



Property and Construction Stakeholder Relationship Forum

Access information from meetings of the Property and Construction Stakeholder Relationship Group.

Property and Construction Forum key messages 16 March 2023



Key topics discussed at the Property and Construction Stakeholder Relationship forum 16 March 2023.

Property and Construction Forum key messages 11 October 2022



Key topics discussed at the Property and Construction Stakeholder Relationship Forum 11 October 2022.

Property and Construction Forum key messages 13 April 2022



Key messages from the Property and Construction Stakeholder Relationship Forum held on 13 April 2022.

Property and Construction Forum key messages 15 September 2021



Key messages for Property and Construction Relationship Forum

Property and Construction Forum key messages 4 March 2021



Key messages for Property and Construction Relationship Forum 4 March 2021.

Property and Construction Forum key messages 25 August 2020



Property and Construction Forum key messages 25 August 2020.

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Property and Construction Stakeholder Relationship Forum key messages 16 March 2023

Key topics discussed at the Property and Construction Stakeholder Relationship forum 16 March 2023.

10 May 2023

Key topics discussed at the Property and Construction Stakeholder Relationship forum 16 March 2023

Opening address

Louise Clarke, Deputy Commissioner Private Wealth, opened the meeting by welcoming members and discussed the need for confidentiality when discussing certain topics.

Charter

A draft Charter was tabled for discussion and is expected to be endorsed at the next meeting with member feedback incorporated and the conflict-of-interest issue addressed.

Action item	Charter
Due date	Before next meeting
Responsibility	All Members
Action item details	Provide comment once draft is issued to members.

Master Builders Australia economic forecast

The economic environment is likely to remain difficult over the short term.

Interest rates are not likely to peak until much later in 2023.

New home building is currently in reverse gear. Following a couple of years in the doldrums, a decent pace of growth is likely to resume. By 2026–27, we anticipate that total new home building starts will have recovered to around 210,000 from a trough of 169,600 in 2022–23.

For non-residential building, the combination of strong government-funded project work as well as the recovery in the areas worst hit by the pandemic mean that modest growth is likely to occur consistently over our forecast horizon.

Civil and engineering construction activity faces a reasonably steady outlook to 2026–27.

Capital versus revenue ATO website guidance

New website content was published 6 December 2022 on ato.gov.au for taxpayers and their advisers to better understand the Tax consequences on sales of small-scale land subdivisions.

Thank you to all forum members who contributed to the development of this web content through providing feedback during the existing consultation period. Two examples are currently provided in the web content, but we are now considering expanding with the adding of more.

Additional examples are currently being drafted and will further inform taxpayers and tax advisers on how the ATO might interpret the distinction between capital and revenue in relation to small scale property development activities. The ATO will consult again with forum members, seeking feedback on the drafting of these examples.

Employee versus Contractor guidance

On 15 December 2022 the ATO released:

- *Draft Taxation Ruling TR 2022/D3 Income tax: pay as you go withholding – who is an employee?*
- *Draft Practical Compliance Guideline PCG 2022/D5 Classifying workers as employees or independent contractors – ATO compliance approach*

The draft ruling provides the Commissioner of Taxation's views on the legal principles involved in determining if a worker is an employee, in light of the High Court's decision in CFMMEU v Personnel Contracting [2022] HCA 1. It is complemented by the draft PCG, which provides a 'risk zone' framework which the Commissioner will follow in deciding when to allocate compliance resources to investigate whether an arrangement has been correctly classified.

The comments period for the products closed on 17 February 2023. The ATO has considered the feedback raised in submissions and is considering any necessary revisions to the products before they are finalised.

ATO research

The Royal Melbourne Institute of Technology is undertaking research into the influencers on real property transactions to:

- define the lifecycle of a property development
- identify the key influencers of decisions made in the property industry
- identify at what point in the property development cycle these influencers can provide advice/influence decision making
- identify the extent to which each identified influencer may impact property decisions.

The research outcomes are designed to enable the ATO to prioritise, target and effectively leverage influencers at different property development stages as required.

The University of New South Wales is undertaking research into the effectiveness of GST concessions available for property transactions.

The research will consider whether the use of these concessions are increasing the cost of compliance for entities undertaking property transactions and the cost to regulators. The ATO is reviewing the effectiveness of these measures, from both a real cost and administrative perspective.

The research will consider:

- impacts on both seller and purchase
- whether costs are passed on to purchasers
- the relative cost as a percentage of the concession
- whether these costs or benefits impact property prices.

Margin scheme valuations legislative instrument

External feedback that was received is currently being considered.

Commissioner of Taxation versus Landcom

On 22 December 2022, the Full Federal Court handed down an unfavourable decision to the Commissioner in **Commissioner of Taxation v Landcom [2022] FCAFC 204 (Landcom)**. The Commissioner has not sought special leave to appeal to the High Court.

The Full Federal Court confirmed the Federal Court's decision that for the purposes of applying the margin scheme to the supply of land comprised of multiple freehold titles, Division 75 of the *A New Tax System (Goods and Services Tax) Act 1999 (Goods and Services Act)* is applied separately to each individual freehold interest.

