

TAXATION

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Build-to-rent tax concessions: exposure drafts released

Treasury has issued two draft Bills which propose to implement the incentives for new Build-to-rent ("BTR") developments.

Match payments to Category B players of WAFL clubs

The ATO has released a Fact Sheet outlining the tax treatment of match payments received by footballers pursuant to WAFL Category B player contracts.

Fraud and evasion: ATO's administrative approach

The ATO has released an updated version of Practice Statement PS LA 2008/6 on fraud and evasion.

Board of Taxation: Chief Executive Newsletter April 2024

The Acting CEO of the Board of Taxation, Ms Michelle Calder, has issued the Chief Executive Newsletter - April 2024.

Government issues warning on fake myGov sites

In a joint media release, 'the Albanese Government urges Australians to be vigilant to scammers targeting ATO log in details to commit tax fraud.'

Non-charitable not-for-profits will be required to lodge an annual NFP self-review return

The ATO have advised that 'from 1 July this year, non-charitable not-for-profits (NFPs) with an active Australian Business Number (ABN) will be required to lodge a new annual NFP self-review return to the Australian Taxation Office (ATO) to confirm their income tax exemption status.'

ATO Updates

The ATO have provided a number of updates on: Tips to help clients pay on time and save; Targeting tax scheme promoters; new R&D decision impact statement; taxation of private public partnerships for social infrastructure projects; systems information; and upcoming ATO events for tax professionals.'

GST

RITCs on IT outsourcing agreements

The ATO has issued Guidelines on supporting reduced input tax credit claims on complex information technology outsourcing agreements.

FINANCIAL SERVICES

LPR's personal liability: updated ATO guideline

The ATO has issued an update to PCG 2018/4, its guidance on the personal liability of a LPR where assets of a deceased estate are distributed with notice of a claim by the ATO.

SUPERANNUATION

DIS on BPFN: Interest income derived by SMSF

The ATO has issued a Decision Impact Statement on the AAT decision in BPFN and FCT [2023] AATA 2330.

REGULATOR NEWS

ASIC News

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

APRA news

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

Legislative amendments

Updates on recent legislative amendments.

SUSTAINABILITY

IFAC Identifies Key Areas Accountants Need to Update their Knowledge & Skills to Prepare for Increasing Sustainability Demands

'The International Federation of Accountants (IFAC) has released a new publication setting out four key areas where accountants need to update their knowledge to meet the growing demand for high-quality sustainability-related information.'

TAXATION

SFCT warns businesses against false invoicing

In a [media release](#), the Serious Financial Crime Taskforce ("SFCT") warns businesses against using illegal financial arrangements such as false invoicing in an attempt to "cheat" the tax and super system. The SFCT said that it is equipped with resources to uncover such activities, including "sophisticated data matching", analytics capability and intelligence sharing relationships.

Such false invoicing arrangements can involve the following:

- an entity (the "promoter") issues invoices to a legitimate business, but no goods or services are provided;
- the business pays the invoices, by cheque or direct transfer, and the promoter returns most of the amount paid to the owners of the business as cash;
- the promoter keeps a small amount as a commission;
- the business then illegally claims deductions and GST input tax credits from the false invoice;
- the owners of the business use the cash they have received for private purposes or to pay cash wages to workers, and don't properly report the amounts in their tax returns.

In addition, the Australian Federal Police ("AFP") and the ATO have also issued a joint [media release](#) in relation to an investigation into a Sydney-based cheque cashing entity suspected of laundering more than \$1 billion to facilitate tax fraud.

The suspected criminal operation is believed to have laundered money for about 1,200 businesses from a range of industries. Commonly known as false invoicing arrangement, the suspected criminal operation received business funds and purported to provide goods and services in return, followed by the return of the funds to participating businesses after charging for commission.

