

## **TAXATION**

### **Government to undertake consultation on car parking and FBT**

Government has announced it will be conducting a consultation to identify appropriate modifications to the definition of commercial parking station.

### **FBT thresholds, lodgment dates and instructions**

ATO has updated the FBT rates and thresholds for 2022-23 as well as advising of the lodgment due date and instructions.

### **Employees vs contractors: ATO decision impact statement**

ATO has issued a decision impact statement on the recent High Court decision which ruled that a labourer engaged by a labour hire company was an employee.

### **Private health insurance rebate percentages 2022-23**

The Department of Health has issued the private health insurance rebate percentages for 2022-23.

### **Insolvent trading safe harbour review**

Treasury has published its final report and the government's response on its review of the insolvent trading safe harbour provisions for company directors.

### **TPB CEO to become a statutory appointment**

Government has announced that the Commissioner of Taxation has agreed to delegate the power to appoint TPB's CEO to the TPB chair.

### **Budget measures legislation passed**

Bill containing Budget measures including updated Medicare levy thresholds, deductibility of COVID-19 tests and LMITO changes has been passed.

## **Additional grant programs declared NANE**

An instrument has been registered to declare grant programs administered by States and Territories NANE.

## **ATO wins appeal: discretionary family trust case**

The High Court has unanimously allowed ATO's appeal in a case concerning adult beneficiaries of a discretionary family trust disclaiming their entitlement to trust income.

## **Aggregation rules determinations released**

ATO has issued three determinations to assist large businesses in applying the aggregation rules that form part of the aggregated turnover test.

## **LAFHA reasonable amounts for meals 2022-23**

ATO has released the weekly amounts it considers reasonable for food and drink expenses incurred by employees receiving a LAFHA fringe benefit.

## **FBT cents per kilometre rate**

The cents per kilometre rates for calculating the taxable value of a fringe benefit arising in the 2022-23 FBT year from the private use of a motor vehicle has been released.

## **Illegal proceeds, penalties and fines**

ATO has issued an Addendum to TR 93/25 which effectively rewrites the ruling to bring it up to date.

## **Refund of excess GST: decision impact statement**

ATO has released a decision impact statement on an AAT case which found that a taxpayer that paid excess GST was not entitled to a refund.

## **BoT report: GST on low value imported goods**

The government has announced the publication of a Board of Taxation review into GST on low value imported goods.

## **GST revenue sharing for States for 2022-23**

Government has published the GST revenue sharing relativities which sets out the Commonwealth Grants Commission's recommended rates.

## **GST-free supply of certain goods**

Determination has been registered to cover the GST-free supply of various products including quit smoking aids and sunscreen preparations.

## **FINANCIAL SERVICES**

### **Financial advisers awaiting authorisation**

Legislative instrument has been issued to overcome an unintended prohibition on certain Australian Financial Services licensees from providing financial advice.

### **Review of financial advice**

An issues paper has been released for the quality of advice review on how the regulatory framework for financial advice can be improved.

### **ASIC advises RoA relief for COVID-19 financial advice to sunset**

ASIC has advised that one of its temporary relief measures relating to the provision of COVID-19 financial advice will be automatically repealed on 15 April 2022.

## **SUPERANNUATION**

### **Super pension minimum payment temporary extension**

Government has made a determination which extends the temporary 50% reduction in minimum annual payment amounts for super pension and annuities.

### **Allowing commutation of certain income streams**

Treasury has registered regulations which make minor and technical changes to address unintended outcomes for certain non-capped defined benefit income streams.

### **SMSF: social security relief for asset-test exempt pensions**

Instrument has been registered to remake a sunseting instrument that operates to waive social security debt in respect of asset-test exempt income streams from SMSFs.

### **Super calculators and retirement estimates**

ASIC has registered an instrument to extend the condition relief from the AFS licensing requirements to certain super fund trustees.

### **ATO guide: third party data tax controls**

ATO has released a supplementary guide on the governance of third-party data tax controls for investment entities including large super funds.

