

TAXATION

2023-24 MYEFO released: "small" deficit, tax measures

Treasury has released the 2023-24 Mid-Year Economic and Fiscal Outlook (MYEFO), it updates the economic and fiscal outlook from the May 2023 Federal Budget.

New franking credit integrity rule guidance: ATO consultation

ATO has issued the consultation paper which invites feedback on whether there are priority issues where ATO public advice and guidance is needed to help entities.

Tax identity fraud investigation initiative: IGTO

The IGTO has announced the launch of its investigation into identity and financial fraud being committed through the tax system.

Franked distributions in specie to tax exempt bodies: Taxpayer Alert

The ATO has released TA 2023/3 Franking credit refunds - income tax exempt entities receiving franked distributions in the form of property other than money.

Legitimate R&D activities in question: Tax alerts

The ATO has issued two tax alerts in relation to R&D activities delivered by associated entities or conducted overseas by foreign related entities.

Higher foreign investment fees for housing

The Treasurer has issued a media release outlining higher fees for the purchase of established homes and increased penalties for those that leave properties vacant.

Government announces expansion of tax treaty negotiation program

The Government has announced that it will expand its tax treaty negotiation program towards its first tax treaties with various countries.

Reporting and transitional exemptions for EDP operators

The ATO has issued two instruments in relation to reporting obligations for operators of electronic distribution platforms (EDPs).

Code of Conduct, TPB sanctions: consultation paper

Treasury has released two consultation documents relating to the regulatory framework under which tax practitioners work.

Tax agent services legislation changes: TPB reminder

The TPB has issued a release which summarises changes to the Tax Agent Services Act 2009 ("TASA") taking effect in 2024.

Board of Taxation appointments announced

The Government has announced the appointments of Judy O'Connell and Andrew Mills as part-time members to the Board of Taxation ("BoT"), each for a three-year term.

TPB compliance case study released

The TPB has issued a compliance case study in relation to a tax agent's registration termination and a ban from applying for registration for two years.

Super funds claiming RITCs for GST paid on adviser services fees

The ATO has released Eligibility of super funds and investor-directed portfolio service investment platforms to claim reduced input tax credits on adviser fees.

Minimise the hurt to your client, their BAS Agent and your practice

On 13 November 2023 we 'saw the introduction of a new OSfA onboarding regime for clients and client roles. If care is not exercised during the client onboarding process, you risk removing access to OSfA for their bookkeeper (BAS Agent) as well as a frustratingly unsuccessful onboarding process for your practice'.

ATO Public Relations

ATO Deputy Commissioner, Individuals and Intermediaries – Andrew Watson has released an end-of-year message thanking the tax profession for your support throughout the year.

Support material to help entity clients nominate their agent

The ATO have said that it's been about a 'month since we rolled out client-to-agent linking to all types of entities with an ABN, excluding sole traders, to bolster security of client information. Agents can share our visual How to nominate an agent in Online services for business guide with clients to help them: nominate the agent to represent them as their new tax or BAS agent; and change or provide extra authorisations so the agent can manage a new obligation.'

The small business lodgement penalty amnesty is ending

The ATO have said that 'agents should encourage eligible small business clients to lodge their overdue forms by 31 December 2023.'

National Tax Clinic program expansion consultation

The ATO have said that they are 'seeking feedback to help us develop guidelines for the upcoming National Tax Clinic open competitive grant process.'

Documented, robust processes are key to successful tax return lodgement

The ATO have stated that 'following our recent publishing of the Next 5,000 Findings Report, we'll be doing further targeted communications with clients in our Next 5,000 privately owned and wealthy group and their tax agents.'

ATO end-of-year office closure and systems availability

The ATO have advised that ;our offices, phone support services and customer response on our social media pages will be closed for a short time during our annual December closure. The closure will start noon local time Friday 22 December 2023. Normal services will resume at 8:00 am local time on Tuesday 2 January 2024.'

Updates to guidance material

The ATO have published a number of updates to guidance materials on TD 2023/D4; Two new taxpayer alerts on R&D claims; Income tax exempt entities' eligibility for refund of franking credits; Consultation on areas for guidance on new franking credit integrity rule; and Tax treatment of off-market share buy-backs has changed'

FINANCIAL SERVICES**Deductibility of financial advice fees paid by non-business individuals**

TD 2023/D4 considers the deductibility (under s 8-1 or 25-5 ITAA 1997) of financial advice fees incurred by non-business individuals.

Revised exam "principles" for financial planners and advisers

Draft legislation has been issued to amend the exam principles which determine who can sit, and the content of, exams which are undertaken by financial advisers and planners.

SUPERANNUATION**Super statistics report released: APRA**

APRA has released two reports on annual fund level super statistics and annual MySuper statistics.

REGULATOR NEWS

Changes to the Statutory Declarations Act 1959 (the Act) that will affect how Commonwealth statutory declarations are made

‘From 1 January 2024, the Act will provide three ways to make a Commonwealth statutory declarations: conventional paper-based execution involving wet-ink signatures and in-person witnessing; electronic execution by applying electronic signatures, with witnessing conducted by video link (for example, over zoom or skype); and digital execution using the myGov platform that authenticates the declarant's Digital Identity through myGovID. ‘

ASIC - Registration of relevant providers - webinar recordings available now

ASIC have advised that ‘following on from’ their ‘recent webinars on the registration requirement, recordings of these webinars are now available on the ASIC website.

ASIC News

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

TAXATION

2023-24 MYEFO released: "small" deficit, tax measures

Treasury has released the [2023-24 Mid-Year Economic and Fiscal Outlook](#) (MYEFO). It updates the economic and fiscal outlook from the May 2023 Federal Budget.

The Treasurer has issued a [media release](#) which highlights the following.

