

IPA NEWS

CyberWardens Guide

The CyberWardens website has a free guide to download that ‘offers simple, actionable steps to help you bolster your digital defences during the festive season, along with quick holiday-themed reminders to keep you and your team cyber-safe.’

AUASB Consultation Paper (CP): *Prohibiting Sustainability Assurance Practitioners from Using Direct Assistance by Internal Auditors*

The IPA has made a submission to the AUASB on the Consultation Paper: Prohibiting Sustainability Assurance Practitioners from Using Direct Assistance by Internal Auditors.

TAXATION

IGTO Identification and management of financial abuse within the tax system

The Inspector-General of Taxation and Taxation Ombudsman has announced a review that ‘will examine concerns raised through our complaint investigation service and by key stakeholders to seek to identify improvements in detecting and managing instances of financial abuse within the tax system.’

Australian Taxation Office (ATO) reminder: myGovID has changed its name to myID

The ATO have advised that myGovID has changed its name but not how you use it. If you’ve already set up myID and use it to access Online services for agents, you don’t need to do anything.’

Aged care reform passes both Houses

The Government’s Aged Care Bill 2024 has passed both Houses, implementing once-in-a-generation reforms to aged care.

Hydrogen and critical minerals tax offset: Bill introduced

The Government has introduced the Future Made in Australia (Production Tax Credits and Other Measures) Bill 2024 to the House of Representatives.



Changes to indexation of HECS/HELP debts: Bill passes both Houses

The Bill amends the Higher Education Support Act 2023 to cap the HELP indexation rate and provide an indexation credit to HELP accounts.

Non-resident trusts: s 99B - ATO guidance and compliance approach

ATO has released its finalised guidance on s 99B of the ITAA 1936: TD 2024/9 and PCG 2024/3.

Global and domestic minimum tax for MNEs: Parliament passes legislation

The Government has passed legislation to implement the minimum taxes under Pillar Two of the OECD/G20 Two-Pillar Solution announced as part of the 2023-24 Budget.

Reporting exemptions for EDPs: draft Instrument released

The ATO has issued an exposure draft to the Taxation Administration (Reporting Exemptions for Electronic Distribution Platform Operators) Determination 2025.

Suspected farm worker exploitation under investigation

A joint media release into their investigation into farmers and labour hire providers has been issued by the ATO, Fair Work Ombudsman and the Department of Home Affairs.

CGT withholding, STP declarations, self-amendment for SMEs: Bill passes both Houses

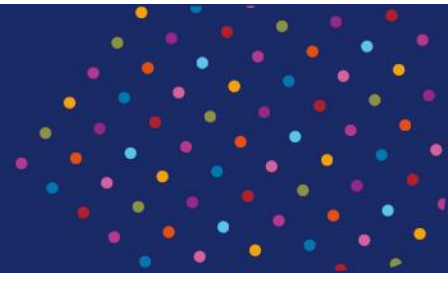
The Bill covers foreign resident CGT withholding, STP declarations, self-amendments for SMEs and phasing out of cheques for tax refunds by the ATO.

Parliament passes Bill: MBR cessation facilitation; DGR update; others

The Bill includes measures to facilitate MBR cessation, updates to DGRs, and other miscellaneous and technical amendments.

Build-to-rent: multinational tax transparency; Buy Now Pay Later laws pass Parliament

The Bill includes build-to-rent concessions, multinational tax transparency, and other measures.



AML/CTF reform passes Parliament

The Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 reforms the AML/CTF regime and repeals the FTR Act.

SUPERANNUATION

ATO SMSF statistics for September 2024

The ATO has released its Self-managed super fund statistical report for September 2024, including demographics, assets, contributions and performance data.

Total superannuation assets reach \$4.1 trillion

APRA has released its Quarterly Superannuation Performance publication and MySuper Statistics report for the September 2024 quarter.

Super funds: ATO approach to non-arm's length income rules following law change

The ATO has issued draft updates to LCR 2021/2 and TR 2010/1 as a consequence of recent amendments to NALI provisions in s 295-550 ITAA 1997 as they apply to NALE.

Superannuation objective passed by Parliament

The Superannuation (Objective) Bill 2023, which will “enshrine” the objective of superannuation in legislation, has passed both Houses and awaits assent to become law.

Family Law - super and financial disclosure - Bill passes Parliament

The Family Law Amendment Bill 2024 includes measures of note to financial planners and super trustees including financial disclosure and review of actuarial formulas.

Superannuation legislation outstanding on last day of Parliament

Three superannuation related Bills remain outstanding on the last day of Parliament for 2024.

FINANCIAL SERVICES

2025 updates to ASIC regulatory guides

ASIC has announced it will engage in stakeholder consultation in 2025 to update some key regulatory guides, as detailed in ASIC's Regulatory Developments Timetable.



FAR learnings for super and insurance entities

ASIC and APRA have published a letter containing observations on registration and notification lodgements since the commencement of the FAR for the banking industry.

