

## **TAXATION**

### **Additional programs declared COVID-19 business support**

Government has registered an instrument which declares certain programs in NSW and SA as relevant COVID-19 business support programs.

### **Director ID data standards of Registrar functions and powers**

Government has registered a legislative instrument to set out the Registrar's operational framework in relation to data collected as a part of director ID applications.

### **Director ID disclosure to PGPA bodies**

A legislative instrument has been registered that provides the Registrar the ability to disclose director ID information to PGPA bodies.

### **Crypto: taxation, licensing and regulatory change**

Government has announced a three-pronged review of the Australian Payment System involving crypto and digital wallets.

### **Draft legislation: digital games tax offset**

Draft legislation has been released to introduce a 30% refundable tax offset for eligible businesses that spend a minimum of \$500,000 related to games development.

### **Distribution rules for ancillary funds: consultation paper**

A consultation paper has been released to seek views on possible policy changes for ancillary funds.

### **Input tax credits denied: insufficient proof transactions occurred**

Input tax credits claimed in relation to alleged purchases of scrap gold were denied as the purchaser failed to prove that the purchases occurred.

## **FINANCIAL SERVICES**

### **Financial services quality advice review: terms of reference**

Government has announced details of its review into the quality of financial advice and has released the terms of reference.

### **TPB reminder: regulation of financial advisers**

TPB has reminded financial advisers who provide personal financial advice to retail clients that they must be registered with ASIC from 1 January 2023.

### **Financial services licensing requirements: APRA consultation**

APRA has released a consultation paper on its proposed licensing requirements for corporate collective investment vehicles.

## **SUPERANNUATION**

### **Super fund NALE rules: laws to be amended**

Government has announced that it will amend the law to ensure NALE provisions for super funds operate as intended.

### **SMSFs and related-party LRBAs: PCG 2016/5 updated**

ATO has updated a practical compliance guideline on when the non-arm's length income provisions will not apply to SMSF related-party LRBAs.

### **Payment summary deferrals for ETPs and DASPs**

ATO has registered an instrument to defer the due date for providing the Commissioner with copies of payment summaries re ETPs and DASPs.

## **Additional FAQs on super data transformation**

APRA has published additional FAQs on the super data transformation phase 1 reporting standards.

## **REGULATOR NEWS**

### **ASIC to review whistleblower policies and programs**

ASIC Commissioner has advised that one of ASIC's priorities in 2022 is to review whistleblower programs from a sample of companies.

### **My Profile upgrade and scheduled maintenance: TPB**

TPB has released an article stating that My Profile and online forms will be unavailable for a certain period of time due to an IT upgrade.

### **Financial Regulator Assessment Authority member appointment**

Government has announced the appointment of Ms Fiona Crosbie to the Financial Regulator Assessment Authority.

### **'New domain name changes could leave your business or organisation at risk'**

From 24 March 2022, anyone with a local connection to Australia (including businesses, associations and individuals) will be able to register [a new category of domain name](#). These shorter simpler domain names will end in .au rather than .com.au, .net.au, .org.au, .gov.au or .edu.au.'

### **New laws requiring company directors to apply for a director ID**

You may be aware that company directors are now required by law to apply for a director ID. New directors appointed for the first time between 1 November 2021 and 4 April 2022 must apply within 28 days of their appointment. Existing directors have until 30 November 2022 to apply.

## **TAXATION**

### **Additional programs declared COVID-19 business support**

The Government has registered the [Taxation Administration \(Data Sharing—Relevant COVID-19 Business Support Program\) Amendment Declaration \(No. 1\) 2022](#). The Instrument amends the Taxation Administration (Data Sharing—Relevant COVID-19 Business Support Program) Declaration 2021 to declare certain programs in NSW and SA as relevant COVID-19 business support programs.

As background, the declaration creates an exception to the general prohibition on disclosing protected tax information in s 355-25 in Sch 1 of the TAA 1953, enabling a taxation officer to share the protected information for the purposes of administering the declared program.

