

TAXATION

Draft legislation: 20% deduction for digital take-up expenditure

Treasury has released draft legislation which will provide small businesses with a 120% deduction for expenditure incurred for the purposes of their digital operations.

Draft legislation: 20% deduction for external training expenditure

Treasury has also released draft legislation to provide a "Skills and Training Boost" (a 20% bonus deduction) to support small businesses to train and upskill their employees.

Trust capital gains and foreign resident beneficiaries

The ATO has released two determinations which finalise its longstanding (and Federal Court supported) views on the tax treatment of trust capital gains flowing to foreign resident beneficiaries.

Legislation: Pacific Islander tax rate reduction

Amendments contained in recently introduced legislation will reduce the tax rate on income earned by foreign resident workers participating in the Pacific Australia Labour Mobility Scheme to a flat 15%.

Draft legislation: excluding crypto assets from "foreign currency"

Treasury has issued exposure draft legislation to clarify that digital currencies continue to be excluded from treatment as "foreign currency" for income tax purposes.

FINANCIAL SERVICES

Quality of Advice Review: proposals for reform

The Quality of Advice Review has released an issues paper setting out proposals for reform.

More funding to advisory service providers to help SMEs digitalise

The Government has announced funding in the form of grants to advisory service providers to help support small businesses adapt and build resilience through digital technology.

SUPERANNUATION

Treasury review of 2021 super changes

Treasury has issued a consultation paper as part of a review of the Your Future, Your Super (YFYS) measures implemented in 2021 to consider whether there have been any unintended consequences and implementation issues.

Expenditure disclosure requirements updated

Amending regulations have been made to update the SIS regulations governing the annual fund members' meeting notice disclosure requirements.

REGULATOR NEWS

Virtual hearings and examinations by regulators

Treasury has released exposure draft laws which will clarify that relevant Treasury portfolio regulators can hold hearings and examinations virtually.

Regulator Assessment Authority review of ASIC

The Financial Regulator Assessment Authority has released its 2022 Review of ASIC which identifies opportunities to enhance its performance.

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.

TAXATION

Draft legislation: 20% deduction for digital take-up expenditure

Treasury has released [draft legislation](#) which will implement a measure announced in the 2022 Budget to provide small businesses (aggregated annual turnover less than \$50 million) with a 120% deduction for expenditure incurred for the purposes of their digital operations.

The “bonus” component of the deduction is capped at \$20,000 per income year.

The relevant expenditure must be incurred between 29 March 2022 and 30 June 2023 and must be eligible for a deduction under another provision of the taxation law. If the expenditure is on a depreciating asset, the asset must be first used or installed ready for use by 30 June 2023.

The following types of expenditure are ineligible: salary and wage costs; capital works costs deductible under Div 43 of ITAA 1997; financing costs; training and education costs; and expenditure that forms part of, or is included in, the cost of trading stock.

Generally, entities must claim the bonus deduction for expenditure incurred in their 2021-22 income year in their 2022-23 return. The bonus deduction for expenditure incurred in an entity's 2022-23 income year will also be claimed in its 2022-23 return (ie effectively a double up in one income year).

Eligible expenditure

To be eligible for the bonus deduction, expenditure must be incurred wholly or substantially for the purposes of an entity's digital operations or digitising the entity's operations. Such expenditure may include, but is not limited to, business expenditure on:

- digital enabling items – computer and telecommunications hardware and equipment, software, systems and services that form and facilitate the use of computer networks;
- digital media and marketing – audio and visual content that can be created, accessed, stored or viewed on digital devices; and

- e-commerce – supporting digitally ordered or platform enabled online transactions.

Depreciating assets

An entity can claim the bonus deduction for expenditure on a depreciating asset only if the asset is first used, or installed ready for use, before 1 July 2023. This rule does not apply to expenses incurred in the development of in-house software allocated to a software development pool, consistent with current pooling rules.

When calculating the bonus deduction for expenditure on a depreciating asset, it is assumed that:

- the entity will continue to hold the asset throughout its effective life; and
- the entity will use the asset for a taxable purpose to the same extent that it does in the income year it first uses or installs the asset.

An entity cannot claim the bonus deduction for expenditure on a depreciating asset if a balancing adjustment event occurs for the asset while the entity holds it during the relevant time period, unless the event is an involuntary disposal. Relevant repair and improvement costs are eligible expenditure.

The bonus deduction is equal to 20% of the cost of the depreciating asset. This means that regardless of the method of deduction that the entity applies (ie whether immediate or over time), the bonus deduction in respect of a depreciating asset is calculated based on the asset's cost.

Draft legislation: 20% deduction for external training expenditure

Treasury has also released [draft legislation](#) which will implement a 2022 Budget announcement to provide a "Skills and Training Boost" (a bonus deduction) to support small businesses to train and upskill their employees.

