

TAXATION

Taxable payment annual report due by 28 August

ATO has reminded certain businesses that they must lodge a taxable payment annual report by 28 August setting out payments to their contractors.

Credit for taxes paid by Indian firms for remote services

Treasury has released draft legislation intended to stop Australian taxation on income of non-resident Indian firms providing technical services remotely.

TPB issues four draft guidance documents

TPB has advised that it has released four draft guidance documents for public consultation.

Board of Taxation update on reviews

BoT has issued an update on its work program including review of CGT roll-overs and review of digital assets and transactions.

Removal of customs duty on certain EVs from 1 July 2022

Australian Border Force has released a Notice to state that certain EVs, hybrids and hydrogen fuel-cell vehicles will have a “free” rate of duty.

Taxation statistics 2019-20 released by the ATO

ATO has released its taxation statistics for the 2019-20 financial year covering areas such as average taxable income by postcodes and occupation.

Bill (No 1) 2022 awaits Assent

Bill to implement lower corporate tax transparency reporting threshold and other amendments passed both Houses with four amendments and now awaits Assent.

Bill (No 2) 2022 introduced

Bill has been introduced to implement previously announced measures including self-education expenses, tax-records education directions, downsizer contributions etc.

FBT exemption for electric cars: Bill referred to committee

Bill that proposes an FBT exemption for certain electric cars has been referred to the Senate Economics Legislation Committee for report by 21 September 2022.

Div 7A and UPEs: ruling and guidance updated

ATO has released Addenda to two determinations and a ruling to reflect the recent publication of TD 2022/11.

GST treatment of financial supplies

ATO has released a draft update to its 20-year old GST ruling on financial supplies which seeks to incorporate cross-border supplies and digital currency.

ATO – Small Business software survey

The ATO are ‘running a short survey to help’ them ‘better understand how small businesses are using software to manage their business today and the possibility of expanding usage in the future. The survey is open until 11:59pm Monday 29 August. It takes less than 2 minutes to complete. All responses are anonymous.’

FINANCIAL SERVICES

Financial adviser professional standards: consultation update

Government has advised that its developing a consultation paper on streamlining the education requirements for financial advisers, including new entrants.

Reportable situations regime for AFS licensees: ASIC update

ASIC has acknowledged implementation challenges with the new reportable situations regime.

Financial Services and Credit Panel: ASIC guidance

ASIC has updated its Regulatory Guide on the Financial Services and Credit Panel (FSCP) and issued a new information sheet for financial advisers.

ASIC urges Dixon Advisory clients to consider lodging complaints

ASIC has urged former clients of Dixon Advisory and Superannuation Services Pty Ltd (in administration) to consider lodging complaints with AFCA as soon as possible.

Review of ASIC industry funding model

Treasury has released the terms of reference for its review of ASIC's industry funding model which commenced in July 2017.

SUPERANNUATION

APRA super performance tests for choice products deferred

Regulations have been registered to amend the SIS Regulations to defer APRA annual performance tests for trustee-directed products for 12 months to 1 July 2023.

Proposed APRA changes: super planning and member outcomes

APRA has proposed making changes to Prudential Standard SPS 515, its prudential standard governing strategic planning and member outcomes in super.

Super fund internal dispute resolution: compliance issues

ASIC has called on super fund trustees to strengthen their internal dispute resolution arrangements to ensure member complaints are handled in a timely way.

Public sector super Bill awaits Assent

Bill to ensure that salary used to determine super entitlements of certain public sector employees does not include rent-free housing awaits Assent.

REGULATOR NEWS**TPB corporate plan 2022-23 released**

TPB has released its corporate plan for 2022-23 highlighting its key activities in conjunction with the 2021-24 strategic plan.

APRA corporate plan for 2022-23 released

APRA has released its corporate plan for 2022-23 continuing its twin themes of protecting the community and ensuring the preparedness of the financial system.

TAXATION

Taxable payment annual report due by 28 August

The ATO has issued a [reminder](#) that certain businesses must lodge a taxable payment annual report (TPAR) with the ATO by 28 August setting out payments to their contractors.

TPRS obligations apply to businesses in the building and construction industry, as well for cleaning, courier, road freight, information technology and security, investigation and surveillance services. The ATO expects more than 270,000 businesses to complete a TPAR for the 2021-22 year.