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.

IPA NEWS

CyberWardens Guide

The CyberWardens website states that ‘Cyber criminals love the holiday season just as much as you do. They know small businesses are juggling holiday orders, staff schedules, and last-minute to-dos, so they ramp up their efforts, hoping to catch you off guard.’

A guide has been released that ‘offers simple, actionable steps to help you bolster your digital defences during the festive season, along with quick holiday-themed reminders to keep you and your team cyber-safe.’

Download the guide today: <https://hubs.la/Q02ZFNpr0>

TAXATION

AUASB Consultation Paper (CP): *Prohibiting Sustainability Assurance Practitioners from Using Direct Assistance by Internal Auditors*

The IPA supports the proposal in the CP of prohibiting assurance practitioners from using direct assistance by internal auditors in a sustainability assurance engagement conducted in accordance with Australian Standards on Sustainability Assurance.

The proposal aligns the prohibition of using internal auditors to provide direct assistance in an independent review or audit a financial report, as per ASA 610 *Using the Work of internal*

Auditors, with those for sustainability assurance.

The proposal therefore ensures consistency of auditor independence, and thereby confidence in the quality of sustainability information.

More information [here](#).

IGTO Identification and management of financial abuse within the tax system

IGTO have stated that ‘importantly we will examine best practice approaches to assist the ATO to design products and processes that effectively support victim-survivors of financial abuse and minimise the risk of further victimisation within the tax system.

The questions we will seek to answer as part of our review are:

1. Whether the ATO has appropriate processes, practice statements, training and guidance in place to assist its officers to identify potential financial abuse within the tax system
(for the purposes of supporting and providing relief from tax liability).
2. How ATO systems may be used to identify potential financial abuse within the tax system (including through information sharing with other agencies or third parties), building off similar experience in the financial services sector (noting that entities in the financial services sector operate in a different regulatory framework and environment to the ATO).
3. How the ATO provides effective support to victim-survivors and relief for tax liability created through financial abuse, in particular whether the ATO:
 - is appropriately considering victim-survivor circumstances
 - leverages the data / information, services and specialist expertise of other agencies and organisations
 - raises awareness amongst taxpayers and tax professionals about financial abuse in the tax system and how to seek assistance from the ATO.
4. Whether the ATO is utilising its full suite of powers to grant relief and provide support to victim-survivors of financial abuse within the tax system and hold perpetrators to account (e.g. reallocation or redistribution of liabilities or referral to law enforcement agencies).
5. The interactions between the ATO and other government agencies as it relates to financial abuse within the tax system, in particular:
 - the information sharing arrangements between the ATO and Services Australia as they relate to financial abuse within the tax system
 - how the tax consequences of financial abuse impact programs administered by other government agencies, in particular welfare and child support
 - the administrative and legislative barriers (e.g. resources, systems, legislative settings etc) that prevent the ATO from being able to work more effectively with Services Australia to minimise the impacts of financial abuse within the tax system on welfare and child support services.



While this review will address some elements of financial hardship and ATO support to taxpayers experiencing vulnerability, it will not involve a deep dive into those topics. Those topics may be investigated as separate stand-alone reviews, subject to further consultation with stakeholders as part of a future refresh of our workplan.

Our review will also not examine law enforcement and prosecutorial efforts to combat coercive control and financial abuse.

While we will take note of policy and administrative programs of work currently being undertaken by other parts of government, this review will focus specifically on tax administration.'

You can access more information [here](#)

Australian Taxation Office (ATO) reminder: myGovID has changed its name to myID

The ATO have said that 'you'll still have:

- your same login details and identity strength
- continued use – the existing app would have automatically updated
- the same authorisations in RAM
- secure access to a range of government online services.'

The change to myID aims to reduce the confusion between myGovID and myGov.

Remember, your myID is unique to you and should not be shared. Remember to stay vigilant and watch out for scammers seeking to take advantage of the name change. There's no need to set up a new myID or reconfirm your details. If you've been asked to do this in a message, email or by visiting a website, it's a scam.

If you're experiencing an issue with myID, visit www.myID.gov.au/help

You can read more on the change [here](#)

Aged care reform passes both Houses

The Government's [Aged Care Bill 2024](#) has finally passed both Houses, implementing once-in-a-generation reforms to aged care.

Starting from 1 July 2025, the new Act will deliver a range of improvements including a tougher regulatory model, strengthened Aged Care Quality Standards and a Statement of Rights to ensure older people and their needs are at the centre of the new aged care system.

The complexity of the changes and speed of the passage of the Bill was reflected in the extraordinary number of amendments - 68 amendments in the House and a further 99 amendments agreed to in the Senate.

Related bills are still before Parliament:

- [Aged Care \(Consequential and Transitional Provisions\) 2024](#); and
- [Aged Care Legislation Amendment 2024](#).