The following are the programs declared as relevant COVID-19 business support programs:

- NSW – (i) 2021 Land Tax COVID-19 Relief as it relates to commercial tenants only; (ii) 2022 Small Business Support Grant; (iii) Alfresco Restart Rebate; and (iv) Commercial Landlord Hardship Fund.
- SA – (i) Business Hardships Grants (December 2021 & January 2022); (ii) COVID-19 Tourism and Hospitality Support Grant; and (iii) COVID-19 Tourism, Hospitality and Gym Grants.

**Date of effect:** 17 March 2022.

### **Director ID data standards of Registrar functions and powers**

The Government has registered legislative instrument [Director Identification Number Laws \(Application\) Data Standard 2022](#). The purpose of the instrument is to set out the Registrar's operational framework in relation to data collected as part of an individual's application for a director ID:

- what information may be requested and collected for the purposes of the performance of the Registrar's functions and exercise of the Registrar's powers;
- how such information may be collected;
- how an application is made;

- when information is given to the Registrar;
- how the Registrar authenticates, verifies or validates information;
- how the Registrar records, uses and stores information;
- correcting information held by the Registrar; and
- the manner and form of communication by persons who give information to or seek to access information from the Registrar.

**Date of effect:** 18 March 2022.

### **Director ID disclosure to PGPA bodies**

The Government has registered legislative instrument [Director Identification Number Laws \(Other Government Bodies\) Disclosure Framework 2022](#). The Instrument provides the Registrar the ability to disclose director ID information to Public Governance, Performance and Accountability (PGPA) bodies.

As background, government entities, as defined under s 41 of the A New Tax System (Australian Business Number) Act 1999, are authorised to receive director ID information. However, there are bodies, being Commonwealth entities and Commonwealth companies within the meaning of the Public Governance, Performance and Accountability Act 2013 (PGPA Act), which do not fall within the meaning of government entity. This instrument is to authorise the disclosure of director ID information to these other government bodies in the same way as government entities authorised in the Corporations Act or Registers Act.

As such PGPA bodies such as ASIC, APRA and the Reserve Bank of Australia may receive director ID information where appropriate.

**Date of effect:** 23 March 2022.

### **Crypto: taxation, licensing and regulatory change**

The Government has [announced](#) a three-pronged review of the Australian Payment System involving cryptocurrency and digital wallets. The reviews will cover: (i) the taxation of digital transactions and assets such as crypto; (ii) proposed new requirements for crypto asset licencing and custody; and (iii) advice from the Council of Federal Regulators (CFR) on the issue of financial regulation.

The Government has tasked the Board of Taxation with undertaking a review into the appropriate policy framework for the taxation of digital transactions and assets in Australia. The [terms of reference](#) are as follows, with a key point being that the changes will "not increase the overall tax burden". The Board is asked to report back by the end of 2022.

The Board is asked to:

- consider the current Australian taxation treatment of digital assets and transactions and emerging tax policy issues;
- consider the awareness of the taxation treatment by both retail and wholesale investors and those transacting in digital assets as part of their business;
- consider the characteristics and features of digital assets and transactions in the market, including the rapid evolution of technology supporting the broader digital asset ecosystem;
- analyse the taxation of digital assets and transactions in comparative jurisdictions and consider how international experience may inform the taxation of digital assets and transactions in Australia; and
- consider whether or not any changes to Australia's taxation laws and/or their administration are warranted in the context of digital assets and transactions, both for retail and wholesale investors.

### **Draft legislation: digital games tax offset**

The Government has released exposure draft legislation for its proposed [Digital Games Tax Offset](#) (DGTO). The draft legislation would amend the ITAA 1997 to introduce a 30% refundable tax offset for eligible business that spend a minimum of \$500,000 on qualifying Australian development expenditure related to the development of eligible games from 1 July 2022.

To be eligible, a company must: (i) obtain a certificate issued by the Arts Minister for the completion of a new game, the porting of a digital game to a new platform, or for ongoing development of one or more existing digital games during an income year; and (ii) claim the offset in its income tax return in respect of the income year. The offset is capped at \$20m per company per income year, regardless of multiple certificates in the income year.