- Revenue has been upwardly revised by 92% since the Budget, with a further \$9.8 billion in savings and "reprioritisations". As a result, the underlying cash balance is forecast to be a "much smaller" deficit of \$1.1 billion in 2023-24. This is an improvement of \$12.8 billion compared to the May Budget (and stated to represent a \$55.4 billion turnaround compared to the former Government's last Budget).
- Gross debt as a share of GDP is expected to peak lower at 35.4% of GDP in 2027-28, before declining to 32.1% of GDP by the end of the medium term.
- Growth is forecast to moderate in the near-term as inflation, higher interest rates and global uncertainty weigh on domestic activity. The economy is expected to expand by 1.75% in 2023-24 before regaining momentum in 2024-25 "as improving real incomes growth support a recovery in household consumption".
- Inflation is moderating "but it is still too high". Global oil prices have driven a "near-term uptick" in inflation but Treasury still expects inflation to return to the target band on the same timeframe as at Budget time.
- While unemployment is expected to "tick up slightly", the Treasurer states that it is at "historic lows" and has seen "the longest consecutive run below 4% since monthly

records began". The participation rate is at record highs, with the Treasurer stating that more than 620,000 jobs have been created since the election.

- Wage growth has picked up to its fastest annual rate since 2009, and after 2 consecutive quarters of positive real wage growth, "annual real wage growth is expected to return in early 2024".

As is often the case, there were a number of important tax measures buried in the detail of the report, which were not highlighted. These are set out below.

Proposed tax changes: new

The report flags the following proposed new tax-related reforms. (References are to the page numbers in the PDF version of the report.)

- No deduction for ATO interest charges. The Government will deny deductions for ATO interest charges, specifically the general interest charge (GIC) and shortfall interest charge (SIC), incurred in income years starting on or after 1 July 2025. (Page 192)
- Non-resident CGT withholding. The Government will increase the foreign resident capital gains withholding tax rate from 12.5% to 15% and reduce the withholding threshold from \$750,000 to \$0. The changes will apply to real property disposals with contracts entered into from 1 January 2025. (Page 195)
- Penalty unit to increase. The report states that the value of a penalty unit will increase to \$330, up from \$313 which was due to commence on 1 July 2023. (Page 185)

Proposed tax changes: previously announced (some changes)

The report also references the following tax-related reforms which are already in the public domain. (Again, references are to the page numbers in the PDF version of the report.)

- Denying deductions for payments relating to intangibles – proposed changes to be "refined". Changes will be made to "better target" the proposed rules which will deny deductions for payments relating to intangibles held in low- or no-tax jurisdictions (intangibles measure): see 2022 WTB 44 [853]. The rules will still apply to payments made from 1 July 2023. The rules are still in exposure draft form with no fixed consultation period. (Page 197)
- Public country-by-country reporting for SGEs – delayed start date. The Government is proposing legislation which will require significant global entities ("SGEs") to publicly release certain tax information on a country-by-country basis and a statement on their approach to taxation, for disclosure by the ATO. The proposed start date of 1 July 2023 will be pushed back to 1 July 2024, with "further consultation on specific parameters, including the appropriate level of disaggregated reporting". (Page 197)
- Super advice fees deductible to fund. The Government will provide a clear legal basis for superannuation trustees to pay advice fees agreed between a member and their financial adviser from the member's superannuation account and prescribe that such fees are a tax deductible expense of the fund retrospectively from 2019-20. This is stated as being flagged by the Assistant Treasurer in a media release in June 2023 as part of the Government's response to the Quality of Advice review. Draft legislation was released in November 2023. (Page 192)
- Successor fund transfers. The Government will amend legislation to ensure the superannuation transfer balance cap of individuals with a capped defined benefit

income stream is not adversely impacted in the event of a merger or successor fund transfer between superannuation funds. Under current legislation, a member's transfer balance cap may be impacted due to the original income stream being treated as ceasing and a new one beginning. This means a new valuation of the capped defined benefit income stream is required which can result in a higher valuation for the transfer balance cap and lead to adverse outcomes for some members. This measure will apply retrospectively from 1 July 2017. This was announced in October 2023. (Page 199)

- Exemption for Global Infrastructure Hub. The Government continue to provide the GI Hub with an exemption from the liability to pay income tax on its ordinary and statutory income. (Page 194)
- Higher foreign investment fees for housing. As per the Treasurer's press release this week. (Page 193)
- Lower application fees for Build to Rent projects. The Government will apply lower commercial foreign investment application fee to foreign investments in Build to Rent projects where investors are proposing to acquire residential land or agricultural land. (Page 193)
- Child sexual abuse victims to access offenders' superannuation. The Government will enable victims and survivors of child sexual abuse to seek access, via a court order, to additional personal or salary sacrifice superannuation contributions made by the offender after the first offence occurred where a related court order for compensation remains unpaid after 12 months. Applications to identify any potential eligible superannuation would be facilitated by the ATO. Draft legislation has been released. (Page 293).

New franking credit integrity rule guidance: ATO consultation

The ATO has issued the consultation paper - [Capital raised for the purpose of funding franked distributions](#). The Paper invites feedback on whether there are priority issues where ATO public advice and guidance is needed to help entities understand whether the new law addressing franked distributions funded by capital raising applies to their circumstances.

As background, the recently enacted Treasury Laws Amendment (2023 Measures No 1) Act 2023 made amendments that prevented certain distributions funded by capital raising from being frankable. Applying to relevant distributions made on or after 28 November 2023, the measure is intended to discourage arrangements that are entered into for a purpose (other than an incidental purpose) and with the principal effect of accelerating the release of franking credits to members of entities in circumstances that cannot be explained by existing distribution practices, and which are typically artificial or contrived.