The Federal Court also found that the Court did have jurisdiction to consider the correctness of the advice in the private ruling issued by

the Commissioner relating to notional GST liability.

Debt approach

Our approach to managing debt is centred on transparency, ensuring clients are aware of their obligations and what is expected of them, their options, and support and assistance they can access and clarity of the next steps we may take if they do not act.

Payment plan take-up has also improved significantly to pre-COVID-19 levels as clients engage with us and bring their debt into a management arrangement.

Effective management and reduction of aged debt that has further accumulated throughout the pandemic remains an area of focus.

BAS lodgment performance continues to be impacted by a growing number of clients who are showing limited or no signs of business or employer activity.

ANZ/Property Council Survey

The Confidence Index dropped 6 points nationally in the December quarter yet remained in positive territory (113 index points) but below the long-term average (123 index points). A score of 100 in the Confidence Index is considered neutral.

Majority of respondents expect continued increases in interest rates.

Overall expectations for economic growth and debt finance availability remain negative.

Survey respondents expect asset prices for office and residential sectors to decline, while industrial asset prices are expected to increase.

Housing supply and affordability continues to be the most major elected issue for both the federal and state governments.

Australian Securities and Investments Commission

Insolvencies have increased in 2022–23 year to date (up 66.2%) on last financial year.

Comparing 2022–23 financial year to date to the base year (an average of the 3 financial years 2017, 2018 and 2019, pre-COVID-19), we see that insolvencies are down 6.2%.

The increase in insolvencies which started at the beginning of calendar year 2022, continues but is still down on the base year. The only type of insolvency appointment which is still below the base year is court appointed liquidations.

More information about Australian Securities and Investments Commission [insolvency statistics](#)  is available.

Action item

Action item	TR 2018/3 and Kurts principle
Due date	Before next meeting
Responsibility	Sian Sinclair
Action item details	Provide details of suggestions to Ashley Warner, ATO.

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Property and Construction Stakeholder Relationship Forum key messages 11 October 2022

Key topics discussed at the Property and Construction Stakeholder Relationship Forum 11 October 2022.

9 February 2023

Master Builders Australia economic forecast

Interest rates – Since the start of 2022, the biggest game changer in Australia is interest rates with rates increasing by 250 basis points since May. It is expected this will go up at least another 100 basis points and possibly even more moving towards 2026.

Material cost – An unanticipated issue that emerged mid-2021 was the substantial rise in building material prices, however the worst is behind us, and prices of construction materials are expected to recover.

Medium and high-rise buildings – There are less people arriving in Australia from overseas (reduced migration due to COVID-19 restrictions), leading to less demand for medium and high-rise buildings. Rental demand continues to be weak; it is expected to recover as migration to Australia returns, and as interest rates recover.

Online services for business

Members discussed the online services provided by the ATO, noting issues particularly regarding registering new and multiple trusts. The ATO will research this matter and come back to the forum with options to address this and modernise their internal processes.

Action item	Online services for business
Due date	Before next forum (6 months)
Responsibility	Scott Walker
Action item details	Investigate issues raised with ATO online services by members, come back to forum to discuss options to modernise systems.

Margin scheme valuations consultation

A new Margin Scheme legislative instrument was drafted with professional standards changes, suggests that all valuations should meet these new market valuation requirements, and requires the declaration of the particular valuation method being applied.

The consultation process on this drafting is 4 weeks, closing on the 12 October 2022.

ANZ/Property Council Survey

National economic growth expectations:

- Turned negative in the last quarter due to inflation and interest rates.

Interest rate expectations:

- Majority of respondents expect increases in interest rates.

Retirement living capital growth expectations:

- Given the continuing change in demographics it remains positive.

Critical issue for Federal Government:

- Housing supply and affordability continues to be the most major elected issue for the Federal Government.

COVID-19 impacts:

- continues to have a large negative impact across all states
- hotels, tourism, and leisure impact has decreased significantly since last year
- commercial office continues to grow from the previous quarters but will be driven by how employees will work going forwards, office, home, or hybrid.

Housing Industry Association (HIA) and contractor insights

HIA members are raising issues regarding price increases, labour shortages and greater insolvencies.

In the workforce we are seeing instances of workers being poached by other firms, attracting them with higher salaries. This is elongating construction times, as there are not enough people to fill roles, and requires a return to normal migration for the issue to resolve.

Bank lending is proving challenging for members to get construction loans from banks, if companies cannot project expenses 12 months in advance, banks are unlikely to provide finance.

ATO and industry debt

As a result of COVID-19 ATO debt has increased considerably.

Over the past 6 months the ATO has been escalating procedures and initiating campaigns for more strict payment plans.

The ATO has improved Director penalty notice (DPN) visibility: Once the DPN is issued and the liability sits with taxpayer, they can see it in client services (online service).

Analysis is being undertaken with regards to 'Doubtfully registered entities', which are entities, mainly in the GST space, that have no activity, may have obligations, but appear that they have been abandoned. ATO will proactively deregister these entities when these businesses have ceased in their activities.

