

## **TAXATION**

### **New appointments to the ACNC advisory board announced**

Treasury has announced the appointments of a new Deputy Chair and a new member to the Australian Charities and Not-for-profits Commission ("ACNC") Advisory Board.

### **Draft guidance for some of the new Code obligations: TPB**

The TPB has released draft guidance for consultation on new obligations under the Tax Agent Services (Code of Professional Conduct) Determination 2024.

### **ATO guidance on work-related expenses and record keeping**

The ATO has issued a media release seeking to provide guidance to taxpayers on claiming for work-related expenses and record keeping to substantiate the deductions.

### **Latest compliance case studies released: TPB**

The TPB has issued two compliance case studies on BAS agent misconduct and breach of client confidentiality.

### **ATO Tax Time Meeting | 6 August 2024 Key messages**

The Tax Practitioner Stewardship Group (TPSG) Tax Time meeting was held on 6 August 2024 and updates were provided on: ATO Systems and Digital Services; Tax return processing and phone services; Marketing and communication.

## **SUPERANNUATION**

### **Mercer Superannuation penalised \$11.3 million for greenwashing**

The Federal Court has ordered Mercer Superannuation (Australia) Limited to pay an \$11.3 million penalty for making misleading statements.

### **New courses for setting up and winding up an SMSF launched**

The ATO have announced on their website that they have 'released 2 education courses for SMSF trustees to build their knowledge on setting up and winding up an SMSF'.

## **FINANCIAL SERVICES**

### **ASIC extends operation of instruments**

ASIC proposes to extend the operation of three legislative instruments, due to expire in

October 2024, for a further five years.

## **ASIC financial advice update**

ASIC has published a consolidated summary of recent regulatory developments and issues affecting financial advice.

## **Financial advice - Request for member input!**

The Institute of Public Accountants (IPA) and Financial Advice Association Australia (FAAA) are part of the Joint Associations Working Group (JAWG). The FAAA are looking to organise some focus groups of Accountants in and around the Sydney CBD area for face-to-face sessions to gather feedback on promoting the financial advice profession to consumers, prospective students and to accountants looking for high quality financial advice referral partners.

## **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.

-----

## **TAXATION**

### **New appointments to the ACNC advisory board announced**

Treasury has [announced](#) the appointments of a new Deputy Chair and a new member to the Australian Charities and Not-for-profits Commission ("ACNC") Advisory Board.

Ms Sara Harrup has been appointed as the part-time Deputy Chair (and member) in recognition of her contributions since becoming a member on 1 August 2023. Her appointment as Deputy Chair will commence on 2 August 2024 and continue through to 1 August 2026.

Mr Nick Maisey has been appointed as a part-time member for a period of 3 years. Mr Maisey is the founder of Befriend, a community building non-profit, established in Western Australia in 2010 to address isolation and loneliness by facilitating social connection.

Treasury also thanked outgoing Deputy Chair, Ms Heather Watson, for her contributions to the Advisory Board over the past seven years.

## Draft guidance for some of the new Code obligations: TPB

The Tax Practitioners Board has [released](#) draft guidance for consultation on three of the eight new obligations under the Tax Agent Services (Code of Professional Conduct) Determination 2024 ("Determination"):

- [TPB\(I\) D54/2024 False or misleading statements to the TPB or Commissioner](#); and
- [TPB\(I\) D55/2024 Managing conflicts of interest and maintaining confidentiality in dealings with government](#).

**Date of effect:** 1 August 2024. Note that the government has announced that it will insert a transitional rule into the Determination that will provide firms with 100 employees or less until 1 July 2025 and larger firms with 101 employees or more until 1 January 2025 to bring themselves into compliance, so long as they continue to take genuine steps towards compliance during this period.

**Submissions** for both are due by 3 September 2024.

## ATO guidance on work-related expenses and record keeping

The ATO has issued a [media release](#) seeking to provide guidance to taxpayers on claiming for work-related expenses and record keeping to substantiate the deductions.

Records need to be kept for five years from the date of the relevant tax return lodgment. They can be kept as a paper version, an electronic copy or a true and clear photo of an original record. Taxpayers can use any electronic device or app to keep their electronic records. The ATO highlights that the [myDeductions](#) tool on the ATO app allows taxpayers to store copies of all their receipts in one place, keeping them safe for tax time.