A common complaint during the passage of the Bill was that much of the detail is still to be released in the new Aged Care Rules. This is delegated legislation that can be tabled and commence at very short notice. Requests were made by Senators to release drafts of the delegated legislation for stakeholder feedback prior to being tabled.

With 594 pages of legislation and no Rules yet released it will take some time for stakeholders to digest and understand the full impact of the reforms.

Hydrogen and critical minerals tax offset: Bill introduced

The Government has introduced the [Future Made in Australia \(Production Tax Credits and Other Measures\) Bill 2024](#) to the House of Representatives on 25 November 2024. The Bill proposes to:

- establish the Hydrogen Production Tax Incentive ("HPTI") in the form of a new tax offset called the hydrogen production tax offset. The hydrogen production tax offset is a refundable tax offset that is available at a rate of \$2 for a kilogram of eligible hydrogen for companies that satisfy the eligibility requirements. The HPTI will apply to hydrogen produced in income years starting on or after 1 July 2027 and before 1 July 2040
- establish the Critical Minerals Production Tax Incentive ("CMPTI") called the CMPTI tax offset, ie a new refundable tax offset to support the processing of critical minerals in Australia. The amount of the offset for an eligible company is equal to 10 per cent of the eligible expenditure of the company. The CMPTI will apply to expenditure incurred in income years starting on or after 1 July 2027 and before 1 July 2040
- insert a new provision into the Aboriginal and Torres Strait Islander Act 2005 to include a specific power for Indigenous Business Australia ("IBA") to borrow money for a purpose in connection with IBA's functions. The proposed change removes current legislative restrictions on IBA borrowing and fund raising capabilities.

The Bill also proposes to make amendments to Sch 1 to the TAA 1953 and the ITAA 1936 to address a minor and technical issue with shortfall interest charge. Previously, shortfall interest charge did not apply consistently if a taxpayer received an excessive amount of a tax offset. To the extent that the tax offset had been applied to reduce the income of the taxpayer, shortfall interest charge correctly applied. However, to the extent that the tax offset had resulted in a refund, shortfall interest charge did not apply. The proposed change ensures that shortfall interest charge will now apply to the full amount of all tax offsets.

Changes to indexation of HECS/HELP debts: Bill passes both Houses

The [Universities Accord \(Student Support and Other Measures\) Bill 2024](#) has passed both Houses on 26 November 2024. Introduced into the House of Reps on 15 August 2024, the Bill amends the Higher Education Support Act 2003 to:

- cap the HELP indexation rate to be the lower of either the Consumer Price Index (CPI)

- or the Wage Price Index (WPI); and
- provide an indexation credit to people's HELP accounts to ensure the new HELP indexation cap has effect from 1 June 2023.

Non-resident trusts: s 99B - ATO guidance and compliance approach

The ATO has released its finalised guidance on s 99B of the ITAA 1936. Section 99B is an integrity measure that requires a beneficiary who was resident at any time during the income year to include in their assessable income an amount of trust property that is paid to them or applied for their benefit in that income year, unless an exclusion applies.

[Determination TD 2024/9](#) focuses on the "corpus" and "non-taxable" exclusions in s 99B(2). Both exceptions include a "hypothetical resident taxpayer" test. The ATO says that in applying these tests (to determine if an amount would be assessed in the hands of this hypothetical taxpayer), it is necessary to consider the circumstances which gave rise to the relevant amount and how it became an asset of the trust. Crucially, the ATO view is that the only characteristic that may be ascribed to the hypothetical taxpayer is their Australian residency. This means, for example, that the CGT discount is ignored.

[Practical Compliance Guideline PCG 2024/3](#) explains the ATO's compliance approach where property of a non-resident trust (or trust property accumulated while the trust was a non-resident) is paid to or applied for the benefit of a resident beneficiary. This may occur where: non-resident relatives (as trustees of a non-resident trust) send funds or gifts to their resident relatives, or loan an amount (or forgive the loan); a trustee allows a resident beneficiary to use non-resident trust property; or a beneficiary receives an amount from a non-resident deceased estate.

In relation to non-resident deceased estates, the ATO will not dedicate compliance resources to consider the application of s 99B if trust property is distributed to a resident beneficiary within 24 months of the date of death, the total value received does not exceed A\$2 million, and the beneficiary has the relevant documentation.

Another low-risk arrangement is where trust property is provided to a resident beneficiary and the borrowing, hire or use of the property is subject to an agreement made on commercial terms, provided the beneficiary makes a physical payment to the trustee equal to the interest, hire or use per the commercial terms, and the relevant documentation is retained.

DATE OF EFFECT: retrospective.

Draft versions of these documents (Draft TD 2024/D2 and Draft PCG 2024/D1) were released in July 2024. There are some changes to the finalised versions, in particular to TD 2024/9.

Global and domestic minimum tax for MNEs: Parliament passes legislation

The Government has finally passed legislation to implement the minimum taxes under Pillar Two of the OECD/G20 Two-Pillar Solution. Announced as part of the 2023-24 Budget, the following Bills set a 15 per cent global minimum tax and domestic minimum tax for all multinational enterprise groups with an annual global revenue of at least EUR 750 million.