The Paper includes specific areas of consideration when considering the case for a guidance from the ATO. Further information on [Franking distributions](#) is available on the ATO website.

Submissions are due by 16 February 2024.

Tax identity fraud investigation initiative: IGTO

The Inspector-General of Taxation and Taxation Ombudsman ("IGTO") has [announced](#) the launch of its investigation into identity and financial fraud being committed through the tax system.

Since 1 July 2022, the IGTO has received more than 130 complaint cases about the ATO's actions relating to compromised tax accounts and tax identity fraud - for income tax, Business Activity Statements and GST returns. The IGTO is seeking input from the community's experience, ie stories or accounts of identity and financial fraud perpetrated through the tax system. Specifically, the IGTO is looking to understand what took place, whether it was reported to the ATO and whether the ATO's responses were appropriate and sufficient.

The IGTO said that its report with findings and recommendations is planned for release in June 2024.

Submissions are due by 15 February 2024.

Franked distributions in specie to tax exempt bodies: Taxpayer Alert

The ATO has released [TA 2023/3](#) Franking credit refunds - income tax exempt entities receiving franked distributions in the form of property other than money.

The arrangements involve franked distributions in the form of property other than money (ie in specie distributions) that are made to income tax exempt entities – such as registered charities, deductible gift recipients, scientific institutions and public educational institutions. Critically, there are restrictions "on the ordinary incidents of ownership" of the distributed property that:

- are imposed as part of the terms and conditions for the making of the franked distribution; and
- prevent the income tax exempt entity from receiving immediate custody and control of that property.

The ATO's concern is that relevant entities may be entering into these arrangements without being aware that these restrictions may make them ineligible for a refund of the franking credits attached to the franked distribution. In other words, that income tax exempt entities may be incorrectly seeking refunds of franking credits.

The Alert notes that the ATO is seeking to identify an appropriate test case.

Legitimate R&D activities in question: Tax alerts

The ATO has issued two tax alerts in relation to R&D activities.

- [TA 2023/4: Research and development activities delivered by associated entities](#) - the ATO is currently reviewing claims made by R&D entities for a tax offset under the R&D tax incentive (R&DTI) for expenditure incurred under an agreement with an associate of the R&D entity (the "Service Provider") who itself conducts the R&D activities. The ATO is concerned with arrangements that: (i) incorrectly purport the R&D entity as having incurred or paid (or both) the relevant expenditure under an agreement with the Service Provider; or (ii) have the effect of obtaining for the R&D entity a tax offset for expenditure on R&D activities purportedly conducted for the R&D entity's own benefit

but are instead in substance being conducted for (or to a significant extent, for) the Service Provider.

- [TA 2023/5: Research and development activities conducted overseas for foreign related entities](#) - the ATO is reviewing arrangements where Australian-resident R&D entities claim a tax offset under the R&DTI rules for expenditure incurred on R&D activities conducted overseas. The ATO is concerned that R&D entities might be incorrectly claiming the R&D tax offset irrespective of whether: (i) the R&D entity has an overseas finding covering the R&D activities being conducted; or (ii) under the contractual arrangements between the R&D entity and the foreign related entity, the R&D entity purportedly has an interest in any developed intellectual property (IP), know-how or other results from the R&D entity's expenditure on the R&D activities.

The ATO said that it is currently reviewing arrangements covered in the Alerts and will continue to closely scrutinise such arrangements as they are identified. The ATO is also developing further website guidance on specific technical matters in the Alerts that will be published in "due course".

Higher foreign investment fees for housing

The Treasurer has issued a [media release](#) outlining higher fees for the purchase of established homes, increased penalties for those that leave properties vacant and strengthened compliance activity relating to foreign investment in residential property. The relevant legislation will be introduced "next year".

The changes include:

- a tripling of foreign investment fees for the purchase of established homes;
- a doubling of vacancy fees for all foreign-owned dwellings purchased since 9 May 2017.

While foreign nationals are generally barred from buying existing property, they can do so when they come to live here for work or study. When they leave the country, they are required to sell the property if they have not become a permanent resident. The Treasurer also announced an enhancement to the ATO's compliance regime to ensure that foreign nationals comply with the requirement to sell their property.

In addition, the Government will cut application fees for foreign investment in Build to Rent projects. The application of commercial foreign investment fees to all future Build to Rent projects will apply after 14 December 2023.

Government announces expansion of tax treaty negotiation program

The Government has [announced](#) that it will expand its tax treaty negotiation program towards its first tax treaties with Ukraine and Brazil, and to update treaties with New Zealand, the Republic of Korea, and Sweden. The work on the expanded tax treaty program is scheduled to

run for four years, commencing this financial year. The expansion adds to Australia's existing tax treaty program which concludes in 2027.

Reporting and transitional exemptions for EDP operators

The ATO has issued two instruments in relation to reporting obligations for operators of electronic distribution platforms (EDPs) under s 396-55 and 396-70(4) in Sch 1 to the TAA 1953.

- Taxation Administration (Transitional Exemptions for Reporting by Electronic Distribution Platform Operators - Relevant Accommodation and Taxi Travel) Determination 2023 ([LI 2023/35](#)) - provides relevant operators with a choice of either a reporting exemption, or a deferral of the time by which their reports must be lodged, based on their relative circumstances; and
- Taxation Administration (Reporting Exemptions for Electronic Distribution Platform Operators - Relevant Accommodation and Taxi Travel) Determination 2023 ([LI 2023/36](#)) – exempts operators of EDPs from having to include specified classes of transactions in reports required to be prepared and given to the ATO.

Date of effect for both instruments is 1 July 2023 (ie retrospective).

The instruments were registered on 8 December 2024. They had been issued in draft form in August 2023. There are no changes of note.