Action item	ATO and industry debt
Due date	Before next forum (6 months)
Responsibility	Anita Challen
Action item details	Consider feedback from members regarding visibility of pay as you go liabilities on taxpayers' accounts

Australian Securities and Investments Commission

Corporate insolvencies are up 86% compared to last year, but down 7% down from 2019 (base level). Insolvencies are starting to come back to normal levels now.

The landscape has changed. Accountants and lawyers are advising their clients about insolvency practices, changing views on insolvencies. With alternate options to liquidation becoming more popular over recent years.

Australian Securities and Investments Commission (ASIC) is simplifying Form 505 for construction insolvencies. This may add to statistics for construction insolvencies, as ASIC gains a clearer and more accurate picture of the industry.

ASIC is releasing information on insolvencies in 2 sets:

- Series 1 – Data on the first time a company enters a formal insolvency appointment (receiver appointed or enter voluntary administration).
- Series 2 – All insolvencies.

ASIC intends to launch an explanation of their new statistics and automate the releases for efficiency and accuracy.

Retirement villages – construction and operation

The retirement village sector is growing due to the changing age demographic in Australia. The ATO needs to understand more about how retirement villages are constructed and the commercial aspects of their lifecycles, as there is a need to provide guidance on GST and Income tax regarding construction of villages.

The ATO has been consulting with experts to gain a better understanding around what support operators need and what gaps exist in the guidance provided by the ATO.

Action item	Retirement villages – construction and operation
Due date	Before next forum (6 months)
Responsibility	All Property and Construction Stakeholder Relationship Forum members
Action item details	Members to provide any feedback regarding observed trends in the retirement village industry, including apportionment or new financing arrangements.

Insolvencies in construction discussion

Large private groups doing a lot of business are very hesitant to go insolvent due to the reputational/goodwill risk.

The property and construction industry is a hostile environment and there is a tendency to quarantine mistakes through use of Special Purpose Vehicles.

Mezzanine finance is not always planned for, but clients might have an equity gap that they need to fill, or else financiers get nervous. This may see clients accepting unfavourable rates.

Capital versus revenue

Web guidance has been drafted regarding the capital versus revenue distinction; shared with members for input and commentary.

The draft guidance is focused on understanding small land subdivisions, whether they are income or capital, the income tax and GST consequences, and other factors to consider.

Action item	Capital versus revenue
Due date	Before next forum (6 months)
Responsibility	All Property and Construction Stakeholder Relationship Forum members
Action item details	Members to provide any input and commentary regarding the drafted capital versus revenue web guidance.

Research update

ATO commissioned research into Real Property Influencers is being conducted by RMIT University from August 2022 to February 2023 to understand the key influencers at key decision points within the property development lifecycle enabling the ATO to optimise our interactions with them at various stages of the property development lifecycle.

The cost of GST concessions is being conducted by UNSW from August 2022 to February 2023 to understand the effectiveness of GST concessions available for property transactions, including consideration of whether they are increasing the cost of compliance for entities undertaking property transactions and also regulators.

Property and Construction Stakeholder Relationship Forum key messages 13 April 2022

Key messages from the Property and Construction Stakeholder Relationship Forum held on 13 April 2022.

16 June 2022

Opening address

Louise Clarke, Deputy Commissioner Private Wealth, opened the meeting acknowledging the contribution members make to this and other ATO forums, particularly the newly established Build to Rent working group.

Economic forecast – Master Builders Australia

Detached housing

Home Builder propelled detached houses to immense heights.

The 2021 financial year was the strongest year on record since the 1970s.

Recently deceleration is being seen post-Home Builder stimulus.

High-Medium density housing

Forecast to grow, driven in part by deteriorating housing affordability and demand from increasing overseas migration.

Home renovations

Renovations have increased substantially, and approval figures are significantly elevated. Home renovations are expected to remain high for the foreseeable future.

Non-residential

Demand for industrial property surged during Covid-19 due to a strategic shift on the part of companies and government. The shift is away from reliance on international supply chains towards domestic manufacturing and storage options for example, warehousing.

Is it expected to fall back from its Covid-19 peak, however retaining permanent and long-lasting growth.

GST withholding credits processing delays

Several clients have had delays in receiving their GST property credits after their BAS has been lodged. The ATO is actively addressing this with several treatments, including:

- Getting the Forms Right – 98% of delays are due to clients and/or representatives making errors on the forms for GST on settlement. The ATO actively engages conveyancers monthly providing them with updates on common errors and how to avoid them.
- Streamlining Processes – Enhanced workflows, prioritisation and using ATO models to pick up required information where possible. The ATO is continuing to work with industry to make sure we get this right.
- Promotion of clients to take ATO calls – ATO staff are making outbound calls to address this issue, with more than 60% of form errors requiring us to talk to the client. However 80% of calls from the ATO to clients are not answered. To improve this, we are looking to do a pre-call SMS, providing clients with an allocated time.