- [Taxation \(Multinational - Global and Domestic Minimum Tax\) Bill 2024](#) - implements the framework for imposition of top-up tax for the Income Inclusion Rule ("IIR"), Undertaxed Profits Rules ("UTPR") and the Domestic Minimum Tax ("DMT") consistent with the GloBE Rules;
- [Taxation \(Multinational - Global and Domestic Minimum Tax\) Imposition Bill 2024](#) - imposes top-up tax, namely Australian DMT tax, Australian IIR tax and Australian UTPR tax; and
- [Treasury Laws Amendment \(Multinational - Global and Domestic Minimum Tax\) \(Consequential\) Bill 2024](#) - contains consequential and miscellaneous provisions necessary for the administration of top-up tax, consistent with the existing administrative framework under Australian tax law and the GloBE Rules.

The Bills passed both Houses with amendments to prescribe the meaning of "Securitisation Entity" and to ensure references to a Group Entity do not include GloBE Securitisation Entities. This means Securitisation Entities are not joint and severally liable for any top-up tax amounts of other Group Entities, ie the assessment of whether a Securitisation Entity is insolvency-remote is not impacted by the operation of the joint and several liability provisions contained in Subdivision 128-A in Schedule 1 to the TAA 1953.

DATE OF EFFECT: The Australian DMT tax and Australian IIR tax apply for Fiscal Years beginning on or after 1 January 2024. The Australian UTPR tax applies for Fiscal Years beginning on or after 1 January 2025.

Reporting exemptions for EDPs: draft Instrument released

The ATO has issued the exposure draft to the [Taxation Administration \(Reporting Exemptions for Electronic Distribution Platform Operators\) Determination 2025](#). Similar to the 2024 Determination, the draft Instrument exempts operators of electronic distribution platforms ("EDPs") from having to include specified classes of transactions in reports required to be prepared and lodged under table item 15 in s 396-55 in Sch 1 to the TAA.

As background, item 15 in s 396-55 in Sch 1 to the TAA requires an operator of an EDP - within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 ("GST Act") - to prepare a report about specified transactions made through that EDP.

While the draft Instrument includes the same exemptions in the 2024 Determination, it also provides a new exemption for certain transactions where the operator of the EDP is treated as a supplier under the GST Act, ie transactions involving certain types of suppliers are also exempt.

Once finalised, the Instrument repeals and replaces the 2024 Determination.

DATE OF EFFECT: Applies to reporting periods starting on or after 1 July 2025.

Suspected farm worker exploitation under investigation

The ATO, Fair Work Ombudsman ("FWO") and Department of Home Affairs have issued a joint [media release](#) in relation to their investigation into farmers and labour hire providers in the

Gatton region in Southeast Queensland.

Part of a wider initiative named Operation Topaz, the 3 regulators visited 7 locations, including farms that produce broccoli, onions, pumpkins and shallots. The investigation is to ensure the farmers and labour hire providers are complying with relevant tax, super, workplace and immigration laws.

The regulators warn that in recent years, non-compliance in the agriculture sector has been disproportionately higher among labour hire employers and these Operation Topaz investigations are part of the Government's efforts to ensure those who are doing the wrong thing are being found out and held to account.

CGT withholding, STP declarations, self-amendment for SMEs: Bill passes both Houses

The [Treasury Laws Amendment \(2024 Tax and Other Measures No. 1\) Bill 2024](#) has passed both Houses on 28 November 2024. Measures in the Bill are as follows:

- Foreign resident capital gains withholding - increases the WT rate from 12.5% to 15% and removes the threshold before which withholding applies so that disposals of relevant CGT assets by a foreign resident are subject to foreign residents' capital gains withholding requirements regardless of the market value of the CGT asset.
- STP declarations for employers - allows employers using single touch payroll to make a standing declaration for multiple STP lodgements.
- Self-amendments for SMEs - amendments can be made to the assessments of small and medium business taxpayers who apply to the Commissioner within 4 years (previously 2 years) after the Commissioner has given notice of an assessment.
- Phasing out of cheques - extends the circumstances in which the ATO may retain a tax refund to "encourage taxpayers to provide the Commissioner with valid Australian financial institution account details to facilitate the faster, safer and cheaper payment of refunds".

Parliament passes Bill: MBR cessation facilitation; DGR update; others

The [Treasury Laws Amendment \(Fairer for Families and Farmers and Other Measures\) Bill 2024](#) has passed both Houses on 28 November 2024. Introduced into the House of Reps the day prior, the Bill, among other things:

- facilitates the return of responsibility and resources for administering Commonwealth business registers from the ATO to ASIC, in winding up the Modernising Business Registers (MBR) Program;
- updates the list of deductible gift recipients under the income tax law; and
- makes miscellaneous and technical amendments to Treasury portfolio legislation as part of the Government's ongoing care and maintenance to correct errors and unintended outcomes and make technical changes for quality improvement.



