

TAXATION

Changes to trust income reporting and lodgments: 1 July 2024

The ATO has issued a release in relation to certain trust administration changes which will take effect from 1 July 2024 for trustees, beneficiaries and tax agents.

Thin capitalisation rules for foreign bank branches: discussion paper

The ATO has issued the discussion paper entitled Thin capitalisation - attribution of risk weighted assets to Australian branches of foreign banks.

Transfer pricing for related party debt management: ANAO report

ANAO has published its performance audit report entitled Management of Taxpayers' Use of Transfer Pricing for Related Party Debt.

MLI: synthesised text of DTA with Thailand

The ATO has released the synthesised text of Australia's double taxation agreement with the Kingdom of Thailand.

Updates to Online services for agents

The ATO have said that 'We're listening to your feedback about the client-to-agent linking process and in response have made some updates to Online services for agents. From 20 April 2024 improved in-system guidance will help agents link to the correct account once a client has nominated them as their agent'.

FINANCIAL SERVICES

ASIC - Changes to executive leadership team

ASIC has confirmed a number of changes to its senior executive leadership team, including the departure of ASIC CEO.

SUPERANNUATION

APRA quarterly superannuation statistics released

APRA has released two quarterly publications on APRA-regulated superannuation funds for the December 2023 quarter.

APRA publishes new and updated FAQs on SDT

APRA has published one updated and four new frequently asked questions (FAQs) for the Superannuation Data Transformation (SDT) project.

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.

New guidance for engaging with artificial intelligence

'The Australian Signals Directorate's Australian Cyber Security Centre (ASD's ACSC) has released a new publication, [Engaging with Artificial Intelligence](#) (AI).

How to connect your clients to an appropriate, licensed, expert – Wednesday 1 May 2024 at 12:30 to 1:30PM AEDT

Attend this free webinar from the Joint Accounting Bodies to hear from our regulators on how to avoid the pitfalls and refer your clients to the appropriate, licenced, advisor to help manage debt.

TAXATION

Changes to trust income reporting and lodgments: 1 July 2024

The ATO has issued a [release](#) in relation to certain trust administration changes which will take effect from 1 July 2024 for trustees, beneficiaries and tax agents.

First announced in the March 2022 Budget, the Modernisation of Trust Administration Systems ("MTAS") project looks to deliver changes to annual tax return forms, as well as intending to simplify reporting for trustees, beneficiaries and their tax agents.

The changes will impact lodgments for the 2023-24 income year and onwards and include the following.

- Modified labels in the statement of distribution to "improve the reporting" of beneficiary details (four CGT labels have been added).

- The introduction of a new schedule ("trust income schedule") that all trust beneficiary types who receive trust income will need to lodge with their tax returns. This will "assist correct reporting and facilitate consistency of reporting across all beneficiary types".
- The addition of new data validations to the trust tax return form in the practitioner lodgment service. This is stated to have the intention to "strengthen the integrity of data reported through the lodgment process".

Taxpayers will be notified of further changes as the MTAS project progresses.

Thin capitalisation rules for foreign bank branches: discussion paper

The ATO has issued the discussion paper entitled [Thin capitalisation - attribution of risk weighted assets to Australian branches of foreign banks](#). The Paper is in relation to the safe harbour formula used to work out the minimum capital amount of inward investing entities ("ADIs"). It outlines the ATO's suggested view on how to work out the part of the risk-weighted assets ("RWAs") attributable to a branch of a foreign bank. It also sets out the expected supporting documentation that will be accepted by the ATO for Justified Trust reviews in respect of thin capitalisation positions.

The ATO's proposed approach to RWA attribution is that an asset is attributable to the place where the significant people functions pertinent to the creation and management of the relevant asset are carried out. The Paper provides that significant people functions include general management, the setting of business strategies, personnel functions, clerical and administrative functions, and accounting and IT services. The ATO considers it to be consistent with OECD guidance.

The Paper makes clear that while the method of attribution proposed by the ATO (significant people functions) is not based on APRA guidelines, it is expected that the method will generally be consistent with attribution under APRA's approach to asset attribution.

The ATO said that it is still considering the date of effect of its view and how to apply it to income years.

Comments are due by 31 May 2024.

Transfer pricing for related party debt management: ANAO report

The Australian National Audit Office ("ANAO") has published its performance audit report entitled [Management of Taxpayers' Use of Transfer Pricing for Related Party Debt](#). The objective of the audit was to provide assurance to the Parliament that the ATO effectively manages transfer pricing for related party debt, using sound strategies and processes to address risks and to ensure related party debt is appropriately priced. The audit was identified as a priority by the Parliament's Joint Committee of Public Accounts and Audit in the context of the ANAO's 2022-23 and 2023-24 Annual Audit Work Program.