### **Super information for family law proceedings**

Government has issued a reminder that the new simpler super splitting initiative started on 1 April 2022.

**REGULATOR NEWS****New members for the TPB**

The TPB has advised of the appointment of two new board members to replace outgoing members.

**IGTO quarterly report for Q2**

IGTO has released its Q2 reporting pack highlighting its activities during the quarter and provides update against the IGTO corporate plan.

**Board of Taxation 2020-21 Annual report**

The Board of Taxation has issued its report for 2020-21 highlighting the stages of various reviews.

**APRA executive team changes announced**

APRA has announced changes to its leadership team, including changes to general counsel, and the appointment of its new CEO.

## **TAXATION**

### **Government to undertake consultation on car parking and FBT**

The Government has [announced](#) that it will be conducting a consultation to identify appropriate modifications to the definition of "commercial parking station". This will be undertaken with a view to restoring the previously-understood interpretation of FBT to car parking benefits. Specifically, car parks that effectively charge penalty rates for all-day parking (to encourage shorter stays) do not represent genuine alternative parking arrangements for commuters and so should not trigger FBT liabilities.

Once finalised, the new definition will apply to car parking fringe benefits provided from 1 April 2022.

### **FBT thresholds, lodgment dates and instructions**

The ATO has updated its [worksheet](#) which summarises the FBT rates and thresholds for 2022-23 (ie 1 April 2022 to 31 March 2023). New numbers for 2022-23 include:

- record keeping exemption (\$9,181- up from \$8,923); and
- statutory or benchmark interest rate (4.52% - unchanged).

The housing indexation figures for each State and Territory are also provided. However, the car parking threshold for 2022-23 is still pending, ie it will be updated once the relevant CPI figure is available.

The [worksheet](#) also sets out the "historical" rates and thresholds, which date back to 2013-14.

### **Lodgment dates and instructions**

In a separate [worksheet](#), the ATO advises that the due date to lodge the return and pay the liability for the FBT year is 23 May, unless either:

- the ATO accepts a request for an extension of time to lodge; or
- a registered tax agent lodges the return electronically and meets the lodgment program requirements for FBT.

The ATO has also released its [2022 Fringe Benefits tax return instructions](#).

## **Employees vs contractors: ATO decision impact statement**

The ATO has issued a [decision impact statement \(DIS\)](#) on the recent High Court decision in Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd [2022] HCA 1. In that case, the High Court ruled that a labourer engaged by a labour hire company to work on construction sites under the supervision and control of a builder was an employee of the labour hire company.

While the Commissioner was not party to this Fair Work Act matter, the ATO noted that the High Court has provided clarity in the approach to be taken to the common law test of employment when characterising the legal relationship of the parties. The Commissioner observed that the High Court has not disturbed the well-established practice of examining the "totality of the relationship". The ATO said the most significant clarification arises in primarily examining the terms of the written contract between the parties to establish the character of the relationship.

The ATO said it will review the implications of the High Court's decisions for its relevant products, including Superannuation Guarantee Ruling SGR 2005/1, SGR 2005/2, Ruling TR 2005/16 and TR 2013/1.

**Comments** are due by 6 May 2022.

## **Private health insurance rebate percentages 2022-23**

The Dept of Health has issued [PHI 04/22 - Private Health Insurance Rebate Adjustment Factor Effective 1 April 2022](#). The new circular set the rebate adjustment factor (RAF) for the 2022-23 period as 1, ie there will be no changes to the Australian Government PHI Rebate on 1 April 2022.

Therefore, the Private Health Insurance Rebates effective from 1 April 2022 to 31 March 2023 are now:

**Private Health Insurance Rebate percentages from 1.4.2022 - 31.3.2023**

Age	Base Tier	Tier 1	Tier 2	Tier 3
Under 65	24.608%	16.405%	8.202%	0%
65-69	28.710%	20.507%	12.303%	0%
70+	32.812%	24.608%	16.405%	0%

These are the income ranges: **Base Tier**: Singles - \$90,000 or less; Families - \$180,000 or less; **Tier 1**: Singles - \$90,001-\$105,000; Families - \$180,000-\$210,000; **Tier 2**: Singles - \$105,001-\$140,000; Families - \$210,001-\$280,000; and **Tier 3**: Singles - \$140,001 or more; Families - \$280,001 or more.

