

TAXATION

Revised sitting dates for Federal Parliament

The revised sitting dates have been released following the cancellation of Parliament for two weeks as a mark of respect for the passing of Queen Elizabeth II.

ATO DIS on retrospective amendments to JobKeeper

ATO has released a Decision Impact Statement on a Federal Court case which held that retrospective amendments to the JobKeeper rules applied to deny entities to payments.

Franked distributions funded by capital raisings: draft legislation

Treasury has released draft legislation which proposes to prevent certain distributions that are funded by capital raisings from being frankable.

Simplifying FBT record-keeping requirements: draft legislation

Government has released a series of exposure drafts designed to simplify FBT record-keeping for employers who maintain good corporate records.

Third party reporting to ATO: exclusions for certain shares and units

ATO has registered an instrument which excludes certain companies and trusts from reporting certain transactions which change the composition of assets.

ANAO commences audit of government response to taskforce

ANAO has commenced a performance audit of the implementation of the government response to the Black Economy Taskforce Report in 2017.

Non-profit sporting and games clubs

ATO has released a ruling that considers whether not-for-profit clubs are exempt from income tax under the encouragement of a game or sport category.

Non-commercial losses: flood, bushfire and COVID-19 impacts

ATO has released a practical compliance guideline which provides safe harbour for qualifying individuals with non-commercial business losses for certain years.

Draft margin scheme valuation determination

ATO has issued a draft legislative instrument which specify the requirements for making valuations for the purposes of the margin scheme.

Residential colleges and GST-free supplies

Draft PCG has been released which sets out a proposed compliance approach for universities and residential colleges re supply of accommodation and meals.

Section 100A PCG – additional draft green zone scenarios

The ATO has released a consultation document which includes additional draft green zone scenarios to be included in the practical compliance guideline dealing with section 100A reimbursement agreements.

FINANCIAL SERVICES**Financial Accountability Regime: draft rules**

Government has released draft rules to support the establishment of the Financial Accountability Regime.

APRA information paper on prudential architecture

APRA has released an information paper outlining its plans to modernize the architecture of its prudential standards and guidelines for banks, insurers and super licensees.

SUPERANNUATION

Review of YFYS: working group established

Government has established a Technical Working Group as a part of its review of the Your Future, Your Super laws.

Annual performance test for faith-based products

Treasury has released draft regulations to support the proposed amendments for supplementary performance testing for faith-based products.

REGULATOR NEWS

IGTO reporting pack released: Quarter 4 FY22

IGTO has released its FY22 Q4 reporting pack highlighting its activities during the quarter including total complaints and KPI results.

Consumer Data Right

The Government is continuing to roll out the Consumer Data Right (CDR) to enable consumers to 'shop around' their data to try and get a better deal from banks, telcos and eventually energy companies. There is a direct impact on intermediaries such as accountants and tax agents. The IPA is heavily involved in advocacy on CDR and will continue to update members.

SUSTAINABILITY

Consultation: Safeguard Mechanism reform

The Department of Industry, Science and Resources released a consultation paper proposing a reform to the Safeguard Mechanism.

Australian Peak Bodies Submission to the International Sustainability Standards Board (ISSB)

The IPA was one of 20 Australian peak professional associations to make an unprecedented submission to the ISSB, comprising a mix of preparer, investor, and director perspectives.

Harvard Business School Professor Robert S. Kaplan speaks exclusively on ESG Reporting

The IPA-hosted event, Professor Kaplan explained that sustainability reporting can be addressed within the shareholder value approach by identifying and measuring the negative and positive externalities from corporate decisions and actions.

IPA Reflect Reconciliation Action Plan

The Institute of Public Accountants has formally commenced its reconciliation journey through the release of its first Reflect Reconciliation Action.

TAXATION

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Revised sitting dates [have been released](#) following the cancellation of Parliament for two weeks as a mark of respect for the passing of Queen Elizabeth II. The new dates are as follows for both the House of Reps and the Senate.

- September 2022: Friday 23, Monday 26, Tuesday 27 and Wednesday 28.
- October 2022: Tuesday 25 and Wednesday 26.

