

TAXATION

ATO's corporate tax transparency report released

ATO has released its corporate tax transparency report for 2021-22 which analyses aggregated data from income tax returns of Australia's largest corporations.

ATO - Self-serve payment plan threshold has increased

The ATO have advised that 'if clients receive a tax bill they should pay in full and on time. However, if they are experiencing financial difficulties, they may be able to set up a payment plan'. The ATO have further said that they 'have recently increased the self-serve payment plan threshold to \$200,000'

ATO pre-referral warning letters

The ATO have advised that they 'will be recommencing the use of external debt collection agencies. Clients who have an overdue debt and haven't responded to our previous contact attempts and requests to pay may receive a pre-referral warning letter. If you receive a letter on behalf of your client, encourage them to pay their debt, or they may be referred to our external debt collection agency.'

ATO Super guarantee compliance snapshot released

The ATO have said that they take 'a firm approach against employers who don't pay their employees' super in full, on time and to the right fund. For the second year, we have published a snapshot of our latest super guarantee (SG) compliance actions and results'.

Updated ato.gov.au: sneak peek

The ATO have announced that members of the public can 'have a sneak peek and experience the refreshed look and design of the preview version of our updated website by clicking on the banner in ato.gov.au.'

Small business lodgment penalty amnesty

The ATO have advised that 'the small business lodgment penalty amnesty applies to small businesses with overdue income tax returns, BAS and fringe benefits tax returns that were due between 1 December 2019 and 28 February 2022.'

ATO impersonation scams

The ATO have advised that 'if agents or their clients get a message claiming to be from the ATO, Services Australia or myGov, they should stop, think and check.'

Greens propose amendments to TPB reform Bill

Senator Barbara Pocock of the Australian Greens has introduced proposed amendments to *Treasury Laws Amendments (2023 Measures No.1) Bill 2023* (the Bill) in relation to the Tax Practitioners Board (TPB) and Tax Agents Services Act 2009 reforms.

Other taxation updates

Updates from various government bodies over the past week including the ATO, Treasury and TPB.

GST

Decision Impact Statement: frozen foods not GST-free

The ATO has released a Decision Impact Statement setting out its response to the Federal Court's decision that concluded various frozen products were not GST-free. More information [here](#)

FINANCIAL SERVICES

Financial advice registration requirement extended

ASIC has registered an instrument that puts in place further interim measures to delay the requirement for relevant providers to be registered with ASIC.

ASIC cost recovery levies for 2022-23

ASIC has registered legislative instruments setting out figures it will use to calculate the cost recovery levies payable.

SUPERANNUATION

APRA prudential standard minor amendment

APRA has released a minor amendment to Prudential Standard LPS 310 to correct an error relating to the level of assurance required for two reporting standards.

REGULATOR NEWS

First ASIC action for failure to comply with internal dispute resolution requirements

ASIC [has advised](#) that it has commenced civil penalty proceedings in the Federal Court alleging that a super fund failed to comply with internal dispute resolution requirements.

ASIC proposes extension of exemption from consistency obligations in ASIC Class Order [CO 14/541] to 1 January 2026

ASIC [has proposed](#) an extension of two years to the exemption from consistency obligations in [CO 14/541] for RSE licensees from 1 January 2024 to 1 January 2026, and has invited industry feedback on the proposal.

ASIC Financial Advisers Register updated for changes to definition

ASIC [has made](#) a one-off update to the Financial Advisers Register to record that individuals who are both a relevant provider and a registered tax agent on 20 September 2023 can provide tax (financial) advice services to retail clients on relevant

financial products.

ASIC alert list for investment scams

ASIC has released a new investor alert list as part of its scam prevention tools, replacing the previous list for “Companies you should not deal with”.

ASIC action on misleading super marketing

HESTA has paid \$48,600 in relation to 3 infringement notices issued by ASIC for alleged false or misleading statements about its “Balanced Growth” superannuation option.

ASIC Newsroom

Updates from ASIC in the past week including media releases, news, articles and speeches.

TAXATION

ATO's corporate tax transparency report released

The ATO has released its [Corporate tax transparency report for 2021-22](#), the ninth annual report.