Action item	GST withholding credits processing delays
Due date	Ongoing
Responsibility	Loretta Bishop-Spalding
Action item details	Members are to contact Loretta Bishop-Spalding if they have concerns about any delays.

Corporate liabilities determination project

The purpose of the Corporate liabilities determination project is to raise awareness about Director penalty notices (DPN) and that Directors maybe personally liable for certain debts, Super, pay as you go withholding, GST.

Further information on Director penalty notices warning letters to directors and **notice of intent to disclose** a tax debt to credit reporting agencies is available.

Action item	Corporate liabilities determination project
Due date	To be advised
Responsibility	Janine Laidler
Action item details	Provide an update on the findings of this program in a future session.

Australian Securities and Investments Commission insolvency update

Insolvencies have increased in 2021–22 on last financial year.

Comparing 2021–22 financial year to the base year (an average of the 3 financial years 2017, 2018 and 2019, pre covid), we see that insolvencies are down 42%.

There has been an increase in insolvencies over the last few months, but still down on last year. Expected this is an upwards trend towards normal.

More information about ASIC [insolvency statistics](#)  is available.

Build to Rent working group

The ATO has formed a build to rent working consultation group with the main aim to get a common understanding across the ATO, states and territories and industry to reduce the administrative burden and cost of compliance for build to rent projects.

Valuations for margin scheme

The Administrative Appeals Tribunal (AAT) decision regarding valuation professional standards was handed down, the Decleah decision. The ATO is reviewing the impact of this decision, once approved internally this will go to public consultation.

Action item	Valuations for margin scheme
Due date	To be advised
Responsibility	Loretta Bishop-Spalding
Action item details	Organise out of session meeting when internal endorsement is completed.

Vacant land deductions

Discussion regarding vacant land deductions in scenarios where there are large plots of agricultural land with small portions dedicated to residential property.

Draft Taxation Ruling TR 2021/D5 *Income tax: expenses associated with holding vacant land* which has been put out for consultation, with commentary, sets out preliminary view.

Action item	Vacant land deductions
Due date	To be advised
Responsibility	Sian Sinclair, Grant Thornton Australia
Action item details	Provide Kelly Kalisz, ATO with examples, scenarios to be considered in the Taxation Ruling.

Capital verses revenue guidance

The ATO have commenced production on web guidance which is expected to be available this year. It will provide guidance on capital verses revenue and encourage clients to get in touch with the ATO for assistance.

Other business

Update on ATT decision in Ian Mark Collins & Mienneke Mianno Collins
ATF The Collins Retirement Fund and Commissioner of Taxation
(Taxation) [2022] AATA 628: The Decision Impact Statement is being prepared by the ATO and will be circulated once finalised.

The ATO is returning to pre-covid approaches with Extension Requests with each request being considered on a case-by-case basis.

Action item	Extension requests
Due date	Ongoing
Responsibility	Members
Action item details	Where members believe individual circumstances have not been considered, send details of deferral requests to Loretta Bishop-Spalding.

Income tax treatment of the windfall gains tax (WGT) in Victoria: The ATO recommends taxpayers approaching us for individual advice on their circumstances.

Action item	Income tax treatment of the windfall gains tax
Due date	Ongoing
Responsibility	Peter Chester
Action item details	Peter Chester to follow up regarding guidance on WGT and its interaction with income tax

Temporary Full Expensing for commercial landlords: This will be taken offline and followed up with the group in a future session.

Action item	Temporary Full Expensing
Due date	To be advised

Responsibility	Peter Chester
Action item details	Peter Chester to contact Sian Sinclair, Grant Thornton Australia.

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Property and Construction Stakeholder Relationship Forum key messages 15 September 2021

Key messages for Property and Construction Relationship Forum held on 15 September 2021.

19 October 2021

Opening address

Louise Clarke, Deputy Commissioner Private Wealth opened the meeting, discussing the importance of the property and construction industry to Australia and the economy.

Economic Forecast: Master Builders Australia

Residential – Detached dwellings

A combination of the HomeBuilder grant and Covid-19 behavioural changes (working from home) has seen approvals soar.

There are concerns that bringing forward of future housing demand caused by HomeBuilder will lead to low demand for detached housing over the coming years.

Other concern is Australia's low immigration rate due to Covid-19 restrictions, as immigration is the largest influencer on housing demand.

Residential – Home renovations

Home renovations have been one of the big beneficiaries of Covid-19, seeing significant increases in approvals for home renovations across all states, driven in part by low interest rates and growing housing prices.

Non-Residential Market


The non-residential market was down over the last year, but latest figures show the non-residential is on an upswing again.


Industrial – Biggest beneficiary of pandemic, with exposed supply chain issues leading to firms shoring up their domestic production and onshore warehousing facilities.


ATO Foreign investment program

The ATO has published new webpage content on **New and Near New Dwelling Exemption Certificates** to the ATO website, which includes a reporting template for property developers.

The ATO is continuing to promote increased use of **Exemption certificates** for foreign investors of residential real estate and the benefits for foreign investors seeking approval.