Code of Conduct, TPB sanctions: consultation paper

Treasury has released two consultation documents relating to the regulatory framework under which tax practitioners work, as part of the Government's broad intention to implement reforms to address the "severe shortcomings" in regulatory frameworks relating to "tax adviser misconduct".

Closing date for submissions for both is 21 January 2024.

Enhancing TPB sanctions: consultation paper

The first paper is the [Enhancing the Tax Practitioners Board's sanctions regime](#).

As its title suggests, it constitutes a review of the sanctions regime that the TPB administers. There are five proposals in relation to this regime:

- re-introducing criminal penalties for unregistered preparers;
 - broader and increased civil penalties in the Tax Agent Services Act 2009;
 - the introduction of an infringement notice scheme (attached to the civil penalty regime);
 - a new TPB power to allow it to enter enforceable voluntary undertakings with tax practitioners; and
 - a new TPB power to impose interim and contingent suspensions.
- Expanding TPB Code of Conduct: draft legislative instrument

The second document is the draft [Tax Agent Services \(Code of Professional Conduct\) Determination 2023](#). It seeks to expand the TPB's Code of Professional Conduct via legislative instrument. The areas addressed by the draft are set out below (section references are to the

provisions in the draft).

- Promoting and upholding ethical standards. Section 10 of the Instrument will require tax practitioners, both on their own and in cooperation with other tax practitioners, to uphold and promote the Code and protect public trust and confidence in the integrity of the tax profession and tax system. It will also require tax practitioners to work collectively to take reasonable steps to hold each other accountable for compliance with the Code and to protect public trust and confidence in the integrity of the tax profession and tax system.
- False and misleading statements. Section 15(1) will require tax practitioners not to make false, incorrect or misleading statements to the ATO or TPB in any capacity (either personal or professional) and in any way (including the giving of a document, the making of an oral statement or omission) in circumstances where they knew or ought reasonably to have known when making the statement that the statement was not true or was misleading. Similarly, it will require tax practitioners to not omit information that would result in such a statement being false or misleading.
- Conflicts of interest when dealing with government. Section 20 will require tax practitioners to take reasonable steps to identify and avoid material conflicts of interest related to their dealings with Australian government agencies. Conflicts of interest may be direct or indirect, apparent or real, and may involve a potential or perceived benefit or gain arising from these activities such as a misuse of confidential information obtained in government dealings or interference in the government's decision making process.
- Maintaining confidentiality when dealing with government. Section 25(1) will prohibit tax practitioners disclosing information from an Australian government agency that was obtained directly or indirectly in connection with activities they undertake for the government agency as a tax practitioner, unless there is a legal duty to disclose or in other specified circumstances.
- Client records. Section 30 will require tax practitioners to keep complete and accurate records relating to tax agent services provided to each of their clients, including former clients. As this obligation will exist for former clients, if a tax practitioner ends an engagement with a client they are still required to generate and retain records of the services provided within the engagement period.
- Services provided on behalf of tax agents. Section 35 will provide that tax practitioners must ensure that adequate supervision is offered to those providing tax agent services on their behalf and that these individuals have the relevant skills to provide services competently. This will complement existing requirements that all tax practitioners maintain the relevant knowledge and skills necessary to ensure that tax agent services are provided competently by themselves and others on their behalf. Proposed s 35 extends this by ensuring that not only registered tax practitioners are required to maintain skills, but individuals who provide these services on their behalf also maintain sufficient skills and knowledge to provide services competently.
- Quality assurance. Section 40 will require all tax practitioners to have sufficient internal control procedures to ensure they are compliant with the Code.
- Disclosure to clients. Section 45 imposes an obligation on tax practitioners to clearly advise all prospective and current clients, in writing, of any matters that are reasonably relevant and material to the client's decision on whether to use their tax agent services, inform clients of the Board's public register and complaints process. In practice, general information in relation to the register and the complaints process must be provided to all clients upon engagement or re-engagement, whereas any relevant matters will only be advised if and when a matter arises.

Tax agent services legislation changes: TPB reminder

The TPB has issued a [release](#) which summarises changes to the Tax Agent Services Act 2009 ("TASA") taking effect in 2024. The changes were made through the Treasury Laws Amendment (2023 Measures No 1) Act 2023, implementing recommendations arising from a 2019 independent review into the effectiveness of the TPB and the TASA.

The TPB said that it will be providing further guidance, including website information and webinars, to tax practitioners on how the new laws will operate. This will include draft guidances:

- to explain the new Code items 15 and 16 that prevent tax practitioners from employing or using a "disqualified entity" without TPB approval or entering into certain arrangements with a "disqualified entity"; and
- on the new breach reporting requirements, ie self-reporting and reporting another tax practitioner on significant breach of the Code.

Board of Taxation appointments announced

The Government has [announced](#) the appointments of Judy O'Connell and Andrew Mills as part-time members to the Board of Taxation ("BoT"), each for a three-year term.

Ms O'Connell was the Victorian Small Business Commissioner from 2016 to 2021. Prior to that, she worked for the ATO for more than 30 years, including as Assistant Commissioner for Small Business. She also worked for the OECD's Centre for Tax Policy and Administration.

Mr Mills has over 40 years' experience in senior commercial, accounting and legal practice, government and academic roles. He is a former ATO Second Commissioner of Taxation and was a director-partner at Greenwoods & Freehills for over 20 years.

It was also announced that Dr Julianne Jaques has been reappointed for a further two years - a member of the Board since 2017 and served as Acting Chair from 2019 to 2020.