The ANAO concluded that the ATO is "largely effective" at managing taxpayers' use of transfer pricing for related party debt. The same is said of the ATO's effectiveness in identifying and prioritising risks to transfer pricing for related party debt. Overall, it was found that the ATO has established a "largely effective" strategic framework and has sound processes for identifying and prioritising risks to transfer pricing for related party debt at the business level.

The ANAO made four recommendations in which the ATO agreed in varying levels (ie agreed or agreed in principle):

- **Recommendation 1:** The ATO conduct further analysis to determine and monitor why taxpayers may not lodge Country-by-Country local file reporting;
- **Recommendation 2:** The ATO take action to (i) determine the number of completed Tax Assurance Reports considered sufficient to gain assurance that Top 100 taxpayers are appropriately using transfer pricing for related party debt; and (ii) determine how to gain sufficient assurance over the Top 1,000 population through the use of Combined Assurance Reviews and gap analysis, while also formalising how gap analysis should be conducted;
- **Recommendation 3:** The ATO take action to ensure all taxpayers with related party debt that do not apply Practical Compliance Guideline 2017/4 are reviewed in accordance with the ATO's goals; and
- **Recommendation 4:** The ATO (i) make training in related party financing mandatory for new case officers where related party financing is likely to be relevant to their role; and (ii) develop and maintain a register to ensure all staff are trained consistently and remain up to date in developments around transfer pricing for related party debt.

MLI: synthesised text of DTA with Thailand

The ATO has released the [synthesised text](#) of Australia's double taxation agreement with the Kingdom of Thailand. It incorporates the modifications made to the DTA by the Multilateral Convention to Implement Tax Treaty Measures to Prevent Base Erosion and Profit Shifting (MLI). These modifications generally apply from 1 January 2023 and include rules to address the artificial avoidance of permanent establishment status and a general anti-abuse rule based on the principal purpose(s) of an arrangement or a transaction.

Thailand has not adopted the MLI tie-breaker rules for dual resident companies, the rules in relation to transparent entities and the mandatory arbitration rules. Accordingly, these rules do not form part of the DTA.

Updates to Online services for agents

The ATO added that 'the guidance will:

- assist agents to link to their client at the right account level
- alert agents when they're about to remove another agent and prompt them to ensure they have their client's authority to do so.

On 19 April 2024 we'll email all registered agents (based on their RAN) to inform them about this new in-system guidance. A copy of this email is attached for you.

The following support materials are available on our website:

- [Agent checklist for client-to-agent linking process](#)
- [Troubleshooting guide for agents client-to-agent linking](#)
- [Online services for agents user guide](#) (will be updated after 20 April).'

For more information, please click [here](#).

FINANCIAL SERVICES

ASIC - Changes to executive leadership team

ASIC has [confirmed](#) a number of changes to its senior executive leadership team, including the departure of ASIC CEO, Warren Day and the appointment of an interim CEO from 1 June 2024.

SUPERANNUATION

APRA quarterly superannuation statistics released

APRA has [released](#) the following two quarterly publications on APRA-regulated superannuation funds, for the December 2023 quarter:

- [Quarterly Superannuation Industry Publication](#)
- [Quarterly Superannuation Product Statistics](#)

APRA publishes new and updated FAQs on SDT

APRA has [published](#) one updated and four new frequently asked questions (FAQs) for the Superannuation Data Transformation (SDT) project. 18 FAQs have been archived.

The SDT FAQs are available on the APRA website: [Frequently Asked Questions - Superannuation Data Transformation](#).

REGULATOR NEWS

ASIC News

ASIC has released the following updates in its Newsroom section:

- [12 April 2024 – MEDIA RELEASE – ASIC obtains Federal Court orders appointing receivers over digital currency assets of blockchain mining companies](#) – ASIC has commenced proceedings against NGS Crypto Pty Ltd, NGS Digital Pty Ltd and NGS Group Ltd (and the companies' directors) and successfully applied to have receivers appointed over their digital currency assets. ASIC was concerned that investors' assets were at risk and that the group of companies had contravened s 911A of the *Corporations Act 2001* (Cth) by providing financial services while unlicensed.
- [11 April 2024 – SPEECH – Improving regulatory guidance for registered liquidators](#) – ASIC Commissioner Kate O'Rourke presented an address to the Australian Restructuring Insolvency and Turnaround Association National Conference on the Gold Coast on 11 April 2024. She emphasised that ASIC is improving its regulatory guidance for liquidators by streamlining reporting obligations and seeking feedback on proposed changes.
- [11 April 2024 – MEDIA RELEASE – ASIC consults on misconduct reporting guidance](#)

[for external administrators and controllers](#) – ASIC has issued a consultation paper proposing revisions to its Regulatory Guide RG 16 External administrators and controllers: Reporting of possible offences and misconduct. The need for revisions has been precipitated by developments in case law, legislative reform and the recommendations of the Parliamentary Joint Committee on Corporations and Financial Services. Interested parties may make submissions until 6 June 2024.