**Submissions** are due by 18 April 2022.

## **Distribution rules for ancillary funds: consultation paper**

Treasury has released a consultation paper entitled [Distribution Guidelines for Ancillary Funds](#). It is designed to seek views on possible policy changes for ancillary funds. It sets out a series of discussion questions (15 in all), seeking the input of interested and affected parties. The closing date for submissions is 6 May 2022.

An ancillary fund is a trust set up and maintained solely for the purpose of providing money, property or benefits to deductible gift recipients (DGRs). To ensure ancillary funds meet their philanthropic goal, guidelines made under the TAA 1953 require funds to make a minimum distribution each financial year.

Issues canvassed in the discussion paper include:

- allowing ancillary funds to build funds to support a large project (ie amending the current rules which impose a minimum distribution requirement for all funds in all circumstances, subject to the Commissioner's discretion);
- allowing the transfer of assets by an ancillary fund to another ancillary fund if the transferor has made the minimum annual distribution; and
- including the transfer of assets by an ancillary fund to another ancillary fund in the minimum distribution calculation.

## **Input tax credits denied: insufficient proof transactions occurred**

Input tax credits claimed in relation to alleged purchases of scrap gold totalling just over \$2.34m were denied as the "purchaser" failed to prove that the purchases occurred: [Kais Jewellery \(Syd\) Pty Ltd and FCT \[2022\] AATA 425](#) (AAT, Olding SM, 11 March 2022).

Mr K was a jeweller who operated his business through a company (Kais Jewellery), which claimed input tax credits in relation to purchases of scrap gold from Coin D'Or (for just over \$1.03m) and Too Nite (just over \$1.31m). The ATO, however, denied the claim as it contended that the acquisitions never occurred. The ATO also assessed Mr K on the basis that the cash withdrawn from Kais Jewellery's bank account to allegedly pay for the scrap gold was his ordinary income. Mr K was the sole signatory to the account.



The AAT concluded that there was insufficient independent evidence to support Kais Jewellery's assertions that it had purchased the scrap gold and agreed with the ATO that the input tax credits should be denied. Relevant factors included:

- there were no financial accounts or other records supporting Kais Jewellery's case;
- Mr K did not offer a convincing rationale for conducting such high value transactions in cash;
- the AAT was not prepared to give weight to a witness statement from the sole director and shareholder of Too Nite (who died before the hearing);
- Mr K's evidence that Kais Jewellery had purchased scrap gold from Coin D'Or was not corroborated by the sole director and shareholder of that company; and
- Coin D'Or and Too Nite had not disclosed the acquisitions of scrap gold in GST returns.

In the absence of a satisfactory explanation for the cash withdrawals from Kais Jewellery's bank account, the AAT also decided that Mr K had not discharged the burden of proving the withdrawals were not his ordinary income.

## **FINANCIAL SERVICES**

### **Financial services quality advice review: terms of reference**

The Government has [announced](#) details of its review into the quality of financial advice, ie it has released the [Terms of Reference for the Quality of Advice Review](#) and appointed Ms Michelle Levy as the reviewer.

This Review will give effect to the Government's response to recommendations 2.1, 2.3, 2.5 and 2.6 of the Financial Services Royal Commission. Assessing how the regulatory framework can deliver better outcomes for consumers, the review will investigate:

- whether there are opportunities to streamline and simplify regulatory compliance to reduce costs and duplication;
- how to improve the clarity and availability of documents provided to consumers; and



- whether parts of the regulatory framework have created "unintended consequences".

The Review will invite submissions from the public and consult with stakeholders, including consumers, industry and regulators. The Review will also be informed by data collected by ASIC and Treasury.

A report is expected to be provided to the Government by 16 December 2022.

### **TPB reminder: regulation of financial advisers**

The Tax Practitioners Board (TPB) has [reminded](#) financial advisers who provide personal financial advice to retail clients that they must be registered with ASIC as a relevant provider from 1 January 2023. This includes relevant providers who were previously registered with the TPB as individual tax (financial) advisers.