TPB compliance case study released

The TPB has issued a [compliance case study](#) in relation to a tax agent's registration termination and a ban from applying for registration for two years. The Board Conduct Committee (BCC) found the tax agent breached multiple items of the Code when they:

- made false or misleading statements to the ATO, by listing false superannuation auditor numbers in superannuation annual returns in circumstances where they knew, or ought to have known, no audits had taken place;
- failed to act honestly and with integrity by enabling an unregistered individual to circumvent registration requirements by allowing them to directly invoice clients for tax agent services and to receive client refunds directly into a personal bank account which

was not supervised by the tax agent and was under the unregistered individual's control;

- failed to comply with taxation laws in the conduct of their own personal tax affairs; and
- failed to ensure that a tax agent service they provided or that was provided on their behalf was provided competently by failing to take reasonable care in the preparation and lodgement of income tax returns.

Minimise the hurt to your client, their BAS Agent and your practice

Please share this [guide](#) with any person in your firm charged with client onboarding. It is important that staff be made aware of this approach and include it as part of your onboarding process. In this way, you can save hurt to your clients, their BAS Agents and your practice.

ATO Public Relations

Reflecting on the key outcomes for 2023 and the priorities for the year ahead, Andrew discusses topics including balancing smoother interactions with the ATO with the ongoing security risks associated with client data and fraud.

Link: <https://publish.viostream.com/play/bi9or7ornebxp>

Support material to help entity clients nominate their agent

That ATO have advised that 'this material includes screenshots of the nomination process in Online services for business, which may assist both clients and agents.

Clients who prefer text instead of visual can find the same information in [Client-to-agent linking steps](#). Agents should ensure they add the client to the right account after the nomination. For income tax agents they should use the TFN to add the client and choose the income tax account. If an income tax agent uses the ABN to add the client, they will remove any existing BAS agent.'

The small business lodgement penalty amnesty is ending

The ATO have stated that 'eligible lodgments will have failure to lodge penalties remitted, without needing to apply. You can find out more here [media release](#).'

National Tax Clinic program expansion consultation

The ATO have advised that 'the National Tax Clinic program is an Australian government-funded initiative which serves the dual purposes of:

- offering tax support to unrepresented taxpayers who may not be able to access tax advice and assistance due to economic, social, or personal factors, and
- providing practical experience for students undertaking relevant studies in tax related disciplines under the supervision of a qualified tax professional at participating universities and TAFEs.

The Government announced the expansion of the National Tax Clinic program to improve access to the service for small businesses in hardship and other vulnerable groups by

increasing the number of tax clinics by five from 1 January 2025. As part of the expansion of the program, eligibility for funding will be extended to TAFE institutions to improve access to tax clinic services in regional areas.

The government has appointed the ATO as the grant administrator for the program. The ATO also provides limited administrative support to the independent tax clinics.

The “grant opportunity guidelines” will underpin the expansion and ongoing operation of the National Tax Clinic program to ensure it continues to meet the needs and expectations of the broader community.’

This is a link to the [‘consultation paper’](#) which is open until **9 February 2024**. ‘

‘Once consultation has concluded, we expect the grant opportunity will be advertised on GrantConnect in March 2024.

If you have any questions, please email ExpansionofNationalTaxClinics@ato.gov.au. ‘

Documented, robust processes are key to successful tax return lodgement

The ATO have said that ‘this communication will highlight the need to have documented, robust governance and processes in place to ensure correct reporting. ‘

ATO end-of-year office closure and systems availability

The ATO have advised that ;our offices, phone support services and customer response on our social media pages will be closed for a short time during our annual December closure. The closure will start **noon local time Friday 22 December 2023**. Normal services will resume at **8:00 am local time on Tuesday 2 January 2024**.

‘System maintenance

All ATO digital systems, ato.gov.au website and online services will be available with no planned outages or maintenance in this year's December closure.

For any unexpected or unplanned system impacts and times refer to our system maintenance page and dashboards to see if the system you need is available.

- [System maintenance page](#)
- [Online services for agents dashboard](#)
- [Practitioner lodgment service \(PLS\) dashboard](#)

Need help accessing ATO online services?

For assistance agents can refer to our [self-help web content](#).

Lodgment

We recommend agents lodge as early as possible to give us time to process returns, activity statements or other forms before our office closes.

If an agent or their clients feel overwhelmed, or are behind with their lodgment program, we can help. Agents should contact us as early as possible to discuss their situation. For more information about our help and support options visit [Support and helpful information for your practice](#).

Small Business Superannuation Clearing House

There are key dates Agents and their clients need to be aware of for the [Small Business Superannuation Clearing House](#) (SBSCH).

These are:

- Monday 11 December 2023 5:30 pm AEDT – all super payments with instructions received after close of business on this date will be processed from Tuesday 2 January 2024.
- Sunday 28 January 2024 – super guarantee quarterly payments are due. As this date falls on a weekend, payments are due by the next business day.

Client-to-agent linking

As you know, Client-to-agent linking has been rolled out to all businesses with an ABN (excluding sole traders). Clients will need to provide authorisation before an agent can add them to their client list.

Agents with clients who use the SBSCH should check lodgment obligations and ensure they can access their client's account. If access has been removed agents can follow the steps in our [troubleshooting guide](#).

Updates to guidance material

The ATO have advised of the following updates to guidance materials

'TD 2023/D4: Income tax: deductions for financial advice fees paid by individuals who are not carrying on a business

The [draft Determination](#) outlines when an individual, who is not carrying on a business, can claim a deduction for fees for financial advice. The draft Determination replaced TD 95/60 Income tax: are fees paid for obtaining investment advice an allowable deduction under section 8-1 of the Income Tax Assessment Act 1997 (ITAA 1997) for taxpayers who are not carrying on an investment business? published in 1995. The replacement draft Determination modernises the existing guidance as it:

- includes additional contemporary examples
- includes new (additional) content on when financial advice fees can be deducted as tax-related expenses.