**Insolvent trading safe harbour review**

Treasury has published its [final report](#), and the Government's response, on its review of the insolvent trading safe harbour provisions for company directors.

The safe harbour was established under the Treasury Laws Amendment (2017 Enterprise Incentives No 2) Act 2017 (as part of the Government's so called National Innovation and Science Agenda). It provides protection for company directors from personal liability for insolvent trading if the company is genuinely attempting to restructure.

More particularly, the Act created a safe harbour for company directors from personal liability for insolvent trading under s 588G(2) of the Corporations Act if the company is undertaking a restructure outside formal insolvency. It also provides for a safe harbour for holding companies. In addition, the Act makes certain contractual rights that amend or terminate an agreement (ipso facto clauses) unenforceable when a company is undertaking a formal restructure except in certain limited circumstances.

The intention of the safe harbour is to encourage directors to seek advice early on how to restructure and save financially distressed but viable companies, rather than closing down prematurely to avoid personal liability. This is intended to provide "breathing space" for distressed businesses.



Overall, the Panel considers that the safe harbour protections offer "considerable assistance in encouraging an active turnaround market, particularly for larger companies". However, the Panel holds concerns as to the relevance and applicability of the safe harbour (and, indeed, the underlying prohibition on insolvent trading) to the SME market.

It also recommends a comprehensive review of Australia's insolvency laws that not only considers the past 30 years of jurisprudence, but also assesses the impact of the insolvency laws on Australia's trading partners, on domestic and international capital markets and other economic and social factors. This, it states, would be a significant and invaluable development.

The Government agrees with most of the Report's 14 recommendations, though it refines its response to five of them in its [Government Response to the Review of the insolvent trading safe harbour](#).

### **TPB CEO to become a statutory appointment**

The Government has [announced](#) that the Commissioner of Taxation has agreed to delegate the power to appoint the Tax Practitioners Board's Chief Executive Officer to the TPB Chair. This follows recommendation 3.2 of the independent review of the TPB undertaken in 2019.

This is intended to ensure the CEO's direct accountability to the Board and so enhance the TPB's independence. At the time of the review, the CEO was an ATO employee on secondment. The ATO and TPB will settle the necessary arrangements by 1 July 2022.

## Budget measures legislation passed

The [Treasury Laws Amendment \(Cost of Living Support and Other Measures\) Bill 2022](#) passed both Houses of Parliament with no amendments and is awaiting assent. It was introduced and passed on the same day, ie 30 March 2022.

The Bill implements a wide range of Budget related measures, including the following:

- updated Medicare Levy related thresholds;
- deductibility of COVID-19 tests;
- more DGRs;
- employee share scheme changes;
- PAYG and GST instalment uplift factor set at 2% for 2022-23;
- LMITO changes (increasing the low and middle income tax offset for the 2021-22 income year by \$420).
- Other non-tax measures include the one off cost of living payment, temporary decrease in fuel levy and PBS changes.

## Additional grant programs declared NANE

Treasury has registered the [Income Tax Assessment \(Eligible State and Territory COVID-19 Economic Recovery Grant Programs\) Amendment Declaration \(No.3\) 2022](#). The instrument is the third in the series of declarations of grant programs administered by States and Territories as eligible programs for the purposes of s 59-97 of the ITAA 1997, under which a payment received by a small business entity (as defined in that provision) from an eligible program is non-assessable non-exempt income.

The following programs are declared as NANE under this instrument:

- NSW Accommodation Support Grant (New South Wales);
- Commercial Landlord Hardship Grant (New South Wales);
- NSW Performing Arts Relaunch Package (New South Wales);
- NSW Festival Relaunch Package (New South Wales);
- 2022 Small Business Support Program (New South Wales);
- 2021 COVID-19 Business Support Grants (Queensland);
- COVID-19 Business Support Grant – July 2021 (South Australia);
- COVID-19 Additional Business Support Grant (South Australia);
- COVID-19 Tourism and Hospitality Support Grant (South Australia);

- COVID-19 Business Hardship Grant (South Australia); and
- COVID-19 Business Support Grant (Australian Capital Territory)

The measure was announced in the 2022-23 Federal Budget.