Three [new webinar products](#)  have been published to ATO TV that aim educate audiences on how to comply with the Vacancy Fee program and how to apply for Exemptions Certificates.

The [FIRB Annual Report](#)  has been published on FIRB.gov.au

Key contact for Foreign investment Program, Public Groups and Internationals is FIRBATOCOMMS@ato.gov.au 

Covid-19 lockdowns – Open discussion

Construction industry has been impacted by lockdowns with capacity limits for workers on site and supply chain issues affecting the completion of projects.

Border restrictions/closures have impacted flows of capital from overseas investors into Australian commercial property.

A key priority is reactivating central business districts, noting that NSW is currently researching and developing a recovery strategy.

Employers are taking the initiative to get employees vaccinated, offering staff incentives but are concerned about the potential fringe benefits tax implications.

Employers have also expressed concerns that the Australian government has provided guidance on what a 'Covid-19 safe' workplace looks like.


Working remotely is expected to become a permanent trend – not just for staff, but also principals and owners taking up this option.

Action item	Vaccine Tax Incentives
Due date	Before next meeting
Responsibility	Peter Chester, ATO
Action item details	Guidance required from the ATO regarding whether there are any tax incentives for offering vaccinations to employees.

Stimulus measures

Temporary full expensing is directed toward stimulating investment in new assets, where eligible businesses can deduct in full the business portion of the cost of eligible depreciating assets of any value in the year they are first held, and first used or installed ready for use for a taxable purpose. The business portion of the cost of improvements to existing eligible depreciating assets made during this period can also be fully deducted.

- Temporary Full Expensing
- Interaction of tax depreciation incentives
- Economic stimulus measures – compliance and integrity
- Draft Tax Determination TD 2021/D1 *Income tax: when working out your aggregated turnover, are the relevant annual turnovers of entities connected with you, or entities that are affiliates of yours, determined by reference to your income year?*

- Draft Law Companion Ruling LCR 2021/D1 *Temporary full expensing*
- [Tax professionals webcast](#) 

Loss carry back is intended to interact with temporary full expensing, which may result in tax losses. Eligible corporate tax entities may make the choice to carry back tax losses, this may result in a tax refund, which will increase business cash flow

- Loss carry back

Extension announced in 2021–22 Budget to include 2023 income year.

Instant Asset Write Off. From 12 March 2020 until 30 June 2021, eligible businesses with an aggregated turnover of less than \$500 million (Different dates) can use the instant asset write-off for each asset purchased by 31 December 2020 and costing less than the \$150,000 threshold. Instant asset write-off will apply for assets first used or installed ready for use until 30 June 2021. can only be claimed if you do not claim a deduction under temporary full expensing.

- Instant asset write-off

Backing business investment. To be eligible to claim the accelerated deduction in your 2020 tax return, each depreciating asset must: be new and not previously held by another entity (other than as trading stock) and be first held on or after 12 March 2020.

- Claim backing business investment this tax time

RMIT Research update

The full [RMIT research report](#)  ([PDF 1.96MB](#))  has been published.

Some of the key findings:

- Data – The ATO's primary data source is land registry data from the States and Territories, which is not provided consistently across states. The ATO are working on improving the on quality, quantity, timeliness of the data.
- Valuations – Research identified that the value of the property has major implications for goods and services tax (GST) revenue, particularly when determining market value for the margin scheme.
- Build to Rent (BTR) – Main issue being inconsistency in understanding and definitions for BTR across states, government,

and industry.

Action item	RMIT Research Out of Session Discussion
Due date	Pending ministerial approval
Responsibility	Loretta Bishop-Spalding, ATO
Action item details	Organise an out of session discussion for RMIT Research for those who may like to provide feedback on the findings.

Action item	Valuations
Due date	Pending ministerial approval
Responsibility	Loretta Bishop-Spalding, ATO
Action item details	Organise an out of session discussion regarding a valuation case study.

Action item	Distribute Published RMIT Research
Due date	Pending ministerial approval
Responsibility	Matt Breton, ATO
Action item details	When published, distribute link to the RMIT Research on the ATO website to all members.

Acreage and capital gains tax (CGT) curtilage

Sparke Helmore Consulting out of session update

There was out session discussion between the ATO and Sparke Helmore Consulting (SHC) regarding the 2-hectare concept for the

CGT main residence exemption and the definition of residential premises for GST purposes.

SHC brought up the inconsistency between the capital gains tax provisions and the GST law as resulting in uncertainty for both the purchaser and vendors of land.

Despite the differences in treatment raised, the ATO's guidance and administration of the GST relating to the purposes and use of real property is consistent with the law.

Build to Rent

BTR is expected to become a lot more prevalent in the Australian property market over the coming years. We've already seen advocacy pushes for BTR and the States and Territories have signalled their support via various concessions and incentives.

Taxpayers looking to get the concessions offered must meet certain criteria to be considered BTR by the States and Territories definitions, which differ from each other and differ from what the ATO considers commercial residential. This inconsistency is confusing for taxpayers.

We are currently proposing that the ATO, States and Territory governments and industry set up a working group to collaborate on a working definition for BTR to provide certainty for industry going forward.

