

TAXATION

Latest tax Bill

Measures contained in the latest major tax Bill include bonus temporary bonus deductions for small businesses in relation to external training provided to their employees and the digitising of their operations.

Revised ATO guidance on the PSI rules

The ATO has issued Taxation Ruling TR 2022/3 to update its previous guidance on the operation of the personal services income rules.

Aggregated turnover test: ATO DIS on Water West

The ATO has issued a Decision Impact Statement setting out its views on the AAT's decision in the *Water West case and what is an "income year" for the purpose of the aggregated turnover test for small businesses*.

FBT exemption for electric cars

A Bill to provide an FBT exemption for electric cars has been passed by the Senate with two amendments.

Retired partner could not offset capital gain against partnership debt

The Federal Court has upheld a decision that a capital gain arising from the disposal of goodwill by a retired partner could not be offset by amounts he owed to the partnership.

Expansion in DTA coverage

Australia is entering into new tax treaty negotiations with Bulgaria, Colombia, Croatia, Cyprus, Estonia, Latvia and Lithuania.

Gambling activities funded by undeclared income

Two brothers have failed to show that amended assessments based on records of their gambling activities at a casino were excessive.

Disclosure of tax information for deceased estates

The ATO has *repealed an* instrument made to allow taxation officers to disclose protected information about a deceased taxpayer to relevant representatives of an executor or administrator of their estate.

ACT Small Business Hardship Scheme declared NANE

Payments under an ACT COVID-19 Small Business Hardship grant scheme have been declared non-assessable non-exempt income.

No supply for GST purposes

The AAT has concluded that where an entity, by virtue of its contractual arrangements, paid GST on more than it received for the supply of mobile telephone and tablet accessories, it was not entitled to an input tax credit or a decreasing adjustment.

FINANCIAL SERVICES**Sale of home: social security assets test exemption extended**

Legislation to double to 2 years the time limit for which the proceeds of the sale of a principal home are exempt from the pension assets test until a person purchases a new home has been passed and awaits assent.

ASIC highlights focus areas for 31 December 2022 reporting

ASIC is urging directors, preparers of annual and half-year reports and auditors to assess whether companies' financial reports provide useful and meaningful information for investors and other users, as it highlights key focus areas for reporting by companies for full and half-years ending 31 December 2022.

Scam alert: Scammers fraudulently stating ASIC will guarantee their bonds

Scammers are using ASIC's name and logo to issue fake bond documents to investors, holding out that ASIC will 'guarantee' their bonds. The scammers are targeting overseas residents and are pretending to be Australian financial services

(AFS) licensees. ASIC will never provide a guarantee for bonds or other financial products.

ASIC releases sitting dates for 2023 financial adviser exams

The first exam sitting of 2023 will be held on 16 February 2023. Enrolments for the February Cycle 20 sitting will be open from 10 January 2023 and close on 30 January 2023.

All exams are delivered by remote proctoring.

SUPERANNUATION

Super fund investments in affordable housing

An Industry Super Australia commissioned report suggests changes to increase superannuation fund investments in affordable housing.

Total super assets down 3.2% for year

APRA has reported total super assets of \$3.322 trillion at 30 September 2022, down 3.2% for the year.

REGULATOR NEWS

Director identification number applications

Directors who have missed the 30 November deadline for applying for their director identification number have effectively been given a two week extension.

ASIC action against SMSF auditors for breaches

ASIC has taken action against 6 self-managed super fund (SMSF) auditors.

Government response to TPB review

Treasury has released draft legislation addressing 5 recommendations arising from the independent review of the Tax Practitioners Board.

Urgent – Director IDs

The ABRS has advised that no action will be taken on late applications for Director IDs as long as they are completed by Wednesday 14 December 2022.

SUSTAINABILITY

Empowering the AASB to deliver sustainability standards

The Government has committed to ensuring large businesses provide investors and the public with greater transparency and accountability when it comes to their climate-related plans, financial risks, and opportunities. The Exposure Draft Legislation seeks to amend parts of the ASIC Act 2001 that will empower the AASB to deliver sustainability standards.

Labor's EV strategy won't immediately fix Australia's supply problems, experts say

Industry experts are suggesting that despite the national electric vehicle (EV) strategy, Australia's poor fuel efficiency standards will continue to see Europe, the UK and the US and other regions prioritised over Australia when it comes to the supply of EVs.

FRC taps Big Four leaders for sustainability reporting agenda

As the time for implementation draws nearer, the Financial Reporting Council (FRC) has looked to the Big Four to plug some holes across the Australian Accounting Standards Board (AABB) and the Australian Auditing and Assurance Standards Board (AUASB).

