

## **TAXATION**

### **ATO corporate plan 2024-25 released**

The ATO has released its corporate plan for 2024-25 which provides coverage of the functions of the ATO, TPB and the ACNC.

### **Appointment to Board of Taxation announced**

The Government has announced the re-appointment of Ian Kellock as a part-time member of the Board of Taxation for a 3-year period.

### **TPB register enhanced**

The TPB has issued a media release in relation to its enhanced public register following recommendations arising from the Independent Review of the Tax Practitioners Board.

### **\$1.8m fine for providing tax agent services whilst unregistered**

The Federal Court has "fined" an individual \$1.8m for preparing and lodging tax returns whilst not a registered tax agent.

### **HECS/HELP debts: changes to indexation rate calculation**

A Bill has been introduced into the House of Reps which will implement previously announced measures to change the way that indexation is applied to HELP debts.

### **GST: sunscreen products**

The ATO has released Draft GSTD 2024/D2 on when the supply of a sunscreen product is GST free.

### **ATO Updates**

The ATO have provided updates in relation to changes to promoter penalty laws; update on the ATO's new R&D tax incentive transparency report; ATO webinar recording on Personal services business; and consultation opportunities.

## **SUPERANNUATION**

### **ASIC - how to deliver better retirement outcomes**

ASIC Commissioner's speech at a recent conference emphasised the need for better retirement outcomes and member services in Australia's superannuation industry.

## **Regulations to rectify transfer balance account issues for veterans**

Regulations have been registered to prescribe new rules for invalidity pensions under the MSBS and DFRDB.

## **FINANCIAL SERVICES**

### **APRA shares further insights on common cyber control weaknesses**

APRA has written to all regulated entities to provide further insights and guidance on common cyber control weaknesses.

### **Financial advice - Request for member input!**

The Institute of Public Accountants (IPA) and Financial Advice Association Australia (FAAA) are part of the Joint Associations Working Group (JAWG). The FAAA are looking to organise some focus groups of Accountants in and around the Sydney CBD area for face-to-face sessions to gather feedback on promoting the financial advice profession to consumers, prospective students and to accountants looking for high quality financial advice referral partners.

## **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.

### **Legislative Amendments and Proposals, Government Announcements and Consultations**

Updates from the Government including legislation.

### **Scams Awareness Week – share a story, stop a scam**

National Anti-Scams Centre's (NASC) Scams Awareness Week (SAW) runs 26 to 30 August. This year's theme is 'Share a story, stop a scam'.

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## **TAXATION**

### **ATO corporate plan 2024-25 released**

The ATO has released its [corporate plan for 2024-25](#) (the "Plan"). The Plan provides coverage of the functions of the ATO, the Tax Practitioners Board ("TPB") and the Australian Charities and Not-for-profits Commission ("ACNC"). It sets out key activities, capabilities, partners, enterprise risks and the Commissioner's responsibilities.

The headlines to the ATO's key focus areas outlined in the Plan were:

- Strengthening debt collection;
- Enhancing counter fraud measures;
- Sustaining multinational and large taxpayer performance;
- Enhancing the ATO's cybersecurity;
- Strengthening the value of data and digital; and
- Blueprinting a future small business digitalised tax experience.

### **Appointment to Board of Taxation announced**

The Government has [announced](#) the re-appointment of Ian Kellock as a part-time member of the Board of Taxation for a three-year period.

A member of the Board since 12 May 2021, Mr Kellock is a tax Partner at Ashurst with more than 25 years' experience as a tax professional and with expertise on a range of issues such as mergers and acquisitions, corporate restructures, financing and funds.

### **TPB register enhanced**

The TPB has issued a [media release](#) in relation to its enhanced public register. The enhancements follow recommendations arising from the Independent Review of the Tax Practitioners Board - [final report](#) released in 2020.

The TPB Register now publishes additional information, such as past names, more detailed information about any integrity or misconduct issues and TPB sanctions imposed (which will now appear for longer), and details of matters being considered by tribunals or the courts. The Register also displays certain unregistered entities and individuals who offer services illegally.

### **\$1.8m fine for providing tax agent services whilst unregistered**

The Federal Court has "fined" an individual \$1.8m for preparing and lodging tax returns whilst not a registered tax agent.

The individual (Mr Van Dyke) was a Radio Traffic Controller who had never been a registered tax agent and had never applied to be registered as a tax agent. However, between about 29 September 2019 and 11 July 2023, he prepared and lodged original and amended income tax returns for taxpayers for a fee (\$500 for each return lodged). In total, he earned \$1.658m (which he did not declare in his own income tax returns).

