

TAXATION

Eligibility requirements for TPB registration: consultation paper released

The Government has released a consultation paper focusing on proposed reforms in registration requirements for tax practitioners.

Government's philanthropy inquiry final report out

The Productivity Commission has released the final report for the Government's philanthropy inquiry entitled Future foundations for giving.

ATO Practice Statement updates

The ATO has issued a series of minor statements to its practice statements: PS LA 2008/1 (GA), PS LA 2007/21 and PS LA 2011/21.

Taxation Administration (Withholding Schedules) Instrument 2024

The Australian Taxation Office (ATO) has registered the *Taxation Administration (Withholding Schedules) Instrument 2024*. The instrument is effective from 1 July 2024 and details 15 withholding schedules for calculating the withholding amount required to be paid under the pay as you go (PAYG) system for the 2024-25 income year.

Code of Professional Conduct Determination – call to have the determination withdrawn

The IPA together with the other professional bodies (Joint Bodies), have called for the withdrawal of *Tax Agent Services (Code of Professional Conduct) Determination 2024* in an open letter to the Assistant Treasurer.

SUPERANNUATION

Interaction of NALI and CGT rules - Determination TD 2024/5

TD 2024/5 provides guidance on calculating the amount of statutory income that is NALI where a super fund makes a capital gain as a result of non-arm's length dealing.

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

Eligibility requirements for TPB registration: consultation paper released

The Government has issued a consultation paper entitled [Review of eligibility requirements for registration with the Tax Practitioners Board](#). As part of the Government's responses to crack down on tax practitioner misconduct, this consultation paper focuses on proposed reforms in the registration requirements for tax practitioners.

Key features of the proposed enhanced registration regime include:

- strengthening company and partnership registration eligibility requirements;
- re-evaluating the professional association accreditation and registration pathways;
- broadening the TPB's ability to accept alternative forms of "relevant experience";
- amending the primary qualification settings prescribed in the Tax Agent Services Regulations 2022 (Cth) ("TASR"); and
- improving the 'fit and proper person' test set out in the Tax Agent Services Act 2009 ("TASA").

The Paper also seeks feedback on:

- whether the TASR and/or TASA should be amended to give the TPB greater flexibility to accept other qualifications outside the traditional tax practitioner course of study;
- whether the current formulation of the 'fit and proper person' test within the TASA adequately protects consumers, without imposing a disproportionate barrier to entry; and
- other proposals to modernise the registration framework and/or address potential challenges.

SUBMISSIONS are due by 7 August 2024.

Government's philanthropy inquiry final report out

The Productivity Commission has released the final report for the Government's philanthropy inquiry entitled [Future foundations for giving](#). The purpose of the inquiry is to understand trends in philanthropic giving in Australia, the underlying drivers of these trends, and to identify opportunities and obstacles to increasing such giving. The report will inform future steps for the Government in reaching its goal of doubling philanthropic giving by 2030.

Some highlights to the philanthropic trend were that:

- over \$13 billion was donated to charities in Australia in 2021, an increase of 26% in real terms since 2017;
- while the total value of donations has increased over recent decades, a lower proportion of people who have taxable income are giving;
- almost half of all tax-deductible donations are made by people who are in the top 1% of income earners.

The Commission has made 19 final recommendations, focusing on 4 main areas:

- improving the system that determines which charities have access to tax-deductible donations;
- improving access to philanthropic networks for Aboriginal and Torres Strait Islander people;
- enhancing the regulatory framework for charities and ancillary funds, and
- improving public information on charities and donations.

The Government followed with a [media release](#) stating that it will consider its response to the inquiry while making clear that the recommended changes to tax settings for donations to school building funds are not being considered.

ATO Practice Statement updates

The ATO has issued a series of minor updates to its practice statements. There were no substantive changes, rather updates to references, style, accessibility requirements, wording to improve clarity and removal of redundancies. The practice statements updated were:

- [PS LA 2008/1 \(GA\)](#): Goods and services tax and input tax credits for acquisitions related to making supplies under a disclosed hire purchase agreement entered into before 1 July 2012;
- [PS LA 2007/21](#): Substituted accounting periods (SAPs); and
- [PS LA 2011/21](#): Offsetting of refunds and credits against taxation and other debts.