The authorities executed search warrants at seven residential and business properties in the Sydney suburbs of Liverpool, Beverly Hills, Kingsgrove, Cabramatta and Earlwood. \$500,000 cash, financial documents, electronic devices, and mobile phones were seized and will undergo "further analysis".

Build-to-rent tax concessions: exposure drafts released

Treasury has issued two [draft Bills](#) which propose to implement the incentives for new Build-to-rent ("BTR") developments. Announced as part of the 2023-24 Budget, the incentives proposed are as follows.

- Increased capital works deduction rate from 2.5% to 4.0%; and
- Reduction in the final withholding tax rate on fund payments from eligible managed investment trust ("MIT") investments from 30% to 15%.

The two exposure draft legislations are set out below.

- Treasury Laws Amendment Bill 2024: Build to rent developments - provides that to access one or both concessions the BTR development must meet the following eligibility criteria: (i) the development's construction commenced after 7:30PM (AEST) on 9 May 2023; (ii) the development consists of 50 or more residential dwellings made available for rent to the general public; (iii) all dwellings in the development (and common areas that are part of the BTR development) continue to be owned together by a single entity, at any one time, for at least 15 years (although the BTR development can be sold to another single entity during the period and remain eligible for the concessions); (iv) dwellings in the BTR development must be offered for lease terms of at least three years (although a tenant can request a shorter period); and (v) at least 10% of the dwellings are available as affordable tenancies.
- Capital Works (Build to Rent Misuse Tax) Bill 2024 - imposes a misuse tax when one or both tax concessions are claimed in circumstances where they are not available due to BTR development ineligibility. It approximately neutralises tax benefits claimed by entities where the BTR development ceases to be an active BTR development during the 15-year BTR compliance period.

The consultation also specifies particular interest on views regarding:

- the impacts of including a minimum proportion of dwellings to be made available as affordable tenancies; and
- whether the minimum period of 15 years during which dwellings must be retained under single ownership strikes the right balance between investment needs and meeting public demand for long term tenancy availability.

A policy fact sheet is also available to assist with the consultation process.

Date of effect: The beginning of the quarter following assent.

Submissions are due by 22 April 2024.

Match payments to Category B players of WAFL clubs

The ATO has released a [Fact Sheet](#) outlining the tax treatment of match payments received by footballers pursuant to West Australian Football League ("WAFL") Category B player contracts.

The ATO concludes that a match payment is not assessable income if the footballer is involved in a club or the WAFL as a Category B player (rookie) and their involvement is no more than a private recreational pursuit or hobby pursued for pleasure or recreation. Similarly, any expenditure incurred in relation to that involvement is private in nature and not deductible.

Fraud and evasion: ATO's administrative approach

The ATO has released an [updated version](#) of Practice Statement PS LA 2008/6 on fraud and evasion. This Practice Statement instructs ATO staff on how to deal with taxpayers who have, or are suspected of having, committed fraud or evasion.

As well as making style changes, PS LA 2008/6 has been updated to provide additional information on the work practices applying to fraud and evasion cases.

Board of Taxation: Chief Executive Newsletter April 2024

The Acting CEO of the Board of Taxation, Ms Michelle Calder, has issued the [Chief Executive Newsletter - April 2024](#) providing an overview of the Board's activities up to April 2024, welcoming 2 new Board members, Mr Andrew Mills and Ms Judy O'Connell. The new Commissioner of Taxation, Mr Rob Heferen, has also recently joined the Board as its newest ex officio member.

The Newsletter also confirmed that the Final Report for the Review of the tax treatment of digital assets and transactions in Australia was delivered to the Government on 23 February 2024.

Government issues warning on fake myGov sites

The media release states that 'the ATO has received a large number of reports of scammers using fake myGov sites to steal myGov sign in details that can be used to commit tax and refund fraud in other people's names.

To be clear – the ATO or myGov will never send an email or text message with a link to sign in to myGov.'

A copy of the full media release can be viewed [here](#).

