

TAXATION

Reforms may give ATO expanded powers

The government has released a discussion paper which may give the ATO expanded powers of electronic surveillance.

Loss carry-back Bill: Senate hearing

The Senate Economics Committee is undertaking a review of the loss carry-back extension Bill and has released the transcript of hearings.

Decision Impact Statement: cash flow boost case

ATO has released a Decision Impact Statement in relation to a case that a company was not entitled to the cash flow boost.

Certain clinical trials to be accepted as core R&D activity

Government has released for consultation the draft industry R&D determination relevant for the medical products field.

Failure to provide documents: McDonalds Australia

The ATO has issued a media release advising that McDonald's Australia has been convicted and fined for failing to provide documents.

ATO draft effective life for e-bikes and e-scooters

ATO has issued a draft effective life proposal for e-bicycles and e-scooters of five years and two years, respectively.

CPI December 2021 quarter

ABS has released the CPI index under for the December 2021 quarter of 121.3 which is up from the September 2021 quarter.

Jail sentence for GST fraud

ATO has issued a media release advising that a person has been sentenced to jail after pleading guilty to fraudulent GST refunds.

NSW Small Business Support Program (SBSP)

The NSW Government announced on the 30th of January 2022 further financial support for small businesses impacted by the current COVID-9 Omicron outbreak.

FINANCIAL SERVICES**Naming conventions for exchange traded products: consultation paper**

ASIC has released a consultation paper on naming conventions for licensed exchanges that admit exchanged traded products.

SUPERANNUATION**APRA super data reporting: updated FAQs**

APRA has published a new set of FAQs to provide further guidance to registrable super entity licensees on reporting standards.

Superannuation entity ordered to pay penalty for misleading members

Federal Court has ordered Statewide Superannuation Pty Ltd to pay civil penalties totalling \$4m for providing members with misleading information re insurance.

REGULATOR NEWS

SMSFs and crypto-assets: ASIC warning about scams

ASIC has warned individuals about an increase in marketing and scams targeting people to switch from retail and industry super funds to SMSFs to invest in crypto-assets.

Member feedback required for upcoming audit & reviews

The Australian National Audit Office (**ANAO**) and Inspector-General of Taxation and Taxation Ombudsman (**IGTO**) are both conducting important reviews which can lead to future improvements to our tax system. The ANAO review is particularly relevant as it will be looking at whether the ATO provides enough support and services for tax agents. This is your opportunity to vent any issues or frustrations.

We would really appreciate if members could provide any feedback so that IPA can consolidate member insights into our submission in response to these reviews.

TAXATION

Reforms may give ATO expanded powers

The Government has released a discussion paper entitled the [Reform of Australia's electronic surveillance framework](#). The paper is released in the context of the Government's stated intention to reform Australia's laws governing electronic surveillance. It consists of background briefings and 37 questions to seek feedback.

Relevantly for the readers of this publication, the discussion paper advises that the Government will consider providing the ATO with the power to access telecommunications data "for the purposes of protecting public revenue from serious financial crimes". More specifically, the paper states the following (at page 18):

"For example, with respect to the ATO, access to telecommunications data would support or, in some cases, potentially replace expensive, resource-intensive and intrusive physical surveillance operations. ATO experience demonstrates that telecommunications data would also be a critical tool in excluding non-involved individuals from lines of inquiry, or in establishing a relationship between an original person of interest being investigated (for example, for tax fraud) and a larger group of individuals committing serious criminal offences (such as large-scale fraud against the Commonwealth)."

Loss carry-back Bill: Senate hearing

The Senate Economics Committee is undertaking a review of the [Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021](#) and has released the [transcript](#) of hearings. The reporting date is 3 February 2022.

Decision Impact Statement: cash flow boost case

The ATO has released a [Decision Impact Statement](#) ("DIS") in relation to MJ and IT Holdings Pty Ltd and FCT [2021] AATA 3250. In that case, the AAT found that MJ and IT Holdings Pty Ltd was not entitled to the cash flow boost ("CFB") in respect of an amount paid to its sole director because it entered into a scheme with the dominant purpose of increasing its entitlement to the cash flow boost.

