



Australian Government
Australian Taxation Office

Helping not-for-profits get it right

ATO compliance approaches

Charity Law Association of Australia and New Zealand (CLAANZ)

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Presenters:

Jennifer Moltisanti, Assistant Commissioner
Not-for-profit, Government and New Measures
Small Business

Glenn Cooper, Assistant Commissioner
Engagement and Assurance Services
Private Wealth

EXTERNAL





Australian Government
Australian Taxation Office

- ✓ National administrator for taxation and superannuation
- ✓ Providing clients with timely and tailored advice that assists them to understand and meet all their tax and super obligations.
- ✓ Supporting clients to deliver important services for the Australian community
- ✓ Assesses not-for-profits and charities seeking access to Commonwealth tax exemptions and concessions - such as DGR endorsement and income tax and GST concessions
- ✓ Monitors the sector for risk and delivers strategies to support compliance and increase the integrity of the system

What we will cover today

- ✓ Tax obligations and what attracts ATO attention
- ✓ Overview of compliance program
- ✓ Our approach to compliance in the NFP sector including outcomes of compliance activities
- ✓ Privacy and secrecy - information sharing between ATO and ACNC
- ✓ Taxpayer charter
- ✓ Questions

NOT-FOR-PROFITS TAX AND SUPER OBLIGATIONS

ATO registrations, lodgments and payments not-for-profits may have

GST obligations



- NFPs are required to register for GST if their turnover is **\$150,000 or more**. NFPs under the \$150,000 threshold can choose to register.
- NFPs registered for GST must lodge Business Activity Statements (BAS), usually on a quarterly basis.
- This can be done using *Online Services for Business* or through a tax or BAS agent.
- NFPs are required to report and pay GST amounts and claim any GST credits they may be entitled to via the BAS.

Employer obligations

PAYG Withholding (PAYGW)

- NFPs with employees have the same PAYGW obligations as for-profit businesses.
- NFPs must register when they are required to withhold tax from payments to others - including employees, directors and office holders.

Single Touch Payroll (STP)

- All NFPs should now be using STP to report salaries and wages, PAYGW and superannuation.
- The end-of-year finalisation process using STP has replaced lodging a payment summary annual report.

Fringe Benefits Tax (FBT)

- NFPs liable for FBT on benefits provided to employees are required to:
 - register for FBT
 - lodge an annual FBT return
 - pay the resulting FBT liability.
- Examples of benefits provided may include:
 - use of a car
 - meal allowance
 - direct payments of employees' personal expenses (rent, mortgage, utility bills).
- NFPs may need to pay FBT instalments each quarter.



Superannuation

- NFPs must provide eligible employees with super contributions of at least the super guarantee rate by the quarterly cut-off date.
- Most employees are covered by the super guarantee legislation. It covers those who are full time, part-time or casual. It also covers certain independent contractors.
- The super guarantee rate is 10.5% for the 2022-23 financial year and is currently increasing by 0.5% each financial year.

Charities



Charities registered with the ACNC must meet all of their tax and super obligations **in addition** to their ongoing obligations to the ACNC.

Tax concessions

Charities should review their entitlement to charity tax concession endorsement on an annual basis and when there is a major change in the charity's structure, purpose or operations

DGR endorsement

Charities should review their entitlement to DGR endorsement on an annual basis and when there is a major change in the charity's structure, purpose or operations

KEY FOCUS AREAS WHAT ATTRACTS OUR ATTENTION

1. OPERATING FOR PURPOSE

- Are entities applying income and assets solely for purpose?
- Are entities operating in accordance with their governing documents?



2. PRIVATE AND PUBLIC ANCILLARY FUNDS



- Are ancillary funds established to facilitate philanthropic giving or for other purposes?
- Are ancillary funds meeting the requirements of the guidelines?
- Are external auditors confirming compliance with the Guidelines as part of their annual audit of accounts?

