

## **SUSTAINABILITY**

### **Mandatory climate-related financial disclosure**

The IPA has lodged a submission to Treasury, in response to their proposals to introduce mandatory climate-related disclosures in the Australian economy. The IPA broadly supports many of the proposals in the consultation paper, although highlights the need for significant simplification and relief in the SME sector.

### **BNP Paribas Asset Management study shows strong growth in female board membership**

Between 2021 and 2022, female board membership has increased overall, quite markedly in some regions, with a two percentage point increase for both the ISS universe and BNPP AM investee companies, demonstrating positive progress. However, there is still plenty of work to be done to claw back the significant underrepresentation of females on boards.

### **PwC: ESG Reporting in Australia in 2023**

PwC hosted a webinar about the ongoing ESG Reporting developments and what organisations can do to prepare in the lead up to mandatory reporting requirements. ‘No regrets moves’ include assembling a cross-functional team and taking a stocktake of existing data.

## **TAXATION**

### **Taxpayer alert: accessing company profits tax-free**

The ATO has issued Taxpayer Alert TA 2023/1 on schemes to allow individuals to access private company profits tax-free through an interposed holding company.

### **Withholding for PSI: draft instrument**

ATO has released a draft instrument that varies the amount that a PSE would otherwise be required to pay to the Commissioner in certain circumstances.

## **Cryptocurrency: Treasury releases token mapping consultation**

Treasury has released a consultation paper dealing with token mapping which is a key step in the plan to develop regulatory settings for the crypto sector.

## **Australian philanthropy review**

Government has announced that the Productivity Commission's review of Australian philanthropy is underway.

## **Independent review of modernising business register program**

Government has announced an independent review of the modernising business register program.

## **Measures (No 1) Bill 2023 introduced**

Bill has been introduced to implement off-market share buy-backs, TPB review changes, ASIC registration of providers and assisted decision making, among other things.

## **No. 5 Bill passes Parliament**

Bill to make changes to the list of deductible gift recipients has been passed by Parliament with no amendments and awaits assent.

## **Modernising Business Communications Bill passes House**

Bill to amend the Corporations Act and other Commonwealth Acts to modernise communication methods available to businesses has passed the House of Reps.

## **New fixed-rate method to calculate WFH running expenses**

ATO has released a practical compliance guideline which finalises the "revised" fixed-rate method for employees to calculate WFH running expenses from 1 July 2022.

**ATO acts on billion dollar GST fraud**

The government has welcomed the actions of an ATO-led taskforce in relation to what is termed “the biggest GST fraud in Australia’s history”.

**FINANCIAL SERVICES****Legislating certain ASIC instruments: draft legislation**

Treasury has released draft legislation which will incorporate “longstanding and accepted matters” currently contained in ASIC-made legislation into Corporations Act.

**Quality of Advice Review final report released**

Government has released the Quality of Advice Review final report which makes 22 recommendations.

**SUPERANNUATION****Expenditure disclosure requirements for super funds disallowed**

The Senate has passed a resolution disallowing previously registered Regulations that amended the information that must be provided by APRA regulated super funds.

**Competency standards for approved SMSF auditors to sunset**

ASIC has proposed to allow a class order relating to competency standards for approved SMSF auditors to sunset.

## **REGULATOR NEWS**

### **ASIC highlights strategic and enforcement priorities**

ASIC has issued a media release warning businesses that it is expanding its enforcement focus targeting greenwashing, predatory lending and misleading insurance pricing.

## **SUSTAINABILITY**

### **Mandatory climate-related financial disclosure**

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At a high level, the IPA supports:

- Aligning Australian sustainability standards with those of the International Sustainability Standards Board (ISSB).
- 'Phase-in' approach of requiring initial application of the standards to large entities (for 2024/25) and delay the application for SMEs to a later phase.
- Scalability and simplification of the standards, especially for SMEs, proportionate to the size and complexity of the entity.
- Mandatory application of the standards and assurance (also proportionate to the size and complexity of the entity).
- A standard setting and oversight structure where the staff and the boards have the necessary sustainability reporting technical expertise to draft, deliberate and approve the standards for issuance.