**Date of effect:** 5 April 2022.

### **ATO wins appeal: discretionary family trust case**

The High Court has unanimously allowed the ATO's appeal in the Carter case: [FCT v Carter \[2021\] HCA 10](#) (High Court, Gageler, Gordon, Edelman, Steward and Gleeson JJ, 6 April 2022).

As a reminder, the Full Federal Court had held that adult beneficiaries of a discretionary family trust (the Whitby Trust) had effectively disclaimed their entitlement to trust income, thus allowing an appeal against an AAT decision. The Full Court upheld the AAT's decision that the income of the Whitby Trust had not been validly appointed to another trust as there was insufficient evidence to show there was a valid resolution of the Whitby Trust to distribute the income, or that the meeting at which the resolution was allegedly made actually took place.

However, the Full Court overturned the AAT's decision that the adult beneficiaries had not validly disclaimed their entitlement to the income of the trust for 2014. The Full Court said that the adult beneficiaries' conduct was consistently directed towards one end – to reject any right to any income from the Whitby Trust.

The High Court held that s 97(1) is directed to the position existing immediately before the end of the income year for the purpose of identifying the beneficiaries who are to be assessed with the income of the trust. The section looks to the right to receive an amount of distributable income, not the receipt of income. Events occurring after the end of the income year cannot disentitle a beneficiary who was "presently entitled" immediately before the end of the income year. The taxpayers' disclaimers were therefore not effective to retrospectively expunge the rights of the Commissioner against the respondents which were in existence at midnight on 30 June 2014 and which gave rise to the 2014 Assessments.

## Aggregation rules determinations released

The ATO has issued three Determinations to assist mainly large businesses in applying the aggregation rules in Subdiv 328-C ITAA 1997 (meaning of small business entity). These rules form part of the aggregated turnover test, used to determine eligibility for a range of tax concessions.

[TD 2022/7](#) considers how the aggregation rules apply to partnerships, foreign hybrids and non-entity joint ventures. The ATO notes that these rules (and Subdiv 328-C more generally) apply to "entities". Crucially, partnerships are treated as entities for Subdiv 328-C purposes, whereas non-entity joint ventures are not.

According to the ATO, the treatment of partnerships as entities means that an entity is capable of directly controlling a partnership based on the general direct control test or a specific partnership test. If an entity is directly controlled by (or controls) a partnership, that entity will also need to consider whether it is indirectly controlled by (or indirectly controls) any other entities that control (or are controlled by) the partnership, including the individual partners.

As foreign hybrids are partnerships for income tax purposes, both the general direct control test and the specific partnership test can apply. The ATO makes it clear that the voting control test (for companies) is not relevant.

As non-entity joint ventures are not entities for Subdiv 328-C purposes, the ATO view is that, in applying the aggregation rules, the relevant entities are each of the parties to the joint venture, in their separate capacities. Further, joint venturers will not be affiliates merely because of the nature of their business relationship.

[TD 2022/5](#) confirms that because corporate limited partnerships are treated as companies for income tax purposes, both the general direct control test and the voting control test are relevant.

[TD 2022/6](#) deals with the situation where a public entity is interposed in an ownership structure. The indirect control test does not apply if the interposed entity is one of the public entities listed in s 328-125(8). The ATO says that the mere presence of an interposed public entity will not result in the breakage of the control chain. The first entity may still control the third entity through direct control.

**Date of effect:** retrospective.

## **LAFHA reasonable amounts for meals 2022-23**

The ATO has [released](#) the weekly amounts it considers reasonable for food and drink expenses incurred by employees receiving a living-away-from-home allowance fringe benefit for the 2022-23 FBT year (ie starting 1 April 2022).

