

TAXATION

Requirement to lodge 2024 tax and other returns

The ATO has issued two legislative instruments which cover the requirement to lodge income tax and other returns for a range of entities.

Tax Accountability and Fairness Bill passed by Parliament

The Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023 has been passed by the Senate without amendment and awaits assent.

Instant asset write-off concession: Parliament in stand-off

The Bill to allow small businesses to immediately deduct the full cost of eligible depreciating assets costing less than \$20,000 is still before the Senate.

FBT rules for plug-in hybrids: Private Member's Bill

Senator David Vann (Independent) has introduced a Private Member's Bill proposing to extend the current FBT exemption for plug-in hybrid electric cars.

ATO lodgment performance

The ATO have published information on their website on 'Lodgment performance and our differentiated approach' including information on 'how you can improve your annual performance percentage and meet the 85% benchmark'.

GST

GST revenue sharing for States for 2024-25

The Determination specifies the factors that will be the GST revenue sharing relativities for each State, the ACT and Northern Territory for the 2024-25 payment year.

Decision impact statement: Hannover Life Re of Australasia

The ATO has issued its decision impact statement ("DIS") in relation to FCT v Hannover Life Re of Australasia Ltd [2024] FCAFC 23.

FINANCIAL SERVICES

Super account balances above \$3m - Senate report recommends passage

The majority of the Committee recommended that the Bills both be passed but the Coalition and Greens Senators did not support the Bills in their current form.

SUPERANNUATION

DIS on JMC: lecturer not an employee for super guarantee

The ATO has issued a Decision Impact Statement on the Full Court's decision in JMC Pty Ltd v FCT [2023] FCAFC 76.

DIS on Jamsek: truck drivers not employees for super guarantee

The ATO has issued a Decision Impact Statement on the AAT's decision in Jamsek v ZG Operations Australia Pty Ltd (No 3) [2023] FCAFC 48.

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.

Government consultations

The Treasury has released the report of Dr Kevin Lewis, former Chief Compliance Officer with ASX, on the amendments to the continuous disclosure provisions in Chapter 6CA of the *Corporations Act 2001* (Cth) which took effect in 2021.

ASIC issues warning over dodgy cold calling operators and online baiting tactics

ASIC has issued a media release 'warning consumers to be wary after an ASIC review identified some cold calling operators using high-pressure sales tactics and online click-bait advertisements to lure consumers into receiving inappropriate superannuation switching advice'.

TAXATION

Requirement to lodge 2024 tax and other returns

The ATO has issued two legislative instruments which cover the requirement to lodge income tax and other returns for a range of entities.

The [Taxation Laws \(Requirement to Lodge a Return for the 2024 year\) Instrument 2024](#) covers individuals, companies, trustees of SMSF and partners. There is also a new requirement that NFP self-review returns must be lodged. It also includes the following lodgements:

- franking account returns, including special rules for late balancing corporate tax entities that elect to use 30 June as a basis for determining their franking deficit tax liability;
- venture capital deficit tax returns;
- ancillary fund returns; and
- member information statements by superannuation providers.

The ATO also issued the [Income Tax Assessment \(Requirement for Parents Liable for or Entitled to Child Support to Lodge a Return for the 2024 Year\) Instrument 2024](#). It requires liable and recipient parents under a child support assessment to lodge an income tax return for the income year, by the due date specified in the instrument. Such persons may not otherwise be required to lodge an income tax return.

Tax Accountability and Fairness Bill passed by Parliament

The [Treasury Laws Amendment \(Tax Accountability and Fairness\) Bill 2023](#) has been passed by the Senate without amendment and awaits assent.

The Senate had previously voted to split the Bill into two separate Bills, in line with the recommendations of the report of the Economics Legislation Committee.

- the Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023 – consisting of Schs 1 to 4; and
- the Treasury Laws Amendment (Tax Accountability and Fairness No 2) Bill 2023 – consisting of Sch 5.

However, this proposed amendment was not supported and the Bill was then passed as introduced, ie with no amendments and including the Petroleum Resource Rent Tax.

- The contents of the Bill as passed are set out below.
- Schedule 1 implements the promoter penalty law reforms;
- Schedule 2 deals with the whistleblower changes;
- Schedule 3 involves reform of the Tax Practitioners Board;
- Schedule 4 will allow taxation officers and TPB officials to share protected information with Treasury; and
- Schedule 5 will implement changes to the PRRT.

