

TAXATION

Availability of 2023 Tax checklists

IPA Tax checklists for Individuals, Companies, Trusts and Partnerships are now [live](#).

IGTO Quarterly Reporting Pack Quarter 3, 2022-2023

The IGTO Quarterly Reporting Pack provides progressive updates against the latest IGTO Corporate Plan. The [Quarter 3, 2022-2023 report](#) has been issued.

TPB webinar: Keeping it secure

In our technology driven world where online data storage is commonplace, data security is more important than ever. Find out what your responsibilities are in relation to keeping your client data secure by [registering](#) for the TPB webinar on Thursday, **22 June 2023** AEST 12:00 pm - 1:00 pm Online.

Addendum to TD 2012/22: trusts

The ATO has issued an addendum to TD 2012/22, its ruling on using the proportionate approach to determine a beneficiary's share of the net income of a trust.

Car depreciation limit

The ATO has updated the car cost limit for depreciation for the 2023-24 financial year to \$68,108.

NSW purchaser duty and land tax surcharges: more DTA countries

Revenue NSW has advised of four more countries that have international tax treaties which limits the ability of the NSW government to impose surcharge purchaser duty.

NSW moots stronger penalties for confidentiality breaches

NSW Minister for Finance has advised that the government was considering implementing new penalties for sharing confidential tax related information.

Board of Taxation Chair reappointed

The government has announced the reappointment of the Chair of the Board of Taxation for a three-year period.

New Chair of TPB

Government has announced the appointment a new Chair of the TPB for a three-year period.

Measures No 1 Bill: Senate Committee report

Senate Economics Legislation Committee has released its report into the measures contained in Taxation Laws Amendment (No 1) Bill 2023.

Government issues tax scam warning

Government has issued a media release warning taxpayers to wary to tax scams this tax time.

Labour costs incurred in creating capital assets

ATO has issued a ruling which sets out its view on when certain labour costs related to creation of a capital asset are capital expenses.

Residency tests for individuals

ATO has released a ruling which considers the key tax residency tests for individuals after some significant cases on residency.

Strategic plan for Australia's payment system

Government has released its strategic plan for Australia's payments system highlighting key priorities and supporting initiatives.

TPB case study released

TPB has issued a case study where a tax agent had their registration terminated having been found to have breached Code of Professional Conduct.

Taxation statistics 2020-21 released

The ATO has released its taxation statistics for the 2020-21 financial year including some notable on tax return lodgement and liabilities.

PAYG withholding schedules for 2023-24 released

The instrument that makes available all the withholding schedules for the 2023-24 year has been registered.

FINANCIAL SERVICES

Financial adviser registration requirements extended

ASIC has announced that it will extend the date by which financial advisers who provide personal advice to retail clients on relevant financial products must be registered.

AMP penalised for charging deceased customers: ASIC

ASIC has issued a media release advising that four companies that were or are part of the AMP group have been found to have breached the law re charging deceased customers.

Small business lodgement penalty amnesty

ATO has reminded small businesses to take advantage of a lodgement amnesty announced in the 2023-24 Budget.

ASIC focus areas for June 2023 reporting

ASIC has highlighted its areas for attention in relation to financial reports for full and half-years ending 30 June 2023.

SUPERANNUATION

Adjustment of super entitlements on divorce

A determination has been registered which specifies the interest rate to be used for adjusting the based amount allocated in a court order or agreement.

Updated reporting standards under SDT project

APRA has determined nine updated reporting standards following its proposed minor amendments to these standards under Phase one of the SDT project.

SDT forum notes released

ASIC has released notes from the Superannuation Data Transformation (SDT) Strategic Forum.

Notes on fourth Superannuation CEO Roundtable

ASIC and APRA have released the public notes on the fourth superannuation CEO roundtable.

REGULATOR NEWS

IGTO Quarterly reporting pack

IGTO has released its FY23 Q3 reporting pack highlighting activities during the quarter

including complaints and KPI results.

APRA's statement of intent released

APRA has published its statement of intent in response to the government's statement of expectations.

TAXATION

Availability of 2023 Tax checklists

We have published our tax checklists for 2023 on our website under Resources, Practice Management Tools. You will need your IPA member ID and password to access these resources. These resources have been designed to assist you to assist your clients in the best possible way.

We are also running our [Tax Agent Guide and Intensive Tax Workshop](#) which has been refreshed for 2023!

A reminder, also, that the next ATO open forum is scheduled for Wednesday 14 June from 11am to 1pm AEST. This is a [link to register](#) to hear the latest updates on lodge and pay, employer obligations, self-managed super funds compliance and an update from the Tax Practitioners Board.