The DIS states that the AAT's conclusion that the payment made displayed a dominant, if not sole purpose, of increasing the March 2020 CFB entitlement was consistent with the Commissioner's interpretation and application of the "integrity rule" in s 5(1)(g) of the Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020.

The DIS also states that the AAT's decision that the taxpayer made a constructive payment of \$25,000 to the director in the month of March 2020 is fundamentally a finding of fact particular to the evidence in this specific case, where the Commissioner considers that the aspect of the decision may have limited application beyond the scope of this case.

Comments are due by 18 February 2022.

Certain clinical trials to be accepted as core R&D activity

The Government has released for [consultation](#) the draft Industry Research and Development (clinical trials, Phase 0, I, II, III for an unapproved therapeutic good) Determination 2021. This is relevant for the medical products field.

By way of background, to register for the R&D tax regime, companies must conduct or plan to conduct at least one "core R&D activity". Activities involved in clinical trials covered by the draft will meet the requirements for being core R&D activities – important because the outcome of clinical trials covered by the draft cannot be known or determined in advance.

The Treasurer and other Ministers issued a joint [media release](#) stating that the draft is the first of its kind to be made under the reforms to the R&D Tax Incentive announced in the 2020-21 Budget. The Treasurer also reminded readers that the Government intends to introduce the so-called "patent box" tax regime, which will tax corporate income derived from patents at a concessional effective corporate tax rate of 17%. The patent box will apply to income derived from Australian medical and biotechnology patents (announced in the 2021-22 Budget).

Date of effect: The day following the registration of the Determination.

Submissions are due by 17 February 2022.

Failure to provide documents: McDonalds Australia

The ATO has issued a [media release](#) advising that McDonald's Australia has been convicted and fined for failing to provide documents.

The background is that the ATO issued a formal notice in July 2019 requiring the entity to produce documents which were not provided by the compliance date of 30 August 2019. It provides a reminder of the scope of the ATO's reach when it comes to obtaining information. In this instance, the press release concludes by noting that the High Court has refused the special leave application of the taxpayer in *Mussalli v FCT* [2021] FCAFC 71, which would indicate that the breach notice was in relation to matters involving pre-paid rent. In *Mussalli*, the Full Federal Court held that upfront payments to secure a rent reduction under long-term leases were on capital account and not deductible under s 8-1.

ATO draft effective life for e-bikes and e-scooters

The ATO has issued a [draft effective life proposal](#) for e-bicycles and e-scooters. It suggests a five year effective life for bikes and two years for the scooters.

Comments are due by 25 February 2022.

CPI December 2021 quarter

The Australian Bureau of Statistics (ABS) has [released](#) the CPI index number of 121.3 for the December quarter 2021 (up from 119.7 for the September 2021 quarter). This CPI index number is used to index certain tax and superannuation amounts under Subdiv 960-M of the ITAA 1997. The index number is also used for FBT purposes concerning remote area benefits (under ss 60 and 60AA of the FBTA).

The CPI rose 1.3% for the December 2021 quarter. The most significant price rises were for New dwelling purchase by owner-occupiers (+4.2%) and Automotive fuel (+6.6%). Over the year to the December 2021 quarter, the CPI is now running at 3.5%.

Jail sentence for GST fraud

The ATO has issued a [media release](#) advising that a person has been sentenced at the Perth District Court to three years jail after pleading guilty to dishonestly obtaining and attempting to obtain a financial advantage by deception.

The offender lodged 14 BAS's which sought to obtain almost \$230,000 in fraudulent GST refunds. The release advises that the offender's bank accounts showed no receipt of income from the alleged business and insufficient cash flow to support the purchase of the alleged acquisitions. This was after reporting the alleged business had made \$307,000 in sales and paid GST on purchases of \$256,955 across the period.

NSW Small Business Support Program (SBSP)

Tony Greco, General Manager Technical Policy at the IPA says 'Business needs this. While there is no public order stopping people from leaving home, they are reluctant to. It has resulted in a shadow lockdown and it's hurting businesses. The NSW Government is clearly worried about business failures and job losses resulting from the unofficial lockdown and has moved to extend another round of business support to help SMEs ride out the omicron wave'.

