TAXATION

New Commissioner of Taxation announced
The Government has announced the appointment of Rob Heferen as the Commissioner of Taxation to lead the ATO for a period of seven years.

2024-25 Pre-Budget submissions open
The Government is seeking submissions from individuals, businesses and community groups on their views for priorities for the 2024-25 Federal Budget.

Draft report on philanthropic giving released
The Government has released the draft report on philanthropic giving by the Productivity Commission.

Latest issue of ATO's interpretation NOW! released
The ATO has released Episode 102 of its series on statutory interpretation entitled interpretation NOW!.

Multinationals Bill: referred to Senate Committee for report
The Government's proposed amendments to the Making Multinationals Pay Their Fair Share Bill have been referred to the Senate Economics Legislation Committee.

Administrative Review Tribunal to replace AAT: Bills introduced
Bills have been introduced that propose to establish the Administrative Review Tribunal - a new federal administrative review body to replace the AAT.

Classifying workers as employees or contractors
Taxation Ruling TR 2023/4 has been issued by the ATO and explains when an individual is an "employee" for PAYG withholding purposes.

Trustee risk reserves: deductibility of fund payments to trustee
Draft Determination TD 2023/D3 has been issued and considers the deductibility of payments made by a superannuation fund to its trustee.

Beta period extended for the updated ato.gov.au website
The ATO recently made the Beta version of the updated ato.gov.au the primary or ‘default’ website for users visiting ato.gov.au. The ATO have advised that they are ‘extending the Beta phase through to January 2024 while’ they ‘continue to refine and improve the Beta website experience based on user feedback’.

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.

Two Bills in House referred to Committees

Two Bills currently before the House of Reps have been referred to Parliamentary legislative Committees and accordingly will not be passed this year.

Quality of advice review: final Government response released

The Government has issued its final response to the Quality of Advice review report prepared by Michelle Levy.

SUPERANNUATION

Super balances above $3m: Bills referred to Senate Committee

Bills which propose to impose an extra 15% tax on superannuation earnings for certain individuals has been referred to the Senate Committee.

Retirement phase of super: Treasury discussion paper released

The Government has issued the discussion paper which outlines the challenges Australians face when navigating the complexities of their retirement phase.

Sustainability of group life insurance in super: APRA survey findings

APRA has issued a letter to industry in relation to its findings of a survey on the sustainability of group life insurance in superannuation.

Reminder: Lodge SMSF auditor annual statement

‘All approved and suspended SMSF auditors are required to lodge an SMSF auditor annual statement. All SMSF auditors must lodge their annual statement within 30 days of their registration anniversary date. If you do not complete your annual statement, ASIC have advised that they ‘may cancel your registration’.

SMSF Annual return - Did you miss your lodgment due date?

‘Find out what to do if you were required to lodge your SMSF annual return (SAR) on 31 October but missed the due date’.

REGULATOR NEWS

Anti-money laundering - what you need to know

‘Today AUSTRAC released its regulatory priorities for 2024. These priorities identify five key areas’…to ‘build resilience to money laundering, terrorism financing and other serious crimes’

ASIC News

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

TAXATION

New Commissioner of Taxation announced

The Government has announced the appointment of Rob Heferen as the Commissioner of Taxation to lead the ATO for a period of seven years. Mr Heferen will commence in the role on 1 March 2024 as Chris Jordan's term as Commissioner concludes on 29 February 2024.

Mr Heferen is currently the Chief Executive Officer of the Australian Institute of Health and Welfare, a role he has held since 2021. He has over 30 years' experience in the Australian Public Service, including over ten years in senior leadership roles. Mr Heferen had previously worked at the ATO and served as the Deputy Secretary of Revenue Group at the Treasury between 2011 and 2016, where he had responsibility for tax policy, tax legislation and revenue forecasting.

2024-25 Pre-Budget submissions open

The Government is seeking submissions from individuals, businesses and community groups on their views for priorities for the 2024-25 Federal Budget. Further information on how to lodge submissions is available on the Treasury website.

