

## **TAXATION**

### **ATO reminder for small businesses for 2022-23**

ATO has issued a media release reminding small businesses of various changes including small business boosts and deduction rate changes.

### **ATO warns against copy-paste work-related claims**

ATO has issued a release reminding taxpayers of “three golden rules” when claiming a deduction for a work-related expense.

### **ATO general remission power: legislative instrument**

ATO has issued a legislative instrument that codifies its long-standing practice of remitting interest or penalties to certain classes of entities.

### **ATO discretion to extend time to lodge an objection**

Updated version of PS LA 200/7 in relation to ATO’s discretion to extend time to lodge an objection has been released.

### **Reasonable travel and overtime meal allowance amounts**

ATO has released its annual ruling setting out the amounts it treats as reasonable travel and overtime meal allowance amounts for 2023-24.

### **Payments for the authorised use of an individual’s fame**

A taxation determination has been released on the income tax treatment of payments for using an individual’s “fame” under third party “licensing agreements”.

### **ATO 2023 Tax time meetings with Professional bodies – Have your say!**

The Institute of Public Accountants (IPA) will attend regular meetings with the ATO during Tax time 2023 and we are keen to hear from members on any issues, insights and concerns that impact a large group of individual tax payers

## **The BAS agent lodgment program 2023-24**

The BAS agent lodgment program 2023-24 has now been approved. The lodgment program helps you manage your workload by providing additional time to lodge your clients' obligations over the 12-month period ending 30 June 2024

## **FINANCIAL SERVICES**

### **Regulations supporting CSLR registered**

Treasury has registered regulations to support the amendments made by legislation to create a compensation scheme of last resort.

## **SUPERANNUATION**

### **Interaction of NALI and CGT rules**

A draft determination has been issued to provide guidance on calculating the amount of statutory income that is NALI where a super fund makes a capital gain.

### **Illegal schemes targeting SMSFs**

ATO has released articles warning taxpayers of illegal schemes involving SMSFs including residential property purchases.

### **Super trustees need to boost efforts to merge duplicate accounts**

ASIC has issued a release warning super trustees to proactively merge duplicate member accounts.

## **REGULATOR NEWS**

### **Accounting standard amended for advent of Pillar Two**

AASB has issued AASB 2023-2 which amends Accounting AASB 112 (Income Taxes) to provide a mandatory temporary exception to the requirements in AASB 112.

### **ASIC cost recovery statement 2022-23**

ASIC has released its cost recovery implementation statement setting out the estimated industry sector levies for 2022-23.

## **AUDIT & ASSURANCE**

### **Highlights from most recent AUASB meeting**

The IPA attended the AUSAB meeting held on 14 June 2023 at which a number of items were discussed including a Standard on Sustainability Assurance

## **TAXATION**

### **ATO reminder for small businesses for 2022-23**

The ATO has issued a [media release](#) reminding small businesses of three things to remember of as 30 June 2023 approaches.

- Small business boosts now available - a "bonus" 20% tax deduction for eligible expenses is available for small businesses investing in digital operations (eg technology, cloud-computing, eInvoicing, cyber security), or skills and training for new and existing employees. For every \$100 spent, a \$120 tax deduction is available (caps apply) for investments made between 29 March 2022 and 30 June 2023.
- Temporary full expensing ("TFE") ends on 30 June 2023 - small businesses can still claim an immediate deduction for the cost of eligible assets first used or installed ready for use by 30 June 2023 in this year's tax returns. The end of TFE on 30 June 2023 means that the cost of assets that are not already being used or installed ready to use by 30 June 2023 are not eligible for an immediate deduction.
- Deduction rate changes - both the running a business from home deductions and the car expense deductions have changed for this tax time. The new cents per kilometre rate is 78 cents and the car limit has increased to \$64,741 for 2022-23. The working from home deduction methods have also changed for this year. Small businesses can choose one of two methods to claim working from home deductions, ie either the actual cost or fixed rate method.

In a separate [release](#), the ATO is also reminding taxpayers not to rush lodging their annual income tax return from 1 July. Taxpayers who lodge before their income statement is marked as "Tax ready" run the risk of processing delays and follow-up questions from the ATO if their return is incomplete.

### **ATO warns against copy-paste work-related claims**

The ATO has issued a [release](#) reminding taxpayers of what it sees as the three "golden rules" when claiming a deduction for a work-related expense:

- money must be spent by the taxpayer and not be reimbursed;
- expenditure must directly relate to earning the taxpayer's income and not be private in nature; and
- there must be a record to validate claims (eg a receipt).

