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Private Groups Stewardship Group

Access information from meetings of the Private Groups Stewardship Group.

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Key topics discussed at the Private Groups Stewardship Group meeting 23 November 2023.

QC 51377

Private Groups Stewardship Group key messages 9 September 2026

Key topics discussed at the Private Groups Stewardship Group meeting 9 September 2026.

Published 27 October 2026

Environmental scan

ATO Corporate Plan

The Australian Taxation Office (ATO) has launched its corporate plan which is aligned to both the ATO Strategy and the ATO purpose, both of which were launched earlier in the year.

Client-to-agent linking for individuals and sole traders

The ATO deployed client-to-agent linking in 2022 and 2023 to all entities with an Australian business number (ABN), excluding sole traders to strengthen the security of the tax and super system.

It was introduced in response to fraud activities, where agents' digital credentials were being compromised by unknown third parties.

Client-to-agent linking has successfully prevented this fraudulent activity in the ABN entity market, and we are now applying this process to individuals and sole traders.

The client-to-agent linking process will only apply when an individual or sole trader wants to appoint a new registered agent or is changing the authorisations given to an existing agent, and will:

- help ensure only authorised agents can access a client's tax information
- reduce the risk of identity theft and fraudulent activity
- provide greater visibility and control for individuals over who can access their tax record.

This change supports a more secure and trusted digital environment for both agents and their clients.

A pilot is planned for March 2027, with full deployment in November 2027 when the process becomes mandatory for adding new individual and sole trader clients. Expressions of interest are open to registered tax and BAS agents.

No action is currently required. Existing access arrangements and ABN entity linking remain unchanged, with guidance to follow before implementation.

Division 855 amendments

The recent enactment of amendments to Division 855 were discussed. Members queried whether the ATO was consulting in relation to how the amendments may interact with international treaty obligations. We confirmed that this matter is being actively considered.

Independent review service

Following a review of its independent review services, the ATO:

- Discontinued Large Market Independent Review from 1 October 2026 and has been communicating with taxpayers whose final audit position papers were issued around that date.

- Ended the Small Business Independent Review Expansion Pilot on 30 June 2026 due to low uptake and findings that it was not resolving disputes earlier. Participation was by invitation only for eligible privately owned and wealthy groups with turnover between $10 million and $50 million.

The existing Small Business Independent Review service continues for entities with aggregated turnover below $10 million.

As part of its commitment to efficient dispute resolution for large businesses and private groups, the ATO consulted members on a proposed arbitration pilot for cases meeting the criteria outlined in the pilot framework.

Members asked why participation was by invitation only. We explained that this approach would allow it to test the pilot's scope and methods before considering broader participation. If successful, the pilot may be expanded.

Member raised issues

Members raised the family trust distribution tax (FTDT) amnesty, which is due to end on 31 December. Members have concerns that taxpayers may not have sufficient time to identify, quantify and disclose historical issues, particularly where trust structures are complex, records are incomplete or interpretative issues remain unsettled.

Members supported allowing taxpayers to lodge an expression of interest before the deadline to preserve access to the 80% general interest charge (GIC) remission while they finalise their disclosure. Members suggested a need for greater flexibility where an issue is identified during an ATO review but before significant compliance activity has occurred.

The ATO advised it intends to review existing FTDT cases and will update public advice and guidance (PAG) where appropriate.

ATO PAG and litigation

The group discussed the implications of current litigation for the ATO's longstanding position in IT 2340 on pre-CGT assets held by discretionary trusts.

The ATO made reference to a matter that was recently heard in the Federal Court where the Court is considering whether, or in what circumstances, assets acquired before 20 September 1985 by discretionary trusts could retain their pre-CGT status. Depending on the outcome, IT 2340 may no longer reflect the correct legal position and may need to be withdrawn or revised.

Members highlighted the potentially significant and retrospective consequences for taxpayers who have relied on the ruling over many years, including uncertainty over the pre-CGT status of assets and difficulties obtaining historical records.

The ATO noted that related private ruling applications are likely to be placed on hold until the Court provides clarity.

Minimum tax on discretionary trusts

The group discussed the proposed minimum trust tax regime, the discretionary trust rollover and the election for fixed trust taxation measure. Members raised concerns that the proposals would create significant complexity, compliance costs and unintended commercial consequences.

Discussion focused on the practicality of the rollover and election options, potential interactions with trust law and state taxes. Members proposed a simpler alternative whereby the minimum trust tax regime would include a non-refundable credit mechanism for corporate beneficiaries.

The group emphasised the need for clear public guidance, practical administrative processes and supporting tools to help taxpayers understand and comply with the new rules. The ATO acknowledged these concerns and will continue working with Treasury and stakeholders as the measures are developed.

Other business

Members were informed of the upcoming Private Groups Stewardship Group membership refresh.

Action item update

Action item	20260324-2 GIC remission guidance
Description	ATO to consider more detailed guidance for advisors about the updated GIC remission process for taxpayers and tax professionals.
Responsibility	ATO
Status	Open – Guidance for tax advisors is actively being considered and worked on.

Action item	20260716-1 Contact Australian Small Business and Family Enterprise Ombudsman
Description	ATO to contact the Australian Small Business and Family Enterprise Ombudsman to let them know the ATO will assist with guidance, direction and referral pathways for small business queries about the new measures.
Responsibility	ATO
Status	Open – This is currently in progress.

Action item	20260716-2 Private Groups Stewardship Group (PGSG) out of session – CGT interactions
Description	The ATO to organise an out of session PGSG meeting focusing on interaction issues, particularly those relevant to Private Wealth, and the session will operate as a listening and feedback gathering forum.
Responsibility	ATO

Status	Closed – Out of session consultation was held on 17 August 2026.

Action item	20260716-3 PGSG out of session – Trust restructuring and rollover issues
Description	ATO to organise an out of session PGSG meeting focusing on whether existing rollovers could support movement from trust structures into corporate groups and whether any transitional or safe habour-style approaches are possible.
Responsibility	ATO
Status	Closed – Out of session consultation was held on 17 August 2026.

Action item	20260909-1 PAG development for new trust measures
Description	ATO to consider member feedback and provide a copy of a draft for consultation, once ready, relating to the development of PAG for the new trust measures.
Responsibility	ATO
Status	Open

Attendees

Attendees list

Organisation	Member
ATO	Louise Clarke (Co-chair), Private Wealth
ATO	Carolynne McQuay, Private Wealth
ATO	Grant Brodie, Individuals and Intermediaries
ATO	Sonia Corsini, Private Wealth
Accru Felsers	Brett Cox
Alvarez & Marsa	Dang Kha
BDO	Michael Anderson
Chartered Accountants Australia and New Zealand	Karen Liew
CPA Australia	Jenny Wong
EY	Priyanka Subramanyam
HLB Mann Judd	Gaurav Chitnis
John Fairfax Group	Rob Jackson
KPMG	Belinda Cheesewright
Law Council of Australia	Tuan Van Le
Moore Australia	Varun Kumar
Mutual Trust	George Psarrakos
Piper Alderman	Megan Bishop
Pitcher Partners	Alexis Kokkinos

Tax Bar Association	James Strong
The Tax Institute	Jonathan Ortner (Co-chair)
William Buck	Tim Lyford

Guest attendees

Guest attendees list

Organisation	Attendee
ATO	Cassandra Franklin, Litigation and Legal Services
ATO	Daniel Nesci, Objections and Review
ATO	Jason Michael, Private Wealth
ATO	Jenny Lin, Private Wealth
ATO	Maree Caulfield, Private Wealth
ATO	Neville Thomas, Private Wealth
ATO	Rebecca Saint, ATO Executive
ATO	Scott Walker, Private Wealth

Apologies list

Apologies list

Organisation	Member
Oatley Family Group	Sharon Clark

QC 108235

Private Groups Stewardship Group key messages 16 July 2026

Key topics discussed at the Private Groups Stewardship Group meeting 16 July 2026.

Published 11 September 2026

Environmental scan

ATO Strategy 2026–30 was released 22 June 2026. The strategy outlines 5 strategic shifts to take the ATO forward towards 2030:

- simplifying the tax experience so doing the right thing is the easiest option
- closing the payment gap so we collect what is rightfully due
- strengthening the system so it operates fairly and as intended
- partnering across the ecosystem to build a more connected tax system
- equipping a future-ready workforce to succeed in a changing environment.

The strategy also outlines an aspiration for 2030 to evolve the tax system for wealthy individuals and their related entities to a system where: complex structures are more transparent; reporting, lodgment and payment occur accurately and on time; and data enables earlier assurance reducing opportunities for tax arbitrage. Clear expectations and aligned payment cycles ensure accurate reporting regardless of complexity.

The Australian National Audit Office published its audit report on the Australian Taxation Office Management of Small Business Collectable Debt with the ATO agreeing to all recommendations.

Tax Ombudsman's Review into the ATO's administration of Director Penalty Notices (DPN) is due to commence this month.

The review will explore how the ATO uses and administers DPNs and any opportunities to improve its approach.

Federal Budget

The ATO facilitated a discussion on the proposed implementation of recent Federal Budget measures, including providing an overview on anticipated governance arrangements, consultation approaches and delivery considerations. Participants discussed some of the technical and administrative impacts of the proposed capital gains tax (CGT) and trust measures.

We advised that implementation of each measure will be led by the business line with primary responsibility for the most impacted taxpayer segment. For example, the trust measure will be led by Private Wealth. For implementation we will adopt our usual practice of establishing a core design team for each measure, comprising of representatives from all impacted business lines to oversee design and delivery.

Existing stewardship groups will be used to support consultation on the measures. Consultation will generally be conducted through the stewardship group most closely aligned to the impacted taxpayer segment, with additional stakeholders engaged as required to explore specialist issues and emerging risks.

The Digital Partnership Office will engage with digital service providers to help them understand the measures and prepare for building systems to deliver any new services necessary under the measures.

Members noted that there is currently a great deal of uncertainty in relation to the trust measure, including:

- the scope of the rollover provisions
- the impact of rolling out of discretionary trusts on existing asset protection arrangements
- the interaction of the rollover with existing anti-avoidance provisions.

Members emphasised the importance of providing certainty as early as possible to support compliance and consistent administration.

Members noted:

- The importance of balancing policy integrity objectives with practical implementation outcomes, particularly where measures may encourage taxpayers to restructure their entities and their operating models.
- That discretionary trusts are commonly used for a range of non-tax reasons, including asset protection, succession planning and commercial flexibility, and raised concerns that these features may not always be preserved if discretionary trusts rollover into companies.
- That the interaction between the trust measure and the proposed CGT changes could give rise to complex outcomes for private groups. Members considered that several Private Wealth-specific issues may not be fully explored through broader consultation forums, for example, the National Tax Liaison Group and would benefit from dedicated discussion.

Members further advised the Australian Small Business and Family Enterprise Ombudsman was already receiving enquiries relating to trust restructuring options following the Budget announcement. Members observed that these enquiries may involve complex tax technical matters that extend beyond the Ombudsman's role and will require clear referral pathways and guidance materials.

The ATO agreed to engage with the Australian Small Business and Family Enterprise Ombudsman to support early understanding of the measure and available guidance pathways.

To support continued consultation the ATO agreed to hold 2 out of session meetings before our meeting in September, to:

- identify and explore CGT and trust interaction issues relevant to private groups
- consider trust restructuring and rollover issues, including how existing rollover provisions and administrative approaches may support legitimate restructures while appropriately managing integrity risks.

Members reiterated the importance of early consultation, clear communication and timely guidance to support taxpayers, advisers and digital service providers as the measures progress through policy and legislative design.

Action items

Action item	20260716-1 Contact the Australian Small Business and Family Enterprise Ombudsman
Description	ATO to contact the Australian Small Business and Family Enterprise Ombudsman to let them know the ATO will assist with guidance, direction and referral pathways for small business queries about the new measures.
Responsibility	ATO
Status	Open

Action item	20260716-2 Organise an out-of-session CGT interaction session.
Description	The session will focus on interaction issues, particularly those relevant to Private Wealth, and operate as a listening/feedback-gathering session.
Responsibility	ATO
Status	Open

Action item	20260716-3 Organise out-of-session discussion on trust restructuring and rollover issues
Description	The session will focus on whether existing rollovers could support movement from trust structures into corporate groups and whether any transitional or safe harbour-style approach may be possible.

Responsibility	ATO
Status	Open

Private equity

The ATO's Private Equity Program is part of a broader suite of work focused on addressing tax risks associated with private capital investment in Australia. The program covers domestic and international private equity firms and their associated participants across the investment lifecycle, from pre-acquisition through to exit.

We are considering a range of tax risks and issues arising through our engagement and compliance activities. In particular, we are reviewing arrangements where private equity firms push down expenses relating to the acquisition of a target to the target entity, with the target claiming a deduction for blackhole expenditure under section 40-880 of the *Income Tax Assessment Act 1997* (ITAA 1997). We are considering issuing public advice and guidance to outline our concerns with this arrangement.

Members expressed concern regarding the scope of what expenses may be captured. We noted that concern generally lies with the push down of expenses by a firm that are referrable to the fund's acquisition of a target to the target itself. Members said that the facts and circumstances of an arrangement need to be considered, including the timing of the expenses.

Other tax risks and issues including funding arrangements and international risks (such as withholding obligations), profit distributions and returns of capital, consolidation allocable cost amount calculations and Division 855 of the ITAA 1997 are being considered., as well as risks associated with disposal events and fund vehicle eligibility.

Members discussed Managed Investment Trusts (MIT) eligibility in respect of private equity structures. Members noted that multiple fund vehicles, including MITs, may invest alongside each other in a target, and commented that whether a trading business is controlled by a firm and its fund vehicles will depend on the facts and circumstances of each arrangement.

Work is progressing to understand trends and issues arising in relation to other aspects of domestic private capital investment by private groups, including private credit.

In respect of private credit, members noted that the ATO's focus should have regard to the different arrangements within the industry. Members highlighted that ordinary lending arrangements may be less risky whereas more complex arrangements, such as participation loans, may present greater risk.

Disputed debt posture

Disputed debt (debt subject to objection, review and appeal) remains a significant component of ATO debt, with privately owned and wealthy groups accounting for a material proportion of disputed debt.

As per PS LA 2011/4 *Collection and recovery of disputed debt* the ATO expects large business and wealthy group taxpayers to actively manage disputed debt obligations while disputes are being resolved. This generally means payment in full or a 50:50 arrangement.

We emphasised that this approach to disputed debt is not a new policy and clarified that existence of a dispute does not prevent us from taking appropriate recovery action in respect of the undisputed debt owed by the taxpayer.

Through the Better Payment Outcomes Project, we are focused on disputed debt and improving consistency in our approach from compliance to objection to litigation.

In response to a member query about whether a specialised area manages 50:50 arrangements, it was noted that the Better Payment Outcomes Project is intended to help taxpayers engage with the right area to discuss payment or other disputed debt arrangements.

Members queried the treatment of disputed family trust distribution tax. We confirmed that where the taxpayer is disputing the liability, it would be treated as disputed debt. Also confirmed is that the current focus for family trust distribution tax disputes remains on voluntary disclosures and working with taxpayers to resolve disputes in an expeditious manner.

We encourage members to familiarise themselves with PS LA 2011/4 and discuss disputed debt expectations with clients early in the

dispute process. We intend to publish an article to assist practitioners in creating awareness of expectations regarding dispute debt.

Top 500 program

The 2026 Top 500 program survey shows overall satisfaction increased to 70%, the highest level since 2022, with most respondents reporting they were treated professionally and respectfully during their engagement with the ATO.

The program is helping private groups understand the importance of tax governance, with over 80% of respondents indicating that the Top 500 program has helped them understand how effective tax governance supports groups to meet their tax obligations.

We will use feedback on timeliness, communication and program delivery to inform ongoing improvements to the Top 500 program.

Members agreed that the program has improved, particularly compared with earlier years.

Members agreed that continuity of ATO staff is important.

It was noted that positive feedback was stronger where the same ATO team stayed involved with a group. Less positive feedback tended to arise where engagements were transferred between teams or case officers.

There was acknowledgment that some transfers are unavoidable because of resourcing and regional distribution of Top 500 groups, but we advised we have tried to manage this carefully, particularly by not moving groups that were actively working through issues unless necessary.

Private Wealth is also reviewing guidance currently on ato.gov.au regarding tax governance.

The proposed updates will be positioned as guidance for all privately owned and wealthy groups. However, they will remain most relevant to Top 500 groups, given the requirements of effective tax governance to achieve justified trust.

Members acknowledged that the examples in the draft guidance are useful, particularly because many private groups do not know where to start when preparing a tax governance framework.

However, members also questioned whether this might reopen an old issue, that is, why should private groups invest time and money into producing governance documentation?

The concern was that some private groups, especially those with smaller internal teams, may see the guidance as requiring them to produce a 'manual' that sits on a shelf.

Our response was that the focus is not meant to be creating entirely new processes. Instead, for many groups, it should be about documenting existing governance practices and showing that those processes are followed.

Family trust distribution tax – follow up discussion

Members raised a range of concerns about the practical operation of the family trust distribution tax (FTDT) rules, particularly where historical elections, trust structures and ordinary commercial arrangements do not align neatly with the legislative framework. The discussion highlighted that many issues are not necessarily driven by deliberate mischief, but by legacy arrangements, incomplete records, technical uncertainty and the complexity of applying the rules across family groups, trusts, companies and interposed entities.

Members expressed concern that the rules can produce disproportionate or unintended outcomes, including uncertainty around the validity of elections, the treatment of interest-free loans, the consequences of historical errors, and potential double-tax or franking credit impacts. A key theme was the need for clearer public guidance and practical examples so taxpayers, advisers and ATO case teams can apply the rules consistently and distinguish genuine compliance risks from ordinary commercial or administrative issues.

The ATO recognised that the FTDT issues are technically complex, fact-dependent and difficult to resolve in the abstract, particularly where historical elections, trust structures and interposed entities are involved.

We confirmed our view that an interest-free loan from a trust to a beneficiary may, in some circumstances, give rise to a distribution for the purposes of the trust loss rules but only to the extent that the value of the interest-free loan exceeds the value or amount of consideration given in return: see example 3 in TD 2017/20.

We reiterated, a genuine error in a family trust election form may be corrected where there is sufficient contemporaneous evidence supporting a conclusion that there was a genuine error, such as a typological mistake. In contrast, where a trustee makes a choice to name a particular individual in their family trust election and then later regrets that decision, our view is that a valid choice was made and it cannot be 'corrected'.

In relation to phantom elections, historical records and portal inconsistencies, we will work with taxpayers to assess the available evidence and determine whether an election was made and, if so, its content.

We are reviewing our position on the validity of retrospective elections where the conditions in subsection 272–80(4A) are not satisfied.

We acknowledge that there was uncertainty in relation to technical issues currently the subject of litigation before the courts. However, we are unable to comment on those matters currently but will provide further guidance once the proceedings have concluded.

The removal of some web content may have caused confusion, however additional guidance and examples will be provided to explain the ATOs view more clearly.

Recent public advice and guidance

Members discussed recent public advice and guidance impacting the private wealth market, including:

- Debt deduction creation rules and Division 7A
- Draft Practical Compliance Guideline PCG 2026/D2 *Application of Part IVA to property development arrangements involving long-term construction contracts – ATO compliance approach*
- Loans by private companies
- Taxation Determination TD 2026/3 *Income tax: when does a private or public ancillary fund 'provide' a 'benefit'?*
- Decision Impact Statement Commissioner of Taxation v Morton [2026] FCAFC 31
- Decision Impact Statement Commissioner of Taxation v Bendel [2026] HCA 18.