The three "golden rules" apply when determining the deductibility of a work-related expense: (i) the taxpayer must have spent the money themselves; (ii) the expense must directly relate to earning their income; and (iii) the taxpayer must have a record (usually a receipt) to prove it.

Deductions may be disallowed if taxpayers are ineligible or do not keep the right records. Noting that bank statements, on their own is generally insufficient evidence to claim a deduction for work-related expenses, taxpayers are encouraged to refer to the ATO's record keeping guide on its website.

The ATO also debunks a "common myth" that taxpayers can claim \$300 for work-related expenses automatically, without proof. While work-related expenses less than \$300 may not need receipts, taxpayers must be able to show they spent the money and how the claim was calculated.

Record keeping for working from home expenses will differ when using the fixed rate method or the actual cost method.

In relation to car expenses, in order to claim a deduction: (i) the taxpayer must own or lease the car; (ii) the expenses must be for work-related trips; (iii) the taxpayer must have spent the

money themselves and wasn't reimbursed; and (iv) the taxpayer must have the required records. The required records for car expenses will also depend on the method used, ie the logbook method or the cents per kilometre method.

## Latest compliance case studies released: TPB

The TPB has issued 2 compliance case studies:

1. [BAS agent's misconduct leads to termination](#) - registration terminated and prohibited from re-applying for a period of four-years, an individual BAS agent was found by the Board Conduct Committee ("BCC") to have breached the Code of Professional Conduct ("Code") by:
  - a. making false statements in a renewal application by not declaring overdue tax obligations for themselves and their related entities and regarding meeting the continuing professional education ("CPE") requirements;
  - b. failing to lodge multiple returns, including 93 business activity statements, three FBT tax returns and three income tax returns for themselves and their related entities by their due dates;
  - c. failing to pay outstanding tax debts as and when they fell due;
  - d. failing to complete the minimum level of relevant CPE; and
  - e. failing to respond to requests and directions from the TPB in a timely, responsible; and reasonable manner.
2. [Breach of client confidentiality](#) - an individual tax agent and a company tax agent that the individual was the sole director and supervising agent of, had their registrations terminated and both imposed a three-year ban from re-applying. They were found to have breached multiple items of the Code by:
  - a. failing to lodge their personal and company income tax returns by their respective due dates;
  - b. disclosing confidential client information to a third party without the clients' permission;
  - c. failing to maintain relevant knowledge and skills by not completing the minimum level of CPE requirements;
  - d. failing to maintain current professional indemnity insurance; and
  - e. failing to respond to the TPB's requests and directions in a timely, responsible and reasonable manner.

## ATO Tax Time Meeting | 6 August 2024 Key messages

### *'ATO Systems and Digital Services*

Overall, ATO system health is tracking well, and activities are processing as anticipated. The waiting room for Online services for individuals have not been required in the past few weeks.

### *Tax return processing and phone services*

The high demand in the ATO call environment has steadied, with call volumes on the registered agent phone line down by 3% from last year.

Approximately 4.4 million individual 2024 tax returns have been lodged since 1 July 2024,

which is around 1% increase compared with the same time last year. Of these:

- Self-preparers – 2.8 million, around 3% increase compared with the same time last year.
- Agent prepared – 1.6 million, around 5% decrease compared with the same time last year.

#### *Marketing and communication*

The current ATO communications focus is on encouraging taxpayers and agents to start lodging as most pre-fill data is now available.

Other communications include:

- a media release encouraging taxpayers to consider what work-related expenses they will be looking to claim in the new financial year, and what records they will need to substantiate those deductions.
- promotion of resources available in over 20 languages other than English, including guides on good record keeping, work-related expenses and support when lodging a tax return.
- the latest video for tax professionals, focusing on the importance of declaring all income sources in their clients' tax returns.
- promotion of the ATO Open Forum event on 20 August, with topics including eInvoicing, client-to-agent linking, and an update from the Tax Practitioners Board on the expansion of the Code.
- promotion of the fuel tax credit calculator as an easy way to work out the amount of fuel tax credits that can be claimed each BAS period.
- the Tax Professionals newsletter will cover topics including strengthening foreign resident capital gains tax rules, the expanded Tax Practitioner Board (TPB) code obligations, what to do if you disagree with an ATO decision, a reminder that Taxable payments annual reports (TPAR) are due on 28 August, and, that the ATO is writing to employers who haven't yet finalised their Single Touch Payroll (STP) data.