Submissions are due by 25 January 2024.

Draft report on philanthropic giving released

The Government has released the draft report on philanthropic giving by the Productivity Commission. The purpose of the review is to boost donations to charities and meet the Australian Government's goal of doubling philanthropic giving by 2030.

The final report is expected to be provided to the Government in the first half of 2024.

Latest issue of ATO's interpretation NOW! released

The ATO has released Episode 102 of its series on statutory interpretation entitled interpretation NOW!.

Multinationals Bill: referred to Senate Committee for report

The Government's proposed amendments to the Treasury Laws Amendment (Making Multinationals Pay Their Fair Share - Integrity and Transparency) Bill 2023 have been referred to the Senate Economics Legislation Committee for an inquiry and report due by 5 February 2024. Accordingly, the Bill will not be passed this year.

The Government's proposed Senate amendments (on sheet RU100) to the Thin Capitalisation measures in the Bill were previously flagged in exposure draft legislation. Broadly, the Government amendments to the Bill cover: choices under Subdiv 820-AA; the meaning of "obligor group"; "tax EBITDA"; the third party debt test; debt deduction creation rules and other matters. Further details are set out in the Supplementary EM.

Date of effect: The amendments are proposed to commence at the start of the first quarter following assent and apply to assessments for income years beginning on or after 1 July 2023. However, Subdiv 820-EAA (the debt deduction creation rules) applies in relation to assessments for income years starting on or after 1 July 2024.

Administrative Review Tribunal to replace AAT: Bills introduced

The Administrative Review Tribunal Bill 2023 and Administrative Review Tribunal (Consequential and Transitional Provisions No 1) Bill 2023 has been introduced in the House of Reps. The Bills propose to establish the Administrative Review Tribunal (the Tribunal) - a new federal administrative review body to replace the Administrative Appeals Tribunal (AAT) to conduct merits reviews of decisions (including Taxation and Business decisions). The Bills will implement the recommendations of the March 2022 report by the Senate Legal and Constitutional Affairs Committee to abolish the AAT and establish a new federal body with a transparent merit-based selection process for members.

The Consequential and Transitional Provisions (No 1) Bill will amend 138 Commonwealth Acts, including the ITAA 1936, ITAA 1997, TAA, FBT Assessment Act, Tax Agent Services Act and SIS Act. Importantly, the Bills retain a range of existing special rules for Tribunal reviews of taxation and charity matters to, among other things, protect tax revenue and uphold core tax principles and practices.

Date of effect: The Bills will commence 12 months after assent (or an earlier day to be fixed by Proclamation).

Classifying workers as employees or contractors

Taxation Ruling TR 2023/4 has been issued by the ATO and explains when an individual is an "employee" for PAYG withholding purposes, while Practical Compliance Guideline PCG 2023/2, sets out the ATO's compliance approach for businesses that engage workers and classify them as employees or independent contractors. These products have been issued in response to the High Court's landmark "worker classification" decisions in Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd [2022] HCA 1 and ZG Operations Australia Pty Ltd v Jamsek [2022] HCA 2.

In accordance with the High Court's decisions, TR 2023/4 states that the issue of whether a worker is an employee of an entity is determined by reference to an objective assessment of the totality of the relationship between the parties and having regard only to the legal rights and obligations which constitute that relationship. If the parties comprehensively committed the terms of their relationship to a valid written contract, it is the legal rights and obligations in the contract alone that are relevant in determining the worker's status. The ATO says that the various indicia of employment identified in case law (eg control, specified result, risk and delegation) remain relevant but are to be considered only in respect of the legal rights and obligations between the parties.

Date of effect: TR 2023/4 applies retrospectively. PCG 2023/2 applies from 6 December 2023.

