

TAXATION

ATO reminder to lodge TPAR

ATO has identified more than 60,000 businesses that have yet to comply with lodgment requirements under the taxable payments reporting system.

Requirement to lodge 2021 returns: draft instrument

ATO has issued for consultation a draft instrument in relation to requirement to lodge 2021 tax and other returns.

Ombudsman report calls for changes re small business

Australian Small Business and Family Enterprise Ombudsman has released a research paper setting out changes aimed at improving the tax system for small businesses.

Small business ATO debts at \$21bn

Australian Small Business and Family Enterprise Ombudsman has urged the ATO to take a measured approach to debt collection.

Reporting thresholds for charities: consultation

Treasury has issued a consultation paper seeking to increase harmonised financial reporting thresholds for charities.

Allocation of professional firm profits guideline: draft

ATO has released a draft practical compliance guideline re allocation of professional firm profit or income in the assessable income of the individual profession practitioner.

CGT small business concessions: property investment companies

ATO has released Taxation Determination TD 2021/2 which outlines whether CGT small business concessions apply to companies that rent out investment properties.

FBT: cents-per-kilometre rate

Taxation Determination TD 2021/4 sets out the cents-per-kilometre rates for calculating the taxable value of a fringe benefit for vehicles other than cars.

FBT LAFHA reasonable amounts for meals

Taxation Determination TD 2021/3 sets out the weekly amounts the ATO treats as reasonable for food and drink expenses incurred by employees on LAFHA.

GST annual performance report 2019-20 released

ATO has released the 2019-20 GST administration annual performance report which sets out details of compliance activities and GST collections, among other things.

FINANCIAL SERVICES**Financial Reforms No 2 Bill receives Assent**

Bill to implement some of the recommendations of the Banking Royal Commission has received Royal Assent.

AFCA review: terms of reference

Treasury has released the terms of reference for the independent review of the Australian Financial Complaints Authority.

SUPERANNUATION

Reuniting more Super Bill passed with amendments

Bill to facilitate the timely and efficient exit of all eligible rollover funds has been passed by Parliament with amendments and awaits Assent.

Superannuation contributions cap increase from 2021-22

It has been calculated from AWOTE details that the concessional contributions cap is set to increase to \$27,500 for the 2021-22 financial year.

ATO data-matching program: invalidity benefit payments

ATO has registered a notice of data matching program to acquire invalidity benefit payments data from Commonwealth Superannuation Corporation.

REGULATOR NEWS

IGTO released Edition 15 of IGoT News!

The Inspector-General of Taxation and Taxation Ombudsman has released the most recent edition of its news detailing complaint investigations and follow ups.

21-036MR Industry funding: 2019-20 Cost Recovery Implementation Statement

ASIC today published the final 2019-20 Cost Recovery Implementation Statement (CRIS). The CRIS provides regulated entities with details of ASIC's forecast regulatory costs and activities by industry and subsector.

OTHER NEWS

Release of JobAccess Intermediary Toolkit – supporting the employment of people with disability

The Australian Government has launched the JobAccess Intermediary Toolkit to help organisations like you, who work with and support small to medium enterprises (SMEs), to promote the benefits of inclusive and open employment.

Extended Support for New Apprenticeships to Rebuild and Prepare for the Future

To assist with the recovery from COVID-19, the Australian Government is providing support to all eligible employers who engage a new Australian Apprentice. More information [here](#)

TAXATION

ATO reminder to lodge TPAR

The ATO has issued a [media release](#) confirming that its Taxable payments reporting system (TPRS) – a black economy measure designed to identify contractors who don't report or under-report their income, has identified more than 60,000 businesses that have yet to comply with lodgment requirements under the TPRS for 2019-20.

ATO Assistant Commissioner Peter Holt said that it's not just businesses that pay contractors in the building and construction industry that need to lodge a taxable payments annual report (TPAR). 2020 was the first year that businesses that pay contractors to provide road freight, information technology, security, investigation, or surveillance services may need to lodge a TPAR with the ATO. This is in addition to those businesses providing building and construction, cleaning, or courier services.

"Many restaurants, cafés, grocery stores, pharmacies and retailers have started paying contractors to deliver their goods to their customers. These businesses may not have previously needed to lodge a TPAR. However, if the total payments received for these deliveries or courier services are ten per cent or more of the total annual business income, you'll need to lodge," Mr Holt said.

