

TAXATION

FBT: adequate alternative records – draft instruments

ATO has released five draft instruments specifying acceptable record-keeping obligations which can be used by employers as an alternative to employee declarations.

Notice of visa data-matching program

ATO has registered a notice that it will acquire visa data from the Department of Home Affairs for the 2023-24 thought to 2025-26 income years.

GST: supplies of combination food

ATO has released a draft GST determination which sets out its preliminary views on whether a food is a “combination” food.

ATO consultation report September 2023

The ATO have released the ATO consultation report for September 2023 which has details on consultation matters, draft advice and guidance products and recent news from stewardship and other consultation groups.

S100A trust reimbursement agreements update

The ATO has issued amended versions of its s100A guidance on the parties to a trust reimbursement agreements, with retrospective effect.

FINANCIAL SERVICES

Financial advice registration requirement extended

ASIC has registered an instrument that puts in place further interim measures to delay the requirement for relevant providers to be registered with ASIC.

Payments systems reform: RBA to get more regulatory powers

Treasury has released draft legislation which seeks to impose regulation on digital payment services.

SUPERANNUATION

Payday super reforms: consultation paper

Treasury released a consultation paper on the proposal for all employers to pay employees' super guarantee at the same time as salary and wages.

REGULATOR NEWS

ASIC News

Updates from ASIC in the past week including media releases, news, articles and speeches.

TAXATION

FBT: adequate alternative records – draft instruments

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The five draft instruments are as follows.

- [Fringe Benefits Tax Assessment \(Adequate Alternative Records – Temporary Accommodation Relating to Relocation\) Determination 2023](#) – applies where: (i) the employer seeks to reduce the taxable value of a benefit in respect of providing temporary accommodation or temporary hire of household goods to an employee and their family members (under s 61C of the FBTAA); and (ii) the temporary accommodation is required solely because the employee is required to change their usual place of residence in order to perform the duties of their employment (ATO ref: LI 2023/D18).
- [Fringe Benefits Tax Assessment \(Adequate Alternative Records – Otherwise Deductible Benefits\) Determination 2023](#) – applies where an employer seeks to reduce the taxable benefit of a fringe benefit by applying the otherwise deductible rule, specifically employers reducing the taxable value of an expense payment fringe benefit (described in s 24), a property fringe benefit (described in s 44), or a residual fringe benefit (described in s 52 of the FBTAA). (ATO ref: LI 2023/D19.)
- [Fringe Benefits Tax Assessment \(Adequate Alternative Records – Living-Away-From-Home Allowance – Maintaining an Australian Home\) Determination 2023](#) – applies in respect of living-away-from-home allowance (LAFHA) fringe benefits where the employee lives away from their Australian home, receives a LAFHA fringe benefit and the employer seeks to reduce the taxable value of the benefit under s 31(2) of the FBTAA (ATO ref: LI 2023/D20).
- [Fringe Benefits Tax Assessment \(Adequate Alternative Records – Fly-in Fly-out and Drive-in Drive-out Employees\) Determination 2023](#) – specifies the records that the ATO will accept from an employer in respect of LAFHA fringe benefit where the employee works on a fly-in fly-out or drive-in drive out basis, and the employer seeks to reduce the taxable value of the benefit under s 31A of the FBTAA (ATO ref: LI 2023/D21).
- [Fringe Benefits Tax Assessment \(Adequate Alternative Records – Private Use of Vehicles Other Than Cars\) Determination 2023](#) – applies to residual fringe benefits relating to the private use of a motor vehicle other than a car, where the employer uses the otherwise deductible rule in s 52 of the FBTAA and chooses to ascertain the amount of this reduction by reference to the number of business

use and/or private use kilometres travelled in the vehicle (ATO ref: LI 2023/D22).

When issued in final form, the legislative instruments will all commence on 1 April 2024. The consultation period closes on 9 November 2023, again for all drafts.

Notice of visa data-matching program

The ATO has [registered](#) a notice that it will acquire visa data from the Department of Home Affairs for 2023-24 through to 2025-26. The program seeks to:

- help ensure that individuals and businesses are fulfilling their tax and super reporting obligations;
- promote voluntary compliance;
- continue to refine the ATO's understanding of the tax and super risks across visa holders, visa sponsors and migration agents;
- develop and implement treatment strategies to improve voluntary compliance, which may include educational or compliance activities as appropriate;
- help ensure visa populations fulfil their registration, lodgment, correct reporting and payment of tax and super obligations;
- test the accuracy and strengths in the ATO's risk detection models and treatment systems and practices and identify areas for improvement;
- identify potentially new or emergent approaches to fraud and those entities controlling or exploiting the visa framework;
- improve the integrity of the tax and superannuation systems by cancelling ABNs of ineligible ABN holders; and
- support compliance activities under Australia's foreign investment rules.

GST: supplies of combination food

[Draft GST Determination GSTD 2023/D1](#) sets out the ATO's preliminary views on whether a food is a "combination" food for the purposes of s 38-3(1)(c) of the GST Act. That section provides that a supply of food is not GST-free if the food is of a kind specified in the third column of the table in clause 1 of Sch 1 (eg confectionery and cookies), or a combination of one or more foods, at least one of which is food of such a kind.

In the recent case of *Chobani Pty Ltd and FCT* [2023] AATA 1664, the AAT found that the taxpayer's Flip Strawberry Shortcake flavoured yoghurt was a combination food for s 38-3(1)(c) purposes. Having regard to the AAT's decision, the ATO says that three principles apply in determining whether there is a supply of a combination food:

1. there must be at least one separately identifiable taxable food;
2. this separately identifiable taxable food must be sufficiently joined together with the overall product; and

3. this separately identifiable taxable food must not be so integrated into the overall product, or be so insignificant within that product, that it has no effect on the essential character of that product.