Trustee risk reserves: deductibility of fund payments to trustee

Draft Determination TD 2023/D3 has been issued and considers the deductibility of payments made by a superannuation fund to its trustee to address the trustee's risk of exposure arising from amendments to s 56 of the Superannuation Industry (Supervision) Act 1993. From 1 January 2022, a provision in a fund's governing rules is void in so far as it exempts or indemnifies the trustee from penalties under Commonwealth law. The ATO notes that impacted funds have taken differing approaches to address the risk of exposure to penalties, including establishing or building a trustee risk reserve and/or increasing ongoing and recurrent charges for trustee services.

The ATO's draft view is that a payment to the trustee is capital in nature and therefore not deductible under s 8-1 if the trustee charges the fund the amount in order to build or maintain a reserve to address the trustee's risk due to the s 56 amendments, and the amount is charged as a lump sum, or as lump sum instalments or an ongoing amount that is separate and distinct from its existing ongoing and recurrent charges for trustee services.

A fund payment to the trustee is, however, deductible if it is for trustee services and the trustee has merely increased its existing ongoing and recurrent charges for those services to reflect the increased cost of providing those services. The payment would need to be apportioned if some of the expenditure relates to gaining or producing exempt or NANE income.

Proposed date of effect: retrospective.

Comments are due by 19 January 2024.

Beta period extended for the updated ato.gov.au website

The ATO have advised that they ‘are currently running the site in Beta to ensure it

performs as expected before we go live (and turn off the legacy site). Users are able to provide feedback via a survey or let us know if they are having issues on a page via the ‘report webpage issue’ tab on the right-hand side of the page.
The old or ‘legacy’ website is still accessible via a link in the banner.’

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.

Two Bills in House referred to Committees

The following Bills currently before the House of Reps have been referred to Parliamentary legislative Committees (and accordingly will not be passed this year).

- Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023 - had its second reading speech on 30 November 2023. It has been referred to the Senate Economics Legislation Committee with a report date of 18 April 2024. It is an important Bill that proposes a raft of major changes relating to the "tax adviser misconduct" scandal.

- Superannuation (Objective) Bill 2023 - was also referred to the same Committee with a report date of 28 March 2024. It will "enshrine" the objective of superannuation in legislation, requiring policy-makers to demonstrate how any future changes to superannuation law are consistent with the legislated objective of superannuation (including a statement of compatibility with the objective of superannuation that must be prepared for a Bill or regulation that relates to superannuation, unless specifically exempt).

Quality of advice review: final Government response released

The Government has issued its final response to the Quality of Advice review report. The Quality of Advice review report, prepared by Michelle Levy and released on 8 February 2023, included 22 recommendations aimed at making financial product advice more accessible and more affordable. An earlier response was issued by the Government in June 2023.

As a final response, the Government outlines a new model that will introduce a new class of financial advisers (termed "qualified advisers") intended to expand the delivery of simple advice at scale that will be high quality, helpful, and safe for consumers. This class will be required to meet education standards, be focused on providing advice on simple matters, and be prevented from charging a fee or a commission.

The changes will be proposed to apply across all financial institutions, including superannuation funds, life and general insurers, and banks. It is expected that "qualified advisers" will generally be employees of licensed financial institutions. The licensee will be wholly responsible for the advice provided.

The Government is looking to develop legislation to be implemented in 2024. The proposed new model will:

- Modernise the best interests duty to ensure customers receive helpful advice, including on single issue or limited scope issues, at a high standard;
- Replace statements of advice with a record that is in plain English and provides helpful information to make an informed decision;
- Introduce a new class of financial advisers who can provide advice on simple topics, while being subject to the modernised best interests duty;
- Clarify the topics that superannuation funds can charge for advice on and allowing super funds to consider a broader range of a member's personal and household circumstances such as debt, spouse's income, or age pension eligibility;
- Allow super funds to provide helpful "nudges" to members to drive greater engagement with superannuation at key life stages.

SUPERANNUATION

Super balances above $3m: Bills referred to Senate Committee

The Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023 and the Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2023 have been referred to the Senate Economics Legislation Committee for inquiry and report by 19 April 2024.