Build-to-rent: multinational tax transparency; Buy Now Pay Later laws pass Parliament

The [Treasury Laws Amendment \(Responsible Buy Now Pay Later and Other Measures\) Bill 2024](#) (the "Responsible Bill") has finally passed both Houses on 29 November 2024.

Note that the build-to-rent ("BTR") concessions that were carved out of the Responsible Bill in July 2024, and put into the [Treasury Laws Amendment \(Build to Rent\) Bill 2024](#) (the "BTR Bill") have been re-instated. This means the Responsible Bill, as passed by both Houses, contains the BTR concessions rendering the BTR Bill unnecessary and "Discharged from Notice Paper" (to use the Parliamentary language).

As such, the Bill passed by Parliament consists of the:

- BTR concessions - (i) Increase in capital works deduction rate from 2.5 per cent to 4 per cent per year; and (ii) reduction of the final withholding tax rate on eligible fund payments from MIT investments for eligible new BTR developments from 30 per cent to 15 per cent.
- Medicare levy exemption for lump sum payments - amends the Medicare Levy Act 1986 to ensure low-income taxpayers are not denied concessional Medicare levy treatment solely as a result of receiving an eligible lump sum payment, for example as compensation for past underpaid wages.
- Country-by-Country ("CBC") reporting by certain large multinational enterprises - amends the TAA 1953 to require certain large multinational enterprises to publish selected tax information on a CBC basis for specified jurisdictions, and on either a CBC basis or an aggregated basis for the rest of the world.
- updates to the listing of Deductible Gift Recipients.

The Bill also contains 2 measures which are not tax-related which are:

- amendments relating to payments that the Commonwealth makes to the States in relation to the National Skills Agreement; and
- extending the application of the Credit Code to Buy Now, Pay Later system of credit contracts and establishing low cost credit contracts as a new category of regulated credit.

AML/CTF reform passes Parliament

The [Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024](#) has finally passed both houses of Parliament and awaits assent to become law. The Senate made 42 amendments to the original Bill, which were all agreed to by the House.

The Bill will reform Australia's anti-money laundering (AML) and counter-terrorism financing (CTF) regime, and repeal the Financial Transaction Reports Act 1988 ("FTR Act").

The Bill will amend the AML/CTF Act to:

- extend the AML/CTF Act and AML/CTF Rules and associated regulations to additional services that are globally recognised by the Financial Action Task Force (FATF) - the

global financial crime body - as posing high money laundering and terrorism financing risks. This includes certain higher-risk services provided by real estate professionals, professional service providers including lawyers, accountants and trust and company service providers, and dealers in precious stones and metals (known as "tranche two" entities);

- simplify the AML/CTF program and customer due diligence ("CDD") obligations to minimise regulatory burden and improve compliance;
- provide new powers for the Australian Transaction Reports and Analysis Centre ("AUSTRAC"), as the AML/CTF regulator and Financial Intelligence Unit (FIU), to require the disclosure of information and conduct examinations; and
- modernise the regime to reflect changing business structures, technologies and illicit financing methodologies.

The reforms will not fundamentally change the central tenets of the existing AML/CTF regime, which align with international obligations.

EFFECTIVE DATE: The Act will commence on the day of assent. The effective dates of the 12 Schedules within the Bill vary, generally being 31 March 2026 or 1 July 2026.

FINANCIAL SERVICES

2025 updates to ASIC regulatory guides

ASIC has [announced](#) it will consult with stakeholders in 2025 to update some key regulatory guides including:

- [Regulatory Guide 53](#) The use of past performance in promotional material;
- [Regulatory Guide 168](#) Disclosure: Product Disclosure Statements (and other disclosure obligations);
- [Regulatory Guide 181](#) Licensing: Managing conflicts of interest;
- [Regulatory Guide 183](#) Approval of financial services codes of conduct; and
- [Regulatory Guide 234](#) Advertising financial products and services (including credit): Good practice guidance.

For further details about our upcoming releases and timing, please refer to ASIC's [Regulatory Developments Timetable](#).

FAR learnings for super and insurance entities

ASIC and APRA have published a [letter](#) containing observations on registration and notification lodgements made since the Financial Accountability Regime (FAR) commenced for the banking industry. The regulators urge banking, superannuation, insurance entities to review the observations and areas for further consideration in the appendix to the letter. The appendix aims to help accountable entities comply with their obligations under the FAR.

The Financial Accountability Regime (FAR) commenced for the banking industry on 15 March 2024 and takes effect for the insurance and superannuation industries on 15 March 2025.



