

TAXATION

Miscellaneous amendments to Treasury portfolio laws: draft Bill and instrument

Treasury has released the exposure draft of its Spring 2024 amendments to Treasury portfolio laws as part of its periodic care and maintenance program.

Corporate collective investment vehicles: flow-through tax treatment

The ATO has released LCR 2024/1 which explains tax rules applicable to CCIVs, in particular the deeming rules resulting in taxation on a flow-through basis.

Consultation to review tax promoter penalty laws released

Treasury has released a consultation paper reviewing the tax promoter penalty laws seeking views on whether the laws operate as intended and are fit for purpose.

TPB case studies released

The TPB has released 2 compliance case studies: the first resulting in a company's termination and the second involving the issue of an education order.

Invalid tax law claim correspondence: practice statement update

The ATO has updated PS LA 2004/10 which provides guidance to ATO staff on how to deal with taxpayer correspondence.

Latest issue of ATO's interpretationNOW! released

The ATO has released Episode 112 of its series on statutory interpretation entitled interpretationNOW!.

ATO – Running an SMSF publication now available

The ATO have advised their publication on '[Running an SMSF](#)' is now available and complements their two existing publications [Starting a self-managed super fund](#) and [Winding up a self-managed super fund](#).

ATO highlights: SMSF quarterly statistical report June 2024

The ATO have advised that the '[June 2024 quarterly statistical report on self-managed super funds \(SMSFs\)](#)' is now available and provides our latest statistics on the self-managed super fund (SMSF) sector'.

Merchant and Commissioner of Taxation [2024] AATA 1102 – ATO Decision Impact Statement

The IPA were part of a Joint submission with Chartered Accountants Australia & New Zealand, CPA Australia, and the Self Managed Superannuation Fund Association to provide feedback about the draft DIS published by the ATO on 4 September 2024.

Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 2) – Joint submission on Code determination amendments

The Joint Bodies lodged a submission regarding the exposure draft amendments contained in the Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 2) Determination 2024 (the ED amendments) and Explanatory Statement (the ES) for residue concerns remaining.

SUSTAINABILITY

AASB ED 331 Climate-related and Other Uncertainties in the Financial Statements

The IPA made a submission on the *AASB ED 331 Climate-related and Other Uncertainties in the Financial Statements*, and overall, the IPA supports the inclusion of examples that assist in applying the requirements of the standard.

SUPERANNUATION

APRA quarterly superannuation statistics released

APRA has released three quarterly publications for the June 2024 quarter on APRA-regulated superannuation funds.

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.

Proposed legislative amendments, government announcements and consultations

Updates from the Government including legislation.

ACCC 2024 Strategic Review – stakeholder survey

The ACCC have advised that 'each year the ACCC conducts a strategic review of our Compliance and Enforcement Policy and Priorities. As part of this annual review the ACCC has released a survey to seek feedback from consumers, businesses and other stakeholders. The survey will close at close of business on 18 October 2024'.

TAXATION

Miscellaneous amendments to Treasury portfolio laws: draft Bill and instrument

Treasury has released the [exposure draft](#) of its Spring 2024 amendments to Treasury portfolio laws as part of its periodic care and maintenance to correct drafting errors, repeal inoperative provisions, address unintended outcomes and make other technical changes.

The proposed minor and technical amendments come under the:

- Treasury Laws Amendment Bill 2024: Minor and technical Amendments (Spring 2024); and
- Treasury Laws Amendment Instrument 2024: Minor and technical amendments (Spring 2024).

SUBMISSIONS are due by 11 October 2024.

Corporate collective investment vehicles: flow-through tax treatment

The ATO has released [Law Companion Ruling LCR 2024/1](#) which explains the tax rules applying to corporate collective investment vehicles (CCIVs), in particular the deeming rules in Subdiv 195-C of the ITAA 1997 that result in taxation on a flow-through basis, with investors assessed as beneficiaries (and not shareholders).

The key deeming rule creates a trust relationship between the CCIV and those investors who hold shares referable to a particular sub-fund (a CCIV sub-fund trust). If the CCIV sub-fund trust qualifies as an attribution managed investment trust (AMIT), the tax outcomes for investors are the same as those applying to investors in other AMITs.

The ATO notes that because these deeming rules apply for the purposes of "all taxation laws", they are intended to have "wide operation". For example, third parties may need to consider the tax effect of these rules for their own tax purposes.

DATE OF EFFECT: 1 July 2022. LCR 2024/1 finalises LCR 2023/D1 and takes the same approach as the draft.