TAXATION

Latest tax Bill

Measures contained in the [Treasury Laws Amendment \(2022 Measures No 4\) Bill 2022](#) will implement the following previously-announced measures:

- small businesses (aggregated annual turnover less than \$50m) will be able to deduct an additional 20% of eligible expenditure incurred on external training provided to their employees. Date of effect: applicable to eligible expenditure incurred from 29 March 2022 until 30 June 2024 in relation to enrolments or arrangements for the provision of training made from that start time;
- eligible small business will be able to deduct an additional 20% of eligible expenditure on expenses and depreciating assets for their digital operations or digitising their operations. This temporary bonus deduction will apply to the total of eligible expenditure up to \$100,000 per income year, up to a maximum bonus of \$20,000 per year. Date of effect: applicable to eligible expenditure incurred from 29 March 2022 until 30 June 2023;
- a refundable tax offset will be available for eligible expenditure incurred in the development of digital games. Date of effect: first quarter after assent to the Bill, applicable to qualifying expenditure incurred from 1 July 2022;
- digital currencies (such as bitcoin) will continue to be excluded from the “foreign currency”. This will ensure that the current treatment is unchanged and that cryptocurrency will not be regarded as a foreign currency. Date of effect: income years that include 1 July 2021 and later years. Related GST amendments will apply to supplies or payments from 1 July 2021;
- the ATO will be empowered to allow employers finalising their FBT returns to rely on adequate alternative records holding all the prescribed information, instead of seeking that information again (eg by way of prescribed employee declarations). Date of effect: applicable to FBT years starting on or after the first quarter after assent to the Bill; and
- APRA-regulated super funds will be required to prepare and lodge audited financial reports with ASIC. The requirements for auditors of RSE licensees will also be amended: Date of effect: 1 July 2023.

Revised ATO guidance on the PSI rules

[Taxation Ruling TR 2022/3](#) provides general guidance on the operation of the personal services income (PSI) rules. It combines the ATO's previous rulings on these rules - TR 2001/7 (on the meaning of PSI) and TR 2001/8 (on the meaning of a personal services business).

The ATO says the principles set out in the former rulings have not changed. However, TR 2022/3 takes into account significant decisions handed down since the release of those rulings two decades ago. It also includes 41 examples and a flow chart to demonstrate the operation of the PSI rules.

The ruling flags the potential application of Pt IVA where the PSI rules do not apply and a personal services entity is conducting a PSB.

Aggregated turnover test: ATO DIS on Water West

The ATO has issued a [Decision Impact Statement](#) setting out its views on the AAT's decision in *Water West Pty Limited and FCT* [2022] AATA 427. In that case, the ATO was successful in arguing that an entity was not entitled to the cashflow boost as it was part of a large international group for much of its 2020 income year.

The AAT was required to determine if the entity was a small business entity or a medium business entity for the purposes of s 328-110 of ITAA 1997. This must be done "for the income year in which the period starts" (with the definition of "income year" contained in s 995-1). The AAT concluded that the income year in question was the period commencing on 1 January 2019 and ending on 30 June 2020 (the entity had separately applied for a substituted accounting period and had been granted this as a transitional period). The entity failed the threshold tests of \$10 million and \$50 million respectively in this period and hence the ATO was successful.

The DIS states that the relevant income year when applying s 328-110 is a 12-month period. In other words, an income year cannot be a period of more than 12 months under the provisions of the Assessment Act. It further states that the ATO will seek "to clarify this position" at the next opportunity before the Tribunal or Courts.

FBT exemption for electric cars

The [Treasury Laws Amendment \(Electric Car Discount\) Bill 2022](#) was passed by the Senate on 25 November 2022. There were 2 amendments agreed to (Pocock/Greens).

The Bill provides an FBT exemption for electric cars used by employees for private use. The FBT exemption under new s 8A of the FBTAA relates to car fringe benefits and will only apply to cars that are "zero or low emissions vehicles", ie battery electric vehicles; hydrogen fuel cell electric vehicles; and plug-in hybrid electric vehicles.

The first Senate amendment put a sunset clause on the exemption for plug-in hybrid electric vehicles. This will cease to apply to car fringe benefits for such vehicles provided on or after 1 April 2025.

The second Senate amendment mandates that a review be undertaken in 3 years to determine the effectiveness of the exemption, ie in encouraging the uptake of electric cars.