Instant asset write-off concession: Parliament in stand-off

The House of Reps has voted down proposed Senate amendments which would have increased the amount of the instant asset write-off and broadened the concession's eligibility.

The [Treasury Laws Amendment \(Support for Small Business and Charities and Other Measures\) Bill 2023](#) proposes to allow small businesses (ie with an aggregated annual turnover of less than \$10 million) to immediately deduct the full cost of eligible depreciating assets costing less than \$20,000 that are first used or installed ready for use for a taxable purpose between 1 July 2023 and 30 June 2024 (as well as other changes such as the energy rebate and the NALE/NALI changes).

The Senate passed the Bill on 27 March 2024 with an amendment which would have extended the coverage from small businesses to medium businesses, ie all entities with an aggregated turnover of less than \$50 million and increased the threshold from \$20,000 to \$30,000. As reported, this was not agreed to by the House.

The Bill was returned to the Senate, who then voted against a proposal to "not insist on its amendment to which the House had disagreed". This means that the Bill is still before the Senate and the amendment is still "live". It can be returned to the House with the amendment if the Senate so wishes, ie the Bill is in a sort of political limbo.

FBT rules for plug-in hybrids: Private Member's Bill

Senator David Vann (Independent) has introduced a Private Member's Bill proposing to extend the current FBT exemption for plug-in hybrid electric cars, which is otherwise due to expire on 1 April 2025.

The current FBT exemption for electric vehicles was introduced in 2022. During its passage through the Senate, the Bill was amended to put a sunset clause on the exemption for plug-ins.

The Private Member's Bill – the [Treasury Laws Amendment \(Extending the FBT Exemption for Plug-in Hybrid Electric Vehicles 2024](#) – will extend the concession to 1 April 2030.

ATO lodgment performance

The ATO website states that 'your lodgment program will not be adversely affected if you do not meet the 85% lodgment program performance benchmark in the 2022–23 lodgment program year.

However, we want to help you improve your performance and maintain your lodgment program. Therefore, we may contact you to discuss your circumstances. We will work pragmatically and flexibly with you to ensure that we provide you with the right support through our differentiated support strategies.'

The ATO 'support strategies are summarised' in a table. You can obtain more information [here](#).

GST

GST revenue sharing for States for 2024-25

The [Federal Financial Relations \(GST Revenue Sharing Relativities for 2024-25\) Determination 2024](#) specifies the factors that will be the GST revenue sharing relativities for each State, the ACT and Northern Territory for the 2024-25 payment year.

The Determination sets out a factor that is the GST revenue sharing relativity for 2024-25. Put simply, a number above one means that the government gets more GST revenue, while below one they must give up revenue.

- NSW: 0.86736
- Vic: 0.96502
- Queensland: 0.95232
- WA: 0.75000
- SA: 1.40312
- Tasmania: 1.82832
- ACT: 1.20419
- NT: 5.06681.

Decision impact statement: Hannover Life Re of Australasia

The ATO has issued its [decision impact statement](#) ("DIS") in relation to FCT v Hannover Life Re of Australasia Ltd [2024] FCAFC 23. In that case the Full Federal Court dismissed the ATO's appeal against a decision that a life insurance company was partly entitled to input tax credits in relation to its overheads, such as rent, IT and telephone costs and consulting fees.

The DIS highlights the ATO's views on the following.

- Determining extent of creditable purpose - the decisions confirm that the application of s 11-15 of the GST Act is focused on the precise nature of the relationship between an acquisition and the supplies made by the entity. The fact that an input taxed supply is interdependent, and cannot be made without a GST-free or taxable supply also being made will not in itself determine the creditable purpose of the relevant acquisition.
- Creditable purpose of overhead acquisitions - the Commissioner considers that the conclusions in relation to the overhead acquisitions consisted of an "evaluative factual judgment" unique to the case and expects taxpayers, when applying s 11-15 to their own circumstances, to provide evidence that they have precisely identified the relevant acquisition relates to one or more different classes of supplies.
- Apportionment methods for the purposes of s 11-30 - the Commissioner accepts that there may be more than one methodology that is fair and reasonable in any given factual circumstance. However, the Commissioner does not consider that the fact a specific apportionment method was allowed in this case represents an endorsement of the method as fair and reasonable in other circumstances.

Comments are due by 14 June 2024.