SUPERANNUATION

ATO SMSF statistics for September 2024

The ATO has released its [Self-managed super fund statistical report - September 2024](#) providing the following estimates from its SMSF data:

- there were 10,133 net SMSF establishments during the September 2024 quarter;
- the total number of SMSFs is 631,942;
- total number of SMSF members is 1,173,867;
- average assets per member is \$835,265;
- total SMSF assets estimated at \$988bn (up from \$891bn in September 2023);
- the top asset types held by SMSFs are listed shares (\$286bn) and cash and term deposits (\$162bn), making up 29% and 16% of total SMSF assets, respectively;
- total limited recourse borrowing arrangements (LRBAs) were estimated at \$70.4bn as at September 2024 (up from \$64.5bn in September 2023); and
- real property assets (residential plus non-residential) were estimated at \$165bn (up from \$151bn in September 2023).

Total superannuation assets reach \$4.1 trillion

APRA has released its:

- [Quarterly Superannuation Performance publication](#); and
- [Quarterly MySuper Statistics report for the September 2024 quarter](#).

Superannuation asset growth in the year to September 2024:

- total superannuation assets up 13.4% to \$4.1tn;
- APRA-regulated assets up 15.1% to \$2.8tn;
- SMSF assets up 10.9% to \$1.0tn;
- public sector superannuation assets up 7.3% to \$171.6bn; and
- life office statutory fund assets up 2.1% to \$57.3bn.

Key statistics for APRA-regulated funds in the year to September 2024:

- total contributions up 13.1% to \$191.3bn;
- employer contributions up 11.4% to \$140.8bn;
- member contributions up 18.1% to \$50.5bn;
- benefit payments up 11.4% to \$119.9bn;
- lump sum payments up 4.9% to \$65.1bn; and
- pension payments up 20.3% to \$54.8 bn.

Super funds: ATO approach to non-arm's length income rules following law change

The ATO has issued draft updates to the following rulings as a consequence of the recent



amendments to the non-arm's length income (NALI) provisions in s 295-550 of the ITAA 1997 as they apply to non-arm's length expenses (NALE):

- [LCR 2021/2](#) (non-arm's length income - expenditure incurred under a non-arm's length arrangement); and
- [TR 2010/1](#) (superannuation contributions).

The 2024 amendments (which apply from 1 July 2018) include:

- retrospectively exempting large APRA-regulated funds, public sector superannuation funds, PSTs and ADFs from the NALE rules. This means that the NALE rules are confined to SMSFs and small APRA-regulated funds. The NALI provisions (excluding the NALE rules) still apply to larger funds; and
- limiting the amount of NALI arising from general expenses to twice the difference between the actual expense and the expected market rate of the expense.

The draft update to LCR 2021/2 explains the operation of the 2024 NALE amendments, updates the examples in LCR 2021/2 and removes the compliance approaches in Appendix 1 to LCR 2021/2 (which are no longer needed as a result of the 2024 amendments).

The draft update to TR 2010/1 addresses the application of the NALI rules where:

- a fund incurs NALE (eg where an asset is purchased under a contract at less than market value). The ATO does not consider that the difference between any consideration paid and the market value represents an in specie contribution as the asset is acquired under the terms of the contract and not via an in specie contribution;
- a contribution is made by way of value shifting to a fund asset and the parties are not dealing at arm's length. The ATO says that the NALI rules may apply to income derived with respect to the asset to which the contribution relates.

A previous draft update to TR 2010/1 (issued in July 2021) has been [withdrawn](#) with effect from 27 November 2024. This draft also included a proposed compliance approach, which has not been replicated in the new draft (due to the 2024 amendments).

Superannuation objective passed by Parliament

The [Superannuation \(Objective\) Bill 2023](#) has finally passed both houses of Parliament and awaits assent to become law.

Section 5 of the Bill states:

"The objective of superannuation is to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way".

The 6 key concepts in the objective are not defined in the legislation but are explained in further detail in the explanatory memorandum, with the acknowledgment that some of the concepts are subjective.

The Bill will "enshrine" the objective of superannuation in legislation, requiring policy-makers to

demonstrate how any future changes to superannuation law are consistent with the legislated objective of superannuation.

This includes a requirement for a statement of compatibility with the objective of superannuation that must be prepared for a Bill or regulation that relates to superannuation, unless specifically exempt. There are 9 exemptions that include public sector superannuation schemes, military superannuation schemes, parliamentary superannuation schemes, judges pensions schemes, and family law matters.

EFFECTIVE DATE: The Act commences on the 28th day after assent. The measures will apply in relation to a bill or regulation that "relates to superannuation", that is proposed, introduced or made on or after the commencement of the Act.

Family Law - super and financial disclosure - bill passes Parliament

The [Family Law Amendment Bill 2024](#) (the "Bill") has finally passed both Houses of Parliament and awaits assent to become law. The Senate made 35 amendments to the original bill which were all agreed to by the House.

The Bill will amend the Family Law Act 1975 ("Family Law Act") and make consequential amendments to 5 other acts to address recommendations from 3 major inquiries into the Family Law System. The amendments focus on ensuring separating couples can better understand the decision making framework used in family law to resolve their property and financial matters confidently and safely. It will also support contact between children and their non-residential parents where this cannot be achieved safely without support.