The report analyses aggregated data from the 2021-22 income tax returns of some of Australia's largest corporations, including:

- Australian public and foreign-owned corporate tax entities with total income of \$100 million or more;
- Australian-owned resident private companies with total income of \$200 million or more; and
- entities that have petroleum resource rent tax (PRRT) payable.

A [media release](#) accompanying the report notes that approximately 31% of companies did not pay any tax, and that the mining sector paid more tax than all other sectors combined in the 2022 income year.

Listed highlights of the report also include:

- There are 2,713 entities in this year's population, representing a net increase of 245 entities (9.9%) on 2020-21.

- Total income for 2021-22 was \$2,630.6 billion, an increase of 14.7%.
- Taxable income was \$341.4 billion, an increase of 33.1%.
- Tax payable was \$83.8 billion, an increase of 22.2%.
- Foreign-owned entities accounted for 55.1% of this year's corporate transparency population and 28.3% of tax payable.
- Australian public entities accounted for 21.7% of this year's corporate transparency population and 60.2% of tax payable.
- Australian private entities accounted for 23.1% of this year's corporate transparency population and nearly 11.5% of tax payable.
- Entities with income of more than \$5 billion represented 2.9% of the corporate transparency population and accounted for 57.0% of tax payable (\$47.8 billion).
- Entities with income of between \$250 million and \$5 billion represented the largest portion (56.5%) of the corporate transparency population and accounted for 38.1% of the tax payable (\$31.9 billion).
- Medium entities - those with income of less than \$250 million - represented 40.6% of the corporate transparency population and accounted for only 4.9% of the tax payable (\$4.1 billion).
- Tax payable in the corporate transparency population was again dominated by the Mining, Energy and Water segment at 50.6% (\$42.4 billion) of the total. This year the Mining, Energy and Water segment increased by \$10.2 billion (31.6%) on last year.
- PRRT payable increased 115.6% from \$926.0 million last year to \$1,996.6 million this year.

ATO - Self-serve payment plan threshold has increased

The ATO have said that 'this should reduce the need for agents to contact us, saving time to assist clients who need the support.'

Payment plans require an upfront payment and should be completed within the shortest possible timeframe to minimise general interest charges (GIC) that will continue to accrue.

Clients will be better off financially if they pay in full and on time, rather than arranging a payment plan. For example, if a business receives a \$20,000 tax bill and they set up a 12-month payment plan, they will pay an additional \$2,359.82 in accrued GIC over the payment plan period. This example is based on the current rate of [GIC](#), which is updated quarterly'.

ATO pre-referral warning letters

Further the ATO have said that 'there is [support available](#) if your clients are experiencing financial difficulties. You or your clients should contact the ATO as early as possible.'

Key points to note:

- Pre-referral warning letters will start issuing from **14 November**. Taxpayers will have 14 days to respond to the letter. If no action is taken, they may be referred to the external debt collection agency.
- You may receive pre-referral warning letters for your clients if you have preference to receive their communications.
- The external debt collection agency will not be engaged on a commission basis and there will be no incentives offered for debt collection outcomes.
- The external debt collection agency will not undertake any firmer actions like garnishees, issuing of Director Penalty Notices, disclosure of business tax debts, legal actions, or insolvency.
- Clients experiencing serious financial hardship will be referred back to the ATO.
- The external debt collection agency will have limited access to our systems. They will only be able to update contact details and have read access for client account information. This access will ensure a better client experience as the external collection agency will have up to date information, including debt balances.
- The external debt collection agency is held to strict quality assurance, governance checks and privacy controls to protect taxpayers. The staff are subject to pre-engagement integrity checks in alignment with internal onboarding requirements. They will treat taxpayers with the same courtesy and professionalism as our employees.
- There will be no additional penalties for being referred to our external debt collection agency.
- We will update you when the external debt collection agency commences actioning referrals. We will let you know who the external collection agency is, and how to check that contact from them is legitimate.

We remain committed to understanding each taxpayer's circumstances and working with them to provide options to help manage their obligations'.

ATO Super guarantee compliance snapshot released

The ATO have stated that 'this snapshot provides a transparent view of the actions we've taken to help employees receive the super contributions they're entitled to.