The ATO said that businesses who have not yet lodged need to lodge as soon as possible, to avoid penalties as forms were due to be lodged by 28 August 2020.

Requirement to lodge 2021 returns: draft instrument

The ATO has issued, for consultation, draft instrument [Notice of Requirement to Lodge a Return for the Income Year Ended 30 June 2021](#) (LODGE 2021/D1) which covers income tax returns and other lodgments for:

- franking account returns, including special rules for late balancing corporate tax entities that elect to use 30 June as a basis for determining their franking deficit tax liability;
- venture capital deficit tax returns;
- ancillary fund returns;
- trustees of SMSFs;
- member information statements by superannuation providers.

The draft also covers use of approved forms for lodgment, lodgment deferrals, lodgment exemptions, and penalties for non-lodgment.

The ATO also issued draft instrument [Notice of Requirement for Parents with a Child Support Assessment to Lodge a Return for the Income Year Ended 30 June 2021](#) (LODGE 2021/D2) for consultation. It requires liable and recipient parents under a child support assessment to lodge an income tax return for the income year, by the due date specified in the instrument. Such persons may not otherwise be required to lodge an income tax return. The return must be in the approved form.

Comments for both are due by 30 March 2021.

Ombudsman report calls for changes re small business

The Australian Small Business and Family Enterprise Ombudsman, Kate Carnell, has released a research paper, [A tax system that works for small business](#), setting out changes aimed at improving the tax system.

The report recommends reforms including waiving interest and penalties for a first offence, restricting ATO review and audit periods to one year when a small business is using an accredited tax or BAS agent, and immediately ceasing debt recovery action against a small business that is seeking a review of its tax position, regardless of whether the dispute is before the AAT.

The report also recommends making compliance easier by allowing small businesses to opt-in to GST being collected and remitted directly to the ATO at the electronic point of sale as well as income averaging measures that would help small businesses pay the right amount of tax in good years and bad. The Ombudsman noted that tax compliance costs small businesses about \$90 per \$1,000 turnover - about 225 times more than the cost for big business (\$0.40 per \$1,000 turnover). Without change, Ms Carnell said many small businesses will fail at a time when Australia needs small business to pull the economy towards recovery.

Small business ATO debts at \$21bn

The Australian Small Business and Family Enterprise Ombudsman, Kate Carnell, has [urged](#) the ATO to take a measured approach when the ATO begins to ramp up its debt collection action. The Ombudsman noted that collectable debt owed to the ATO has peaked at \$34bn - the majority of which is owed by small business (\$21bn).

With ATO debt collection action expected to ramp up as debts hit a record high, Ms Carnell expressed concern that small businesses may be subjected to the harsh debt recovery actions inflicted prior to the COVID-19 crisis. Ms Carnell said the ATO has rightly taken a softer approach towards small businesses in response to COVID-19 and she does not want to see a return to extreme enforcement actions. Previous actions, such as garnishee notices, crippled small businesses, so it is critical the ATO uses its powers proportionately and appropriately, particularly as small businesses work to get back on their feet, Ms Carnell said.

While the ATO quite reasonably sees its role as an enforcer of taxation laws, Ms Carnell said it's important that small businesses in dispute with the ATO are given a fair go, especially when the dispute is exacerbated by overly complicated tax laws.

Reporting thresholds for charities: consultation

Treasury has issued a [consultation paper](#) seeking to increase harmonised financial reporting thresholds for charities. The deadline for submissions is 21 March 2021.

Commonwealth, State and Territory governments have been working since 2014 to harmonise the reporting arrangements and obligations across jurisdictions for ACNC-registered charities. An ACNC report in 2018 recommended that registered entities be required to report on the basis of size (ie with increasing complexity as the size increases). The Council on Federal Financial Relations (CFFR) has asked that a framework for increasing harmonised financial reporting thresholds for charities registered with the ACNC be announced by 30 June 2021.

The main thrust of the proposed change is that the thresholds for:

- small charities would increase from \$250,000 to \$500,000;
- medium charities would increase from \$250,000 to \$1 million to \$500,000 to \$3 million; and
- large charities would increase from \$1 million or more to \$3 million or more.

Allocation of professional firm profits guideline: draft

The ATO has released draft practical compliance guideline [PCG 2021/D2: Allocation of professional firm profits - ATO compliance approach](#). The Guideline explains how the ATO intends to apply compliance resources when considering the allocation of professional firm profit or income in the assessable income of the individual professional practitioner (IPP).