Consultation to review tax promoter penalty laws released

Treasury has released a [consultation paper](#) reviewing the tax promoter penalty laws. Accounting for the updates to the tax promoter penalty laws included in the Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024 (Cth) that took effect from 1 July 2024, the consultation seeks views on whether the laws operate as intended, are fit for purpose, and are adequate to deter, and to protect the community from contemporary forms of misconduct.

Highlighting certain emerging behaviours in the wake of the rise in social media usage and changes in the use of technology, the consultation also seeks views on whether the existing tax promoter penalty law framework has kept up with new emerging threats to the integrity of the tax system and if the tax promoter penalty laws should be expanded to capture "lower-level" promoter behaviour.

Treasury notes that views raised in relation to the tax promoter penalty laws may also be relevant to the promoter penalties in relation to promotion of illegal early release schemes under s 68B of the Superannuation Industry (Supervision) Act 1993 (Cth).

As part of the review, Treasury will hold virtual roundtable discussions to supplement the written submissions process, during the consultation period.

SUBMISSIONS are due by 1 November 2024.

TPB case studies released

The Tax Practitioners Board has released 2 compliance case studies:

- [Egregious conduct results in company's termination](#) - from the actions of one of the directors who was not a registered tax practitioner, a registered tax agent company was found to have breached Code items 1 and 4, by: (i) failing to act lawfully and honestly by using clients' information on their system to create false entities without their knowledge and authorization; (ii) lodging over 70 fraudulent business activity statements ("BAS") to obtain GST refunds which was deposited into bank accounts which they controlled; and (iii) lodging a further 36 BAS resulting in GST refunds being stopped by the ATO. The company had its registration terminated with the maximum 5-year ban applied while a co-director, a registered tax practitioner who was not involved in the fraud, was ordered to complete a course of education within 3 months for not taking the necessary steps to ensure services were provided competently.
- [Education order issued for incompetence](#) - the Board Conduct Committee ("BCC") found a tax agent had failed to ensure the preparation and lodgement of tax returns for clients were prepared accurately. This resulted in ATO compliance activities finding overclaimed or incorrect deductions that did not have a sufficient nexus to assessable income and could not be substantiated. The BCC issued the tax agent a written caution and an order to complete a course on the Tax Agent Services Act 2009.

Invalid tax law claim correspondence: practice statement update

The ATO has updated Practice Statement Law Administration [PS LA 2004/10: Tax laws claimed to be invalid](#). PS LA 2004/10 provides guidance to ATO staff on how to deal with correspondence from taxpayers who claim that they will not comply with tax laws because the laws are invalid or do not apply to them.

The update informs the change in business processes where ATO staff will not be responding to correspondence where taxpayers claim tax laws are invalid or do not apply. Updates to citation references were also made.

Latest issue of ATO's interpretationNOW! released

The ATO has released [Episode 112](#) of its series on statutory interpretation entitled interpretationNOW!.

ATO – Running an SMSF publication now available

The ATO have said that ‘the [Running a self-managed super fund \(PDF, NAT 75612, 2.12MB\)](#) publication helps you understand your role and obligations to help you manage your fund effectively. It includes:

- accepting contributions and rollovers
- managing your fund's investments
- paying super benefits
- reporting and administration.

We are currently developing the Running a self-managed super fund online education module. It will be available here once completed.

The content in the publication and upcoming education module can be found in [contributions and rollovers](#), [investing](#), [paying benefits](#) and [administering and reporting](#).’

ATO highlights: SMSF quarterly statistical report June 2024

The ATO report states that ‘highlights include:

- There are 625,609 SMSFs.
- There are 1,152,792 members of SMSFs.
- The total estimated assets of SMSFs are \$990.4 billion.
- The top asset types held by SMSFs (by value) are:
 - listed shares (28% of total estimated SMSF assets)
 - cash and term deposits (16%).
- 53% of SMSF members are male and 47% are female.
- 85% of SMSF members are 45 years or older.

This report also provides an update of the annual SMSF population analysis tables for 2018–19 to 2022–23, based on SMSF annual return data.

Highlights for 2022–23 include:

- The average total assets per SMSF was \$1.6 million (median total assets was \$877,000).
- The average assets per SMSF member was \$835,000 (median assets was \$498,000).
- Member contributions into SMSFs were \$18.5 billion.
- Employer contributions into SMSFs were \$6.0 billion.

Read the full report for further statistics about:

- SMSF fund and member demographics
- estimates on SMSF asset holdings
- annual 'flows' in and out of SMSFs.