Snapshot highlights In 2022-23:

- A total of \$1,130 million in super guarantee charge (SGC) liabilities were raised from employers and we distributed around \$683 million to super funds and individuals.
- Between employee complaints and ATO initiated audit cases, we reviewed over 14,000 employers. This led to super entitlements being raised for 216,000 employees.

- We issued around 134,000 reminders and prompts to employers to check their obligations, raising \$81 million in SGC liabilities.
- Employers are paying more than 94% of the SG they are required to, without intervention from us.

We know that mistakes can happen, and we're here to support employers in getting it right. If an employer does make a mistake, they should lodge an SGC statement as soon as possible.

We also have a range of help and support tools available including our [Superannuation guarantee eligibility decision tool](#) and [Super guarantee contributions calculator](#). '

Updated ato.gov.au: sneak peek

The ATO have said 'later this month the preview version will become the 'default' website when you navigate to ato.gov.au, before officially replacing it in December 2023.

Using the updated website, you can expect:

- more streamlined navigation that is clear and intuitive, making it easier for you to find what you need
- smarter search function that allows you to find information more efficiently and the simplified home page makes it easier for you to access the most relevant content for your query
- updates to website structure to move super content to relevant areas. You'll now find super content in the relevant section for either Individuals and families, Businesses and organisations, or Tax and super professionals.

You can share your feedback and comments in a short survey by clicking the link in the banner on the updated website.

For more information watch our [Updated ato.gov.au video](#).'

Small business lodgment penalty amnesty

Further the ATO states that 'lodgments eligible for the amnesty will have failure to lodge (FTL) penalties remitted without needing to apply. Directors that take advantage of the amnesty to bring their company's lodgments up to date will also have any FTL penalties remitted if they are reliant on those company lodgments to finalise their own personal tax obligations. This applies to eligible lodgments made between 1 June and 31 December 2023.

Thousands of businesses have already taken advantage of the amnesty and we have remitted over \$40 million in penalties.

The amnesty is coming to an end on 31 December 2023. Please encourage your small business clients to check their eligibility at ato.gov.au/FTLpenaltyamnesty ‘

ATO impersonation scams

The ATO have further stated that ‘scammers may impersonate government agencies via text message, email, phone calls or social media to obtain personal information. They could say things like “a refund is waiting for your action” or “you should click a link to avoid your myGov account being suspended or frozen”.

Scammers often impersonate the ATO. This can make it hard to distinguish when it's really them trying to contact the agent or a client.

The ATO will never:

- send a link asking taxpayers to login into ATO online services
- ask for personal information on social media or via reply SMS or email
- threaten taxpayers with immediate arrest.

If an agent or client thinks a phone call, SMS, voicemail, email, or interaction on social media claiming to be from the ATO is not genuine, **do not engage with it**. They should either phone **1800 008 540** or visit the [Verify or report a scam](#) webpage.’

Greens propose amendments to TPB reform Bill

Some of the key proposals include:

- Board members of the TPB cannot be a partner/officer of an entity that is a prescribed tax agent (i.e., a partnership or company with more than 100 employees) or a past partner/officer if they are continuing to receive benefits from them now or in the past 6 months.
- The TPB can order a person to notify current clients that they have been sanctioned.
- Tax agents will be required to self-report significant breaches of the Code of Conduct.
- Tax agents will be required to notify significant breaches of the Code of Conduct by other tax agents to the TPB within 30 days of having reasonable grounds to believe that this has occurred.

According to the Senator Barbara Pocock’s media release, the Government has agreed to the Greens amendments.

The IPA is engaging on the Bill through the TPGSF group of professional associations.

Other taxation updates

The following updates have been released related to the area of taxation:

- ATO has issued an [updated version](#) of PCG 2022/1 (Non-commercial business losses - Commissioner's discretion regarding flood, bushfire or COVID-19).
- ATO has released an [updated version](#) of PCG 2017/2 (Simplified transfer pricing record-keeping options).
- ATO has released a rewritten version of [Practice Statement PS LA 2011/4](#) (Collection and recovery of disputed debts).
- Treasury [statement](#) on OECD Crypto-Asset Reporting Framework.