No further details about subsequent sitting dates are currently available on the Parliamentary Calendar.

It has been advised that the Federal Budget will be delivered late October, ie presumably Tuesday 25. This will be the second Budget of the year and the first for the new Government. Again, there are no further details about this on the Parliamentary site.

ATO DIS on retrospective amendments to JobKeeper

The ATO has released a [Decision Impact Statement](#) on *Airport Handling Services Australia Pty Ltd v FCT* [2021] FCA 1405. In that case the Federal Court held that retrospective amendments to the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (the "JobKeeper Rules") applied to deny 8 sovereign entities that were Australian tax residents the right to receive JobKeeper payments from day one.

The three issues considered by the Court were:

- whether an instrument amending the JobKeeper Rules (the "Amending Instrument") commenced before it was registered, within the meaning of s 12(2) of the Legislation Act 2003 (the "LA 2003") (retrospectivity issue)
- if the Amending Instrument had retrospective operation, whether the applicants had any "rights" that were adversely affected within the meaning of s 12(2)(a) of the LA 2003 under either of ss 6 or 7 (of the JobKeeper Rules) at the time that the Amending Instrument was registered (rights issue); and
- to the extent that the Amending Instrument had retrospective operation, whether it was ultra vires the rule-making power in s 20 of the Coronavirus

Economic Response Package (Payments and Benefits) Act 2020 (the "CERP Act") (ultra vires issue).

In relation to the retrospectivity issue, the ATO agrees with the Federal Court's interpretation of the term "commences" in s 12(2) of the LA 2003 and considers it to be consistent with the purpose of the section. With regards to the rights and *ultra vires* issues, the decision of the Federal Court is consistent with the way the Commissioner has interpreted and applied the JobKeeper Rules and the CERP Act.

Franked distributions funded by capital raisings: draft legislation

Treasury has released [draft legislation](#) which proposes to prevent certain distributions that are funded by capital raisings from being frankable.

It will do this by adding a new line entry to s 202-45 and inserting a new s 207-159 into the ITAA 1997. This will add "distributions funded by capital raising" to the list of distributions that are unfrankable.

A distribution by an entity is funded by capital raising if, broadly:

- the distribution is not consistent with an established practice of the entity of making distributions of that kind on a regular basis;
- there has been an issue of equity interests in the entity or another entity; and
- it is reasonable to conclude in the circumstances that either: (i) the principal effect of the issue of any of the equity interests was to directly or indirectly fund some or all of the distribution; or (ii) any entity that issued or facilitated the issue of any of the equity interests did so for a purpose (other than an incidental purpose) of funding the distribution or part of the distribution.

Date of effect: The amendments will apply to distributions made on or after 12 pm ACT time on 19 December 2016, ie it is retrospective.

Consultation: The consultation deadline is 12 October 2022.

Simplifying FBT record-keeping requirements: draft legislation

The Government has released a series of exposure drafts designed to simplify FBT record-keeping for employers who maintain good corporate records. The [proposed legislation and regulations](#) will give the Commissioner the power to modify, by legislative instrument, existing FBT record-keeping obligations to allow employers to

rely on existing corporate records, rather than the employee declarations and other prescribed records, to finalise their FBT returns where the Commissioner considers the alternative records adequate.

The drafts are as follows.

- Treasury Laws Amendment (Measures for Consultation) Bill 2022: FBT record keeping - amends the Fringe Benefits Tax Assessment Act 1986 (FBTAA) to allow employers the option, for each fringe benefit, to (i) rely on adequate alternative records (as determined by the Commissioner) which contain the requisite information; or (ii) keep and retain the designated statutory evidentiary documents in the approved form for FBT record-keeping purposes. Currently, employers must keep and retain the designated statutory evidentiary documents in the approved form for each fringe benefit;
- Fringe Benefits Tax Assessment - Adequate Alternative Records (Travel Diaries) Determination 2022 - outlines the adequate alternative records the Commissioner will accept as a substitute for a "travel diary" required under the FBTAA; and
- Fringe Benefits Tax Assessment - Adequate Alternative Records (Relocation Transport) Standard 2022 - outlines the adequate alternative records the Commissioner will accept as a substitute for an employee declaration in respect of expense payment fringe benefits where: (a) the benefit is in respect of relocation transport; and (b) the employer seeks to reduce the taxable value of the benefit under s 61B of the FBTAA.