For Australian locations, the reasonable weekly amounts are: 1 adult - \$289; 2 adults - \$434; 3 adults - \$579; 1 adult and 1 child - \$362; 2 adults and 1 child - \$507; 2 adults and 2 children - \$580; 2 adults and 3 children - \$653; 3 adults and 1 child - \$652; 3 adults and 2 children - \$725; and 4 adults - \$724.

An "adult" for this purpose is a person aged 12 years or more at 31 March 2022.

For larger family groupings, \$145 is added for each additional adult, while \$73 is added for each additional child under 12.

## **FBT cents per kilometre rate**

The [cents per kilometre rates](#) for calculating the taxable value of a fringe benefit arising in the 2022-23 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 - 58 cents/km;
- vehicles with an engine capacity of over 2,500cc - 69 cents/km; and
- motorcycles - 17 cents/km.

## **Illegal proceeds, penalties and fines**

The ATO has issued an [Addendum to TR 93/25](#), its ruling on the assessability of proceeds from illegal activities, the treatment of amounts recovered and the deductibility of fines and penalties. The Addendum effectively rewrites the ruling to bring it up to date, eg by replacing references to former ITAA 1936 provisions. There are no changes to the ATO's views. The rewrite provides that.

- receipts from a systematic activity are income if the elements of a business are present, even if the activities are illegal

- in the case of an isolated transaction, the assessability of the proceeds depends on the circumstances of each case;
- the deductibility of amounts forfeited, recovered from or repaid depends on whether there is a sufficient connection with income-earning activities. It is not enough that the illegally-earned income was assessable when derived; and
- fines and penalties would not generally qualify as general deductions and, in any event, are specifically excluded from being deductible pursuant to s 26-5 ITAA 1997.

**Date of effect:** 15 December 2021 (when the Addendum was released in draft form).

### **Refund of excess GST: decision impact statement**

The ATO has published its [decision impact statement](#) (DIS) for M3K Services Pty Ltd and FCT [2021] AATA 4416. In the case, the Tribunal found the taxpayer that paid excess GST because it treated GST-free supplies as taxable supplies was not entitled to a refund as it failed to convince the AAT that: (i) it had not passed on the excess GST to its customers (which amounts were not reimbursed); and (ii) refunding the excess GST would not result in a windfall gain.

The DIS sets out the ATO's view on the two issues addressed by the AAT:

- Passing on GST - the Commissioner agrees with the Tribunal's observation that it will be a rare case in which GST is not passed on to a customer, where the Tribunal addressed all four factors outlined in para 28 of GSTR 2015/1;
- Application of s 142-15 – the AAT's decision is consistent with the Commissioner's approach to s 142-15, in that it applies only in exceptional circumstances, ie as a confined power exercised according to its terms, rather than a broad-based discretion importing concepts of fairness, reasonableness or harshness of outcome.

**Comments** are due by 22 April 2022.

### **BoT report: GST on low value imported goods**

The Government has [announced](#) the publication of 2 reports that it commissioned the Board of Taxation (the "Board") to undertake in 2021.

### **Review of GST on low value imported goods**

The purpose of the review was to assess the effectiveness of the low value imported goods (LVIG) regime to efficiently collect GST with reference to the policy intent of the law that low value goods imported by consumers face the same tax regime as goods that are sourced domestically.

The [report](#) highlights the issues that were raised by stakeholders and provided its recommendations and observations – which supported the Board's conclusion that there were "no prevailing issue of concern raised" during its consultations with stakeholders and that, accordingly, no legislative change is required "at this stage".

### **R&D Tax Incentive - Review of the dual-agency administration model**

The R&DTI is jointly administered by the Industry Innovation and Science Australia (IISA), the Department of Industry, Science, Energy and Resources (DISER) and the ATO, with DISER (on behalf of IISA) being responsible for registering companies' R&D activities; and the ATO being responsible for the administration and processing of R&D tax offset claims in the Company Tax Return.