Amendments of note for financial planners and superannuation trustees include the following measures.

- Financial disclosure - the Bill contains amendments which will codify an ongoing duty for parties in family law proceedings to provide full and frank financial disclosure to other parties and the courts. This duty extends to third parties joined to the proceedings, such as superannuation trustees or extended family members, to ensure expeditious and equitable resolution of property matters following relationship breakdowns; and
- Review of actuarial formulas: amendments will empower regulators to require superannuation trustees to review actuarial formulas used in valuing superannuation interests for family law property matters. This change aims to ensure courts have access to accurate valuations when determining equitable property divisions for separating parties.

EFFECTIVE DATE: The Bill commences on the day of assent. The individual measures have varying application dates, generally being the day after assent or 6 months from assent.

Superannuation legislation outstanding on last day of Parliament

The last day of Parliament for the calendar year was a busy one however 3 superannuation related bills remain outstanding:

- [Treasury Laws Amendment \(Better Targeted Superannuation Concessions and Other Measures\) 2023](#);
- [Superannuation \(Better Targeted Superannuation Concessions\) Imposition Bill 2023](#); and
- [Corporations Amendment \(Streamlining Advice Process\) Bill 2024](#) - a Private Member's bill not likely to progress through Parliament.

The first 2 Bills will implement new Div 296 tax from 2025-26 if passed. This tax will subject individuals to an additional tax of 15% on the proportion of "earnings" that relate to their total superannuation balance ("TSB") above \$3m at year end.

Other notable measures yet to enter Parliament include:

- the remaining "[Delivering Better Financial Outcomes](#)" measures (Tranche 2 and 3) stemming from the Quality of Advice Review; and
- regulations for [Legacy retirement product conversions and reserves](#).

REGULATOR NEWS

ASIC News

ASIC has released the following updates in its Newsroom section:

- [29 November 2024 – MEDIA RELEASE – ASIC cancels licence of RPD Group Advice Pty Ltd](#) – ASIC has cancelled the Australian financial services licence of RPD Group Advice Pty Ltd following a payment of compensation by the Compensation Scheme of Last Resort. On 12 July 2024, AFCA made a determination against the RPD Group which it failed to pay. The Compensation Scheme of Last Resort, which has been in operation since April, paid compensation on 13 November 2024. Where AFCA makes a determination against a licence-holder and the CSLR compensates a complainant, ASIC must cancel the licence which it did on 21 November 2024.
- [28 November 2024 – NEWS ITEM – ASIC welcomes recent IOSCO reports outlining key developments for global market regulators](#) – ASIC is a member of the International Organization of Securities Commissions (IOSCO) which recently issued reports which detailed challenges and opportunities for regulators. For investor protection, IOSCO published a consultation report on pre-hedging and a set of reports for online safety relating to financial influencers, copy-trading and digital engagement.
- [28 November 2024 – SPEECH – Promoting ongoing improvements in financial advice](#) – ASIC Commissioner Alan Kirkland presented at the Financial Advice Association Australia Congress in Brisbane. Although the standards of financial advice have improved in recent years, ASIC still sees many examples of poor advice causing serious outcomes for consumers. Financial advisers can improve outcomes for clients by ensuring that the advice they give is driven by client interests, continually focusing on product performance and keeping records to show how their advice complies with their obligations.
- [28 November 2024 – MEDIA RELEASE – ASIC action results in \\$1.25 million penalty against Sasha Hopkins for unlicensed conduct](#) – The Federal Court has fined the sole shareholder, director and company secretary of The A Team Property Group Pty Ltd

\$1.25 million and disqualified him from managing a corporation for four years for operating an unlicensed managed investment scheme. This is the first instance of a court ordering pecuniary penalties against an individual for a breach of s 601ED of the *Corporations Act 2001* (Cth). The Court also ordered that the company be wound up, as well as five investment schemes and associated companies. Receivers were appointed over the property of the entities associated with them. The [decision](#) of Beach J is available.

