

TAXATION

ATO releases Tax Time 2022 for tax professionals

The ATO has released its "Tax Time 2022" which provides forms and support for tax professionals.

COVID-19: ATO reminder of things to consider

The ATO has highlighted certain COVID-19 related matters that should be taken into account when preparing tax returns this tax time.

ATO DIS on Carter: disclaimers of trust income

The ATO has issued a Decision Impact Statement on the *Carter* case in which the High Court held that disclaimers of the right to trust income did not operate retrospectively.

Div 7A and UPEs: sub-trust arrangements maturing in 2021-22 and beyond

The ATO has extended the operation of PCG 2017/13, its current guidance on Div 7A unpaid present entitlements and sub-trust arrangements with interest-only payments, so that it can is guidance to arrangements maturing after 30 June 2021.

ATO DIS on Greig case: no change to rulings

The ATO has issued an update to its Decision Impact Statement on the Full Federal Court decision in *Greig v FCT* [2020] FCAFC 25. The update indicates that the ATO will not be revising any of the relevant rulings in light of the decision.

GST payable on subdivided lots: ATO DIS

The ATO has issued a Decision Impact Statement on a case in which the AAT found that an SMSF which sold subdivided residential lots was required to be registered for GST and thus liable to pay GST on the sale of those lots.

S100A guidance for the 2021-22 income year

This guidance will assist registered tax agents and trustees understand when [section 100A of the Income Tax Assessment Act 1936](#) (S100A) may be relevant.

Professional firm profit allocation arrangements – Reminder

‘Professional firms (such as accounting, law, medical, engineering, architecture, management consulting, and financial service practices) should review their profit allocation arrangements using [PCG 2021/4](#) Allocation of professional firm profits – ATO compliance approach, which applies from 1 July 2022.’

FINANCIAL SERVICES

New financial reporting requirements for AFS licensees

ASIC has announced new financial reporting requirements for certain Australian financial services licensees.

SUPERANNUATION

High Court ruling on validity of SMSF BDBN clause

The High Court has ruled that reg 6.17A of the SIS Regs does not apply to SMSFs, and therefore clauses in an SMSF's deed operated as a binding death benefit nomination.

NALI/NALE rules: ATO extends transitional compliance

The ATO has advised that it is extending the transitional compliance approach to the NALI/NALE rules contained in PCG 2020/5 by 12 months, ie to 30 June 2023.

Family law super splits: interest rate for adjusting base amount

A determination has been made to specify the interest rate to be used for adjusting the "base amount" allocated in a court order or a superannuation agreement under the Family Law Act 1975 that splits a future defined benefit superannuation interest or an interest in an SMSF.

Start date for proposed amendments to APRA audit standard for super reporting

APRA has released a response to consultation on its proposed amendments to Prudential Standard SPS 310 Audit and Related Matters (SPS 310).

Insurance in superannuation: APRA standard SPS 250 finalised

APRA has registered a determination to finalise its revisions to Prudential Standard SPS 250 (Insurance in Superannuation).

REGULATOR NEWS

ASIC Information Sheet on warning and reprimands

ASIC has released information on how it will exercise powers given to it as a result of the Hayne Royal Commission to give warnings and reprimands to financial advisers.

ACCC – small business update

Australians lost over \$205 million to scams between 1 January and 1 May, a 166% increase compared to last year, according to new data from Scamwatch. Broadband speeds are improving but there are still issues. Airports suffered during the pandemic but still made profits.

New CPD requirements for BAS agents mandated by the TPB commencing 1 July 2022

The TPB's new CPD policy for tax and BAS agents commences from 1 July 2022. In particular, BAS agents should complete a minimum of 90 hours of CPE over a 3-year period.

Help shape the administration of the tax, super and registry systems

Tax professional association members

We're currently [refreshing the membership](#) of the Tax Practitioner Stewardship Group (TPSG), one of our most important consultation and codesign forums, and are inviting all registered agents to nominate themselves or one of their staff to become members.