Action item	Build to Rent sub-group
Due date	February 2022
Responsibility	Loretta Bishop-Spalding, ATO
Action item details	Organise BTR sub-group

Australian Securities and Investments Commission view on liquidations

The number of insolvencies is increasing, but from a low base figure (compared to baseline trend).

Construction had second highest number of insolvencies by industry.

Voluntary administrations are up proportionally, compared to other forms of insolvency. While court appointed insolvencies have increased slightly – suggesting that creditors are starting to pursue recovery proceedings more often.

Government relief measures introduced last year kept a lot in business, expected to see increased insolvencies with the withdrawal of these measures – but this has not been seen yet. The concept of the ‘zombie’ business was nowhere near as bad as expected with lots of support out there for business.

Other business – Open discussion

Withdraw of Residential Colleges Tool – The ATO conducted a feasibility study, finding that the tool does not meet requirements and was not viable to change the tool, so it will be withdrawn on 31 December 2021. The ATO is working with affected areas the sector to support them in managing this change.

Development Lease Case – A recent case in the ACT involving the inclusion of preparatory works as part of consideration under the margin scheme was discussed. The case was favourable for the Commissioner in the primary issue. The ATO view is maintained.

GST Real Property Tool update – We are now in the testing phase for the updated tool which should go live at the end of this month. The updated tool now includes registration, margin scheme calculations and GST at Settlement.

Note – the Property Tool is currently offline for testing and will be back online in late October, early November.

ATO Let’s talk – ATO is not going to proceed with publishing this and is looking to what we can do regarding advice and guidance. We will be consulting with stakeholders on this.

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Property and Construction Stakeholder Relationship Forum

key messages 4 March 2021

Key messages for Property and Construction Relationship Forum 4 March 2021.

23 March 2021

Opening address

Chair Scott Walker, Private Wealth ATO, opened the forum session, thanking participants for their time and stated an interest in learning how things are going in the property and construction industry – particularly as we move from a Covid-19 environment, back to something a little closer to business as usual.

Superannuation: Early release of super and first home saver

The two main ways that early release of super and the property market interact is via the compassionate release of super and the first home super saver program.

Compassionate release of super – In the last 12–18 months we have seen a reduction in applications for compassionate release of super in the order of 75%, surprising considering the current environment. However, things are starting to return to pre-Covid levels.

First home super saver – We have seen a significant increase in use of this program (200% increase). It is expected this is because it is still a new scheme, so the numbers were low early as the program was rolled out and advertised. It is expected that numbers will increase to a plateau of around 20,000 requests per year.

Update from industry

Supply and demand

In the residential market space, specifically detached housing, a lot of planned developments were brought forward to meet demand in the market. This has been driven by the timeframes dictated by state and federal government forcing timelines and demand forward.

Home builder grant was successful in driving demand, application numbers double what was forecast.

A question is whether this increased demand for residential housing will force prices up and cause housing affordability issues.

There is still appetite for residential apartments, but demand has swung more towards detached houses.

Increased demand is leading to material and labour shortages – these may impact timeframes imposed by the government concessions/grants.

Labour – A lot of demand for construction workers, but supply has been constrained by restricted travel. The Australian labour force cannot move around to address areas of highest demand, nor can we import skilled migrant workers to make up the shortages.

Build to rent (BTR)

Need to separate the concept of BTR from social/affordable housing – BTR in other countries increases housing stock, but it is not necessarily social housing.

The government has been pushing BTR to as a means to address social housing supply shortages, but despite the push there has not been a large increase in BTR developments. Industry are looking at the viability of BTR, seeking concessions, mainly at state level to make BTR developments feasible.


Another hurdle for BTR in Australia is that it requires a bit of a cultural shift from the 'Australian dream' of a back yard and a detached house.

Insolvencies

Insolvencies are at all-time lows as a result of insolvency measures put in place in response to Covid-19.

Expecting insolvencies to return to pre-Covid levels when the rest of the stimulus/support measures for example JobKeeper are withdrawn.

Insolvency reforms introduced temporary restructuring relief, debt restructuring and simplified liquidation. All three processes are only available to incorporated small business that have less than \$1 million in liabilities and meet specific criteria. The temporary restructuring relief is an extension to support measures introduced by government in 2020 and is available until 31 March 2021.





[Statutory Trust Accounts](#)  – On 1 March 2021 Queensland introduced a statutory trust framework for state government initiated construction contracts. Under this framework, the head contractor must set up a statutory trust account and use this to pay their subcontractors ensuring security of payments.

Temporary full expensing (TFE) and Loss carry back

TFE – Businesses with turnover less than \$5 billion are eligible to fully expense cost of improvements to existing assets and/or cost of new business assets. Businesses claim this via their tax return, the online forms are being updated and more information on this will be shared on ato.gov.au.

Loss carry back – Loss carry back provision looks to help businesses who had a good year prior to Covid-19 but went on to make losses in proceeding years 2021–2022. Claims for loss carry back won't come in until the next financial year.

