

TAXATION

Draft legislation: climate related financial disclosure

Treasury has released draft legislation to implement standardised, internationally aligned requirements for mandatory disclosure of climate-related risks in Australia.

Intangibles migration arrangements: ATO compliance approach

PCG 2024/1 sets out the ATO's compliance approach re certain cross-border arrangements involving intangible assets and international related parties.

Royalties: payments re software and IP rights

The ATO has released Draft TR 2024/D1, a revised draft ruling on when amounts paid under software arrangements are royalties.

FINANCIAL SERVICES

Extension for relevant financial advisers to register with ASIC

ASIC has issued a media release announcing the extension, by two weeks, of the registration period for certain financial advisers.

Financial services industry governance legislation a "tangled mess"

ALRC has tabled its report which found that the legislation governing Australia's financial services industry difficult to navigate and costly to comply with.

SUPERANNUATION

Proposed updates to the super prudential framework

APRA has issued a consultation paper proposing several updates to the superannuation prudential framework.

Financial reporting by super funds: legislative instrument

AASB 1056, which requires the presentation of a comprehensive set of financial statements for superannuation entities has been issued as a legislative instrument.

REGULATOR NEWS

ASIC News

Updates from ASIC in the past week including media releases, news, articles and speeches.

TAXATION

Draft legislation: climate related financial disclosure

Treasury has released [draft legislation](#) which is intended to implement standardised, internationally aligned requirements for mandatory disclosure of climate-related risks and opportunities in Australia.

The amendments set out new climate-related financial reporting requirements for entities, leveraging the existing financial reporting regime under Chapter 2M of the Corporations Act. Chapter 2M provides for record-keeping, financial reports and audit. Part 2M.3 covers financial reporting including who must prepare annual financial reports and the contents of those annual financial reports. The climate statements are to be prepared in line with the relevant sustainability standards issued by the AASB.

Large entities that are required to prepare and lodge annual reports under Chapter 2M will be required to disclose information about climate-related risks and opportunities. This includes listed and unlisted companies and financial institutions as well as registrable superannuation entities and registered investment schemes. Large entities are defined using size thresholds equivalent to the existing Large Proprietary Company definition (this threshold will apply to both listed and unlisted companies).

The closing date for comments is 9 February 2024.

Intangibles migration arrangements: ATO compliance approach

[Practical Compliance Guideline PCG 2024/1](#) sets out the ATO's compliance approach and risk assessment framework with respect to certain cross-border arrangements involving intangible assets and international related parties. The guidance focuses on the potential application of the transfer pricing rules or Pt IVA (including the diverted profits tax) to arrangements in relation to structuring issues and tax risks associated with:

- the migration of intangible assets; and
- the mischaracterisation and non-recognition of Australian activities connected with intangible assets.

Date of effect: 17 January 2024, including for existing arrangements.

Royalties: payments re software and IP rights

The ATO has released [Draft TR 2024/D1](#), its much anticipated revised draft ruling on when amounts paid under software arrangements are royalties. It replaces Draft TR 2021/D4, which has now been withdrawn.

A number of concerns were raised in relation to TR 2021/D4, due to changes in the ATO's approach (particularly where intermediaries are involved). The ATO says that the new draft "elaborates" on the views expressed in TR 2021/D4 by providing further clarity on a range of matters, in particular apportionment and the impact on different software distribution models. It now also discusses the interaction between the domestic law and tax treaty definition of "royalties". Draft TR 2024/D1 focuses on payments for the use of, or right to use, copyright. It lists five arrangements where an amount paid as consideration will be treated as a royalty. The first four are in the standard tax treaty definition of royalties and involve granting or using an intellectual property right; supplying know-how in relation to such a right, or supplying assistance furnished as a means of enabling the application or enjoyment of the supply.

The fifth arrangement concerns the sale by a distributor of hardware with embedded software, where the distributor is granted or uses rights in the intellectual property of the software. For example, if an Australian distributor is granted the right to modify or adapt the embedded software, this may involve the grant or use of a copyright right and the ATO considers that apportionment of any payment may be needed to reflect the amount paid for the use or grant of that right.

Proposed date of effect: retrospective. This retrospective start date is not intended to prevent TR 93/12 (the previous ruling) applying prior to its withdrawal on 25 June 2021 to the extent that it has been "appropriately relied upon".

Comments are due by 1 March 2024.

FINANCIAL SERVICES

Extension for relevant financial advisers to register with ASIC

ASIC has issued a [media release](#) announcing the extension, by two weeks, of the registration period for financial advisers who provide personal advice to retail clients on relevant products ("relevant providers"). This follows ASIC's latest records showing over 4,000 (26%) of eligible relevant providers have not yet registered with ASIC. The registration period will be extended to 16 February 2024 (once ASIC registers the relevant legislative instrument to that effect).