IGTO Quarterly Reporting Pack Quarter 3, 2022-2023

The IGTO has issued its reporting pack for quarter 3, 2022-2023 and has provided an update including:

- Key performance Areas (5)
- complaints received
- dispute investigations commenced and finalised
- Top 5 issues finalised
- Total Complaints
- Improving systems and processes
- Lodgement method, Investigations commenced/closed
- Complaint Survey Results

TPB webinar: Keeping it secure

The TPB will discuss confidentiality obligations under the Code of Professional Conduct as well as tips on securing data. Find out what your responsibilities are in relation to keeping your client data secure.

Addendum to TD 2012/22: trusts

The ATO has issued an [Addendum](#) to TD 2012/22, its ruling on using the proportionate approach to determine a beneficiary's share of the net income of a trust.

TD 2012/22 has been amended as a consequence of the decision in *Lewski v FCT* [2017] FCAFC 145, which concerned variation of income resolutions. According to the ATO, the Full Federal Court "made clear the inherent uncertainty" of these resolutions under trust law. However, as the ATO "is unable to conclusively determine trust law outcomes, it is not possible to provide binding public guidance on whether such a resolution would make a beneficiary presently entitled". The amendments seek to ensure that trustees are "fully aware of the risks and the possible consequences of using these resolutions".

As amended, TD 2012/22 now provides that, for income tax purposes, the relevant question is whether the income variation resolutions are effective in conferring present entitlement on any beneficiaries by the end of the income year. While the existence of a variation of income resolution "will not necessarily result in ineffective conferral of present entitlement on all named beneficiaries", the outcome in a particular case will depend on the precise terms of the trust deed and resolutions. The ATO notes that in some cases, there will be a range of possible interpretations and therefore "genuine doubt about where the liability to tax rests". In these situations, alternative assessments may be raised.

Another key amendment to TD 2012/22 is the deletion of two "potentially misleading" examples involving ineffective further resolutions (Examples six and seven). These examples have been removed with effect from 31 May 2023. The ATO undertakes not to devote compliance resources to identifying and examining the use of these resolutions prior to 31 May 2023, provided 100% of the net income is brought to tax either by including it in a beneficiary's assessable income or by assessing the trustee, and there is no evidence of tax avoidance, evasion or fraud.

Date of effect: the Addendum applies from 31 May 2023.

Car depreciation limit

The ATO has [updated](#) the car cost limit for depreciation for 2023-24 financial year to \$68,108 (previously \$64,741 in 2022-23).

NSW purchaser duty and land tax surcharges: more DTA countries

Revenue NSW [has advised](#) of four more countries that have international tax treaties which limit the ability of the NSW government to impose NSW surcharge purchaser duty and surcharge land tax, ie India, Japan, Norway and Switzerland.

The NSW Government announced in February 2023 that certain DTAs contain a non-discrimination provision along the lines that a foreign resident shall not be subject to more tax in Australia than Australian residents.

As a result, there are now eight countries in total. This means that individuals who are purchasing residential-related property or land in their own capacity will no longer be required to pay surcharge purchaser duty or surcharge land tax in NSW if they are a citizen of one of

the following nations:

- New Zealand;
- Finland;
- Germany;
- India;
- Japan;
- Norway;
- Switzerland; and
- South Africa.

NSW moots stronger penalties for confidentiality breaches

The NSW Minister for Finance [has advised](#) that the Government was considering implementing "new multi-million dollar penalties" for advisors and organisations who seek commercial advantage by sharing confidential tax related information.

Revenue NSW currently consults with representative industry bodies as part of the consultation process on tax policy and legislation. These bodies include the NSW Law Society, the Tax Institute, Chartered Accountants Australia and New Zealand, CPA Australia, the Property Council of Australia (NSW) and an association representing several small business groups. The Chief Commissioner of State Revenue has already been in touch with the chairs of the liaison groups "to underscore the importance of confidentiality".

There are no details of substance in the release. The Minister advises that the measures will impose "significant penalties" for those that unlawfully use or disclose sensitive or confidential tax information, including penalties "in the order of millions of dollars".

Board of Taxation Chair reappointed

The Government has [announced](#) the re-appointment of Ms Rosheen Garnon as the Chair of the Board of Taxation for a three-year period until 25 March 2026. Ms Garnon, first appointed in March 2020, has over 30 years of experience in the field of taxation including as a senior partner with KPMG.

New Chair of TPB

The Government has [announced](#) the appointment of Mr Peter de Cure as the Chair to the Tax Practitioners Board (TPB) for a three-year period. Mr de Cure replaces Mr Ian Klug who has served the TPB as Chair over the past seven years.