Key aspects

- Minimum annual distributions of 5% (Private funds) and 4% (Public funds)?
- Maintaining a diverse investment strategy that has regard to the risk of holding certain assets and meeting strict annual distribution requirements
- Loans/valuations are accurately recorded and in line with guidelines?

3. SELF-ASSESSING INCOME TAX EXEMPTION



Not-for-profits correctly access and use the significant concessions available to the sector.

Key aspects

- Are self-assessing entities regularly reviewing their entitlement to self-assess as income tax exempt (e.g. purpose must align to 1 of 8 categories)?
- Are self-assessing entities meeting their other taxation obligations, such as:
 - GST registration, lodgment and payment
 - Super and PAYGW payments

DGR ENTITLEMENT

- Are deductible gift recipients (DGR) meeting their purpose and activity requirements?
- In entity groups with a mix of DGR and non-DGRs, do donation reach the correct entity?

REFUND OF FRANKING CREDITS

- Are charities claiming correct amounts?
- Do they meet all technical eligibility requirements?
- download the claim form at ato.gov.au

MEETING TAX AND SUPER OBLIGATIONS

- Are FBT concessions and calculations correct?
- Are NFP entities meeting their obligations for PAYGW, Single Touch Payroll and Super?

WIND-UP

- Are surplus funds and assets distributed according to the NFPs governing rules, upon wind-up?

MUTUALITY

- Is the principle of mutuality being applied correctly and are members correctly classified?
- Are tax returns being lodged as required?

INTERNATIONAL TRANSACTIONS

- Are funds being sent overseas for non-charitable purposes?
- Are there indicators of Terrorism financing or money laundering in NFP sector?

4. EMERGING RISKS



STRUCTURING AND A LACK OF TRANSPARENCY

- Are structures that contain 'for-profit' entities operating at arms-length and for the ultimate benefit of the NFP?
- Are structures appropriate for operations, or being put in place to impede transparency or exploit generous tax concessions?
 - Use of Basic Religious Charity Trust structures to access uncapped fringe benefits and avoid financial reporting
 - Use of Public Benevolent Institution (PBI) structure to access FBT concessions for ineligible employees
 - Creation of 'Private' NFP foundations to stream untaxed income – see [Taxpayer Alert - TA 2016/5](#)

GST REPORTING BY NFP ENTITIES

- Are NFP entities meeting requirements to be registered for GST, and correctly classifying/reporting GST supplies?

- Are commercial activities being treated correctly in GST?

COMMERCIAL ACTIVITIES BY NFP ENTITIES

- Are assets and income being applied solely for the purpose for which the NFP was established, or to provide private benefits to individuals?
- At wind-up, are assets being distributed in accordance with the entity's governing documents?

RISING DEBT LEVELS

- Do NFP entities with significant debt have appropriate payment arrangements in place? Are entities viable?

New Reporting requirements – risks in focus

The lodgment requirement on ABN registered SAITE entities commences on 1 July 2024 (for the 23-24 year) and will result in new risk behaviours, including:

- Non-lodgment of self-review return
- Late lodgment of self-review return
- SAITEs not eligible to self-assess:
 - Entity has charitable purposes and should be endorsed by ACNC and the ATO to access Income Tax exemption
 - Entity has no entitlement to Income Tax exemption and should be lodging an annual tax return or Return Not Necessary

ATO OVERSIGHT APPROACHES TO COMPLIANCE

NFP COMPLIANCE APPROACH

The focus of NFP treatment strategies remains prevention, and this is evident in our work to:

1. shape, influence, and lead the progression of NFP new measures,
2. support clients to understand and meet their obligations, and
3. increase our understanding of NFP and Government clients to identify and assess tax risk.

However, some compliance engagement is required to treat behaviours of concern, to increase transparency and send signals to market about compliance expectations in the segment.

Where entities are unsure or prone to mistakes, we provide additional support and clarity via our interpretive advice and guidance products.

Where entities fail to take appropriate steps to meet their obligations and ensure they are operating for purpose, we will invest in reviewing their activities.