Eligibility:

- One-off payment for the month of February 2022
- Aggregated turnover between \$75,000 and \$50 million for 2020-2021
- Maintain employee headcount as of 30 January 2022
- Decline in turnover of at least 40% due to Omicron in January 2022 compared with January 2020 or January 2021; and decline in turnover of at least 40% due to Omicron from 1-14 February 2022 compared with the same fortnight in February of the comparison year used

Amounts:

- Payments are equal to 20% of NSW weekly payroll (subject to the following caps):
 - Employing entities: Minimum \$750 per week to a maximum of \$5,000 per week (\$3,000 and \$20,000 in total)
 - Non-employing entities: \$500 per week (\$2,000 in total)

Commencement date:

- Mid-February 2022 through Services NSW

Further information to follow.

Website links:

Services NSW further information [here](#).

NSW Premier's release [here](#).

Additional support

The small business Fees and Charges Rebate will be expanded to cover 50% of the cost of Rapid Antigen Tests (RATs) and the amount of the rebate will increase from \$2,000 to \$3,000 (in late March 2022).

For more information, [click here](#).

FINANCIAL SERVICES**Naming conventions for exchange traded products: consultation paper**

ASIC has released a consultation paper ([CP 356](#)) on naming conventions for licensed exchanges that admit exchange traded products (ETPs), and its proposal to update guidance on the ETP admission guidelines (INFO 230). Because ETPs have different structures, features, strategies and risks to traditional warrants and listed products, ASIC believes they should be labelled in a way that differentiates them from other listed products.

Submissions are due by 3 March 2022.

SUPERANNUATION

APRA super data reporting: updated FAQs

APRA has published a [new set of FAQs](#) to provide further guidance to registrable superannuation entity licensees on the reporting standards and the reporting of historical data for Phase 1 of the Superannuation Data Transformation (SDT) project. The updates include: (i) historical data collection FAQs; (ii) general FAQs; and (iii) FAQs for numerous reporting standard SRS. APRA said it has extended the due date for the submission of historical data for SRS 251.0 from 28 February 2022 to 30 May 2022.

Superannuation entity ordered to pay penalty for misleading members

The Federal Court has ordered Statewide Superannuation Pty Ltd to pay civil penalties totalling \$4 million for providing members with misleading information about their insurance and failing to report the issue to ASIC: [ASIC v Statewide Superannuation Pty Ltd \[2021\] FCA 1650](#) (Federal Court, Besanko J, 22 December 2021).

From 2017 to 2020, Statewide Super sent over 14,000 annual statements to at least 7,000 fund members representing that they held insurance within their superannuation in circumstances where their insurance cover had lapsed. Statewide Super also overcharged insurance premiums of at least \$2.5m to some fund members at a time when the cover had ceased. This conduct stemmed from inadequate management and risk control processes, including a failure to adequately manage systems changes. Statewide also failed to report these issues to ASIC within 10 days of becoming aware of them, as required by law.

The Court held that Statewide Super breached s 1041H of the Corporations Act 2001 and ss 12DA and 12DB of the ASIC Act in connection with the misleading or deceptive representations about insurance cover to members who received the annual statements. In making these representations, the Court said Statewide breached its general obligations as an AFS licence holder under s 912A(1)(c) of the Corporations Act to act efficiently, honestly and fairly and to comply with financial services laws. The Court also ordered Statewide to undertake a remediation program and publish an adverse publicity notice on its website and mobile app.

REGULATOR NEWS

SMSFs and crypto-assets: ASIC warning about scams

ASIC has [warned](#) individuals about an increase in marketing and scams targeting people to switch from retail and industry super funds to self-managed super funds (SMSFs) to invest in crypto-assets (or cryptocurrencies). ASIC reminded super fund members that they should seek advice from a licensed financial adviser before agreeing to transfer their super into an SMSF. ASIC also noted that the [ATO website](#) contains information about the obligations for SMSFs making investments, including cryptocurrencies.