Recent litigation

Members discussed recent litigation impacting the private wealth market, including:

- Commissioner of Taxation v Morton [2026] FCAFC 31
- Commissioner of Taxation v Hicks [2026] HCADisp 96 (PDF, 98.7KB)
- Kilgour v Commissioner of Taxation [2026] HCADisp 78 (PDF, 106KB) and Isterling v Commissioner of Taxation [2026] HCADisp 79 (PDF, 102KB)
- Frizelle v Federal Commissioner of Taxation [2026] ARTA 752
- Cameron v Federal Commissioner of Taxation [2026] FCA 609
- Commissioner of Taxation v Cheung [2026] FCAFC 75
- S.N.A Group Pty Ltd (ACN 113 271 766) & Anor v Commissioner of Taxation [2026] HCADisp 140 (PDF, 114KB).

Members raised several issues in relation to the downstream effects of the High Court decision in Bendel.

Key issues for members included:

- Practical uncertainty for advisers, especially in explaining what taxpayers should do with existing structures and historical arrangements.
- Need for clear post-Bendel guidance, including the ATO's compliance approach to legacy arrangements, Subdivision EA and related integrity provisions.

We have issued a Decision Impact Statement confirming the High Court position that UPEs are not loans for Division 7A purposes.

We confirmed that where taxpayers followed earlier ATO guidance and converted UPEs into, or treated them as, complying Division 7A loans, those arrangements are now loans and cannot simply be unwound without consequences.

Following the High Court's comments, Subdivision EA may still have a role even though the UPE is not a loan under section 109D.

The ATO noted that section 100A may still need to be considered from a risk perspective, consistent with its interim position and would

consider the practical question raised about when a UPE is paid or satisfied for Subdivision EA purposes.

Action item update

Action item	20250319-2 Private equity
Description	ATO to consider opportunities for additional public advice and guidance in relation to private equity and arrange an out-of-session discussion on potential topics.
Responsibility	ATO
Status	Closed. Update being presented at today's meeting.

Action item	20260324-1 MTAS feedback
Description	Members to provide further feedback, via PrivateGroupsStewardshipGroup@ato.gov.au, on the impact of label and validation changes in the updated Trust return, particularly for trusts with over 200 beneficiaries.
Responsibility	PGSG members
Status	Closed

Action item	20260324-2 GIC remission guidance
Description	ATO to consider more detailed guidance for advisors about the updated GIC remission process for taxpayers and tax professionals.

Responsibility	ATO
Status	Open – Guidance for taxpayers, How to request a remission of interest and failure to lodge penalties was published in April 2026. Guidance for tax professionals is in progress.

Action item	20260324-3 GIC communication feedback.
Description	Members to provide feedback via PrivateGroupsStewardshipGroup@ato.gov.au on effective approaches to communicating the updated GIC remission requirements to tax professionals and taxpayers.
Responsibility	PGSG members
Status	Closed

Action item	20260324-3 Family trust distributions tax
Description	Members to email their technical questions and viewpoints surrounding Family trust distributions tax to the external co-chair, who will collate and forward to PrivateGroupsStewardshipGroup@ato.gov.au
Responsibility	PGSG members
Status	Closed. Questions provided to ATO for discussion at today's meeting.

Attendees

Attendees list

Organisation	Member
ATO	Louise Clarke, (Co-chair), Private Wealth
ATO	Carolynne McQuay, Private Wealth
ATO	Grant Brodie, Individuals and Intermediaries
ATO	Jenny Lin, Private Wealth
Accru Felsers	Brett Cox
Alvarez & Marsal	Dang Kha
BDO	Michael Anderson
CPA Australia	Jenny Wong
EY	Priyanka Subramanyam
KPMG	Belinda Cheesewright
Law Council of Australia	Tuan Van Le
Moore Australia	Varun Kumar
Mutual Trust	George Psarrakos
Oatley Family Group	Sharon Clark
Piper Alderman	Megan Bishop
Pitcher Partners	Alexis Kokkinos
Tax Bar Association	James Strong
The Tax Institute	Jonathan Ortner (Co-chair)

William Buck	Tim Lyford

Guest attendees

Guest attendees list

Organisation	Attendee
ATO	Aaron Bennett, Public Groups
ATO	Adrian Zuccarini, Private Wealth
ATO	Daniel Nesci, Objections and Review
ATO	Jeneata Segaram, Private Wealth
ATO	Joseph Gurren, Private Wealth
ATO	Kacey Jardine, Private Wealth
ATO	Maree Caulfield, Private Wealth
ATO	Nicholas Bell, Private Wealth
ATO	Vesna Circosta, Private Wealth
Chartered Accountants Australia and New Zealand	Susan Franks

Apologies

Apologies list

Organisation	Member
Chartered Accountants Australia and New Zealand	Karen Liew
HLB Mann Judd	Gaurav Chitnis
John Fairfax Group	Rob Jackson

QC 108026

Private Groups Stewardship Group key messages 24 March 2026

Key topics discussed at the Private Groups Stewardship Group meeting 24 March 2026.

Published 8 May 2026

Action items table

Action item 20250319-2	Private Equity
Description	Consider opportunities for additional public advice and guidance (PAG) in relation to private equity and arrange an out-of-session discussion on potential topics.
Responsibility	ATO
Status	Open

	We are continuing to progress our private equity program of work, including consideration of new PAG. Once the program matures and reaches a suitable stage for discussing potential PAG topics, we intend to arrange an out-of-session discussion or include an item for discussion at a group meeting in 2026.

Action item 20260324-1	Modernisation of Tax Administration Systems (MTAS) feedback
Description	Members to provide further feedback, via PrivateGroupsStewardshipGroup@ato.gov.au, on the impact of label and validation changes in the updated trust return, particularly for trusts with over 200 beneficiaries.
Responsibility	Private Groups Stewardship Group (PGSG) members
Status	Open

Action item 20260324-2	General interest charge (GIC) remission guidance
Description	Consider more detailed guidance for advisors about the updated GIC remission process for taxpayers and tax professionals.
Responsibility	ATO
Status	Open

Action item 20260324-3	GIC communication feedback
Description	PGSG members to provide feedback via PrivateGroupsStewardshipGroup@ato.gov.au on effective approaches to communicating the updated GIC remission requirements to tax professionals and taxpayers.
Responsibility	PGSG Members
Status	Open

Action item 20260324-4	Family Trust Distributions Tax
Description	PGSG members to email their technical questions and viewpoints surrounding Family Trust Distributions Tax to the external co-chair, who will collate and forward to PrivateGroupsStewardshipGroup@ato.gov.au
Responsibility	PGSG Members
Status	Open

Environmental Scan

The Top 500 findings report was published on 27 November 2025, providing a comprehensive overview of the ATO's assurance and compliance results. It highlights practical steps Top 500 groups can take to demonstrate they are meeting their tax obligations as well as outlines the key focus areas and priorities for 2026.

Tax Practitioner Board compliance priorities

The TPB released its compliance priorities in December, focusing on tax practitioners who:

- Help clients avoid paying tax debts or engage in illegal phoenix activities, undermining employee entitlements and creditors' rights.
- Put clients into schemes designed to avoid tax, such as artificially shifting profits to low-tax jurisdictions, hiding income or assets in secrecy havens illegally, and misusing research and development concessions.
- Facilitate shadow economy activities.
- Encourage clients to overclaim work-related expenses.
- Engage in activities that exploit vulnerable Australians.
- Fail to meet their personal tax obligations.

Board of Tax red tape reduction review

The written submissions for this review closed on 15 December 2025. The final report is expected to be provided to government by 30 June 2026.

ATO strategy

In February 2025, Rob Heferen, the Commissioner of Taxation released a new Who we are purpose and vision, providing a clear statement of why we exist and what we are striving to achieve. The ATO strategy will build on this foundation by defining the aspirations and shifts required to deliver a fair, efficient and sustainable tax system into the future. Creating a clear line of sight from our purpose and vision through to the shifts and actions that will realise our aspirations.

The importance of an enterprise-wide strategy was reinforced in the 2025 Australian Public Service Commission Capability Review (PDF 817KB) of the ATO, which confirmed that while our workforce is highly skilled and committed, we need a shared strategic perspective and a unifying plan to guide our efforts. As a result, the development of this strategy is a committed action under the ATO's response to the review, Our Performance Evolution (PDF 598KB).

The ATO Strategy will not replace our Corporate Plan, which sets out our committed deliverables and priorities for the year ahead. Instead, the strategy will focus on the longer-term direction and the opportunities we have to strengthen the system and our

administration. The ATO Strategy will be underpinned by taxpayer segment strategies.

Modernisation of Tax Administration Systems

On 18 December 2024, as part of the 2024–25 Mid-Year Fiscal and Economic Outlook, the government announced it will provide funding support to deliver the Modernisation of Tax Administration System (MTAS) program.

The MTAS program is a multi-year program designed to improve trust and beneficiary income reporting and make the process simpler and improve accuracy. It will stream-line the way the ATO matches and uses data, increase the amount of information that can be pre-filled, and allow most trust tax returns to be lodged electronically. These changes will support greater transparency, reduce the time and cost of meeting tax obligations, and improve the overall experience for trustees, beneficiaries and tax agents.

Program timeline:

- Phase 1 deliverables were deployed on 1 July 2024.
- Phase 2 deliverables are planned for deployment on 1 July 2026 and 1 July 2027.

The ATO is consulting with stakeholders including digital service providers (DSPs), tax professionals, impacted industry bodies and taxpayers throughout development and implementation.

This consultation will focus on the MTAS program changes to explore the implications for tax agents and trustees to identify opportunities to support them through the transition.

Members commended the changes, noting that they are predominately favourable and will make workflows easier to understand for agents.

Members queried whether the trust return could function as an approved form for family trust elections noting the potential legislative and timing constraints. The ATO took this query on notice.

Members also highlighted the need for a clear distinction between accounting and tax concepts in the development of the new labels, supported by instructions that minimise the risk of misinterpretation

and misreporting—particularly in relation to capital gains and unpaid present entitlements. Members provided the example of unpaid present entitlements being converted to loans and whether that would need to be reported under the proposed changes. The ATO noted this feedback.

For trusts with more than 200 beneficiaries, members suggested considering the use of existing beneficiary reporting mechanisms as an alternative or supplementary approach considering the proposed trust return changes. The ATO noted the feedback.

In relation to communicating the changes, members emphasised the importance of early, clear and concise communication to support tax agents in fee discussions with their clients.

Taxpayer relief provisions and request process changes

Since March 2025, the ATO has been working on a review of the administrative settings around concessions including lodgment and payment deferrals, payment arrangements, shortfall interest charge (SIC) remission, general interest charge (GIC) remission and failure to lodge (FTL) penalty remission, with a view to ensuring that:

- there are clear and contemporary administrative settings designed to meet intended legislative outcomes, and
- it is easier for taxpayers and their representatives to identify their eligibility for concessions, and circumstances in which concessions will not be available.

In September 2025, we developed a set of guiding principles to describe the ATO's overarching approach to concessions. These principles were also shared externally as part of our public consultation to gather feedback on our approach.

We received approximately 30 submissions from taxpayers, representatives, advocate groups and associations. The feedback received covered some consistent themes, including:

- Consistency – in particular a desire to see consistent application of the concessions policies and procedures from ATO staff.
- Transparency – this was a particularly strong focus of professional associations, seeking more visibility of the policies that guide staff.

- Flexibility – people wanted the ATO to be more flexible in accommodating individual circumstances, this was commonly raised in relation to payment plans.
- Role of agents – there was desire to see greater recognition of the role of tax practitioners in supporting taxpayers to understand and apply for concessions.
- Vulnerability – people wanted greater clarity on how we would consider clients experiencing vulnerability, and how our policies would accommodate those more dynamic and complex scenarios.

Following public consultation, we refined the principles and added a principle of transparency in response to the submissions. The updated principles are:

- Fairness - we will promote equity by balancing fairness to
  - the taxpaying community who have lodged and paid on time by not advantaging those who haven't
  - all taxpayers by considering their specific circumstances, including any vulnerability they are experiencing.
- Conditionality - some concessions may come with conditions or expectations. This might mean some taxpayers will be required to demonstrate continued efforts to lodge and pay on time, or catch up on overdue obligations, as part of an agreement to grant a concession.
- Context - when considering concessions, we will consider any previous decisions, including concessions that have already been provided. We will also consider any changes in individual circumstances since that decision.
- Engagement - when we are making decisions about concessions, taxpayers who proactively engage with us and who show they are willing to comply will be considered more favourably. This means there will be more flexibility if taxpayers come to us early when they think they might have trouble lodging or paying.
- Exclusions - taxpayers who knowingly and deliberately avoid their obligations may not have access to concessions. This means that when taxpayers do the wrong thing or attempt to gain an unfair advantage, may not be able to benefit from concessions that are

available to those who do the right thing or who make an honest mistake.

- Transparency – we will be transparent in how we make decisions by clearly explaining the processes, policies, and frameworks we have relied on. We will show how individual circumstances have been considered and provide clear reasons for our decision.

Leveraging the feedback received through this consultation, from internal stakeholder engagement and the insights from our current state analysis, we have a set of proposed policy and process shifts that give effect to the draft principles and achieve the desired future state.

The key tenets of our desired future state include:

- Tailored guidance – taxpayers and their representatives should be able to test their eligibility for a concession through an online tool. The tool should provide prompts and guidance on the evidence so that applications can be complete and accurate the first time.
- No wrong door – regardless of the channel a taxpayer uses to contact us about a concession, their details should be captured in a consistent form and processed by a dedicated team.
- Consolidated policies and settings – the policies guiding our administration of concessions should be consolidated in one place to ensure consistency and transparency.
- The responsibility to understand the law – the obligation to identify the appropriate concession should rest with the ATO. Taxpayers should only need to describe their circumstances, and the ATO should determine which discretion(s) or concessions(s) is most suitable and lawful.
- Clear expectations of behaviour – we should clearly communicate the behaviours expected of taxpayers before and after receiving a concession. This ensures support reaches those genuinely in need while protecting the integrity of the system.

Members suggested that, as part of the future conceptual design of the form, it would be preferable for it to be equally accessible to self-represented tax agents and lawyers, noting that transitional periods can sometimes result in loss of access to the tax agent portal. The ATO noted this feedback.

Members also observed that there may be insufficient guidance available to the market in relation to GIC matters. ATO noted this feedback.

The ATO highlighted that success in relation to GIC remission would not be measured by approval rates, but rather by outcomes such as reductions in duplicate applications, complaints, and similar issues.

Proposed changes to private groups tax performance programs

We are considering changes to the Next 5,000 and Medium & Emerging (M&E) private groups tax performance population programs to improve the taxpayer compliance process.

The Next 5,000 program commenced with a focus on undertaking streamlined assurance reviews across the population to provide assurance that the right amount of tax was being reported and paid. This program has now evolved to be largely risk focussed. The M&E private groups program continues to implement a risk-based approach to compliance activities.

Given the similarities in current approach between the M&E and Next 5,000 population programs, we are combining these programs into one Private Wealth (PW) Tax Performance Program. Having a single PW Tax Performance Program covering groups that are now in the M&E and Next 5,000 populations will result in benefits including greater consistency in our compliance approach across the privately owned and wealthy groups population and better align the timing of our risk-based compliance activities with our communications to market.

We expect these changes will improve the private group taxpayer experience with their ATO compliance interactions.

Members queried what has prompted this change to the tax performance population groups. The ATO explained that the tax issues and risks that attract our attention are similar across Next 5,000 and M&E programs and the changes aim to reduce duplication of workflows and ensure taxpayers can expect the same ATO approach and processes whether they are part of the M&E or the Next 5,000 populations.

Members also queried whether the changes would result in a reduction of ATO staff engaging in compliance work. The ATO advised that

staffing resources overall will not be affected by this proposed change.

Members noted that different economic groups will have different capacities to interact with the ATO which will need to be considered as part of these changes.

Member-raised issues

Members asked about the ATO's approach to the application of Division 149 in the context of discretionary trusts pending outcomes in current litigation matters.

The ATO advised that we will be taking the opportunity to modernise our current guidance in IT 2340 once current litigation matters are determined. We will continue to progress ongoing reviews and private binding ruling requests in accordance with the views expressed in IT 2340 - noting that we do not consider that it permits pre-capital gains tax assets within a discretionary trust to be maintained when a new discretionary object not contemplated by the original trust deed pre-September 1985 is subsequently added.

Members queried the ATO's approach in cases were involving beneficiaries not yet born prior to September 1985. The ATO advised that our views in relation to those circumstances will be informed by the outcomes of current litigation matters and any impacted reviews or private binding ruling requests will be placed on hold pending the outcome of those matters.

Concerns were raised about the impacts of the Family Trust Distributions Tax, particularly where liabilities have arisen from administrative or technical mistakes rather than deliberate avoidance. The unlimited amendment period arising from the self-executing nature of the law - which also compounds the impact of GIC in relation to outstanding liabilities, was highlighted as the primary issues of concern.

Members raised the current GIC amnesty and urged the ATO to consider extending the amnesty. The ATO agreed to consider providing taxpayers with a further 6 months, to 30 June 2027 to avail themselves of the opportunity to make a voluntary disclosure. The ATO also agreed that if a taxpayer advises they will be making a voluntary disclosure before a review is commenced, in anticipation of notifying the liability later, they can still be eligible for a GIC remission of up to 80% upon payment of the outstanding liability.

Another concern raised by members was the perceived lack of clarity about the ATO's interpretation of relevant legislative provisions about the validity of retrospective elections and variations of elections. The ATO advised members that we continually review existing web guidance and make necessary updates to ensure that the ATO's views are clear, current and visible. We also invited members to provide examples for us to consider where they believe more interpretive advice would be helpful.

Members suggested a potential national education roadshow outlining key technical issues and the ATO's position. The ATO acknowledged this feedback and noted that we will actively consider this suggestion.

PAG and litigation updates

Members discussed recent public advice and guidance and litigation impacting the private wealth market, including:

- Tax Determination TD 2025/D3 *Income tax: when does a private or public ancillary fund 'provide' a 'benefit'?*
- Taxpayer Alert TA 2025/3 *Arrangements to improperly access deductions for donations of 'barter credits'*
- Taxpayer Alert TA 2026/1 *Contrived property development arrangements between related parties that defer recognition of income and exploit tax losses*
- Web content- non-widely held trusts and the franking tax offset
- Web content- reporting significant global entity status for large private groups
- *Commissioner of Taxation of the Commonwealth of Australia v Bendel & Anor*
- *Commissioner of Taxation v Merchant & Anor Case No S 157/2025; Merchant & Anor v Commissioner of Taxation S 158/2025*
- *Commissioner of Taxation v Hicks*
- *Commissioner of Taxation v S.N.A Group Pty Ltd*

Attendees

Attendees list

Organisation	Attendee
ATO	Louise Clarke (Co-Chair)
ATO	Grant Brodie, Individuals and Intermediaries
ATO	Kasey Macfarlane, Private Wealth
Accru Felsers	Brett Cox
Alvarez & Marsal	Dang Kha
Balmoral Australia	Sharon Clark
BDO	Michael Anderson
Chartered Accountants Australia & New Zealand	Karen Liew
EY	Priyanka Subramanyam
HLB Mann Judd	Gaurav Chitnis
John Fairfax Group	Rob Jackson
KPMG	Belinda Cheesewright
Law Council of Australia	Neil Brydges
Moore Australia	Varun Kumar
Mutual Trust	George Psarrakos
Piper Alderman	Megan Bishop
Pitcher Partners	Alexis Kokkinos
Tax Bar Association	James Strong

The Tax Institute	Jonathan Ortner (Co-Chair)
William Buck	Tim Lyford

Guest attendees

Guest attendees list

Organisation	Attendee
ATO	Adrian Zuccarini
ATO	Glenn Cooper
ATO	Laura Bagnato
ATO	Nicholas Bell
ATO	Sonia Corsini

Apologies list

Apologies list

Organisation	Member
ATO	Jenny Lin, Private Wealth
CPA Australia	Jenny Wong
Law Council of Australia	Tuan Van Le

Private Groups Stewardship Group key messages 11 November 2025

Key topics discussed at the Private Groups Stewardship Group meeting 11 November 2025.