Where we see patterns of behavior or entity structures that appear to exist to facilitate non-compliance, we may take stronger action and send signals to market to highlight 'behaviors of concern'.

In all instances, case selection is purposeful, driven by data insights.

ARE NFPs SELECTED FOR REVIEW BY OTHER AREAS OF THE ATO?

- The NFP Centre is just one Branch in the ATO, and in some circumstances NFP clients may be selected for review by other Branches.
- This includes:
 - Where lodgment of an Activity Statement, Income tax return or Refund of Excess Franking Credit claim triggers risk models or otherwise indicates a potential risk.
 - Where NFP clients are connected to a group of entities that are under review, for example a Private Ancillary Fund that is part of a Private Group.
 - Where the ATO is focused on particular tax risks and NFP clients are active in that space, for example where NFPs partner with private enterprise to develop land or social housing projects and GST risks for property and construction are in focus.
 - Where a known tax scheme or set of high risk behaviours rely on NFP vehicles to extract tax benefits, NFPs may be included in the review of broad entity group structures or key individuals.

ARE NFPs SELECTED FOR RANDOM ENQUIRY PROGRAMS?

- Random Enquiry Programs (REPs) are conducted on a regular basis, in order to assess overall compliance.
- Cases are randomly selected, not based on risk, and not-for-profits may be selected.
- REPs are generally run on a tax product basis, such as GST or SEO.
- Results assist us to:
 - develop tax gap estimates
 - identify where risk models may not be operating to capture emerging risk.



You can help by notifying us of anyone you believe is using not-for-profits to access concession incorrectly at ato.gov.au/tipofform

FORMAL POWERS WHAT TO EXPECT

FORMAL NOTICE POWERS

The information we need to administer the Australian tax and superannuation systems generally resides with taxpayers, their advisers or other parties involved in their business and tax affairs.

Where the information we need isn't given to us cooperatively, we have formal information-gathering powers available to us, including our notice powers.

You have rights and obligations when we issue a notice to you. It is important to understand the reasons why you have received the notice, how you should respond to it and what you can expect from us.

A formal notice may require you to do any of the following:

- give information – to answer our questions in writing, based on your knowledge and understanding
- attend and give evidence – to attend an interview and answer questions, based on your knowledge and understanding, you may be required to give the evidence on oath or affirmation
- produce documents – to send documents to us.

FORMAL ACCESS POWERS

ACCESSING LAND, PREMISES OR A PLACE

We have statutory rights of immediate access under our access powers, although we will usually give you prior notice of our intention to access your records.

We may agree to postpone our examination of documents in respect of which you claim that access may be restricted if your adviser isn't immediately available. If we don't postpone our access visit, we will quarantine those documents that may be subject to your claim.

Where there is a large amount of data, we may agree to a staged approach so that the documents can be reviewed in batches.

If you're the occupier of the premises we are accessing, we will provide you with:

- a copy of the decision to take access without notice
- a copy of the statutory provisions relevant to our access
- information setting out your rights and obligations in relation to the access
- reasonable time and opportunity to consult another person – for example, a legal adviser.

PROVIDING REASONABLE FACILITIES AND ASSISTANCE

An occupier of land, premises or a place has a legal obligation to provide all reasonable facilities and assistance to us when we visit the premises and exercise our access powers.

We require the reasonable use of your photocopiers, telephones, light and power to be provided to us.

Your reasonable assistance may include:

- answering questions about the location of books, documents or other records
- providing computer passwords or logging on to the computer and then allowing us to operate it
- advising us who might have the password to the computer or other device
- removing obstructions, such as unlocking facilities (if within your power) or suggesting other reasonable methods of obtaining access
- explaining index systems or computer folders to identify, interpret and locate books and documents
- explaining codes and symbols when this is necessary to identify, interpret and locate books and documents
- locating user guides to explain the computer program that needs to be accessed
- providing codes and passwords to decrypt data.