Merchant and Commissioner of Taxation [2024] AATA 1102 – ATO Decision Impact Statement

The Joint submission provided five comments about the draft DIS:

1. The above Administrative Appeals Tribunal (AAT) case was held concurrently with several Federal Court cases which were decided on 14 May 2024¹.

It is our understanding that the related Federal Court cases has been appealed to the Full Federal Court by Mr Merchant and a related entity².

It is our view that the outcome of that appeal may have a bearing on the implications of the AAT case. We therefore suggest that the finalisation of the draft DIS should be delayed until the outcome of the Full Federal Court is known.

2. We consider the AAT's findings in relation to Regulation 4.09 of the Superannuation Industry (Supervision) Regulations 1994 to be important and the DIS would benefit from discussing these findings, and their practical implication, in much greater detail than contained in the draft DIS.
3. We consider the AAT's findings in relation to Sections 62 and 65 of the Superannuation Industry (Supervision) Act 1993 – SIS Act – to be important and the DIS would be improved if it discussed these findings in greater detail; we believe the draft DIS should note that these findings appear to be consistent with the Commissioner's prior announcements, including Self Managed Superannuation Fund Rulings, about these specific areas.
4. We note that the ATO disqualified Mr Merchant from acting as a superannuation trustee under sub-sections 126(2) and 126(3) of the SIS Act. Mr Merchant then requested an administrative review of these disqualification decisions. In time, the ATO decided that he should not be disqualified as a superannuation trustee under sub-section 126(3) but should remain disqualified under sub-section 126(2). The AAT however decided that Mr Merchant should not be disqualified under sub-section 126(2) for the same reasons proffered by the ATO review when it decided that he should not be banned under sub-section 126(3). We consider that the outcomes of this part of the AAT matter indicate that the ATO may wish to review its administrative processes to

determine if a person should be disqualified from acting as a superannuation trustee. The DIS should discuss this in some detail.

5. We note that the draft DIS refers to the decision in *Coronica* and Commissioner of Taxation [2024] AATA 2592 and that the applicant had sought to apply the Merchant decision to his circumstances. This was rejected by the AAT. We believe that the overall circumstances in the Merchant AAT case and the *Coronica* case are very different from each other. That is, different facts have not produced similar outcomes. We ask that this be clarified in the DIS before it is finalised.

1 <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2024/498.html>

2 <https://www.comcourts.gov.au/file/Federal/P/NSD746/2024>

You can read the full submission [here](#)

Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 2) – Joint submission on Code determination amendments

To date there have been two amendments to the Legislative instrument (Tax Agent Services (Code of Professional Conduct) Determination 2024) that was registered on 2 July 2024.

Amendment Determination No. 1, was registered on 9 September 2024 and unconditionally defers the application date of the TASA Determination to one of two dates in 2025, depending on the size of the firm.

Amendment Determination No. 2 was registered on Tuesday 24 September 2024, the Minister released for public consultation an exposure draft of the Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 2) Determination 2024.

This Determination contains significant amendments to sections 15 (client dob in) and 45 (client disclosure) of the TASA Determination. Minor amendments to sections 20, 30 and 40 are also proposed.

The Joint Bodies lodged a submission regarding the exposure draft amendments contained in the Tax Agent Services (Code of Professional Conduct) Amendment (Measures No. 2) Determination 2024 (the ED amendments) and Explanatory Statement (the ES) for residue concerns remaining.

The joint bodies submission can be found [here](#)

Subsequent to closing date for the submission which was 2 October 2024, the IPA and the other professional bodies continued discussions with the Assistant Treasurer's office and Treasury regarding these residual concerns with the ED amendments and the ES. The Government has considered further refinements in response to our submission. The final signed Amendment (Measures No. 2) will reflect these changes was signed on 8 October 2024 and will appear before Parliament shortly.

SUSTAINABILITY

AASB ED 331 Climate-related and Other Uncertainties in the Financial Statements

The IPA supports the:

Intent of the ED to include illustrative examples that would help improve the reporting of the effects of climate-related uncertainties in the financial statements.

The principles-based approach of the illustrative examples, while dealing with uncertainties arising from climate-related risks, can also apply to uncertainties in general.

The inclusion of the illustrative examples accompanying the accounting standards, instead of publishing them as educational materials or elsewhere.

However, the IPA thinks that the illustrative examples contain simple fact patterns with high level conclusions of whether additional disclosures are warranted. The examples would be more useful if they contained more complex fact patterns and detailed the likely disclosures, ie the reasons why the climate-related uncertainties would not have an effect on the entity's financial position and financial performance.

