

TAXATION

GIC and SIC no longer deductible: exposure draft

Exposure draft legislation proposing to make the general interest charge (GIC) and shortfall interest charge (SIC) no longer deductible from 1 July 2025 has been released.

Deductibility of financial advice fees paid by non-business individuals

Taxation Determination TD 2024/7 considers the deductibility of financial advice fees incurred by individuals not carrying on an investment business.

Clarification to certain tax practitioner code of conduct: draft legislative instrument

A draft legislative instrument has been issued proposing to clarify sections 15 and 45 of the Code of Conduct to provide assurance about the operation of the new obligations.

ATO to introduce supplementary annual GST return

The ATO has said it will introduce an annual GST return for large GST businesses who have received a GST assurance, initially trialling the new return via a pilot.

Consultation on draft guidance for personal service businesses

'The ATO is seeking comments on draft guidance to help personal services business operators earning personal services income through a personal services entity understand how they can meet their tax obligations'.

SUPERANNUATION

APRA's Comprehensive Product Performance Package released

APRA has released its CPPP - a package of product performance metrics underpinning the legislated performance tests and APRA's superannuation heatmaps.

Fraudulent applications for early release of super leads to jailtime

The ATO has issued a joint media release with the AFP as part of the Serious Financial Crime Taskforce in relation to a WA woman jailed for superannuation fraud.

FINANCIAL SERVICES

AFS reportable situations relief extension: instrument registered

ASIC has registered the ASIC Corporations and Credit (Breach Reporting-Reportable Situations) Instrument 2024/620 replacing LI 2021/716 and LI 2021/801.

AFS personal advice record keeping requirements: instrument registered

ASIC Corporations (Record-Keeping Requirements for Australian Financial Services Licensees when Giving Personal Advice) Instrument 2024/508 has been registered.

\$12.9m penalty for misleading ESG claims by Vanguard

The highest penalty yet for greenwashing misconduct has been imposed on Vanguard Investments Australia by the Federal Court.

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

GIC and SIC no longer deductible: exposure draft

Treasury has issued the exposure draft of the [Treasury Laws Amendment Bill 2024: Denying Deductions for Interest Charges](#). This follows the Government's announcement as part of the 2023-24 Mid-Year Economic and Fiscal Outlook, that it will deny deductions for general interest charge ("GIC") and shortfall interest charge ("SIC") incurred on or after 1 July 2025. The draft Bill proposes to amend s 25-5 and 26-5 of the ITAA 1997 to that effect.

Taxpayers will continue to have the ability to apply to the ATO and request the remission of any GIC or SIC payable. The Commissioner has the discretion to remit the interest charges where it is fair and reasonable to do so, taking into consideration the circumstances which led to the delayed payment of tax liabilities or the tax shortfall.

As GIC and SIC will no longer be deductible, the remittance of the interest charges will no

longer be considered an assessable recoupment as provided under subsection 20-20(3) of the ITAA 1997.

DATE OF EFFECT: The amendments apply to SIC and GIC incurred in income years commencing on or after 1 July 2025.

The IPA will be making a submission. Kindly provide your input to ipaadvocacy@publicaccountants.org.au by **Tuesday, 8 October 2024**.

Deductibility of financial advice fees paid by non-business individuals

[Taxation Determination TD 2024/7](#) considers the deductibility of financial advice fees incurred by individuals not carrying on an investment business. It updates and replaces TD 95/60, which was withdrawn when TD 2024/7 was released in draft form.

The ATO maintains its view that fees for financial advice on a proposed investment (prior to acquiring the asset) are not deductible under s 8-1 ITAA 1997 as the expenditure is associated with putting the income-earning investment in place, ie the fees are either incurred too soon and/or are capital in nature. To be deductible under s 8-1, the ATO says the fees must be incurred on a "regular or recurrent basis" for an existing or ongoing income-producing investment.

In relation to s 25-5 ITAA 1997 (which allows a deduction for advice relating to managing one's tax affairs), the ATO accepts that "tax (financial) advice" as defined in the Tax Agent Services Act 2009 comes within the meaning of "tax affairs". However, the ATO makes it clear that not all advice provided by a financial adviser would be classified as tax (financial) advice.

