Your Knowledge

Newsletter –September 2023

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The Billion Dollar TikTok Scandal

$1.7 billion paid out in fraudulent refunds, another $2.7bn in fraudulent claims stopped, around 56,000 alleged perpetrators and over 100 arrests to date. How did the TikTok tax scandal get out of control?

> **"Everyone else got refunds, it's OK, it's just a temporary loan [from the ATO]."**
> *TikTok social influencer*

It was promoted as a victimless hack that delivered tens of thousands of dollars into your bank account. Like any hack, taking part was as simple as following the instructions. The streamlined process designed to make it easy for a small business to start-up under Australia's self-assessment system, also made it easy for the 'TikTok fraud' to go viral.

How did it happen?

At some point in 2021, videos started to spread that spelt out how to get the Australian Taxation Office (ATO) to deliver money into your account. Not quite a loan but a hack that sometimes saw tens of thousands delivered into accounts, no questions asked. As the message gained traction, and with more and more people validating the hack, facilitators emerged. All you had to do was hand over your personal details to the facilitators and they would take care of the rest.

The fraud saw offenders inventing fake businesses, applying for an Australian Business Number (ABN), many in their own names, then submitting fictitious Business Activity Statements (BAS) to claim GST refunds.
By late 2021, the Banks noticed the uptick in suspicious activity, mostly large refunds that were out of character for those accounts - in some cases, Centrelink recipients receiving large credits from the ATO. The banks froze a number of accounts and reported the suspicious matters as they are required to do under the Anti-Money Laundering & Counter Terrorism legislation, including to the ATO.
In April 2022, the ATO formed Operation Protego to disrupt the rapid increase in GST refund fraud by individuals that were not genuinely in business. By that stage however, the strategy had gone viral.
By May 2022, the average GST refund paid was $20,000, claimed by around 40,000 people. The ATO conceded around $850 million had been paid out in potentially fraudulent claims. By June 2022, that figure had blown out to $1.2bn but the ATO had stemmed the flow, rejecting $1.7bn in fraudulent claims. Search warrants and arrests of scheme promoters followed.
It's hard to understand how so many people - an estimated 56,000 Australians - made the leap in logic that some sort of hack had been discovered that enabled you to claim thousands of dollars in tax refunds as a 'loan' from the ATO. At the best of times the ATO is not known for its sporadic acts of generosity and laissez faire attitude to tax revenue. We know the opposite is true.
And, why so many accepted a view promoted on TikTok - the act of participating in the fraud required falsifying records at several stages and yet, failed to ring alarm bells. Unfortunately, naivety is not a compelling defence against fraud.

Caught in the web?

"The ATO has zero tolerance to any fraudulent or corrupt behaviour that may in any way impact the ATO."

The TikTok tax fraud is extensive and has several layers of impact across the 56,000 taxpayers caught up in it.
The closest circle are the scheme promoters and facilitators. To date, more than 100 people have been arrested including members of outlaw motorcycle gangs, organised criminal organisations, and youth crime gangs – and more than 10 people have been convicted for their involvement.
The maximum penalty for promoting a tax fraud scheme is 10 years in prison.
The second circle are those actively engaged in the scheme - who declared that they were carrying on a business, established an ABN, and submitted GST refund claims for expenses they did not incur. For those who received fraudulent GST refunds, the money will need to be paid back, penalties are likely to apply, and there is a risk of criminal proceedings. If the ATO have contacted you, engagement will be the key to reducing penalties and

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preventing an escalation to criminal proceedings. If you were engaged in the GST refund fraud but the ATO has not contacted you yet, it will be important to **work with us as soon as possible to declare and manage the issue**.

Where to now for identify theft victims?

The third circle is comprised of the unwitting identity theft victims whose details have been used to generate fraudulent GST refunds. The ATO have had reports of people offering to buy and sell myGov details in order to access refunds. The conversation within the accounting community is that the ATO are inundated at present trying to manage the fallout, not just from the TikTok GST refund fraud but identity theft in general. So, keep on top of your myGov account and if you notice any unusual activity, contact us asap.

The TikTok fraud timeline

"Nobody is giving money away for free or offering loans that don't need to be paid back."
ATO Deputy Commissioner and Chief of the Serious Financial Crime Taskforce (SFCT) John Ford.

