

## **TAXATION**

### **Decision impact statement: Merchant and FCT [2024] AATA 1102**

The ATO has issued a DIS in relation to the Merchant case, in that case the AAT set aside an ATO decision to disqualify an individual from acting as a trustee.

### **Latest issue of ATO's interpretationNOW! Released**

The ATO has released Episode 111 of its series on statutory interpretation entitled interpretationNOW!.

### **Draft updates: GST rulings on ATM service fees and financial supplies**

The ATO has released Draft updates on GSTR 2014/2 and GSTR 2002/2 on the GST treatment of ATM service fees and financial supplies.

### **ATO NFP self-review return**

'The new reporting requirements for self-assessing income tax exempt non-charitable not-for-profits (NFPs) with an active Australian business number (ABN) may appear complex'. The ATO have published a key facts sheet which will assist NFPs to understand their obligations.

## **SUPERANNUATION**

### **Notes from the latest Superannuation CEO Roundtables released**

ASIC and APRA have released the public notes from the latest Superannuation CEO Roundtables held on 18 June 2024 and 16 July 2024.

## **FINANCIAL SERVICES**

### **APRA extends deadline for smaller financial institutions under CPS 230**

APRA has amended Prudential Standard CPS 230 Operational Risk Management (CPS 230).

### **APRA consultation: minor updates to the prudential framework**

APRA has released a number of minor updates to the prudential framework for consultation.

## **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.

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## **TAXATION**

### **Decision impact statement: Merchant and FCT [2024] AATA 1102**

The ATO has issued a [Decision Impact Statement](#) ("DIS") in relation to Merchant and FCT [2024] AATA 1102. In that case the AAT set aside an ATO decision to disqualify an individual from acting as a trustee, or as a responsible officer of a corporate trustee, of a superannuation entity despite serious breaches of the SIS Act.

In relation to the breaches of the SIS Act, the Tribunal's decision that they were serious breaches is consistent with the Commissioner's position.

In relation to the risk of future non-compliance by the Applicant, the ATO considers the Tribunal's conclusion that it was unlikely based on the particular facts of the case, is consistent with the Commissioner's approach as outlined in Law Administration Practice Statement PS LA 2006/17 Self-managed superannuation funds - disqualification of individuals to prohibit them from acting as a trustee of a self-managed superannuation fund. Based on its particular circumstances, the Commissioner had maintained that the nature, number and seriousness of contraventions by the Applicant were sufficient grounds for disqualification under subsection 126A(2) of the SIS Act.

However, the ATO accepts that, when considering the Tribunal's holistic consideration of all the particular facts as they applied to the Applicant, the decision that the Applicant was unlikely to be a future compliance risk and setting aside the disqualification of the Applicant, was reasonably available to the Tribunal on the facts before it. The ATO takes the view that this decision has limited broader application beyond the "peculiar circumstances of this case" as:

1. the approach taken by the Tribunal to the issues in this matter is consistent with the principles outlined in PS LA 2006/17; and
2. the decision does not displace the long-standing principle that the primary responsibility for operating an SMSF rests with the individual trustees or the directors of the corporate trustee nor restricts other consequences of contravening a civil penalty provision.

## Latest issue of ATO's interpretationNOW! Released

The ATO has released [Episode 111](#) of its series on statutory interpretation entitled interpretationNOW!.

## Draft updates: GST rulings on ATM service fees and financial supplies

The ATO has issued a draft update to [GSTR 2014/2](#) (GST: treatment of ATM service fees, credit card surcharges and debit card surcharges). The draft sets out the ATO's revised views on the meaning of "ATM" and "ATM services" in light of the decision in Banktech Group Pty Ltd and FCT [2023] AATA 3850. In that case, the AAT found that the supply of cash withdrawals via cash dispensing equipment in hotels and clubs were not supplies of ATM services within the ordinary meaning of the term. Consistent with the AAT's decision, the ATO now says that the term "ATM" has its ordinary meaning and that 3 requirements need to be satisfied for a facility, machine or device to be an ATM:

- its primary purpose and function is to provide banking facilities to account holders in relation to accounts with authorised deposit-taking institutions or overseas equivalent financial institutions;
- it dispenses cash to account holders upon request; and
- it is properly characterised as an ATM.

The draft includes a non-exhaustive list of factors that indicate whether a device is more likely to be characterised as an ATM.

A previous draft update (GSTR 2014/2DC1, issued in March 2023) was withdrawn as the proposed changes in that draft have been incorporated into the new draft.

The ATO also released a draft update to [GSTR 2002/2](#) (GST treatment of financial supplies and related supplies and acquisitions). This draft would replace the definition of "ATM", in line with the proposed amendments to GSTR 2014/2.