Retired partner could not offset capital gain against partnership debt

The Federal Court has upheld a decision that a capital gain arising from the disposal of goodwill by a retired partner could not be offset by amounts he owed to the partnership: [Hedges v FCT](#) [2022] FCA 1389.

The taxpayer was a partner in a firm of solicitors. When he retired, he became entitled under the Partnership Deed to a payment for the disposal of goodwill. However, the partnership was entitled under a "set-off clause" to be paid any amounts that the taxpayer owed to it. When the set-off mechanism was applied, the taxpayer did not receive any amount in respect of the goodwill because the amount he owed exceeded the goodwill amount. The taxpayer, however, was still assessed on the capital gain.

In *Hedges and FCT* [2020] AATA 5307, the AAT decided that the capital gain could not be offset by the amount the taxpayer was required to repay. The Federal Court has dismissed the taxpayer's appeal on the basis that the capital gain crystallised before the operation of the set-off clause. The set-off clause was merely a mechanism that provided a convenient method by which the partnership could recover amounts owed by an outgoing partner on their retirement and it was not the source of the relevant obligations in respect of such payments.

Expansion in DTA coverage

The Government has [announced](#) that *Australia* is entering into new tax treaty negotiations with Bulgaria, Colombia, Croatia, Cyprus, Estonia, Latvia and Lithuania.

Treasury subsequently [announced](#) a consultation in relation to the negotiations. The review will encompass "the key outcomes Australia should seek in negotiating these tax treaties and any other issues related to Australia's tax treaty network".

The closing date is 23 December 2022.

Gambling activities funded by undeclared income

Two brothers have failed to show that amended assessments based on records of their gambling activities at a casino were excessive: [Cammarano and FCT \[2022\] AATA 3910](#).

The amended assessments increased one brother's assessable income for three years by a total of almost \$1.4m and the other's assessable income for two years by just over \$2.3m. The amended assessments were based on records provided to the ATO by Crown Casino Melbourne, showing the use of their membership cards during the relevant income years. The ATO concluded from the records that the funds used to finance one brother's gambling activities and the other brother's gambling losses came from unreported and unexplained income.

The brothers refused to give evidence at the AAT hearing, but alleged in witness statements that their membership cards did not record all of their gambling activities. However, neither explained what their actual gambling activities had been and the actual sources of the funds expended. As a result, the AAT concluded that the taxpayers had failed to show that the amended assessments were excessive.

Disclosure of tax information for deceased estates

The ATO has registered an [instrument](#) *which repeals an* instrument made under s 370-5 of the TAA to allow taxation officers to disclose protected information about a deceased taxpayer to relevant representatives of an executor or administrator of their estate.

The repeal follows the enactment of an amendment to s 355-25 of Sch 1 to the TAA to the same effect as the instrument made under s 370-5.

Division 370 of the TAA gives the ATO a discretion to apply the tax laws in such a way as to remedy a perceived defect, usually by making a legislative instrument to modify the operation of the taxation. The instrument made under s 370-5 addressed significant concerns that tax agents and legal practitioners could not access information that related to a deceased's affairs. This forced the executor/administrator - who often had little expertise in tax - to deal with the ATO, thereby slowing down the process and causing delays in the preparation of final returns.

ACT Small Business Hardship Scheme declared NANE

Treasury has registered a [declaration](#) that the COVID-19 Small Business Hardship Scheme grant program administered by the ACT is an eligible program for the

purpose of s 59-97 of ITAA 1997, under which a payment received in the 2020-21 or 2021-22 financial year by a small business entity is non-assessable non-exempt income.

No supply for GST purposes

The AAT has concluded that where an entity, by virtue of its contractual arrangements, paid GST on more than it received for the supply of mobile telephone and tablet accessories, it was not entitled to an input tax credit or a decreasing adjustment: [SVYR and FCT](#) [2022] AATA 3994.

The taxpayer sold mobile telephone and tablet accessories for one particular telecommunications company (Telco). Under its arrangement with Telco, the taxpayer invoiced a customer for the total price of the accessories it sold, but Telco provided a credit to the customer (the "Accessory Repayment Amount") if the customer accepted Telco's Accessory Repayment Option ("ARO"). Under the contractual arrangements between the taxpayer and Telco, the taxpayer received a lesser amount (the "ARO Payment") from Telco.

The taxpayer contended that since it was liable for GST on the total price of the accessories it sold but it received less than the total price from Telco, the GST rate was effectively more than the statutory rate of 10%. To overcome this "perceived problem", the taxpayer submitted that it was entitled to input tax credits as there was a "supply" of permission being made on each occasion a customer took advantage of the ARO promotion, the consideration for which was the difference between the Accessory Repayment Amount and the ARO Payment (the Shortfall).