Taxation Administration (Withholding Schedules) Instrument 2024

Details of the 15 withholding schedules

Number	Quick code	Title
1	QC102416	Schedule 1—Statement of formulas for calculating amounts to be withheld
2	QC102417	Schedule 2—Tax table for individuals employed in the horticultural or shearing industry
3	QC102418	Schedule 3—Tax table for actors, variety artists and other entertainers
4	QC102419	Schedule 4—Tax table for return to work payments

5	QC102438	Schedule 5—Tax table for back payments, commissions, bonuses and similar payments
6	QC102420	Schedule 6—Tax table for annuities
7	QC102421	Schedule 7—Tax table for unused leave payments on termination of employment
8	QC102422	Schedule 8—Statement of formulas for calculating study and training support loans components
9	QC102423	Schedule 9—Tax table for seniors and pensioners
10	QC102424	Schedule 10—Tax table for payments made under voluntary agreements
11	QC102425	Schedule 11—Tax table for employment termination payments
12	QC102426	Schedule 12—Tax table for superannuation lump sums
13	QC102439	Schedule 13—Tax table for superannuation income streams
14	QC102427	Schedule 14—Tax table for additional amounts to withhold as a result of an agreement to increase withholding
15	QC102428	Schedule 15—Tax table for working holiday makers

You can get [more information here](#)

Code of Professional Conduct Determination – call to have the determination withdrawn

The Determination, as it is currently registered, needs to be withdrawn and further consultation undertaken to ensure the new obligations can be fairly implemented and that there are no unintended consequences for tax practitioners or the Tax Practitioners Board.

For more details see a copy of the [open letter](#)

The [shadow Assistant Treasurer](#) has also called for the determination to be removed.

SUPERANNUATION

Interaction of NALI and CGT rules - Determination TD 2024/5

The ATO has issued [Tax Determination TD 2024/5](#) to provide guidance on calculating the amount of statutory income that is non-arm's length income (NALI) where a superannuation fund makes a capital gain as a result of a non-arm's length dealing.

The ATO says the amount of NALI is determined by reference to the amount of the non-arm's length capital gain, being the capital proceeds less the cost base arising from the scheme in which the parties were not dealing at arm's length. This non-arm's length capital gain is subject to any applicable CGT market value substitution rule and is then reduced by any attributable deductions to calculate the non-arm's length component. However, the s 295-550(1) "amount" of statutory income that is NALI cannot exceed the fund's net capital gain as calculated using the CGT method statement in s 102-5(1) for the relevant income year.

In working out the tax payable by the fund (using the s 295-10(1) method statement), s 102-5(1) is applied at Steps 2 and 3. The net capital gain calculated under s 102-5 (consisting of all arm's length and non-arm's length capital gains) is included as statutory income. The non-arm's length capital gain (the NALI amount), less any deductions attributable to that gain, is then included at Step 4, ie in working out the fund's non-arm's length component.

If a fund's net capital gain is nil due to the application of capital losses and previously unapplied net capital losses, no amount of NALI is referable to the non-arm's length capital gain.

TD 2024/5 includes 3 practical examples to demonstrate these calculations. It also canvasses various alternative views, which the ATO disagrees with.

DATE OF EFFECT: retrospective.

TD 2024/5 finalises TD 2023/D1 and takes the same approach as the draft. Some additions have been made to the final determination, such as incorporating the recently enacted amendments to ss 295-545 and 295-550 (which refined the NALF rules and confined them to SMSFs and small APRA-regulated funds).

REGULATOR NEWS

ASIC News

ASIC has released the following updates in its Newsroom section:

- [19 July 2024 – MEDIA RELEASE – American Express ordered to pay \\$8 million penalty for failing to meet its design and distribution obligations](#) – In the Federal Court of Australia, Jackson J has found that in 2022 American Express breached design and distribution obligations as an issuer of credit cards and imposed a pecuniary penalty. The credit cards were issued mostly to customers of David Jones. The court considered that American Express ought to have deduced that high rates of cancelled applications suggested that previous target market determinations were no longer appropriate and continued to issue the cards when the TMDs had not been reviewed. The [judgment](#) is available.
- [18 July 2024 – MEDIA RELEASE – ASIC bans former directors of XTrade.AU Pty Ltd](#) – Shay Zakhaim and Anthony Anderson, former directors and managers of XTrade.AU Pty Ltd, have been banned by ASIC for three and five years respectively from carrying on a financial services business as either director or manager. XTrade's Australian Financial Services Licence has also been cancelled. It had been engaged in offering contracts for difference and foreign exchange contracts. The two individuals had failed

to ensure that XTrade could manage conflicts of interest or ensure that its

representatives complied with financial services laws.