**Proposed date of effect:** retrospective.

**Comments** on the drafts are due by 18 October 2024.

## ATO NFP self-review return

From 2023–24 income year, ABN-registered non-charitable NFPs need to lodge an annual NFP self-review return confirming income tax exemption status.

The return contains 3 sections used to substantiate NFP eligibility for income tax exemption based on purpose and activities:

- Organisational details, including one question about estimating the gross revenue range as small, medium or large.
- Five questions to test eligibility.

- Summary and declaration.

The new reporting requirement will not apply to:

- registered charities endorsed by the ATO as income tax exempt
- certain types of government entities
- taxable NFPs

You can read more about this in this two-page [fact sheet](#).

## **SUPERANNUATION**

### **Notes from the latest Superannuation CEO Roundtables released**

ASIC and APRA have released the [public notes](#) from the latest Superannuation CEO Roundtables held on 18 June 2024 and 16 July 2024. Attended by 12 superannuation trustee CEOs and executives, representing a broad cross-section of the industry, the events were themed around superannuation funds as investors of members' money.

## **FINANCIAL SERVICES**

### **APRA extends deadline for smaller financial institutions under CPS 230**

APRA has amended [Prudential Standard CPS 230 Operational Risk Management \(CPS 230\)](#). This change, registered as [Banking, Insurance, Life Insurance, Health Insurance and Superannuation \(prudential standard\) variation No. 1 of 2024](#), grants an additional 12 months for compliance to entities classified as "non-significant financial institutions" ("non-SFIs").

Key points:

- Extended compliance period: Non-SFIs now have until July 1, 2026, to meet requirements related to business continuity and scenario analysis under CPS 230.
- Definition of "non-SFI": For Registrable Superannuation Entity ("RSE") licensees, non-SFI status applies to those with total assets of AUD \$30 billion or less, whether for a single RSE or combined across multiple RSEs.
- APRA's discretion: The regulator retains the authority to determine an RSE as a significant financial institution based on factors such as operational complexity or group membership.
- Scope of CPS 230: The standard sets out requirements to ensure that APRA-regulated entities are resilient to operational risks and disruptions and that risks arising from the use of service providers are managed appropriately.
- Implementation: For entities not qualifying for the extension, CPS 230 will still come into effect on July 1, 2025, as originally planned.

### **APRA consultation: minor updates to the prudential framework**

APRA has released a number of minor updates to the prudential framework for consultation.

The proposed amendments are primarily technical clarifications and do not present any material change in policy settings.

APRA's letter and draft standards and guidance are available on the APRA website at: [Minor updates to the prudential framework](#).

### Impacted documents and industries

- CPS 511 Remuneration - Superannuation; ADIs; Life Insurance; Private Health Insurance
- APS 110 Capital Adequacy - ADIs
- APS 112 Capital Adequacy: Measurement of Capital - ADIs
- APS 116 Capital Adequacy: Market Risk - ADIs
- HPS 110 Capital Adequacy - Private Health Insurance
- HPS 112 Capital Adequacy: Measurement of Capital - Private Health Insurance
- GPG 240 Insurance Risk - General Insurance
- LPG 240 Life Insurance Risk and Life Reinsurance Management - Life Insurance

**Comments** due by 4 October 2024.

## **REGULATOR NEWS**

### **ASIC News**

ASIC has released the following updates in its Newsroom section:

- [6 September 2024 – MEDIA RELEASE – Court appoints receivers and new voluntary administrators to Keystone](#) – The Federal Court has appointed receivers to Keystone Asset management Ltd which was the responsible entity for the Shield Master Fund managed investment scheme. Keystone's directors had appointed voluntary administrators, but the court removed them (as per ASIC's application) and appointed the receivers as administrators as well. ASIC was concerned that having two sets of insolvency practitioners for the company would duplicate work needlessly and result in disagreements between them, reducing the funds left for investors and creditors. The [judgment](#) of Moshinsky J to appoint the receivers is available.
- [6 September 2024 – NEWS ITEM – ASIC releases August 2024 financial adviser exam results](#) – ASIC has released the results of the 26th Financial Advisers Exam cycle from August 2024. Of the 231 people that sat the exam, 62% passed. Since its inception, over 21,000 people have passed the exam to demonstrate their skills and knowledge to gain entry to the profession. The indicative dates for the exams in 2025 are 6 March, 5 June, 7 August, and 6 November.
- [5 September 2024 – NEWS ITEM – ASIC updates misconduct reporting guidance for external administrators and controllers](#) – ASIC has issued the revised version of Regulatory Guide 16 *External administrators and controllers: Reporting of possible offences and misconduct*, taking into account responses to a consultation paper released in April 2024. Included is a dedicated contact point to raise questions about reports of misconduct. The new guidance also clarifies that an external administrator or controller may use their judgment that they should undertake further inquiries to meet their obligations in particular circumstances.

