of properties, and compliance with limited recourse borrowing arrangement (LRBA), in-house asset, related party and arm's length rules.

Winding up a SMSF: ATO guide

The ATO has published a guide, [Winding up a self-managed super fund](#), setting out the obligations when winding up a SMSF, including a checklist. This is another

lifecycle guide by the ATO and follows "Starting a self-managed super fund" which was published in 2021.

The ATO guide sets out the tax, reporting, audit and compliance obligations that must be completed before lodging a final annual return to wind up the fund. Lodging a final SMSF annual return will notify the ATO of the intention to wind up the SMSF. The ATO says it is important not to close the fund's bank account before paying all final liabilities, receiving all final refunds from the ATO and completing any rollovers using SuperStream.

Military invalidity benefits and super payments: draft instrument

The ATO has released Draft Legislative Instrument ([LI 2022/D9](#)) proposing an alternative method under s 307-125 of the ITAA 1997 for calculating the tax free and taxable components of a superannuation benefit paid to certain former ADF members during the 2022-23 financial year. This follows the decision in *FCT v Douglas* [2020] FCAFC 220 which held that a lump sum payment in arrears of certain military invalidity benefits was a super lump sum and subject to concessional tax.

Draft LI 2022/D9 will apply to such lump sums paid as a pension during the 2022-23 financial year to certain former ADF members in accordance with the Defence Force Retirement and Death Benefits Act 1973 and the Trust Deed referred to in s 4 of the Military Superannuation and Benefits Act 1991. The alternative method is that the tax components of the superannuation benefit are taken to bear the same proportion to the amount of the corresponding components of the superannuation income stream that commenced on or after 20 September 2007.

Date of effect: The instrument will commence the day after it is registered.

Comments due by 14 July 2022.

See also the [ATO update](#) on its remediation program for taxpayers impacted by the Douglas decision. The ATO said it will pre-fill 2022 tax returns for relevant military invalidity benefit payments reported by the Commonwealth Superannuation Corporation. Accordingly, the ATO says impacted taxpayers should wait until mid-August 2022 to lodge.

REGULATOR NEWS

Super calculator and retirement estimates: ASIC guidance

ASIC has released [Regulatory Guide RG 276 \(Superannuation forecasts: Calculators and retirement estimates\)](#). It explains what superannuation calculator and retirement estimate providers need to do to rely on ASIC's recent conditional relief set out in ASIC Corporations (Superannuation Calculators and Retirement Estimates) Instrument 2022/603. The instrument took effect on 1 July 2022. ASIC has provided a six-month transition period, during which providers of superannuation forecasts may rely upon either the existing relief or the new relief. Only the new relief will be available from 1 January 2023.

Joint Bodies letter to Assistant Treasurer on TASA reforms

To enhance the integrity of tax practitioners for clients, and in turn government revenues, the Joint Bodies call on the government to prioritise consultation on:

- How best to ensure substantive operational and financial independence of the TPB
- More contemporary and accessible education and experience requirements to be reflected in the Tax Agent Services Regulations (TASR), and
- Improving the TPB's ability to deal with breaches of the Tax Agents Services Act 2009 and increasing the level of publicly available information.

[View the letter here.](#)