Last updated 12 January 2026

Action item update

Action item	20250319-2 Private Equity
Description	ATO to consider opportunities for additional public advice and guidance in relation to private equity and arrange an out-of-session discussion on potential topics.
Responsibility	ATO
Status	Open We are continuing to progress our private equity program of work, including consideration of new public advice and guidance (PAG). Once we have a reasonable list of potential PAG topics, we intend to arrange an out-of-session discussion or include an item for discussion at a future meeting. We expect this to occur in 2026.

Action item	20251111-1 Family trust distributions tax (FTDT), General Interest Charge (GIC) remission
Description	ATO to consider if there would be any circumstances where we would remit 80% GIC where taxpayers hadn't proactively self-reviewed prior to being notified of an ATO review but acted immediately to file FTDT

	payment advice form and pay the FTDT after being notified of a review.
Responsibility	ATO
Status	Closed The ATO announced in August 2025 that the ATO may consider it fair and reasonable to remit GIC up until 31 December 2026 where an entity has taken reasonable steps to address outstanding or unidentified FTDT liabilities. GIC may be remitted by 80% in cases where the taxpayer has proactively self-reviewed their FTDT liability (before a review has commenced), lodged the FTDT payment advice form and paid the FTDT. There may be partial remission (less than 80%) where the entity has made a voluntary disclosure of a FTDT liability during the early stages of a review (prior to an audit), and a FTDT payment advice form has been lodged and FTDT paid.

Environmental scan

Practical compliance guideline

Private Wealth (PW) has been working on a draft practical compliance guideline (PCG) *Significant Global Entities – ATO compliance approach for privately owned and wealthy groups* outlining our compliance approach to the reporting of significant global entity (SGE) status for entities that are members of privately owned and wealthy groups, private groups.

PW sought member feedback on the draft PCG at the Private Groups Stewardship Group (PGSG) meeting on 24 July 2025.

Since the meeting in July, we have decided that the content of the draft PCG will be published as web guidance.

The web guidance is designed to assist entities who are members of a private group self-assess and report their SGE status. The tailored web guidance will outline our reporting and record-keeping expectations of taxpayers. We will notify PGSG members when we publish the web guidance.

Corporate tax transparency report

On 2 October 2025, the Corporate Tax Transparency report for the 2023–24 income year was published.

Research and development tax incentive transparency report 2022–23

On 25 September 2025, the latest Research and Development (R&D) tax incentive transparency report was published for the 2022–23 income year. Data from 12,956 companies revealed expenditure totalling $16.2 billion in R&D claims in the 2022–23 year.

ATO annual report

On 31 October 2025, the 2024–25 ATO annual report was published. $636.3 billion in net tax was collected, 4.2% more than 2023–24. Our key focus areas included:

- Continuing to strengthen the integrity of the system and protect revenue.
- Improving payment performance and stopping the growth in debt.
- Improving the digital tax experience for small business.

What attracts our attention web material

Our Areas of focus page was refreshed in September 2025, to reflect the ATO's priority focus areas for 2025–26 page. A recording of a webinar to accompany the refreshed guidance is available on that page.

Family trusts distribution tax GIC remission

Members queried the situations where a taxpayer 's request a remission of GIC on family trusts distributions tax and how the ATO would approach remission. The ATO referred to published guidance and stated that the 80% remission may be applied where taxpayers

proactively self-review their affairs prior to being notified of a review. Partial remission may be granted where taxpayers act quickly after notification but the extent to which GIC may be revised will depend on the circumstances of each case.

Members highlighted challenges for smaller tax agents in retrieving records from transactions up to 10 years old and noted that agents often cannot identify issues in a taxpayer's affairs until the ATO initiates a review.

Recent public advice and guidance

Members discussed recent public advice and guidance impacting the private wealth market, including:

Taxation Determination TD 2025/6 *Income tax: does section 109U of the Income Tax Assessment Act 1936 only apply to arrangements where a private company gives a guarantee to another private company?*

This TD finalises Draft Taxation Determination TD 2024/D3 *Income tax: Division 7A – does section 109U of the Income Tax Assessment Act 1936 only apply to arrangements where a private company gives a guarantee to another private company?*

A public advice and guidance compendium was prepared, compiling responses to comments received on the Draft Taxation Determination TD 2025/6EC.

Recent litigation

Members discussed recent litigation impacting the private wealth market, including:

- Commissioner of Taxation v Bendel
- Merchant & Anor v Commissioner of Taxation
- VZFS v Commissioner of Taxation
- XLZH v Commissioner of Taxation

Next 5,000 program

The Next 5,000 Program has removed a mandated 1-month notification period from all future Comprehensive Review products.

This change was previously discussed at the 9 September 2025 PGSG meeting and published to ato.gov.au in September 2025. This provides a similar experience for private groups that are subject to a review across the privately owned and wealthy groups population.

The ATO gave an overview of what is being seen in terms of compliance within the Next 5,000 population. The main observation is that we continue to see errors in record keeping and reporting because of inadequate tax governance. Members asked if the tax issues identified within the Next 5,000 population had increased or decreased over the past 5 years. The ATO advised that the identification of these issues have been trending upward during this period, largely due to ongoing basic errors across groups. The ATO is seeking for this trend to reverse.

Members queried which financial years are normally the focus of a review, with the response being reviews typically focus on the last 2 financial years where lodgment had occurred. Currently, new reviews are generally focusing on the 2023–24 and 2024–25 financial years.

Members asked if the focus of the Next 5,000 reviews was on the existence or the quality of a group's governance framework. The ATO responded that when a review identifies tax risks, we will highlight how tax governance could have helped prevent these issues. As part of the reviews, we reiterated we will engage in discussions about the benefits of tax governance and how it can support groups in managing their obligations effectively. Members recommended that when the ATO communicates about what concerns them in the population that they are provided detailed and practical examples of how the risks manifest and how tax governance can mitigate the risk, to better support taxpayer understanding.

Medium and emerging private groups program

The medium and emerging (M&E) private groups program takes a risk-based approach in deciding what compliance activities to undertake and to improve tax performance. We have observed that M&E private groups continue to:

- fail to report income
- extract wealth from group entities without paying the requisite tax

- incorrectly claim capital gains tax concessions
- engage in arrangements using trusts where integrity rules potentially apply
- incorrectly claim the R&D tax offset
- have significant non-compliance in the property and construction sector.

In 2026 financial year the M&E private groups program will continue to focus on these areas of non-compliance. In addition, the compliance program will align with tax risks outlined in the current areas of focus for 2025–26 private groups including private equity participants and incorrect reporting of cryptocurrency transactions.

The M&E private groups program is developing a plan to provide support and awareness to private groups experiencing growth from small business and entering the M&E population, M&E new entrants. M&E new entrants transitioning from the startup phase of their business lifecycle and experiencing growth (in income, assets or size of group), often have associated increasing complexity with their tax affairs and may not have appropriate systems, advice or awareness to manage the taxation obligations of their growing private group.

Members were invited to provide feedback on proposed tax health check resource focused on providing education to M&E new entrants, as well an associated targeted email campaign. The tax health check resource covers tax compliance issues the ATO sees M&E new entrants get wrong and is pitched to enable a taxpayer with a non-tax background to understand tax issues that may apply to their growing private group.

Members were supportive of the strategy and agreed the resource was a worthwhile initiative, in particular, the need for a high-level resource that can be understood by a non-tax person enabling them to have a discussion with their tax agent. Members suggested the ATO consider exploring different channels to raise awareness in addition to including the resource on the ATO website. Members suggested reiterating that taxpayers are responsible for their tax affairs and cannot outsource this responsibility to tax agents.

Members queried whether the tax agents representing private groups where basic errors are identified are referred to the Tax Practitioners Board (TPB). The ATO advised that there is an expectation that tax

agents have a fundamental understanding of tax issues for the clients they represent, and where systemic issues with a tax agents' competency are identified, we will involve the TPB. We will also leverage the work being undertaken in the Private Wealth Adviser Program to engage proactively with advisers where we see common compliance concerns across a number of their clients, to work with them to address these issues for their clients.

Top 500 program

The Top 500 Findings Report for 2024–25 will be published on 27 November 2025 and will include the program outcomes, key risks affecting Top 500 groups and our future priorities for 2025–26. Key findings for the 2024–25 year are:

- The income tax of $835.11 million paid by Top 500 entities was tax assured. This result encompasses assurance activities relating to the 2018 to 2024 income years.
- Income tax liabilities of $388.5 million were raised, with $23.3 million from voluntary disclosures. Many liabilities arose from basic errors highlighting the importance of tax governance in avoiding costly errors.
- Thirty-six Top 500 groups were in justified trust, an increase of 4 from the previous year and 5 Top 500 groups were in provisional justified trust, an increase of 3 from the previous year.

Future priorities include:

- Reviewing our tax governance guidance on ato.gov.au and develop new tools for groups to self-assess their tax governance. This will support groups in developing and embedding effective tax governance to reduce the risk of errors, improve compliance, and help groups to achieve justified trust.
- Continue identifying and reviewing all significant, atypical transactions through the Top 500 and commercial deals programs, ensuring these transactions are consistently subject to thorough review and tax assurance.
- Direct additional resources to bring engagements up to date, being the last year lodged. With fewer Top 500 groups in the program after groups exit due to the April 2025 program changes, we will allocate more staff to Top 500 engagements and seek to expedite

the assurance process. Groups that have not yet invested in governance, or are not fully assured, will be a priority to ensure that compliance issues are identified and addressed promptly.

- Commence engagements with new Top 500 groups. We have identified several groups that have grown significantly in wealth and turnover, leading to their inclusion in the Top 500 population.
- Ensuring all entities in a Top 500 group have up-to-date payments and lodgments, which is our expectation of Australia's wealthiest groups, as well as the expectation of the government and Australian community.

Members suggested it would be beneficial to understand the tax issues that relate to the liabilities raised in the program and the ATO agreed to review how this information could be incorporated into the next Top 500 Findings Report and other messages to the population.

Payday Super

On 9 October, the government introduced Payday superannuation legislation into parliament and obtained Royal Assent on 6 November 2025. The intention is it will take effect from 1 July 2026.

Key changes for Payday Super are available.

Draft guidance has been published on our compliance approach for employers for the first year of Payday Super. Draft Practical Compliance Guideline PCG 2025/D5 *Payday Super – first year ATO compliance approach* sets out the things that will be considered when deciding how the ATO will apply compliance resources to investigate employers in relation to the first year of Payday Super. The feedback period closed on 7 November 2025.

The Small Business Superannuation Clearing House (SBSCH) will be closed from 1 July 2026 and was closed for new registrants from 1 October 2025.

The ATO requested feedback from members about employer readiness to Payday Super. Members commented that it was probably too early to assess but explained that there are many considerations for businesses in complying with Payday Super. The proposed compliance approach will recognise that employers who try to do the right thing and resolve any issues quickly from 1 July 2026 to 30 June 2027 should not be the focus of ATO compliance action.

Members queried why the ATO's SBSCH is being closed. The ATO explained that the government decided to close it from 1 July 2026 as it was considered no longer fit for purpose in a Payday Super environment and given the advances in commercial clearing houses since the inception of the ATO's SBSCH. The last day for payment instructions is 30 June 2026, and a technical working group is in place to ensure current users transition smoothly to alternatives.

Regulatory reform initiatives

On 4 July 2025, the Treasurer and Minister for Finance wrote to a few agency heads inviting them to outline actions that they were taking that contribute to increase productivity, economic growth and budget sustainability. Responses including the ATO's have been published on the Department of Finance's website.

The ATO's response outlined its aspiration to streamline business experience, delivering the simplification benefits akin to those achieved for individual taxpayers over the past 2 decades. The response highlighted initiatives to streamline tax administration for businesses that are already underway or will be implemented.

While many of the initiatives outlined in the letter have been piloted for the small business population, we are now exploring opportunities to streamline tax administration for other businesses including those in privately owned and wealthy groups.

The ATO is interested in understanding from members:

- What the opportunities, limitations and required adjustments might be for privately owned and wealthy groups to adopt some of the current initiatives.
- If there are other opportunities or initiatives to streamline tax administration that the ATO should consider.

Members and the ATO discussed:

- Complexities that may arise due to the nature of private groups, including several year-end transactions, the use of trusts, and having related entities that remain separate legal entities for tax purposes.
- The potential role eInvoicing might play.

- 'Natural systems' might vary between private groups who have different accounting systems and software ranging from more common software through to bespoke systems
- The importance of ensuring human oversight, while making some of the more administrative tax tasks easier.

The ATO noted that this move is not towards removing the human from the decision making in tax administration but rather simplifying the process and calculations that would be required, thereby producing a more efficient and less burdensome tax system.

The ATO also noted that it was looking for initiatives that will not require legislative change and members commented that in principle they like the concept of having a system where tax information is required to be entered only once and used to meet tax obligations.

Technical Issues

The ATO advised a Draft Practical Compliance Guideline *Recognition of income under property development agreements involving long-term construction contracts – ATO compliance approach* will be published in December 2025 and will be open for community consultation. The draft guideline will set out our proposed compliance approach to long-term construction contract arrangements (projects that span a period of greater than one year) in the property and construction industry.

Members queried whether there were any test cases being considered to test the Commissioner of Taxations view on long term constructions contracts. The ATO advised there were several potential test cases in the pipeline.

Members were advised that in addition to Draft Practical Compliance Guideline *Back-to-back CGT roll-overs – ATO compliance approach,* which is expected to be published in December 2025, the ATO will also release PAG to cover specific provisions such as subdivisions 122A and 122M of the *Income Tax Assessment Act 1997* (ITAA 1997). The PAG's will articulate the circumstances of when the Commissioner considers a scheme involving back-to-back rollers has been entered into for the dominant purpose of obtaining a tax benefit to which Part IVA would apply. The PCG is expected to be published in the first quarter of 2026.

Members agreed PAG would beneficial as it will provide an understanding of where the ATO will focus its compliance activities.

Members were also advised the web guidance will issue shortly regarding the 45-day holding rule and franked distributions.

Members were advised that the Commissioner has filed an appeal in relation to the Administrative Review Tribunal decision of XLZH and Commissioner of Taxation. Members queried if Taxation ruling IT 2340 *Income tax: capital gains: deemed acquisition of assets by a taxpayer after 19 September 1985 where a change occurs in the underlying ownership of assets acquired by the taxpayer on or before that date* would be updated. The ATO advised that it plans to withdraw IT 2340 and replace it with more modern and contemporary guidance once the appeal process is finalised.

End of year wrap up

Members and the ATO provided their reflections about this year's PGSG meetings.

Members expressed the view that the engagement between members and the ATO has been positive, and the members feel heard. They explained that the PGSG is worthwhile as it allows for robust and wide-ranging discussions noting that this year more items were actioned than in previous periods.

The ATO acknowledged it appreciates the honesty and openness of members, and that their feedback helps to shape how we design our strategies for engaging with and supporting private groups.

Attendees

Attendees list

Organisation	Member
ATO	Kasey Macfarlane (Co-chair), Private Wealth
ATO	Jenny Lin, Private Wealth

Accru Felsers	Brett Cox
Alvarez & Marsal	Dang Kha
BDO	Michael Anderson
Chartered Accountants Australia and New Zealand	Karen Liew
EY	Priyanka Subramanyam
HLB Mann Judd	Gaurav Chitnis
KPMG	Belinda Cheesewright
Law Council of Australia	Tuan Van Le
Moore Australia	Varun Kumar
Mutual Trust	George Psarrakos
Piper Alderman	Megan Bishop
Pitcher Partners	Alexis Kokkinos
Tax Bar Association	James Strong
The Tax Institute	Jonathan Ortner (Co-chair)
William Buck	Tim Lyford
Workpac	Rachel Tyler

Guest attendees

Guest attendees list

Organisation	Attendee
ATO	Adrian Zuccarini, Office of the Chief Tax Counsel

ATO	Andrew Demonte, Private Wealth
ATO	Brock Spicer, Private Wealth
ATO	David Hall, Private Wealth
ATO	Fiona Hinrichsen, Private Wealth
ATO	Glenn Cooper, Private Wealth
ATO	Hoa Wood, Regulatory Reform
ATO	Nadia Alfonsi, Regulatory Reform
ATO	Priyasheel Jalota, Private Wealth
ATO	Usha Narain, Superannuation and Employer Obligations

Apologies list

Apologies list

Organisation	Member
ATO	Louise Clarke (Co-Chair), Private Wealth
ATO	Grant Brodie, Individuals and Intermediaries
CPA Australia	Jenny Wong
John Fairfax Group	Rob Jackson
Oatley Family Group	Sharon Clark

Private Groups Stewardship Group key messages 9 September 2025

Key topics discussed at the Private Groups Stewardship Group meeting 9 September 2025.

Published 9 October 2025

Action item update

Action item	20241119-2 Valuation of Employee Share Schemes (ESS)
Description	ATO to consider the application of the valuation guidelines in ESS 2015/1 (and whether amendments are required) to companies issuing shares that qualify for the start-up concession where the relevant company issuing shares is the head company of a group of entities.
Responsibility	ATO
Status	Closed Pending the new legislative instrument for the start-up concession coming into effect, there is a team working on additional web guidance on this issue.

Action item	20250319-2 Private Equity
Description	ATO to consider opportunities for additional public advice and guidance in relation to private equity and arrange an out-of-session discussion on potential topics.
Responsibility	ATO
Status	Open

	We are continuing to progress our private equity program of work, including consideration of new Public Advice and Guidance (PAG). Once the program matures and reaches a suitable stage for discussing potential PAG topics, we intend to arrange an out-of-session discussion or include an item for discussion at a future PGSG meeting.

Environmental scan

ATO corporate plan

The ATO corporate plan 2025–26 was released on 8 August 2025. It highlights 4 key activities that are significant programs or areas of work which will be a high priority. The corporate plan also outlines 5 enterprise priorities which are strategically important, aimed to improve results against the ATO's key activities and core business functions over the short term.

Consultation on ATO approach to taxpayer relief provisions

The ATO has been reviewing its decision-making approach for several lodgment and payment related discretions which are concessionary in nature. On 4 September, the ATO published for public consultation, proposed principles for making these decisions to assist taxpayers and their representatives understand how the ATO will make future decisions.

Modernisation of tax administration program

Following the changes introduced to the Trust Tax Return in Tax Time 2024, the government announced in their 2024–25 mid-year economic and fiscal outlook statement it will provide funding to deliver the next phase of the modernisation of tax administration program.

Consultation with tax professionals and industry organisations will occur over the coming months to prepare for the changes and seek feedback on the proposed approaches.

An update is scheduled for the November Private Groups Stewardship Group (PGSG) meeting and the ATO will seek feedback on how to best

prepare trustees, beneficiaries and tax professionals for the next raft of changes being introduced in Tax Time 2026.