The Bills, introduced on 30 November 2023, propose to insert a new Div 296 into the ITAA 1997 to impose an extra 15% tax on superannuation earnings from 1 July 2025 for individuals with a total superannuation balance that exceeds $3 million.

Retirement phase of super: Treasury discussion paper released

The Government has issued the discussion paper, Retirement phase of superannuation. The Paper outlines the challenges Australians face when navigating the complexities of their retirement phase, citing 84% of retirement savings are in account-based pensions which do not manage the risk of outliving one's savings. This has resulted in around 50% of retirees seeking to withdraw at the minimum drawdown rate, rather than considering alternative strategies or products to manage this risk.

APRA and ASIC had recently completed a joint thematic review of trustees' retirement income strategies which found that while Registrable Superannuation Entity ("RSE") licensees are improving assistance provided to members in and approaching retirement, there was a lack of progress and insufficient urgency from RSE licensees (APRA regulated funds) in embracing the retirement income covenant to improve members' retirement outcomes.

The Paper indicates that while the issues are not new, the need to focus on retirement outcomes is becoming more urgent as an estimated 2.5 million Australians will move from the accumulation to the retirement phase in 10 years (currently there are 1.6 million people aged 65 and over receiving income from a superannuation product).

The Paper seeks to increase the focus on the retirement phase by examining 3 key areas:

- Supporting members to navigate the retirement income system;
- Supporting funds to deliver better retirement income products and services; and
- Making lifetime income products more accessible.

Submissions are due by 9 February 2024.

Sustainability of group life insurance in super: APRA survey findings

APRA has issued a letter to industry in relation to its findings of a survey on the sustainability of group life insurance in superannuation. The survey, conducted by APRA at the end of 2022, was intended to assess how the industries are responding to the issue of sustainability of the provision of group life insurance offerings and benefits in superannuation.

The letter highlights the actions taken by the industries in response to three key areas of concern:

- Premium volatility - the responses to the survey identified that premium volatility is still evident, due to recent legislative changes impacting participation in group insurance arrangements and uncertainty arising from COVID-19. APRA will continue to monitor this through normal supervision processes but expects the volatility to "abate significantly" from this point;
- Availability and provision of data - the responses to the survey suggests minimal progress in relation to the availability and provision of data, noting that Registrable Superannuation Entities ("RSE") licensees continue to experience challenges in obtaining member data from employers;
- Tender practices - responses indicate that the time provided for insurers and reinsurers to engage in tenders was, in most instances, "adequate".

RSE licensees, life insurers and reinsurers are encouraged to work together to improve access to data points that will facilitate the design of benefits to align with the insurance needs of different member cohorts more closely at sustainable premium rates.

Reminder: Lodge SMSF auditor annual statement

'The SMSF auditor annual statement verifies that an auditor continues to meet the conditions of registration.'

How?

'You must complete your statement using ASIC's Regulatory Portal.

Extension of time

If you are unable to complete your statement by the due date, you must apply for an extension of time. You can apply online using ASIC's Regulatory Portal.
We can only consider an application if you apply before your annual statement due date. Applications received after this date will be rejected. For example, if you were registered on 15 April, you must apply before 15 May each year in order to have your request for an extension considered.'

SMSF Annual return - Did you miss your lodgment due date?

The ATO have advised that 'your due date to lodge your SMSF annual return (SAR) was **31 October** if:

- your SMSF is newly registered and you're preparing your own return, or
- you have overdue SMSF annual returns from prior financial years.

If you missed your lodgment due date, it is important you lodge now. We may consider further compliance actions if you don't.

When your SMSF annual return is more than two weeks overdue and you haven't contacted us, your compliance status will be changed to *Regulation details removed* on Super fund lookup. This means APRA funds can't roll over member benefits and employers are discouraged from making any super guarantee contributions.

This status will remain until your overdue lodgments are brought up to date.

Remember, you're still required to lodge if the fund has had no contributions, income, payments made, or is in pension mode. If your SMSF does not have assets set aside for the benefit of members in the first year it was registered, you can ask us to cancel the fund or request a return not necessary.