- [18 July 2024 – MEDIA RELEASE – Former NSW mortgage broker Aleksandra Frizzell permanently banned following fraud convictions](#) – Ms Aleksandra Frizzell, formerly a mortgage broker with Beagle Finance Pty Ltd between 2013 and 2017 and then Supra Financial Pty Ltd in 2017 and 2018, has been convicted in the Newcastle Local Court of a total of 21 counts of criminal offences committed between 2015 and 2019. She has been sentenced to four years' imprisonment. As a result, she has been permanently banned by ASIC from participating in the financial services and credit industry.
- [17 July 2024 – MEDIA RELEASE – ASIC permanently bans former financial adviser Anass Abdalla](#) – ASIC has permanently banned Queensland-based financial adviser Anass "Caesar" Abdalla from participating in the financial service industry. ASIC found that his conduct, in directing an authorised representative to sign a statement that personal advice had been provided when it had not, indicated that does not have the fitness and propriety to provide financial services or to supervise persons that do.
- [15 July 2024 – MEDIA RELEASE – Former BitConnect promoter John Bigatton convicted for providing unlicensed financial advice](#) – In the Sydney District Court, Mr John Bigatton, the former promoter of BitConnect in Australia, has been found guilty of providing financial advice without a licence as required by the *Corporations Act 2001* (Cth). He had promoted BitConnect in seminars and on social media in a period spanning 2027 and 2018. He is banned from providing financial services until 2027, and was released by the Court conditional on maintaining good behaviour for three years.
- [15 July 2024 – MEDIA RELEASE – Big banks to refund millions in fees to low-income customers following ASIC report](#) –ASIC's Report 785, *Better banking for Indigenous Consumers*, has found that four banks had systemically charged high fees to customers who could least afford it. As a result, ANZ, the Bendigo and Adelaide Bank, the Commonwealth Bank and Westpac have undertaken to repay over \$28 million in the next 12 to 18 months to customers on low incomes. Before the review, the four banks had a process of requiring customers to opt into low-fee accounts and attend a branch which may be a long distance from customers' homes. ASIC Commissioner Alan Kirkland suggested that other banks also could improve the accessibility of their own low-fee accounts.

APRA news

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

- [19 July 2024 – MEDIA RELEASES – APRA reduces Westpac's operational risk capital add-on by \\$500 million](#) – To reflect the progress that Westpac Banking Corporation has made in addressing shortcomings in its governance, culture and risk management, APRA has halved the capital add-on it had applied to the bank's capital requirements. The remaining \$500 million add-on will remain until Westpac's completes the remediation of its weaknesses and APRA confirms the long-term sustainability of new governance frameworks and practices within Westpac.
- [17 July 2024 – NEWS ITEM – APRA releases response on enhancements to quarterly insurance publications](#) – APRA has issued its response to its consultation to proposals to revise the reporting framework for insurance to reflect the implementation of new accounting standards and revised capital requirements for private health insurance, and request changes to the data is reported. Feedback the APRA from interested

parties was broadly positive, although clarification of the treatment of confidential data

was suggested. APRA plans to release the first edition of enhanced quarterly insurance data in August 2024.

- [17 July 2024 – NEWS ITEM – APRA releases response to consultation on minor amendments to prudential framework for ADIs and insurers](#) – APRA has issued its response to consultation on its proposal to amend the prudential framework for authorised deposit taking institutions and insurers. Revised prudential standards and guides are now available, along with submissions that were not confidential.
- [15 July 2024 – MEDIA RELEASES – APRA imposes additional licence conditions on Fiducian](#) – To address concerns it identified earlier this year in the annual superannuation performance test, APRA has imposed extra licence conditions on Fiducian Portfolio Services Ltd, the trustee for Fiducian Superannuation Service. APRA's review revealed issues related to the accuracy and completeness of information that Fiducian reported to APRA. Effective immediately, Fiducian has to ensure that an expert reviews its data, implement the expert's recommendations and provide a declaration to APRA about the accuracy of its data.