Businesses and tax professionals can view via the ATO Online platforms the data the ATO receives about their business reported under the TPRS. For sole traders, any payments reported to the ATO through TPRS will be pre-filled in their tax return at tax time.

Credit for taxes paid by Indian firms for remote services

Treasury has released [draft legislation](#) intended to stop Australian taxation on income of non-resident Indian firms providing technical services remotely (not through a permanent establishment) to Australian customers that are covered by Art 12(3)(g) of the Indian Agreement.

Currently Australia is taxing payments or credits paid to non-resident Indian firms by Australian customers for technical services covered by Art 12(3)(g) that are provided remotely. Australia taxes these payments or credits of non-resident Indian firms due to operation of both the royalty definition and the Source Article (ie Art 23) under the Indian Agreement.

Pursuant to an exchange of government letters on 2 April 2022, proposed s 11J of the Agreements Act will stop the Australian taxation on payments or credits paid to non-resident Indian firms by Australian customers for technical services covered by Art 12(3)(g) that are provided remotely if 3 criteria are met:

- the payments or credits have to be paid or credited to a non-resident Indian firm as consideration for a service covered by Art 12(3)(g);

- these payments or credits are not royalties within the meaning of the ITAA 1936; and
- these payments or credits must only be subject to Australian tax because of the operation of Art 12(3)(g) and Art 23.

It is proposed that the changes will take effect from the later of 2 April 2022 or the date that the changes proposed in the letters come into effect. In Australia, this will be confirmed by way of notifiable instrument.

TPB issues four draft guidance documents

The Tax Practitioners Board [has advised](#) that it has released four draft guidance documents for public consultation – three new and one update. The due date for comments for all four is 22 September 2022.

The draft update is to the [existing confidentiality of client information guidance](#).

The three new guidance documents explain the following:

- the types of services that constitute a tax agent service ([TPB\(I\) D48/2022 What is a tax agent service?](#));
- the types of services that constitute a BAS service ([TPB\(I\) D47/2022 What is a BAS service?](#));
- the types of arrangements that determine if a tax agent or BAS service is being provided for a fee or other reward ([TPB\(I\) D49/2022 What is a fee or other reward?](#)).

Board of Taxation update on reviews

The CEO of the Board of Taxation, Ms Christina Sahyoun, has issued the [CEO Update - August 2022](#) providing updates on its work program, including:

- Review of CGT roll-overs - the Board is now finalising its report on CGT roll-overs for delivery to the Government in August 2022. The purpose of the review is to identify opportunities to rationalise the existing CGT roll-overs and associated provisions into a simplified set with the same practical effect;
- Review of Digital Assets and Transactions - the Board will commence public consultations following confirmation of the Terms of Reference (ToR) from the new Government (the ToR was released by the former Government on 21 March 2022). The review will consider the policy framework for taxation of

digital assets and if any changes are required to taxation laws and/or their administration.

The next Board meeting is to be held on 5 August 2022.

Removal of customs duty on certain EVs from 1 July 2022

The Australian Border Force has released [Australian Customs Notice No 2022/34](#). It states that customs duty on electric vehicles, plug-in hybrid vehicles and hydrogen fuel-cell vehicles with a customs value less than the fuel efficient luxury car tax threshold (\$84,916 for 2022-23) will have a "free" rate of duty. It applies to goods entered for home consumption from 1 July 2022.

This measure was made in conjunction with the introduction of the [Treasury Laws Amendment \(Electric Car Discount\) Bill 2022](#). That Bill has been referred to Committee for report by 21 September 2022.

Taxation statistics 2019-20 released by the ATO

The ATO has released its [Taxation Statistics for the 2019-20 financial year](#). The report presents an overview of 17.8 million income tax returns (up from 17.4 million in the previous period) which includes 15.0 million individuals, 1.1 million companies with the rest from super funds, partnerships and trusts.

The statistics cover areas such as average taxable income by postcodes and occupation. This year, the ATO also included data for the three main phases of the JobKeeper Payment Scheme which spanned the 2019-20 and 2020-21 financial years. The publication also includes information relating to the 2020-21 financial or fringe benefits tax year, ie GST, FBT and excise and fuel schemes.