The boost will allow small businesses (aggregated annual turnover less than \$50 million) to deduct 20% in addition to an existing available deduction for eligible expenditure incurred on external training for employees, ie 120% in all. It will apply to eligible expenditure incurred from 29 March 2022 until 30 June 2024.

Generally, small businesses will be able to claim the bonus deduction in the income year in which the expenditure is incurred (but there are special timing rules for early and late balancing entities).

Expenditure to train employees

The bonus deduction is only available in relation to expenditure incurred on external training for the employees of the small business. This will mean that the bonus deduction is not available for the training of non-employee business owners such as sole traders, partners in a partnership and independent contractors.

Training can be provided either in person to employees physically located in Australia, or online. There is no requirement for employees to be physically located in Australia when undertaking online training. The intent is to allow for circumstances in which employees may be temporarily located overseas for operational reasons or working remotely.

External trainers

The bonus deduction is only available for expenditure incurred on external training for employees that is provided by certain registered training providers. The training provider must meet relevant registration requirements at the time the expenditure is incurred. The training must also be within the scope of the provider's registration, where the provider's registration has "scope requirements" (a requirement of some of the government authorities listed below).

In other words, in-house or on-the-job training is not eligible expenditure for the purpose of the bonus deduction.

Critically, in order for training to be eligible for the bonus deduction, the training provider must be registered with at least one of the following four government authorities:

- Australian Skills Quality Authority;
- Tertiary Education Quality and Standards Agency;
- Victorian Registration and Qualifications Authority;
- Training Accreditation Council of Western Australia.

Trust capital gains and foreign resident beneficiaries

The ATO has released two determinations which finalise its longstanding views in relation to trust capital gains flowing to foreign resident beneficiaries.

The main legislative focus of the determinations is s 855-10 of ITAA 1997 which allows a foreign resident or the trustee of a foreign trust to disregard a capital gain where a CGT event happens to non-taxable Australian property. In *Peter Greensill Family Co Pty Ltd (Trustee) v FCT* [2021] FCAFC 99, the Full Federal Court agreed with the ATO, holding that:

- the s 855-10 exemption does not apply if a capital gain is made via a resident trust. This is the case even if the gain is attributed to a foreign resident beneficiary under the streaming rules in Subdiv 115-C of ITAA 1997. This was because the Subdiv 115-C capital gain is a deemed capital gain and not a capital gain from a CGT event, as required by s 855-10; and
- as a result of the 2010 enactment of the dividend streaming rules, Subdiv 115-C is no longer a "conversion and adjustment mechanism" of Div 6 assessable income. Rather, Subdiv 115-C operates exclusively in respect of allocating the tax liability on trust capital gains. Further, the source requirements in Div 6 (that foreign residents are assessed on amounts attributable to sources in Australia) do not apply to the streaming rules.

TD 2022/12

Consistent with the Full Federal Court's decision, [Determination TD 2022/12](#) states that, following the enactment of the streaming rules, the Div 6 source concept is no longer relevant in determining whether a trust capital gain is assessable to a foreign resident beneficiary or to the trustee of a resident trust.

The same view applies in relation to a foreign resident beneficiary's share of TAP gains of a non-resident trust and a trustee's share of a capital gain to which the streaming rules apply.

TD 2022/13

Also in accordance with the Full Court's decision, [Determination TD 2022/13](#) provides that a foreign resident beneficiary of a resident non-fixed trust cannot disregard a capital gain under s 855-10 if the beneficiary is treated as having an

extra capital gain under the streaming rules. A second exemption (in s 855-40) does not apply as this provision is specifically limited to fixed trusts.

Date of effect

The determinations apply retrospectively. However, for the 2018-19 and earlier income years, the ATO undertakes not to devote compliance resources to identify arrangements that would give rise to adjustments solely on the basis of TD 2022/12.

Despite this concession, the ATO says that if it is "presented with the issue and asked to provide advice or otherwise becomes aware of an arrangement in the course of compliance activities", the law will be applied in accordance with the views expressed in TD 2022/12.

Legislation: Pacific Islander tax rate reduction

Amendments contained in the [Treasury Laws Amendment \(2022 Measures No 3\) Bill 2022](#) introduced into Parliament on 8 September 2022 will reduce the tax rate on certain income earned by foreign resident workers participating in the Pacific Australia Labour Mobility scheme from marginal rates starting at 32.5% to a flat 15%.

Draft legislation: excluding crypto assets from “foreign currency”

Treasury has issued exposure [draft legislation](#) to amend ITAA 1997 to clarify that digital currencies continue to be excluded from treatment as “foreign currency” for the income tax purposes.

Under the existing law, digital currencies may potentially become foreign currency for the purposes of ITAA 1997 if they are adopted as a legal tender by a foreign jurisdiction (as per El Salvador which adopted Bitcoin as legal tender in 2021). The proposed amendments will ensure that digital currencies are not foreign currencies for the purposes of ITAA 1997, even if they are adopted as a legal tender by a foreign jurisdiction.