TAXATION

ATO releases Tax Time 2022 for tax professionals

The ATO has released its ["Tax Time 2022"](#) for tax professionals. The forms and support for tax professionals are wide and varied and include the following:

- overview of key changes (set out below);
- prepare for tax time (updating client list, check due dates, security, notification if a client isn't lodging);
- before you lodge (tips and links to help check clients' tax returns before lodging so as avoid delays);
- after you lodge (how to access progress of clients' tax returns);
- TPSG – tax time updates (Tax Time 2022 updates with key messages from the Tax Practitioner Stewardship Group);
- forms and instructions (access tax time publications as they are released); and
- tax time toolkits.

Key changes are listed as follows:

- COVID-19 payments;
- deduction for C-19 tests;
- working holiday maker;
- temporary full expensing measures;
- loss carry back tax offset tool;
- research and development tax incentive amendments;
- film tax offsets;
- offshore banking unit regime;
- change in base rate for base rate entities;
- new and modified terms in 2022 Company Tax Return;
- removed items in the AMIT tax return; and
- changes to capital allowance rules.

COVID-19: ATO reminder of things to consider

The ATO has issued a [media release](#) highlighting certain COVID-19 related matters that should be taken into account when preparing tax returns this tax time. Items highlighted include the following:

- **COVID-19 work-related expenses** - from 1 July 2021, COVID-19 tests for work-related purposes (such as to determine "fit-for-work" status) are deductible (though reasonable evidence or proof of purchase is still required). Cost of protective items that protect against risk of illness or injury while performing work duties may also be deductible;
- **Jobseeker** - JobSeeker payments are taxable and will be automatically pre-filled in tax returns at the Government Allowances and Payments label once they are ready. If taxpayers choose to lodge before the information is pre-filled, it will need to be added manually;
- **COVID-19 disaster payment for people affected by restrictions** - the Government's COVID-19 disaster payment (delivered through Services Australia) is not taxable. It does not need to be included in tax returns;
- **Pandemic Leave Disaster Payments** - the Pandemic Leave Disaster Payment is taxable. Tax returns will not be pre-filled with these payments and will require manual input.

As a reminder, registered tax agents with clients affected by COVID-19 or financial hardship can access support at ato.gov.au/coronavirus.

ATO DIS on Carter: disclaimers of trust income

The ATO has issued a [Decision Impact Statement](#) on FCT v Carter [2022] HCA 10. In that case, the High Court held that disclaimers of the right to trust income did not operate retrospectively so as to disapply s 97(1) of the ITAA 1936.

Given the outcome was favourable to the Commissioner, the ATO's view of the decision is reasonably succinct and in line with expectations. It considers that disclaimers such as those in Carter "do not disturb what would otherwise be the tax result" and that "beneficiaries who have an interest in, or entitlement to, trust income should now take this into account if they were otherwise considering not accepting that interest or entitlement and instead looking to disclaim it".

The DIS flags that the ATO has withdrawn ATO ID 2010/85 with effect from 8 June 2022. In that ID, the ATO accepted that a retrospective (post-30 June) disclaimer is effective for tax purposes. Obviously this is no longer good law following Carter.

Div 7A and UPEs: sub-trust arrangements maturing in 2021-22 and beyond

The ATO has [extended](#) the operation of PCG 2017/13, its current guidance on Div 7A unpaid present entitlements (UPEs) and sub-trust arrangements with interest-only payments, so that it can apply to Option 1 and Option 2 arrangements maturing after 30 June 2021 (but only where the UPE arose before 1 July 2022).

Under Option 1, the funds can be invested on an interest-only 7-year loan at the Div 7A benchmark interest rate. Option 2 involves investing the funds on an interest-only 10-year loan at a prescribed interest rate. The ATO accepts that if a trustee fails to repay the principal at the end of the loan term, another loan on complying terms can be put in place, thus providing a further 7 years for the amount to be repaid, with periodic payments of both principal and interest.