- [27 November 2024 – MEDIA RELEASE – ASIC disqualifies security industry director for five years](#) – ASIC has disqualified director Mary Asha Makeny of Liverpool, NSW, from managing corporations for five years following her involvement in the failure of three companies in the security industry. In a period spanning 2020 and 2021, Ms Makeny was the director of Atlas Support Services Pty Ltd, All In One Security Pty Ltd and MBNSS Pty Ltd which collapsed owing over \$1 million to unsecured creditors including the Australian Taxation Office. ASIC drew on the liquidator's reports in finding that she failed to meet her obligations as director.
- [27 November 2024 – MEDIA RELEASE – Director of Sydney gym charged with authorising the making of false statements to ASIC](#) – The former Director of Strong and Co Australia Pty Ltd has appeared at the Mt Druitt Local Court charged with two counts of authorising the making of a false statement in a document lodged with ASIC contrary to s 1308(1) of the *Corporations Act 2001* (Cth). ASIC alleges that he authorised a form to be lodged to deregister the company which contained false declarations that it had no liabilities and that the company's members had agreed to the deregistration.
- [27 November 2024 – NEWS ITEM - ASIC and APRA release observations from the banking industry's implementation of the Financial Accountability Regime](#) – ASIC and APRA have jointly released an open letter to APRA-regulated entities detailing their observations on the progress made in adjusting to the advent of the Financial Accountability Regime. The letter sets out the areas that need further consideration by banks. It also reiterates and highlights for banking, insurance and superannuation entities specific aspects consistent with previously released guidance.
- [25 November 2024 – NEWS ITEM – ASIC update on maintenance of regulatory guides](#) – ASIC has announced that it intends to update a number of Regulatory Guides in 2025 to ensure they remain easy to understand and up-to-date. For key Guides, it will also consult with stakeholders. The RGs targeted for revision in 2025 are Regulatory Guide 53 *The use of past performance in promotional material*; Regulatory Guide 168 *Disclosure: Product Disclosure Statements (and other disclosure obligations)*; Regulatory Guide 181 *Licensing: Managing conflicts of interest*; Regulatory Guide 183 *Approval of financial services codes of conduct*; and Regulatory Guide 234 *Advertising financial products and services (including credit): Good practice guidance*.
- [22 November 2024 – MEDIA RELEASE – Financial Services and Credit Panel issues registration suspension order](#) – The Financial Services and Credit Panel has suspended the registration of Ian Reid, for three months. The Panel, which makes administrative decisions relating to financial advisers, acted after ASIC referred Mr Reid to it for possible attention. The Panel acted because he had not complied with his obligations as a financial adviser in that he was still using statements of advice given to clients up to seven years ago.

APRA news

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

- [29 November 2024 – MEDIA RELEASES – APRA releases Monthly Authorised Deposit-taking Institution Statistics for October 2024](#)
- [28 November 2024 – NEWS ITEM – APRA releases quarterly private health insurance statistics for September 2024](#)
- [27 November 2024 – MEDIA RELEASES – APRA releases superannuation statistics for September 2024](#) – APRA has released its Quarterly Superannuation Performance and Quarterly MySuper Statistics for the September 2024 quarter. In the 12 months to 30 September 2024, total superannuation assets in Australia grew by 13.4 per cent and APRA-regulated assets increased by 15.1 per cent.
- [27 November 2024 – MEDIA RELEASES – APRA and ASIC release observations from the banking industry's implementation of the Financial Accountability Regime](#) – ASIC and APRA have jointly released an open letter to APRA-regulated entities detailing their observations on the progress made in adjusting to the advent of the Financial Accountability Regime. The letter sets out the areas that need further consideration by banks. It also reiterates and highlights for banking, insurance and superannuation entities specific aspects consistent with previously released guidance.
- [25 November 2024 – SPEECHES – APRA Chair John Lonsdale's speech to the European Australian Business Council – Forewarned and forearmed](#) – APRA has begun consulting on a stress test of Australia's financial system that it intends to conduct in 2025 to consider how risk scenarios might affect the resilience of the system. The operating environment is global and many countries face the same risks. Geopolitical shocks may have a ripple effect on markets internationally and within local economies.
- [25 November 2024 – MEDIA RELEASES – APRA maintains current macroprudential settings in uncertain environment](#) – APRA has announced that its policy settings remain unchanged as a result of its regular reviews of economic conditions. Although household debt remains high, lending standards are sound and the ratio of non-performing loans is low. Inflation has continued to moderate in the last quarter.

Proposed legislative amendments, Government announcements and consultations

- [28 November 2024 – LEGISLATION – Treasury Laws Amendment \(Mergers and Acquisitions Reform\) Bill 2024](#) – This bill was passed by the Senate on 28 November 2024 and now awaits assent. The amendments to the *Corporations Act 2001* (Cth) relate to transfers of shares in the business of a licensed clearing and settlement facility under Div 4 of Pt 7.3B and will take effect on 1 July 2025
- [27 November 2024 – LEGISLATION – Treasury Laws Amendment \(Fairer for Families and Farmers and Other Measures\) Bill 2024](#) – This bill was introduced in the House of Representatives by Dr Andrew Leigh, the Assistant Minister for Competition, Charities and Treasury. The bill was introduced to the Senate on 28 November 2024 and passed on the same day. It now awaits assent. Among other things, the bill clarifies tax residency disclosures required in s 295 of the *Corporations Act 2001* (Cth) and take effect from the 2025-2026 financial year. In addition, the disclosure requirements for liquidators of sub-funds of Corporate Collective Investment Vehicles will be clarified. The *Australian Securities & Investments Commission Act 2001* (Cth) will be amended to remove the requirement that the Minister consent to certain proceedings.