Recent public advice and guidance

Members discussed recent public advice and guidance impacting the private wealth market, including:

- Taxation Ruling TR 2004/18 *Income tax: capital gains: application of CGT event K6 (about pre-CGT shares and pre-CGT trust interests) in section 104-230 of the Income Tax Assessment Act 1997*.
- Taxpayer Alert TA 2025/2 *Arrangements designed to improperly obtain goods and services tax refunds*.
- Taxation Determination TD 2025/5 *Income tax: disregarding certain payments under section 109R of the Income Tax Assessment Act 1936 in determining how much of a loan has been repaid in situations where notional loans are involved*.
- Practical Compliance Guideline PCG 2025/2 *Restructures and the new thin capitalisation and debt deduction creation rules – ATO compliance approach*.

Recent litigation

Members discussed recent litigation impacting the private wealth market, including:

- Merchant & Anor v Federal Commissioner of Taxation
- *Commissioner of Taxation v Ierna* and others

Top 500 program

The ATO provided an update on the Top 500 program and discussed the key findings for the 2024–25 year as well as some key insights from the client survey.

An area for improvement that was highlighted in the client survey results is the response to timeframes around requests for information (RFI).

Members queried whether this survey response related to the 28-day response requirement for a RFI. The ATO explained that it was and that a portion of the survey population were in an audit or review which

tends to be accompanied by a stricter requirement to abide by the 28-day time frame due to the limited period of review. A member commented that in their experience the ATO is supportive in providing an extension of time for an RFI and that they have positive interactions when requesting an extension.

The ATO acknowledged the program survey was conducted just before tax time which was not ideal and assured members that consideration would be given to when the next survey would be conducted. Future iterations of the survey will also have more specific questions relevant to the type of interaction, for example, engagement or review/audit that the group is involved in.

Following program changes that came into effect in April 2024, the ATO confirmed that the majority, if not all Top 500 groups eligible to exit the program, will occur in the 2025–26 financial year. The ATO advised that several groups that were eligible to exit the program had opted to remain, many of whom had invested in tax governance and were already in, or close to achieving, justified trust.

Members asked if the ATO is seeing a rise in the use of artificial intelligence (AI) to produce tax governance frameworks.

The ATO advised it has not been seen in tax governance documentation but has been seen in responses to queries. Members asked if the ATO had an internal view about the use of AI. The ATO responded it does not have an issue with the use of AI but expected human review of material produced with the assistance of AI before it is finalised.

Private groups focus areas for 2025–26

The ATO provided an update on the development of key risk focus areas for 2025–26 for the privately owned and wealthy groups (POWG) client experience.

Members discussed a draft of the refreshed web content planned for release and noted the upcoming 23 September webinar.

Members queried who the intended audience for the web guidance is. We advised it is intended to be targeted at both private groups and their advisers, with a particular focus on reaching the lower end of the POWG market.

Members agreed that highlighting areas of focus was beneficial as it allows advisers to raise the focus areas with their clients.

Members queried whether retaining the 45-day holding period rule as a focus area for 2025–26 meant that there would be further activity. The ATO noted that it is seeing this issue arise more frequently in cases, so it will continue to be a focus area, with some guidance expected to be published shortly.

Members and the ATO confirmed that the focus areas for the year are largely a continuation of last year's topics with a small number of additional areas.

Small business independent review pilot

The ATO's Small Business Independent Review (SBIR) service has been undertaking a trial expansion into the POWG segment for eligible businesses with aggregated turnover of between $10 million and $50 million.

Independent review is a pre-assessment merits review designed to bring a fresh set of eyes to an audit dispute, focusing on the areas of disagreement between the parties.

Eligible taxpayers receive an offer at the completion of an audit to undertake an SBIR. In the 2025 financial year, the trial expansion received 29 requests for SBIR and completed 20 reviews.

The ATO is gathering feedback and evaluating the trial expansion, which runs to 31 December 2025. This evaluation, and feedback from stakeholders will inform our consideration of post-trial options.

Members commended the process as it allows for taxpayer to feel heard and gives them a forum to better understand the ATO position.

It was noted that small business taxpayers with research and development claims made up a higher proportion of the SBIR due to the potential that if the research and development claims are not approved, the cost may be substantial and cause the taxpayer to enter administration.

Members also noted that when seeking feedback from taxpayers about the SBIR, it would be better if it's done at the conclusion of any review as taxpayers may be concerned that any feedback provided during the SBIR could negatively impact the outcome.

Draft PCG: back-to-back CGT rollovers

Members participated in a confidential discussion and provided feedback on the proposed draft practical compliance guideline (PCG) that the ATO is developing on this topic. The ATO will incorporate this feedback in progressing the PCG, including reviewing the language and nuance in the examples.

Property and construction topical issues

Property and construction are a key industry within the privately owned and wealthy group population, therefore the ATO will continue to have a focus on helping taxpayers and their advisers get it right, while also ensuring a level playing field.

In June 2024, the ATO consulted with the PGSG in relation to 3 topical issues for expanded web content, which has now been published. We are now considering the further topical issues which have been included on our what attracts our attention, property and construction web content since August 2022.

We are seeking members insights and feedback on ATO observed examples and scenarios in relation to related party developments to help deepen our understanding for consideration of potential further guidance.

Members discussed the different scenarios, commercial drivers and arrangements. Feedback was provided on the importance of any guidance being clear on the difference in features between contrived and commercial. Members noted that guidance would be useful if the ATO is observing high risk contrived and artificial arrangements.

Agent authorisation process for individuals and sole traders

The ATO is currently undertaking consultation on an agent authorisation solution suitable for individuals and sole traders.

We have been engaging with a diverse group of representatives including:

- tax practitioners
- professional association representatives

- digital service providers
- groups of individuals and sole traders to provide input and feedback.

Additional industry sectors and groups will be invited to provide their input and feedback as the consultation proceeds.

The next stages of consultation will include testing and discussions addressing support options, communications and the delivery plan.

Members queried if the tax agent authorisation process would apply to all individuals and sole traders and if it could be run through myGov.

The ATO advised that using myGov may be part of the solution and that the process will apply to all individuals and sole traders but only in circumstances where they are seeking to change their tax agent.

The ATO highlighted the feedback received from individuals and sole traders has been positive as they want to have control of who can access their information.

Members commented that whichever mechanism is used, the ATO should be mindful of those groups of people who won't or can't access technology and may require additional support.

The ATO agreed and advised consideration on how to support these groups will occur at the next stage of the consultation process.

Next 5,000 program

Next 5,000 program updates have been made in respect of streamlined assurance review (SAR) and next action review products discussed at the 24 July 2025 PGSG. The changes have been implemented as part of improving taxpayer experience. The specific updates are:

- changes published to ato.gov.au in September 2025
- changes implemented about ATO processes and systems for new SARs commenced from September 2025.

The ATO discussed a further change to processes regarding a one-month notification period for comprehensive risk reviews. Instead of being locked to provide a particular amount of time for notification, staff will work with tax agents and taxpayers on what way is most

appropriate to start a review. For example, allow some time for agents and taxpayers to prepare, have a meeting first to better understand the group, obtain financial statements to best tailor our questions we ask, issues a request for information. This change means there will be a similar experience for private groups that are subject to a review across different populations.

Members questioned whether a notification letter is issued when a client has entered the Next 5,000 population. The ATO advised that such a letter is not issued. Notification letters are issued prior to a review commencing.

The Next 5,000 program has communicated the ATO's concerns about non-lodgment in the privately owned wealthy group population through articles published on the tax professional's newsletter and business bulletin newsletter in August 2025.

The Next 5,000 program issued a program experience survey in June 2025 to tax agents to draw additional insights for the Next 5,000 program focusing on tax governance, SAR notification period, findings report and external communications to assist with shaping the Next 5,000 program going forward.

Technical updates

Following the decision of PepsiCo, members and ATO discussed the potential upcoming changes that may be seen in the market relating to Part IVA cases.

Members were informed of consultation to be held between PGSG members, ATO and Treasury surrounding family trust distributions tax on 24 September 2025.

Attendees

Attendees list

Organisation	Member
ATO	Louise Clarke (Co-chair), Private Wealth

ATO	David Mendoza, Individuals and Intermediaries
ATO	Jenny Lin, Private Wealth
ATO	Kasey Macfarlane, Private Wealth
Accru Felsers	Brett Cox
Alvarez & Marsal	Dang Kha
BDO	Michael Anderson
Buildcorp Group	Jeff Jones
Chartered Accountants Australia and New Zealand	Karen Liew
CPA Australia	Jenny Wong
EY	Priyanka Subramanyam
HLB Mann Judd	Gaurav Chitnis
John Fairfax Group	Rob Jackson
KPMG	Belinda Cheesewright
Law Council of Australia	Tuan Van Le
Moore Australia	Varun Kumar
Mutual Trust	George Psarrakos
Oatley Family Group	Sharon Clark
Piper Alderman	Megan Bishop
Tax Bar Association	James Strong
The Tax Institute	Jonathan Ortner (Co-chair)

William Buck	Tim Lyford

Guest attendees

Guest attendees list

Organisation	Attendee
ATO	Amy James-Velagic, Private Wealth
ATO	Adrian Zuccarini, Office of the Chief Tax Counsel
ATO	Alexa Olczyk, Private Wealth
ATO	Amanda Priestley, Private Wealth
ATO	Celeste Salem, Private Wealth
ATO	Daniel Nesci, Objections and Review
ATO	Deborah Boyd, Office of the Chief Tax Counsel
ATO	Glenn Cooper, Private Wealth
ATO	Helen Filinis, Private Wealth
ATO	Pei-Sheng Hsu, Private Wealth
ATO	Pri Wijesooriya, Private Wealth
ATO	Priyasheel Jalota, Private Wealth
ATO	Tanya Richards, Office of the Chief Tax Counsel
ATO	Tara McLachlan, Private Wealth
ATO	Vesna Circosta, Private Wealth

ATO	Ziva White, Individuals and Intermediaries

Apologies list

Apologies list

Organisation	Member
ATO	Rowan Fox, Individuals and Intermediaries
Pitcher Partners	Alexis Kokkinos
Workpac	Rachel Tyler

QC 105608

Private Groups Stewardship Group key messages 24 July 2025

Key topics discussed at the Private Groups Stewardship Group meeting 24 July 2025.

Published 2 September 2025

Action item update

Action item	20241119-2 – Valuation of Employee Share Schemes (ESS)
Description	ATO to consider the application of the valuation guidelines in ESS 2015/1 (and whether amendments are required) to companies issuing shares that qualify for the start-up concession where the relevant

	company issuing shares is the head company of a group of entities.
Responsibility	ATO
Status	Open

Action item	20250319-1 – Professional firms – retention of profits
Description	The ATO to consider opportunities to further clarify the ATO website examples about how the retention of profits in a professional firm impacts the risk assessment criteria set out in Practical Compliance Guidelines *PCG 2021/4 Allocation of professional firms profits- ATO compliance approach* and provide a broader range of examples for how risk is assessed with the retention of profits in a professional firm.
Responsibility	ATO
Status	Closed The ATO has considered the existing web content and current examples involving retention of profits. We agree that it is appropriate to update and clarify the content and examples to highlight that the impact of the retention of profits within a firm on the risk assessment under the PCG will depend on varying facts and circumstances

Action item	20250319-2 – Private Equity
Description	ATO to consider opportunities for additional public advice and guidance in relation to private equity and arrange an out-of-session discussion on potential topics.

Responsibility	ATO
Status	Open

Action item	20250319-3 – Comms and guidance in relation to Bendel
Description	ATO to provide further guidance to support taxpayers on how to treat unpaid present entitlements pending finalisation of the *Commissioner of Taxation v Bendel* [2025] FCAFC 15 outcome.
Responsibility	ATO
Status	Closed The following article and content was published on the ATO website shortly after the last meeting: Deputy Commissioner Louise Clarke discusses Bendel decision. The article complements the guidance outlined in the ATO's Interim Decision Impact Statement.

Action item	20250319-4 – Section 124M Guidance
Description	ATO to consider whether the views expressed in an edited version of a private ruling reflect the ATO's general position on the interaction between look-through earnouts and the scrip-for-scrip rollover under section 124-M of *Income Tax Assessment Act 1997* (ITAA 1997), and if so, whether to confirm in public guidance.
Responsibility	ATO
Status	Closed

	The view expressed in the edited version represents the ATO view based on the facts and circumstances of that particular matter. The ATO position is that section 124-M scrip-for-scrip rollover can apply in relation to shares acquired as part of the financial benefits received through a look-through earnout right. However, it is dependent on the facts and circumstances in any given case. We don't see this issue arising frequently in our interactions through compliance activities and advice and guidance requests, and it is not an issue that is prioritised for public advice and guidance at this time. We will continue to monitor cases and advice requests and reconsider the need for public advice and guidance (PAG).

Environmental Scan

Members discussed recent developments and insights relevant to private groups.

- The Economic Reform Roundtable was held between 19 and 21 August 2025 in Canberra to support and shape the government's growth and productivity agenda.
- Partnership returns lodgment software has been updated and all statements of distributions for partners to a partnership can be lodged electronically.
- In response to the Australian Public Service Commissions ATO Capability Review (PDF 817KB), the ATO released Our Performance Evolution on 11 July 2025.
- On 12 June 2025, the ATO released a draft Vulnerability Framework for public consultation. Submissions closed on 18 July 2025.
- The ATO will focus on debts on hold and will be offsetting these debts against refund amounts. Communication will be issued to advise the market of this renewed focus.

Next 5,000 program

Timely lodgment is a key expectation for the Next 5,000 population, there is a low tolerance for non-lodgment. In the months ahead, the

ATO will communicate concerns through multiple channels. Taxpayers are strongly encouraged to review their lodgment status, lodge where needed and stay up to date with their obligations.

To improve the taxpayer experience, the ATO is making refinements to case products, specifically streamlined assurance reviews (SAR) and next action reviews (NAR).

Members noted that non-lodgment may arise for some taxpayers where they are in dispute for a prior year, and they are unsure how to treat their future year returns. Members also observed that when a registered tax agent reaches the 85% on-time lodgment benchmark, there may be a level of complacency with the remaining 15% of the outstanding lodgments.

Members provided positive feedback about the changes to the SAR and NAR products. In particular, the SAR 2-month notification change and the issuance of letters by case teams will allow groups to meet with case teams earlier, obtain context for the review, and understand why the ATO is looking at certain issues. Tax governance will be tailored to errors identified in the SAR to understand tax governance processes and procedures to prevent these errors from reoccurring. NARs will be phased out and replaced with resolving issues in the current SAR or an escalation to audit where required.

Members supported the proposed reduction in detail provided in the SAR report, though one member raised concerns that some taxpayers see value in receiving a detailed analysis of what was considered during a review even where no errors were identified.

Top 500 program

The Top 500 program changes were published on ato.gov.au in April, and a webinar for representatives and advisers of Top 500 groups was held on 1 May 2025 to explain the changes. The slides from the presentation were sent to all registrants and the recording is available at Top 500 Program - Changes to the program from April 2025 - ATOtv. The focus is now on implementing these changes by working with Top 500 groups.

The ATO's expansion of the Provisional justified trust for Top 500 groups approach to all groups that achieve full tax assurance has been published. The approach is about encouraging more groups,

particularly those in our significant category, to invest in tax governance.

The 2025 Top 500 client survey was conducted in May and June 2025 and the detailed results will be presented to the Private Groups Stewardship Group (PGSG) and published on ato.gov.au in the second half of 2025.

Members commented that guidance on how a private group is defined is not overly detailed and further clarity may be appropriate. The ATO acknowledged the feedback, noting that a close collaborative approach with the Top 500 engagement teams will also assist with resolving any ambiguities.

Community expectations of privately owned and wealthy groups and GST

The ATO is exploring how community expectations might shape its approach to GST compliance for privately owned and wealthy groups. The Tax Avoidance Taskforce is primarily focused on ensuring that the largest and wealthiest taxpayers pay the right amount of income tax in Australia. The ATO asked members if there is a segment of the privately owned and wealthy groups population that needs a differentiated approach and what such an approach might look like, noting the most significant GST reporters do not all appear to be concentrated in the Top 500 population.

Members agreed that wealth alone should not determine differentiated GST engagement and noted that:

- fraudulent GST claims and phoenixing undermine community trust
- GST was originally introduced with an implicit trade-off, businesses take on compliance obligations in exchange for cash flow benefits
- non-compliance often stems from poor cash flow management rather than deliberate evasion, the ATO could consider targeted education campaigns to help businesses understand and manage GST obligations proactively, especially in industries with longer payment cycles like construction
- BAS agents often have real-time visibility into client cash flow and GST positions they could play a stronger role in assurance and education efforts

- classification errors, for example, food items, margin schemes in property as persistent GST risks and the ATO could consider industry-specific guidance and system checks could help mitigate these errors.

Family trust distributions tax

Following the PGSG out of session consultation on 10 February 2025, the ATO has continued to consider internal and external stakeholder feedback.

The session provided updates on the ATO's consideration of:

- administrative improvements to make it easier for taxpayers to comply
- group member suggested administrative proposals for taxpayers who have family trust distributions tax (FTDT) exposure
- potential opportunities to prevent on-going FTDT compliance issues.

Members discussed the various administrative improvements that the ATO has been progressing since the consultation.

- Updates to the Online services for agents, family trust elections (FTE) and interposed entity election IEE) report are currently being progressed in response to feedback on visibility, or lack thereof, of certain elections. This information is currently available if taxpayers have previously lodged their elections and call the ATO to confirm. The ATO confirmed it will issue communications once the updates have been finalised.
- The 2025 FTE (NAT 2787) and IEE (NAT 2788) declaration forms have now been updated to clarify that the election declaration can be signed by a public officer or a director of the corporate trustee. The members discussed whether this was prospective, the ATO confirmed it was just a clarification therefore existing elections are valid.
- The ATO's upcoming planned communications and updates, such as web content updates, will provide further education and awareness on compliance obligations, consequences and issues that can arise.

- Members also discussed the compliance challenges and compliance issues that arise under the current legislative framework.

The group will continue to work collaboratively to explore potential opportunities to prevent on-going FTDT compliance issues.

Draft practical compliance guideline

The ATO is developing a draft practical compliance guideline (PCG) outlining its compliance approach to the reporting of significant global entity (SGE) status for entities that are members of privately owned and wealthy groups (private groups).

The purpose of the draft PCG is to support private groups in managing compliance risks when assessing whether group members are SGEs, in the context of the generally lower public financial disclosure requirements for private groups and the complexity in applying accounting principles to entities commonly found in private groups, such as discretionary trusts.

The ATO plans to release the draft PCG for public consultation later this year.

The ATO noted that country-by-country reporting entity status is outside the scope of the draft PCG. The draft PCG sets out a practical administration approach, it does not provide an interpretation of accounting standards.

The draft PCG does not apply to publicly owned and foreign controlled groups. Members suggested that the draft PCG should also apply to foreign controlled private groups which the ATO will consider.

Members questioned whether there would be an additional disclosure on ATO forms (such as the reportable tax position (RTP) schedule) regarding whether the PCG applies. The ATO is not contemplating including the PCG in the RTP schedule at this stage.

Members queried whether a change in ATO communication to taxpayers regarding their SGE status will occur as groups approach the AUD $1 billion threshold. The ATO acknowledged this comment but noted this wasn’t feasible given the time lag, that is the ATO being reliant on this data from lodgment.

The ATO welcomed member feedback on the draft PCG. Members were invited to make a submission at any time before the wider public consultation period is completed.