Some notable statistics:

- Tax return lodgment increased in the last five financial years from individuals, companies and trusts but declined from partnerships and APRA and other funds. Lodgment from SMSFs observed a minor increase from five years ago.
- Taxation liabilities by industry had the wholesale trade at the top with \$38 billion followed by financial and insurance services with \$30 billion and manufacturing with \$21 billion;

- Net tax across the board, ie by individuals, companies and super funds, has been increasing steadily over the last five financial years (note that the ATO's definition of net tax is the amount of tax owed for the income year, before refundable credits are taken into consideration).

Bill (No 1) 2022 awaits Assent

The [Treasury Laws Amendment \(2022 Measures No 1\) Bill 2022](#) awaits assent after passing both Houses with [four amendments by the Greens](#) (supported by the Government) to lower the corporate tax transparency reporting threshold to a turnover of \$100 million for Australian private companies from 2022-23: see below.

The Bill, as introduced, contains measures to provide a tax exemption for World Cup and Cyclone Seroja grants. Other amendments cover FBT and hospitals, the transition of super complaints to AFCA; and other minor changes.

The Senate amendments to the Bill (agreed to by the House of Reps) will require the ATO to make publicly available tax information (including total income, taxable income and income tax payable) about an entity if:

- the entity is a corporate tax entity; and
- the entity has total income equal to or exceeding \$100 million for the income year, according to information reported to the Commissioner in the entity's income tax return for the income year.

Currently and notwithstanding the secrecy provisions, the ATO is required to publish information about the total income and taxable or net income of, and tax payable by, certain corporate tax entities. The amendments will effectively reduce to \$100m the existing \$200m threshold for Australian resident private companies, ie it will affect resident private companies only.

The Greens' amendments will also remove the financial reporting exemption under [ASIC Corporations \(Exempt Proprietary Companies\) Instrument 2015/840](#).

The Assistant Treasurer, Stephen Jones, said the Government has agreed to remove this "loophole" in the tax code as it "provides a shelter for 1,500 large private companies, incorporated before 1995, from public scrutiny of their tax affairs". This arbitrary privilege is not afforded to similar companies incorporated after 1995 and therefore treats otherwise identical classes of taxpayer differently, Mr Jones said.

Bill (No 2) 2022 introduced

The [Treasury Laws Amendment \(2022 Measures No 2\) Bill 2022](#) has been introduced in the House of Reps. The Bill proposes to implement the following previously announced measures:

- Self-education expenses: the Bill will remove the \$250 threshold for self-education expenses in s 82A of ITAA 1936. Consequential amendments will also be made to the FBTAA to remove references to s 82A. Date of effect: will apply from the 2022-23 income year (and the 1 April 2023 FBT year).
- ATO tax-records education directions: will require an entity to complete an approved record-keeping course (as an alternative to existing penalties) where the Commissioner reasonably believes that there has been a failure to comply with one or more specified record-keeping obligations under a taxation law. Date of effect: The Commissioner will be able to issue a tax-records education direction to an entity three months after the day the Bill receives assent.
- AAT power to stay small business tax decisions: will enable small business entities to apply to the Small Business Taxation Division of the AAT for an order staying the operation or implementation of certain decisions of the Commissioner that are being reviewed by the AAT. Date of effect: will apply to applications for review made on or after the day after the Bill receives assent.
- Digital platforms: an operator of an electronic distribution platform will be required to provide information on transactions made through the platform to the ATO. Will implement a recommendation of the Black Economy Taskforce. Date of effect: will apply from 1 July 2023 to the supply of taxi travel and short-term accommodation (and 1 July 2024 for all other transactions).
- Downsizer super contributions: will give effect to the Government's election commitment to reduce the eligibility age to 55 (down from 60) to make downsizer contributions into super. Date of effect: will apply to contributions made from the first quarter after assent to the Bill.

FBT exemption for electric cars: Bill referred to committee

The [Treasury Laws Amendment \(Electric Car Discount\) Bill 2022](#) has been referred to the Senate Economics Legislation Committee with a report due by 21 September 2022. The Bill proposes to provide an FBT exemption for electric cars that are below the luxury car tax threshold for fuel efficient cars (\$84,916 for 2022-23) and first held and used from 1 July 2022.