The ATO said that simply "copying and pasting" claims from last year may raise a red flag as there have been some "key changes to look out for this tax time". These include: (i) the increase in the rate for working from home expenses (from 52 cents to 67 cents per hour); (ii) the increase in the cents per kilometre rate for work-related car expenses (from 72 cents to 78 cents); and (iii) the removal of the requirement to exclude the first \$250 of certain self-education expenses.

The ATO also reminds taxpayers that it has a series of 40 [occupation and industry-specific](#) guides for work-related expenses.

### **ATO general remission power: legislative instrument**

The ATO has issued a legislative instrument that codifies its long-standing practice of remitting interest or penalties to certain classes of entities, including where the charge or penalty has not yet become due and payable: the [Taxation Administration \(Remedial Power – Remission of Charges and Penalties\) Determination 2023](#) (F2023L00956).

The Instrument applies to the General Interest Charge, Shortfall Interest Charge and the Failure to Lodge penalty that would otherwise be imposed on an individual or group:

- that the Commissioner is satisfied has been affected by a natural disaster or other serious and external adverse event;
- with a liability to a charge or penalty the Commissioner considers is a minor amount (eg where the cost of collection is greater than the amount to be collected); or
- where the Commissioner considers is appropriate to remit to encourage ongoing compliance with taxation laws (eg the remission of a charge or penalty for a taxpayers' first failure to lodge or pay on time).

The Instrument has immediate effect. It was issued in draft form in April 2023 and is unchanged.

### **ATO discretion to extend time to lodge an objection**

The ATO has released an [updated](#) version of PS LA 2003/7. This Practice Statement sets out the factors ATO officers should take into account in determining whether to exercise the Commissioner's discretion to extend the time to lodge an objection. The

ATO says PS LA 2003/7 has been amended to provide clarification. However, the following key changes should be noted:

- The Practice Statement no longer includes a general rule that ATO staff should approach an extension request on the basis that it will be granted, unless there are exceptional circumstances. Instead, it now states that the discretion is an exception to the requirement to lodge an objection on time and its purpose is to avoid injustice being caused in a particular case due to the rigid application of the time limit.
- Additional factors have been added to the matters ATO staff should take into account.

The circumstances in which extensions may not be appropriate have been expanded to include the taxpayer changing advisors (if that is the only explanation for the delay).

## Reasonable travel and overtime meal allowance amounts

The ATO has released its [annual ruling](#) setting out the amounts it treats as reasonable for 2023-24 in relation to employee claims for:

- overtime meal expenses. The reasonable amount is \$35.65;
- domestic travel expenses. Reasonable amounts are provided for three salary levels for: (i) short-stay accommodation in commercial establishments; (ii) meals (breakfast, lunch and dinner); and (iii) deductible expenses incidental to travel;
- meal expenses for employee truck drivers in receipt of a travel allowance and required to sleep (take their major rest break) away from home. The reasonable amounts are \$28.75 (breakfast), \$32.80 (lunch) and \$56.60 (dinner);
- overseas travel expenses. Reasonable amounts are provided for 3 salary levels for: (i) meals (breakfast, lunch and dinner); and (ii) deductible expenses incidental to travel.

**Date of effect:** 1 July 2023.

## Payments for the authorised use of an individual's fame

The ATO has released [Taxation Determination TD 2023/4](#) on the income tax treatment of payments for using an individual's "fame" under third party "licensing" agreements. It applies to arrangements where:

- the individual (eg a sportsperson) establishes a company, family trust or other related entity;
- an agreement is entered into with the related entity for the use of the individual's "fame"; and
- the related entity then "authorises" other entities to use the individual's fame in return for a fee.

The ATO maintains its revised view (released in draft form in TD 2022/D3) that any fees paid for using the individual's fame will be ordinary income of the individual. Previously, in Draft PCG 2017/D11, the ATO allowed up to 10% of such payments to be treated as income of the related entity.

**Date of effect:** retrospective. However, if an arrangement was entered into in good faith before 28 June 2023 based on Draft PCG 2017/D11, the ATO will not devote compliance resources to apply the views in TD 2023/4 to income derived from 1 July 2023.

## **ATO 2023 Tax time meetings with Professional bodies – Have your say!**

Issues, concerns and insights impacting a large group of individual tax payers can be emailed to us at [ipaadvocacy@publicaccountants.org.au](mailto:ipaadvocacy@publicaccountants.org.au).

Issues and concerns in relation to individual clients of yours will need to be managed through the existing ATO channels. [Tax practitioner assistance \(TPA\)](#) can help all registered tax and BAS agents resolve client specific or practice management issues that you have not been able to resolve through existing ATO channels. It is not designed to be the first contact you make with the ATO on the matter.