Mr de Cure has extensive experience in the regulation of the tax practitioner industry. He has been a Member of the Remuneration Tribunal of South Australia since 2020 and is currently the Chair of the South Australian Fire and Emergency Services Commission. He also has been the Chair and director for multiple directorships since 2007, including the Royal Flying Doctor Service (Central Operations), Accord Property Holdings and Gifford Hill.

Measures No 1 Bill: Senate Committee report

The Senate Economics Legislation Committee has released its [report](#) into the measures contained in the Taxation Laws Amendment (2023 Measures No 1) Bill 2023. The key recommendation is that the Government review the measure that targets franked distributions funded by capital raisings (contained in Sch 5 to the Bill).

The stated purpose of these amendments is to ensure that direct or indirect recipients of affected distributions are not entitled to a tax offset and the amount of the franking credit is not included in the assessable income of the recipient. They also ensure that the distribution is not exempt from withholding tax under s 128B of the ITAA 1936.

The Committee's recommendation is that the Government "consider opportunities to clarify Sch 5...to ensure it appropriately targets the identified behaviour and addresses feedback provided to the Committee". There is no detail in the report as to what Treasury may propose.

Government issues tax scam warning

The Government has issued a [media release](#) warning taxpayers to be wary of tax scams this tax time. According to the release, impersonation scams are most commonly seen at tax time. Scammers will impersonate the ATO contacting individuals via a link to a fake myGov login page.

Taxpayers are warned of the common tricks of tax scammers.

- Posing as the ATO on social media and offering to help with tax and super questions.
- Luring unsuspecting people with an offer of a "refund". A "refund" enticement is merely to obtain personal information.
- Trying to keep taxpayers engaged in a conversation for as long as possible to collect as much personal information as possible.
- Using a variety of methods to contact taxpayers including phone calls, a private message on social media, an email or text.

Taxpayers are also reminded that the ATO will never send them a link to login to their online services or ask for personal information via social media, email or SMS.

Labour costs incurred in creating capital assets

[Taxation Ruling TR 2023/1](#) considers the key tax residency tests for individuals in s 6(1) ITAA 1936 - the ordinary concepts, domicile and 183-day tests. Unremarkably, the ATO says that residency under these tests is determined by considering all of the relevant facts and circumstances and that no single fact is determinative. Accordingly, there are no "bright-line rules" or paramount factors.

TR 2023/1 consolidates and updates the views expressed in IT 2650 (permanent place of abode outside Australia), IT 2681 (residency status of business migrants) and TR 98/17 (residency status of individuals entering Australia), all of which have now been withdrawn.

Some significant cases on residency have been decided since the release of these withdrawn rulings (eg Harding, Pike and Addy) and the ATO takes these decisions into account in TR 2023/1.

In relation to the domicile test, TR 2023/1 retains the ATO's "rule of thumb" approach that if a person intends to stay overseas for less than two years, they are unlikely to be able to prove that their permanent place of abode is outside of Australia.

The ruling does not address the proposed changes to the residency tests, announced by the previous Government in the May 2021 Budget.

Date of effect: retrospective. There are no changes to the draft version (ie TR 2022/D2), although extra examples have been added.

Residency tests for individuals

[Taxation Ruling TR 2023/2](#) sets out the ATO's view on when certain labour costs related to the construction or creation of a capital asset are capital expenses and therefore not immediately deductible under s 8-1 ITAA 1997. The labour costs covered by the ruling are:

- salary and wages for employees who perform functions in relation to constructing or creating the capital asset, and other costs associated with the employment of that labour. This is not limited to those involved in the actual construction work; and/or
- other amounts for labour or principally for labour incurred in relation to constructing or creating the asset. Such amounts may include contract payments to labour hire firms.

The ATO says that these labour costs are capital in nature to the extent that they are incurred specifically for constructing or creating a capital asset. If a worker has other duties, the labour costs may need to be apportioned (on a fair and reasonable basis). Labour costs are likely to be of a revenue nature if the worker's role is remotely connected to the construction or creation of capital assets or if the worker has a broader role that involves incidental activities connected with constructing or creating capital assets.

The nature of the labour costs is generally ascertained at the time the expenditure is incurred. The ATO notes that such costs may be initially on capital account and later change to be on revenue account (and vice versa).

The ATO acknowledges that labour costs not covered by TR 2023/2 are generally revenue in nature and would form part of a business' working expense. (This acknowledgement was not in the draft version of the ruling, TR 2019/D6, which was the subject of extensive consultations. However, the ATO has not changed its approach.)

Date of effect: retrospective.