Mr Van Dyke admitted to 3,359 contraventions of s 50-5(1) of the Tax Agent Services Act 2009 (TASA) by preparing and lodging income tax returns for taxpayers, for a fee or other reward, whilst not a registered tax agent. In deciding the appropriate civil penalty, the Federal Court said that, to serve the purpose of deterrence, the civil penalties must be more than the profit made by Mr Van Dyke. Ultimately, the Court settled on a penalty of \$1.8m, stating that this was the minimum that could be imposed. The Federal Court's decision is reported as *Tax Practitioners Board v Van Dyke* [2024] FCA 899 (14 August 2024).

## HECS/HELP debts: changes to indexation rate calculation

The [Universities Accord \(Student Support and Other Measures\) Bill 2024](#) has been introduced into the House of Reps. Among other things, it will implement previously announced measures to change the way that indexation is applied to HELP debts.

Specifically, the Bill will amend the Higher Education Support Act 2003 to change how a person's indexation rate is calculated by:

- capping the HELP indexation rate to be the lower of either the Consumer Price Index (CPI) or the Wage Price Index (WPI); and
- providing an indexation credit to people's HELP accounts to ensure the new HELP indexation cap has effect from 1 June 2023.

In other words, where the WPI is lower than the CPI, the WPI will be used to determine the indexation factor. The intention is to ensure that outstanding loans never grow faster than average wages.

## GST: sunscreen products

The ATO has released [Draft GSTD 2024/D2](#) on when the supply of a sunscreen product is GST free. The supply will be GST-free if the product is "of a kind of sunscreen preparation for dermal application", has a SPF of 15 or more, must be included on the ARTG and is marketed principally for use as sunscreen.

According to the ATO, marketing statements that a sunscreen product can aid in preventing premature skin ageing, solar keratosis and sunspots, and may reduce the risk of, or assist in preventing, some skin cancers are consistent with use of the product as sunscreen. However, descriptions of products as multi-use or multi-functional, either explicitly or through descriptors such as "2-in-1", "3-in-1" or "dual action", are indicative of products that are not marketed principally for use as sunscreen. Other terms that "strongly indicate" a product is not being marketed principally for use as sunscreen include BB cream, CC cream, foundation, make-up, insect repellent, "full or medium coverage", "reverse the signs of ageing" and "correct the appearance of blemished skin".

Draft GSTD 2024/D2 replaces the following product classification issues listed in the Pharmaceutical Health Forum - issues register, which have now been withdrawn:

- [GSTII PH5: What are 'sunscreen preparations for dermal application'?](#)
- [GSTII PH6: When is a sunscreen preparation marketed principally as a sunscreen?](#)

**Proposed date of effect:** retrospective.

**Comments** on the draft are due by 13 September 2024.

## ATO Updates

### Changes to promoter penalty laws

Recent legislative changes to promoter penalty laws effective from 1 July 2024 include:

- increasing the maximum penalties for promoters of unlawful tax schemes to \$780 million
- increasing the time limit for the ATO to bring Federal Court proceedings on promoter penalties from 4 years to 6 years after the conduct occurred
- expanding the scope of schemes to which the laws apply
- changing the definition of when an entity is a 'promoter' of a 'tax exploitation scheme'.

On 21 August the ATO will update [Promoter penalty laws](#) web content and also publish the updated Law Administration Practice Statement [PS LA 2021/1 Application of the promoter penalty laws](#) reflecting the recent changes.

The ATO will be issuing communications to tax professionals, businesses and the community to inform them of the changes.

### Update on the ATO's new R&D tax incentive transparency report

The ATO will publish their first annual *Report of data about research and development tax incentive entities* in late September 2024. The report will contain specific data about research and development (R&D) entities that claimed the R&D tax incentive (R&DTI) for the 2021–22 income year.

Over the last year, the ATO has sent several emails to R&D entities (and their tax agents) that will have their data published in this first report, advising the entities of the reporting measure and providing an opportunity to lodge an amendment if they needed to correct their R&DTI claim.

The ATO's R&DTI forms and calculator have also been updated so future claimants should be aware that their data will be reported.

### What's in the report

The report lists companies in various industries taking up the opportunity provided by the R&DTI to develop new knowledge. It will have 2 components: the data published on [data.gov.au](#), and an analysis of the data to be published on our website.