Non-charitable not-for-profits will be required to lodge an annual NFP self-review return

The ATO website states that 'even though the due date is in October, there are things you should do now to make sure you are ready. We also recommend not waiting until the last moment to report, you can report from as early as 1 July.

Non-charitable NFPs who have an active ABN can get ready now by:

- conducting an early review of their eligibility by using the [ATO's guide](#)

- [checking all their details are up to date](#), including authorised associates, contacts and their addresses are current
- reviewing their purpose and governing documents to understand the type of NFP they are setting up myGovID and linking it to the organisation's ABN using Relationship Authorisation Manager.

When it comes time to lodge, NFPs can use Online services for business which lets organisations manage their reporting at a time that is convenient to them.

For NFPs that have engaged a registered tax agent, their agent can also lodge on their behalf through Online services for agents.'

You can obtain more information from the ATO [website](#).

ATO Updates

The ATO have provided the following updates:

- [Tips to help clients pay on time and save](#)
- [Targeting tax scheme promoters](#)
- [Updates to guidance material](#)
 - [New R&D Decision impact statement released](#)
 - [Taxation of private public partnerships for social infrastructure projects](#)
- [Systems information](#)
- [Upcoming ATO events for tax professionals](#)

Tips to help clients pay on time and save

A key theme of our conversations over the past 12 months has been addressing collectable debt. We are currently undertaking an engagement campaign to help prevent small businesses from falling behind on paying their tax by helping them build good cash flow habits.

As you know, developing strong cash flow habits benefits businesses at all stages of their growth. We've prepared some cash flow tips that could prove useful for you and your practice in assisting clients to enhance their business viability and mitigate unexpected tax bills.

These tips are designed to help small businesses in balancing their cash flow effectively, enabling them to lodge and pay their obligations in full and on time. Importantly, this means that they will avoid paying general interest charge which is currently **11.34%** and compounds daily.

Tip 1: Consider using a separate bank account for pay as you go (PAYG) withholding, employee super and GST.

Tip 2: Avoid the temptation to use PAYG withholding, employee super or GST as cash flow for your business.

Tip 3: Boost cash flow skills by taking advantage of our free online tools:

- [Essentials to strengthen your small business](#)
- [Cash flow resources](#) (business.gov.au).

We value the crucial support provided by tax professionals in supporting small business and hope these tips will help in the conversations you have with your clients.

To learn more about how you and your practice can support your small business clients with their cash flow visit our [Cash Flow Coaching Kit](#). It provides a flexible coaching model to help guide cash flow conversations.

We've also shared these tips on [Facebook](#) and [LinkedIn](#) and we hope that you'll use your networks to share these important messages.

Targeting tax scheme promoters

Unlawful tax schemes involve the deliberate exploitation of the tax and super systems and we treat these schemes seriously and will take action.

Anyone who promotes unlawful tax schemes is taking big risks. They risk our attention, serious penalties, as well as their reputation. They're also risking their clients' money for their own financial gain.

We continue our focus on deterring and disrupting promoters of unlawful tax schemes through the Tax Avoidance Taskforce.

We use the [promoter penalty laws](#) to take action against promoters of unlawful tax schemes, regardless of the firm size, occupation, position in their organisation or standing in the tax community. Read our [media release](#) about a case that is currently before the Federal Court.

We publish the outcomes of [court cases](#) on our website. Two Federal Court judgements from 2021 show how seriously the courts take these matters:

\$22.68 million in penalties for [a tax agent working as an R&D adviser](#)

- \$9.4 million in penalties for a [trio of promoters](#).

We know that most advisers do the right thing and give independent and objective tax and super advice to their clients. Agents can help protect themselves, their clients, and the tax profession by:

- understanding the warning signs of unlawful [tax schemes](#)
- reporting suspected unlawful tax schemes by completing our confidential [tip-off form](#)
- advising clients against getting involved in unlawful tax schemes
- encouraging clients who might be caught up in an unlawful tax scheme to talk to us so we can work with them to resolve any problems.