Strategic plan for Australia's payment system

The Government has released its [Strategic Plan for Australia's Payments System](#). The Strategic Plan, developed through a consultation process with regulators, industry, consumer

and business representatives, sets out the Government's policy objectives and priorities for the payments system. The Strategic Plan will be reviewed on an 18 month review cycle to allow on-going assessment of its objectives and priorities. The Strategic Plan highlights the following key priorities and supporting initiatives:

- Promoting a safe and resilient system - reduce scams, fraud, cyber-attacks; supervision of "systematically important" payment systems.
- Updating the payments regulatory framework - changes to the Payment Systems (Regulation) Act (PSRA); establish a new payments licensing framework; promote competition; better collaboration between regulators; reduce transaction costs.
- Modernising payments infrastructure - phase out cheques; upgrade systems; maintain access to cash.
- Uplifting competition, productivity and innovation across the economy - align payments system objectives and the CDR framework; support the broader use of Digital ID; uplift

digital and technological skills; build public trust and confidence and supporting adoption of AI.

- Australia as a leader in the global payments landscape - create a regulatory environment that attracts and enables innovation; facilitate cross-border payments; explore the policy rationale for a central bank digital currency in Australia.

As part of the Strategic Plan, the Government has also released two consultation papers to ensure regulations keep pace with payments innovations:

- [Reforms to the Payment Systems \(Regulation\) Act 1998](#) - proposes updates to the PSRA to address the risks posed by new payments technologies. The consultation proposes changes to (i) ensure the RBA can regulate new and emerging payments systems, such as digital wallet providers; and (ii) introduce a new Ministerial designation power that would allow particular payments services or platforms that present risks of national significance to be subject to additional oversight by regulators. SUBMISSIONS are due by 5 July 2023; and
- [Licensing of payment service providers - payment functions](#) - proposes a list of payments functions that would be regulated under the new licensing framework. SUBMISSIONS are due by 19 July 2023.

As part of the same swathe of announcements, the Government has also [announced](#) that it will remove legislative and other requirements that entrench payment by cheques. Government usage of cheques is expected to end by 2028.

TPB case study released

The TPB has issued a [case study](#) where a tax agent had their registration terminated having been found to have breached multiple Code of Professional Conduct (the "Code") items. The TPB Conduct Committee found the tax agent to have breached:

- Code items one and two by failing to act honestly and with integrity and to comply with the taxation laws in the conduct of their personal affairs;

- Code items four and seven by failing to act lawfully in the best interest of their clients and to ensure the services they provided were provided competently; and
- Code items eight, 13 and 14 by failing to meet the continuing professional education requirements, failing to maintain professional indemnity ("PI") insurance and not providing complete responses to requests from the TPB during its enquiries and investigation.

The tax agent was also banned from re-applying for registration for three years.

Taxation statistics 2020-21 released

The ATO has released its [Taxation Statistics for the 2020-21](#) financial year . The report presents an overview of almost 18.0 million income tax returns (up from 17.8 million in the previous period) which includes 15.1 million individuals, 1.1 million companies with the rest from super funds, partnerships and trusts.

Some notable statistics:

- Tax return lodgement increased in the last five financial years from individuals, companies and trusts but declined from partnerships and APRA and other funds.
- Taxation liabilities by industry had the wholesale trade at the top with \$43.0 billion followed by financial and insurance services with \$34.1 billion and professional scientific and technical services with 25.9 billion;
- Net tax across the board, ie by individuals, companies and super funds, has been increasing steadily over the last five financial years (note that the ATO's definition of net tax is the amount of tax owed for the income year, before refundable credits are taken into consideration).

PAYG withholding schedules for 2023-24 released

The [Taxation Administration Withholding Schedules 2023](#) has been registered. The instrument makes available all withholding schedules for the 2023-24 income year.

There are some 15 tables in all. It is worth noting that the instrument only updates one schedule, ie 14 are unchanged from 2022-23. Withholding schedule eight is being updated due to the annual indexing of the repayment income thresholds for study and training support loans.

The instrument repeals and replaces legislative instrument Taxation Administration Withholding Schedules 2022 - F2022L00819, registered on 24 June 2022.

Date of effect: 1 July 2023.

FINANCIAL SERVICES

Financial adviser registration requirements extended

ASIC has [announced](#) that it will extend the date by which financial advisers who provide personal advice to retail clients on relevant financial products (including time share advisers) must be registered. Financial advisers will now need to be registered by 1 October 2023. It was originally set for 1 January 2023, then extended to 1 July 2023.

The new proposed registration requirement is in addition to the pre-existing requirements for an AFS licensee to appoint a relevant provider to the Financial Advisers Register after they have been authorised.