The update to PCG 2017/13 is necessary because the ATO's proposed new approach to Div 7A (in Draft TD 2022/D1) will only apply to present entitlements arising from 1 July 2022. In particular, it is the ATO's preliminary view that a Div 7A loan can arise if a sub-trust fund is on commercial terms, with a return paid to the fund (ie Options 1 and 2 will no longer be acceptable). However, PCG 2017/13 now makes it clear that taxpayers can continue to rely on the ATO's previous guidance (in TR 2010/3 and PS LA 2010/4) if the entitlement arose before 1 July 2022, even if the sub-trust or further loan is put in place after 30 June 2022. TR 2010/3 and PS LA 2010/4 are due to be withdrawn with effect from 1 July 2022.

PCG 2017/13, as amended, includes 2 tables outlining key dates where an Option 1 or 2 investment is not repaid on time. Crucially, for a UPE arising on 30 June 2022, the tables indicate that the funds can be placed on a sub-trust by 15 May 2023, with the liability to pay interest arising on 30 June 2023. If the principal and final interest are not repaid by 14 May 2030 (for Option 1) or 14 May 2033 (for Option 2), a new 7-year complying loan can be entered into within the year.

ATO DIS on Greig case: no change to rulings

The ATO has issued an update to its [Decision Impact Statement](#) on the Full Federal Court decision in *Greig v FCT* [2020] FCAFC 25. The update indicates that the ATO will not be revising any of the relevant rulings in light of the decision.

In Greig, a majority of the Full Court allowed the taxpayer's appeal after concluding that he had acquired shares in an ASX-listed company (Nexus Energy) as part of a "business operation or commercial transaction". As the taxpayer also had a profit-making intention in acquiring those shares, the Full Court said the Myer Emporium principle was engaged so that the share losses of \$11.85m (and legal fees of just over \$500,000) were deductible under s 8-1 of the ITAA 1997.

The ATO issued its first version of the DIS in July 2020. The latest update does not make any changes to the views contained in the earlier version, however the ATO stated in the 2020 DIS that it would review TR 92/3 and TR 93/4 to ensure they reflect the Full Court's application of the principle in this case.

The ATO states now that the decision is consistent with the ATO's explanation of the Myer Emporium principle in existing advice and guidance and provides another example of the application of that principle to the particular facts before the Full Court. Although not stated in the DIS, this amounts to the ATO stating that it will not revise TR 92/3 and TR 93/4 or any other rulings.

GST payable on subdivided lots: DIS on Collins

The ATO has issued a [Decision Impact Statement](#) on the decision in Ian Mark Collins & Mienneke Mianno Collins ATF The Collins Retirement Fund and FCT [2022] AATA 628.

In that case, the AAT found that an SMSF which sold subdivided residential lots was required to be registered for GST and thus liable to pay GST on the sale of those lots.

The ATO states that the AAT's interpretation of the exclusions in s 188-25 from the projected turnover and its reasoning are consistent with the ATO's view set out in GSTR 2001/7, including the effect of s 188-25 of the GST Act on projected GST turnover. This case illustrates that the GST liabilities of a complying super fund turn on the requirements for registration, as the enterprise test in s 9-20(1)(da) of the Act will always be satisfied. The case is a reminder that the activities of some entities are deemed to be an enterprise requiring only the turnover threshold for registration to be considered.

Accordingly, the decision has no impact on any related ATO advice or guidance, at least in the ATO's view.

S100A guidance for the 2021-22 income year

The ATO has provided a brief overview of S100A in order to provide guidance to tax agents and trustees dealing with trust distributions for 2021–22 income year on when section 100A may apply.

The ATO draft ruling on S100A is not in final form hence the release of this guidance to help practitioners navigate S100A implications.

It is important that tax practitioners are fully conversant with S100A as it impacts trust distributions and can help guide trustees with their trust distribution arrangements.

The guidance can be found [here](#).

Professional firm profit allocation arrangements – Reminder

‘Professional firms (such as accounting, law, medical, engineering, architecture, management consulting, and financial service practices) should review their profit allocation arrangements using [PCG 2021/4](#) *Allocation of professional firm profits – ATO compliance approach*, which applies from 1 July 2022.