See our website for more information about [protecting clients and practices](#) from tax avoidance and evasion schemes, and managing promoter penalty risks.

Updates to guidance material

We encourage you and your colleagues to [subscribe](#) to the *Tax professionals newsletters* for

the latest [Tax professionals newsroom](#) articles and other key updates.

New R&D Decision impact statement released

We've released a [decision impact statement](#) outlining our position following the Administrative Appeals Tribunal (AAT) 16 February 2024 decision in GQHC and Commissioner of Taxation.

The AAT's decision includes consideration of whether the ATO can deny R&D tax incentive claims for R&D expenditure on the basis that the self-assessed registered R&D activities don't meet the eligibility criteria.

The AAT held that the activities weren't eligible R&D activities, and if the activities were eligible activities, a feedstock adjustment would be required for certain expenditure claimed.

In its decision, the AAT supported the ATO view that the Commissioner can assess whether registered activities are eligible R&D activities, when the Department of Industry, Science and Resources (DISR) has not, or cannot, make a finding.

The AAT reinforced how important it is for companies that seek to claim an R&D tax offset, to maintain sufficiently detailed, contemporaneous records of any activities claimed as R&D.

Taxation of private public partnerships for social infrastructure projects

We have made minor updates to our [guidance](#) on public private partnerships (PPPs) for social infrastructure projects. Social infrastructure projects include the construction and maintenance of facilities such as schools, hospitals, prisons, roads and public utilities.

The updated guidance:

- refreshes the format and content
- includes minor technical updates
- incorporates new reference material.

The updated guidance confirms our views on:

- the tax implications of social infrastructure projects using the 'securitised licence' PPP model
- how the investors into PPPs will be taxed, including treatment when an investor exits
- areas of compliance focus.

Private sector consortiums that are involved in social infrastructure PPP projects, and their advisers, should familiarise themselves with our guidance for greater confidence about their income tax and GST obligations.

Our guidance will help public and multinational businesses understand the tax implications of social infrastructure projects using the securitised PPP model and sets out how income tax and goods and services tax (GST) laws apply to a social infrastructure project.

A social infrastructure PPP involves a consortium of investors and the government agreeing that the:

- consortium will obtain financing to design, construct, operate and maintain some public infrastructure
- Government will obtain title to, and repay the consortium for the infrastructure, plus a return, over a certain period.

Our position and messaging delivered in the updated content has not substantially changed since consultation was last conducted in 2017. Though the views of the guidance are not binding, it provides guidance to assess risk in early engagement, rulings and reviews of social infrastructure PPP transactions.

If agents require further information on how the guidance applies to their clients' arrangements they can contact us.

Systems information

Relationship Authorisation Manager (RAM) will be unavailable from 11:30pm AEST Thursday 18 April to 7:00am AEST Friday 19 April 2024.

[Maintenance to RAM](#) will include updating the 'History' functionality to improve visibility of machine credential activities. For example, when it was created, claimed or removed.

If agents experience any issues after this time they should check the [systems advice and alerts](#) page for further information and updates.

Upcoming ATO events for tax professionals

April open forum

Our [open forums](#) offer a great opportunity for agents to ask questions and listen to our latest updates. [Register](#) for our next session on Tuesday 30 April from 1:30 to 3:00pm AEST. We encourage agents to register early as sessions do fill up quickly.

GST

RITCs on IT outsourcing agreements

The ATO has issued [Guidelines](#) entitled ATO expectations on how you support your reduced input tax credit claims on complex information technology outsourcing agreements.

It outlines the ATO's "expectations" to support claims for reduced input tax credits ("RITC") on complex information technology ("IT") outsourcing agreements acquired partly or wholly in making of input taxed supplies.

The issue revolves around the application of table item 2 of s 70-5.02(1) of the A New Tax System (Goods and Services Tax) Regulations 2019.