- [11 April 2024 – MEDIA RELEASE – ASIC action results in \\$1.25 million Court imposed penalty against AFSL 'licence for hire' firm](#) – The Federal Court of Australia has found that Lanterne failed to comply with its AFS Licence obligations under s 912A of the *Corporations Act 2001* (Cth) in a period spanning 2019 to 2021. Lanterne conducts a business authorising representatives to provide financial advice to wholesale customers under its own licence. Among other things, Lanterne admitted that it did not have formal and documented risk management systems and conducted no due diligence on its representatives. The judgment of McEvoy J is [available](#).
- [11 April 2024 – MEDIA RELEASE – Federal Court winds up retail OTC derivative issuer Prospero Markets Pty Ltd](#) - The Federal Court of Australia has ordered that Prospero Markets Pty Ltd, the holder of an Australian financial services licence, be wound up and appointed liquidators. Section 461(1)(k) of the *Corporations Act 2001* (Cth) enables the court to wind up a company where it is just and equitable to do so. Prospero's licence was suspended in December 2023 after it failed to lodge audited financial accounts. An investigation by the Australian Federal Police resulted former officers and responsible managers being charged with money laundering offences.
- [10 April 2024 – MEDIA RELEASE – AAT reinstates Cameron Lindsay Duncan's liquidator registration with conditions](#) – After an application to the Administrative Appeals Tribunal for a review of decision of a liquidator's Disciplinary Committee in 2023 to cancel the registration of Mr Duncan, the AAT has ordered it be conditionally reinstated. Mr Duncan is currently not an Australian resident. The decision of AAT Deputy President McCabe is [available](#).
- [10 April 2024 – MEDIA RELEASE – ASIC appeals Finder Wallet decision](#) – ASIC has appealed against the decision of Markovic J on 14 March 2024 in the Federal Court of Australia in which she dismissed ASIC's allegation that Finder Wallet Pty Ltd had provided unlicensed financial services because the Finder Earn product was not a debenture as defined in s 9 of the *Corporations Act 2001* (Cth). The appeal will be heard by the Full Federal Court. The primary judgment is [available](#).
- [9 April 2024 – MEDIA RELEASE – James Mawhinney arrested and charged following ASIC criminal investigation](#) – Following a referral from ASIC investigation, James Mawhinney has been arrested on four counts of engaging in dishonest conduct while running a financial services business in a period spanning 2019 and 2020. He has been released on bail and is due to appear next in the Melbourne Magistrate's Court on 28 June 2024.

APRA news

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

- [12 April 2024 – NEWS ITEM – APRA publishes the December 2023 edition of the Quarterly Superannuation Product Statistics and Quarterly Superannuation Industry Publication](#) – APRA has issued data on superannuation products and the industry or the quarter ending December 2023. For the first time, data on investments by asset class is included.

New guidance for engaging with artificial intelligence

'The new guidance, co-sealed with the international intelligence community, includes important advice to help medium businesses to large organisations interact with AI securely.

When used securely, AI has the potential to benefit businesses by improving efficiency and effectiveness in all industries. It's important to understand the challenges your organisation may face when engaging with an AI system and how to manage them.

The new guidance from ASD's ACSC outlines steps businesses can take to securely use AI in their operations.

1. Apply advice about engaging with AI alongside the Essential Eight framework to help secure your AI system.
2. Know the constraints of your AI system and train your staff to use it securely.
3. Understand how the AI system will affect your organisation's privacy and data protection obligations.
4. Consider if any AI services used in your organisation or supply chain are secure-by-design.
5. Have suitably qualified staff to ensure the digital system is set up and maintained securely.

Read about [Engaging with Artificial Intelligence](#).'

How to connect your clients to an appropriate, licensed, expert – Wednesday 1 May 2024 at 12:30 to 1:30PM AEDT

In this webinar, members can hear about: What leads your clients to unlicensed pre-insolvency advisors; How to spot an unlicensed pre-insolvency advisor; The role of government and accountants; and How to connect your clients to a licensed pre-insolvency advisor.

This event is being hosted by CAANZ and you will be required to Create an account and then fill in the section on Personal information. Please be advised that CA ANZ have provided assurance that this information is not stored and is isolated information for this event only.

Please join the webinar [here](#).