The ATO has completed a thorough data assurance process to ensure the accuracy of the data that's included in the report.

The [R&D tax transparency reports](#) webpage provides detailed information on:

- the purpose of report

- what data is and isn't included
- the ATO's data assurance process
- ATO data sources.

### ATO webinar recordings now available: Personal services business

Recordings of the ATO's recent webinar series: Personal services business and what you need to know ([Part 1](#) & [Part 2](#)) are now available.

Both webinars address common misconceptions about how to treat personal services income (PSI) when qualifying as a personal services business (PSB). They also cover the taxation rulings to consider, how Part IVA may apply when operating a PSB and what may attract the ATO's concern to review.

See webinar slides: [PSB Webinar Part 1](#) and [PSB Webinar Part 2](#).

### Consultation opportunities

#### *Draft guidance on section 99B*

The ATO recently published draft taxation determination (TD) and draft practical compliance guideline (PCG) on section 99B of the *Income Tax Assessment Act 1936* for consultation.

Section 99B should be considered where a resident beneficiary receives a payment or benefit from a trust that accumulated property while the trust was a non-resident of Australia for tax purposes.

[Draft Practical Compliance Guideline PCG 2024/D1](#) aims to provide guidance and certainty on:

- common scenarios where section 99B may need to be considered
- the practical aspects of record keeping evidencing that an exception in subsection 99B(2) applies to reduce the amount that section 99B would otherwise include in assessable income
- the ATO's compliance approach with respect to non-resident deceased estates and the use of a non-resident trust's property.

In conjunction with the PCG, [draft Taxation Determination TD 2024/D2](#) clarifies the ATOs view on the hypothetical resident taxpayer test in paragraphs 99B(2)(a) and (b), and in particular:

- the characteristics of the hypothetical resident taxpayer
- the characteristics of, and circumstances giving rise to, the 'amount' referred to in the hypothetical resident taxpayer test
- the relevance of the source of the amount paid to or applied for the beneficiary.

The consultation period is open until **28 August 2024**.

#### *GSTD 2024/D2: Supplies of sunscreen*

The ATO are seeking feedback on the draft Goods and Services Tax Determination [GSTD 2024/D2: supplies of sunscreen](#).

The determination provides clear guidance to help determine when sunscreen products are 'marketed principally for use as sunscreen'. This is particularly relevant for contemporary



products with dual features, for example, sunscreens with moisturiser or tint. It also makes it easier for suppliers of sunscreen products across a supply chain to determine the GST classification of their product.

Feedback on the draft determination is open until **Friday 13 September 2024**.

Practitioners are encouraged to [subscribe](#) to *Tax professionals newsletters* for the latest [Tax professionals newsroom](#) articles and other key updates from the ATO.

## **SUPERANNUATION**

### **ASIC - how to deliver better retirement outcomes**

ASIC Commissioner Simone Constant's [speech](#) at the Conexus Institute Retirement Conference emphasised the need for better retirement outcomes and member services in Australia's superannuation industry.

ASIC highlighted good examples occurring across the industry, and recognised the significant investment and effort to make that happen, but sees the examples as outliers. The regulator expects super funds to communicate proactively and transparently, be accountable, deal responsibly with members' money, and consistently deliver value and services meeting fair standards.

### **Regulations to rectify transfer balance account issues for veterans**

The [Income Tax Assessment Amendment \(Transfer Balance Account Value for Certain Superannuation Income Streams\) Regulations 2024](#) ("the Regulations") prescribe new rules for invalidity pensions under the Military Superannuation and Benefits Scheme (MSBS) and the Defence Force Retirement and Death Benefits Scheme (DFRDB) impacted by the Federal Court decision in *FCT v Douglas* [2020] FCAFC 220 ("the Douglas decision").

The Regulations prescribe:

- a special value for transfer balance credit reporting purposes under new s 294-135.01(6) - (9) ITAR 2021; and
- provide for a transfer balance debit to arise under new s 294-80.02B when these income streams cease and the cessation does not otherwise result in a transfer balance debit.

The regulations commence on 17 August 2024 with retrospective operation from 1 July 2017.

#### **Transfer balance credit**

The regulations apply where scheme trustees had not reported the income stream as a superannuation income stream for transfer balance cap purposes because they did not meet relevant legislative criteria prior to the Douglas decision. These pensions have subsequently been prescribed as capped defined benefit income streams and are superannuation income streams as a result of the Government's legislative response to the Douglas decision.

