

TAXATION

Division 7A – avoid common errors

The ATO, working in partnership with professional associations, will be raising awareness of Division 7A and the areas where the ATO sees many errors across both the basics and the more complex aspects. The ATO will be sharing information through their communication channels and at tax practitioner events.

Commissioner's farewell speech to the Press Club

The outgoing ATO Commissioner, Mr Chris Jordan AO, has given a final address to the National Press Club in Canberra.

ATO DIS on FCT v Wood: settlement payment

The ATO has issued a Decision Impact Statement on a case where an individual provided consultancy services to a company via his family company.

Options for simplified application of arm's length principle: OECD

The OECD has released the report on Amount B of Pillar One which sets out a simplified and streamlined approach to the application of the arm's length principle.

2024-25 exploration cap for junior explorers

The Government has registered Regulations which provide that an additional \$4.77 million is added to form part of the annual exploration cap for the 2024-25 income year.

Deductibility of self-education expenses

ATO has released Taxation Ruling TR 2024/3 which considers the deductibility of self-education expenses under s 8-1 of the ITAA 1997.

Corporate limited partnership: "crediting" an amount to a partner

TR 2024/2 sets out the ATO's views on when a corporate limited partnership (CLP) "credits" an amount to a partner within the meaning of s 94M of the ITAA 1936.

Rental bond and novated leases data matching programs

The ATO has registered two data matching program notices on rental bonds and novated leases.

GST and fuel tax: time limits for claiming input or fuel tax credits

Draft Miscellaneous Tax Ruling MT 2024/D1 sets out the ATO's revised preliminary views on the four-year entitlement period for claiming input tax credits or fuel tax credits.

FINANCIAL SERVICES

Operational risk financial requirement for super: exposure draft

APRA has issued exposure drafts proposing to amend the SPS 114 Operational Risk Financial Requirement and its accompanying Prudential Practice Guide SPG 114.

SUPERANNUATION

ASIC report calls out risk to retirement outcomes

ASIC has released its report entitled Report 779 Superannuation and choice products: What focus is there on performance?

REGULATOR NEWS

ASIC News

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

APRA news

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

TAXATION

Division 7A – avoid common errors

Request for feedback

To help IPA tailor our sharing knowledge sessions on Division 7A with the ATO, we invite

feedback from our members on the focus areas you want the ATO to address.

Please send your feedback to ipaadvocacy@publicaccountants.org.au

Commissioner's farewell speech to the Press Club

The outgoing ATO Commissioner, Mr Chris Jordan AO, has given a [final address to the National Press Club](#) in Canberra. Mr Jordan's term as Commissioner concludes on 29 February 2024 and he will be replaced by Mr Rob Heferen. Some of the highlights are flagged below.

- The "next part" of the ATO's modernisation "journey" will include being fully digitalised by 2030. This means it will offer real-time tax reporting and payment information – where data will flow from taxpayers' "natural systems" to the ATO, "without any extra effort or intervention from them".
- The number of small businesses has increased from 2.5 million to 4.6 million (from 2013 to 2022). The number of wage and salary earners who are also deriving income from a business has increased as well.
- Since 2013, the ATO has reduced the cost of collecting every \$100 of tax from 91 cents to 54 cents.
- The Tax Avoidance Taskforce has secured around \$30 billion in additional tax revenue from multinational, large public and private businesses. More importantly, the ATO considers that it has locked in future tax performance by requiring companies to agree to the tax treatment of their operations.
- The ATO is also announcing for the first time the estimated size, scale and trajectory of the illegal early access of funds from SMSF accounts. In 2020 over \$380 million was illegally accessed from SMSFs and \$255 million in 2021.

In conclusion, when asked what kept him awake at night, the response is – cyber security.