PCG 2021/4 outlines our compliance approach to the allocation of profits or income from professional firms, in the assessable income of the individual professional practitioner (IPP).

It aims to address arrangements that alienate, or inappropriately redirect, the income of an IPP to an associated entity (such as a spouse or family trust) with the effect of reducing the IPP's tax liability.

Professional firm owners and operators need to [review their profit allocation arrangement](#) against 2 'gateways' in PCG 2021/4. If their arrangement passes both gateways, PCG 2021/4 will help them to:

- self-assess their level of risk, using a risk assessment framework
- understand the level of engagement they can expect from us
- decide whether to seek professional advice or contact us.

A 2-year transitional period until 1 July 2024 may apply to arrangements that were low risk under the [suspended guidelines](#), but are now considered moderate or high risk under PCG 2021/4.

PCG 2021/4 contains several case studies and examples which may be useful for you when reviewing your arrangements.

If your circumstances are unique and not covered by the guidance, we encourage you to contact us via email at ProfessionalPdts@ato.gov.au.

More information can be found on the [ATO website Professional firm profit allocation arrangements](#).

FINANCIAL SERVICES

New financial reporting requirements for AFS licensees: ASIC

ASIC has [announced](#) new financial reporting requirements for certain Australian financial services (AFS) licensees. Following changes to the accounting standards, AFS licensees' financial reports commencing on or after 1 July 2021 must contain disclosures consistent with the financial reports of other for-profit entities, prepared under standards set by the Australian Accounting Standards Board (AASB).

The AASB's new reporting regime will apply for the Chapter 7 financial reports of most AFS licensees, using the public accountability test. The disclosure requirements of the full standards would also be required to be applied by some licensees to avoid doubt as to whether they have public accountability (including licensees that typically hold client monies or assets), or because they are large or sophisticated licensees with greater market impact. All licensees will be required to prepare a cash flow statement. In addition to single entity financial statements, consolidated financial statements must be presented where the licensee has controlled entities.

SUPERANNUATION

High Court ruling on validity of SMSF BDBN clause

In dismissing an appeal from a decision of the WA Court of Appeal, the High Court has [ruled](#) that reg 6.17A of the SIS Regs does not apply to SMSFs, and therefore clauses in an SMSF's deed operated as a binding death benefit nomination (BDBN): *Hill v Zuda Pty Ltd as trustee for The Holly Superannuation Fund & Ors* [2022] HCA 21.

Mr Sodhy (deceased) and his de facto partner (Ms Murray) were directors of Zuda Pty Ltd which was the trustee of an SMSF. The only members of the fund were the deceased and Ms Murray. The SMSF trust deed was amended in 2011 to insert a BDBN clause to provide that if either member of the fund died, the trustee was required to distribute the deceased member's balance to the surviving member. Ms Hill (the only child of Mr Sodhy) commenced proceedings arguing that the BDBN clause was invalid as it did not comply with the standards prescribed by reg 6.17A (eg 2 witnesses and 3-year time limit).

The High Court rejected Ms Hill's argument that reg 6.17A(1) makes the standards in reg 6.17A(4) applicable to all regulated superannuation funds. Rather, the High Court held that reg 6.17A(1) simply makes the standard in reg 6.17A(4) applicable to the operation of those regulated super funds to which reg 6.17A(4) applies. Since reg 6.17A(4) has no application to an SMSF, neither does reg 6.17A(1). The High Court said it isn't surprising that reg 6.17A(4) does not apply to SMSFs as the members of the fund are also directors of the corporate trustee. In the context of an SMSF, the High Court said that "giving notice of the kind envisaged by reg 6.17A(4) as expounded in reg 6.17A(6) and (7) would be at best an exercise in formality and at worst redundant."

NALI/NALE rules: ATO extends its transitional compliance treatment

The ATO has [advised](#) that it is extending the transitional compliance approach contained in PCG 2020/5 by 12 months, ie to 30 June 2023. It has amended LCR 2021/2 to reflect this extension.