The special value for the transfer balance credit for these superannuation income streams is prescribed as the lesser of:

- annual entitlement multiplied by 16; or
- annual entitlement multiplied by the term remaining, if the income stream has a fixed term.

This ensures that the special value for these superannuation income streams uses the method that is most advantageous to the member. The special value of the superannuation income stream is calculated from the later of 1 July 2017 or the date that the superannuation income stream commenced.

## **Transfer balance debit**

The regulations also provide for a transfer balance debit to be applied if one of these superannuation income streams ceases and the cessation does not otherwise result in a transfer balance debit. The value of the transfer balance debit will be equal to the value of the original transfer balance credit, less certain other transfer balance debits that have arisen prior to cessation.

The transfer balance debit will apply to a non-lifetime permanent incapacity pension in a scheme that had not been reporting for transfer balance cap purposes for these pension types prior to 17 August 2024.

This change will address an unintended consequence of the government's legislative response to the Douglas decision, which resulted in these non-lifetime permanent incapacity pensions having to be reported as superannuation income streams for transfer balance cap purposes. It will ensure that the person does not have their transfer balance cap space taken up by that pension if it ceases, and is not adversely affected when commencing a new retirement phase superannuation income stream.

## **FINANCIAL SERVICES**

### **APRA shares further insights on common cyber control weaknesses**

APRA has written to all regulated entities to provide further insights and guidance on common cyber control weaknesses. [The letter](#) is part of APRA's ongoing supervision of cyber resilience across industry, and follows a [previous letter](#) on the security and adequacy of back-ups.

Today's letter details the common issues observed in terms of security in configuration management, privileged access management and security testing:

- some IT assets deviate from the approved secure baseline configuration;
- gaps in the process of identifying, escalating, and remediating IT assets that deviate from the secure baseline have resulted in vulnerabilities;
- lack of a complete and accurate inventory of all privileged accounts, including both user and system accounts;
- privileged access to information assets is not always approved and granted based on a valid business need and for a specified time;



- privileged access credentials may not always be strong and securely stored in approved solutions;
- inadequate and insufficient testing coverage, often with repeated testing of the same limited set of IT assets; and
- inadequate management and oversight of security test findings.

APRA expects regulated entities to review their control environment against these common weaknesses and address any identified gaps promptly.

## Financial advice - Request for member input!

To gather valuable insights from Accountants, the FAAA is planning to organise some focus groups to gather valuable feedback and perspectives on:

1. Promoting the financial advice profession to consumers,
2. Promoting the financial advice profession to prospective students, and
3. Promoting the value of the CERTIFIED FINANCIAL PLANNER® (CFP) designation to accountants who may be looking for high quality financial advice referral partners for their clients.

Ideally, the FAAA is looking for accountants who are holders of a designation, who are not part of an integrated planning and wealth firm, and are based in or close to the Sydney CBD (as they would ideally like these sessions to be face-to-face).

If you are interested in participating in these focus groups kindly send us an email ([ipaadvocacy@publicaccountants.org.au](mailto:ipaadvocacy@publicaccountants.org.au)) authorising the IPA to share your contact details with the FAAA.

## **REGULATOR NEWS**

### **ASIC News**

ASIC has released the following updates in its Newsroom section:

- [15 August 2024 – MEDIA RELEASE – Sydney labour hire services director disqualified for five years](#) – ASIC has disqualified Gregory Lavopa, former director of Premier Holding Group Pty Ltd (deregistered), Byron Resourcing Pty Ltd and Project Service Holdings Pty Ltd (deregistered), from managing corporations for five years. The three collapsed companies owed a total of \$4.1 million to small businesses and government agencies. ASIC drew on the reports of each of the liquidators and found that his management did not meet the standards required of a director in Australia he failed to lodge documents with the Australian Taxation Office, assist a liquidator, maintain sufficient business records or make allowance for statutory liabilities.
- [15 August 2024 – MEDIA RELEASE – ASIC disqualifies VIC director for maximum five years](#) – ASIC has disqualified Richard Sparreboom, former director of two liquidated companies, Sparrk Logistics Pty Ltd and Hedgehog Logistics Solutions Pty Ltd. The two failed companies and Hedgehog Group Holdings Pty Ltd owed a total of over \$11 million to creditors including former employees. ASIC found that because among other things he acted improperly and failed to discharge his duties as director by failing

to lodge documents as required with the Australian Taxation Office, destroying books and records and producing false ones, and allowed two of the companies to continue to trade while there were indicators that the companies were insolvent.