The Guideline raises the ATO's concerns around arrangements involving taxpayers who redirect their income to an associated entity from a business or activity which includes their professional services, where it has the effect of altering their tax liability. Broadly, it explains the ATO's "risk-based" approach to IPPs and how their professional firm allocates profits – via two "gateways":

- **Gateway 1** – there has to be sound commercial rationale, especially where the arrangement would not be expected to be present in a more straightforward or commercial dealing, for entering into and operating the arrangement or structure. The arrangement must be appropriately documented and evidence available that the stated commercial purpose was achieved as a result of the arrangement; and
- **Gateway 2** – there must not be certain 'high-risk features' such as (i) financing arrangements relating to non-arm's length transactions; (ii) exploitation of the difference between accounting standards and tax law; (iii) arrangements where a partner assigns a portion of a partnership interest that are materially different in principle from the Everett and Galland cases; or (iv) multiple classes of shares and units held by non-equity holders.

The Guideline also provides a risk assessment scoring table with explanation for the risk assessment factors, ultimately to demonstrate how the ATO will be utilising its risk assessment framework.

The ATO said that the Guideline will be reviewed from and during 2022 and that any revisions to improve its efficacy will be made on an 'as necessary' basis.

Proposed date of effect: Applies prospectively from 1 July 2021.

Comments are due by 26 March 2021.

CGT small business concessions: property investment companies

In Ruling TR 2019/1, the ATO accepted that a company can be carrying on a business even if its activities are relatively limited and consist of passively receiving investment returns or rent, which it distributes to shareholders. However, the ATO cautioned that TR 2019/1 only applies to and binds the Commissioner in relation to specific provisions - namely, the definition of "small business entity" in Div 328 ITAA 1997 and historically in relation to the Income Tax Rates Act 1986. TR 2019/1 warned that "care must be exercised in applying the reasoning and conclusions expressed in this Ruling when applying other provisions".

One such example is the CGT small business concessions (Div 152 ITAA 1997). [Taxation Determination TD 2021/2](#) which states that a company carrying on a business in a general sense as described in TR 2019/1 but whose sole activity is renting out an investment property cannot obtain Div 152 relief in relation to that property. While the property is used in the course of carrying on a business (a requirement for Div 152 relief), the property does not qualify as an active asset (a separate requirement). This is due to the "main use to derive rent" exclusion in s 152-40(4)(e) ITAA 1997.

Date of effect: retrospective.

FBT: cents-per-kilometre rate

The cents per kilometre rates for calculating the taxable value of a fringe benefit arising in the 2021-22 FBT year from the private use of a motor vehicle (other than a car) are:

- vehicles with an engine capacity of up to 2,500cc - 56 cents/km;
- vehicles with an engine capacity of over 2,500cc - 67 cents/km; and
- motorcycles - 17 cents/km.

The 2021-22 rates are set out in [Taxation Determination TD 2021/4](#) and are unchanged from the previous FBT year.

Date of effect: 1 April 2021 to 31 March 2022.

FBT LAFHA reasonable amounts for meals

[Taxation Determination TD 2021/3](#), sets out the weekly amounts the ATO treats as reasonable for food and drink expenses incurred by employees receiving a living-away-from-home allowance fringe benefit for the 2021-22 FBT year.

For Australian locations, the reasonable weekly amounts are: one adult - \$283; two adults - \$425; three adults - \$567; one adult and one child - \$354; two adults and one child - \$496; two adults and two children - \$567; two adults and three children - \$638; three adults and one child - \$638; three adults and two children - \$709; and four adults - \$709.

For larger family groupings, \$142 is added for each additional adult and \$71 for each additional child. An "adult" for this purpose is an individual aged 12 years or more at 31 March 2021.

Date of effect: 1 April 2021 to 31 March 2022.

GST annual performance report 2019-20 released

The ATO has released the [2019-20 GST administration annual performance report](#), a requirement under the GST Administration Performance Agreement.

The ATO raised \$1.6 billion from compliance and lodgment enforcement activities in 2019-20, exceeding its planned commitment of \$740 million.

Its GST cash collections were \$60.2 billion, 7.6% lower than 2018-19, reflecting the significant impact of COVID-19 on the economy. More telling is the difference between net GST accruals and cash collections of approximately \$6.4 billion, compared with \$1.6 billion in 2018-19. The most significant component of this is an increase in unpaid debt, in part due to payment deferrals granted to businesses experiencing financial hardship.