Div 7A and UPEs: ruling and guidance updated

The ATO has released Addenda to the following rulings to reflect the recent publication of TD 2022/11 and the associated withdrawal of TR 2010/3 and PS LA 2010/4:

- [TD 2011/15](#) (Division 7A - unpaid present entitlements - factors the Commissioner will take into account in determining the amount of any deemed entitlement arising under s 109XI ITAA 1936);
- [TD 2015/20](#) (Division 7A: is a release by a private company of its UPE a "payment" within the meaning of Div 7A?); and
- [TR 2015/4](#) (CGT small business concessions: UPEs and the maximum net asset value test).

TD 2022/11 sets out the ATO's new approach to the application of Div 7A where a private company beneficiary is made present entitled to trust income from 1 July 2022. The withdrawn documents continue to apply to pre-1 July 2022 entitlements.

Date of effect: The Addenda apply from 13 July 2022 (when TD 2022/11 was released).

The ATO also released an updated version of [PCG 2017/13](#) (PS LA 2010/4 sub-trust arrangements maturing in or after 2016-17). Substantive changes to this guidance were made in June 2022 (to extend its application to arrangements maturing after 30 June 2021 where the entitlement arose before 1 July 2022). The latest changes (apart from the references to TD 2022/11 and the withdrawn documents) are mainly stylistic and are not intended to affect the principles set out in PCG 2017/13.

GST treatment of financial supplies: draft update

The ATO has released a draft update to [GSTR 2002/2](#), its 20-year old GST ruling on financial supplies. The draft seeks to:

- update GSTR 2002/2 for changes to the GST rules (eg in relation to cross-border supplies and digital currency);
- add a buy-now pay-later example that applies the ATO's longstanding view on interest free loans; and
- update Sch 2 of GSTR 2002/2 (business to business supplies) to indicate when certain foreign currency-denominated products and overseas payment products are GST-free.

ATO – Small Business software survey

The ATO are 'running a [short survey](#) to help' them 'better understand how small businesses are using software to manage their business today and the possibility of expanding usage in the future. The survey is open **until 11:59pm Monday 29 August**. It takes less than 2 minutes to complete. All responses are anonymous.'

FINANCIAL SERVICES

Financial adviser professional standards: consultation update

The Government has [advised](#) that Treasury is developing a consultation paper on streamlining the education requirements for financial advisers, including new entrants. The Assistant Treasurer, Stephen Jones, said Treasury will also consult on the Code of Ethics in 2023 after the Government has considered its response to the Quality of Advice review.

The consultation is in response to the Government's election commitment to remove the tertiary education requirements for financial advisers who had passed the exam, had 10 years' experience and a clean record of financial practice. The deadline for existing advisers to pass the exam is 30 September 2022. After this deadline, Mr Jones said Treasury will explore areas where the exam could be improved.

Reportable situations regime for AFS licensees: ASIC update

ASIC has [acknowledged](#) "implementation challenges" with the new reportable situations regime but said it will engage with AFS and credit licensees on their reporting practices to further understand any issues and compliance burdens. Under the regime, licensees are required to notify ASIC of reportable situations within 30 calendar days after the licensee first knows that there are reasonable grounds to believe a reportable situation has arisen. Certain situations are deemed to be significant (eg a contravention of a civil penalty provision).

Financial Services and Credit Panel: ASIC guidance

ASIC has updated its Regulatory Guide ([RG 263](#)) about the Financial Services and Credit Panel (FSCP) and issued a new "your rights" Information Sheet ([INFO 273](#)) for financial advisers in relation to FSCP decisions. The FSCP is the new disciplinary body for financial advisers and has been given its own powers to take action in response to financial adviser misconduct. INFO 273 outlines the rights of financial advisers affected by an FSCP decision, including how to make an application to vary or revoke FSCP decisions.

ASIC urges Dixon Advisory clients to consider lodging complaints

ASIC has [urged](#) former clients of Dixon Advisory and Superannuation Services Pty Limited (in administration) to consider lodging a complaint with the Australian Financial Complaints Authority (AFCA) as soon as possible.