Please note that the draft Determination does not change the underlying view expressed in TD 95/60 about when financial advice fees can be deducted under the general deductibility provision.

The draft Determination is open for consultation until **2 February 2024**.

Two new taxpayer alerts on R&D claims that attract our attention

We have recently released 2 new taxpayer alerts to warn entities and their advisers about our concerns regarding incorrect [Research and Development \(R&D\) tax incentive](#) claims. These alerts are about activities delivered by associated entities and activities conducted overseas for foreign related entities.

The guidance is available via:

Taxpayer Alert [TA 2023/4](#) *Research and Development (R&D) activities delivered by associated entities.*

Taxpayer Alert [TA 2023/5](#) *Research and Development (R&D) activities conducted overseas for foreign related entities.*

Taxpayer Alert: Income tax exempt entities' eligibility for refund of franking credits

We're alerting income tax exempt entities to the operation of subparagraph 207-122(b)(i) of the Income Tax Assessment Act 1997 (ITAA 1997) to assist them in avoiding entering arrangements that may make them ineligible for a refund of franking credits.

Before entering into arrangements involving in specie franked distributions of shares and other property, income tax exempt entities need to consider the operation of subparagraph 207-122(b)(i) of the ITAA 1997 due to the potential consequences on their eligibility for a refund of franking credits.

Subparagraph 207-122(b)(i) of the ITAA 1997 denies an income tax exempt entity a refund of franking credits if they receive an in specie franked distribution of property such as shares, and there are terms and conditions attached to the distribution that mean the income tax exempt entity does not receive immediate custody and control of the shares.

This Taxpayer Alert has been issued to support income tax exempt entities by helping them avoid inadvertently being denied refunds of franking credits, rather than as a response to any concerns about a potential tax avoidance arrangement as might ordinarily be the case.

For more information, see our [Taxpayer Alert](#).

Consultation on areas for guidance on new franking credit integrity rule

Changes have now come into effect to restrict franking credits on distributions to shareholders, in certain situations where capital is raised for the purpose of funding franked distributions.

We're consulting on priority areas to identify where advice or guidance needs to be provided to help apply the law changes.

The [Consultation paper - Capital raised for the purpose of funding franked distributions](#) is open for comment until **16 February 2024**.

For more information, visit [Franking distributions](#) on our website.

Tax treatment of off-market share buy-backs has changed

Changes to the tax treatment of off-market share buy-backs are now law.

If a listed public company offers an off-market share buy-back after 7:30pm AEDT on 25

October 2022, the tax treatment for its shareholders will be the same as a shareholder selling their shares on-market.

Find out about the changes and when they apply, in our latest [Business bulletin article](#).'

GST

Super funds claiming RITCs for GST paid on adviser services fees

The ATO has released [Eligibility of super funds and investor-directed portfolio service investment platforms to claim reduced input tax credits on adviser fees](#). This document notifies superannuation funds and IDPS investment platforms of recently reviewed arrangements where the ATO considers that a fund cannot claim reduced input tax credits (RITCs) for GST paid on adviser services fees.

These arrangements involve an individual (or other entity) engaging an adviser to provide personal financial advice about the individual's interest in the fund, with the individual authorising the fund to pay the fees. In the ATO's view, the fund is not the recipient of a supply for which the fees are consideration.

The document includes a prospective compliance approach (in recognition that past binding private advice may have contributed to incorrect RITC claims in the industry). The ATO will generally not devote compliance resources to review RITC claims for adviser services fees paid under these arrangements for tax periods ending before 1 April 2024.

FINANCIAL SERVICES

Deductibility of financial advice fees paid by non-business individuals

[Draft Determination TD 2023/D4](#) has been issued by the ATO and considers the deductibility (under s 8-1 or 25-5 ITAA 1997) of financial advice fees incurred by non-business individuals. It updates and replaces TD 95/60, which has now been [withdrawn](#).

The ATO maintains its position that fees for financial advice on a proposed investment (prior to acquiring the asset) are not deductible under s 8-1 because the expenditure is either incurred too soon or is of a capital nature. For financial advice fees to be deductible under s 8-1, the

ATO says they must be incurred on a "regular or recurrent basis" for an existing or ongoing income-producing investment.

In relation to s 25-5 (which allows a deduction for advice relating to managing one's tax affairs), the ATO accepts that "tax (financial) advice" as defined in the Tax Agent Services Act

2009 comes within the meaning of "tax affairs". However, the ATO says that not all advice provided by a financial adviser would be considered to be tax (financial) advice.

Proposed date of effect: retrospective.

Comments are due by 2 February 2024.

Revised exam "principles" for financial planners and advisers

The Government has issued a draft legislation determination, the [Corporations \(Relevant Providers Education and Training Standards\) Amendment \(2023 Measures No 1\) Determination 2023](#).

The instrument will amend the exam principles which determine who can sit, as well as the content of, exams which are undertaken by financial planners and financial advisers so as to qualify as authorised to provide personal advice to retail clients. There are two broad changes.

- Who can sit. Exam Principle five currently restricts access to the exam to only provisional relevant providers who have met the qualifications standard (ie they have already completed an approved degree) and existing providers. The determination will change the rules so that eligibility to sit the exam is not contingent on the person having already met the qualifications before sitting the exam (or being an existing provider).
- Exam content: multiple choice. Currently, exam Principle two requires the exam to contain at least 70 questions, comprising at least 64 multiple choice questions and at least six written response questions. The determination will amend this to remove the

requirement for the exam to include written response questions. That is, the exam must still contain at least 70 questions, all of which must be multiple choice questions.