The purpose of the review was to evaluate the R&DTI dual agency administration model, with a view to identifying opportunities to reduce duplication between the 2 administrators, simplify administrative processes, or otherwise reduce the compliance costs for applicants.

The Board's [report](#) noted that the dual administration model of the R&DTI program should be maintained while putting forward 11 recommendations and 4 observations to enhance effectiveness of the model.

### **Government's response**

The Government acknowledged the importance of both reports noting that they indicate that "current settings are working well". In relation to the recommendations, the Government believes the ATO and other relevant regulators are working together to administer the programs efficiently and collaboratively with affected stakeholders.



## GST revenue sharing for States for 2022-23

The Government has published the [GST Revenue Sharing Relativities - 2022 Update](#). The update sets out the Commonwealth Grants Commission's recommended GST relativities for 2022–23 – as below. Note that factors in parentheses denotes those from prior year.

- NSW: 0.95065 (0.95617)
- Vic: 0.85861 (0.92335)
- Queensland: 1.03377 (1.05918)
- WA: 0.70000 (0.41967)
- SA: 1.28411 (1.34719)
- Tasmania: 1.85360 (1.96067)
- ACT: 1.09250 (1.16266)
- NT: 4.86988 (4.79985).

## GST-free supply of certain goods

The Government has registered the [A New Tax System \(Goods and Services Tax\) \(GST-free Health Goods\) Determination 2022](#). The Determination covers the GST-free supply of the following goods:

- condoms;
- barrier dams, femidoms and harness devices;
- personal and surgical lubricants that are water-soluble and suitable for use with condoms;
- preparations for use by humans that contain folic acid as the only active ingredient and have a recommended daily dose of 400 to 500 micrograms of folic acid;
- sunscreen preparations for dermal application that are marketed principally for use as sunscreen and are SPF15 or higher; and
- nicotine for use as an aid in withdrawal from tobacco smoking where the nicotine is administered in preparations for transdermal use or oromucosal use.

The Determination repeals and replaces the GST-free Supply (Health Goods) Determination 2011, which is due to sunset on 1 April 2022.



## **FINANCIAL SERVICES**

### **Financial advisers awaiting authorisation**

The [ASIC Corporations \(Existing Providers\) Instrument 2022/241](#) has been issued to overcome an unintended prohibition on certain Australian financial services licensees from providing financial advice.

The Instrument applies to advisers who:

- had not passed the financial adviser exam (termed the "Exam Requirement") by 1 January 2022 (or 1 October 2022 in certain cases);
- were not authorised to provide advice on the relevant day (ie either 1 January 2022 or 1 October 2022); and
- have not obtained an approved degree, qualification or approved course (the "Qualification Requirement").

The effect of the Instrument is that affected advisers need only pass the Exam Requirement to be eligible to be authorised by an AFS licensee to provide advice. Affected existing providers must then comply with the Qualification Requirement by 1 January 2026.

The amending legislation did not properly enact this, ie as drafted affected entities did not have until 1 January 2026.

### **Review of financial advice**

An [Issues Paper](#) has been released for the Quality of Advice Review on how the regulatory framework for financial advice can be improved. This follows the publication of the Terms of Reference on 11 March, and the appointment of Ms Michelle Levy as the independent reviewer.

The Review forms part of the Government's response to the Banking Royal Commission. The Issues Paper sets out 83 consultation questions for the Review of the regulatory framework and other measures to improve the quality, affordability and accessibility of advice. Note that the Review will not make recommendations on the professional standards for financial advisers or the taxation laws applicable to financial advice.

**Submissions** are due by 3 June 2022. A report to the Government is due by 16 December 2022.

## **ASIC advises RoA relief for COVID-19 financial advice to sunset**

ASIC has [advised](#) that one of its temporary relief measures relating to the provision of COVID-19 financial advice will be automatically repealed on 15 April 2022.

The measure allows financial advisers to provide existing clients with a record of advice (RoA), rather than a statement of advice (SoA), for financial advice due to the impact of COVID-19. The original Instrument, [ASIC Corporations \(COVID-19 - Advice-related Relief\) Instrument 2020/355](#), provided three temporary relief measures to facilitate retail clients receiving financial product advice in relation to COVID-19. The RoA measure had been extended twice as a result of the pandemic.