If you're having difficulty preparing your return, contact us or talk to a registered tax professional.

You can also visit our SMSF support services for help'.

REGULATOR NEWS

Anti-money laundering - what you need to know

'Impact

AUSTRAC's regulatory priorities aim to ensure that regulated businesses are:

building and maintaining a culture of anti-money laundering and counter-terrorism financing (AML/CTF) compliance and risk management

developing and maintaining effective transaction monitoring programs to identify unusual transactions or suspicious customer interactions

ensuring any AML/CTF functions outsourced to a third party meet legal requirements'.

To assist with addressing these priorities, AUSTRAC have advised that they 'will continue to collaborate with industry and use our comprehensive education and supervision programs to support businesses in identifying areas for improvement early.

In line with AUSTRAC's approach to regulation, regulatory interactions will continue being tailored based on the level of risk posed and the needs and circumstances of the businesses we regulate'.

What you need to do

'Read AUSTRAC's regulatory priorities and consider where you may need to allocate resources to address priority areas to ensure compliance with AML/CTF obligations.

More information

If you require more information on anti-money laundering and counter-terrorism financing obligations you can:

- visit austrac.gov.au
- submit a query at austrac.gov.au/contact-us/form
- phone 1300 021 037'.

Download AUSTRAC's regulatory priorities 2024 (PDF, 704KB).

ASIC news

ASIC has released the following updates in its Newsroom section:

- 08 December 2023 - MEDIA RELEASE 23-332MR ANZ to pay $900,000 penalty for continuous disclosure failure - The Federal Court has today ordered Australia and New Zealand Banking Group Limited (ANZ) to pay a penalty of $900,000 for breaching its continuous disclosure obligation during a $2.5 billion institutional share placement in 2015. The Court declared that ANZ contravened section 674(2) of the Corporations Act by failing to notify the Australian Securities Exchange (ASX) that ANZ shares, with a value of between approximately $754 million and $790 million of the $2.5 billion of ANZ shares offered in an Institutional Placement, were to be acquired by its underwriters. ASIC Deputy Chair Karen Chester said, 'This is a landmark case for ASIC. Today's decision confirms the paramount importance of continuous disclosure. The penalty and remarks from the Judge today are a clear and resolute message to ANZ and the market that this conduct was very serious. It also confirms that a significant take-up of shares by underwriters (in a share placement) must be disclosed to the market and investors.

- 08 December 2023 - MEDIA RELEASE 23-331MR ASIC disqualifies food services industry director for one and a half years – ASIC has disqualified former food services industry director Simon Cauchi of Albury, NSW, from managing corporations for one and a half years due to his involvement in the failure of four companies. In disqualifying Mr Cauchi, ASIC took into account Mr Cauchi's bankruptcy which commenced on 20 October 2021 and relied on supplementary reports lodged by the liquidators of Fresh Food Wholesale Pty Ltd and Fresh Start Equity Pty Ltd, Adam Shepard of Setter Shepard and

Steven Staatz of Vincents. ASIC assisted Mr Shepard and Mr Staatz to prepare their reports by providing funding from the Assetless Administration Fund.

- 08 December 2023 - MEDIA RELEASE 23-330MR Financial Services and Credit Panel issues registration prohibition order - The Financial Services and Credit Panel (FSCP) has made a registration prohibition order against financial adviser Timothy Anderson from 7 December 2023 until after 17 May 2025. Mr Anderson was found to be insolvent under administration. Mr Anderson has had his registration as a financial adviser cancelled and is prohibited from being registered with ASIC. He is also prohibited from giving personal advice to retail clients on relevant financial products during the prohibition period.