For more information on the new insolvency measures refer:

- [Insolvency](#) 
- [Debt-restructuring process](#)  for incorporated small businesses
- [Simplified liquidation process](#)  for incorporated small businesses
- [Extension to the temporary relief](#) .

For more information on TFE and loss carry back refer:

- Temporary full expensing
- Loss carry back.

Master Builders Economic Forecast

Residential

Homebuilder has been very supportive of residential activities in the short term.

Detached housing fell 11% in January, but is continuing to be supported by Homebuilder, particularly with the extension of Homebuilder timeframes and increases to the value of properties considered under the program. There is a good amount of residential work in the pipelines.

High density approvals for example, apartments were struggling prior to Covid-19 and have continued to struggle with low rental growth, the lowest since 1974.

Forecast – short term (2020–21) expecting 160 000 new builds across Australia. In the medium term (2021–22) expecting 140,000 new dwelling starts, due to low migration. After this Master Builders Association forecast a bounce back, driven by full employment and removal of international travel restrictions.

University/student accommodation

Student accommodation is under a lot of pressure – significantly reduced movement of international students.

New Payment Times Reporting

Payment times reporting scheme was announced in November 2018, before undergoing a consultation period with more than 400 businesses. The legislation was approved in October 2020 and the scheme started 1 January 2021.

The scheme aims to improve payment times for small businesses, having large businesses report on their payment times and then having this information published by the government.

Availability of this data is expected to help small businesses decide who they do business with and help the Australian public decide which large businesses they buy from.

Businesses that are constitutionally covered entities, carry on an enterprise in Australia and have a total income in excess of \$100 million need to report on their payment times and practices via the Payment times reporting portal. We are supporting large businesses with tools to assist complete the reporting requirements, including releasing a small business identification tool.

See also:

- [Payment Times Reporting Scheme](#) .

Debt and Lodgment: Approach to recommencement

The ATO is recommencing these activities under a three-phase approach:

- Phase 1 – June 2020: ATO continuing to allow deferrals of due dates and use of tax plans, while encouraging clients to contact the ATO for help. Action continued for high risk clients.
- Phase 2 – February 2021: Continued help and assistance for those who need it and are willing to engage with the ATO. Formal warnings reintroduced.
- Phase 3 – March 2021: Elements from both Phase 1 and 2, while taking firmer and stronger action with non-compliant clients.

In addition to all of this, the ATO is continuing to put out messaging to encourage clients to comply and assisting them by improving access to online services.

Action items

Action item	Question on notice regarding ATO debt and lodgment
Due date	March 2021
Responsibility	ATO
Action item details	Provide members details to ATO contact for offline discussion.

Action item	Practical Compliance Guideline: Build to Rent
Due date	To be considered prior to next meeting
Responsibility	ATO
Action item details	ATO to consider preparing a practical compliance guideline for Build to Rent.

Action item	Out of Session Discussion: Acreage and CGT Curtilage
Due date	April 2021
Responsibility	ATO
Action item details	ATO to organise out of session meeting with member to discuss.

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Property and Construction Stakeholder Relationship Forum key messages 25 August 2020

Property and Construction Forum key messages 25 August 2020.

22 October 2020

This extraordinary meeting was held with selected members of the Property and Construction Stakeholder Relationship Forum to discuss the impacts of COVID-19 and the associated Government stimulus on the property industry.

Opening address

Tim Dyce, Deputy Commissioner Private Wealth and Sponsor of the Property and Construction Stakeholder Relationship Forum opened the meeting, discussing the intent of the group and briefly touching on some of the agenda items for the meeting.

Update from Industry

Open discussion lead by Scott Walker, chair, with members providing insights into key issues currently impacting the industry.

COVID19 Restrictions Impacting on Property Inspections:

- property sales have been impacted due to restrictions on open inspections
- less impact felt for land sales, as restrictions do not apply.

Construction

Longer term concerns for the construction industry with a predicted dip in work in the next 6–12 months, particularly considering potential withdrawal of stimulus measures and stricter lending conditions.

Pipeline and JobKeeper

Infrastructure projects and the work already in pipeline are keeping people in employment, resulting in many developers not needing to rely on JobKeeper support. We will need to monitor the uptake of JobKeeper as the pipeline of work ends, expected in the next 6–12 months.

Commercial landlords

Commercial landlords are shouldering the economic burden of COVID-19 by providing relief via rental reductions and deferrals. This has significantly impacted their revenues, decreased asset values and there are concerns this will impact foreign investment in this space.

ATO feedback

Dealings with the ATO have been positive and helpful, particularly around the current industry pain point of cash flow.

Victoria

The current COVID-19 situation in Victoria has seen restrictions on the number of persons allowed on a building site, and on movement between sites. This has severely slowed construction in Victoria, particularly regarding renovations and finishing work, and has effectively 'bottlenecked' the state's pipeline of work. Consequently, it is expected that Victoria will take longer for construction to recover.

HomeBuilder

HomeBuilder has helped the industry, seeing an upswing in enquiries, but did take time to come to fruition with states and commonwealth having to iron out the details around payments and eligibility.