This means that the ATO will not allocate compliance resources in the 2022-23 financial year to determine whether the non-arm's length income provisions apply to all the income of a super fund where it incurs non-arm's length expenditure of a general nature on or before 30 June 2023.

The non-arm's length income ("NALI") rules in s 295-550 of the ITAA were amended by the Treasury Laws Amendment (2018 Superannuation Measures No 1) Act 2019 so that super funds are also taxed at 45% for related-party schemes involving non-arm's length expenditure ("NALE") not incurred that would normally be expected to apply in a commercial transaction.

The ATO issued Law Companion Ruling LCR 2021/2 on 28 July 2021, which sets out its views on the effect of changes to the NALI rules. Previously, on 1 June 2020, the ATO issued PCG 2020/5 setting out its transitional compliance approach for the application of the NALE rules to complying superannuation funds.

By way of quick summary, PCG 2020/5 established the transitional compliance approach as the ATO recognised that super trustees may not have realised that the amendments apply to NALE of a general nature. In it, the ATO confirms that it will not allocate compliance resources to determine whether the NALI provisions apply to a complying super fund where the fund incurred NALE of a general nature that has a sufficient nexus to all ordinary and/or statutory income derived by the fund. However, this transitional compliance approach does not apply where the fund incurred NALE that directly related to the fund deriving particular ordinary or statutory income.

PCG 2020/5 as originally released applied in respect of the 2018-19, 2019-20 and 2020-21 income years. This was subsequently extended to 2021-22 and has now been extended a second time to include 2022-23.

Family law super splits: interest rate for adjusting base amount

The [Family Law \(Superannuation\) \(Interest Rate for Adjustment Period\) Determination 2022](#) specifies the interest rate to be used for adjusting the "base amount" allocated in a court order or a superannuation agreement under the Family Law Act 1975 that splits a future defined benefit superannuation interest or an interest in an SMSF.

Where the adjustment period is the financial year beginning on 1 July 2022, the interest rate is set at 4.7% (down from 5.7% in the previous year) for the purposes of reg 45D(3) of the Family Law (Superannuation) Regulations 2001.

Start date for proposed amendments to APRA audit standard for super reporting

APRA has released a response to consultation on its proposed amendments to Prudential Standard SPS 310 Audit and Related Matters (SPS 310).

APRA released proposed amendments to SPS 310 in 2021 to align it with recent changes to APRA's reporting standards for superannuation. The specified data items that APRA proposes to subject to review include those that will be used for APRA's administration of the Your Future, Your Super (YFYS) performance test and data published in APRA's Heatmap.

In its response to the submissions – in the form of [a letter to RSE licensees and RSE auditors](#) – APRA states that it will delay the commencement of the proposed amendments. There will be no change to audit requirements for the 2022 financial year. Rather, APRA will finalise SPS 310 later in 2022 and the new requirements will apply to audits from the financial year ending 30 June 2023.

Insurance in superannuation: APRA standard SPS 250 finalised

APRA has registered the [Superannuation \(prudential standard\) determination No 1 of 2022](#) to finalise its revisions to Prudential Standard SPS 250 (Insurance in Superannuation). With the objective of delivering better outcomes for their members with respect to insurance arrangements, the key revisions are that an RSE licensee must:

- obtain an independent certification of insurance arrangements with connected entities before entering into, renewing or materially altering an insurance arrangement, and on a triennial basis. APRA may also require an RSE licensee to obtain such a certification for an insurance arrangement with a non-connected entity;
- strengthen arrangements to protect members from potential adverse outcomes caused by conflicted life insurance arrangements. This includes heightened obligations on the RSE licensee to assess whether there are any business practices of the RSE licensee or terms and conditions of the

insurance arrangement that may indicate the arrangement is not at arm's length, and whether the insurance arrangement is overall in the best financial interests of beneficiaries. This requirement increases the scope of the comprehensive review of the insurance management framework, conducted by operationally independent, appropriately trained and competent persons at least every three years;

- satisfy itself, and demonstrate to APRA, that the rules for attributing any status to a beneficiary (including a class or cohort of beneficiaries) in connection with the provision of insurance, are fair and reasonable; and
- include in the insurance management framework a process that enables beneficiaries to easily opt out of insurance cover, and that sets out how this process will be communicated to beneficiaries.