Clarification to certain tax practitioner code of conduct: draft legislative instrument

The draft legislative instrument entitled [Tax Agent Services \(Code of Professional Conduct\) Amendment \(Measures No. 2\) Determination 2024](#) (the "Instrument") has been issued. The Instrument proposes to amend sections 15 (about false or misleading statements) and 45 (about keeping clients informed of relevant matters) of the [Tax Agent Services \(Code of Professional Conduct\) Determination 2024](#) ("Determination") to clarify the provisions to provide assurance to tax practitioners about how the new obligations are intended to operate.

As background, the Determination was registered on 2 July 2024 which sets out additional professional and ethical obligations of tax practitioners under s 30-10 of the Tax Agent Services Act 2009. The Determination commenced on 1 August 2024. The Determination was later amended so that the obligations under the enhanced Code of Professional Conduct ("Code") now apply from 1 January 2025 for larger firms and from 1 July 2025 for smaller firms.

DATE OF EFFECT: The proposed amendments to the Determination apply from 1 January 2025 for larger firms and 1 July 2025 for smaller firms.

SUBMISSIONS are due by 2 October 2024.

ATO to introduce supplementary annual GST return

In order to better engage with the Top 100 and Top 1,000 public and multinational business taxpayers for GST, the ATO said that it will introduce an annual GST return for large businesses who have received a GST assurance review.

In a [bulletin release](#), the ATO said the information provided in the annual return will enable more targeted and less resource intensive justified trust reviews for many taxpayers. The ATO also said that the return is straightforward to complete and targeted at understanding how taxpayers have actioned recommendations from our earlier review, and key updates on governance and GST compliance for the year.

The ATO will initially trial the new return through a pilot, to commence in the next 6 months, where it will work with a small number of Top 100 and Top 1,000 taxpayers to respond to the return questions as part of their assurance reviews.

The ATO expects that taxpayers will need to start lodging the return from the 2024-25 financial year, with the first lodgments for early balancers due on 21 August 2025.

The ATO also said that it will be updating its web guidance "soon" with a copy of the return and with further detail on who is required to lodge.

Consultation on draft guidance for personal service businesses

'The draft Practical Compliance Guideline ([PCG2024/D2](#)) clarifies the types of alienation arrangements the ATO considers to be of 'low' or 'higher' risk of the general anti-avoidance provisions of income tax law (Part IVA) applying and the likelihood of us reviewing those arrangements.

The ATO have advised that 'draft Guideline explains when we will be more likely to have cause to apply compliance resources to consider the potential application of Part IVA of the Income Tax Assessment Act 1936 (the general anti-avoidance provisions of the income tax law) to an alienation arrangement where personal services income (PSI) of an individual is derived through a personal services entity (PSE) that is conducting a personal services business (PSB).'

For more information, visit [Personal services businesses and Part IVA of the Income Tax Assessment Act 1936](#). The IPA will be making a submission. Kindly provide your input to ipaadvocacy@publicaccountants.org.au by **Tuesday, 8 October 2024**.

SUPERANNUATION

APRA's Comprehensive Product Performance Package released

As part of its efforts to increase transparency in superannuation, APRA has released its [Comprehensive Product Performance Package](#) ("CPPP"), a package of product performance metrics underpinning the legislated performance test and APRA's superannuation heatmaps.

The CPPP covers 876 MySuper and choice products which, collectively, represent most types of investment offerings for accumulation members. The package analyses investment returns and fees for:

- MySuper: Default superannuation products with single, diversified investment strategies.
- Trustee directed products - non-platform: Standalone diversified investment offerings where the trustee or a connected entity of the trustee has control over the management of investments and/or sets the strategic asset allocations of the product offering.
- Trustee directed products - platform: Diversified investment offerings that form part of a larger investment structure where members can create bespoke portfolios. The trustee or a connected entity of the trustee has control over the management of investments and/or sets the strategic asset allocations of these product offerings.
- Externally directed products - non-platform: Standalone diversified investment offerings where the trustee or a connected entity of the trustee has no control over the management of investments and/or sets the strategic asset allocations of the product offering.

The package includes an insights paper, statistical publications and interactive product performance lookup tools.

A notable highlight from the package is that there was a significant drop in the number of products that failed the performance test in 2024 (37 down from 97) with 52 products that failed the 2023 test exiting the market.

Fraudulent applications for early release of super leads to jailtime

The ATO has issued a [media release](#) in relation to a WA woman who was recently sentenced by the Perth District Court to 3 years' imprisonment with a non-parole period of 18 months, after pleading guilty to 30 charges of fraud and attempted fraud.