Late 2021	• Banks freeze suspicious accounts and refer unusual behaviour to ATO.
April 2022	• Operation Protego formed
May 2022	• ATO issue a warning on fake businesses, ABN applications and fraudulent business activity statements to generate GST refunds after around $850 million in potentially fraudulent payments made to around 40,000 individuals, with the average amount fraudulently claimed being $20,000.
June 2022	• ATO tallies the cost of fraudulent claims at $1.2bn. Between April and June 2022, the ATO rejected $1.7bn in fraudulent claims. • ATO launches coordinated action across three days in 12 locations across NSW, Victoria, Tasmania, South Australia, Western Australia, and Queensland, which saw warrants executed against 19 individuals suspected of being involved in GST fraud.
July 2022	• ATO executes search warrants for five suspected offenders.
Dec 2022	• ATO tallies fraudulent rejected claims at $2.5bn by more than 53,000 individuals.
Feb 2023	• Warrants executed against 10 individuals suspected of promoting the fraud including on social media.
Aug 2023	• ATO tallies fraudulent rejected claims at $2.7bn.

The upshot to date; $2.7bn in fraudulent claims rejected before being paid, $1.7bn fraudulent payments made with around $66m recovered by 30 June 2022. Another $700m in liabilities, including around $300 million in penalties, raised in 2023-24.
-**End-**

The case of the taxpayer who was paid too late

What a difference timing makes. A recent case before the Administrative Appeals Tribunal (AAT) is a reminder about the tax impact of the timing of employment income.
In this case, the taxpayer was a non-resident working in Kuwait. As part of his work, he was entitled to a 'milestone bonus' but, the employer was not in a position to pay the bonus at the time.
When the job ended, the taxpayer moved to Australia and became a resident. Once in Australia, the former employer honoured the performance bonus and paid it as a series of instalments.
The dispute between the ATO and the taxpayer started when the Commissioner issued amended assessments taxing the bonus payments received.
The dispute focused on when the bonus was derived. Had the bonus been derived while the taxpayer was still a non-resident then it would not have been taxed in Australia. This is because non-residents are normally only taxed in Australia on Australian sourced income. Employment income is typically sourced in the place where the work is performed (although there can be exceptions to this).

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Australian tax case law says that employment income is normally derived on receipt. In the taxpayer's case, this was when he received the payments from his former employer, not when he became entitled to the bonus. Because the taxpayer received the bonus when he was a tax resident of Australia, the bonus was subject to tax. The difference for the taxpayer was quite dramatic. Had he been paid the bonus when it was due, he would have paid no tax as Kuwait does not impose income tax.
Please call us if you are concerned about tax residency or managing overseas income.

The shape of Australia's future

What will the Australian community look like in 40 years? We look at the key takeaways from the Intergenerational Report.

The 2023 Intergenerational Report (IGR) is a crystal ball insight into what we can expect Australian society to look like in 40 years and the needs of the community as we grow and evolve. It doesn't map out our path to flying cars and *Jetsons* style robotic domestic help (unfortunately) but it does forecast structural trends that will give many of us a level of anxiety about what we need to be doing now to successfully navigate the future.
The report links the continued growth and prosperity of Australia to five significant areas of influence:

We're ageing

Thanks for the reminder. The number of people aged 65 and over will more than double and the number aged 85 and over will more than triple. We're expected to live longer with the life expectancy of men increasing from 81.3 to 87 years and from 85.2 to 89.5 for women by 2062-63. And that's a problem for the younger generation.

Who bears the burden of an ageing population?

Australia's low birth rate, limited migration and increased longevity all have an impact. The old age percentage - the number of people aged 65 and over for every 100 people of traditional working age (15 to 64) in the population - will increase from 26.6% to 38.2%.
From a tax perspective, Australia's reliance on personal tax means workers will bear an increasing proportion of the tax burden under current fiscal policy. In a recent interview, former Treasury boss Ken Henry labelled it an "intergenerational tragedy" with personal tax growing from 11.7% of GDP to 13.5% based on current policy. The report says that "only 12% of Australians aged 70 and over, pay income tax and this age group now makes up 12.2% of the total population. This age group is expected to increase to 18.1% of the total population in 2062-63."
Wholesale tax reform will be required to prevent the growing tax burden on individuals dragging on the economy. With economic growth expected to slow to 2.2% from 3.1% over the next 40 years, the solution will not magically arise from corporate Australia. If it was not for our high rate of inflation you would think an increase to the GST was imminent.

Services and who pays

Demographic ageing alone is estimated to account for around 40% of the increase in Government spending over the next 40 years.
The outcome of an ageing population, as you would expect, is increased demand for care and support services that will push the Federal Budget back to a point where deficits are the norm if the current policies remain in place. From a consumer perspective, it also means that the trend towards user-pays will only increase. As individuals, we need to ensure that we have the means to fund our old age because Government resources will be limited by increasing demand and this demand is funded by a deteriorating percentage of workers contributing to tax revenue.

It's also likely that we will need to look at how we generate income. For some that might mean working longer, for others it is value adding - creating, buying and selling assets in some form, whether that is business, innovation, or through more traditional assets such as property or financial products.

