

TAXATION

Tax adviser regulatory framework: reforms

The government has announced steps to address several shortcomings in regulatory frameworks on tax adviser misconduct.

Taxpayers with simple affairs can now lodge their returns

The ATO has issued a release giving the green light for taxpayers with fairly straightforward financial affairs to lodge their annual income tax returns.

Pay as you go (PAYG) instalments variation issue

‘Activity statements are showing an incorrect instalment rate. The ATO have advised that they are aware of an issue impacting pay as you go (PAYG) instalment variations that is currently being rectified’.

ATO Tax time 2023 update

The ATO has published key messages and themes from the Tax Practitioner Stewardship Group (TPSG) Tax Time meeting, held on 1 August 2023.

Operation Protego (fraudulent claims for GST refunds) – Professional and Ethical obligations

There has been extensive ATO reporting of the impact of this fraud since Operation Protego was launched in April 2022 (Operation Protego publicly announced [May 2022](#), first raids announced [June 2022](#), further raids announced [July 2022](#), crackdown on promoters [Feb 2023](#), arrest activity [August 2023](#)).

The ATO has released a statement [‘Correcting the record on Operation Protego’](#) which includes a reminder to tax and BAS agents of their expectation that agents notify the ATO immediately if they become aware that a client has participated in fraud.

ATO SMS and Email impersonation scam

The ATO is aware of multiple fake SMS and emails in circulation that are impersonating them. These messages are referencing ATO refunds, tax return payments or more simply a general ATO notification. Do not click on links contained within these messages.

FINANCIAL SERVICES

AFS licensing relief for foreign financial services extended

An instrument has been registered to preserve the effect of the relief in a transitional instrument to conditionally exempt foreign financial service providers from licensing.

AFS licensing exemptions for FFSPs: draft

Treasury has issued a draft Bill proposing to provide four licensing exemption categories for foreign financial service providers to replace existing relief.

SUPERANNUATION

MySuper benchmark performance test: SIS Regs modified

APRA has registered a Determination to modify the actual and benchmark formulas in the SIS Regs used to conduct annual performance assessments.

SMSF Auditor

The ATO has published updated information on appointing an SMSF auditor. 'You need to appoint an [approved self-managed super fund \(SMSF\) auditor](#) for each income year, no later than 45 days before you need to lodge your [SMSF annual return \(SAR\)](#).



REGULATOR NEWS

IGTO quarterly reporting pack released

IGTO has released its FY23 Q4 reporting pack highlighting activities during the quarter including total complaints received.

TAXATION

Tax adviser regulatory framework: reforms

The Government has [announced](#) steps to address "severe shortcomings" in regulatory frameworks on tax adviser misconduct. The Government will be introducing a package of reforms that will cover three priority areas:

- Strengthening the integrity of the tax system - increasing maximum penalties for advisers and firms who promote tax exploitation schemes (from \$7.8 million to over \$780 million); expand tax promoter penalty laws to apply to advisers and firms who promote tax avoidance; increase the time limit for the ATO to bring Federal Court proceedings on promoter penalties from four years to six years;
- Increasing the powers of regulators - remove limitations in the tax secrecy laws that were a barrier to regulators; enable the ATO and TPB to refer ethical misconduct by advisers (including but not limited to confidentiality breaches) to professional associations for disciplinary action; whistleblower protection; more time for the TPB (up to 24 months) to complete complex investigations; increase transparency of agent and firm misconduct on the TPB's public register of practitioners;
- Strengthening regulatory arrangements to ensure they are fit for purpose - among other things, to strengthen the range of sanctions available to the TPB; a review of the promoter penalty laws and any emerging systemic abuse of the tax system; a review of the use of legal professional privilege in Commonwealth investigations; etc.

The Government expects consultations in relation to the adequacy of regulations applying to large consulting, accounting and auditing firms will begin in "coming months".

Taxpayers with simple affairs can now lodge their returns

The ATO has issued a [release](#) giving the "green light" for taxpayer with "fairly straight-forward" financial affairs to lodge their annual income tax returns. The ATO said that most taxpayers with simple affairs will find the information they need to lodge has now been pre-filled in their tax return.

The ATO reminds taxpayers that some income may need to be manually added - for example, income from rental properties, some government payments or income from "side hustles".

Some tips were also offered to taxpayers: (i) include all income; (ii) assess circumstances that occurred during the year, eg WFH frequency, etc; (iii) keep records for work related expenses; (iv) wait for notice of assessment before making plans of using any expected tax refund; and (v) stay alert to scams.