Click [here](#) to view the full submission.

### **BNP Paribas Asset Management study shows strong growth in female board membership**

Between 2021 and 2022, female board membership has increased overall, quite markedly in some regions, with a two percentage point increase for both the ISS universe and BNPP AM investee companies, demonstrating positive progress. However, there is still plenty of work to be done to claw back the significant underrepresentation of females on boards.

#### **Average rate of female board membership within ISS database:**

Australia & New Zealand:

- 30% (up from 26% in 2021)

North America:

- 23% (up from 20% in 2021)

South Africa:

- 32% (up from 28% in 2021)

Asia:

- 14% (up from 10% in 2021)

Europe:

- 29% (up from 28% in 2021)

Click [here](#) to read more about the findings and the challenges that remain.

## **PwC: ESG Reporting in Australia in 2023**

PwC hosted a webinar about the ongoing ESG Reporting developments and what organisations can do to prepare in the lead up to mandatory reporting requirements.

‘No regrets moves’ to prepare your organisation:

- Assemble a cross-functional team.
- Understand and evaluate ESG reporting requirements.
- Inventory existing climate disclosures and related data.
- Create a plan to address gaps.

ESG skills requirements:

- Identify and utilise existing skills across your organisation.
- Upskill executive management and the board across key sustainability issues to strike the right balance between experienced leadership skills and those needed to navigate emerging risks.
- Mobilise people across the company who have the skills to address the challenges – i.e., finance teams, risk professionals.
- Use economics/modelling teams to work with sustainability leads.

## **TAXATION**

### **Taxpayer alert: accessing company profits tax-free**

The ATO has issued Taxpayer Alert [TA 2023/1: Interposition of a holding company to access company profits tax-free](#). The Alert addresses certain arrangements involving CGT roll-overs and Div 7A.

In these arrangements, a company is interposed between a private company with retained profits ("first company") and its shareholder, and a CGT roll-over is applied to disregard the CGT consequences. The first company then pays a franked dividend to the interposed company, which uses the proceeds to fund a loan to the individual, on terms which do not comply with s 109N of the ITAA 1936.

The roll-over enables the shareholder to disregard for tax purposes the capital gain they make on disposal of their shares in the first company. The ATO states that the arrangements are structured so that Div 7A would not apply to treat the loan to the individual as an assessable dividend. That is because the interposition of the company and the subsequent dividend paid by the first company is to ensure that neither company has a distributable surplus for the purposes of Div 7A. As a result, the individual seeks to access, and purports to be able to access, the retained profits of the first company in a tax-free form.

The Alert highlights the arrangement features that are "red flags", stating that taxpayers and advisers who enter into these types of arrangements will be subject to increased scrutiny.

### **Withholding for PSI: draft instrument**

The ATO has released the draft instrument [Taxation Administration \(Withholding Variation for Personal Services Income\) Legislative Instrument 2023](#). The instrument varies the amount (to nil) that a personal services entity ("PSE") would otherwise be required to pay to the Commissioner in certain circumstances. The Instrument continues the arrangements under the existing legislative instrument, which is due to sunset on 15 March 2023.

**Date of effect:** 1 April 2023.

**Comments** are due by 21 February 2023.

## **Cryptocurrency: Treasury releases token mapping consultation**

Treasury has released a [consultation paper](#) dealing with token mapping. Token mapping is the process of identifying the key activities and functions of products in the crypto ecosystem and mapping them against existing regulatory frameworks. This is a key step in the Government's plan to develop regulatory settings for the crypto sector.

The consultation questions are as follows.

- What do you think the role of Government should be in the regulation of the crypto ecosystem?
- What are your views on potential safeguards for consumers and investors?
- Are there solutions (eg disclosure, code auditing or other requirements) that could be applied to safeguard consumers that choose to use crypto assets?
- What policy or regulatory levers could be used to ensure crypto token exchanges do not offer scam tokens or more broadly, prevent consumers from being exposed to scams involving crypto assets?