The AAT disagreed. In its view, there was no "supply" and the "practical and commercial reality of the arrangements" was that the Shortfall was the cost to the taxpayer if Telco provided credit to the customer. Accordingly, the taxpayer was not entitled to input tax credits.

The AAT also decided that the taxpayer was not entitled to decreasing adjustments as there was no evidence of any "event" that had the effect of changing the total price of the accessories (the consideration for a supply).

FINANCIAL SERVICES

Sale of home: social security assets test exemption extended

The [Social Services and Other Legislation Amendment \(Incentivising Pensioners to Downsize\) Bill 2022](#) has passed all stages without amendment and now awaits assent.

The Bill doubles to 2 years the time limit for which the proceeds of the sale of a principal home are exempt from the pension assets test until a person purchases a new home. For social security deemed income purposes, the Bill also ensures that only the lower below threshold deeming rate (0.25%) will apply to the sale proceeds during the period of exemption.

The amendments will apply from 1 January 2023.

ASIC highlights focus areas for 31 December 2022 reporting

ASIC has highlighted a number of areas for attention, in particular:

- asset values
- provisions
- solvency and going concern assessments
- events occurring after year end and before completing the financial report
- disclosures in the financial report and Operating and Financial Review (OFR).

More information can be found in the [22-333MR ASIC highlights focus areas for 31 December 2022 reporting](#).

Scam alert: Scammers fraudulently stating ASIC will guarantee their bonds

Red flags

- Documents with ASIC's logo which hold out that ASIC will guarantee the relevant investments. These documents are fake. ASIC will never provide a guarantee on investments and will never authorise its logo to be attached to investment materials.
- Offers which are made through unsolicited telephone calls, emails or other means such as social media contact. If you receive an investment offer which claims to be guaranteed by ASIC, do not deal with the entity.

Further information is available on the ASIC website [Scam alert: Scammers fraudulently stating ASIC will guarantee their bonds.](#)

ASIC releases sitting dates for 2023 financial adviser exams

Financial adviser exams 2023

The dates for 2023 exam sittings are as follows:

Exam Sitting 20	Exam Date
February, 2023	Thursday 16/2

Enrolments for Sitting 20 open on 10 January and close on 30 January 2023

Exam Sitting 21	Exam Date
May, 2023	Thursday 11/5

Enrolments for Sitting 21 open on 3 April and close on 21 April 2023

Exam Sitting 22	Exam Date
August, 2023	Thursday 10/8

Exam Sitting 22

Exam Date

Enrolments for Sitting 22 open on 3 July and close on 21 July 2023

Exam Sitting 23

Exam Date

November, 2023

Thursday 9/11

Enrolments for Sitting 23 open on 2 October and close on 20 October 2023

Further information on the [Financial adviser exams 2023 and the dates for 2023 exam sittings](#)

SUPERANNUATION

Super fund investments in affordable housing

Ahead of the Treasurer's first Investor Roundtable on affordable housing, a report commissioned by Industry Super Australia has suggested changes to increase superannuation fund investments in affordable housing.

The Frontier Advisory report, [Super in the Economy](#), found there are numerous factors that limit superannuation fund investment in affordable housing. The report notes that super funds typically prefer investing in existing assets. Without meaningful and consistent government concession schemes that boost returns for private investors, the report considers that most affordable housing projects are unviable.

The report recommends practical steps for governments and stakeholders to consider, including a reassessment of Regulatory Guide RG 97 (disclosure of fees and costs) and the Your Future Your Super (YFYS) legislation. The new national Housing Accord between State and Territory governments and investors is targeting 40,000 new affordable homes.

Total super assets down 3.2% for year to September 2022

APRA has released its [Quarterly Superannuation Performance publication](#) for the September 2022 quarter reporting total super assets of \$3.322 trillion at 30 September 2022 (down 0.5% for the quarter, and 3.2% for the year).

Total assets in MySuper were down 0.7% for the quarter, and 3.8% for the year, to \$887bn. Self-managed super fund (SMSF) assets were down 2.8% for the year to \$865bn.

REGULATOR NEWS

Director identification number applications

The ATO has [advised](#) that, as at 30 November, over 1.8 million directors had applied for their director identification number.

Given the total number of directors in Australia who need to register is estimated to be 2.5 million, this means that over 700,000 directors have not met the 30 November deadline.