## **SUPERANNUATION**

### **Super pension minimum payment temporary extension**

The Government has made the [Superannuation Legislation Amendment \(Superannuation Drawdown\) Regulations 2022](#), which extends the temporary 50% reduction in minimum annual payment amounts for superannuation pensions and annuities by a further year to 30 June 2023.

This was announced in the 2022-23 Federal Budget.

The 50% reduction in the minimum pension drawdowns, which has applied for the 2019-20, 2020-21 and 2021-22 income years, was due to end on 30 June 2022. The reduction in the minimum payment amounts for 2022-23 applies to account-based, allocated and market linked pensions. Minimum payments are determined by age of the beneficiary and the value of the account balance as at 1 July each year under Sch 7 of the SIS Regs.

## Allowing commutation of certain income streams

Treasury has registered the [Treasury Laws Amendment \(Allowing Commutation of Certain Income Streams\) Regulations 2022](#) (the "Regulations"). The Regulations amend three Treasury portfolio regulations to make minor and technical changes that address unintended outcomes arising from the inability of recipients of certain non-capped defined benefit income streams (that were commenced on or after 1 July 2017) to address excess transfer balance amounts.

The amendments apply to the (i) Income Tax Assessment (1997 Act) Regulations 2021; (ii) Retirement Savings Accounts Regulations 1997 (the "RSA Regs"); and (iii) Superannuation Industry (Supervision) Regulations 1994 (the "SIS Regs"). These changes ensure that the relevant regulations operate as intended.

The amendments add exceptions to the commutation rules to allow commutations to occur so as to comply with commutation authorities, ie require recipients to address excess amounts above the transfer balance cap for certain products specified in the table in s 294-130(1) of the ITAA 1997. Previously, the exceptions contained in the SIS Regs and the RSA Regs did not permit for such commutations to occur. As such, retirement phase recipients of affected products were not able to address any existing excess transfer balance and were therefore unable to comply with transfer balance cap rules.

The Regulations make clear that where a capped defined benefit income stream that was also a lifetime pension or lifetime annuity is commuted into one of the affected products the commutation exceptions will apply. However, any conversion of a capped defined benefit income stream into a lifetime pension or annuity will not be covered by these exceptions.

**Date of effect:** 5 April 2022.

## SMSF: social security relief for asset-test exempt pensions

The Minister for Veterans' Affairs has registered the [Veterans' Entitlements \(Class of Debts - Self Managed Superannuation and Small APRA Funds\) Specification 2022](#) to remake the 2012 Instrument which is due to sunset on 1 April 2022. Broadly, the Specification operates to waive any social security debt due to the Commonwealth in respect of asset-test exempt income streams sourced from a self-managed

superannuation fund (SMSF) or a small APRA fund (SAF) that are no longer able to meet the "high probability" actuarial test.

The Specification effectively enables certain asset-test exempt income streams sourced from a SMSF or a SAF before 20 September 2004 (or where commuted and rolled over before 20 September 2007 from those income streams) to be commuted to an account-based market-linked income stream (MLIS) without a debt being raised.

Date of effect: 1 April 2022.

### **Super calculators and retirement estimates**

[ASIC Corporations \(Repeal and Transitional - Relief for Providers of Retirement Estimates\) Instrument 2022/204](#), has been registered to repeal ASIC Class Order [CO 11/1227] (Relief for providers of retirement estimates) while providing transitional relief to extend its effect until 31 December 2022.

Class Order CO 11/1227 provides conditional relief from the AFS licensing requirements to superannuation fund trustees who prepare retirement estimates for their members in accordance with the conditions in the Class Order. Where a trustee already holds an AFS licence, the Class Order provides relief from the advice, conduct and disclosure requirements. The effect of the Instrument is to extend the application of CO 11/1227 until the end of 31 December 2022 to provide conditional relief from the legislative requirements that apply to providers of retirement estimates.