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Superannuation the size of a nation

Australia currently has the fourth largest pool of retirement assets in the world, with total superannuation balances projected to grow from 116% of GDP in 2022-23 to around 218% by 2062-63. Our superannuation system will be what underwrites retirement for most Australians. At present, around 70% of people over aged pension age receive some form of Government income support. Over time, and as our superannuation system matures, this percentage is expected to decline sharply as a percentage of GDP with Government support supplementing rather than providing for retirement (the first generation of workers with superannuation guarantee throughout their working life hit retirement age around 2058).

However, the IGR points out that, “the cost of superannuation concessions will increase, driven by earnings on the larger superannuation balances held by Australians.” The proposed tax on future earnings on super balances above $3m may not be the last.

You can expect the management of superannuation to be a priority for Government to ensure that retirement savings are maximised to reduce the reliance on Government support, and to ensure that this enormous pool is leveraged for the gain of not only members, but the nation.

Growth of services

Like most advanced economies, global competition has shifted Australia’s industrial base from the production of goods to services. Ninety percent of jobs are now in services.

With an ageing population, demand for health and care services is expected to soar. People aged 65 or older currently account for around 40% of total Australian health expenditure, despite being about 16% of the population. The IGR estimates that the workforce required to support this sector will need to be twice the size of what it is now to meet demand by 2049-50.

The Government’s biggest spending pressures will be health, aged care, the NDIS, defence and interest payments on government debt. Of these, the NDIS is the fastest growing at 7% per year.

The role of technology

The speed of technological change is difficult to predict, and the IGR doesn’t attempt to make predictions. But what we do know is that technology has had a transformational impact on labour productivity (the value of output of goods and services produced per hour of work). Over the last 30 years, labour productivity has accounted for around 70% of the growth in Australia’s real gross national income. But, tempering this is a slowing of labour productivity growth since the mid-2000s.

We know technological disruption is coming and the debate about the role of artificial intelligence is only just beginning. We also know that unless technology is accessible, our future will be one polarised by those who have and have not benefited from technological change.

Climate change transformation

There are two key aspects to climate change; the cost of rising temperatures, and the opportunity created by the shift to renewable energy.

Temperatures are anticipated to increase by 1.5 degrees before 2100, potentially before 2040.

From 1960 to 2018, climate disasters reduced annual labour productivity in the year they occurred by about 0.5% in advanced economies. However, for severe climate disasters labour productivity is estimated to be around 7% lower after three years. With rising temperatures, floods, bushfires and other extreme weather events are expected to increase in frequency and severity. The impact of climate change spelt out in the report is sobering with disruptions and changing patterns impacting agriculture, tourism, recreation and industries that rely on labour intensive outdoor work.

On the positive side, Australia could benefit from new “green” industries, such as hydrogen and other clean energy exports, critical minerals and green metals. It is also likely to drive new, innovative ideas as businesses invest in and develop low emissions technologies, providing a source of future productivity growth in a more sustainable economy. Australia’s potential to generate renewable energy more cheaply than many countries could also reduce costs for both new and traditional sectors, relative to the costs faced by other countries.

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Geopolitical risks

Australia relies on open international markets. Trade disputes and military conflicts pose an external threat to Australia's economy and well being. While the IGR cannot predict the nature of geopolitical events, it notes the importance of investing in national security, presumably this includes cybersecurity, ensuring access to international markets, and deepening regional partnerships to reduce supply chain vulnerabilities.
-End-

Legislating the 'objective' of super

The proposed objective of superannuation released in recently released draft legislation is: '**to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way**.'
The significance of legislating the objective of super is that any future legislated changes to the superannuation system must be in line with this objective. It's a fairly broad definition. For example, "equitable" seeks to address the distributional impact of superannuation policy. That is, latitude for the Government to target tax concessions to address differences in demographic factors and structural inequities including intergenerational inequity and outcomes for different groups including women, First Nations Australians, vulnerable members and low-income earners.
"Sustainable" encapsulates the changing needs of an ageing population including reducing the reliance on the Age Pension. The draft also alludes to the viability of the cost of tax concessions used to incentivise Australians to save for retirement.
"Deliver income" appears to reinforce the concept that superannuation savings "should be drawn down to provide individuals with a source of income during their retirement."
More than 15 million Australians now have a superannuation account. Australia's superannuation pool has grown from around $148 billion in 1992 to $3.5 trillion in 2023 and will continue to grow. Total superannuation balances as a proportion of GDP are projected to almost double from 116% in 2022–23 to around 218% of GDP by 2062-63.
The consultation also recognises the value of the superannuation system as a source of capital, "which can support investment in capacity-building areas of the economy where there is alignment between the best financial interests of members and national economic priorities."

Quote of the month

"Don't spend time beating on a wall, hoping to transform it into a door."

Coco Chanel

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