Since 1 January 2022, the Financial Services and Credit Panel (FSCP) within ASIC is the new single disciplinary body regulating financial advisers. While the TPB no longer regulates tax (financial) advisers, those providing tax (financial) advice services, who are not eligible to be registered with ASIC as a relevant provider (eg partnership and company entities), still need to be registered with the TPB as tax agents. A temporary exemption to register as a tax agent with the TPB applies until 31 December 2022 for these entities, provided the entity: (i) was registered as a tax (financial) adviser with the TPB as at 31 December 2021; and (ii) is not a relevant provider.

### **Financial services licensing requirements: APRA consultation**

ASIC has released the [Consultation Paper 360: Corporate collective investment vehicles: Preparing for the commencement of the new regime](#). It contains ASIC's proposed licensing requirements for corporate collective investment vehicles ("CCIVs"). The requirements include a range of licensing-related matters, including how ASIC will:

- assess Australian financial services ("AFS") licence applications from corporate directors seeking to operate a CCIV;
- assess AFS licence applications from persons seeking to provide financial product advice on and/or deal in CCIV securities; and
- administer the licensee obligations that will apply to CCIV corporate directors.

CP360 also proposes updates to five licensing-related regulatory guides, which are expected to be released before 1 July 2022. This will allow entities adequate time to prepare for the provision of CCIV-related financial services before the "new regime" commences.

**Date of effect:** 1 July 2022.

**Comments** are due by 14 April 2022.

## **SUPERANNUATION**

### **Super fund NALE rules: laws to be amended**

The Government has [announced](#) that it will amend the law to ensure the non-arm's length expense (NALE) provisions for superannuation funds operate as intended. To achieve this, the Government said it will consult with relevant stakeholders on the appropriate operation of the non-arm's length income (NALI) and NALE provisions in s 295-550 of the ITAA 1997, particularly for APRA-regulated super funds.

The Minister for Superannuation, Senator Jane Hume, said the NALE rules are designed to prevent super funds from circumventing contributions caps, and artificially inflating fund earnings through non-commercial dealings. Under s 295-550, NALE incurred by a super fund in gaining or producing assessable income (including capital gains) may result in such income being taxed as NALI at the top marginal rate of 45%.

Ms Hume acknowledged industry concerns regarding the ATO's interpretation of the NALE provisions in Law Companion Ruling LCR 2021/2, and the implications of the ruling for both APRA-regulated funds and SMSFs.

**Date of effect:** The proposed legislative amendments will apply from 1 July 2022.

## **SMSFs and related-party LRBAs: PCG 2016/5 updated**

The ATO has updated [Practical Compliance Guideline PCG 2016/5](#) on when the non-arm's length income (NALI) provisions will not apply to SMSF related-party limited recourse borrowing arrangements (LRBAs). PCG 2016/5 sets out the ATO safe harbours under which existing related-party LRBAs will be treated as being consistent with an arm's length dealing.

The ATO has added a new para 17A to confirm that the Commissioner will not apply compliance resources in relation to the NALI provisions in s 295-550 of the ITAA 1997 for income derived by the SMSF for the 2018-19 and later income years from an asset that is subject to an LRBA, provided that the SMSF satisfies the conditions set out in the Guideline. Other minor updates to PCG 2016/5 align it with the current ATO style.

## **Payment summary deferrals for ETPs and DASPs**

The ATO has registered the [Taxation Administration – Payment Summary Deferral: Employment Termination and Departing Australia Superannuation Payments Deferral 2022](#) to defer the due date for providing the Commissioner with copies of payment summaries in respect of employment termination payments (ETPs) or departing Australia superannuation payments (DASPs) to 14 August following the end of the financial year in which the payments are made.

The instrument does not defer the due date for providing the payee the payment summaries in respect of ETPs or DASPs. The payer is still required to provide the payment summaries to the payee within 14 days of making the payments.

**Date of effect:** 1 April 2022.

## **Additional FAQs on super data transformation**

The Australian Prudential Regulation Authority (APRA) has published [additional frequently asked-questions](#) (FAQs) on the Superannuation Data Transformation (SDT) Phase 1 reporting standards.