The woman submitted 30 false severe financial hardship claims for herself and 24 other people to access superannuation payments of \$10,000 each. In relation to her own applications, after successfully receiving a hardship payment from her superannuation account, she transferred the remaining balance into another fund and made another hardship application.

The woman was paid a fee by each person whose applications she created and submitted. More than \$202,000 was released to her and others as a result of the fraudulent applications she submitted.

FINANCIAL SERVICES

AFS reportable situations relief extension: instrument registered

ASIC has registered the [ASIC Corporations and Credit \(Breach Reporting-Reportable Situations\) Instrument 2024/620](#) ("Instrument"). The Instrument remakes and consolidates the following instruments that were to expire on 5 and 1 October 2024 respectively, for a five-year period until the start of 1 October 2029:

- ASIC Corporations and Credit (Breach Reporting -- Reportable Situations) Instrument 2021/716 ("LI 2021/716"); and
- ASIC Credit (Breach Reporting -- Prescribed Commonwealth Legislation) Instrument 2021/801 ("LI 2021/801").

LI 2021/716 and LI 2021/801 prevented unintended regulatory and reporting burdens from being imposed upon Australian financial service ("AFS") licensees as part of the breach reporting obligation (reportable situations regime) in Subdivision B, Division 3 of Part 7.6 of the Corporations Act 2001 ("Act"). These burdens were due to initially unforeseen interactions between the Act, National Consumer Credit Protection Act 2009 ("Credit Act") and ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 ("LI 2020/98") following the enactment of the Financial Sector Reform (Hayne Royal Commission Response) Act 2020.

By preserving the notional modifications to the Act and Credit Act that LI 2021/716 and LI 2021/801 made, the Instrument also continues to exclude certain minor, technical, or inadvertent non-compliance with standards set out in LI 2020/98 from the categories of situations that are deemed to be 'significant' breaches of core obligations.

The [ASIC Corporations and Credit \(Repeal\) Instrument 2024/507](#) was also registered to repeal LI 2021/716 and LI 2021/801.

AFS personal advice record keeping requirements: instrument registered

ASIC has registered the [ASIC Corporations \(Record-Keeping Requirements for Australian Financial Services Licensees when Giving Personal Advice\) Instrument 2024/508](#) ("Instrument"). The Instrument continues the requirements in Class Order [CO 14/923] ("[CO 14/923]") which imposes specific record-keeping requirements for Australian Financial Service ("AFS") licensees when the licensee or their representative (including an advice provider) give personal advice to retail clients. [CO 14/923] had sunsetted on 1 October 2024 and this instrument replaces it with minimal changes.

The [ASIC Corporations and Credit \(Repeal\) Instrument 2024/507](#) was also registered to repeal [CO 14/923].

\$12.9m penalty for misleading ESG claims by Vanguard

The Federal Court has ordered Vanguard Investments Australia to pay a \$12.9 million penalty for making misleading claims about environmental, social and governance (ESG) exclusionary screens. The penalty imposed is the highest yet for greenwashing misconduct.

The following materials are available on the ASIC website:

- ASIC's Vanguard greenwashing action results in record \$12.9 million penalty [24-213MR](#)

- [ASIC v Vanguard Investments Australia Ltd \(No 2\)](#) [2024] FCA 1086 (Federal Court, O'Bryan J, 25 September 2024)
- ASIC wins first greenwashing civil penalty action against Vanguard [24-061MR](#)
- [ASIC v Vanguard Investments Australia Ltd](#) [2024] FCA 308 (Federal Court, O'Bryan J, 28 March 2024).

REGULATOR NEWS

ASIC News

ASIC has released the following updates in its Newsroom section:

- [26 September 2024 – NEWS ITEM – ASIC extends Consultation Agreement with Financial Markets Standards Board](#) – ASIC has announced that its Consultation Agreement with the Financial Markets Standards Board has been extended to 25 September 2026. The FMSB is an industry-led, member-funded, global standards body for wholesale financial markets. The agreement enables ASIC to have input to and benefit from the development of global industry standards.
- [26 September 2024 – NEWS ITEM – ASIC to allow instrument for primary production managed investment schemes to expire](#) – Following a lack of submissions in response to its consultation on whether minimum standards are still required for land holdings by responsible entities of primary production managed investment schemes, the requirements are withdrawn from 1 October 2024. However, managed investment schemes continue to be governed by Chapter 5C of the *Corporations Act 2001* (Cth).
- [26 September 2024 – NEWS ITEM – ASIC Annual Forum 2024: Speakers and sessions announced](#) – ASIC has released the program and list of speakers for its Annual Forum to be held at the Hilton Hotel in Sydney on 14-15 November 2024.
- [25 September 2024 – MEDIA RELEASE – ASIC's Vanguard greenwashing action results in record \\$12.9 million penalty](#) – In the Federal Court of Australia, O'Bryan J imposed a \$12.9 million penalty on Vanguard Investments Australia after it admitted to misleading investors that its funds would be screened to exclude investments in bond issues for investments in fossil fuels. Vanguard had developed the fund in response to a market demand for "ethical" products. The [judgment](#) is available.
- [25 September 2024 – MEDIA RELEASE – Former Linchpin Capital director appeal dismissed by Full Federal Court](#) – The Full Federal Court has dismissed an appeal by Peter Daly, a former director of Linchpin Capital Group Ltd (in liq). Mr Daly was one of four directors who were found by the Federal Court to have breached their duties as officers of a responsible entity of a managed investment scheme and did not act in members' interests. The five-year term of his ban and the \$150,000 penalty stand. The [judgment](#) of O'Callaghan, McElwaine and Jackman JJ is available.
- [25 September 2024 – MEDIA RELEASE – Macquarie Bank fined a record \\$4.995m for serious market gatekeeper failure](#) – The Markets Disciplinary Panel has fined Macquarie Bank Ltd \$4.995 million following an ASIC investigation of breaches of market integrity rules. ASIC was concerned that Macquarie had allowed three clients to place 50 suspicious orders on the electricity futures market. The Panel found that Macquarie should have suspected that each order was intended to create a false or misleading appearance in the market.
- [24 September 2024 – MEDIA RELEASE – ASIC cancels licences of Ultimate Credit Management Pty Ltd and Worry Free Finance Pty Ltd](#) – ASIC has cancelled the

Australian credit licences of two companies following the payment of determinations against them by the Compensation Scheme of Last Resort. They had earlier failed to pay AFCA determinations to eligible consumers.

- [24 September 2024 – NEWS ITEM – ASIC extends reportable situations relief and personal advice record keeping requirements](#) – ASIC has extended the relief it grants against reporting obligations and to set record-keeping requirements for giving personal advice. The two Legislative Instruments replace instruments which were about to expire (plus a Class Order) and extend relief until 1 October 2029.
- [23 September 2024 – MEDIA RELEASE – ASIC sues south-west Sydney car dealership for alleged unlicensed lending](#) – ASIC has instituted proceedings in the Federal Court against Diamond Wheels Pty Ltd, Keo Automotive Pty Ltd and a former director for allegedly providing unlicensed car loans to consumers, many of whom paid excessive interest rates. ASIC is pursuing declarations, civil penalties and injunctions, including injunctions against Ken Keomanivong to prevent him from being involved in credit activities in the future. Between 2018 and 2024, it is alleged that at least 600 credit contracts were entered into with consumers for new and used vehicles.

APRA news

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

- [26 September 2024 – MEDIA RELEASES – APRA releases intermediated general insurance statistics for June 2024](#) – APRA has issued biannual insurance statistics for the six months ending 30 June 2024. This publication summarises intermediated general insurance with APRA-authorized general insurers, Lloyd's underwriters and unauthorised foreign insurers.
- [24 September 2024 – MEDIA RELEASES – APRA releases performance metrics and insights package to improve transparency in superannuation](#) – APRA has issued a Comprehensive Product Performance Package to assist superannuation trustees to improve fund performance for members. The package includes an insights paper, a methodology paper, data publications and tools to enable users to compare product-specific information.
- [23 September 2024 – MEDIA RELEASES – APRA remakes Prudential Standard APS 117 Capital Adequacy: Interest Rate Risk in the Banking Book \(Advanced ADIs\)](#) – APRA has issued its Prudential Standard APS 117 on capital adequacy for banks. It received no submissions in response to its proposal to remake the standard to have it apply as a transitional measure after it is due to sunset on 1 April 2025 and until Prudential Standard APS 117 Capital Adequacy: Interest Rate Risk in the Banking Book takes effect on 1 October 2025.