In addition, the GST definition of “digital currency” (which is picked up in the ITAA 1997 definition of “foreign currency”) will be amended to ensure it excludes government-issued digital currencies.

FINANCIAL SERVICES

Quality of Advice Review: proposals for reform

The Quality of Advice Review to simplify the regulatory framework for the provision of high quality, accessible and affordable financial advice has released an [issues paper](#) setting out proposals for reform.

The paper focusses on the following.

- What should be regulated? The paper suggests that the provision of "personal advice" should be broader than it currently is.
- How should personal advice be regulated? The obligation to provide "good advice" would replace the best interests duty.
- Intra-fund advice and paying for service through superannuation – super fund trustees should be able to provide advice to their members.
- Providers of personal advice should obtain annual written consent from their client to deduct ongoing advice fees from a financial product.
- The reporting requirements under the design and distribution obligations regime should be simplified by requiring relevant providers to only report to the product issuer where they have received a complaint in relation to a financial product.
- There should be an adequate transition period for implementing these changes. Consideration should also be given to allowing providers to "opt in" early.

On compliance, the Review has been told that the burden of complying with regulation is impeding access to financial advice. It prevents many financial services providers providing simple advice and assistance to their customers; it inhibits the development of digital advice tools; and, it has made comprehensive advice unaffordable for many people.

The consultation period ends on 23 September 2022. The feedback will assist in the preparation of a final report to be given to the Government by 16 December 2022.

More funding to advisory service providers to help SMEs digitalise

The Government has announced \$18.6 million in funding to help support small businesses "adapt", and "build resilience" through digital technology. The funding will

be available through a new round of the Digital Solutions - Australian Small Business Advisory Services Program, which provides grants to advisory service providers.

The funding is available to business advisory service providers to deliver digitalisation advice for 3 years from April 2023. Further details are available on the Government's business.gov website.

SUPERANNUATION

Treasury review of 2021 super changes

Treasury has issued a [consultation paper](#) as part of a review into the Your Future, Your Super (YFYS) measures implemented in 2021 to consider whether there have been any unintended consequences and implementation issues.

The YFYS measures involved four key elements designed to improve the superannuation system:

- subjecting superannuation products to an annual performance test;
- the display of MySuper products on a comparison tool to assist members in choosing a well-performing MySuper product;
- “stapling” checks to prevent the creation of unintended multiple accounts by ensuring superannuation follows individuals as they change jobs; and
- trustees’ best financial interests duty.

The review will cover all four elements. It will not address other issues "unless they are directly related to the implementation or associated outcomes of the YFYS legislation".

The closing date for submissions is 14 October 2022.

Expenditure disclosure requirements updated

[Amending regulations](#) have been made to update the SIS regulations governing the annual fund members' meeting notice disclosure requirements by:

- allowing contextual information in the short-form summary (allowing contextual information about the aggregated expenditure disclosed in the short-form summary (non-promotional information);
- removing itemised disclosure of certain expenditure;
- removing the double-counting of certain expenditure; and
- aligning the definition of "related party" to the definition in the Australian Accounting Standards.

The amendments apply to any notices that relate to each year of income that ends on or after 30 June 2022. However, only notices given after commencement of the Regulations will be subject to the new requirements.

REGULATOR NEWS

Virtual hearings and examinations by regulators

Treasury has released [exposure draft laws](#) which will clarify that relevant Treasury portfolio regulators can hold hearings and examinations virtually.

The relevant regulators are APRA, ASIC, FSCP, CADB, ACCC, AER and TPB, which hold hearings or examinations under the relevant legislation. The regulator has the discretion whether to hold a hearing or examination in a physical, hybrid or virtual form.

- The relevant amendments Bill will clarify that the regulator can hold a hearing or examination:
- at one or more physical venues (a physical hearing or examination);
- at one or more physical venues and using virtual enquiry technology (a hybrid hearing or examination); or
- using virtual enquiry technology only (a virtual hearing or examination).

If the regulator decides to hold a hearing or examination using virtual enquiry technology, the regulator must ensure that the technology provides each participant

in the hearing or examination with a reasonable opportunity to participate in or be represented at the hearing or examination. If a hearing is to take place in public using virtual enquiry technology, the regulator must ensure that members of the public are provided with a reasonable opportunity to observe the hearing using the technology.

ASIC generally effective and capable; opportunities identified: FRAA review report

The Financial Regulator Assessment Authority (FRAA) has released its [2022 Review of ASIC](#) which found that ASIC is generally effective and capable in the areas reviewed, but identified opportunities to enhance its performance.

The recommendations made in the review were that ASIC:

- requires a "substantial uplift" in its data and technology capability, which will involve cultural change;
- should have a stronger focus across the organisation on enhancing the quality of its engagement with stakeholders;
- should enhance its ability to measure its own effectiveness and capability and communicate the outcomes of such assessment transparently, both internally and externally; and
- should continue to "broaden its mix of skill sets" to ensure it can meet the current and future needs of the organisation.

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:

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