Revised SPS 250 commences on 1 July 2022 (subject to transitional arrangements).

REGULATOR NEWS

ASIC Information Sheet on warning and reprimands given to financial advisers

ASIC has the capacity to give warnings and reprimands to financial advisers in specified circumstances as part of the measures implemented by the Financial Sector Reform (Hayne Royal Commission Response-Better Advice) Act 2021. It has now released Information Sheet 270 Warnings and Reprimands ([INFO 270](#)) which explains:

- what warnings and reprimands are;
- when ASIC will give a warning or reprimand;
- how ASIC will communicate the giving of a warning or reprimand;
- when and to whom ASIC will provide procedural fairness before giving a warning or reprimand, and
- the adviser's right of review of ASIC's decision to give a warning or reprimand.

ACCC – small business update

Updates and key developments relevant to franchising and small business

[Australians are losing more money to investment scams](#)

Australians lost over \$205 million to scams between 1 January and 1 May, a 166% increase compared to last year, according to new data from Scamwatch.

“We are seeing more money lost to investment scams and so are urging all Australians not to trust investment opportunities that seem too good to be true,” ACCC Deputy Chair Delia Rickard said.

Scamwatch has also seen an increase in imposter bond scams this year, with \$10.9 million reported lost. Imposter bond scams usually impersonate real financial companies or banks and claim to offer government/Treasury bonds or fixed term deposits.

[Broadband speeds increase for all consumers but urban services still perform better](#)

Consumers in both urban and regional Australia who have fixed-line NBN services have seen a significant improvement in download speeds since November 2018, the ACCC’s latest [Measuring Broadband Australia report](#) shows.

Retail service providers’ average download and upload speeds during busy hours were between 84.4% and 102.4% of plan speed in February 2022, a decline compared to December 2021.

NBN fixed wireless performance declined in February, with download speeds during busy hours dropping to 74.7% of plan speed.

[Airports suffered during 2020-21 pandemic but most still made a profit](#)

Australia’s four largest airports (Sydney, Melbourne, Brisbane and Perth) had a combined operating profit in 2020-21, only about 5% of what it was in the last full financial year before the pandemic, the ACCC’s latest [Airport Monitoring Report](#) reveals.

Despite this, the four airports still recorded operating profits, although their margins fell sharply.

Retail chains operating at the four airports told the ACCC that their sales turnover in 2020-21 was only about 5% of their pre-pandemic average. As a result, many retailers at the four airports had to close their operations.

Hire car operators at the four airports also told the ACCC that their revenues were between about 10% and 50% of pre-pandemic levels. Some hire car companies had to close their booths at airports and sell parts of their fleets to generate enough cashflow to continue.

New CPD requirements for BAS agents mandated by the TPB commencing 1 July 2022

The TPB's new CPD policy for tax and BAS agents commences from 1 July 2022. In particular, BAS agents should complete a minimum of 90 hours of CPE over a 3-year period. A summary of the key changes can be viewed in the [TPB's news article](#), [frequently asked questions](#) and [TPB\(EP\) 07/2021 Continuing professional education requirements for tax and BAS agents from 1 July 2022](#).

Help shape the administration of the tax, super and registry systems

Tax professional association members

We're currently [refreshing the membership](#) of the Tax Practitioner Stewardship Group (TPSG), one of our most important consultation and codesign forums, and are inviting all registered agents to nominate themselves or one of their staff to become members.

We are looking for a cross-section of tax professionals who are passionate about optimising the tax, super and registry systems and willing to represent their peers and share their thoughts on a broad range of topics.

Now is your chance to share your insights and experience and help shape the administration of systems, and the future tax professionals experience. An expression of interest is now open, with nominations closing 7 July 2022.

For more information, search [TPSG Nominations](#) on ato.gov.au.