ATO DIS on FCT v Wood: settlement payment

The ATO has issued a [Decision Impact Statement](#) on FCT v Wood [2023] FCA 574. In that case, an individual provided consultancy services to a company (Alleasing) via his family company. The Federal Court held that a settlement payment made by the individual to Alleasing after his employment had ended was deductible under s 8-1 of the ITAA 1997. The Court agreed with the findings of the AAT that, from a practical and business point of view, the payment was calculated to bring to an end a litigation risk that had as its source the individual's employment with his family company and the consultancy agreement with Alleasing.

The ATO says the decision does not depart from established principles concerning s 8-1 and has "limited application beyond its own factual circumstances".

Comments are due by 22 March 2024.

Options for simplified application of arm's length principle: OECD

The OECD has released the [report on Amount B of Pillar One](#). The report sets out a simplified and streamlined approach to the application of the arm's length principle to baseline marketing and distribution activities, with a particular focus on the needs of low-capacity countries.

This is in response to the call of low-capacity countries that report between 30-70% of their transfer pricing disputes relate to baseline marketing and distribution activities.

The report introduces two options for implementation for jurisdictions that opt into the simplified and streamlined approach from January 2025. It describes the circumstances under which a distributor is within scope of Amount B including cases where it also performs certain non-distribution activities, such as manufacturing. It also sets out the activities that may exclude a distributor from the scope of the simplified and streamlined approach, such as the distribution of commodities or digital goods.

2024-25 exploration cap for junior explorers

The Government has registered the [Income Tax Assessment Amendment \(Junior Minerals Exploration Incentive\) Regulations 2024](#). The Regulations provide that an additional \$4.77 million is added to form part of the annual exploration cap for the 2024-25 income year.

As background, the Junior Minerals Exploration Incentive provides an incentive for investment in small minerals exploration companies ("junior explorers") undertaking greenfields minerals exploration in Australia. This is achieved by allocating certain exploration credits to junior explorers each income year: s 418-103(1)(g) of the ITAA 1997. The amount of credits available each income year is capped.

Deductibility of self-education expenses

Taxation Ruling [TR 2024/3](#) considers the deductibility of self-education expenses under s 8-1 of the ITAA 1997. It consolidates and updates the views expressed in TR 92/8 and TR 98/9, both of which were withdrawn when TR 2024/3 was released in draft form (as TR 2023/D1). There are no changes to the ATO's approach.

The ATO's approach is that self-education expenses are deductible if one or both of the following principles apply (and an exclusion does not apply):

1. the person's income-earning activities are based on the exercise of a skill or some specific knowledge, and the self-education enables them to maintain or improve that skill or knowledge; and/or
2. the self-education objectively leads to, or is likely to lead to, a future increase in the person's income from their current income-earning activities.

The exclusions are that:

1. the self-education will enable the person to get employed, obtain new work or open up a new income-earning activity (in business or in their current employment); or
2. at the time the expenses are incurred, income-earning activities to derive assessable income are not being undertaken.

The Ruling also discusses apportionment and the types of expenditure that may be deductible

as a self-education expense.

Date of effect: retrospective.

Corporate limited partnership: "crediting" an amount to a partner

Taxation Ruling [TR 2024/2](#) sets out the ATO's views on when a corporate limited partnership (CLP) "credits" an amount to a partner within the meaning of s 94M of the ITAA 1936. Section 94M deems the amount credited to be a dividend paid to the partner out of profits derived by the CLP.

In the ATO's view, a CLP "credits" an amount to a partner if, in substance, the CLP applies or appropriates its resources to confer a benefit on the partner that is:

- legally enforceable by the partner and not subject to any condition precedent; and
- separate and distinct from the partner's existing interest in the CLP and the CLP's assets.

Where these requirements are met, the partner is credited with the amount, even if a future event may occur requiring the benefit to be relinquished or returned to the CLP.

Date of effect: retrospective. It finalises Draft TR 2017/D4 and contains the same views.