GST

Decision Impact Statement: frozen foods not GST-free

The ATO has released a [Decision Impact Statement](#) (DIS) setting out its response to the Federal Court's decision in *Simplot Australia Pty Limited v FCT* [2023] FCA 1115. In that case, the Court concluded that various frozen products were food of a kind "marketed as a prepared meal" (for the purposes of s 38-3 of the GST Act) and were therefore not GST-free.

The ATO states in the DIS that the Court's decision confirms the ATO's classification of the particular products.

The ATO goes on to say that a product which is regarded as a "meal component" may yet be taxable as "food of a kind marketed as a prepared meal" in some situations. However, the ATO also said that it will be rare that, as a result of the decision in *Simplot*, a meal component not previously understood to be taxable will now be understood to come within a class or genus of food marketed generally as having the attributes of a prepared meal.

The closing date for comments is 8 December 2023.

FINANCIAL SERVICES

Financial advice registration requirement extended

ASIC has registered the ASIC Corporations (Amendment) Instrument 2023/730 (the "Amending Instrument"). The Amending Instrument puts in place further interim measures to delay the requirement (the "Registration Requirement") for "relevant providers" to be registered with ASIC as a precondition for providing personal advice ("Financial Advice") to retail clients about relevant financial products.

By way of background, the requirement for relevant providers to be registered was introduced by the Financial Sector Reform (Hayne Royal Commission Response -- Better Advice) Act 2021 ("Better Advice Act"). The registration provisions, as inserted by the Better Advice Act, staggered commencement dates so that Australian financial

services ("AFS") licensees and relevant providers could continue providing Financial Advice without being registered up to 1 January 2023. Subsequent steps were taken by the Government to delay the Registration Requirement to 1 October 2023.

The Amending Instrument provides for a further delay to the Registration Requirement to 1 February 2024 in order to allow:

- parliament to further consider the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 ("TLAB 1"), which gives ASIC the power to use assisted decision-making systems when processing registration applications and facilitate multiple registration of relevant providers;
- ASIC to implement TLAB 1 if TLAB 1 is enacted;
- industry to understand its rights and obligations concerning the Registration Requirement; and
- AFS licensees to register their relevant providers with ASIC prior to the Registration Requirement commencing.

ASIC cost recovery levies for 2022-23

ASIC has registered the following legislative instruments setting out the figures it will use to calculate the cost recovery levies payable by each leviable entity for the 2022-23 financial year:

- [ASIC \(Supervisory Cost Recovery Levy – Annual Determination\) Instrument 2023/778](#);
- [ASIC \(Supervisory Cost Recovery Levy – Regulatory Costs\) Instrument 2023/777](#).

ASIC will use these instruments to prepare levy invoices which will be sent out in January 2024. Either a basic levy component or a graduated levy component is applied to each sub-sector. Overall, ASIC is seeking to recover regulatory costs totaling \$350m for the 2022-23 financial year.

SUPERANNUATION

APRA prudential standard minor amendment

APRA [has released](#) a minor amendment to Prudential Standard LPS 310 (Audit and related matters) to correct an error relating to the level of assurance required for two reporting standards. The changes will be effective from 18 December 2023.

REGULATOR NEWS

Professional Standards Councils' 2022/23 Annual Report snapshot

2022/23 Highlights of the year

- Roundtable on professional indemnity insurance
- New guidance on codes of ethics
- Net Promoter Score
- Redesign of association annual reporting on risk management strategies
- Professional Standards Forums
- Membership of Standards Australia

[Download the full report here](#)

ASIC news

First ASIC action for failure to comply with internal dispute resolution requirements

ASIC [has advised](#) that it has commenced civil penalty proceedings in the Federal Court alleging that a super fund failed to comply with internal dispute resolution requirements.

Trustees of regulated superannuation funds (except SMSFs) or of approved deposit funds must have an internal dispute resolution (IDR) procedure in place which complies with ASIC standards and requirements: s 101(1) of the SIS Act. These are contained in Internal Dispute Resolution RG 271.