The closing date for submissions is 3 March 2023.

## **Australian philanthropy review**

The Government [has announced](#) that the Productivity Commission's review of Australian philanthropy is underway. The final report is expected in the first half of 2024.

The Productivity Commission will consult broadly, including with Commonwealth, State and Territory governments, the philanthropic, not-for-profit and business sectors and the general public. The Commission will hold public hearings, invite public submissions and release a draft report for public review.

The Government has appointed Krystian Seibert, formerly an Industry Fellow at the Centre for Social Impact at Swinburne University of Technology, to join the review as an Associate Commissioner.

The [terms of reference](#) are on the Commission's website.



## **Independent review of modernising business register program**

The Assistant Treasurer [has announced](#) an independent review of the Modernising Business Register program.

The MBR program was established by the former Government with the aim of modernising and uniting ASIC's 31 business registers and the ABR on to a new system at the ATO. The intention being that users will interact with the new Australian Business Registry Services (ABRS) to manage their registrations and registry obligations in one place.

The review is designed to deliver "a comprehensive understanding of the current state of the program and provide recommendations for changes, improvements and strategies to best position it to achieve its intended objectives". Terms of reference are listed in the media release. There are no details as to who will undertake the review, nor anything about submissions or timing.

## **Measures (No 1) Bill 2023 introduced**

The [Treasury Laws Amendment \(2023 Measures No 1\) Bill 2023](#) has been introduced in the House of Reps proposing to implement the measures outlined below.

### **Off-market share buy-backs**

The stated intention of Sch 4 is to align the tax treatment of off-market share buy-backs undertaken by listed public companies with the tax treatment of on-market share buy-backs. It does this so that no part of the purchase price is taken to be a dividend in an off-market share buy-back undertaken by a listed public company.

It will also amend the tax treatment in respect of selective share cancellations to ensure alignment of tax treatment across capital management activities for listed public companies, by treating any distribution received as part of a share capital reduction as unfrankable.

The measures will apply retrospectively, ie to buy-backs and selective share cancellations undertaken by listed public companies that were first announced to the market after 25 October 2022. Draft legislation was released in November 2022.

**Franked distributions funded by capital raisings**

Schedule 5 will include a new item in the ITAA 1997 to make certain distributions funded by capital raisings unfrankable.

The stated purpose of the amendments is to ensure that direct or indirect recipients of affected distributions are not entitled to a tax offset and the amount of the franking credit is not included in the assessable income of the recipient. They also ensure that the distribution is not exempt from withholding tax under s 128B of the ITAA 1936.

The measures are an integrity measure, designed to prevent the "inappropriate release" of franking credits. They are designed to prevent the use of artificial arrangements under which capital is raised to fund the payment of franked distributions to shareholders and enable the distribution of franking credits.

The measures will also apply retrospectively, ie they will apply to distributions made on or after 15 September 2022. This is an unannounced change – the original start date was 19 December 2016, a day after the draft Bill released.

**TPB review changes**

Schedule 3 implements a number of changes recommended by the independent review of the Tax Practitioners Board (the "TPB review"), specifically:

- require tax practitioners to not employ or use a disqualified entity without the TPB's approval, or enter an arrangement with a disqualified entity (Recommendation 4.6) – to take effect on the first 1 January/April/July/October after the Bill receives assent;
- convert to an annual registration period (Recommendation 4.7) – to take effect 1 July 2024;
- enable the Minister to supplement the existing Code of Professional Conduct to ensure that emerging or existing behaviours and practices by tax practitioners are properly addressed (Recommendation 5.1) – to take effect on the first 1 January/April/July/October after the Bill receives assent;
- update and modernise the objects clause of the TAS Act (Recommendation 2.1) – to take effect on the first 1 January/April/July/October after the Bill receives assent; and
- create financial independence for the TPB from the ATO (Recommendation 3.1) – to take effect on 1 July 2023.

The legislation was released in draft form in November 2022.