Rental bond and novated leases data matching programs

The ATO has registered two data matching program notices:

- [Gazette notice: Commissioner of Taxation - Notice of a rental bond data-matching program - 23 February 2024](#) - the ATO will acquire rental bond data from State and Territory rental bond regulators bi-annually for 2023-24 to 2025-26.
 - Data items include (i) individual client details; (ii) landlord and managing agent identification details; and (iii) rental bond transaction details.
 - The primary objective is to identify properties producing income and individuals who may be failing to meet their lodgment, correct reporting and/or payment obligations and take appropriate action (compliance and/or education and assistance).
- [Gazette notice: Commissioner of Taxation - Notice of a novated leases data-matching program 23 February 2024](#) - the ATO will acquire novated lease data from McMillan Shakespeare Group, Smartgroup Corporation, SG Fleet Group, Eclipx Group, LeasePlan, Toyota Fleet Management, LeasePLUS and Orix Australia for 2023-24 to 2025-26.
 - Data items include (i) lessee/employee identification details; (ii) employer identification details; and (iii) lease transaction details.

Novated leases data may be used to initiate nudge messaging to taxpayers and tax professionals through online services at, or before the time of lodgment. The messaging will appear for taxpayers identified in the prior financial year and it will inform the taxpayer that motor vehicle expenses under a novated lease arrangement are not tax-deductible.

GST and fuel tax: time limits for claiming input or fuel tax credits

Draft Miscellaneous Tax Ruling [MT 2024/D1](#) sets out the ATO's revised preliminary views on the four-year entitlement period for claiming input tax credits or fuel tax credits. A previous draft, MT 2018/D1, was withdrawn in December 2019 following the Federal Court's decision in *Coles Supermarkets Australia Pty Ltd v FCT* [2019] FCA 1582.

The withdrawn draft took a strict approach to the four-year time limit rules for claiming input tax credits or fuel tax credits. In particular, the ATO stated that a tax credit is not taken into account in an assessment when the taxpayer lodges an objection or requests an amendment, even if the objection or amendment request is made within the four-year entitlement period.

The ATO's revised approach is that a tax credit cannot be taken into account in an assessment by lodging an objection, requesting an amendment, or applying for a private ruling. However, in accordance with the *Coles Supermarkets* case, the relevant rules do not apply to disentitle a taxpayer to a tax credit for a tax period to the extent that entitlement is specified in the grounds of a valid objection lodged within the four-year entitlement period. To the extent that the objection decision or any subsequent review or appeal process finds that the taxpayer was entitled to the tax credit and it is attributable to the period in dispute, the entitlement will not cease.

Proposed date of effect: retrospective.

Comments are due by 22 March 2024.

FINANCIAL SERVICES

Operational risk financial requirement for super: exposure draft

APRA has issued [exposure drafts](#) proposing to amend the Prudential Standard SPS 114 Operational Risk Financial Requirement and its accompanying Prudential Practice Guide SPG 114 of the same name. This follows submissions received from APRA's discussion paper back in November 2022 on potential changes to operational risk financial requirements, which was aimed at ensuring registrable superannuation entities ("RSE") can better access the financial resources held to meet the operational risk financial requirement ("ORFR") when needed and maintain an appropriate level of funding.

The proposed amendments include measures to:

- clarify the purpose of the ORFR;
- introduce a clear and direct relationship with Prudential Standard CPS 230 *Operational Risk Management* ("CPS 230");
- widen the range of uses for the ORFR; and

- amend the notification requirements to facilitate use of the ORFR.

APRA expects that its proposed simpler approach on focusing integration with CPS 230 (as opposed to its previously consulted model) to position RSE licensees to use the ORFR actively in order to manage the impact of disruption and smooth operational risk related losses fairly across different cohorts of beneficiaries.

Date of effect: Once finalised, SPS 114 would commence in 2025, to align with (or follow) CPS 230.

Submissions are due by 13 May 2024.

SUPERANNUATION

ASIC report calls out risk to retirement outcomes

ASIC has [released](#) its report entitled Report 779 Superannuation and choice products: What focus is there on performance?. The report is the result of ASIC's examination of the roles of trustees, financial advisers and advice licensees and their product governance practices in relation to performance of Choice investment options. Of the 29 Choice options reviewed, 24

options did not meet or exceed the performance benchmark disclosed in the PDSs for five or more years.