**Date of effect:** 30 March 2022.

### **ATO guide: third party data tax controls**

The ATO has released a [Supplementary Guide](#) on the governance of third-party data tax controls for investment entities, including large superannuation funds, managed funds and insurance entities.

The Supplementary Guide explains how the Justified Trust methodology is applied by the ATO to review the existence, design effectiveness and operational

effectiveness of third-party data income tax controls. It should be read together with the existing ATO Guide, [Tax risk management and governance review guide](#).

The Guide covers large super funds, insurance entities and trustees of managed investment trusts (MITs) and attribution managed investment trusts (AMITs) and trustees of unit trusts in the managed funds industry. These entities rely on data from third parties for the preparation and finalisation of their income tax reporting obligations and Attribution Managed Investment Trust Member Annual (AMMA) Statement for AMITs, standard distribution statement (SDS) for MITs and distribution statements for unit trusts.

While entities, as investors, can rely on the SDS, AMMA statement or distribution statement to an extent, the ATO expects such sophisticated investors to have controls in place to "sense check" the amounts. Once the ATO establishes that a tax control framework exists, it then looks for objective evidence that the framework is designed effectively and is "lived". The ATO warns that it may assign a "red flag" where the entity cannot provide evidence to demonstrate a tax control framework exists.

## **Super information for family law proceedings**

The Government has issued a [reminder](#) that the new Simpler Super Splitting initiative started on 1 April 2022.

From 1 April 2022, parties to family law proceedings are able to apply to the courts for information from the ATO about their former partner's super. This follows amendments to the TAA and Family Law Act 1975 that cleared the way for a new mechanism for sharing super information by parties to family law proceedings, leveraging information held by the ATO.

## **REGULATOR NEWS**

### **New members for the TPB**

The TPB has [advised](#) of the appointment of two new Board members.

Andrew Conway is CEO of the Institute of Public Accountants (IPA) and Adjunct Professor at Deakin University Business School. Steven Dobson has spent nearly ten years with the Small Business Development Corporation (WA), having previously worked as a police officer. They have both been appointed for a term of three years.

They replace Mr Greg Lewis (on the Board since 2015) and Dr Julianne Jaques QC (leaving after six years on the Board).

The IPA President Julie Williams, on behalf of the IPA Board, management and staff, congratulates Andrew Conway on his appointment to the TPB.

### **IGTO quarterly report for Q2**

The IGTO has released its [Q2 reporting pack](#) highlighting its activities during the quarter. The pack provides updates against the IGTO Corporate Plan. This quarter the IGTO reported observations such as:

- The top five complaint issues – (i) Payments to the taxpayer; (ii) Lodgment and processing; (iii) Debt collection; (iv) Communications; and (v) Registration/Taxpayer details;
- a reduction in total complaints received during FY22 Q2 compared to the same period in prior years; and
- 53.6% complaints investigations finalised in the first half of FY22.

## **Board of Taxation 2020-21 Annual report**

The Board of Taxation has issued its [report for 2020-21](#).

Highlights from the 2020-21 reporting year include the following:

- the completion of the review of corporate tax residency rules;
- the ongoing review of CGT roll-overs;
- the commencement of the review of the dual agency administration of R&DTI program; and
- maintaining watching briefs over international developments in the taxation of the digital economy and the impact of the COVID-19 pandemic on Australian small businesses.

## **APRA executive team changes announced**

APRA has [announced](#) changes to its leadership team. Sean Carmody, currently Executive Director, Cross-Industry Insights and Data (CID), will take over from Brandon Khoo as Executive Director, Insurance, while Mr Khoo will take on the role of Executive Director, Cross-Industry Insights and Data. Both roles will commence on 4 April 2022 and will report to APRA Deputy Chair Helen Rowell.

From 15 April, current General Manager, Legal, and Deputy General Counsel Lucinda McCann will become APRA General Counsel. The current APRA General Counsel Warren Scott will be retiring after 13 years at APRA.

APRA has also appointed Sharon Burns as its new CEO who will commence in late April.