The determination will take effect on the day it is registered. It will replace the current rules contained in the Corporations (Relevant Providers Exams Standard) Determination 2019. Submissions are open until 10 January 2024.

SUPERANNUATION

Super statistics report released: APRA

APRA has released the:

- [Annual fund-level superannuation statistics report](#) - contains detailed profile and structure, financial performance and financial position, conditions of release, fees and membership information; and
- [Annual MySuper statistics report](#) - contains detailed profile and structure, financial performance, fees and membership information for all MySuper products.

REGULATOR NEWS

Changes to the Statutory Declarations Act 1959 (the Act) that will affect how Commonwealth statutory declarations are made

Each method of execution will produce an equally valid Commonwealth statutory declaration.

The changes to the Act respond to the consultation on proposed reforms to the Act undertaken in July 2023.

New form for making a statutory declaration

Please find [attached](#) the approved form for making a statutory declaration that is witnessed (in-person, or remotely by video link) from 1 January 2024.

It is important that this form is used to make a Commonwealth statutory declaration from 1 January 2024.

myGov digital statutory declaration execution service – coming soon

The digital option is under development by Services Australia and will be available through myGov from early 2024. A person will be able to use their myGov account and Digital Identity to make a statutory declaration online, without needing a witness.

A statutory declaration made through myGov will include a QR code that can be used to verify the content of the declaration using the myGov app. myGov will not store a copy of completed declarations.

Further information will be provided on the AGD website, which will be updated on 1 January 2024, and again when the myGov Commonwealth statutory declaration service becomes available in early 2024.

For inquiries or discussions regarding the upcoming changes, please feel free to contact: ModernisingDocumentExecution@ag.gov.au.

ASIC - Registration of relevant providers - webinar recordings available now

ASIC have said that 'the webinar recordings are accompanied by the webinar slides. A consolidated version of the questions asked during the course of the webinars will soon be published on the same webpage.

ASIC has also temporarily made [available](#) a dataset for AFS licensees to determine if a relevant provider is registered. This is a one-off, point-in-time dataset, as at 9:00am, 18 December 2023. This information will be made available as part of the Financial Advisers Dataset on data.gov.au in due course.'

ASIC news

ASIC has released the following updates in its Newsroom section:

- [15 December 2023 - MEDIA RELEASE 23-341MR Janet Cameron found guilty of not disclosing her interest in Bellamy's Australia](#) - Ms Janet Heather Cameron, of Hobart, Tasmania, has been found guilty in the Hobart Magistrates Court of one count of failing to lodge a substantial holder notice regarding her interests in Bellamy's Australia Limited (Bellamy's) and one count of making a false and or misleading statement. The Court found that in August 2014, Ms Cameron failed to disclose her, and her associates, relevant interest in the Black Prince Private Foundation which owned 14 million Bellamy's shares. The Court also found that Ms Cameron made a misleading statement in a Notice of Initial Substantial Holder (SHN) lodged with Bellamy's and submitted to ASIC in February 2017 by failing to properly disclose the true nature of her relationship with Black Prince and the details of her interest in the 14 million Bellamy's shares. These failures were contrary to disclosure obligations required under the Corporations Act.
- [15 December 2023 - MEDIA RELEASE 23-340MR Federal Court appoints receivers to Brite Advisors](#) - On 13 December 2023, following a three-day hearing, the Federal Court made orders appointing Linda Smith and Robert Kirman of McGrathNicol as corporate receivers and managers of Australian Financial Services licensee, Brite Advisors Pty Ltd (Brite). The receivers are tasked with conducting further investigations into Brite and the approximately AUD\$1 billion client pension funds under its management. The receivers are to provide a report to the Court and to ASIC on their investigation within 42 days. The appointment of the receivers follows initial action taken by ASIC in October 2023 to secure interim asset preservation orders against Brite ([23-286MR](#)). The receivers were subsequently appointed by the Court as investigative accountants and provided a report to the Court on 8 December 2023.
- [15 December 2023 - MEDIA RELEASE 23-339MR ASIC commences civil proceedings against Adam Blumenthal and EverBlu Capital undertakes to cancel its licence](#) - ASIC has commenced civil penalty proceedings in the Federal Court against Adam Blumenthal alleging market rigging and breaches of his duties as a director of two companies, EverBlu Capital Pty Ltd (EverBlu) and Creso Pharma Limited (now known as Melodiol Global Health Limited)(Creso). ASIC has also accepted a court enforceable undertaking from Mr Blumenthal to the effect that he will cease being involved in financial services for five years and from EverBlu, his corporate advisory company, to the effect that it will cease offering financial services to new clients and apply for cancellation of its Australian financial services (AFS) licence. An ASIC investigation revealed that between 18 March and 15 November 2021, EverBlu breached its obligations as an AFS licensee by failing to properly follow procedures and put in place adequate controls relating to the receipt and execution of client orders, the use of its suspense account, the maintenance of records and the management of conflicts of interest.
- [15 December 2023 - MEDIA RELEASE 23-338MR Debt Wipeout business operator found unfit to stand trial](#) - Debt Wipeout founder David Murphy has been found unfit to stand trial and unlikely to become fit in the next 12 months, following a fitness hearing in the NSW District Court. On 26 April 2022, Mr Murphy was charged with four counts of engaging in dishonest conduct while carrying on a financial services business and three counts of making false or misleading statements ([22-102MR](#)). ASIC alleged that Mr Murphy, by advertising the Debt Wipeout business on billboards, websites and in

person, represented that he could discharge consumers' debts for an upfront payment when he could not, and did not discharge those debts. The matter was referred to the NSW District Court after a question as to Mr Murphy's fitness to stand trial was raised.