FINANCIAL SERVICES

Financial Reforms No 2 Bill receives Assent

The [Financial Sector Reform \(Hayne Royal Commission Response No 2\) Bill 2020](#) has received assent as Act No 19 of 2021. The Bill implements further recommendations of the Banking Royal Commission in areas such as ongoing fee arrangements; disclosure of lack of independence; and advice fees in superannuation.

In heralding the passage of Bill, the Treasurer [stated](#) the following:

- clients of financial advisers will receive an annual, forward-looking summary of fees and corresponding services, in addition to existing disclosures;
- advisers will need to obtain written consent prior to deducting fees;
- the changes complement the introduction of a new disclosure obligation that requires financial advisers who are not independent of product providers to provide their clients with a clear and concise written disclaimer; and
- the legislation will also prohibit the deduction of ongoing advice fees from MySuper products and increase the transparency of fees to members.

AFCA review: terms of reference

Treasury has released the [terms of reference](#) for the independent review of the Australian Financial Complaints Authority. The report must be delivered no later than 30 June 2021 and submissions will be received until 26 March 2021.

The review provides an opportunity for feedback on the operation of AFCA since its establishment and to consider whether further enhancements should be made to ensure the external dispute resolution (EDR) scheme is appropriately calibrated and operating effectively.

Legislation also requires the review to examine the appropriateness of the monetary limits on claims that may be made to, and remedies that may be determined by, AFCA in relation to disputes about credit facilities provided to primary production businesses, including agriculture, fisheries and forestry businesses.

SUPERANNUATION

Reuniting more Super Bill passed with amendments

The [Treasury Laws Amendment \(Reuniting More Superannuation\) Bill 2020](#) has been passed by the Senate with amendments, and awaits assent.

The measures in the Bill will facilitate the timely and efficient exit of all eligible rollover funds (ERFs) from the market by early 2022. Specifically, it will require accounts transferred from ERF to the ATO will, where possible, be proactively reunited with a member's superannuation account or directly with the individual where eligible, within 28 days.

Amendments made just before the Bill was passed are outlined in [Sheet SH137](#) and include:

- measures to delay the operation of the charges proposed to be made by Sch 1 of the Bill to provide trustees of eligible rollover funds additional time to exit the market; and
- a new Sch 2 to the Bill, which provides that a superannuation provider may pay to the Commissioner any amount it holds on behalf of a member, former member or non-member spouse, if it is in the best interests of the member etc and it is done for reunification by the Commissioner of those amounts with an active superannuation account.

Treasurer's take

The Treasurer [states](#) that the measure is intended to remove the large numbers of duplicate super accounts and the changes are consistent with recommendation 5 of the Productivity Commission's report, "Superannuation: Assessing Efficiency and Competitiveness".

Superannuation contributions cap increase from 2021-22

Thomson Reuters has used the latest AWOTE details (ABS Catalogue no: [6302.0](#)) to calculate the following superannuation rates and thresholds for 2021-22 in accordance with Subdiv 960-M of the ITAA 1997.

CONTRIBUTIONS CAPS: The concessional contributions cap is set to increase to \$27,500 for the 2021-22 financial year (up from \$25,000 since 2017-18). The non-concessional contributions cap (which is set at four times the concessional cap) is \$110,000 for 2021-22 (or \$330,000 under the bring-forward rule over three years). The CGT cap amount for non-concessional contributions is \$1.615m for 2021-22 (up from \$1.565m).

SUPER GUARANTEE: the "maximum contribution base" is \$58,920 per quarter for 2021-22.

CO-CONTRIBUTIONS: "lower income threshold" is \$41,112 for 2021-22; "higher income threshold" is \$56,112.

SUPER BENEFITS: The following indexed thresholds apply for 2021-22:

- Lump sum low rate cap - \$225,000 (up from \$215,000); untaxed plan cap - \$1.615m (up from \$1.565m).
- ETP cap amount - \$225,000 (up from \$215,000).
- Genuine redundancy and early retirement payments - tax-free amounts: base amount - \$11,341 (up from \$10,989); service amount - \$5,672 (up from \$5,496).

Importantly, the ATO does not consider that this decision has wider ramifications beyond the taxpayer's particular circumstances.