By way of background, the requirement for financial advisers to be registered was introduced by the Financial Sector Reform (Hayne Royal Commission Response -- Better Advice) Act 2021 in response to Recommendation 2.10 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. It is a new requirement that is separate to the pre-existing requirement for an AFS licensee to appoint a Relevant Provider to the Financial Advisers Register once they have been authorised.

ASIC said that there will not be any further extensions after this time and that it will focus on ensuring compliance with the registration regime and taking regulatory action where required.

Financial services industry governance legislation a "tangled mess"

The Australian Law Reform Commission ("ALRC") has tabled its report entitled [Confronting Complexity: Reforming Corporations and Financial Services Legislation](#). The report found that

the legislation governing Australia's financial services industry difficult to navigate, costly to comply with and unnecessarily difficult to enforce.

The report made 58 recommendations to simplify the law, including a revamped legislative framework for the financial services sector. These reforms aim to reduce costs for service providers and consumers, improve productivity by reducing complexity, and provide clarity around compliance requirements and enforcement.

Recommendations in the Final Report include the following.

Redesigning financial services legislation to give it a clear home and identity as the "Financial Services Law", making it easier and less costly to find, navigate, and understand.

Ending the use of almost invisible notional amendments that make the law deeply inaccessible, and instead using thematic, consolidated rulebooks to provide flexibility for regulating particular products, persons, services, or circumstances.

Making it easier to tell when something is a "financial product" or "financial service" by introducing a single, simplified definition of both terms.

Making offence and penalty provisions less complex and more obvious by consolidating them into a smaller number of provisions that cover the same conduct, making them easier to identify, and making the consequences of breach clear on the face of the law..

SUPERANNUATION

Proposed updates to the super prudential framework

APRA has issued a [consultation paper](#) proposing several updates to the superannuation prudential framework. The updates are "minor and consequential" amendments as a result of legislative reforms in relation to the financial reporting and audit requirements for superannuation which were set out in Treasury Laws Amendment (2022 Measures No 4) Act 2023. Updates are proposed to the following standards and guidance:

- Prudential Standard SPS 310 Audit and Related Matters (SPS 310)
- Prudential Standard SPS 510 Governance (SPS 510)
- Prudential Standard SPS 520 Fit and Proper (SPS 520)
- Prudential Practice Guide SPG 520 Fit and Proper (SPG 520)

Submissions are due by 28 February 2024.

Financial reporting by super funds: legislative instrument

AASB 1056 Superannuation Entities has been issued as a [legislative instrument](#).

AASB 1056 requires the presentation of a comprehensive set of financial statements for superannuation entities, whether they constitute one or more superannuation plans and whether they have defined contribution members or defined benefit members, or both.

It was first issued in 2014 at a time when super funds were not required by the Corporations Act or any other legislation to prepare financial statements or to lodge them with ASIC. However, amendments to the Corporation Act by the [Treasury Laws Amendment \(2022 Measures No 4\) Act 2023](#) extended the financial reporting requirements to require APRA-regulated super funds to prepare and lodge audited financial reports.

The Accounting Standard was reissued as a legislative instrument as a result of the amendments. In doing so, the AASB has not changed the requirements.

The reissued Standard applies to annual periods beginning on or after 1 July 2023 that end on or after 31 December 2023. Earlier application is permitted.

REGULATOR NEWS

ASIC news

ASIC has released the following updates in its Newsroom section:

- [19 January 2024 - NEWS ITEM ASIC proposes to remake managed investment scheme legislative instruments](#) - ASIC proposes to remake a number of class orders relating to managed investment schemes due to sunset on 1 April 2024. Interested stakeholders are invited to provide feedback on the proposal.
- [18 January 2024 - NEWS ITEM ASIC urges AFS licensees to register their financial advisers and provides a short extension to facilitate compliance](#) - ASIC records show that a significant number of financial advisers (known as relevant providers) are still not registered, despite a requirement to be registered commencing on 1 February 2024. ASIC has extended the due date for registration by two weeks and confirms 16 February 2024 as the final date for the commencement of the registration requirement. AFS licensees that have not already registered their Relevant Providers are urged to do so as a priority via ASIC Connect. Advisers who provide personal advice to retail clients without being registered after 16 February, together with their authorising AFS licensee(s), will be in breach of the law and face potential regulatory action.
- [17 January 2024 - MEDIA RELEASE 24-004MR Liquidator disciplinary committee imposes conditions on registration of Steven Naidenov](#) - On 21 December 2023, a liquidator disciplinary committee (the Committee) decided that conditions should be imposed on Steven Naidenov, a registered liquidator. In summary, the conditions require that Mr Naidenov arrange for a peer review of six external administrations, at his own cost, over the next two years for which he is an appointed external administrator. The six external administrations will be selected by ASIC. The Committee also decided that ASIC should direct Mr Naidenov not to accept any further appointments as a liquidator from the date on which a direction is given until 30 April 2024.