Technical updates

The ATO discussed the recently published public advice and guidance pieces.

Members discussed the recent part unfavourable decision of the Full Federal Court in Merchant v Commissioner of Taxation [2025] FCAFC 56, delivered on 22 April 2025. The ATO advised it has filed a special leave application with the High Court appealing part of the section 177E issue. The majority found in favour of the Commissioner for all other issues including section 177D and the application of the taxation of financial arrangements rules. The taxpayer has also filed a special leave application with respect of section 177G.

Members discussed the ATO's position in relation to the application of the 45 day holding period rule in the context of family trusts. The ATO reiterated its position that for a beneficiary of a discretionary trust with an FTE in place, both the beneficiary and trust are required to meet relevant qualified person testing and must satisfy the 45 day holding period requirement to receive the benefit of the franking credit offset. The ATO undertook to update its web guidance to further emphasise this view.

Attendees

Attendees list

Organisation	Member
ATO	Louise Clarke (Co-chair), Private Wealth
ATO	Jenny Lin, Private Wealth
ATO	Kasey Macfarlane, Private Wealth

ATO	Rowan Fox, Individuals and Intermediaries
Accru Felsers	Brett Cox
Alvarez & Marsal	Dang Kha
BDO	Michael Anderson
Buildcorp Group	Jeff Jones
Chartered Accountants Australia and New Zealand	Karen Liew
CPA Australia	Jenny Wong
EY	Priyanka Subramanyam
HLB Mann Judd	Gaurav Chitnis
John Fairfax Group	Rob Jackson
KPMG	Belinda Cheesewright
Law Council of Australia	Tuan Van Le
Moore Australia	Varun Kumar
Mutual Trust	George Psarrakos
Oatley Family Group	Sharon Clark
Piper Alderman	Megan Bishop
Pitcher Partners	Alexis Kokkinos
Tax Bar Association	James Strong
The Tax Institute	Jonathan Ortner (Co-chair)
William Buck	Tim Lyford

Workpac	Rachel Tyler

Guest attendees

Guest attendees list

Organisation	Attendee
ATO	Amy James-Velagic, Private Wealth
ATO	Carlee Deigan, Private Wealth
ATO	Carolynne McQuay, Private Wealth
ATO	David Kasmarik, Private Wealth
ATO	Glenn Cooper, Private Wealth
ATO	Karen Price, Private Wealth
ATO	Karen Rooke, Superannuation and Employer Obligations
ATO	Matthew Campbell, Enterprise Solutions and Technology
ATO	Paul Morgan, Enterprise Solutions and Technology
ATO	Priyasheel Jalota, Private Wealth
ATO	Pru Hancox, Private Wealth
ATO	Victor Yong, Private Wealth
ATO	Vince Lagana, Private Wealth

Apologies

Apologies list

Organisation	Member
ATO	Andrew Watson, Individuals and Intermediaries

QC 105469

Private Groups Stewardship Group key messages 19 March 2025

Key topics discussed at the Private Groups stewardship Group meeting 19 March 2025.

Published 28 April 2025

Action item update

Action item 20240916-3 – ATO to consider what opportunities exist for communicating to relevant stakeholders the distinction between investors and founders, and whether or not it is appropriate at law for founders to access the early-stage innovation companies concessions.

This item is closed.

Action item 20241119-1 – ATO to identify the key issues surrounding Family Trust Distributions Tax and to work collaboratively with members to consider areas of concern and opportunities to address issues via an out-of-session discussion in early 2025.

This item is closed.

Action item 20241119-2 – ATO to consider the application of the valuation guidelines in ESS 2015/1 (and whether amendments are required) to companies issuing shares that qualify for the start-up concession where the relevant company issuing shares is the head company of a group of entities.

This item is open.

Action item 20250319-1 – ATO to consider opportunities to further clarify the ATO website examples about how the retention of profits in a professional firm impacts the risk assessment criteria set out in Practical Compliance Guidelines PCG 2021/4 Allocation of professional firms profits- ATO compliance approach and provide a broader range of examples for how risk is assessed with the retention of profits in a professional firm.

This item is open.

Action item 20250319-2 – ATO to consider opportunities for additional public advice and guidance in relation to private equity and arrange an out-of-session discussion on potential topics.

This item is open.

Action item 20250319-3 – ATO to provide further guidance to support taxpayers on how to treat unpaid present entitlements (UPE) pending finalisation of the Commissioner of Taxation v Bendel [2025] FCAFC 15 outcome.

This item is open.

Action item 20250319-4 – ATO to consider whether the views expressed in an edited version of a private ruling reflect the ATO's general position on the interaction between look-through earnouts and the scrip-for-scrip rollover under section 124M of Income Tax Assessment Act 1997 (ITAA 1997), and if so, whether to confirm in public guidance.

This item is open.

Environmental scan

Members discussed recent developments and insights from members relevant to private groups.

The ATO has filed an application to seek special leave to the High Court for review of the decision of the Full Federal Court in *Commissioner of Taxation v Bendel* [2025] FCAFC 15. An updated Interim Decision Impact Statement has been published explaining the Commissioner of Taxation's administrative approach pending the outcome of the special leave application.

The 2024–25 Mid-Year Economic and Fiscal Outlook announced $76 million in funding over 4 years from financial year 2024–25 to

modernise income tax reporting systems. For more information, see Modernising Tax Administration Systems (MTAS).

The group discussed whether the ATO would consider a United States incorporated company, when it is top hatted on an Australian resident group, an Australian resident for tax purposes.

A member raised a query regarding the ATO's web guidance on Practical Compliance Guideline PCG 2021/4 *Allocation of professional firm profits – ATO compliance approach* concerning an example involving profits retained by a practice entity. The ATO agreed to review the example and consider whether it would be appropriate to provide additional examples.

A member observed a trend of the ATO imposing administrative penalties at the recklessness level 50% more frequently and queried if this was due to a change of approach. The ATO advised there is no systemic change in how administrative penalties are applied, and noted all penalties are determined on the facts of the case.

Top 500 program

The group discussed impending changes to the Top 500 program following a comprehensive internal review. The ATO intends to update the definition of groups in the Top 500 program to ensure it is focused on the wealthiest private groups whose tax affairs are the most material. This change means that some groups in the program will be removed. There is an associated strategy for exiting those groups that no longer meet the definition.

Additionally, the ATO intends to implement a differentiated approach to obtaining assurance that the correct amount of tax is being paid, based on a group's categorisation as significant or general.

The ATO supports groups to achieve justified trust, including widening the provisional justified trust approach and clarifying the scope of refresh-year engagements that occur after the monitoring and maintenance period.

Members gave positive feedback but suggested web guidance for tax governance needs to be easier to navigate for tax agents and other stakeholders. The ATO confirmed that better guidance is a focus area for later in 2025.

Members asked about upcoming public communications regarding the changes. The ATO advised website content will be updated with information explaining the changes as a first step, followed by a webinar. Groups affected by the changes will also be advised directly by the case teams.

Private equity

The ATO provided an update on the domestic private equity program.

Risk-based reviews with taxpayers have started in the Next 5,000 private groups tax performance program and the Medium and emerging private groups tax performance program populations.

A new private equity ATO web page is in development and the ATO is considering the need for other public advice and guidance. More public advice and guidance would be helpful, an agreement to discuss potential topics in depth out-of-session was made.

The ATO will give a further update on the domestic private equity program later this year.

Reflections from the Commissioner

Commissioner Rob Heferen shared his reflections about his time in the role, including:

- the recently refreshed the ATO purpose and vision statements
  - The ATO's purpose is to collect tax so the government can deliver services to the Australian community and the non-payment of debt impacts the Australian public more broadly.
  - The ATO's vision is that every taxpayer meets their obligations because it is easy to comply, help is tailored, and deliberate non-compliance has serious consequences.
- the Australian Public Service Commission's recent capability review of the ATO and the findings that will help inform focus areas so that the ATO can fulfill its purpose in the coming years
- the vital role that tax agents and advisers play as partners in the tax system.

Members discussed the ATO's strategies for reducing the debt book, such as the more frequent issuing of director penalty notices, retention

of refunds and opportunities for tax system improvements.

Commissioner of Taxation v Bendel

Members discussed the Full Federal Court decision in *Commissioner of Taxation v Bendel* [2025] FCAFC 15 including:

- practical implications for private groups and their advisers
- tax consequences that might arise depending on whether taxpayers convert unpaid present entitlements to complying loans for section 109N purposes
- the ATO's approach as outlined in the updated Decision Impact Statement
- areas where members would appreciate further guidance from the ATO pending the outcome of the special leave application. The ATO will consider what further practical guidance can be provided in the interim.

Succession planning and private groups

The ATO led a discussion on succession planning and the associated tax risks for private groups. The private groups market has an ageing demographic, and the ATO has observed an increase in succession planning activity and associated tax issues.

Some private groups have not adopted effective tax governance for succession plans, resulting result in unintended tax consequences. The ATO recommends regular reviews of succession plans to ensure they remain fit for purpose. This minimises the circumstances where unintended tax consequences arise or where groups seek to restructure to minimise or avoid tax when implementing the succession plan.

The ATO is updating succession planning web guidance to support private groups to adopt good tax governance and helping understand the behaviours, characteristics and tax issues that attract the ATO's attention in relation to succession planning.

Members commented that the proposed guidance is a great starting point. Members noted the importance of encouraging taxpayers to engage with tax advisers and lawyers on succession planning matters

and they also noted the importance of taxpayers regularly reviewing and refreshing their succession plans.

Members suggested that messaging targeted at the next generation would be beneficial. Members also suggested the ATO consider additional guidance such as a webinar or practical examples on the tax considerations and risks associated with succession planning.

Small business future tax administration

The ATO has engaged broadly with small business, tax and BAS professionals, digital service providers and other bodies in the small business ecosystem as part of their key focus area to blueprint a future digitalised tax experience for small business.

Initiatives and pilots currently underway to begin implementing elements of a future digitalised tax experience include:

- shifting from quarterly to monthly GST reporting, primarily focused on small businesses with history of not complying with their tax obligations, and raising awareness in the small business market that voluntary monthly GST reporting is an option
- embedding guidance and rules into software by engaging in a pilot around embedding pay as you go instalment (PAYG) calculation into software
- providing more assurance and certainty to small business prior to lodgment that they are getting their tax right
- more purposeful use of third-party data, initially focused on taxable payments annual report (TPAR) data.

Members commended the initiatives that were outlined and queried if penalties and interest would apply if the PAYG instalment calculation is embedded into reporting software, but inconsistencies or omitted amounts were found. Questions surrounding the ability of pre-fill if TPAR is on an accrual basis instead of a paid basis were also raised. The ATO advised these considerations will be worked through as these initiatives continue and potentially grow from small pilots to larger scale projects.

Technical updates

The ATO discussed recently published public advice and guidance pieces.

Members commented on Draft Tax Ruling TR 2004/18DC *Income tax: capital gains: application of CGT event K6 (about pre-CGT shares and pre-CGT trust interests) in section 104-230 of the Income Tax Assessment Act 1997*, noting that expanding the examples and including guidance on how to do the calculations would be beneficial.

The ATO gave an update on current and upcoming public advice and guidance priorities linked to ATO key focus areas. Members noted the volume of public advice and guidance already underway and generally agreed with their priority. Members commented that guidance surrounding family trust issues in the private groups market should also be a key priority and that an awareness piece surrounding the 45-day holding rule would be beneficial.

Members were invited to identify other priority areas that the ATO should focus on.

Attendees

Attendees list

Organisation	Members
ATO	Louise Clarke (Co-chair), Private Wealth
ATO	Andrew Watson, Individuals and Intermediaries
ATO	Jenny Lin, Private Wealth
ATO	Kasey Macfarlane, Private Wealth
Accru Felsers	Brett Cox
Alvarez & Marsal	Dang Kha
BDO	Michael Anderson

Buildcorp Group	Jeff Jones
Chartered Accountants Australia and New Zealand	Karen Liew
CPA Australia	Jenny Wong
Deloitte Private	Priyanka Subramanyam
HLB Mann Judd	Gaurav Chitnis
John Fairfax Group	Rob Jackson
KPMG	Belinda Cheesewright
Law Council of Australia	Tuan Van Le
Moore Australia	Varun Kumar
Mutual Trust	George Psarrakos
Oatley Family Group	Sharon Clark
Piper Alderman	Megan Bishop
Pitcher Partners	Alexis Kokkinos
The Tax Institute	Jonathan Ortner (Co-chair)
William Buck	Tim Lyford

Guest attendees

Guest attendees list

Organisation	Attendee
ATO	Amy James-Velagic, Objections and Review
ATO	Daniel Smith, Private Wealth

ATO	Glenn Cooper, Private Wealth
ATO	Kacey Jardine, Private Wealth
ATO	Karen Rooke, Office of the Chief Tax Counsel
ATO	Michael Morton, Small Business
ATO	Nina Cekulis, Private Wealth
ATO	Rob Heferen, Commissioner of Taxation
ATO	Vesna Circosta, Private Wealth
Workpac	Rachel Tyler

Apologies

Apologies list

Organisation	Member
Tax Bar Association	James Strong
Workpac	Judd Adams

QC 104327

Private Groups Stewardship Group key messages 19 November 2024

Key topics discussed at the Private Groups stewardship Group meeting 19 November 2024.

Last updated 16 December 2024

PGSG membership refresh

The biennial Private Groups Stewardship Group membership refresh is complete. The refreshed membership comprises new and reappointed members across professional associations, advisers and private groups, and will commence for a 2-year period over 2025 and 2026. An updated membership list will be published in the new year.

Action item update

Action item 20240916-1 – The ATO to consider opportunities for communication and guidance about the level of information and detail that ought to be included in a request for remission of GIC.

This item is closed.

Action item 20240916-2 – Members to provide feedback on the payment strategy and potential avenues for communication the proposed

This item is closed.

Action item 20240916-3 – ATO to consider if opportunities for communication and messaging about the distinction between investors and founders, and whether or not it is appropriate at law for founders to access ESIC concessions.

This item is open.

Action item 20241119-1 – ATO to identify the key issues surrounding Family Trust Distributions Tax and to work collaboratively with members to consider areas of concern and opportunities to address issues via an out-of-session discussion in early 2025.

This item is open.

Action item 20241119-2 – ATO to consider the application of the valuation guidelines in ESS 2015/1 (and whether amendments are required) to companies issuing shares that qualify for the start-up concession where the relevant company issuing shares is the head company of a group of entities.

This item is open.

Environmental scan

Corporate tax transparency report

The Australian Taxation Office (ATO) has published the *Corporate tax transparency report 2022–23*. This is the first year the report captures Australian private corporate entities with total income between $100 million and $200 million following the threshold change.

R&D tax incentive transparency report

The ATO has published the first annual Research and Development (R&D) tax incentive transparency report. The report covers R&D entities who claimed the R&D tax incentive for the 2021–22 financial year.

Updates to web content

The ATO has updated web content on What attracts our attention. Key updates include:

- areas of focus for 2024–25
- an update on international transactions emphasising the ATO's focus on cross border activities and transactions involving privately owned and wealthy groups
- information on the private wealth adviser program, explaining the ATO's collaborative approach with professional firms and advisers within privately owned and wealthy groups.

Web content on Commercial deals has been updated to include an explanation of how pre-lodgment certainty can be provided and pre-deal compliance action anticipated where foreign residents potentially misapply capital gains tax exemptions.

The ATO has also updated the characteristics of medium and emerging groups information on the Medium and emerging private groups tax performance program page.

Collecting unpaid tax and super

The ATO outlined changes to its approach to collecting unpaid tax and super, highlighting:

- a greater focus on businesses refusing to engage with the ATO and continually ignoring SMS and letter reminders
- a deliberate and targeted approach which considers compliance history
- quicker and firmer action such as Director Penalty Notices (DPNs) and garnishees for businesses who don't engage or set up a payment plan for unpaid GST, PAYG withholding or employee super
- a more holistic view of debt where directors of multiple companies who have unpaid GST, PAYG withholding and employee super amounts do not engage; these directors can expect DPNs capturing the total value of the amounts across all related entities
- an expectation that a private group will extend necessary financial support to pay any outstanding debts of entities in the group.

Public advice and guidance

Members discussed recent public advice and guidance impacting the private wealth market, including draft Practical Compliance Guideline PCG 2024/D3 *Restructures and the new thin capitalisation and debt deduction creation rules – ATO compliance approach*.

Recent litigation

Members discussed recent litigation impacting the private wealth market, including:

- *Michael John Hayes Trading Pty Ltd as trustee of the MJH Trading Trust & Ors v Commissioner of Taxation* [2024] HCASL 268
- *BSKF and HGYT v Federal Commissioner of Taxation* [2024] AATA 3377

Other matters

Members welcomed the updates to the What attracts our attention web content. They suggested the ATO communicate more about specific risks and provide greater detail on what is concerning the ATO to help mitigate risks.

Members raised issues around confidentiality labels for specific agenda items and supporting papers and how these impact advisory members' obligations under section 25 of the *Tax Agent Services*

(Code of Professional Conduct) Determination 2024. The ATO will further define the classification of agenda items and papers to provide greater clarity to members and help them determine whether they can participate in confidential consultation.

Medium and emerging program

The ATO provided members with visibility of the medium and emerging (M&E) private groups tax performance program, with a particular focus on:

- the thresholds, diversity and characteristics of the M&E population
- M&E private groups strategy
- the program of work for the 2025 financial year, including risk focus areas and initiatives
- the ATO's approach to engaging with M&E taxpayers.

Members discussed the considerations and challenges around determining when a taxpayer meets the threshold characteristics of the M&E population. Members highlighted the important role that advisers play in this market and the importance for M&E private groups to seek specialist advice for complex issues.

The ATO discussed the planned approach for communicating with new entrants to the M&E population who have experienced growth in their business and have indicators of tax risks. Members suggested incorporating a feedback loop for advisers to communicate back to the ATO if they are of the view their client hasn't made a mistake.

Members suggested practical guides and examples of the governance and record keeping required for the M&E population, which could assist new entrants and smaller tier advisers. Using existing material in conjunction with a checklist to support business processes could provide useful education.

The ATO's engagement with the M&E population could be improved by providing details of key risks, with practical examples on where things can go wrong and actions to avoid this. Members suggested a roadshow on key risks and governance requirements, including when to escalate matters for specialist advice.

Many M&E private businesses are critical to the supply chain of larger businesses, therefore non-lodgment or non-payment of debt may

impact those within the supply chain. The only visibility of these issues is through the disclosure of business tax debts. The ATO noted work on how large businesses can assist to ensure the compliance of businesses in supply chains is underway, especially in relation to the property and construction industry.

ATO payment strategy pilot

The group discussed the ATO's planned communication approach relating to payment strategy.

Top 500 program

The ATO provided an update on the Top 500 program review and some of the key features of the soon to be published Top 500 *2024 findings report*. The program review is ongoing and due diligence is underway to analyse the potential impacts on relevant tax gaps. An update on the review will be provided in the new year.

Members asked about the tax issues that are arising in the population, and the ATO provided a brief summary including related party transactions with self-managed super funds, deductibility matters such as deductions claimed for private pursuits, and trusts issues including family trust distribution tax.

Next 5,000 program

The ATO provided an update on the Next 5,000 program and some of the key features of the soon to be published Next 5,000 *2024 findings report*, including:

- insights in relation to the program showing that Next 5,000 groups are making errors due to lack of procedures and poor record keeping
- recommendations to be published on the ATO website to assist Next 5,000 groups with their ongoing compliance obligations
- next actions following recommendations from finalisation of streamline assurance reviews, to understand the extent of these recommendations being actioned.