ATO data-matching program: invalidity benefit payments

The ATO has registered a [notice of data matching program](#) to acquire invalidity benefit payments data from Commonwealth Superannuation Corporation for 2010–11 through to 2021–22. The ATO said it is collecting this information to:

- identify individuals impacted by court decisions regarding the taxation of invalidity benefit payments;
- assist individuals in understanding the potential impact of changes to the tax and super treatment of their invalidity benefit payments, as well as the potential impacts of remediation, and
- automate taxation and superannuation remediation for the impacted population where possible, to make the process simpler and quicker for impacted individuals, or facilitate streamlined manual remediation.

The data items collected will include (i) individuals' identification details (name, date of birth, TFN, email address, etc); and (ii) transaction details (scheme name, member account number, unique superannuation identifier, pension commencement date, etc).

The ATO estimates records relating to approximately 16,000 individuals will be obtained each financial year.

REGULATOR NEWS

IGTO released Edition 15 of IGoT News!

The Inspector-General of Taxation and Taxation Ombudsman (IGTO), Karen Payne, has released [edition 15](#) of the IGTO's newsletter - "IGoT News".

The edition provided a summary of the IGTO's December report on [complaint investigations relating to the ATO's administration of JobKeeper and Boosting Cash Flow payments for new businesses](#), highlighting the outcome of the investigations and potential follow-up review investigations.

The edition also provided the IGTO's Q2 FY21 update on its complaints handling service – 365 complaints received compared to 789 in the same period last year. According to the update, the marked reduction was not a surprise as (i) the IGTO has been encouraging taxpayers to seek to resolve their taxation complaint directly with the ATO in the first instance; and (ii) the ATO had not resumed its debt collection activities, an area which previously accounted for approximately 25% to 30% of complaint receipts by the IGTO. The top issue recorded in the quarter, accounting for 41% of complaints received were of taxpayers needing access to COVID-19 economic response measures.

Updates were also shared in relation to two review investigations underway:

- [The effectiveness of ATO communications of taxpayers' rights to complain, review and appeal](#) – following a series of meetings with the ATO, the IGTO said that it has received "a significant amount of information" which will enable the undertaking of random case sampling to examine the nature and detail of information provided to taxpayers and tax practitioners at various interaction points with the ATO. Further discussions with the ATO is underway; and
- [Investigation and Exploration of Undisputed Tax Debts in Australia](#) – the investigation which was deferred in April 2020 due to COVID-19 is now recommenced. The IGTO said that it is in the process of "reviewing and consolidating" the information provided by the ATO on the matter.

Other topics of interest included:

- The refresh of the IGTO's Register of Potential Review Investigation Topics;
- The IGTO's involvement with Parliamentary committees; and
- The IGTO's Q3 FY21 activities.

21-036MR Industry funding: 2019-20 Cost Recovery Implementation Statement

ASIC today published the final [2019-20 Cost Recovery Implementation Statement](#) (CRIS). The CRIS provides regulated entities with details of ASIC's forecast regulatory costs and activities by industry and subsector.

The final CRIS has been updated to include some of the feedback that arose during consultation on the draft document published in June 2020. ASIC has also published a [summary of its actual regulatory costs](#) and [actual levies](#). Levy invoices will be issued shortly.

ASIC is acutely aware of the challenges facing many businesses due to COVID-19 and is committed to working with regulated entities facing difficulties paying industry funding levies. ASIC will consider waivers due to the impact of COVID-19 on a case-by-case basis.

Visit our website for general information about [waiver applications and payment plans](#).

OTHER NEWS

Release of JobAccess Intermediary Toolkit – supporting the employment of people with disability

The Australian Government has launched the JobAccess Intermediary Toolkit to help organisations like you, who work with and support small to medium enterprises (SMEs), to promote the benefits of inclusive and open employment.

We know from research with SMEs that there's a general desire amongst SMEs to employ people with disability, and when businesses do hire people with disability, experiences tend to be good. However, people with disability still experience unemployment at a much higher rate than other Australians.

We also know SMEs are time-poor and business owners can wear many hats. While Government supports and financial incentives are available to help SMEs employ a person with disability, many business owners don't know about them.

By promoting the supports available through JobAccess to SMEs, you can help business owners save time and money, and your efforts will result in good outcomes for businesses and communities.

Your organisation is a trusted source of information for SMEs. This toolkit provides resources that you, as an intermediary organisation, can use in your newsletters, social media and other communications with SMEs to promote the supports available to businesses to employ people with disability.

Extended Support for New Apprenticeships to Rebuild and Prepare for the Future

To assist with the recovery from COVID-19, the Australian Government is providing support to all eligible employers who engage a new Australian Apprentice. More information [here](#)