More specificity in the examples would assist not only in applying the standards by preparers but also auditors when assessing the additional disclosures. The examples in their current general form may lead to differing and inconsistent interpretations by the entity and auditors/regulators, on whether additional disclosures should be made and the extent of the disclosures. The examples may therefore serve as points of contention as opposed to being useful.

You can access the full submission [here](#)

SUPERANNUATION

APRA quarterly superannuation statistics released

APRA has [released](#) the following 3 quarterly publications on APRA-regulated superannuation funds for the June 2024 quarter:

- [Quarterly Superannuation Industry Publication](#);
- [Quarterly Superannuation Product Statistics](#); and
- [Quarterly Fund-Level Statistics](#).

REGULATOR NEWS

ASIC News

ASIC has released the following updates in its Newsroom section:

- [3 October 2024 – MEDIA RELEASE – Supreme Court orders ISG Financial to wind up its registered managed investment schemes](#) – In the Supreme Court of Queensland, Crowley J has ordered that receivers be appointed to the responsible entity for the ISG Private Access Fund and the ISG Real Estate Equity Fund and that the managed investment schemes be wound up. The receivers appointed were the ones proposed by investors who had intervened in the proceedings. ASIC suspended ISG's Australian Financial Services Licence in 2022 because it had failed to meet audit and reporting obligations. ASIC is continuing to investigate suspected breaches of the *Corporations Act 2001* (Cth).
- [3 October 2024 – NEWS ITEM – ASIC publishes updated regulatory guidance for registered liquidators](#) – ASIC has published a revised version of Regulatory Guide 258 *Registered liquidators: Registration, ongoing obligations, disciplinary actions and insurance requirements* after consulting with industry. The guide has been updated to reflect developments that have occurred since it was first released in 2017 including separate guidance on each category of liquidator, registering an applicant who does not meet the experience requirement and advice to liquidators about maintaining their qualifications.
- [2 October 2024 – MEDIA RELEASE – Full Federal Court dismisses ANZ appeal against ASIC case](#) – The Full Court of the Federal Court has dismissed an appeal against a judgment that the Australia and New Zealand Banking Group Ltd breached continuous disclosure laws in 2015. The Full Court (Markovic, Lee and Button JJ) upheld the original 2023 judgment which held that, in failing to notify ASX that a proportion of a share placement was to be acquired by underwriters rather than investors, ANZ had contravened the provisions of Chapter 6CA of the *Corporations Act 2001* (Cth). The [appeal judgment](#) is available.
- [2 October 2024 – MEDIA RELEASE – ASIC cancels AFS licence of Prospero Markets](#) – ASIC has cancelled the Australian financial services licence of over-the-counter derivatives issuer, Prospero Markets Pty Ltd (in liq) after it was suspended in December 2023 when it failed to lodge its 2023 audited financial accounts. In April 2024, the Federal Court ordered that Prospero be wound up on the just and equitable ground under s 461(1)(k) of the *Corporations Act 2001* (Cth).
- [1 October 2024 – MEDIA RELEASE – Dural accountant charged with making false statements to ASIC](#) – Wayne Thomas Fraser, an accountant and tax agent from Dural, NSW and director of Maxum Enterprises Pty Ltd, has been charged for allegedly making or authorising the filing of false or misleading documents with ASIC. The allegations relate to 16 forms lodged for three companies between 2017 and 2019 in contravention of s 1308 of the *Corporations Act 2001* (Cth).
- [1 October 2024 – MEDIA RELEASE – ASIC issues DDO stop order against Northern Territory business over concerns of financial harm to First Nations consumers](#) – ASIC has issued a stop order to prevent Indy-C-Fashion Accessories Pty Ltd from requiring customers at its retail outlet at Katherine, NT to agree to pay credit arrangements with Centrepay deductions. The design and distribution obligations in the *Corporations Act 2001* (Cth) require firms offering financial products to design them to meet the needs of consumers in an identified target market. Indy-C did not have a target market determination. ASIC's concerns stem from the risk of financial hardship for the consumers who signed up to the payment arrangements. The stop order is in place for 21 days unless it is revoked earlier. Indy-C may continue to accept other payment methods.
- [1 October 2024 – MEDIA RELEASE – ASIC announces action against 13 SMSF auditors](#) – Between 1 January and 30 June 2024, ASIC took action against 13 auditors

of self-managed superannuation funds, disqualifying seven of them. ASIC also suspended one, cancelled the registration of another and imposed additional conditions on four auditors. Approved auditors of SMSFs are registered with ASIC under the *Superannuation Industry (Supervision) Act 1993* (Cth). ASIC's concerns stemmed from referrals by the Australian Taxation Office about breaches of auditing and assurance standards, independence obligations, continuing professional development requirements and not being a fit and proper person to retain the role.