ASIC's review found that "often" there was insufficient emphasis on and a lack of transparency about Choice investment options that failed to meet performance expectations. There was little evidence of trustees communicating to members about investment option performance in a targeted manner, and financial advisers were not always addressing underperformance where relevant.

ASIC said that it expects trustees and advisers to treat performance as a primary consideration and, where an option is underperforming, communicate why their recommendation is appropriate despite the underperformance and based on the client's relevant circumstances.

ASIC said that it is considering a range of regulatory responses where there was an indication clients were at risk of detriment as a result of personal advice. It will also continue to work closely with APRA to drive better investment governance practices in the superannuation industry.

REGULATOR NEWS

ASIC News

ASIC has released the following updates in its Newsroom section:

- [22 February 2024 – CORPORATE PUBLICATIONS – MIU Issue 156 February 2024](#) – ASIC has issued the February 2024 Market Integrity Update which summarised recent developments including the Federal Court decision about Westpac’s unconscionable conduct in interest rate swaps, guidance on pre-hedging, and the application of the financial services law to crypto-backed products.
- [21 February 2024 – MEDIA RELEASE – ASIC accepts court enforceable undertaking from former Melbourne financial adviser](#) – ASIC has accepted a court-enforceable undertaking from Mr Shivdeep Jaidka. Division 2 of Part 7.7A of the *Corporations Act 2001* (Cth) regulates the provision of personal financial advice to a retail client. Section 961B requires a provider of financial services to act in a client’s best interests. Section 961G provides that resulting advice must be appropriate for the client. Mr Jaidka has agreed to not provide or carry on a financial services business or manage any entity operating one for five years.
- [21 February 2024 – MEDIA RELEASE – ASIC calls in industry to improve oversight of Choice super performance and address issues](#) – A review by ASIC has highlighted the risks of holding superannuation in persistently underperforming funds, and reminded trustee, advisers and licensees to concentrate on the performance of Choice super investment options. Choice products are those that superannuation members choose themselves, as opposed to MySuper products which are often default products selected by employers. [REP 779 Superannuation and choice products: What focus is there on performance?](#) is available for further detail.
- [19 February 2024 – MEDIA RELEASE – ASIC cancels AFS licence of Valorton Capital Pty Ltd](#) – ASIC has cancelled the Australian Financial Services Licence of Valorton Capital Pty Ltd with effect from 14 February 2024. Section 915B(3A) of the *Corporations Act 2001* (Cth) provides that ASIC may cancel an AFSL held by a body corporate if it is not used within six months of it being granted.
- [19 February 2024 – REGULATORY UPDATES – RG 148 Platforms that are managed investment schemes and nominee and custody services](#) – ASIC has issued an updated version of RG 148 which sets out its aims in regulating platforms for nominee and custody services, and the obligations for advisers. The Guide now refers to ASIC Instruments which were introduced in 2023.

APRA news

APRA has released the following updates in its News and publications section:

- [19 February 2024 – NEWS ITEM – APRA releases letter updating reporting guidance on large exposures on GRF 117.0/GRF 110.0\(G\)](#) – APRA is updating guidance for general insurers about the reporting of large exposures in GRS-117_0. APRA requests that relevant insurers use the standard wording regarding the data fields “counterparty group name” and “exposure description”.
- 19 February 2024 – NEWS ITEM – [APRA consults on proposed amendments to the operational risk financial requirement for superannuation](#) – The Australian Prudential Regulation Authority has issued for consultation proposed amendments to Prudential Standard SPS 114, operational risk financial requirement and its associated guidance. The proposed amendments arise from the 2022 discussion paper “Financial resources



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for risk events in superannuation". [Submissions on Strengthening Financial Resilience in Superannuation](#) are open until 13 May 2024.