FINANCIAL SERVICES

Super account balances above \$3m - Senate report recommends passage

The Senate Economics Legislation Committee has published its [report](#) on the [Superannuation \(Better Targeted Superannuation Concessions\) Imposition Bill 2023](#); and [Treasury Laws Amendment \(Better Targeted Superannuation Concessions and Other Measures\) Bill 2023](#). The majority of the Committee recommended that the Bills both be passed but the Coalition and Greens Senators did not support the Bills in their current form.

Broadly, the Bills propose a new Div 296 tax in the ITAA 1997 which will impose a tax rate 15% on superannuation "earnings" corresponding to the percentage of an individual's super balance that exceeds \$3m for an income year commencing 1 July 2025. The Bills are currently before the House of Reps.

SUPERANNUATION

DIS on JMC: lecturer not an employee for super guarantee

The ATO has issued a [Decision Impact Statement](#) on the Full Court's decision in JMC Pty Ltd v FCT [2023] FCAFC 76.

There the Full Court concluded that a lecturer engaged by a company to provide higher education courses was an independent contractor, and not an employee of JMC under either s 12(1) or s 12(3) of the Superannuation Guarantee (Administration) Act 1992. The Full Court stated that the relevant matter is "the correct characterisation of the relationship created between the parties in light of their comprehensive written contract".

The ATO stated in the DIS that this position is subject to the contractual right not being challenged as being a sham, having been varied by the parties or unenforceable. The ATO remains open that there may be circumstances where the contractual terms of the arrangement do not make it clear whether the worker does have a contractual right to delegate, subcontract or assign their work to another. In these circumstances, the ATO will form its position as to the application of s 12(3) based on the available evidence of the contractual arrangement.

Comments are due by 14 June 2024.

DIS on Jamsek: truck drivers not employees for super guarantee

The ATO has issued a [Decision Impact Statement](#) on the AAT's decision in Jamsek v ZG Operations Australia Pty Ltd (No 3) [2023] FCAFC 48.

After the High Court held that two truck drivers were contractors and not employees of a company according to the ordinary meaning of that term, the matter was sent back to the Full Federal Court to consider whether they were employees under the expanded meaning of the

term "employee" in s 12(3) of the SGAA. The Full Federal Court has unanimously held that s 12(3) did not deem the drivers to be employees for super guarantee purposes. The ATO has stated in the DIS that the Full Federal Court has clarified aspects concerning the application of s 12(3), including, that only a natural person who enters into a contract in that capacity can be deemed to be an employee for the purposes of s 12(3).

The ATO accepts the Full Federal Court's view that a quantitative analysis of the components of delivery services was the most appropriate valuation methodology in the circumstances of this case. However, in the ATO's view, it remains open to apply a qualitative analysis for the purpose of testing whether a contract is principally for labour under s 12(3) where the factual circumstances of a case warrant that approach.

Comments are due by 14 June 2024.

REGULATOR NEWS

ASIC News

ASIC has released the following updates in its Newsroom section:

- [17 May 2024 – MEDIA RELEASE – Former BitConnect promoter John Bigatton pleads guilty](#) – In the Sydney District Court, John Louis Anthony Bigatton of Carss Park, NSW pleaded guilty to providing financial services while unlicensed in contravention of s 911B of the *Corporations Act 2001* (Cth). He ran a financial services business and cryptocurrency platform, which he promoted in face-to-face meetings with potential investors, at seminars and on social media. The matter will return to court for sentencing in July 2024.
- [16 May 2024 – MEDIA RELEASE – ASIC restricts three listed companies from issuing a reduced-content prospectus](#) – Section 713 of the *Corporations Act 2001* (Cth) allows companies in certain circumstances to issue prospectuses with reduced content. However, ASIC has excluded XTC Lithium Ltd, My Rewards International Ltd and Range International Ltd from issuing reduced-content prospectuses for 12 months because of their failures to lodge company reports as required.
- [16 May 2024 – SPEECH – ASIC's Financial Reporting and Audit Surveillance Program](#) – ASIC Commissioner Kate O'Rourke presented to the CA ANZ Audit Conference 2024 in Sydney, emphasising ASIC's financial reporting and audit surveillance work to promote participation in the financial system. ASIC will select and audit companies' financial reports, taking a risk-based approach and factoring in ASX announcements, reported financial information and reports of misconduct. She also foreshadowed that ASIC will develop and publish information on the new sustainability reporting obligations if the Government's proposed legislation is passed and becomes law.
- [15 May 2024 – NEWS ITEM – ASIC welcomes Ministerial determination to progress competition in clearing and settlement reforms](#) – The Assistant Treasurer, Mr Stephen Jones, has issued the *Corporations and Competition (CS Services) Instrument 2024* which enables ASIC to make rules on clearing and settlement services relating to cash equities. ASIC plans to consult on draft rules in July 2024. Part 7.3A (CS services) of the *Corporations Act 2001* (Cth) took effect from 21 September 2023.
- [15 May 2024 – MEDIA RELEASE – ASIC announces 30 June 2024 focus areas and expanded program to support financial reporting and audit quality](#) – ASIC has included improved financial reporting and auditing among its priorities for the end of the financial year. This includes surveillance of large proprietary companies which were previously