However, the ATO has confirmed that Australian Business Registry Services (ABRS) will “apply a pragmatic compliance approach to directors who are required to apply for a director ID by 30 November 2022, if they apply by 14 December 2022”. More specifically, the ABRS “will not apply compliance resources to determine whether individuals met their director ID obligations by 30 November 2022 if they apply for a director ID by 14 December 2022”.

The ATO recommends doing applying online at the ABR website . Once issued, the director ID will need to be provided to the company's record-holder (eg the company secretary, another director, or authorised agent).

ASIC action against SMSF auditors for breaches

ASIC has taken [action](#) against 6 self-managed super fund (SMSF) auditors.

ASIC said it disqualified 3 SMSF auditors for breaches of the auditor independence rules and auditing standards. ASIC also imposed additional conditions on the registration of an SMSF auditor for allegedly not obtaining sufficient audit evidence.

The registration of 2 other SMSF auditors were cancelled for not meeting additional conditions on their registration.

Government response to TPB review

Treasury has released [draft legislation](#) addressing 5 recommendations arising from the independent review of the Tax Practitioners Board.

The former Government commissioned an independent review (carried out by Treasury) of the effectiveness of the TPB and the Tax Agent Services Act 2009 ("TASA") to ensure that tax agent services are provided to the public in accordance with appropriate professional and ethical standards.

The draft legislation addresses the following recommendations made by the review:

- amend the object clause of TASA to make it more contemporary and better aligned with the TPB's role and responsibilities;
- enhance the TPB's financial independence by establishing a Special Account;
- amend TASA to strengthen the disclosure requirements to require tax practitioners to not employ or use disqualified entities in the provision of tax agent services without approval from the TPB;
- convert the 3-year registration cycle to annual registration to align with the TPB's administrative annual declaration process; and
- amend TASA to give the relevant Minister the power to supplement TASA's Code of Professional Conduct via legislative instrument.

Urgent – Director IDs

Who needs to apply?

- a company, registered Australian body, or registered foreign company under the *Corporations Act 2001* (Corporations Act)
- an Aboriginal and Torres Strait Islander corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act).

[How to apply?](#)

Three steps:

- [Step 1 – Set up myGovID](#)
- [Step 2 – Gather your documents](#)
- [Step 3 – Complete your application](#)

Ways to apply

- [Online](#)
- [Paper](#)
- Phone: Phone 13 62 50 Call back: 1300 306 275

[FAQs](#)

[More information](#)

SUSTAINABILITY

Empowering the AASB to deliver sustainability standards

The Government has committed to ensuring large businesses provide investors and the public with greater transparency and accountability when it comes to their climate-related plans, financial risks, and opportunities. The Exposure Draft Legislation seeks to amend parts of the ASIC Act 2001 that will empower the AASB to deliver sustainability standards.

This comes in response to the strong demand from Australian businesses, investors, financial institutions, and users and preparers of financial information, for Australian sustainability standards to align with the International Sustainability Standards Board (ISSB) baseline, following AASB consultation on the ISSB exposure drafts.

Consultation closes on 16 December. The IPA will be making a submission.

Read the exposure draft and lodge a submission [here](#).

Labor's EV strategy won't immediately fix Australia's supply problems, experts say

Industry experts are suggesting that despite the national electric vehicle (EV) strategy, Australia's poor fuel efficiency standards will continue to see Europe, the UK and the US and other regions prioritised over Australia when it comes to the supply of EVs.

Australia is the only country in the developed world, aside from Russia, without a fuel emissions standard. In a submission to treasury on the *Electric Car Discount Bill*, the IPA highlighted fuel efficiency standards as an alternative measure that could greatly increase the supply of EVs in Australia, in line with recommendations from the International Energy Agency's Global EV Outlook. Read the submission [here](#).

Beyhad Jafari, CEO of the Electric Vehicles Council, explains that the UK received 350,000 EVs last year, whereas Australia only received 20,000. This is despite the UK having a new car market not that much larger than Australia's.

Read the full analysis from Jordyn Beazley [here](#).

FRC taps Big Four leaders for sustainability reporting agenda

As the time for implementation draws nearer, the Financial Reporting Council (FRC) has looked to the Big Four to plug some holes across the Australian Accounting Standards Board (AABB) and the Australian Auditing and Assurance Standards Board (AUASB).

These appointments are:

AASB

- Liz Maimone, Chief Operating Officer (PwC)
- Adrian King, Partner, Climate Change & Sustainability (KPMG)
- Mathew Nelson, Chief Sustainability Officer (EY)

AUASB

- Terence Jeyaretnam, Climate Change and Sustainability Services Partner (EY)
- Chi Mun Woo, Partner, Climate Change & Sustainability (Deloitte)