Members raised concerns about the timeframes and the extensive range of information sought at the request for information (RFI) stage

and highlighted challenges with the collation of information and the timeframes for response. Businesses should engage with the ATO if they need more time to provide information and negotiate a suitable timeframe. Members suggested responses to RFIs be provided in tranches so businesses can better manage timeframes and the flow of information requested.

Members suggested greater transparency and clarity surrounding each RFI question to assist advisers to manage responses and the detail required. Members also discussed the need for greater access to information, noting the findings report is useful to discuss with clients and prepare articles, and highlighted effective ways to engage with this population.

Family trust distributions tax

The group discussed family trust distributions tax (FTDT), including:

- what members are seeing as the current risk areas the ATO have identified, and which are causing members the most concern
- possible administrative approaches
- possible legislative amendments based on issues members are seeing with the provisions in practice.

Members shared their experience and issues with FTDT legislation and raised concerns about lack of legislative discretion, impact of general interest charge (GIC) and no limitation on the period of review. Members raised various examples highlighting the difficulties that may arise after a family trust election (FTE), with an emphasis on substantiation of an FTE. There is a lack of awareness about the effect of FTE and interposed entity election (IEE) and there has been a general practice to make these elections. The ATO will present a webinar on FTE and IEE to increase awareness.

Members discussed potential administrative options for taxpayers who want to resolve historical FTE issues. The ATO acknowledged the opportunity to explore options and administrative considerations collaboratively but highlighted the need to consider options in a broader context; for example, the potential longer-term impacts of options in 5 to 10 years. The ATO will consider the breadth of FTDT circumstances arising and will continue to engage with members on this topic.

Income tax and public advice and guidance

The ATO provided an update on draft public advice and guidance due to be released for public consultation in early December including:

- the finalisation of draft Taxation Determination TD 2024/D2 *Income tax: factors taken into account in applying the exceptions to section 99B of the Income Tax Assessment Act 1936 contained in paragraphs 99B(2)(a) and 99B(2)(b)*
- the finalisation of draft Practical Compliance Guideline PCG 2024/D1 *Section 99B of the Income Tax Assessment Act 1936 – ATO compliance approach*
- a draft addendum to Taxation Ruling TR 2004/18 *Income tax: capital gains: application of CGT event K6 (about pre-CGT shares and pre-CGT trust interests) in section 104-230 of the Income Tax Assessment Act 1997.*

Members asked for any updates on draft Practical Compliance Guideline PCG 2024/D3 *Restructures and the thin capitalisation and debt deduction creation rules – ATO compliance approach*. Members who made submissions on the draft PCG highlighted their concern that there are limited options for middle market taxpayers to limit their exposure to the new rules. The ATO noted the comments period for the draft PCG closed on 8 November 2024. The PCG will be finalised in the new year following consideration of the comments received.

Noting increasing market activity and the ATO's planned focus on private equity, members suggested additional guidance on this topic, including further details and examples, would be helpful. The ATO noted is developing further website guidance and information about private equity.

Technical issues

The group discussed net tangible assets in the context of valuing employee share schemes in companies qualifying for the start-up concession. The ATO will consider the appropriate valuation methodology where the start-up is part of a broader private group.

End of year wrap up

Members praised the high quality and broad range of open, productive discussions throughout the year. Members agreed conversations were candid, insightful and provide confidence that the ATO is listening. Real improvements are being made.

Members suggested greater visibility on the progress of action items would be beneficial.

Proposed focus areas for 2025 include:

- improving access to timely and clear guidance available on key and emerging risks, for example:
  - succession planning
  - restructures (inclusive of Part IVA, rollovers, etc.)
  - private equity
- the M&E program
- family trusts distributions tax
- property and construction
- the private wealth adviser program
- the impact of the appeal of the *Bendel and the Commissioner of Taxation* [2023] AATA 3074 decision which is before the Federal Court.

Other business

The ATO thanked members for their contributions this year and farewelled departing members.

Attendees

Attendees list

Organisation	Member
ATO	Louise Clarke (Co-chair), Private Wealth

ATO	Andrew Watson, Individuals and Intermediaries
ATO	Jenny Lin, Private Wealth
ATO	Kasey Macfarlane, Private Wealth
Buildcorp Group	Jeff Jones
Chartered Accountants Australia & New Zealand (CAANZ)	Karen Liew
CPA Australia	Jenny Wong
Deloitte Private	Priyanka Subramanyam
Findex	Carlo Di Loreto
John Fairfax Group	Rob Jackson
KPMG Australia	Belinda Cheesewright
Law Council of Australia	Tuan Van Le
Pitcher Partners	Alexis Kokkinos
Tax Bar Association	James Strong
The Tax Institute	Jonathan Ortner
William Buck	Tim Lyford
Workpac	Judd Adams
Workpac	Rachel Tyler

Guest attendees

Guest attendees list

Organisation	Attendee
ATO	Amy James-Velagic, Private Wealth
ATO	Anita Challen, Frontline Risk and Strategy
ATO	Brock Spicer, Private Wealth
ATO	Daniel Smith, Private Wealth
ATO	David Hall, Private Wealth
ATO	Laura Bagnato, Private Wealth
ATO	Rosie Cicchitti, Private Wealth
ATO	Vesna Circosta, Private Wealth

Apologies list

Apologies list

Organisation	Member
BDO	Michael Anderson
Fox Private Group	Garry Voigt
Oatley Family Group	Sharon Clark

QC 103562

Private Groups Stewardship Group key messages 16 September 2024

Key topics discussed at the Private Groups Stewardship Group meeting 16 September 2024.

Last updated 8 November 2024

Membership changes

The Australian Taxation Office (ATO) advised of the appointment of the following members for the remainder of 2024:

- Karen Liew, Chartered Accountants Australia and New Zealand
- Jenny Wong, CPA Australia
- Rob Jackson, Fairfax Group, private group member
- Jeff Jones, Buildcorp Group, private group member.

Action item update

20231121-1 – Members to provide feedback on Top 500 engagements to be incorporated in nationwide internal sessions.

This item is closed.

20240613-1 – ATO to issue communication to raise awareness about how the thin capitalisation amendments may impact private groups.

This item is closed.

20240916-1 – ATO to consider opportunities for communication and guidance about the level of information and detail that ought to be included in a request for remission of GIC.

This item is open.

20240916-2 – Members to provide feedback on the payment strategy and potential avenues for communicating the proposed approach so that taxpayers and their advisers are aware of the ATO's revised positioning in relation to outstanding debts.

This item is open.

20240916-3 – ATO to consider if opportunities for communication and messaging about the distinction between investors and founders, and whether or not it is appropriate at law for founders to access ESIC concessions.

This item is open.

Environmental scan

Corporate plan 2024–25

The ATO corporate plan 2024–25 highlights 6 key activities that encompass the ATO's core priorities and enable the achievement of its purpose and vision. The corporate plan also outlines 6 key focus areas of strategic importance which reflect the ATO's current operating environment and contribute to its key activities.

Frontline Operations changes

Service Delivery within the ATO has recently restructured and been renamed Frontline Operations. The changes aim to more strategically manage and prioritise work across the group in a holistic and integrated way.

The ATO assured members resources will not be reallocated from other areas as part of prioritising tax collection moving into a modern post-pandemic environment.

Recent public advice and guidance

Members discussed recent public advice and guidance impacting the private wealth market, including:

- updates to Law Administration Practice Statement PS LA 2011/4 *Collection and recovery of disputed debts*
- updates to Law Administration Practice Statement PS LA 2021/1 *Application of the promoter penalty laws*
- debt deduction creation rules and Division 7A web content
- draft Taxation Determination TD 2024/D2 *Income tax: factors taken into account in applying the exceptions to section 99B of the Income Tax Assessment Act 1936 contained in paragraphs 99B(2)(a) and 99B(2)(b)*
- draft Practical Compliance Guideline PCG 2024/D1 *Section 99B of the Income Tax Assessment Act 1936 – ATO compliance approach*
- draft Goods and Services Tax Determination GSTD 2024/D2 *Goods and services tax: supplies of sunscreen*

Recent litigation

Members discussed recent litigation impacting the private wealth market, including:

- Ierna v Commissioner of Taxation [2024] FCA 592
- Kilgour v Commissioner of Taxation [2024] FCA 687
- Wang v Commissioner of Taxation [2024] FCA 585
- *Moloney v Commissioner of Taxation* [2024] AATA 1488

Members commented there may be less appetite to litigate in the private market due to high legal costs.

Other matters

Members discussed the current payment culture relating to remission requests for general interest charge (GIC). They shared their experiences with lodging GIC remission requests using Online services for agents and noted the only avenue to review a denied GIC remission decision is to appeal to the Federal Court under *Administrative Decisions (Judicial Review) Act 1977*.

Members suggested process changes and additional guidance and education for tax professionals to ensure the ATO has all the necessary information to make GIC remission decisions, alleviating the need to appeal to the Federal Court. The ATO acknowledged members' concerns and potential options and will consider potential improvements.

Payment strategy pilot

Members discussed the ATO's payment strategy.

Next 5,000 program

The ATO provided an update on the Next 5,000 program, noting there are no major changes. The 2024 findings report will issue in November 2024.

Members asked about the current population parameters, highlighting there are significantly more groups falling into the Next 5,000 population. The ATO confirmed there are no plans to change the

population parameters and the differentiated approach of streamline assurance and risk reviews will be maintained.

Members commented that the risk reviews still have a tax governance element. The ATO noted the tax governance focus is on record keeping, as many common errors are a result of record keeping issues.

Top 500 program

The ATO provided an update on the Top 500 program and discussed the review of the program currently underway.

Members noted many taxpayers see value in achieving justified trust within the Top 500 program and entering a 3-year monitoring and maintenance period. Some clients in this period experience a higher-than-expected level of engagement. The group discussed the desire to engage in real time focusing on the last income tax return lodged and how to get engagements to this stage.

The group discussed options to improve rewards for achieving and maintaining justified trust. Members suggested the ATO provides a prompt response when taxpayers seek assistance and ensures the involvement of the right people to assist. A one size fits all approach may not be appropriate for the groups in this market as they vary dramatically in size and wealth. Members suggested further tailored approaches be considered.

Objections and private binding rulings workflows

The ATO led discussion on delays experienced by privately owned and wealthy groups (POWG) taxpayers and their advisers on objections and private binding rulings.

Objections

Complex objections in the POWG segment are completed by Objection and Review's middle market objection (MMO) area. Disputes can cover a broad range of technical issues, several tax periods, and a range of taxpayer behaviours. POWG objections of lower complexity that deal with more routine issues are completed by Objection and Review's scale market objection area.

In the 2024 financial year MMO received 761 objections and finalised 709 objections. Both the receipts and finalisations were significantly higher than the previous year and historical averages, with the latter increasing through improved efficiency rather than additional resourcing.

MMO will continue to increase finalisations and improve case management by:

- increasing resourcing through recruitment and an overall increase in MMO case officers
- further developing a differentiated approach to objections, with a focus on appropriate prioritisation and resource application to each individual case
- undertaking a review of the current stock on hand and work processes to identify options for further efficiency gains
- regularly monitoring quality assurance and case data to ensure cases are being allocated as quickly as possible and that taxpayers are being regularly updated on case progress.

Private binding rulings

Private ruling requests received in Private Wealth Advice and Guidance (PW AG) vary in terms of technical difficulty and risk due to the numerous arrangements and structures that private wealth taxpayers enter.

In the 2023–24 financial year, PW AG finalised more than 600 private rulings.

PW AG has been actively managing a backlog of unallocated private advice cases since July 2022 and triage all new private ruling applications to ascertain complexity and risk, to prioritise case allocation.

PW AG continue to explore options for managing the backlog, with a current focus on:

- streamlining the allocation of cases that have been triaged as low risk or non-complex
- identifying experienced technical leaders to be allocated at the commencement of cases that involve more complex arrangements and issues

- monitoring application dates and undertaking priority allocations for cases near or exceeding service standards to help manage the client experience.

Members raised concerns about delays experienced when complex subject matter such as Part IVA and section 45B are being considered. The ATO acknowledged the concerns and explained these matters often involve complex facts and arrangements and can require engagement with Tax Counsel Network. This can impact the time it takes to resolve a case.

Members also expressed concerns about the ATO potentially declining to rule where assumptions are necessary. The ATO addressed its role in providing helpful and accurate advice to support the self-assessment regime and explained the importance of being able to accurately define the scheme being ruled on to ensure the correctness of a private ruling product. The ATO carefully considers whether assumptions are required and appropriate on a case-by-case basis, particularly when ruling on future events and Part IVA.

Members queried if there are set timeframes for completing objections. The ATO explained that there are no specific timeframes as each objection is unique. However, it is expected that each objection is managed efficiently to ensure a timely resolution.

Technical issues

Division 855

Members discussed the recent Treasury paper on proposed changes to Division 855 of the *Income Tax Assessment Act 1997* (ITAA 1997) announced in the 2024 Budget. Members are particularly interested in what changes meant for existing cases concerning the meaning of real property for the purposes of Division 855.

Division 7A distributable surplus

Members observed there is limited ATO guidance about the operation of the distributable surplus formula and its various components as set out in section 109Y of the *Income Tax Assessment Act 1936*. It was suggested the ATO might consider providing additional general guidance on this topic, particularly regarding the fact that the

section 109Y distributable formula does not allow for a negative net asset position in the calculation.

Early stage innovation companies

Members queried the ability of founders to access early-stage innovation companies concessions and asked the ATO to consider if it is possible and/or appropriate under the law for founders to access the concessions.

Family trusts

Members asked the ATO to follow up on a question raised at an earlier meeting about the application of the 45–day holding rule in relation to trust distributions in scenarios where a family trust election has been made.

CGT event K6 and TR 2004/18

The ATO led a discussion on capital gains tax (CGT) event K6 and the proposal to amend Taxation Ruling TR 2004/18 *Income tax: capital gains: application of CGT event K6 (about pre-CGT shares and pre-CGT trust interests) in section 104-230 of the Income Tax Assessment Act 1997*.

Taxation Ruling TR 2004/18 sets out the ATO's view on the application of CGT event K6, regarding pre-CGT shares in a private company and pre-CGT interests in a private trust estate, in section 104-230 of the of the ITAA 1997.

The ATO now considers aspects of the ruling to be incorrect and intends to amend the ruling to reflect its revised view. Specifically, the ATO now considers that:

- if CGT event K6 happens, only one capital gain arises (contrary to the view in TR 2004/18 that two capital gains may arise in some instances, with the lesser gain being disregarded to avoid double taxation)
- the calculation of any K6 capital gain is then based upon an assessment of the relevant items of post-CGT property that the capital proceeds are reasonably attributable to in accordance with subsection 104-230(6), regardless of whether the relevant post-

CGT items are directly or indirectly owned, but in a way that avoids double counting.

Members discussed their views on the proposed revised interpretation, transitional issues, and other matters considered relevant to the development of the proposed addendum.

Members highlighted the importance of transitional arrangements and having practical compliance guidance to outline the safe harbours and what sits in the green zone.

Income tax and public advice and guidance

The ATO discussed Taxation Ruling TR 2018/6 *Income tax: trust vesting – consequences of a trust vesting* in light of the *McGowan and Valentini Trusts* [2021] VSC 154 decision. The group considered whether it creates ambiguity and a need for the ATO distinguish its position from the decision.

Members commented there is no resounding need to change the ruling. The group discussed remedial trusts, such as constructive trusts established by a court decision, and the process involved when there are ill-gotten gains, and the beneficiary has paid the tax.

Other business

The ATO raised awareness of the Private Groups Stewardship Group's 2025 membership refresh process which commenced on 12 September 2024 and will close on 2 October 2024. New and continuing membership will be announced by the end of the year with new members to commence in February 2025.

Attendees

Attendees list

Organisation	Member
ATO	Kasey MacFarlane (Co-chair), Private Wealth

ATO	Jenny Lin, Private Wealth
ATO	Laura Bagnato
BDO	Michael Anderson
Chartered Accountants Australia and New Zealand (CAANZ)	Karen Liew
Deloitte Private	Priyanka Subramanyam
Findex	Carlo Di Loreto
Fox Private Group	Garry Voigt
Tax Bar Association	James Strong
The Tax Institute	Jonathan Ortner (Co-Chair)
William Buck	Tim Lyford

Guest attendees

Guest attendees list

Organisation	Attendee
ATO	Adam O'Grady, Frontline Risk and Strategy
ATO	Andrew Orme, Objections and Review
ATO	Daniel Smith, Private Wealth
ATO	David Esposito, Private Wealth
ATO	Deanna Sari, Private Wealth
ATO	Glenn Cooper, Private Wealth
ATO	Jeneata Segaram, Objections and Review

ATO	Nathan Lymberopoulos, Frontline Risk and Strategy
ATO	Scott Walker, Private Wealth

Apologies

Apologies list

Organisation	Member
ATO	Andrew Watson, Individuals and Intermediaries
ATO	Louise Clarke, Private Wealth
Buildcorp Group	Jeff Jones
CPA Australia	Jenny Wong
John Fairfax Group	Rob Jackson
KPMG Australia	Belinda Cheesewright
Law Council of Australia	Tuan Van Le
Oatley Family Group	Sharon Clark
Pitcher Partners	Alexis Kokkinos

QC 103307

Private Groups Stewardship Group key messages 13 June 2024

Key topics discussed at the Private Groups Stewardship Group meeting 13 June 2024

Published 18 July 2024

Membership changes

Australian Taxation Office (ATO) Co-chair Amy James-Velagic advised of recent Private Groups Stewardship Group membership changes:

- Michael Croker, Chartered Accountants Australia and New Zealand, will retire as a member effective 1 July 2024.
- James Strong has replaced Daniel McInerny as the Tax Bar Association representative for the remainder of 2024, effective May 2024.
- Meng Lee, Andersen Australia, has resigned as a member effective June 2024.

Action item update

20231121-1 – Members to provide feedback on Top 500 engagements to be incorporated in nationwide internal sessions.

This item is closed.

20240613-1 – ATO to consider issuing communication to raise awareness about how the thin capitalisation amendments may impact private groups.

This item is due as soon as practicably possible.

Environmental scan

2024–25 Budget

The ATO will be responsible for delivering a total of 30 measures, including extensions to the Tax Avoidance Taskforce, Personal Income Tax Compliance program and Shadow Economy Compliance program until 30 June 2028.

Other measures of interest include:

- Strengthening the foreign resident capital gains tax regime (amendments to Division 855)
- Strengthening Tax Compliance – ATO Counter Fraud Strategy
- Strengthening Tax Compliance – extending the ATO's retention framework (extending the mandatory notification period for retaining business activity statement refunds from 14 to 30 days)
- Future Made in Australia – Making Australia a Renewable Energy Superpower (jointly led with the Department of Industry Science and Resources and the Clean Energy Regulator)
- Royalty Penalty (and withdrawal of Intangibles measure)
- Small Business Support – $20,000 instant asset write-off (extended for a further 12 months to 30 June 2025)
- changes to debts on hold offsetting.

Members asked if there were further details regarding the reporting requirements and the 365-day testing period for the Division 855 changes. The ATO advised Treasury will undertake further consultation on these measures.

Recent litigation

Members discussed recent litigation impacting the private wealth market, including Minerva Financial Group Pty Ltd v Commissioner of Taxation. Members sought clarification on whether the ATO is planning advice or guidance in addition to the Decision impact statement, especially regarding the reach of the decision.