- 06 December 2023 - MEDIA RELEASE 23-329MR AAT affirms ASIC's decision to ban Victorian adviser Pamela Anderson for two years - The Administrative Appeals Tribunal (AAT) has affirmed ASIC's decision to ban Ms Pamela Anderson, a Victorian financial adviser, from providing financial services for a period of two years. During the period of the misconduct, Ms Anderson was authorised by Australian financial services licensee The Financiallink Group Pty Ltd (Financiallink), now Nextgen Financial Group Pty Ltd. Ms Anderson provided personal advice to retail clients through her practice, Anderson Lutgens & Co Pty Ltd trading as Beyond iWealth. ASIC found that Ms Anderson recommended that some of her clients invest in high-risk fund, the Investport Income Opportunity Fund (IIOF). IIOF was operated by an entity related to Ms Anderson's former licensee, Financiallink. The AAT affirmed ASIC's decision which also prohibited Ms Anderson from managing, supervising or auditing the provision of financial services, and the provision of training about financial services or financial products until the conclusion of the ban.

- 06 December 2023 - MEDIA RELEASE 23-328MR Instinet pays $670,500 penalty over 'set and forget' compliance culture - Instinet Australia Pty Ltd (ACN 131 253 686) (Instinet) has paid a penalty of $670,500 to comply with an infringement notice given by the Markets Disciplinary Panel (MDP). The infringement notice related to market integrity rules requiring Instinet to: Provide meaningful price improvement for client transactions conducted off-market; Disclose all necessary information to its clients about its crossing system; and accurately report regulatory data about the execution venue of trades. Instinet operated a crossing system, often referred to as a 'Dark Pool', called BLX Australia (BLX crossing system) from 1 April 2011 until it was suspended from operation by Instinet on 11 October 2022.

- 06 December 2023 - MEDIA RELEASE 23-327MR ASIC intervenes to protect retail investors from high-risk offers and business practices - ASIC has intervened to improve outcomes for a new wave of retail investors, disrupting potentially harmful offers of financial products and services by online trading providers. During the COVID-19 pandemic, there was a significant increase in retail investor participation in financial markets, with one in five Australian investors starting to invest in exchange traded products (ASX Australian Investor Study 2023). In response to this growth, the range of online trading providers offering trading in regulated investment products expanded. Collectively, these online trading providers have over one million retail clients and hold billions of dollars in client money and assets. In a report released today, ASIC highlighted its observations from its surveillance of online trading providers in 2022-23 and clarified its regulatory expectations. The report identifies a range of regulatory interventions ASIC has made, including court actions, stop orders and infringement notices.

- 05 December 2023 - MEDIA RELEASE 23-326MR Henry Eng Chye Heng pleads guilty to market manipulation - Henry Eng Chye Heng has pleaded guilty to one count of market manipulation and one count of creating a false or misleading appearance of active trading, following an ASIC investigation. Mr Heng is the founder, executive chair and managing director of the ASX listed company, Eneco Refresh Ltd (ASX:ERG) (Eneco). ASIC alleges that on 24 occasions between 18 December 2020 and 15 December 2021, Mr Heng used share trading accounts held in the names of his family to manipulate the share price of Eneco.

- 04 December 2023 - MEDIA RELEASE 23-325MR Director charged after ASIC investigation into Southeast Queensland property development companies - A former company director and undischarged bankrupt has been charged with numerous criminal offences in connection with multiple companies engaged in Gold Coast property development projects. Ian Omar Chester was a director of Vested Capital Pty Ltd and several other associated companies which were used as investment and development vehicles (Vested group). On 4 December 2023, Chester appeared in the Southport Magistrates Court charged with 15 counts of fraud, three counts of falsifying company books and records and two counts of providing false or misleading information to the members of a corporation in connection with his dealings with the Vested group companies. This matter is being prosecuted by the Commonwealth Director of Public Prosecutions.

- 04 December 2023 – NEWS ASIC and AFCA sign memorandum of understanding - A memorandum of understanding ("MoU") has been signed between ASIC and the Australian Financial Complaints Authority ("AFCA"). The MoU documents how ASIC and AFCA already engage, and will continue to engage, including through information sharing and other forms of cooperation and coordination.