## **The BAS agent lodgment program 2023-24**

The lodgment program only applies to returns lodged by registered Tax and BAS agents. To ensure your clients receive the lodgment program due dates, you should lodge activity statements (December monthly, and all quarterly activity statements) via Online services for agents or the practitioner lodgment service (PLS).

If you or your practice are feeling overwhelmed or experiencing challenges beyond your control, the ATO have a range of support options to help you get back on track.

Remember, the new lodgment deferral function in Online services for agents has made the lodgment deferral process easier.

## **FINANCIAL SERVICES**

### **Regulations supporting CSLR registered**

Treasury has registered the [Financial Services Compensation Scheme of Last Resort Levy Regulations 2023](#) (the "Regulations"). The purpose of these is to support the amendments made by the Financial Services Compensation Scheme of Last Resort Levy Act 2023 (the "Act"), which created the levy framework to fund the compensation scheme of last resort ("CSLR").

Briefly, the objective of the CSLR is to provide compensation to eligible consumers where they have an AFCA determination in their favour and where the relevant financial firm has not paid the consumer in accordance with the determination.

While the Act imposes the CSLR levy framework, eg primary funding mechanism, secondary funding mechanisms, etc, the Regulations prescribe the:

- sub-sectors that are required to pay the annual levy for the second levy period and each subsequent levy period;
- general conditions for the imposition of the annual levy and the special levy; and
- methods for working out the amount of the annual levy, further levy, special levy and one-off levy.

**Date of effect:** 8 July 2023.



## **SUPERANNUATION**

### **Interaction of NALI and CGT rules**

The ATO has issued [Draft Determination TD 2023/D1](#) to provide guidance on calculating the amount of statutory income that is non-arm's length income (NALI) where a superannuation fund makes a capital gain as a result of a non-arm's length dealing.

The ATO says the amount of NALI is determined by reference to the amount of the non-arm's length capital gain, being the capital proceeds less the cost base arising from the scheme in which the parties were not dealing at arm's length. This non-arm's length capital gain is subject to any applicable CGT market value substitution rules and is then reduced by any attributable deductions to calculate the non-arm's length component. However, the s 295-550(1) "amount" of statutory income that is NALI cannot exceed the fund's net capital gain as calculated using the CGT method statement in s 102-5(1) for the relevant income year.

In working out the tax payable by the fund (using the s 295-10(1) method statement), s 102-5(1) is applied at Steps two and three. The net capital gain calculated under s 102-5 (consisting of all arm's length and non-arm's length capital gains) is included as statutory income.

If a fund's net capital gain is nil due to the application of capital losses and previously unapplied net capital losses, no amount of NALI is referable to the non-arm's length capital gain.

The Draft includes three practical examples to demonstrate these calculations. It also canvasses various alternative views, which the ATO disagrees with.

**Proposed date of effect:** retrospective.

**Comments** are due by 28 July 2023.

## Illegal schemes targeting SMSFs

The ATO has released articles warning taxpayers of illegal schemes involving SMSFs.

The first article, [Residential property purchased through illegal SMSF schemes](#), warns of schemes that use an SMSF to help members buy property in their personal name. Often targeting first home buyers, these schemes typically involve the (i) set up or use of an SMSF; (ii) rollover of a member's super benefits from an existing fund to the SMSF; (iii) SMSF investing in a property trust (an unrelated unit trust) for a fixed period and rate of return, being a contributory fund with other investors; and (iv) on-lending of money by the property trust to individuals to help them purchase real property, secured by mortgages over the property. Once the investment is in place, the member gains access to money from a third-party entity to help the fund purchase residential property under an arrangement commonly referred to as a "loan".

Such arrangements contravene one or more of the super laws. If fund monies are used to help purchase a house for a member, indirectly through the SMSF's investment in other entities, this will be treated as illegal early access of super benefits by the member. The amount will be included in the member's assessable income and taxed at their marginal rate. Tax shortfall penalties may also apply.

The second article, [Schemes targeting SMSFs](#), broadly covers illegal schemes that are of concern to the ATO, warning of scheme promoters and common "features" of such schemes, ie where they:

- are artificial or contrived arrangements with complex structures around an existing or new SMSF;
- involve seemingly unnecessary steps or transactions;
- are designed to give the taxpayer minimal or zero tax or even a tax refund;
- aim to bring forward a tax benefit; and
- invariably sound "too good to be true" (which they generally are).

The ATO reminds taxpayers that retirement and tax planning is permitted, but only when carried out within the tax and superannuation laws. An SMSF is a trust generally run for the sole purpose of providing retirement benefits to its members. Anyone benefitting from the SMSF outside of this arrangement may risk losing some or all of their retirement savings and receive serious penalties.