AMP penalised for charging deceased customers: ASIC

ASIC has issued a [media release](#) advising that four companies that were or are part of the AMP Group have been found to have breached the law when they charged life insurance premiums and advice fees to the superannuation accounts of more than 2,000 deceased customers.

The Federal Court found all four companies contravened their overarching obligations as Australian financial services licensees to act efficiently, honestly and fairly. However, only two of the companies – AMP Life Limited and AMP Financial Planning Pty Ltd – were ordered to pay a penalty (\$24 million in total): [ASIC v AMP Superannuation Ltd](#) [2023] FCA 488.

These companies admitted to engaging in unconscionable conduct in deducting and/or failing to refund insurance premiums and advice fees from superannuation members after notification of their deaths. Additionally, both admitted to accepting insurance premiums and advice fees despite reasonable grounds for believing they wouldn't be able to supply the insurance or advice.

Small business lodgement penalty amnesty

The ATO has issued a [reminder](#) for small businesses to take advantage of a lodgement amnesty announced in the 2023-24 Federal Budget.

To be eligible, entities must:

- have overdue income tax returns, BAS's or FBT returns that were due between 1 December 2019 and 28 February 2022;
- have had an annual turnover of less than \$10 million at the time the original lodgment was due; and
- lodge those overdue forms between 1 June and 31 December 2023.

The amnesty does not apply to superannuation obligations. It also excludes other administrative penalties such as penalties associated with the Taxable Payments Reporting System.

The failure to lodge ("FTL") penalty will be remitted programmatically, ie there is no requirement to apply once the relevant forms are lodged. However, the ATO warns that eligible entities may see an FTL penalty on their statements for a period of time before it is remitted.

ASIC focus areas for June 2023 reporting

ASIC has [highlighted](#) its areas for attention in relation to financial reports for full and half-years ending 30 June 2023. The areas are:

- asset values;
- provisions;
- solvency and going concern assessments;
- events occurring after year end and before completing the financial report;
- disclosures in the financial report and Operating and Financial Review (OFR); and
- the impact of a new accounting standard for insurers.

Directors, preparers of financial reports and auditors are urged to consider how the current and future performance of an entity, the value of its assets and provisions, and business strategies, may be affected by changing circumstances, uncertainties and risks.

SUPERANNUATION

Adjustment of super entitlements on divorce

The [Family Law \(Superannuation\) \(Interest Rate for Adjustment Period\) Determination 2023](#) has been registered. It 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 a self-managed superannuation fund (SMSF).

Where the adjustment period is the financial year beginning on 1 July 2023, the interest rate is set at 0.059 (up from 0.047 in 2022-23) for the purposes of reg 45D(3) of the Family Law (Superannuation) Regulations 2001.

Updated reporting standards under SDT project

The APRA has issued a [media release](#) stating that it has determined nine updated reporting standards following its proposed minor amendments to these standards under Phase one of the Superannuation Data Transformation (SDT) project.

The reporting standards include amendments that clarify investment option reporting and expenses reporting. Some reporting requirements had its frequency reduced while some had their time for submission increased. The reporting standards have also been amended to incorporate clarifications made by APRA through its FAQs.

The determined reporting standards are available on the [APRA website](#).

SDT forum notes released

APRA has [announced](#) the release of [notes](#) from the Superannuation Data Transformation (SDT) Strategic Forum, which was held on 16 May 2023. The notes cover input from industry stakeholders in relation to challenges for implementation of and transition to the new superannuation data collections.

Notes on fourth Superannuation CEO Roundtable

ASIC and APRA have released the [public notes](#) on the fourth Superannuation CEO Roundtable held on Monday 29 May 2023. The roundtable was attended by 14 superannuation trustee CEOs and executives, representing a broad cross-section of the industry, as well as a representative of the ATO.

REGULATOR NEWS

IGTO Quarterly reporting pack

The IGTO has released its [FY23 Q3 reporting pack](#) highlighting its activities during the quarter. The report provides the Q3 update on the following:

- total complaints received and the Top five complaints received;
- IGTO's KPI results; and
- IGTO's Key Performance Areas.

APRA's statement of intent released

The APRA has [published](#) its Statement of Intent (Sol) in response to the Government's Statement of Expectations (SoE), addressing APRA's role in Government policy priorities, relationships with external stakeholders, and organisational matters. The Sol serves as a reinforcement of APRA's intention to continue striving to be a high-performing prudential regulator.

The [Government's SoE](#) outlines the its expectations for how the APRA will achieve its objectives, carry out its functions and exercise its powers.