- [30 September 2024 – NEWS ITEM – ASIC extends relief for employee redundancy funds](#) – ASIC has extended the existing relief for operators and promoters of employee redundancy funds on an interim basis until 1 April 2026. The existing instrument was due to expire on 1 October 2024. ASIC's consultation yielded mixed views in the submissions it received and it will conduct further consultation in 2025. Entities that are relying on transitional relief should advise ASIC by 31 October 2024.
- [30 September 2024 – NEWS ITEM – ASIC updates guidance for participants in the carbon market following Safeguard Mechanism reforms](#) – ASIC has issued a revised Regulatory Guide RG 236 *Do I need an AFS licence to participate in carbon markets?* to address amendments to the safeguard mechanism that took effect in 2023 and reflect changes to the Australian Carbon Credit Unit regime since the previous version of the guide was published. The publication of the updated guide follows from a consultation ASIC conducted in May 2024.
- [30 September 2024 – MEDIA RELEASE – ASIC disqualifies NSW director for five years following the failure of six companies](#) – Graeme John Doble of Gympie Bay has been disqualified from managing corporations for the maximum term of five years because of his role in the collapse of six companies. Between 1984 and 2023, he was a director in six companies in a variety of industries including: trucking and freight forwarding; labour hire; research and development; and postal and warehousing. ASIC found that he improperly used his position of director to advantage himself to the company's detriment, was involved in a tax avoidance scheme, allowed companies to operate while they were insolvent, allowed companies to fail owing debts, failed to deliver books and records to liquidators and failed to ensure that the companies kept books and records. ASIC drew on liquidators' reports in deciding to ban him. The total amount owing by the companies was over \$15 million, including to the Australian Taxation Office, RevenueNSW and unpaid workers compensation premiums.

APRA news

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

- [2 October 2024 – MEDIA RELEASES – APRA publishes the June 2024 edition of the Quarterly Superannuation Product Statistics, Superannuation Industry Publication and Fund-level Statistics](#)
- [1 October 2024 – MEDIA RELEASES – APRA revokes International Bank of Australia's restricted banking licence](#) – APRA has agreed to requests from the International Bank of Australia Pty Ltd to revoke its licence to operate as a restricted authorised deposit-taking institution and IBOA Group Holdings Pty Ltd to revoke its licence to operate as a non-operating holding company. The licences, which were granted in 2022, were not being used.
- [30 September 2024 – APRA releases Monthly Authorised Deposit-taking Institution Statistics for August 2024](#)

Proposed legislative amendments, government announcements and consultations

- [27 September 2024 – CONSULTATIONS – Miscellaneous amendments to Treasury portfolio laws Spring 2024](#) – The Treasury has commenced a consultation on proposed amendments to legislation including the *Corporations Act 2001* (Cth), the *Corporations Regulations 2001* (Cth) and the *Australian Securities and Investments Commission Act 2001* (Cth). The aims of the exposure drafts bills and regulations are to repeal redundant and inoperative provisions, enhance readability and efficiency, reduce red tape and make technical changes. Interested parties may make submissions until 11 October 2024.

ACCC 2024 Strategic Review – stakeholder survey

The ACCC have said that ‘each year the ACCC conducts a strategic review of our Compliance and Enforcement Policy and Priorities.

This important policy sets out priority areas for ACCC compliance and enforcement activities, as well as the factors we take into account when deciding to pursue issues or matters.

Feedback on the major issues facing Australian small businesses is a vital element of this stakeholder consultation process. Past feedback has helped shape our priorities and enables us to target the issues of greatest importance.

Could you briefly share your views on these issues via this [short survey](#)?

We are keen to hear your views on our current priority areas, how we can better deliver our work, and possible new issues that might be causing small business harm or competitive detriment. We will consider these views when drafting our Compliance and Enforcement Policy for 2025-26.

The survey will close at close of business on **18 October 2024**.

We appreciate you taking the time to provide us with your input to help us ensure that the ACCC’s resources are utilised in the most effective way possible in 2025-26.

If you have any questions about the survey, please contact StrategicReview@acc.gov.au.