#### *Reminders were issued about:*

- tax agents checking the pre-fill reports in Online services for agents and talking to clients about the disposal of shares to assist in correct reporting of any related capital gain, loss, exemption, or rollover.
- alcohol and fuel excise duty rates increasing on 5 August (in addition to the increase on 1 July).

*Next meeting:* Tuesday 20 August 2024.

#### *Useful links*

- [Tax Time 2024](#)
- [Overview of the key changes](#)
- [Support for your practice](#)
- [The Tax practitioner assistance \(TPA\) service](#)
- [TPSG Tax time 2024 key messages](#)
- [Tax time lodgment statistics'](#)

## **SUPERANNUATION**

### **Mercer Superannuation penalised \$11.3 million for greenwashing**

The Federal Court has ordered Mercer Superannuation (Australia) Limited to pay an \$11.3 million penalty for making misleading statements about the sustainable nature of some of its superannuation investment options. This landmark case, [ASIC's first greenwashing case](#) in the Federal Court, highlights the importance of accurate ESG claims to investors: [ASIC v Mercer Superannuation \(Australia\) Limited 2024 \[FCA\] 850](#).

Justice Horan, who handed down the decision, stated that Mercer's contraventions were serious, arising from failures to implement adequate systems to ensure accurate environmental, sustainability and governance ("ESG") claims and monitor the application of sustainability exclusions. He stressed the importance of consumer confidence in ESG claims made by financial product and service providers, noting that misrepresentations in this area undermine trust and harm both consumers and the industry.

The case serves as a strong warning to the financial services industry about the consequences of making unsubstantiated ESG-related claims. Mercer Super has agreed to pay ASIC's costs in addition to the penalty.

ASIC's Information Sheet 271 ([INFO 271](#)) provides information for responsible entities of managed funds and super fund trustees about how to avoid greenwashing when offering or promoting sustainability-related or ethical products and investments.

### **New courses for setting up and winding up an SMSF launched**

The ATO website states that they 'have recently released 2 new courses for SMSF trustees:

- [Setting up a self-managed super fund](#)
- [Winding up a self-managed super fund](#)

These interactive courses provide an excellent opportunity for trustees to build their knowledge and can be easily accessed from the ATO's small business education portal, [smallbusiness.taxsuperandyou.gov.au](https://smallbusiness.taxsuperandyou.gov.au).

Trustees can create an account and set up a personalised learning pathway, which will also record course completion.

These courses form part of a suite of education products aimed at supporting SMSF trustees with their regulatory and reporting obligations.

We will be launching the final course in the suite later in the year on Running a self-managed super fund.

These courses complement our suite of [Lifecycle publications](#) which help those wanting to learn more about navigating an SMSF.



**Looking for the latest news for SMSFs?** – You can stay up to date by visiting our [SMSF newsroom](#) and [subscribing](#) to our monthly SMSF newsletter’.

## **FINANCIAL SERVICES**

### **ASIC extends operation of instruments**

ASIC [proposes](#) to extend the operation of three legislative instruments, due to expire in October 2024, for a further five years. ASIC has assessed that these instruments are operating efficiently and effectively, and continue to form a necessary and useful part of the legislative framework:

- Class Order [[CO 14/923](#)] Record-keeping obligations for Australian financial services licensees when giving personal advice;
- [ASIC Corporations and Credit \(Breach Reporting -- Reportable Situations\) Instrument 2021/716](#); and
- [ASIC Credit \(Breach Reporting -- Prescribed Commonwealth Legislation\) Instrument 2021/801](#).

In extending operation of the instruments, ASIC will convert [CO 14/923] to the legislative instrument format and consolidate the relief in ASIC Instruments 2021/716 and 2021/801 into one instrument.

Stakeholders can provide feedback to ASIC on this proposal at: [rri.consultation@asic.gov.au](mailto:rri.consultation@asic.gov.au).

**Due Date:** 4 September 2024.

### **ASIC financial advice update**

ASIC has published a [consolidated summary](#) of recent regulatory developments and issues affecting financial advice.

The topics of the update include:

- Maintaining accurate records on the financial advisers register;
- Assessing adviser qualifications;
- ASIC's review of cold calling for superannuation switching business models;
- Cyber security - third-party exposure;
- Financial adviser registration;
- Report 779 Superannuation and choice products: What focus is there on performance?;
- Provisional relevant providers; and
- Keeping up to date with financial advice news.