Whether food is a combination food is evaluated at the point of supply.

Proposed date of effect: retrospective. However, the ATO will continue to act in accordance with PS LA 2011/27 (Determining whether the ATO's views of the law should be applied prospectively only) and PS LA 2012/2(GA) (GST classification of food and beverage items). The ATO has also identified various documents that will need to be updated or withdrawn (see paras 47 to 51).

Comments on Draft GSTD 2023/1 are due by 10 November 2023

ATO consultation report September 2023

The ATO have said that In addition to the monthly consultation report, you can access further information on all nine of their stewardship groups, including key messages, on the stewardship group pages of their [website](#).

More information on the ATO consultation report for September 2023 can be obtained [here](#)

S100A trust reimbursement agreements update

The ATO has issued amended versions of TR 2022/4 and PCG 2022/2 which is its s100A guidance on the parties to a trust reimbursement agreements, with retrospective effect.

Further, the ATO says parties include advisers, who formulate the documentation and implement the agreement with the knowledge and assent of one or more parties to the transactions (or the party's controllers, where relevant).

Further information can be obtained on [TR 2022/4](#) and [PCG 2022/2](#)

FINANCIAL SERVICES

Financial advice registration requirement extended

ASIC has registered the [ASIC Corporations \(Amendment\) Instrument 2023/730](#) (the "Amending Instrument"). The Amending Instrument puts in place further interim measures to delay the requirement (the "Registration Requirement") for "relevant providers" to be registered with ASIC as a precondition for providing personal advice ("Financial Advice") to retail clients about relevant financial products.

By way of background, the requirement for relevant providers to be registered was

introduced by the Financial Sector Reform (Hayne Royal Commission Response -- Better Advice) Act 2021 ("Better Advice Act"). The registration provisions, as inserted by the Better Advice Act, staggered commencement dates so that Australian financial services ("AFS") licensees and relevant providers could continue providing Financial Advice without being registered up to 1 January 2023. Subsequent steps were taken by the Government to delay the Registration Requirement to 1 October 2023.

The Amending Instrument provides for a further delay to the Registration Requirement to 1 February 2024 in order to allow:

- Parliament to further consider the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 ("TLAB 1"), which gives ASIC the power to use assisted decision-making systems when processing registration applications and facilitate multiple registration of relevant providers;
- ASIC to implement TLAB 1 if TLAB 1 is enacted;
- industry to understand its rights and obligations concerning the Registration Requirement; and
- AFS licensees to register their relevant providers with ASIC prior to the Registration Requirement commencing.

Payments systems reform: RBA to get more regulatory powers

Treasury has released [draft legislation](#) which seeks to impose regulation on digital payment services.

It will update the definition of "payment" and "payments systems" to capture new payment methods that are widely used today, as well as those that may emerge in the future. The amendments will:

- Ensure the Reserve Bank of Australia can regulate new and emerging payments systems, such as digital wallet providers, and
- Introduce a new Ministerial designation power that would allow particular payments services or platforms that present risks of national significance to be subject to additional oversight by regulators.

While this clearly has no direct impact on tax, super, GST etc, it is an important area that will be subject to major change that will impact all businesses (and their advisers) – and so is reported for the purposes of "practice management".

SUPERANNUATION

Payday super reforms: consultation paper

Treasury has released the [Securing Australians' Superannuation Budget 2023-24 Consultation paper](#). This follows the announcement in the May 2023 Federal Budget that the Government will require all employers to pay their employees' super guarantee

at the same time as their salary and wages from 1 July 2026. The consultation paper consists of two parts.

The first addresses the increased frequency in payment of the SG. The start date of 2026 is designed to enable employers, digital service providers, superannuation funds, and other impacted stakeholders the opportunity to make necessary system changes to accommodate the increased frequency of payment of SG contributions.

The second relates to the Government's intention to step up investment in the ATO's data matching capabilities, to increase SG compliance. From 2023, the ATO will invest in creating a new unified database which matches STP data from employers and Member Account Transaction Service (MATs) data from superannuation funds at scale.

The consultation paper seeks feedback on:

- defining payday super;
- updating the SG charge;
- compliance mechanisms; and
- other areas (SG reporting frameworks etc).

The Government also intends to set unpaid SG recovery targets for the ATO, which will be reported annually, as part of its Securing Australians' Superannuation package.

Submissions close 3 November 2023.

If you have any feedback, please send these comments to ipaadvocacy@publicaccountants.org.au

REGULATOR NEWS

ASIC news

ASIC has released the following updates in its Newsroom section:

- [13 October 2023 - MEDIA RELEASE 23-276MR ASIC improves outcomes for Australians in 2022–23](#)
- [12 October 2023 – SPEECH Opening Statement, Inquiry into management and assurance of integrity by consulting services, 12 October](#)
- [12 October 2023 – SPEECH 'The Princess and the Pea': Getting the basics right in insurance](#)
- [11 October 2023 - MEDIA RELEASE 23-275MR ASIC announces action against 11 SMSF auditors](#)
- [10 October 2023 - MEDIA RELEASE 23-274MR Condor Blanco Mines Limited fined \\$100,000 for financial report failures](#)

- [10 October 2023 - MEDIA RELEASE 23-273MR Former BBY Chief Executive Officer charged with aiding and abetting fraud](#)
- [10 October 2023 - NEWS ITEM ASIC extends electronic precontractual disclosure legislative instrument](#)
- [10 October 2023 - NEWS ITEM ASIC remakes financial reporting legislative instrument](#)
- [09 October 2023 - NEWS ITEM ASIC Annual Forum 2023: Last chance for early bird pricing](#)
- [09 October 2023 - MEDIA RELEASE 23-272MR NSW director sentenced for falsifying company books](#)