The Guidelines highlight the types of questions that the ATO will ask when reviewing RITCs in relation to such acquisitions. These are dealt with under the following headings in the six-page document.

- Understanding the IT outsourcing document
- Determining which parts of the acquisition fall within the scope of table item 2
- Applications or services that perform operational functions
- Processing services to support operational functions or which are related to the general IT environment
- Apportionment methodology
- Determination of overall input tax recovery

The Guidelines encourage affected entities to review their arrangements "to prepare for a review" by the ATO.

FINANCIAL SERVICES

LPR's personal liability: updated ATO guideline

The ATO has issued an update to [Practical Compliance Guideline PCG 2018/4](#), its guidance on the personal liability of a legal personal representative ("LPR") where assets of a deceased estate are distributed with notice of a claim by the ATO. Specifically, it explains when LPRs of less complex estates are treated as having notice of the claim. As amended, PCG 2018/4 applies to executors (who have obtained probate) and administrators (who have obtained letters of administration) in circumstances where:

- in the four years before death, the deceased did not carry on a business, was not assessable on a share of the net income of a discretionary trust and was not an SMSF member;
- the estate assets consist only of cash, cash investments, other personal assets, public company shares or other interests in widely held entities, superannuation death benefits and Australian real property;
- the total market value of the estate assets at the date of death is under \$10 million; and
- no asset passes to a foreign resident, tax exempt entity or complying superannuation entity. In relation to tax exempt entities, testamentary gifts of property are ignored if s 118-60 of the ITAA 1997 applies to disregard the capital gain.

The update includes new commentary on advising the ATO of any material irregularities in a tax return lodged by the deceased prior to death. Generally, the LPR will not be treated as having notice of an ATO claim if they bring the irregularity to the ATO's attention (eg via an amendment request) and the ATO does not, within six months of being notified, issue an amended assessment or indicate that it intends to review the matter.

Date of effect: retrospective. A draft version of the update was released in September 2023 and some changes have been made.

SUPERANNUATION

DIS on BPFN: Interest income derived by SMSF

The ATO has issued a Decision Impact Statement on the AAT decision in BPFN and FCT [2023] AATA 2330.

The AAT concluded there that interest income earned by an SMSF as the beneficiary of a unit trust through a series of loan facility agreements was not non-arm's length income ("NALI"). The ATO had argued that it was NALI pursuant to s 295-550(5) of the ITAA 1997. The AAT concluded from the evidence that the relevant arrangements did not differ from those entities dealing independently with one another in the private lending market at the time would have entered into. Accordingly, the AAT was satisfied that the taxpayer did not derive more income than it might have expected to derive if it had been dealing with the relevant parties at arm's length.

The DIS states that the AAT's conclusion regarding the identification of the "scheme" for the purposes of s 295-550(5) was consistent with the ATO's, as was the conclusion that the parties involved were not dealing with each other at arm's length. However, it goes on to say that the ATO "would question whether this decision can be extrapolated to arrangements involving private lending arrangements more broadly".

Comments are due by 10 May 2024.

REGULATOR NEWS

ASIC News

ASIC has released the following updates in its Newsroom section:

- [12 April 2024 – MEDIA RELEASE – ASIC obtains Federal Court orders appointing receivers over digital currency assets of blockchain mining companies](#) – ASIC has commenced proceedings against NGS Crypto Pty Ltd, NGS Digital Pty Ltd and NGS Group Ltd (and the companies' directors) and successfully applied to have receivers appointed over their digital currency assets. ASIC was concerned that investors' assets were at risk and that the group of companies had contravened s 911A of the *Corporations Act 2001* (Cth) by providing financial services while unlicensed.
- [11 April 2024 – SPEECH – Improving regulatory guidance for registered liquidators](#) – ASIC Commissioner Kate O'Rourke presented an address to the Australian Restructuring Insolvency and Turnaround Association National Conference on the Gold Coast on 11 April 2024. She emphasised that ASIC is improving its regulatory guidance for liquidators by streamlining reporting obligations and seeking feedback on proposed changes.
- [11 April 2024 – MEDIA RELEASE – ASIC consults on misconduct reporting guidance for external administrators and controllers](#) – ASIC has issued a consultation paper proposing revisions to its Regulatory Guide RG 16 External administrators and controllers: Reporting of possible offences and misconduct. The need for revisions has been precipitated by developments in case law, legislative reform and the

recommendations of the Parliamentary Joint Committee on Corporations and Financial Services. Interested parties may make submissions until 6 June 2024.