### **ASIC: registration of providers and assisted decision making**

Schedule 1 to the Bill will amend the Corporations Act to:

- allow ASIC to approve applications from one or more licensees to register on the Financial Advisers Register the same relevant provider in circumstances where the relevant provider has a registration in force; and
- allow assisted decision-making to be used for any purpose for which ASIC may make decisions in the performance or exercise of ASIC functions or powers to register a relevant provider.

These amendments are described as "technical in nature" and have not been previously announced. They will take effect from the date of assent.

### **AASB to issue sustainability standards**

Schedule 2 will amend the *Australian Securities and Investment Commissions Act 2001* to provide the Australian Accounting Standards Board ("AASB") with functions to develop and formulate sustainability standards. By way of context, this will allow the AASB to establish interim non-binding reporting requirements for sustainability that will, as far as is practicable, align with significant international developments – while longer-term governance arrangements for sustainability-related financial reporting, including climate disclosure, are developed and implemented.

Treasury released a consultation paper in December 2022.

### **No. 5 Bill passes Parliament**

The [Treasury Laws Amendment \(2022 Measures No 5\) Bill 2022](#) has been passed by Parliament with no amendments and awaits assent.

Introduced in the House of Reps on 30 November 2022, it makes changes to the list of deductible gift recipients (DGRs) in Div 30 of the ITAA 1997.

## Modernising Business Communications Bill passes House

The [Treasury Laws Amendment Bill 2022](#) has been passed by the House of Reps with no amendments and is now before the Senate.

Schedule 1 will amend the Corporations Act and other Commonwealth Acts to modernise communication methods available to consumers, businesses and regulators when interacting with each other, while Sch 3 contains matters that relate to ASIC Instruments.

There will be no further progress until the Senate Economics Legislation Committee delivers its report, which is [due on 3 March 2023](#).

## New fixed-rate method to calculate WFH running expenses

[Practical Compliance Guideline PCG 2023/1](#), has been issued and finalises the ATO's "revised" fixed-rate method for employees and business taxpayers to calculate work-from-home running expenses from 1 July 2022 (as an alternative to calculating the actual work-related portion of all running expenses). The revised fixed-rate method replaces:

- the fixed-rate method in PS LA 2001/6 (\$0.52 per work hour). Expenses such as phone, internet, computer consumables and stationery needed to be calculated separately. PS LA 2001/6 has now been updated to remove references to the fixed-rate method from 1 July 2022; and
- the short-cut (COVID-19) method in PCG 2020/3 (\$0.80 per work hour for all additional running expenses).

The revised fixed-rate method uses a rate of **\$0.67** for each hour worked from home during the income year to apportion expenditure on energy (electricity/gas), internet, phone, stationery and computer consumables. Separate deductions need to be claimed for the work-related decline in value of any depreciating assets used to work from home, as well as for any other running expenses.

Crucially, in order to use the \$0.67 rate, records will need to be kept from 1 March 2023 of the time spent working from home and of the additional running expenses incurred.

**Date of effect:** 1 July 2022. The fixed-rate and short-cut methods are not available from this date.

## **ATO acts on billion dollar GST fraud**

The Government [has welcomed](#) the actions of an ATO-led taskforce in relation to what is termed "the biggest GST fraud in Australia's history".

The ATO [states](#) that the fraud was first detected in early 2022 and involved offenders inventing fake businesses and ABN applications, then submitting fictitious BAS's in an attempt to gain a false GST refund. In response, the ATO's Serious Financial Crimes Taskforce set up "Operation Protego" in partnership with the Australian Federal Police. Warrants were executed in three States against 10 individuals suspected of promoting the fraud (which included the use of social media).

- The ATO has taken compliance action on more than 53,000 "clients".
- It has stopped approximately \$2.5 billion in fraudulent GST refunds from being paid (as at 31 December 2022).
- Two individuals have been sentenced to jail following their arrest in 2022.
- There have been some 87 arrests across the country, "with many more to come".
- The ATO has commenced writing to more than 20,000 individuals involved in the fraud.