- [14 August 2024 – SPEECH – A guide to 'good': delivering better retirement outcomes and member services for Australians](#) – Ms Simone Constant, ASIC Commissioner, presented to the Conexus Institute Retirement Conference. She observed that in the last year, a lot of ASIC's enforcement work had been directed to rectifying failures of superannuation funds and emphasised the need for funds to be transparent, accountable and responsive to member needs.
- [14 August 2024 – MEDIA RELEASE – ASIC sues ASX for alleged misleading statements](#) – ASIC has instituted proceedings in the Federal Court against ASX Ltd for allegedly making misleading statements about the Clearing House Electronic Subregister System replacement project. It alleges that ASX announcements in 2022 were misleading and deceptive in that they implied the project was on track to meet future milestones when in fact it was not tracking to plan and ASX had no reasonable basis for making the implication. The project was paused in November 2022, with significant cost to ASX and market participants.

## APRA news

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

- [15 August 2024 – MEDIA RELEASES – APRA shares further insights on common cyber control weaknesses](#) – APRA has written to all entities that it regulates to give additional observation and guidance about common cyber weaknesses in security management, privileged access management and security testing. Regulated entities should review their IT frameworks against these issues and address shortcomings as a priority.
- [14 August 2024 – SPEECHES – APRA Deputy Chair Margaret Cole – Speech to the Conexus Retirement Conference](#) – Ms Cole observed that superannuation members in different phases have different needs and the overall focus of the industry must change as more members move into the retirement phase. APRA recently updated Prudential Standard SPS 515 which now requires funds to review the effectiveness and adequacy of their retirement strategies every three years at least and to report to members annually about their outcomes of the strategies. She added that APRA and ASIC would work together to improve the superannuation system in Australia.
- [14 August 2024 – MEDIA RELEASES – APRA imposes additional licence conditions on the trustees for Cbus and BUSSQ](#) – APRA has responded to concerns about the fitness and propriety of fund expenditure management by United Super Pty Ltd and BUSS (Queensland) Pty Ltd and added licence conditions for each. They must engage an independent expert to review their performance against Prudential Standard SPS 520 Fit and Proper and the trustees' compliance with the duty to act in the beneficiaries' best interests in making expenditure decisions.

## Legislative amendments and proposals, government announcements and consultations

- [12 August 2024 – CONSULTATION – Government response to the Continuous Disclosure Review](#) – The Government has released its response to the Treasury consultation of the review of the effectiveness of amendments to continuous disclosure

legislation which took effect in 2021. The review found that the amendments have had a negative impact on ASIC's enforcement of the law and have had little impact on class actions. It made six recommendations; the Government has agreed to four and noted the other two. Further legislative amendments are likely to follow.

## Scams Awareness Week – share a story, stop a scam

The Australian Taxation Office (ATO) have published the following information on their website:

### **‘Does your business know how to spot and report an ATO impersonation scam?’**

This annual reminder is a perfect opportunity to check how ‘scam aware’ your business is.

Since January, nearly 80% of all scams reported to us relate to emails. While scams are becoming more sophisticated, there are red flags you can share to help your employees quickly spot a fake email.

### **Remind your employees to:**

- look out for messages containing a link that asks you to login to a government service such as myGov. The ATO recently removed all hyperlinks in unsolicited, outbound SMS, so if you've received a message from the ATO that contains a link, it's a scam.
- be careful of requests for personal or financial information, especially if they claim to be urgent or time sensitive. We never ask for passwords, account numbers, or other sensitive data via email, SMS or unsolicited phone calls.
- be wary of downloading attachments or opening email links. They can infect your computer with malware and lead to your business's information being stolen and used to commit fraud.
- watch out for unusual transactions or interactions on your accounts. If you're unsure whether contact from the ATO is genuine, don't engage with it and [verify](#) it. You can also look at our [scam alerts](#).

Many people who have a scam experience never report it. By reporting and sharing your ATO scam experience with us, you're helping others see the warning signs and avoid these scams themselves.

This Scams Awareness Week, let's share our scam stories and empower others to do the same. The more we hear, the better equipped we are to prevent Australians from being scammed.

If you see a suspicious email claiming to be from us, send it to [reportscams@ato.gov.au](mailto:reportscams@ato.gov.au).

For more information, visit [ato.gov.au/scams](https://ato.gov.au/scams)