Date of effect: Not specified in drafts but announced in the Budget as applying from the start of the first FBT year (1 April) after the date the enabling legislation receives assent.

Submissions are due by 30 September 2022.

Third party reporting to ATO: exclusions for certain shares and units

The ATO has registered the [Taxation Administration Excluded Classes of Transactions and Entities for Third Party Reports on Shares and Units Determination 2022](#). The Instrument excludes certain companies and trusts from reporting certain transactions which change the composition of assets held by the company or trust.

Under s 396-55 of Sch 1 to the TAA, entities are required to report to the ATO information about transfers of shares or units in a unit trust. In recognising that the benefit of very small entities providing third party data reports is frequently outweighed by the cost, the Instrument provides an exemption for small unit trusts with fewer than 10 investors and less than \$5 million in assets.

Also included are exemptions for:

- trustees, other than trustees of a unit trust, if they are not required to hold an AFS Licence and hold total assets of less than \$5 million;
- trustees of a trust (other than a unit trust) where the trustee can reasonably expect that some other entity will report the transaction;
- entities to which this Instrument applies under table items 6, 7 or 8 in s 396-55 of Sch 1 to the TAA in relation to a transaction where an entity is required to provide information to the Commissioner in relation to the transaction under Div 392 of Sch 1 to the TAA (employee share schemes); and
- erroneous transactions where the reporters are taking steps to reduce the risk of an unfavourable outcome for the taxpayer.

Date of effect: The Instrument applies from 1 July 2017. It repeals the former Excluded Classes of Transactions and Entities for Third Party Reports on Shares and Units Determination 2018.

ANAO commences audit of government response to taskforce

The Australian National Audit Office (ANAO) has commenced a [performance audit](#) of the implementation of the Government Response to the Black Economy Taskforce Report in 2017. The ANAO said a call for submissions will open soon, with a report expected to be tabled in June 2023.

The Black Economy Taskforce Final Report, and the Government's response, are available on the [Treasury website](#). The ANAO will examine whether there are effective whole-of-government governance arrangements supporting the implementation of the Black Economy Taskforce report. It will also consider the measurement, monitoring and reporting arrangements for the shadow economy.

Non-profit sporting and games clubs

[Taxation Ruling TR 2022/2](#) considers whether not-for-profit clubs are exempt from income tax under the "encouragement of a game or sport" category (item 9.1(c) in s 50-45 ITAA 1997). The key terms in item 9.1(c) – "encouragement", "game", "sport" – are not defined and therefore take their ordinary meaning. The ATO says that while some activities are obviously games or sports (eg netball), the following may also qualify:

- activities (athletic or otherwise) where there is a competitive element and participants comply with a set of conventions, expectations and rules. While written or defined rules are not essential, the imposition of such rules and conventions in an organised group of participants can convert an otherwise ordinary leisure activity (eg walking, fishing or dancing) into a game or sport;
- activities where machines or other equipment are used to achieve mobility, eg motor racing;
- activities involving animals, eg polo and rodeo activities; and
- non-competitive, athletic activities such as mountaineering.

To be eligible for a tax exemption in an income year, the club's main purpose for that year must be to encourage a game or sport. This requires an objective evaluation of all material facts and circumstances. Any non-sporting purposes must be ancillary, incidental or secondary to the club's sporting/game purpose.

Date of effect: retrospective.

TR 2022/2 finalises Draft TR 2021/D6 and is a "refresh" of TR 97/22 (exempt sporting clubs), which was withdrawn in 2021. The Commissioner's views are unchanged.

Non-commercial losses: flood, bushfire and COVID-19 impacts

The non-commercial loss rules may operate to prevent an individual's losses from non-commercial business activities being offset against other assessable income in the year the loss is incurred. The ATO has a discretion not to apply these rules if the business activity was or will be affected by special circumstances outside the person's control. The discretion is exercisable on application by the individual.