Pay as you go (PAYG) instalments variation issue

'If clients have lodged a variation on their activity statement from 16 June, they or their agent will need to check the activity statement prior to their next lodgment.

The prior variation may need to be re-input if they are a quarterly or monthly lodger with an activity statement period ending 31 July 2023.

Taxpayers will be informed of the issue via ATO newsrooms and directed to [PAYG instalments – how to complete your activity statement](#) for advice on how to check their activity statement.

The ATO have said that they 'will continue to provide agents with updates on our [OSfA](#) and [PLS](#) status dashboards and [troubleshooting pages](#).'

ATO Tax time 2023 update

'Updates were provided from:

- ATO Systems and Digital services, no issues noticed or reported across the various channels.
- Service Delivery
 - lodgments received were slightly down compared to the same time last year.
 - average wait times for agent calls is about 5 minutes.
 - following a query from the 25 July meeting, confirmed that there have not been changes to the Proof of Record Ownership scripting.
- Marketing and Communication, the tax time focus for this week through our communications and media activities includes:
 - launch of the [super guarantee educational video series](#), to help employers get their super obligations right.
 - a new video in our [Online services for agents user guide](#), on [how to view your client's digital correspondence](#) in communication history. This is part of our range of videos showing key activities in Online services for agents.
 - the latest tax time video for tax professionals focuses on the [Tax time toolkits](#)[External Link](#). Assistant Commissioner, Tim Loh, steps through our range of toolkits, factsheets, and posters, all updated for the

- current year. It's an excellent way to start the conversation with individual and small business clients about what they can claim.
- the Tax professionals newsletter features articles on: [calculating fuel tax credit rates](#); the rules around [GST and property settlement](#) to make sure withholdings are correct; and promotion of the [capital gains tax fact sheet](#) which can help agents guide conversations with clients who are thinking about selling shares etc.

Small Business

- provided an update on Small Business boost measure.
- indexation of fuel tax credit rates has increased from 1 August. Industry associations should refer to ATO bulletin boards and update details listed on [ato.gov.au](#).
- both fuel and alcohol excise duty rates increased from 1 August and affected clients had been issued reminders to apply the correct rate to products delivered before and from 1 August. Clients were encouraged to review the rates as outlined on [ato.gov.au](#).

Member discussed

Feedback relating to issues with Online services for agents was quieter across networks this week.

A small number of instances where BAS agents were unable to access Super Guarantee Charge information – members were encouraged to send examples to the secretariat for review.

Whether all agents should have received a full listing of their clients with debts previously placed on hold. Members were advised the campaign is being progressed in stages so agents would not necessarily have a full listing yet of all clients who may ultimately be impacted by the offsetting.

The opportunity for further communications to help clarify and support practitioners in relation to the Small Business Boost measure – for example: to clarify that both mobile phone hardware and bundled internet costs can be claimed if they're linked to business operations.'

Operation Protego (fraudulent claims for GST refunds) – Professional and Ethical obligations

The ATO in a [statement warning the community](#) in May 2022 said that ‘The fraud involves offenders inventing fake businesses and Australian Business Number (ABN) applications, many in their own names, then submitting fictitious Business Activity Statements in an attempt to gain a false GST refund’.

The ATO statement went further to say ‘ATO Deputy Commissioner and Chief of the Serious Financial Crime Taskforce Will Day said information on how to attempt the fraud is being shared online including via social media platforms.

Sophisticated risk models deployed by the ATO, coupled with intelligence received from banks including through the AUSTRAC-led Fintel Alliance and the Reserve Bank of Australia, identified a recent spike in suspicious refunds.’

IPA members who become aware of a person’s involvement in fraudulent activities are reminded of their professional and ethical obligations, including the below, to report these matters to the relevant authorities.

- [APES 110 Code of Ethics for Professional Accountants \(including Independence Standards\) \(the Code\)](#)
- [APES 220 Taxation Services \(APES 220\)](#)
- [Tax Practitioners Board Code of Professional Conduct](#)
- The ATO also offers a confidential [online mechanism](#) for reporting suspicious behaviour. Legal protections are also afforded to [tax whistle-blowers](#)
- Changes to the Code of Ethics on how accountants need to respond to non-compliance with laws and regulations (NOCLAR) - Refer to the [IFAC website](#) for resources to assist in understanding and applying NOCLAR.

ATO SMS and Email impersonation scam

The ATO is aware of multiple fake SMS and emails in circulation that are impersonating them. These messages are referencing ATO refunds, tax return payments or more simply a general ATO notification.

They are directing people to click on a link that directs to a fake myGov sign in page.

If you, your staff, or your clients receive these communications, do not click on links contained within these messages.