OUTCOMES OF COMPLIANCE ACTIVITIES

Governance

- Operating for purpose
- Responsible person – independence and involvement
- Documenting arrangements with related parties



Related party transactions & private benefits

- Commerciality - ensure no private benefits to other parties
- NFP acts as financier to private businesses
- Direct and indirect private benefits



Eligibility for refunds of franking credits

- When to assess eligibility
- Qualified person rule
- Integrity rules – Subdiv 207-E and section 177EA



Consequences of adverse findings for NFPs and controllers

- Loss of concessions
- Financial penalties (Ancillary funds)
- Denying deductions for donations



PRIVACY AND SECRECY



- A Memorandum of Understanding (MOU) sets out the framework for co-operation between the ATO and ACNC.
- There are several sub-MOUs between ATO and ACNC, including one that covers information exchanges related to the registration and compliance of registered charities.
- The MOU notes that each agency must comply with the laws that govern their use and release of information, specifically:
 - Subdivision 150 of the Australian Charities and Not-for-profits Commission Act 2012
 - Division 355 of Schedule 1 to the Taxation Administration Act 1953
- In basic terms, this means protected client information can only be shared when it is necessary for that agency to perform their functions or administer their legislation, and not for other purposes.
- It is noted that any information exchanged, continues to be protected by the provisions contained in those sections and cannot be used for any other purpose.

TAXPAYERS CHARTER



Our commitment to you

- Fair and reasonable treatment
- Professional service
- Support and assistance
- Security of your data and privacy
- Keep you informed

What we ask of you

- Treat us with courtesy, consideration and respect.
- Be truthful and act within the law.
- Respond to our queries on time and provide us with all relevant information. We may ask you questions or gather more information to ensure what we understand is correct/current.
- Let us know if someone is representing you. You are still responsible for ensuring the information given to us is accurate.
- Meet your obligations including lodging and paying on time. If you can't, let us know before the due date so we can support you.
- Keep good records and provide them to us when needed.
- Take care to keep your identity information safe and let us know if your details change.



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QUESTIONS



THANK-YOU

SEEK SUPPORT AND STAY INFORMED

Visit the ATO website



Go to:

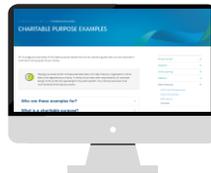
- ato.gov.au/NFPtaxexempt
- ato.gov.au/NFPnotifyofchanges
- ato.gov.au/ATOtv under the not-for-profit channel

NFP self-review return guide



Complete an early self-review using the new return guide at ato.gov.au/NFPselfreviewguide

Visit the ACNC website



Go to:

- acnc.gov.au/for-charities/start-charity

NFP advice service

Our dedicated advice service for not-for-profits operates from 8.00am to 6.00pm, Monday to Friday
Phone 1300 130 248
Email atoendorsements@ato.gov.au

Government

Government
Phone 13 28 66 from 8.00am to 6.00pm, Monday to Friday
Email PWGovernment@ato.gov.au

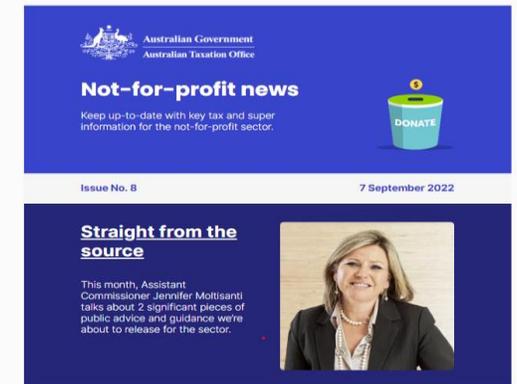
Assistant Commissioner

Jennifer Moltisanti
P: (03) 9285 1711 | **M:** 0423 022 278
E: Jennifer.Moltisanti@ato.gov.au
LinkedIn
linkedin.com/in/jennifer-moltisanti-6872442a

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News highlights

[Directors of clubs and NFP organisations need a director ID](#)

You must apply for a director identification number as soon as possible if you're elected an NFP club or association director at an annual general meeting.