[PCG 2022/1](#) provides a safe harbour for qualifying individuals with non-commercial business losses in 2019-20, 2020-21, 2021-22 or 2022-23 due to flood, bushfire or certain COVID-19 impacts (eg lockdown). The individual's tax affairs can be managed as though the Commissioner's discretion has been exercised (ie without seeking a private ruling).

Date of effect: 2019-20 to 2022-23.

Draft margin scheme valuation determination

The ATO has issued a draft legislative instrument, the [A New Tax System \(Goods and Services Tax\) Margin Scheme Valuation Requirements Determination 2022](#).

As per its predecessors, it will specify the requirements for making valuations for the purposes of the margin scheme under Div 75 of the GST Act. For the purposes of Div 75, various requirements are proposed for the following valuation methods:

- valuation by a professional valuer;
- valuation based on the consideration received by the supplier under the contract of sale;
- State or Territory Government department valuation; and
- valuation obtained by the Commissioner in certain circumstances.

This draft will repeal A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2020.

Importantly, the draft takes into account the decision in *Decleah Investments Pty Ltd and Anor as Trustee for the PRS Unit Trust v FCT* [2021] AATA 4821, a decision which emphasised the importance of following relevant accounting standards in the valuation process applying at the time of valuation – rather than the correctness (or not) of the final dollar valuation. In this context, the draft explanatory statement is not particularly insightful, other than to say that the "update is to confirm that the professional standards can change and the ATO expects that all valuations will meet the valuation standards at the time the valuation is made".

Date of Effect: on the date it is registered.

Residential colleges and GST-free supplies

Draft PCG has been released which sets out a proposed compliance approach for universities and residential colleges re supply of accommodation and meals.

Section 100A PCG – additional draft green zone scenarios

The ATO has released a consultation document which includes additional draft green zone scenarios to be included in the practical compliance guideline dealing with section 100A reimbursement agreements. The consultation document also sets out some specific changes the ATO is making to PCG 2022/D1. The ATO intends to finalise the draft public advice on section 100A before the end of this year and will publish a compendium of the feedback the ATO received from the public consultation earlier this year.

The ATO has requested that the professional associations provide our member feedback to them by 4 October 2022.

If you wish to provide feedback on the additional draft green zone scenarios, please email and send to irwin.bushnell@publicaccountants.org.au by 3 October 2022.

FINANCIAL SERVICES

Financial Accountability Regime: draft rules

The Government has released the [Exposure Draft - Financial Accountability Regime Minister Rules 2022](#) (the Draft Rules) to support the establishment of the Financial Accountability Regime (FAR) as proposed by the FAR Bill 2022. The FAR will extend the Banking Executive Accountability Regime (BEAR) to all APRA-regulated entities in banking, insurance and superannuation with obligations for accountable entities and their senior executives.

The Draft Rules propose to prescribe:

- particular responsibilities and senior positions which cause a person to be subject to the FAR for each industry;

- enhanced notification threshold, which is the total asset size above which an entity is required to comply with additional notification obligations; and
- how a written record from an examination can be authenticated in a proceeding as prima facie evidence of the statements it records.

Submissions are due by 7 October 2022.

APRA information paper on prudential architecture

APRA has released an [information paper](#) outlining its plans to modernise the architecture of its prudential standards and guidance for banks, insurers and superannuation licensees. APRA said its prudential initiatives will focus on: (i) ensuring prudential standards and guidance are easier to navigate, understand and implement; (ii) exploring the use technology to support better regulation; and (iii) developing new approaches and rules to tackle emerging risks.

SUPERANNUATION

Review of YFYS: working group established

The Government has [established](#) a Technical Working Group as part of its [review of the Your Future, Your Super laws](#) (YFYS). The review is considering whether the APRA performance test has had any unintended consequences for MySuper products and will assess how the test should be applied to other super products.