- [11 April 2024 – MEDIA RELEASE – ASIC action results in \\$1.25 million Court imposed penalty against AFSL 'licence for hire' firm](#) – The Federal Court of Australia has found that Lanterne failed to comply with its AFS Licence obligations under s 912A of the *Corporations Act 2001* (Cth) in a period spanning 2019 to 2021. Lanterne conducts a business authorising representatives to provide financial advice to wholesale customers under its own licence. Among other things, Lanterne admitted that it did not have formal and documented risk management systems and conducted no due diligence on its representatives. The judgment of McEvoy J is [available](#).
- [11 April 2024 – MEDIA RELEASE – Federal Court winds up retail OTC derivative issuer Prospero Markets Pty Ltd](#) - The Federal Court of Australia has ordered that Prospero Markets Pty Ltd, the holder of an Australian financial services licence, be wound up and appointed liquidators. Section 461(1)(k) of the *Corporations Act 2001* (Cth) enables the court to wind up a company where it is just and equitable to do so. Prospero's licence was suspended in December 2023 after it failed to lodge audited financial accounts. An investigation by the Australian Federal Police resulted former officers and responsible managers being charged with money laundering offences.
- [10 April 2024 – MEDIA RELEASE – AAT reinstates Cameron Lindsay Duncan's liquidator registration with conditions](#) – After an application to the Administrative Appeals Tribunal for a review of decision of a liquidator's Disciplinary Committee in 2023 to cancel the registration of Mr Duncan, the AAT has ordered it be conditionally reinstated. Mr Duncan is currently not an Australian resident. The decision of AAT Deputy President McCabe is [available](#).
- [10 April 2024 – MEDIA RELEASE – ASIC appeals Finder Wallet decision](#) – ASIC has appealed against the decision of Markovic J on 14 March 2024 in the Federal Court of Australia in which she dismissed ASIC's allegation that Finder Wallet Pty Ltd had provided unlicensed financial services because the Finder Earn product was not a debenture as defined in s 9 of the *Corporations Act 2001* (Cth). The appeal will be heard by the Full Federal Court. The primary judgment is [available](#).
- [9 April 2024 – MEDIA RELEASE – James Mawhinney arrested and charged following ASIC criminal investigation](#) – Following a referral from ASIC investigation, James Mawhinney has been arrested on four counts of engaging in dishonest conduct while running a financial services business in a period spanning 2019 and 2020. He has been released on bail and is due to appear next in the Melbourne Magistrate's Court on 28 June 2024.

APRA news

APRA has released the following updates in its News and publications section:

- [12 April 2024 – NEWS ITEM – APRA publishes the December 2023 edition of the Quarterly Superannuation Product Statistics and Quarterly Superannuation Industry Publication](#) – APRA has issued data on superannuation products and the industry or the quarter ending December 2023. For the first time, data on investments by asset class is included.

Legislative amendments

- [9 April 2024 – BILLS AND LEGISLATION - Treasury Laws Amendment \(Making Multinationals Pay Their Fair Share—Integrity and Transparency\) Act 2024](#) – Following



the assent of this Act as Act No 23 of 2024, amendments to the *Corporations Act 2001* (Cth) have taken effect. As part of their annual financial reporting obligations under Chapter 2M, public companies must now provide a consolidated entity disclosure statement. Sections 295 and 295A are amended.