The ATO encourages anyone who receives an SMS or email like this to forward the message or email to ReportScams@ato.gov.au, and then delete it.

The ATO will never send a link to login to online services. These should be accessed by typing ato.gov.au or my.gov.au directly into the browser.

You may wish to share this message with your clients.

Visit www.ato.gov.au/scamalerts to find out more.

FINANCIAL SERVICES

AFS licensing relief for foreign financial services extended

[ASIC Corporations \(Amendment\) Instrument 2023/588](#) (the "Instrument") has been registered to preserve the effect of the relief in ASIC Corporations (Repeal and Transitional) Instrument 2016/396, ASIC Corporations (CSSF-Regulated Financial Services Providers) Instrument 2016/1109 and ASIC Corporations (Foreign Financial Services Providers -- Limited Connection) Instrument 2017/182 ie conditionally exempt foreign financial services providers ("FFSPs") from the requirement to hold an Australian financial services ("AFS") licence when providing specified financial services in Australia until 31 March 2025.

This Instrument also delays the commencement date of ASIC Corporations (Foreign Financial Services Providers -- Funds Management Financial Services) Instrument 2020/199 until 1 April 2025.

The purpose of the Instrument is to provide certainty for industry pending the outcome of the Government's consideration of options for the regulation of FFSPs.

AFS licensing exemptions for FFSPs: draft

Treasury has issued the [Exposure Draft - Treasury Laws Amendment \(Measures for Future Bills\) Bill 2023](#) proposing to amend the Corporations Act 2001 to provide the following four licensing exemption categories for foreign financial services providers (FFSPs) to replace the existing licensing relief for FFSPs:

- the professional investor exemption - licensing exemption for persons that provide financial services from outside Australia;
- the comparable regulator exemption - licensing exemption for foreign companies and partnerships formed outside Australia that provide financial services to wholesale clients, where the person is authorised, registered or licensed (as necessary) by a comparable regulator to legally provide substantially the same financial service in a place outside Australia;
- the market maker exemption - licensing exemption for a person making a market for derivatives that are able to be traded on prescribed licensed markets; and
- the fit and proper person test exemption - exemption from the requirement to satisfy the fit and proper person test for foreign companies or partnerships formed outside Australia that are authorised, registered or licensed (as necessary) to legally provide substantially the same financial services by a comparable regulator and that only provide financial services to wholesale clients.

Date of effect: 1 April 2024.

Submissions are due by 8 September 2023.

SUPERANNUATION

MySuper benchmark performance test: SIS Regs modified

APRA has registered the [Superannuation Technical Determination No 1 of 2023](#) to modify the actual and benchmark formulas in the SIS Regs used to conduct annual performance assessments. The instrument applies where there are "changes to the lifestages" of a MySuper lifecycle Part 6A product.

It is worth noting that the explanatory memorandum to the Instrument includes an example explaining the operation of the Instrument in circumstances where a MySuper product has changed from a single strategy to a lifecycle strategy with two

lifestages, demonstrating how the modified formulas are used to calculate the performance measure over a product's lookback period.

Date of effect: The modifications to the SIS Regs will apply to performance assessments from 2022-23 and later years.

SMSF Auditor

The ATO have published the following guidance 'Your SMSF's audit must be finalised before you lodge, as you'll need some information from the audit report to complete the SAR. You must ensure the correct auditor details are provided in the SAR, otherwise you may be penalised.

Your auditor will perform a financial and compliance audit of your SMSF's operations before lodging. Remember, an audit is required even if no contributions or payments are made in the financial year.

Your approved SMSF auditor must be:

- registered with the [Australian Securities & Investments Commission \(ASIC\)](#) – you'll need to provide their [SMSF auditor number \(SAN\)](#) on your SAR
- independent – auditors shouldn't audit a fund where they.
 - hold any financial interest in, or where they have a close personal or business relationship with members or trustees.
 - work for a firm who provides your fund with other services such as certain accounting services, tax, super or financial planning advice.

If a fund doesn't meet the rules for operating an SMSF, the auditor may be required to report any [contraventions](#) to the ATO.

[Approved SMSF auditors](#) can be busy so it's a good idea to start this process early. You can find a list of approved SMSF auditors on the ASIC website.

Looking for the latest news for SMSFs? – You can stay up to date by visiting our [SMSF newsroom](#) and [subscribing](#) to our monthly SMSF newsletter.'

REGULATOR NEWS

IGTO quarterly reporting pack released

The IGTO has released its [FY23 Q4 reporting pack](#) highlighting its activities during the quarter. The report provides the full financial year's update on the following:

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