## **FINANCIAL SERVICES**

### **Legislating certain ASIC instruments: draft legislation**

Treasury has released [draft legislation](#) which will incorporate what is termed "longstanding and accepted matters" currently contained in ASIC-made legislation into the primary law, ie the Corporations Act.

There are four instruments addressed, three of which deal with either takeovers, managed investment funds registered with ASIC or credit contracts. The other is dealt with below.

## Financial Services Guides

- The *ASIC Corporations (Superannuation and Schemes: Underlying Investments) Instrument 2016/378* exempts the trustee of a superannuation fund from the requirement to provide a Financial Services Guide where the trustee deals in a financial product in the ordinary course of the operation of the fund. This is to be replaced by proposed s 941C(2A).
- The same instrument also exempts the responsible entity of a registered scheme from the requirement to provide a Financial Services Guide to a member of the scheme to the extent that the requirement would apply to the responsible entity dealing in a financial product in the ordinary course of the operation of the scheme. Proposed s 941C(2B) will achieve the same outcome.

## Quality of Advice Review final report released

The Government has released the [Quality of Advice Review final report](#). The report, prepared by Michelle Levy, includes 22 recommendations aiming to make financial product advice more accessible and more affordable.

The Review investigated how the regulatory framework could better enable the provision of "high quality, accessible and affordable financial advice". The Assistant Treasurer, Stephen Jones, [said](#) the Government will now consult on the Review's recommendations and consider its response to the report.

## SUPERANNUATION

### Expenditure disclosure requirements for super funds disallowed

The Senate has passed a resolution disallowing the [Superannuation Industry \(Supervision\) Amendment \(Annual Members' Meetings Notices\) Regulations 2022](#), which were registered on 2 September 2022.

The Regulations amended the information that must be provided by an APRA regulated super fund with a notice for an annual members' meeting. The Regulations updated the annual members' meeting notice disclosure requirements in reg 2.10 of the SIS Regs by:

- allowing contextual information in the short-form summary – ie it allowed contextual information about the aggregated expenditure disclosed in the short-form summary ("non-promotional information");
- removing the requirement to disclose in the meeting notice an itemised list for the categories of expenses, being: (i) promotion, marketing and sponsorship expenses; (ii) political donations; (iii) payments to industrial bodies; and (iv) related party payments. Instead, RSE licensees are required to disclose an "aggregate figure" for each of these four categories of expenses in a summary format;
- removing the potential for double-counting of political donations where the particular donation aligns with more than one category of expense; and
- aligning the definition of "related party" to the definition in AASB 124.

The Federal Register of Legislation shows that the amending Regs will be repealed on 10 March 2023.

### **Competency standards for approved SMSF auditors to sunset**

ASIC has issued a [media release](#) proposing to allow class order [CO 12/1687] Competency Standards for Approved SMSF Auditors to sunset on 1 April 2023. The class order, made under s 128Q(1) of the SIS Act, sets out competency standards for approved SMSF auditors. ASIC considers that the class order is no longer necessary and relevant, given the SIS Act already requires all SMSF auditors to be registered with ASIC.

**Submissions** are due by 10 March 2023.

## **REGULATOR NEWS**

### **ASIC highlights strategic and enforcement priorities**

ASIC has issued a [media release](#) warning businesses that it is expanding its enforcement focus targeting greenwashing, predatory lending and misleading insurance pricing promises.

The warning follows ASIC's release of its [latest enforcement and regulatory report](#), highlighting actions taken during the last three months of 2022 and outlining the full list of enforcement priorities for the year ahead. The report underscores 312 criminal charges being laid and \$222.1 million in civil penalties imposed by the courts in 2022 against misconduct, market integrity threats and consumer harms in sectors including financial services, retail and crypto-assets.

The media release also calls attention to ASIC's [regulatory developments timetable](#). As part of its efforts to "streamline" interactions with the entities the ASIC regulates, the timetable will help industry to better anticipate when ASIC will issue draft or final guidance, or the making of a legislative instrument.