The ATO advised no guidance is planned at this time but invited members to share any potential unrecognised consequences of this decision. The ATO also welcomed members' advice to provide more practical context and insights to support decision impact statements.

The group also discussed:

- Merchant v Commissioner of Taxation
- BQKD v FC of T
- FC of T v Michael John Hayes Trading Pty Ltd AFT MJH Trading Trust & Ors
- Mylan Australia Holding Pty Ltd v FC of T

- Ierna & Ors v FC of T

Members highlighted the recent number of Part IVA litigations. The ATO noted it is focused on strategic litigation aimed at addressing behaviour and seeking judicial clarification on legislation.

Other matters

Members asked if there has been a change in ATO policy on the collection of debts and general interest charge remissions. The ATO advised it has shifted to focus on positive payment culture and capacity to pay.

Members are experiencing longer response times in engagement products, private rulings and objections, noting a lack of contact by the ATO as to progress. The ATO undertook to provide this feedback to the responsible areas.

Privately owned and wealthy groups

Client experience view of risk and key focus areas for 2024–25

The ATO gave an overview of the frameworks used to understand the system in operation, measure tax performance, and identify current, evolving and emerging risks and potential blind spots across taxpayer populations.

The ATO has estimated and published tax gaps for several years. These estimates provide useful insights into the longer-term operation of the tax and superannuation systems, levels of taxpayer compliance, and focus areas; however, they are a lag indicator measuring historical performance. The ATO complements these insights with a range of other intelligence and data sources to inform understanding of new and emerging risks and potential blind-spots in a timelier way.

The ATO manages risks through a client experience lens, which recognises risks may manifest differently across taxpayer populations due to the nature of the population and their operating environments, and allows the ATO to tailor engagements and strategies to each population.

For each client experience, the ATO has developed a three-tier tolerance framework to help structure the tax risks for that population.

The ATO led discussion on the three-tier tolerance framework used for the privately owned and wealthy groups client experience. The framework helps categorise key risks based on the types of behaviours that might cause a private group's tax performance to decline, and is a tool for tracking risk ratings, tolerance settings and ATO investment across risks.

Members discussed:

- the purpose and utility of the framework as a tool for the ATO to manage risks
- the importance of acknowledging the efforts that continue to be made by clients to achieve justified trust through their investment in governance and systems
- suggested refinements to the descriptions of risks that the ATO should consider if the framework is to be shared with a wider audience in the future, and the additional context that would be needed in accompanying communications.

Private Wealth Top 500 and Next 5,000 programs

Top 500

The annual Top 500 survey was conducted in April 2024, requesting anonymous feedback from Top 500 clients and their representatives. For the first time this year, advisers had the option to respond on behalf of multiple clients.

Key findings included increased participation in the survey (up by 22%) and overall satisfaction (up by 8%).

Members discussed the predominantly positive survey results and highlighted the importance of confidentiality when providing feedback. Members suggested future surveys could include a broader range of response options beyond 'satisfied', 'neutral' and 'dissatisfied' to capture more detailed feedback. The ATO values and appreciates all feedback.

In 2024–25, the focus for the Top 500 program is to simplify messaging and make the ATO's expectations clear. Part of this will involve reviewing items like the tax assurance report provided to clients at the end of a yearly engagement. The ATO will continue to consult with stakeholders on the best approach and will communicate any changes to the program. Members welcomed the opportunity to be consulted on improvements to the Top 500 program.

Members shared a few instances where ATO responses and response times could have been improved, particularly in relation to individual client experiences.

Next 5,000

There will be updates to the ATO's Next 5,000 web content to highlight the difference between streamlined assurance reviews and risk review processes. The ATO welcomes any feedback on further web guidance required.

Members shared client experience instances relating to next action issues and contact points. The ATO acknowledged these types of instances are not ideal and welcomed continued specific feedback to improve the client experience and better manage processes.

Property and construction

The ATO has previously published web content, including detailed examples on the Legal database, around the tax consequences on the sale of small-scale land subdivision and property development. This is intended to provide guidance to taxpayers who are engaging in, or considering, these activities and may not have sought seek tax advice.

Currently, web content on Tax consequences on sales of small-scale land subdivisions contains general guidance and several examples.

The group discussed the proposed expansion of web content focused on 3 current topical areas:

- properties acquired or held for multiple purposes, including resale for profit
- the circumstances which constitute mere realisation of a capital asset

- carrying on a business of renovating properties, also referred to as ‘property flipping’.

Examples relating to each of these areas were presented at a principle level. These proposed examples were recently presented to the Property and Construction Stakeholder Relationship Forum and changes have been made to reflect members' feedback.

Members were asked to consider the examples and provide insights on whether the adviser and intermediary community will consider them common and topical scenarios for small-scale land subdivisions and developments, and whether the examples will help clients get it right and/or understand when to seek tax advice.

Members shared their insights and observations on small-scale subdivisions, specifically in relation to the proposed examples. Members suggested the proposed examples could be improved by reflecting more of the complexities and variances that may occur in small-scale subdivisions including the GST implications. Members acknowledged the difficulty in striking the right balance between providing practical guidance but also being broad enough to reduce the risk of the examples being misinterpreted. The emphasis is for clients to seek tax advice.

The ATO acknowledged the feedback received through the discussion and previously on other property and construction matters.

Technical issues

Loss carry back tax offset

A member sought clarity as to whether a company could claim a loss carry back tax offset for the period prior to becoming a member of the consolidated group due to franking account limitation. The loss carry back tax offset is limited to the franking account balance at the end of the current year. The member highlighted that the ATO has not expressly stated what it sees as the ‘current year’ and requested the ATO engage on this issue.

Look-through earnouts and 124-M

A private ruling, issued on 13 February 2024, deals (amongst other things) with the interaction between scrip for scrip roll-over and look-

through earnouts. Members noted this has been a subject of contention in the market and suggested it would be helpful to get clarity on the ATO's view. The ATO will look into private ruling further and consider if additional support can be provided through a public advice and guidance product.

Section 109U public advice consultation

The ATO is considering developing public advice and guidance on the operation of section 109U and associated provisions in Division 7A of the *Income Tax Assessment Act 1936* (ITAA 1936) as it has observed a very small number of contrived arrangements that it considers are not effective at law due to the operation of section 109U and/or Part IVA.

In particular, the ATO is considering the best approach to raise awareness of the contrived arrangements that are considered legally ineffective for tax purposes, as well as assuring clients and their advisers that genuine commercial arrangements will not fall within the purview of section 109U or Part IVA.

The ATO sought member views on arrangements surrounding private companies providing guarantees or security to enable loans or payments to its shareholders (or associates of a shareholder) through other private companies.

Members supported the issuing of public advice and guidance, including around those genuine commercial arrangements where section 109U will not apply. Guidance should clarify when and how section 109U is engaged, including in cases where a public company, or other entity not being a private company, makes the loan which is guaranteed by a private company.

Capital raised for the purpose of funding franked dividends

The ATO discussed the new integrity measure preventing certain distributions funded by capital raising from being frankable distributions, section 207-159 of the *Income Tax Assessment Act 1997* (ITAA 1997).

The ATO and members acknowledged there are no specific exceptions or exclusions for private companies for this measure.

The ATO has undertaken consultation across markets to determine the priority issues for ATO public advice and guidance. To date, consultation has highlighted the need for guidance on how the ATO assesses the compliance risk that the measure applies, and in particular what it considers high and low risk in line with the explanatory materials.

Members provided insights into the challenges of applying the provisions. Members would welcome practical guidance highlighting the ATO's view of high and low risk arrangements, including how the explanatory materials reference to 'ordinary family or commercial dealings' will influence the ATO's view of risk of arrangements in the private market.

Interest limitation (thin capitalisation) and debt deductions creation rules for private groups

The ATO discussed the changes to the thin capitalisation rules and debt deduction creation rules (DDCR) as a result of the Treasury Law Amendment (Making Multinationals Pay Their Fair Share – Integrity and Transparency) Act 2024. Following ATO consultation, the following high priority topics have been prioritised for public advice and guidance:

- The Commissioner of Taxation's practical compliance approach to restructures in response to the new law, including
  - the Commissioner's application of Part IVA of the ITAA 1936 and/or the DDCR specific anti-avoidance provision in section 820-423D of the ITAA 1997 to certain restructures in response to the new law
  - tracing and apportionment issues relating to historical debt arrangements for the purposes of applying the DDCR.
- The Commissioner's view on key aspects of the third-party debt test – including interpretive guidance on key aspects of the third-party debt conditions, for example, 'minor or insignificant' in paragraph 820-427A(3)(c).
- The Commissioner's practical compliance approach to the modified interaction of transfer pricing and the thin capitalisation rules – in particular, to address concerns on applying existing public advice

and guidance, for example, Practical Compliance Guideline PCG 2017/4 *ATO compliance approach to taxation issues associated with cross-border related party financing arrangements and related transactions*.

Members confirmed there is a lack of awareness on these measures and how they apply to privately owned and wealthy groups, especially the DDCR which applies from 1 July 2024. Members encouraged the ATO to issue communications as soon as reasonably practical to create the necessary awareness. Communications should include the fact that Division 7A loans are not excluded from the operation of the invited members to DDCR.

Members also highlighted some practical issues in applying the provisions in this market segment especially the tracing requirements. The ATO will continue to consult with private groups in the development of public advice and guidance covering tracing and apportionment issues.

Attendees

Attendees list

Organisation	Member
ATO	Amy James-Velagic (Co-Chair), Private Wealth
ATO	Andrew Watson, Individuals and Intermediaries
ATO	Jenny Lin, Private Wealth
ATO	Kasey Macfarlane, Private Wealth
BDO	Michael Anderson
Chartered Accountants Australia & New Zealand	Karen Liew
CPA Australia	Bill Leung

Deloitte Private	Priyanka Subramanyam
EY	Michael Gastevich
Findex	Carlo Di Loreto
Fox Private Group	Garry Voigt
KPMG	Belinda Cheesewright
Law Council of Australia	Tuan Van Le
Oatley Family Group	Sharon Clark
Pitcher Partners	Alexis Kokkinos
Tax Bar Association	James Strong
The Tax Institute	Jonathan Ortner (Co-Chair)

Guests

Guest attendees list

Organisation	Attendee
ATO	Amanda Priestley, Private Wealth
ATO	Andrew Fenn, Private Wealth
ATO	Anthony Pulvirenti, Private Wealth
ATO	Anthony Siouclis, International Support and Programs
ATO	Daniel Smith, Private Wealth
ATO	Glenn Cooper, Private Wealth
ATO	Glenn Nottingham, Private Wealth

ATO	Gordon Longhouse, Private Wealth
ATO	Harjit Singh, Tax Counsel Network
ATO	James de Clifford, Private Wealth
ATO	John Rennie, Private Wealth
ATO	Karen Price, Private Wealth
ATO	Laura Bagnato, Private Wealth
ATO	Natasha Kavvadias, Private Wealth
ATO	Nick Cekulis, Private Wealth
ATO	Nina Seal, Private Wealth
ATO	Stephen Dodshon, Public Groups
ATO	Virginia Gogan, Public Groups

Apologies

Apologies list

Organisation	Member
ATO	Louise Clarke (Co-chair), Private Wealth
Chartered Accountants Australia & New Zealand	Michael Croker
William Buck	Tim Lyford

Private Groups Stewardship Group key messages 14 March 2024

Key topics discussed at the Private Groups Stewardship Group meeting 14 March 2024.

Published 24 April 2024

Membership changes

Louise Clarke advised of recent Private Groups Stewardship Group (PGSG) membership changes:

- Leah Edwards, Spotlight Group and Kenny Cheong, 7-Eleven Group resigned as members, effective March 2024.
- Meng Lee, Andersen Australia and Alexis Kokkinos, Pitcher Partners have been appointed as new advisory members for the remainder of 2024.
- Andrew Watson, ATO has been appointed as a standing member, replacing Emma Rosenzweig, ATO.

Action item update

220309-04 – ATO to provide PGSG members with updates on the progress of Section 99B draft guidance.

This item was discussed at the March meeting and is now closed. Further updates on developments will be disseminated through member emails and/or future meetings as needed.

20230918-1 – An out-of-session discussion on issues raised around corporate residency and intangible migration.

This item was discussed at the March meeting and is now closed.

20230918-2 – ATO to provide overview of the Modernisation of Trust Administration Systems (MTAS) communication strategy planned for the Tax Practitioners Stewardship Group.

This item was discussed at the March meeting and is now closed.

20231121-1 – Members to provide feedback on Top 500 engagements to be incorporated in nationwide internal sessions.

This item is awaiting feedback.

Environmental scan

New Commissioner of Taxation

Commissioner Rob Heferen commenced 1 March 2024 and has been focused on connecting with ATO staff and external stakeholders. He is mindful of the important role stewardship groups play in improving the administration and operation of the tax and superannuation systems and will connect with each stewardship group in the coming months.

Senate consulting inquiry

The Inquiry into management and assurance of integrity by consulting services continues. The ATO, consulting firms, and other government organisations are participating in the inquiry.

Adviser communications

The ATO has recently published an article on Supporting advisers who set the standard for tax and super integrity. The article highlights the importance of ensuring advisers are set up to be compliant with their tax and super obligations.

Analysis of some professional firms within the privately owned and wealthy group population reveals that partners' lodgment compliance is lower than expected. The ATO has also seen examples of professional firms' partner distributions reported incorrectly or omitted.

Members were encouraged to share the article with their networks.

Valuations

Members shared their experiences of obtaining and using valuations of intangible assets in engagements with the ATO. Members expressed concern that the valuations team is under-resourced, and suggested improvements around the communication of issues.

The ATO acknowledged the feedback and confirmed its commitment to finding the balance between building internal expertise and

engaging external valuers.

Private equity

The ATO led a discussion on the current landscape of private equity in the private groups population.

Historically, the ATO has focused resources on reviewing the tax consequences of private equity exits and transactions in the pre-acquisition and acquisition phases. The Tax Avoidance Taskforce has enabled a broader approach to private equity investment. This has allowed the ATO to take a more holistic view and increased its ability to detect activity such as exits.

The ATO has started profiling higher-risk private equity firms to better understand the tax risks that arise throughout the lifecycle of an investment. The insights from this work will help shape the ATO's compliance approach and will assist to identify opportunities for public advice and guidance.

Members discussed their experiences advising on private equity related activities and identified areas requiring public advice and guidance or clarification of the ATO's view. Members acknowledged existing ATO guidance on some topics but noted it can be difficult to find. Members stated the ATO should actively advise on key issues and risks.

The ATO will consider how to consolidate and communicate existing guidance in the first instance and continue to engage on additional topics that would benefit from ATO guidance.

Private Wealth International Program

Topics discussed included:

- new public advice and guidance
- Practical Compliance Guideline PCG 2024/1 *Intangibles migration arrangements*
- Draft Taxation Ruling TR 2024/D1 *Income tax royalties – character of payments in respect of software and intellectual property rights*
- Practical Compliance Guideline PCG 2018/9 *Central management and control test of residency: identifying where a company's central*

management and control is located

- guidance on related party financing for the property and construction industry
- guidance on significant global entity status
- non-residency withholding tax
- controlled foreign companies
- high risk service arrangements
- a recap on upcoming legislation.

The ATO has observed instances of individuals relocating their business offshore without fulfilling tax obligations, as well as structuring transactions aimed at shifting or concealing profits offshore. These issues are of paramount concern and advisers are encouraged to examine the information provided by clients regarding their offshore assets and business holdings.

Members highlighted situations where a business reaches a stage in its lifecycle where further growth within Australia becomes unattainable, necessitating offshore expansion. Such moves are motivated by commercial factors rather than tax avoidance.

Members noted it is not uncommon for clients to withhold information from their advisers, making it challenging to ascertain the full facts. In other instances, clients can be unaware of offshore assets in their name, or cultural factors may mean they are reluctant to disclose the source of their wealth. Cultural factors may also influence how businesses are operated. The ATO should be mindful that cultural factors can influence decision-making and tax outcomes.

Regarding related party financing in the property and construction sector, members expressed interest in the ATO’s views around arm’s length terms and conditions. Proposed web guidance will be shared with the PGSG as part of the ATO's external consultation process. A member suggested guidance on the tax implications for build to rent arrangements is needed.

Members enquired about subsequent guidance to PCG 2024/1 tailored to the lower end of the private groups population. A member also raised concerns around the potential impact of TR 2024/D1 (the draft 'software royalties' ruling) for Australian third-party software

distributors in trying to determine the royalty component of payments made to offshore software suppliers.

The group also discussed the need for guidance on central management and control for companies over and above the existing guidance, particularly on private group arrangements where the ATO will commit compliance resources, and how taxpayers manage the practical issues of lodgments.

The ATO noted member feedback and will review applicability to current guidance products.

Thin capitalisation rules amendment

The ATO provided an update on the proposed amendments to the thin capitalisation rules.

The ATO is seeking feedback on public advice and guidance topics, prioritisation and form for the new thin capitalisation measures.

A consultation document has been distributed to ATO stewardship groups. The ATO has received written submissions and will meet with stakeholders to discuss the prioritisation of issues. The ATO confirmed it is not compulsory for stakeholders to submit written feedback prior to these discussions, but it is helpful.

Members emphasised the importance of practical guidance on the risk assessment framework for applying the debt creation rules to assist taxpayers in their reporting. Members expressed their willingness to further collaborate with the ATO to formulate practical guidance targeting specific areas of concerns.

The ATO emphasised the importance of submissions including real life examples and noted there are key themes emerging around the third-party debt test, the debt deduction creation rules and the interaction of transfer pricing provisions with the thin capitalisation rules.

Behaviours of concern and the promoters and tax exploitation program

The ATO gave an overview of the Behaviours of Concern business line, which focuses on behaviours that deliberately and persistently undermine the tax, superannuation and registry systems.

The overview provided visibility of the promoters and tax exploitation program, including:

- the program's role in detecting, disrupting and deterring the concerning behaviours of tax practitioners, advisers and other intermediaries, who influence or encourage their clients to enter into tax avoidance or tax evasion arrangements
- the program's tailored approaches to treating concerning behaviours
- the program's proactive engagement with the community to provide information about tax schemes and public outcomes
- a summary of the promoter penalty laws and the proposed amendments in the Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023
- guidance for private groups and advisers servicing the private groups sector on ways to manage promoter risks within their firms and for their clients.

Members discussed the role delineations between the ATO and Tax Practitioners Board (TPB) and discussed the notification of breach requirements within the TPB's Code of Professional Conduct. The TPB will release on this topic guidance in due course.

Section 99B draft guidance

The ATO gave an update on the draft practical compliance guideline. Following initial feedback provided by members, further consultation was undertaken to better understand the documentation and information obtained or considered by advisers when advising on the corpus exception in paragraph 99B(2)(a) of the *Income Tax Assessment Act 1936* (ITAA 1936).

Members discussed the types of information or documentation available and outlined the challenges of obtaining documentation from non-resident trust estates in more complex circumstances. Members noted clear guidance would be beneficial to understand the ATO's compliance approach to evidentiary requirements when considering the corpus exception.

Division 7A

The ATO has commenced its Division 7A education campaign and roadshow with a webinar focusing on fundamental aspects of Division 7A of the ITAA 1936, breaches, and requests for discretion under section 109RB of the ITAA 1936. The webinar attracted nearly 3,000 participants, predominantly tax practitioners, who were highly engaged. The ATO is partnering with professional associations to undertake further presentations and workshops and provide further key messages.