In addition to public submissions and stakeholder consultations, the Assistant Treasurer said the Working Group will be a forum for discussions on specific technical issues relating to the APRA performance test. The 12-member Working Group is comprised of independent economists, academics, investment advisers and representatives from retail and not-for-profit super funds.

Annual performance test for faith-based products

As part of the Government's election commitment, Treasury released exposure draft [Superannuation Industry \(Supervision\) Amendment \(Annual performance assessments -- Faith-based products\) Regulations 2022](#) (the "Draft Regulations").

By way of background, the Government introduced the Treasury Laws Amendment (2022 Measures No 3) Bill 2022 (the "Bill") to the House of Reps on 8 September 2022. Schedule 5 of the Bill amends the SIS Act to provide for an alternative annual performance test for faith-based products. APRA may determine that a product is a faith-based product if a trustee for the product provides APRA with a valid application.

The Draft Regulations propose to amend the Superannuation Industry (Supervision) Regulations 1994 to support the proposed amendments introduced by the Bill for supplementary performance test by specifying:

- when APRA must conduct the supplementary performance test;
- how APRA may determine and apply alternative indices for the purposes of conducting the supplementary performance test; and
- additional information that must be included in an application for faith-based status.

Date of effect: The day following registration on the Federal Register of Legislation.

Submissions are due by 7 October 2022.

REGULATOR NEWS

IGTO reporting pack released: Q4 FY22

The IGTO has released its [FY22 Q4 reporting pack](#) highlighting its activities during the quarter. The report provides the Q4 update on the following:

- total complaints received and the Top Five complaints received;
- IGTO's KPI results; and
- IGTO's Key Performance Areas.

Consumer Data Right

The Government is continuing to roll out the Consumer Data Right (CDR) to enable consumers to 'shop around' their data to try and get a better deal from banks, telcos and eventually energy companies. There is a direct impact on intermediaries such as

accountants and tax agents. The IPA is heavily involved in advocacy on CDR and will continue to update members.

See the latest Consumer Data Right newsletter [here](#).

SUSTAINABILITY

Consultation: Safeguard Mechanism reform

The Department of Industry, Science and Resources released a consultation paper proposing a reform to the Safeguard Mechanism, including the introduction of crediting and trading and the removal of headroom to improve the efficiency of Australia's national emissions reductions. Overall, the IPA supports the intent and objectives of this reform, recognising it as a responsible, long-term policy that aims to address the maintenance of Australia's competitiveness in global markets. View the IPA's full submission [here](#).

Australian Peak Bodies Submission to the International Sustainability Standards Board (ISSB)

The IPA was one of 20 Australian peak professional associations to make an unprecedented submission to the ISSB, comprising a mix of preparer, investor, and director perspectives. The IFRS Foundation recently requested submissions on their first two draft sustainability standards – IFRS S1 for general sustainability disclosures and IFRS S2 for climate-related disclosures. The Peak Bodies welcome the IFRS Foundation's push for a global baseline for sustainability standards and look forward to continuing to collaborate. The full submission can be viewed [here](#).

Harvard Business School Professor Robert S. Kaplan speaks exclusively on ESG Reporting

In the IPA-hosted event, Professor Kaplan explained that sustainability reporting can be addressed within the shareholder value approach by identifying and measuring the negative and positive externalities from corporate decisions and actions. One of Kaplan's key messages was around the shift from 'do no harm' to 'do some good', and ensuring these positive externalities are captured and reported. Professor

Kaplan also spoke through the current project he is working on, which takes the principles of cost accounting and applies it to the emissions a firm contributes. More detail on Professor Kaplan's work is available [here](#).

IPA Reflect Reconciliation Action Plan

The Institute of Public Accountants has formally commenced its reconciliation journey through the release of its first Reflect Reconciliation Action (RAP). The IPA's RAP ensures we have a rigorous approach to reconciliation that is genuine, impactful, and endorsed by Reconciliation Australia. We aspire to engage and connect the IPA's First Nations community, identify Aboriginal and Torres Strait Islander stakeholders in our sphere of influence, and to look inwards and ensure our offices are safe, welcoming, and culturally competent. Help keep us accountable by visiting the dedicated [RAP page](#) on the IPA website.