Member feedback required for upcoming audit & reviews

ANAO performance audit of the ATO

ANAO recently started a performance audit of the **ATO's** engagement with tax agents. The ANAO is keen to hear from IPA members' experiences of ATO engagement and insights as an input to the audit.

Audit objective and scope

The audit objective is to assess the effectiveness of the ATO's engagement with tax agents in achieving efficient and effective tax and superannuation systems. To achieve this, the ANAO is examining the ATO's strategy for engaging with tax agents and its services and support for tax agents. The ANAO's focus is on the ATO's broader engagement with tax agents, for example, through their guidance, communications, services and consultation, rather than specific compliance actions.

Audit fieldwork is now underway and the IPA has already had an initial meeting with the ANAO on 22 December 2021 and we will be meeting with them regularly whilst review is still open.

How to provide feedback

We invite our members to provide feedback on the following aspects of the ATO's engagement with tax agents:

1. Does the ATO effectively set out their strategic approach to engaging with tax agents? Is this based on consultation with tax agents? Is this approach clearly communicated to tax agents and the associations?
2. Does the ATO assess their performance in engaging with tax agents? Is it measuring the right things?
3. Does the ATO effectively engage with tax agents through forums (e.g. National Tax Liaison Group, Tax Practitioner Stewardship Group and other forums)?
4. Does the ATO effectively consult with tax agents on related matters (i.e. through the ATO Consultation Hub)?
5. Does the ATO have effective communication and education arrangements?
6. Does the ATO effectively manage the Lodgment Program and Key Agent Program?
7. Does the ATO effectively respond to tax agent enquiries — phone line, tax practitioner assistance service and complaints?
8. Does the ATO have effective digital services — particularly Online Services for Agents and the Practitioner Lodgment Service — and associated support?

To enable IPA to collate member feedback, please email your responses to IPAGroupFeedback@publicaccountants.org.au by the **end of February**.

IGTO reviews

IGTO, announced that the office will be progressing three new review investigations throughout 2022.

A brief summary of the three review investigations is set out below.

[ATO's Administration and Management of Objections](#)

Taxpayers who lodge objections because they are dissatisfied with a decision that the ATO has made about them or their affairs generally expect their objection to be properly considered and to be finalised in a timely manner, impartially and independent of the original decision maker.

The investigation will focus mainly on the timeliness in issuing objection decisions, the independence of objection decision makers and the objection decision making process, as well as the interaction between objections processes and other initiatives in minimising or narrowing disputes.

[Exercise of the General Powers of Administration \(GPA\)](#)

A number of pieces of legislation specifically provide that the Commissioner of Taxation has the General Power of Administration (**GPA**) of the relevant tax law. These provisions grant the Commissioner discretion only in relation to the administration of provisions set out in the respective Acts. It is arguable that any administrative decision made by the Commissioner (or a delegate, or duly authorised officer) that is not a decision under a specific legislative power is an exercise of the GPA. In this sense, the scope and breadth of the GPA is extremely broad.

The IGTO's investigation does not propose to examine every type of decision that may be made under the GPA, but will draw from case studies in their complaints investigation service as well as stakeholder submissions to identify and investigate particular areas raised as examples of exercise of the GPA that should be investigated. In particular, the IGTO is interested to understand how broad-based GPA decisions (i.e. those affecting large groups of taxpayers) are identified and determined.

[Exercise of the Commissioner's Remedial Powers \(CRP\)](#)

The Commissioner of Taxation has a statutory discretion to modify the operation of certain provisions in the tax law where those provisions are not operating as intended. The discretion is only able to be exercised where certain conditions have been met.

Through the IGTO's tax complaint investigation service, it has been observed that there appears to be a lack of clarity about how issues are raised for the Commissioner's Remedial Powers (**CRP**) consideration and whether the processes underlying consideration of these matters are sufficiently robust to take into account consideration of relevant factors and expert stakeholder views.

Call for member feedback for submission

We are keen to hear of our members' experiences, case studies or feedback on:

- the ATO's management of objections;
- the Commissioner's exercise of the GPA or CRP.

To help the IPA collate member feedback, if you have any insights to share, please email your response to IPAGroupFeedback@publicaccountants.org.au by COB on **Friday 18 February 2022**.