## Super trustees need to boost efforts to merge duplicate accounts

ASIC has issued a [release](#) warning superannuation trustees to proactively merge duplicate member accounts. This follows ASIC's review of nine trustees, covering both industry and retail funds, which found:

- **Documented procedure for identifying duplicate accounts** - three out of nine trustees did not have documented business rules for identifying and consolidating multiple accounts on an annual basis across some or all of their funds;
- **Best interest assessments** - eight of the nine trustees undertook some form of best interest assessment across one or more of their funds. The trustee that failed to undertake any best interest assessment has committed to rectifying this practice and implementing appropriate business rules;
- **Member communication** - six out of the nine trustees sought direction from their members to check if consolidation was in the member's best interests and all trustees notified at least some members if a duplicate account was identified;
- **Oversight of the process** – two trustees with multiple funds did not have an internal policy on consolidation of duplicate accounts, instead relying on the administrator to have a process in place. This contributed to inconsistent or inadequate treatment of duplicate accounts across the trustee's funds.

Following engagement with ASIC, all trustees with poor practices have committed to improvements to address concerns raised by ASIC. In addition, three trustees are undertaking remediation of members affected by the trustees' failure to comply with the law.

## **REGULATOR NEWS**

### **Accounting standard amended for advent of Pillar Two**

The Australian Accounting Standards Board has issued [AASB 2023-2](#), which amends Accounting AASB 112 (Income Taxes). This is a result of the earlier release by the International Accounting Standards Board of the International Financial Reporting Standard International Tax Reform – Pillar Two Model Rules (Amendments to IAS 12) in May 2023.

The modification is directed at income taxes arising from tax law enacted to implement the Pillar Two Model Rules – including tax law that implements domestic minimum top-up taxes described in those rules ("Pillar Two income taxes").

AASB 2023-2 amends AASB 112 to provide a mandatory temporary exception to the requirements in AASB 112, such that an entity shall neither recognise nor disclose information about deferred tax assets and liabilities related to Pillar Two income taxes. There are also new disclosure rules related to this.

### **ASIC cost recovery statement 2022-23**

ASIC has [released](#) its Cost Recovery Implementation Statement (CRIS) setting out the estimated industry sector levies for 2022-23 under the industry funding model. ASIC said it expects to recover \$352.0m (\$332.3m last year) of regulatory costs via cost recovery levies and statutory levies.

In relation to AFS licensees that provide personal advice to retail clients, ASIC expects to recover \$55.5m for 2022-23 (down from \$56.7m) from 2,655 AFS licensees with 16,019 advisers. In the superannuation sector, ASIC expects to recover \$28.8m from 87 super trustees that are RSE licensees. The figures in the CRIS are indicative only. Invoices will be issued between January and March of 2024 after actual levies have been calculated.

## **AUDIT & ASSURANCE**

### **Highlights from most recent AUASB meeting**

Highlights from the most recent AUSAB meeting on 14 June 2023.

#### *Standard on Sustainability Assurance*

ISSA 5000 *General Requirements for Sustainability Assurance Engagements* has been approved for public consultation in June 2023 and the AUASB will be conducting extensive stakeholder outreach over the coming months.

#### *Proposed revisions to ISA 570 Going Concerns*

The AUASB will be holding Going Concern Roundtables to be held in Sydney and Melbourne in July and August 2023 over the IAASB's Exposure Draft ISA 570 Going Concern. Proposed changes in ISA 570 is a result of further corporate failures since the last revision, the increase economic uncertainty and impact of COVID. The changes are to promote consistent practice in response to identified risk of misstatement, increase the robustness for evaluating management's assessment of going concern and enhance transparency in the auditor's report.

#### *AUASB and AASB joint publication on Going Concern*

The joint AUASB and AASB publication *Going Concern and Related Assessments* was reissued in June 2023, removing the focus on COVID-19.

#### *Fraud and proposed changes to ISA 240*

Proposed ISA 240 *The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements* includes proposed amendments to auditor reporting with inclusion of fraud related Key Audit Matters in the auditor's report.

#### *IAASB's Proposed Standard for Auditing Less Complex Entities (LCE's)*

The IAASB's proposed standard for auditing LCE's will be aiming to approve the standard by Q4 2023 at which point the AUASB will consider its adoption and application in Australia.

*NFP Sector focus*

The AUASB is continuing to focus their work on the NFP sector to build on recent release of their NFP Fundraising Bulletin in May 2023. They intend on issuing two additional AUASB Bulletins focused on *What **NFP Entities** need to know about Audit v Reviews* and *What **Auditors** of Not-for-Profit Entities need to know about an Audit vs Review*.