Members expressed support for the ATO's Division 7A education campaign and roadshow initiative.

The ATO is concerned that some tax practitioners are not paying sufficient attention to basic, core elements of Division 7A. There have been instances where practitioners have repeatedly applied to the Commissioner to exercise his discretion under section 109RB for the same issue, often relating to fundamental aspects of Division 7A.

The Division 7A benchmark interest rate for 2024 has increased from 4.77% in 2023 to 8.27%. This is the highest annual increase since 2009. Clients need to be aware of and consider the increase to ensure they can meet annual minimum repayments on Division 7A loans by 30 June 2024. The ATO will continue communications about the increased Division 7A benchmark interest rate.

Members emphasised the importance of ensuring that taxpayers do not feel discouraged from coming forward to rectify issues due to concerns that the section 109RB discretion will not be exercised. The ATO stated the discretion is, and continues to be, available to clients in the circumstances of genuine mistakes and inadvertent omissions. The ATO receives some requests where it is unclear whether it is a genuine mistake or an inadvertent omission and it should not be assumed in those circumstances that the discretion will be exercised.

Income tax, public advice and guidance

Back-to-back CGT rollovers

There has been significant interest in the ATO's planned guidance about back-to-back capital gains tax (CGT) rollovers following the recent update to the advice under development program. Restructuring activity is a common part of succession planning or preparing for sale in the private wealth market. Back-to-back CGT rollovers are frequent, prompting requests for advice and guidance on

a regular basis. There is a need for the ATO to establish a clear position and provide certainty in this area.

The ATO is considering interpretative guidance for the ‘and nothing else’ condition in Division 615 of the *Income Tax Assessment Act 1997* (ITAA 1997) and provisions relating to other rollovers such as the 'single arrangement' condition in section 124-M of the ITAA 1997. The ATO is also considering guidance outlining circumstances where the ATO is more likely to apply compliance resources to consider the application of the general anti-avoidance rules in the context of a back-to-back CGT rollover.

The ATO plans to publish draft guidance on back-to-back rollovers in 2024.

Members noted that interpretative guidance about the ‘and nothing else’ condition in Division 615 and other similar provisions may be contingent on the outcome of an appeal in the Ausnet matter.

Division 149 and CGT event K6

The ATO has observed a significant rise in inquiries and requests for advice regarding the application of Division 149 of the ITAA 1997 and CGT event K6 and the pre-CGT status of assets and is considering opportunities to update and enhance guidance on these issues.

Next 5,000 program

The ATO presented its communication strategy following the publication of the Next 5,000 findings report in November 2023.

Letters have been sent to 30 firms identified as having many clients subject to streamline assurance reviews. The letters set out the recommendations published in the Next 5,000 findings report.

Further messaging regarding insufficient record-keeping on related party transactions is scheduled for March and April 2024.

Top 500 program

The ATO presented an update on areas of focus for the Top 500 program.

Tailored tax governance guides have been issued to the 10 professional services firms in the Top 500. Additionally, a guide to

tax governance for passive investments has been published on ato.gov.au

Attendees

Attendees list

Organisation	Member
ATO	Louise Clarke (Co-Chair), Private Wealth
ATO	Jenny Lin, Private Wealth
ATO	Kasey Macfarlane, Private Wealth
ATO	Sahika Jafari, Private Wealth
Andersen Australia	Meng Lee
Chartered Accountants Australia & New Zealand	Karen Liew
CPA Australia	Gavan Ord
Deloitte Private	Priyanka Subramanyam
EY	Michael Gastevich
Fox Private Group	Garry Voigt
KPMG	Belinda Cheesewright
Law Council of Australia	Tuan Van Le
Oatley Family Group	Sharon Clark
Pitcher Partners	Alexis Kokkinos
The Tax Institute	Jonathan Ortner (Co-Chair)

William Buck	Tim Lyford
7 Eleven Group	Kenny Cheong

Guests

Guest attendees list

Organisation	Attendee
ATO	Amy James-Velagic, Private Wealth
ATO	Daniel Smith, Private Wealth
ATO	Giulia Salemme, Private Wealth
ATO	Harjit Singh, Tax Counsel Network
ATO	James de Clifford, Private Wealth
ATO	Jennifer Bond, Private Wealth
ATO	Kacey Jardine, Private Wealth
ATO	Karen Price, Private Wealth
ATO	Karen Rooke, Tax Counsel Network
ATO	Natasha Kavvadias, Private Wealth
ATO	Sarah Taylor, Private Wealth
ATO	Scott Parkinson, Private Wealth
ATO	Stephen Dodshon, Public Groups

Apologies

Apologies list

Organisation	Member
BDO	Michael Anderson
Chartered Accountants Australia & New Zealand	Michael Croker
CPA Australia	Bill Leung
Findex	Carlo Di Loreto
Tax Bar Association	Daniel McInerney

QC 101701

Private Groups Stewardship Group key messages 23 November 2023

Key topics discussed at the Private Groups Stewardship Group meeting 23 November 2023.

Last updated 16 January 2024

Membership changes

Deputy Commissioner Louise Clarke advised the resignation of Michael Dean from the Private Groups Stewardship Group (PGSG) effective November 2023.

Action items update

20221123-2 – ATO to include the introduction of Comprehensive Risk Reviews into the Next 5,000 Program on the PGSG forward work

program in 2023, to discuss observations on how the new process is being received.

This item was discussed at the November meeting and is now closed.

20230308-2 – Members will collate experiences of their clients within the Top 500 program and/or Next 5,000 engagements and bring them to the PGSG as examples to improve the private group experience and refine processes.

This item was discussed at the November meeting and is now closed.

20230308-4 – Members to bring discussion on early engagement back to the PGSG.

The Technical Leadership and Advice service offering will be further explored at the National Tax Liaison Group. Key messages from those meetings will be shared with the PGSG through 2024. This item can therefore be closed.

220309-04 – ATO to provide PGSG members with updates on progress of section 99B draft guidance.

This item was discussed at the November meeting and is now closed.

20230918-1 – An out-of-session discussion on issues raised around corporate residency and intangible migration.

This item will be discussed in early 2024.

20230918-2 – ATO to provide overview of the Modernisation of Trust Administration Systems (MTAS) communication strategy planned for the Tax Practitioners Stewardship Group.

This item will be discussed in early 2024.

Environmental scan

Corporate tax transparency report

On 9 November 2023, the Corporate tax transparency report 2021–22 was released.

With the income threshold set to drop to $100m, there will be an increased number of Privately Owned Wealthy Groups included in the 2022–23 population

Update on litigation

Bendel v Commissioner of Taxation [2023] AATA 3074

- On 4 October 2023 the Administrative Appeals Tribunal (AAT) handed down a decision challenging the position in TD 2022/11 on whether unpaid present entitlements constitute a loan for Division 7A purposes.
- The Commissioner has filed a notice of appeal in the Federal Court. An interim Decision Impact Statement was published on 15 November 2023, further explaining the Commissioner's administrative approach pending the outcome of the appeal.

Michael John Hayes Trading Pty Ltd as trustee of the MJH Trading Trust v Commissioner of Taxation [2023] AATA 3005

- AAT decision on whether dividends were part of a dividend stripping operation within the meaning of section 207-155 of the *Income Tax Assessment Act 1997* (ITAA 1997) and whether dividends were paid as part of a scheme entered for a tax avoidance purpose – decision set aside and substituted.

Simplot Australia Pty Limited v Commissioner of Taxation [2023] FCA 1115

Federal Court decision on the GST treatment of certain frozen food products.

Integrity declarations

Members were reminded to sign and return integrity declarations as soon as possible. Members advised of delays due to internal processes and confirmed they would submit integrity declarations once cleared.

Reflections on 2023 PGSG achievements and 2024 areas of focus

Members reflected on PGSG achievements for 2023 and suggested key topics of interest for 2024 including:

- private equity
- international issues in the private wealth market
- Next 5,000 and Top 500 programs

- public advice and guidance, including section 99B and Division 7A products.

Updated ato.gov.au website

The updated ato.gov.au website is now available as the ATO's default website. Users can expect streamlined navigation, smarter search functionality and a simplified home page.

Members observed some delays and broken links when navigating the website.

Extending the scope of the tax adviser best practice principles

The ATO had a productive meeting with mid-tier firms to explore the potential expansion of the tax adviser best practice principles (principles).

The ATO was encouraged to hear that the firms take good governance seriously and are committed to having robust internal governance controls. Discussion centred on how the existing principles could be adapted to a wider range of firms.

Members discussed the value of expanding the scope of the principles, and current external consultation on the role and powers of the Tax Practitioners Board. The implementation of the principles will need to take the timing and scope of broader developments into account.

Self-managed superannuation fund illegal early access

The ATO is currently undertaking work to estimate the tax gap associated with illegal early access to self-managed super funds (SMSFs). The estimate will be publicly released in due course.

Second Commissioner Jeremy Hirschhorn

Jeremy Hirschhorn addressed the group. The discussion included:

- reflections on the Organisation for Economic Co-operation and Development Tax Forum which highlighted the importance of

stewardship groups in contributing to the tax and superannuation system

- the ATO's future focus, including cybercrime, reducing collectible debt, addressing unpaid superannuation, and making small business tax compliance more natural
- the expansion of the Tax Avoidance Taskforce, highlighting the success of the taskforce to date and reflecting community concern that multinationals, large and private groups pay the right amount of tax
- positive trends in the tax gap across all populations reaffirming the ATO's confidence in the voluntary compliance system, increased levels of information sharing improving ATO modelling, and improved online services
- an acknowledgment that the ATO must remain transparent with the community about the health of the tax system in light of current challenges within the adviser industry.

Members' comments

Members discussed the ongoing challenge of retaining and attracting talent in such a competitive skills market. This is a key focus area for the ATO and is being addressed through automating processes, outsourcing, prioritising work programs and constantly reviewing and improving processes.

Next 5,000 program and findings report

The ATO led a discussion on the Next 5,000 tax performance program and the findings report that was published in November 2023.

The findings report highlighted most groups willingly engage with the ATO in an open and transparent way. However, the ATO is observing that the population is making compliance errors. The ATO is eager to see groups improve on implementing governance processes, procedures and record keeping. This will help to ensure they report correctly in the future.

The ATO plans to proactively communicate the findings report observations and recommendations to Next 5,000 groups and their advisers to assist them to make improvements to their documented processes, procedures and record keeping. This will improve

confidence they are reporting correctly and meeting their tax obligations.

Comprehensive Risk Reviews (CRR) have commenced. The invitation to provide readily available information at the commencement of the CRR has been positively received.

The ATO requested member feedback on its planned communication approach, including which communication channels are the most effective for Next 5,000 clients.

Members' comments

Members noted a perceived shift from an assurance and justified trust approach to a risk-based approach. This has caused confusion on whether governance will be reviewed.

The ATO clarified that tax governance is still a key component of streamlined assurance reviews in the larger more complex Next 5,000 groups. While the ATO does not specifically review governance in risk-based reviews, it is an important element which impacts whether Next 5,000 groups are compliant.

The ATO will communicate broadly on how Next 5,000 groups can practically improve their processes, procedures and record keeping, helping them to comply in the future.

Members recommended that communications to groups not complying with their tax obligations include targeted, stronger messaging highlighting the impact of non-compliance. Members also suggested regular messaging to assist clients stay ahead of their tax obligations.

The ATO will incorporate suggestions in the planned communication approach. Members expressed interest in collaborating with the ATO on drafting the proposed letters to tax agents and the Next 5,000 population.

Top 500 program and findings report

The ATO led a discussion on the Top 500 tax performance program and the findings report that was published in November 2023. Discussion highlighted:

- the ATO has rolled out streamlined approaches for tax assurance and governance for groups whose income is predominantly passive

and for business activities characterised by high volume, low margin transactions

- the ATO has published practical guidance for the development of effective tax governance
- too many Top 500 groups are not ‘getting the basics right’
- the importance of tax governance, and where the ATO is seeing the most improvement in tax performance against the 4 principles of justified trust
- the ATO’s view on current drivers and inhibitors of voluntary compliance and engagement with the justified trust program
- the gradual enhancement of tax governance investment, as reflected in completed reviews
- the ATO's recently introduced questionnaire template which aids Top 500 groups to address tax governance related queries
- enhanced tax governance guidance tailored for the smaller segment of the Top 500 population will be available on ato.gov.au to address wealth extraction issues, with an emphasis on Division 7A of the ITAA 1997.

Members’ comments

Members discussed their Top 500 experiences and highlighted disparities between program messaging and implementation. Members noted case teams often seek copious amounts of substantiation for transactions that have low materiality, or that do not have a tax impact. The importance of prioritising items for assurance was also discussed.

The ATO advised ongoing support and guidance is provided to case teams. Member concerns will be cascaded through these forums, particularly regarding the need for ongoing communication.

Members suggested Top 500 communications would be more impactful if they focussed on the client's responsibility to maintain good records throughout the year and have information ready ahead of due dates for lodgment. Members also noted that involvement in the program is costly for clients and suggested the use of storytelling with numbers and data to encourage participation.

Members sought to better understand the ATO’s criteria for determining a controlling mind, particularly in circumstances of

succession. The ATO commented in general terms but highlighted that ‘control’ needs to be assessed on a case-by-case basis.

Members also noted that Enterprise Risk Management (ERM) transformation programs are occurring more frequently in large private groups. Given the significance and scale of such investment, it is critical large private groups are focused on ensuring IT and GST risk management is considered.

The ATO suggested members provide feedback on Top 500 engagements to be incorporated in nationwide internal sessions.

Action item	20231121-1
Due date	Early 2024
Responsibility	Members
Action item details	Members to provide feedback on Top 500 engagements to be incorporated in nationwide internal sessions.

Draft section 99B

The ATO provided an update on the development of the draft guidance on section 99B of the ITAA 1997.

The ATO is developing a draft compliance approach to explain when it will apply compliance resources to review distributions from non-resident trusts to beneficiaries.

The draft compliance approach will provide practical guidance where an amount is received from a non-resident deceased estate, and on record keeping, to assist clients demonstrate an amount has been paid from the corpus of a non-resident trust.

The aim of the draft guidance is to provide greater clarity and practical certainty around the administration of section 99B. This will make it easier for clients to understand their obligations.

The ATO advised that it is aiming to release the draft guidance for public consultation in mid-2024.

Members’ comments

Members gave feedback on the draft compliance approach and highlighted practicalities taxpayers and their advisers will face when seeking to satisfy the compliance approach.

Action item	20231123-2
Due date	2024
Responsibility	Members
Action item details	Members will provide feedback on the draft compliance approach in early 2024.

Technical issues

Section 115-40

Members noted the limited commentary on section 115-40 of the ITAA 1997 when applied to put and call options. Members highlighted the lack of guidance around a frequently occurring private groups issue where shareholders are looking for liquidity and the put and call options may be excisable beyond the 12-month timeframe.

The ATO noted it is committed to providing further clarity and guidance on this matter. While a taxation determination is deemed suitable for articulating certain parameters around the provision, the ATO proposed expediting the process by offering web guidance in the interim.

Family trust elections

Members discussed the scope and timing thresholds on the ATO's collection of liabilities arising from previous years' family trust elections. There is concern the ATO has not previously dedicated compliance resources to this area and there are now cases where there may be liabilities with general interest charges going back 20 years which, if enforced, will dwarf the original liability in many cases.

The ATO stated the issue has been looked at in limitation and it does appear clients have been caught out by the provisions. The ATO is considering the release of guidance to highlight key aspects of the provisions and how they should be applied.

Back-to-back rollovers

Members noted the updated back-to-back capital gains tax rollovers guidance on ato.gov.au. Members queried the timing and scope of any future tax guidance and whether the ATO has preliminary views on the issues that will be addressed.

The ATO noted back-to-back rollovers pose challenges. The ATO anticipates guidance in the form of a taxation determination will be provided by the end of June 2024. Members will be offered the opportunity to provide feedback on the guidance prior to issue.

Qualified persons rule (45-day holding rule)

Members queried whether there has been a focus on the 45-day holding rule, in the context of trusts and newly introduced beneficiaries.

The ATO recognised the broader issue of entities receiving franked distributions from testamentary trusts without holding an interest in the trust's corpus or meeting the qualified persons' rule.

Members proposed a taxation determination to clarify whether beneficiaries, after a family trust election, share the same holding period as the trustee. Instances have arisen where this position is deviated from or when beneficiaries become eligible after the election. Members recommended considering if the trustee's position at the time of the family trust election applies to beneficiaries, regardless of their eligibility status at that point.

Section 47A

Members queried the ATO's approach and expectations on the provisions set out in section 47A of the ITAA 1997.

The ATO noted there is limited application of and guidance on this provision. The ATO committed to revisiting this issue at future meetings.

Income tax, public advice and guidance

Division 7A roadshow in 2024

The ATO will embark on a Division 7A education campaign and roadshow in 2024.

Through programs of work in Private Wealth and Small Business the ATO has identified a range of breaches of Division 7A of the ITAA 1997. Often these breaches go to more fundamental aspects of Division 7A.

The ATO will partner with professional associations to deliver presentations, webinars and other education products to help advisers and their clients understand their Division 7A obligations.

One of the key messages will be that tax agent and adviser lack of knowledge will not be sufficient to warrant an exercise of the Commissioner of Taxation's discretion under section 109RB in Division 7A.

Members expressed support for the initiative.

Division 7A draft determination 109G(4)

The ATO confirmed that guidance on whether a corporate trustee can suffer undue hardship for the purposes of section 109G(4) of the ITAA 1997 will be provided in the form of web guidance, rather than a taxation determination.

Draft ruling on earn-out arrangements TR 2007/D10

Draft Taxation Ruling TR 2007/D10 was withdrawn in 2016. However, the withdrawal notice states taxpayers can continue to rely on the withdrawn draft ruling where look-through provisions in subdivision 118-I of the ITAA 1997 do not apply.

As flagged at the September 2023 meeting, following further discussion with stakeholders, the ATO will update the withdrawal notice to remove the reference to continued reliance on TR 2007/D10.

The ATO will engage with clients seeking further guidance about arrangements involving non-look-through earnout arrangements on a one-on-one basis.

Attendees

Attendees list

Organisation	Member

ATO	Louise Clarke (Co-chair), Private Wealth
ATO	Emma Rosenzweig, Superannuation and Employer Obligations
ATO	Jenny Lin, Private Wealth
ATO	Kasey Macfarlane, Private Wealth
ATO	Sahika Jafari, Private Wealth
BDO	Michael Anderson
Chartered Accountants Australia and New Zealand	Michael Croker
CPA Australia	Bill Leung
Deloitte Private	Priyanka Subramanyam
EY	Michael Gastevich
Findex	Carlo Di Loreto
Fox Private Group	Garry Voigt
KPMG	Belinda Cheesewright
Law Council of Australia	Tuan Van Le
Oatley Family Group	Sharon Clark
Tax Bar Association	Daniel McInerney
The Tax Institute	Jonathan Ortner (Co-chair)
William Buck	Tim Lyford
7-Eleven Group	Kenny Cheong

Guests

Guest list

Organisation	Attendee
ATO	Amy James-Velagic, Private Wealth
ATO	Christopher Ryan, Private Wealth
ATO	Jeremy Hirschhorn, ATO Executive
ATO	Natasha Kavvadias, Private Wealth
ATO	Sahika Jafari, Private Wealth
ATO	Scott Parkinson, Private Wealth
ATO	Karen Rooke, Office of the Chief Tax Counsel

Apologies

Apologies list

Organisation	Member
Spotlight Group Holdings	Leah Edwards

QC 73795

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