- [15 December 2023 - NEWS ITEM ASIC industry funding: Release of 2022-23 annual dashboard and summary of variances](#) - ASIC has released its 2022-23 annual dashboard outlining regulatory costs by sector and subsector under the industry funding model. The dashboard includes details about the variance between its estimated and actual costs by subsector. Invoices for 2022-23 levies will be issued to entities between January and March 2024.
- [14 December 2023 - MEDIA RELEASE 23-337MR Former insurance broker Cesar Cutro permanently banned](#) – ASIC has permanently banned former NSW-based insurance broker Cesar Cutro from providing any financial services. Mr Cutro has also been banned from controlling, whether alone or in concert with one or more other entities, an entity that carries on a financial services business, and performing any function involved in the carrying on of a financial services business. ASIC found Mr Cutro is not a fit and proper person to participate in the financial services industry because he lacks honesty, integrity, professionalism, and sound judgment, and is likely to contravene financial services law.
- [14 December 2023 - NEWS ITEM ASIC and APRA issue joint letter on premium increases in life insurance](#) - The Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA) have issued a joint letter to life insurers and friendly societies (life companies) about life insurance industry practices in relation to premium increases. The letter outlines ASIC and APRA's observations from a joint review of life companies' past practices, following concerns raised by [ASIC and APRA in December 2022](#). The letter identifies regulatory expectations and areas for further industry focus in relation to future life insurance premium increases, disclosure and marketing materials, and product design. [Read the letter \(PDF 205 KB\)](#).
- [14 December 2023 - NEWS ITEM ASIC releases November 2023 financial adviser exam results](#) - ASIC today released the exam results from the 23rd Financial Advisers Exam cycle held in November 2023. The exam, conducted by the Australian Council for Educational Research (ACER) since inception, follows a rigorous process to ensure all candidates in each cycle are tested to the same standards. In the November exam cycle: 219 people sat the exam; 66% (145) passed the exam; and 70% (154) sat the exam for the first time. As has been the practice for previous cycles, unsuccessful candidates will receive general feedback from ACER on the areas they underperformed.
- [13 December 2023 - MEDIA RELEASE 23-336MR ASIC bans former Newcastle adviser for five years](#) - ASIC has banned Darron Mink from providing financial services or engaging in credit activities for a period of five years. Mr Mink was an authorised representative of AMP Financial Planning Pty Limited (AMPFP) and the sole director of Pinnacle Financial and Investment Services Pty Ltd, which was a corporate authorised representative of AMPFP. The bans prevent Mr Mink from providing any financial services, controlling a financial services business, performing any function involved in the carrying on of a financial services business and engaging in credit activities.
- [12 December 2023 - MEDIA RELEASE 23-335MR Financial Services and Credit Panel issues registration prohibition order against financial adviser](#) - The [Financial Services and Credit Panel \(FSCP\)](#) has made a registration prohibition order against financial adviser Stephen Rogers from 7 December 2023 until after 6 December 2025. Mr Rogers was found to have given non-

compliant advice to a client and acted in a way that was misleading or deceptive

or likely to mislead or deceive the client. In the circumstances, Mr Rogers inappropriately: used a scaled advice model that scoped his advice to the client to exclude the suitability of an SMSF or the suitability of an SMSF investing into products related to Mr Rogers' licensee; and used a rate of return in the benefit comparison in his statement of advice. Mr Rogers has had his registration as a financial adviser cancelled and is prohibited from being registered with ASIC. He is also prohibited from giving personal advice to retail clients on relevant financial products during the prohibition period.

- [12 December 2023 - MEDIA RELEASE 23-334MR Former Continental Coal and Citation Resources director Peter Landau sentenced](#) – On 8 December 2023, Peter Neil Landau, of Claremont, Western Australia, was sentenced before the Supreme Court of Western Australia to five years and two months' imprisonment with a non-parole period of three years and two months for five stealing offences and one offence of forging and uttering contrary to the Criminal Code (WA). Additionally, Mr Landau was sentenced to a further 12 months' imprisonment in relation to two Corporations Act offences which commences at the expiration of his non-parole period. Mr Landau must serve six months of this sentence prior to being released upon him entering into a recognisance in the sum of \$1,000 to be of good behaviour for six months. Overall, the total minimum time Mr Landau must serve is three years and eight months' imprisonment. Mr Landau was a director of former ASX-listed companies Citation Resources Limited (Citation) and Continental Coal Limited (Continental Coal).
- [12 December 2023 - MEDIA RELEASE 23-333MR ASIC prohibits credit broker from engaging in credit activities and suspends credit licence of Robin Raju & Associates for two years](#) - ASIC has prohibited Robin Raju of Parramatta, New South Wales from engaging in credit activities for two years under its banning powers. ASIC has also suspended the credit licence of Robin Raju & Associates Pty Ltd (RRA) for two years. ASIC determined that Mr Raju submitted to ASIC on 25 September 2022 a Credit Licence Annual Compliance Certificate for RRA which contained false and misleading statements, and contravened the obligation to act efficiently, honestly and fairly. Mr Raju did not disclose that he had been the subject of disciplinary action by the Tax Practitioners Board, among other matters. ASIC found that Mr Raju contravened the National Consumer Credit Protection Act 2009 (Credit Act) and made a banning order that prohibits him engaging in credit activities for two years. Additionally, ASIC found that RRA contravened the Credit Act by failing to truthfully answer questions on its Annual Compliance Certificate. Given the findings about Mr Raju, RRA does not have a fit and proper person as its officer as required by the Credit Act. The RRA credit licence has no effect while it remains suspended. Mr Raju's prohibition against engaging in credit activities and RRA's licence suspension took effect on 7 December 2023. Mr Raju and RRA have the right to appeal to the Administrative Appeals Tribunal for a review of ASIC's decisions.