### **Financial advice - Request for member input!**

To gather valuable insights from Accountants, the FAAA is planning to organise some focus groups to gather valuable feedback and perspectives on:

1. Promoting the financial advice profession to consumers,
2. Promoting the financial advice profession to prospective students, and
3. Promoting the value of the CERTIFIED FINANCIAL PLANNER® (CFP) designation to accountants who may be looking for high quality financial advice referral partners for their clients.

Ideally, the FAAA is looking for accountants who are holders of a designation, who are not part of an integrated planning and wealth firm, and are based in or close to the Sydney CBD (as they would ideally like these sessions to be face-to-face).

If you are interested in participating in these focus groups kindly send us an email ([ipaadvocacy@publicaccountants.org.au](mailto:ipaadvocacy@publicaccountants.org.au)) authorising the IPA to share your contact details with the FAAA.

## **REGULATOR NEWS**

### **ASIC News**

ASIC has released the following updates in its Newsroom section:

- [9 August 2024 – NEWS ITEM – Financial advice update](#) – ASIC has issued a financial advice update to summarise recent regulatory developments and current issues affecting financial advice. This update covers the topics of maintaining accurate records on the financial advisers register assessing adviser qualifications; ASIC's review of cold calling for superannuation switching business models; cyber security and third-party exposure; financial adviser registration; Report 779 *Superannuation and choice products: What focus is there on performance?*; provisional relevant providers; and keeping up-to-date with financial advice news.
- [7 August 2024 – MEDIA RELEASE – Stop order revoked after ASIC intervention on Rhinomed Limited Prospectus](#) – ASIC recently withdrew the interim stop orders that it had placed on an entitlement offer under a prospectus lodged by Rhinomed Ltd. Section 710 of the *Corporations Act 2001* (Cth) requires information to be disclosed in a prospectus; ASIC has been concerned that the prospectus did not disclose required information adequately. However, Rhinomed issued a replacement prospectus addressing ASIC's concerns.
- [7 August 2024 – MEDIA RELEASE – ASIC reports low take up of simplified liquidations since 2021 reforms](#) – A newly released ASIC report indicates that few liquidators are using the simplified liquidation process introduced in 2021 although it would be potentially appropriate. The simplified process is available for companies with debts not exceeding \$1 million. Report 789 *Review of simplified liquidations: 2021 – 2023* shows that take up is rare, despite a reduction in the average time to finalise liquidations. ASIC plans to follow up the report by conducting discussions with liquidators who have adopted the process.
- [7 August 2024 – NEWS ITEM – ASIC proposes to extend the operation of three legislative instruments](#) – ASIC intends to convert Class Order [CO 14/923] Record-keeping obligations for Australian financial services licensees when giving personal advice to a legislative instrument. In addition, it proposes to combine two instruments



covering breach reporting into a single instrument. The instruments are due to expire in October 2024, but ASIC considers they are operating effectively and aims to extend their operation for five more years. Stakeholders may make submissions on the proposals until 4 September 2024.

- [5 August 2024 – MEDIA RELEASE – Court orders Noumi pay \\$5 million penalty for breaching continuous disclosure obligations](#) – In the Federal Court, Jackman J has imposed a fine of \$5 million on Noumi Ltd (formerly Freedom Foods) after it admitted breaching continuous disclosure laws by overstating the value of its saleable inventory in financial reports for the 2019 and 2020 financial years. The [judgment](#) is available. ASIC has commenced civil penalty proceedings against two of Noumi's former officers.
- [5 August 2024 – NEWS ITEM – Australian Securities and Investment Commission signs MoU with State Securities Commission Viet Nam](#) – On 2 August 2024, ASIC signed its first Memorandum of Understanding with the State Securities Commission Viet Nam in Sydney to support information sharing arrangements under a formalised capacity building program supported by the Department of Foreign Affairs and Trade. Both signatories expressed their willingness to improve dialogue and enhance engagement through cooperation and sharing experience.

## APRA news

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

- [9 August 2024 – MEDIA RELEASES – APRA announces Brian Gray Scholarship winner](#) – APRA has awarded the Brian Gray Scholarship to Nathaniel Deitch, Honours candidate, Bachelor of Economics and Bachelor of Advanced Studies (Finance) at the University of Sydney. His research topic is *Policy-at-Risk: The Effects of Financial Conditions on the Conduct of Monetary Policy in Australia*. The scholarship program, which is jointly funded by APRA and the Reserve Bank of Australia, supports up to four scholarships annually.