- [5 September 2024 – MEDIA RELEASE – Former Melbourne financial planner Bradley Grimm sentenced to jail for dishonest conduct](#) – Former Melbourne financial planner Bradley Grimm has been convicted in the County Court of Victoria of three counts of dishonest conduct while running a financial services business. In 2015, he transferred funds from two clients' self-managed superannuation funds to three companies of which he was sole director. He also dishonestly transferred shares and convertible notes seven times to a company in which he had a personal interest, without advising his clients. He was sentenced to 18 months' imprisonment. The [judgment](#) of O'Connell J is available.
- [4 September 2024 – MEDIA RELEASE – ASIC wins against Rent4Keeps for overcharging vulnerable consumers on essential household goods](#) – The Federal Court has found the business model used by Rent4Keeps breached the Credit Act. During 2019 its largest franchisee, Darranda Pty Ltd, entered into over 500 "lease" agreements with customers. The Federal Court today found the business model used by Rent4Keeps to sell everyday goods, such as furniture, electronics and whitegoods breached the Credit Act. The court found that they were not leases but credit contracts, meaning that Darranda has breached the 48% per annum interest rate cap under the National Credit Code. The [judgment](#) of Hespe J is available.
- [4 September 2024 – MEDIA RELEASE – ASIC cancels AFS licence of retail OTC derivative issuer FXOpen AU](#) – ASIC has cancelled the Australian financial services licence of FXOpen AU Pty Ltd, after investigations unearthed reasons to be concerned about its capacity to serve its clients and perform supervisory functions. FX Open had held a licence to issue contracts for difference since 2011. ASIC found that FXOpen's lack of compliance with core obligations of holding a licence justified the action to cancel the licence.
- [2 September 2024 – MEDIA RELEASE – Former Courtenay House director sentenced to 11 years imprisonment](#) – In the Supreme Court of New South Wales, Sweeney J sentenced Tony Iervasi, former Director of Courtenay House to 11 years' imprisonment for four counts of dishonest conduct in relation to a financial product or service and operating an unlicensed financial services business. Over six and a half years, he held out to investors that their funds would be traded in foreign exchange and futures markets but monthly amounts paid out were overwhelmingly sourced from new investors. It resulted in a net loss to 585 investors of \$54 million. He pleaded guilty to conducting a Ponzi scheme which resulted in a discount to the sentence.
- [2 September 2024 – NEWS ITEM – ASIC and APRA host Superannuation CEO Roundtables](#) – ASIC and APRA have jointly issued the public notes from the Superannuation CEO roundtables of 18 June and 16 July 2024. The events were co-hosted by APRA and ASIC and were attended 12 superannuation trustees CEOs and executives.
- [2 September 2024 – MEDIA RELEASE – ASIC's Moneysmart calls on super funds to better engage millennials following findings from industry roundtable](#) – A survey by ASIC's Moneysmart indicates that almost half of Australia's millennials think that they are not knowledgeable about maximising their superannuation. ASIC Commissioner Simone Constant urged superannuation funds to consider how they present their products from a consumer perspective.



## APRA news

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

- [6 September 2024 – MEDIA RELEASES – APRA consults on minor updates to the prudential framework for ADIs, insurers and RSE licensees](#) – APRA has commenced a consultation on minor updates to the prudential framework for authorised deposit-taking institutions, general, life and private health insurers and registrable superannuation entity (RSE) licensees. The proposed amendments are mostly technical adjustments. Interested parties may make submissions until 4 October 2024.
- [6 September 2024 – MEDIA RELEASES – APRA seeks disqualification of First Super co-chair Michael O'Connor](#) – APRA has instituted Federal Court proceedings for the civil penalties against Michael O'Connor, a Director and Co-Chair of First Super Pty Ltd, and his disqualification as a director or officer of any corporate trustee or superannuation entity. APRA alleges that he breached director covenants in the *Superannuation Industry (Supervision) Act 1993* (Cth) including the requirement to act honestly, exercise care and diligence, and to act in beneficiaries' best financial interests.
- [2 September 2024 – MEDIA RELEASES – APRA and ASIC release notes on Superannuation CEO Roundtables - June and July 2024](#) – ASIC and APRA have jointly issued the public notes from the Superannuation CEO roundtables of 18 June and 16 July 2024. The events were co-hosted by APRA and ASIC and were attended by 12 superannuation trustees CEOs and executives.