The FAQs now include an amendment to Historical Data FAQ 1.0 which confirms reporting periods for investment options other than those underlying a MySuper

product or a trustee-directed product. The update also include expectations around reporting of withdrawn or closed insurance claims.

## **REGULATOR NEWS**

### **ASIC to review whistleblower policies and programs**

Commissioner Sean Hughes has [advised](#) that one of ASIC's priorities in 2022 is to review whistleblower programs (ie from a sample of companies). The whistleblower provisions in the Corporations Act apply to public companies, large proprietary companies and corporate trustees of registrable superannuation entities.

The review will assess how these entities handle whistleblower disclosures, how they use the information from disclosures to address issues or change their operations, and the level of board and executive oversight of the program.

The Commissioner refers to [ASIC Regulatory Guide 270, Whistleblower policies](#) as containing guidance and what he terms "good practice tips" on establishing and implementing a suitable whistleblower policy and program.

The Commissioner also reminded company directors of the importance of maintaining oversight over an entity's whistleblower program and referred to [ASIC Information Sheet 247 Company officer obligations under the whistleblower protection provisions](#).

### **My Profile upgrade and scheduled maintenance: TPB**

The TPB has released an [article](#) stating that My Profile and online forms (including Complaints and Change registration details) will be unavailable from 6 April 2022 to 11 April 2022 due to an IT upgrade. The TPB's call centre will remain operational during this outage period but will only accept general enquiries from 7 April 2022 to 11 April 2022.

Tax practitioners are reminded to ensure their contact details (including email address and phone number) are up to date in My Profile by Tuesday 5 April to

ensure a smooth transition to the new system. A password reset will also be required the next time they login to My Profile on or after 11 April.

## **Financial Regulator Assessment Authority member appointment**

The Government has [announced](#) the appointment of Ms Fiona Crosbie to the Financial Regulator Assessment Authority (FRAA) for the period commencing 21 March 2022 to 14 September 2026.

Ms Crosbie is Chair of the law firm Allens and have recently chaired the Competition and Consumer Committee of the Law Council of Australia.

## **‘New domain name changes could leave your business or organisation at risk’**

‘All Australian businesses will have until 20 September to reserve their .au equivalent domain name, then it becomes available to the general public.

Opportunistic cybercriminals could register your .au domain name in an attempt to impersonate your business.

### **How to protect yourself**

To help protect your business from opportunistic cybercriminals, the Australian Cyber Security Centre (ACSC) recommends that all Australian businesses with existing domain names register their .au equivalents before 20 September 2022. If a business does not reserve their .au equivalent direct domain name during this six-month period, that name will become available to the public on a first come, first served basis.

You can reserve your .au domain name by visiting an [auDA accredited registrar](#).

Further information on these changes and the registration process is available on [auda.org.au/au-domain-names](https://auda.org.au/au-domain-names):

- [About .au Domain Names](#)
- [The .au Direct Launch](#)
- [The Priority Allocation Process](#)

## New laws requiring company directors to apply for a director ID

You may be aware that company directors are now required by law to apply for a [director ID](#).

A director ID is unique identifier that will help prevent the use of false or fraudulent director identities.

[Australian Business Registry Services](#) (ABRS) is responsible for administering the director ID initiative. ASIC is responsible for enforcing related [offences](#).

[When people must apply](#) depends on when they became a director for the first time:

- **New directors** appointed for the first time between 1 November 2021 and 4 April 2022 **must apply within 28 days of their appointment**.
- From 5 April 2022, intending new directors must apply before being appointed.
- Existing directors appointed before 1 November 2021 have until 30 November 2022 to apply.

Please encourage your contacts and clients to [visit the ABRS website](#) for more information and to apply for a director ID if required. Applying is quick and free, and directors only need to do it once.

Please email ASIC Licensing Liaison [ASICLicensingliaison@asic.gov.au](mailto:ASICLicensingliaison@asic.gov.au) if you have any queries.