exempt from audit requirements and engagement with climate risk under Chapter 2M of the *Corporations Act 2001* (Cth).

- [15 May 2024 – NEWS ITEM – ASIC issues information for unlicensed entities making unsolicited contact with consumers](#) – ASIC's new Information Sheet INFO 282 *Unsolicited contact leading to financial advice* sets out how financial services laws apply to unlicensed entities. ASIC aims to address harms to consumers from high-pressure sales practices and click-bait which is geared to encouraging consumers to switch their superannuation into unsuitable products.
- [15 May 2024 – SPEECH – Taken for a ride: ASIC targets used car financing misconduct](#) – In a speech to the Consumer Rights Forum in Perth on 14 May 2024, ASIC Commissioner Alan Kirkland expressed ASIC's concern about First Nations consumers being exploited to buy defective cars at inflated prices. There are various provisions under financial services and consumer credit laws that ASIC uses to address harm.
- [14 May 2024 – MEDIA RELEASE – ASIC cancels Octillion Partners AFS licence](#) – ASIC has cancelled the Australian Financial Services Licence of Octillion Partners Pty Ltd because of various contraventions of Chapter 7 of the *Corporations Act 2001* (Cth). Octillion, which had held a licence since 2005, will continue to operate under its licence until 16 August 2024 in order to service its current clients. ASIC's concerns about Octillion stemmed from the conduct of Octillion's authorised representative financial adviser, Shane Alan Rose, who was permanently banned from operating in the financial services industry in March 2024.
- [14 May 2024 – MEDIA RELEASE – ASIC permanently bans former financial adviser](#) – ASIC has permanently banned Kudzanai Philip Dzawo from any involvement in financial services. He had been an authorised representative of Link Advice Pty Ltd from 2018 to 2021 and then Quadrant First Pty Ltd in 2021-2022. ASIC found that he was not a fit and proper person to provide financial services.
- [14 May 2024 – MEDIA RELEASE – AAT upholds permanent ban on former NSW based adviser](#) – The Administrative Appeals Tribunal has affirmed ASIC's decision to ban Sean Sweeney from involvement with a financial services business. He had been authorised to provide advice between 2014 and 2018 and was convicted of fraud in 2022 when ASIC applied the ban under ss 920A and 920B of the *Corporations Act 2001* (Cth). The AAT's decision is available [here](#).

APRA news

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

- [13 May 2024 – NEWS ITEM – APRA grants new general insurance licence to Everest International Reinsurance](#)

Government consultations

- [14 May 2024 – CONSULTATION – Report of the independent review of the changes to the continuous disclosure laws](#) – The Treasury has released the report of Dr Kevin Lewis, former Chief Compliance Officer with ASX, on the amendments to the continuous disclosure provisions in Chapter 6CA of the *Corporations Act 2001* (Cth) which took effect in 2021. The report finds that the amendments had, and likely will continue to have, a negative effect on ASIC's enforcement of continuous disclosure laws. The Government is considering its response to the report.

ASIC issues warning over dodgy cold calling operators and online baiting tactics

‘These cold calling operators — which make unsolicited calls to consumers after obtaining their personal information from third-party data brokers or by using online click-bait — have lead generation and referral arrangements with a small subset of financial advisers, who typically recommend consumers switch into super products incurring significant fees.

ASIC has also launched a consumer awareness campaign, encouraging consumers to ‘just hang up’ when contacted by cold calling operators, and to ‘just scroll past’ social media click-bait advertisements.’

More information is available on the ASIC website

[Media release](#)

[Exposing high-pressure cold calling tactics and social media click-bait leading to superannuation switching](#)