The procedures must meet the IDR standards and requirements made or approved by ASIC under s 912A(2) of the Corporations Act that apply to AFS licensees (most trustees of regulated funds are AFS licensees for the purposes of s 912A(2)). RSA providers also need to meet the same standards and requirements in relation to IDR systems as AFS licensees: s 1017G of the Corporations Act. A trustee that is not an AFS licensee or relevant product issuer is also required to have a complying IDR procedure in place. Such requirements also extend to the trustee of an EPSSS that has elected to join the AFCA scheme.

This press release advises that this is the first proceeding under the IDR regime.

Alleged misconduct

RG 271 introduced “enforceable paragraphs”, which set out the legal requirements for the IDR system of a financial firm. This includes the requirement to respond to most superannuation complaints within 45 days. A failure to comply with the enforceable paragraphs may constitute a reportable situation. RG 271 also introduced an expanded definition of “complaint”.

ASIC alleges that between 22 October 2021 and 13 January 2023, Telstra Super received 337 superannuation complaints but failed to comply with notification

requirements when it failed to:

- respond to 106 complainants within 45 days;
- inform 85 complainants about why there was a delay in responding to their complaint; and
- inform 22 complainants about their right to take their complaint to AFCA.

ASIC proposes extension of exemption from consistency obligations in ASIC Class Order [CO 14/541] to 1 January 2026

ASIC [has proposed](#) an extension of two years to the exemption from consistency obligations in [CO 14/541] for RSE licensees from 1 January 2024 to 1 January 2026, and has invited industry feedback on the proposal.

The exemption in [CO 14/541] provides RSE licensees (superannuation trustees) relief from s 29QC of the SIS Act. Section 29QC requires RSE licensees to ensure that information provided to other persons (eg the public) is calculated in the same way as that information is reported to APRA under a reporting standard.

ASIC Financial Advisers Register updated for changes to definition

ASIC [has made](#) a one-off update to the Financial Advisers Register to record that individuals who are both a relevant provider and a registered tax agent on 20 September 2023 can provide tax (financial) advice services to retail clients on relevant financial products. This follows the commencement of the *Treasury Laws Amendment (2023 Measures No 3) Act 2023* which allows financial advisers, who are both a relevant provider and a registered tax agent, to satisfy the definition of “qualified tax relevant provider” without having to meet requirements in Div 3, Pt 3 of the *Corporations (Relevant Providers – Education and Training Standards) Determination 2021*.

Affected individuals and their AFS licensees were notified of the one-off update in October 2023.

ASIC alert list for investment scams

ASIC [has released](#) a new investor alert list as part of its scam prevention tools, replacing the previous list for “Companies you should not deal with”. Alongside ASIC’s updated investor checklist, the alert list helps to identify if an entity could be fraudulent, unlicensed or a scam. The investor alert list supports the work of the National Anti-Scams Centre (NASC) which commenced operation on 1 July 2023.

ASIC action on misleading super marketing

HESTA [has paid](#) \$48,600 in relation to 3 infringement notices issued by ASIC for alleged false or misleading statements about its “Balanced Growth” superannuation

option. The statements were included in marketing material where HESTA referenced 10-year performance figures but did not state the period to which the figures related.

ASIC alleged that the performance figures may have mislead consumers into believing the figures were current, when the 10-year period used by HESTA to calculate them had ended between 5 and 14 months prior to publication, and that the fund was performing better than it was. The Balanced Growth performance figures appeared in HESTA Facebook and Instagram advertisements and in a webinar published on the HESTA website between 23 August 2022 and 18 July 2023. ASIC noted that payment of an infringement notice is not an admission of liability.

ASIC Newsroom

ASIC has also released the following updates in its Newsroom section:

- [09 November 2023 – MEDIA RELEASE 23-298MR ASIC oversees more than \\$17.4 million in compensation to retail investors by OTC derivative issuers](#)
- [09 November 2023 – NEWS ITEM Unfair Contract Terms reforms commence](#)
- [08 November 2023 – MEDIA RELEASE 23-297MR ASIC disqualifies NSW director for maximum five years](#)
- [07 November 2023 – ARTICLE Red light for greenwashing](#)