It is expected that Victoria, due to current restrictions, will not benefit from this stimulus and it has been suggested that Victoria may need more than Homebuilder to drive construction recovery.

NSW relief

Land Tax - 25% reduction for landlords who provide tenants rental relief.

Payroll Tax - Certain businesses may be eligible for a 25% refund of their payroll tax and may also be eligible for 6-month deferral. Businesses opting to take the deferral will need to manage their cashflow because at the end of the deferral they will be liable for the delayed obligation along with their usual monthly obligation, making this a key/critical point in time for these businesses.

Insolvencies

The changes in insolvency laws in response to COVID-19 (changes to statutory demands, insolvent trading) saw a decrease in the number of companies entering administration. As the government stops-withdraws this support it is expected that there will be significant increases in companies entering administration, and potentially more misconduct like insolvent trading, phoenix activity and director bans.

Work is being undertaken to streamline the insolvency process, anticipating this may be needed once government measures are ceased.

Re-commencement of ATO review activities

For the last 6 months the majority of ATO audits have been on hold, unless involving serious evasion or tax crime. From October, the ATO is looking to return to business as usual in those states not significantly impacted by COVID-19.

ATO Research

The ATO is currently involved in two research programs:

- Property and Construction Research - ATO has engaged RMIT University to undertake research aiming to understand behavioural risks in the industry, identify emerging risks and opportunities to address them.
- Technology and the GST System - ATO is working with University of Technology Sydney on a research project to understand more about the impact and opportunities of new technologies on businesses and the GST system.

Redesign of property content


We are currently assessing and redesigning the GST Property Tool and our property content on ato.gov.au. Both will be assessed from an end user perspective to ensure we create a simple, logical and coherent 'one stop' for all property taxation information while taking them through the required processes and calculations.

Other Business

JobKeeper

We are expecting the second iteration of JobKeeper to be a better client experience, more streamlined and a faster turnaround on applications, having learned from the initial JobKeeper program.

Foreign ownership

Chartered Accountants Australia and New Zealand have been working in consultation with the ATO and Treasury on draft legislation for [Exposure Draft Bill \(Register of Foreign Ownership\) \(PDF, 292KB\)](#) .

This will create a new foreign ownership framework that includes a foreign register of ownership. It is expected that this will be introduced to Parliament in October 2020.

Let's Talk

There have been delays on ATO 'Let's Talk' sessions with many resources being directed to COVID-19 support, we intend on having new sessions out later this year.

Vacant land deductions

Content will be released on 'Vacant land deductions', this will support advisors in addressing their clients' queries.

Individuals and Intermediaries (IAI) area of the ATO have been covering the vacant land changes in our media, podcasts and the September issue of the tax practitioner newsletter. In addition to this, IAI have also sent over 6,500 letters to clients with links to information on the vacant land changes.

Developer as corporation manager

Arrangement whereby a subsidiary of a development company is set up as the corporation manager and this is raising ongoing conflicts of interest in multi-level development legal arrangements and regulatory oversight issues.

Reformation of the Corporations Act is required to address these issues, and we need to be aware of the tax implications of such arrangements.

Transfer pricing and interest rates

There are instances of Foreign controlled entities engaging in lending not at arm's length and as such, being deemed dividends.

There may be reasons for lending not at 'arm's length' in the current environment. Due to banks tightened lending, companies may have to seek out cross border funding (e.g. mezzanine funding) from related and unrelated parties and this attracts a higher rate than usual bank lending. We need to keep this in mind when assessing what is truly considered 'arm's length' in the current climate.

Rebuilding Australia - Master Builders Australia

Master Builders Australia shared the following report [Proposals for October 2020 Federal Budget \(PDF, 1.1MB\)](#) [📄](#), which details proposal for a P&C led recovery from COVID-19.

Attendees

Attendees list

Organisation	Attendees
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ATO	Scott Walker (Chair), Private Wealth
ATO	Claudio Borrillo, Private Wealth
ATO	Jennifer Farley, Public Groups International
ATO	Loretta Bishop-Spalding, Private Wealth
ATO	Matt Breton (Secretariat), Private Wealth
ATO	Peter Chester, Private Wealth
ATO	Tim Dyce, Private Wealth
Australian Building and Construction Commission	Jill Jepson
Australian Securities and Investments Commission	Joe Zubcic
Chartered Accountants Australia and New Zealand	Michael Croker
Deloitte	Tim Sinclair
Frasers Property Australia	Anita Au
FTI Consulting	Fiona Hansen
Grant Thornton Australia Limited	Sian Sinclair
Housing Industry Association	Keith Ryan
Macpherson Kelley Lawyers	Carlos Barros
Property Council of Australia	Kosta Sinelnikov

Queensland Building and Construction Commission	Kate Raymond
Revenue NSW	David Allan

Apologies

Apologies list

Organisation	Members
ATO	Sue Goodear, Small Business
Master Builders Australia	Shane Garrett
Sparke Consulting	Jonathan Doy

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