ASIC notes that Dixon Advisory is currently in voluntary administration, and the outcome of the administration could affect clients' eligibility to compensation under a potential future Compensation Scheme of Last Resort (CSLR). If Dixon Advisory's AFCA membership ceases, no further complaints can be accepted by AFCA. ASIC also noted that the CSLR has not yet been established so the scheme's final parameters remain uncertain.

Review of ASIC industry funding model

Treasury has released the [Terms of Reference](#) for its Review of ASIC's Industry Funding Model (IFM). The ASIC funding model commenced in July 2017 following a recommendation of the Financial System Inquiry.

The Review will consider the types of costs and nature of ASIC's activities that are recovered from industry, and whether key aspects of the IFM framework remain appropriate. The Review will also have regard to the temporary relief provided to personal financial advice licensees. Registry fees are not within the scope of the IFM. Treasury said it will undertake public consultation later in 2022.

SUPERANNUATION

APRA super performance tests for choice products deferred

The [Superannuation Industry \(Supervision\) Amendment \(Your Future, Your Super - Addressing Underperformance in Superannuation\) Regulations 2022](#), has been registered to amend the SIS Regulations to defer APRA annual performance tests for trustee-directed products for 12 months to 1 July 2023.

The Regulations give effect to the Assistant Treasurer's [announcement](#) on 7 July 2022 to pause the extension of the APRA performance test beyond MySuper to Choice products for 12 months while it conducts a review of the Your Future, Your Super laws (YFYS laws). The review will consider if the measures create "perverse or unintended" outcomes by discouraging certain investment decisions or certain infrastructure investments.

Proposed APRA changes: super planning and member outcomes

APRA [has proposed](#) making changes to Prudential Standard SPS 515, its prudential standard governing strategic planning and member outcomes in superannuation.

SPS 515 requires trustees to evaluate their performance in delivering quality outcomes to members. As part of the annual Business Performance Review, trustees must also consider whether they will continue delivering quality outcomes into the future and take steps to address any areas needing improvement. It came into effect from 1 January 2020.

In a discussion paper, [Strategic planning and member outcomes – proposed enhancements](#), APRA has proposed updating SPS 515 to make it more effective and simpler for trustees to understand and implement.

Super fund internal dispute resolution: compliance issues

ASIC has [called](#) on superannuation fund trustees to strengthen their internal dispute resolution (IDR) arrangements to ensure member complaints are handled in an effective, fair and timely way. This follows the first stage of ASIC surveillance which found indicators of significant compliance issues with the enforceable IDR requirements in Regulatory Guide [RG 271](#).

ASIC said its surveillance identified problem areas that need fixing, including the requirement for trustees to record all member complaints. ASIC is concerned that some trustees may be adopting an inappropriately narrow definition of a "complaint". ASIC also found that 2.7% of IDR responses were sent after the 45-day maximum timeframe generally required under RG 271.

Public sector super Bill awaits Assent

The [Public Sector Superannuation Salary Legislation Amendment Bill 2022](#) awaits assent after passing both the Senate and House of Reps without amendment. The Bill will ensure that the salary used to determine superannuation entitlements of certain public sector employees does not include rent-free housing.

REGULATOR NEWS

TPB corporate plan 2022-23 released

The TPB has released its [Corporate Plan for 2022-23](#) highlighting its key activities in conjunction with the 2021-24 Strategic Plan of:

- continuing to invest in TPB employees and technology to ensure delivery of regulatory excellence;
- exploring new ways to contribute to the effective operation of the tax system in an ever-changing environment;
- streamlining the TPB's interactions with the tax profession and enhance its profile; and
- driving reform, understand tax practitioner behaviour to better target the TPB's compliance activities, and increase confidence through transparency.

APRA corporate plan for 2022-23 released

APRA has released its [Corporate Plan for 2022-2023](#), continuing its twin themes of "protecting the community today", as well as ensuring the financial system is "prepared for tomorrow".

Over the next four years, APRA said it will focus on: (i) preserving the financial and operational resilience of banks, insurers and superannuation funds; (ii) modernising



the prudential architecture to ensure it remains fit for purpose; and (ii) better enabling data-driven decision-making by APRA's stakeholders.

APRA said it will also focus on the impact of new financial activities and participants, and address important challenges such as superannuation retirement income products, retirement income longevity solutions, insurance accessibility and affordability, and the financial risks associated with climate change.