

## **TAXATION**

### **DIS on Minerva: Pt IVA did not apply to scheme redirecting income via trusts**

The ATO has released a Decision Impact Statement on *Minerva Financial Group Pty Ltd v FCT* [2024] FCAFC 28.

### **MLI: synthesised text of DTA with China**

The ATO has released the synthesised text of Australia's double tax agreement with China.

### **Administrative Review Tribunal Bill 2024 passed by Parliament (with amendments)**

The Administrative Review Tribunal Bill and associated Consequential Bills have been passed by Parliament and await assent.

### **Delivering Better Financial Outcomes: passes House (with amendments)**

The Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024 was passed by the House of Representatives.

### **Small Business and Charities Bill: Senate proposal to expand instant asset write-off concession again rejected**

The House of Representatives has again voted against proposed Senate amendments to the Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023.

### **Joint submission on Breach reporting under the Tax Agent Services Act 2009 - Draft TPB(I) D53/2024**

The IPA has been part of a Joint submission to the TPB on the draft guidance on Breach reporting under the Tax Agent Services Act 2009.

## **SUPERANNUATION**

### **Queensland women convicted for COVID-19 scheme fraudulent claims**

Three Queensland women have been sentenced to prison for illegally attempting to access superannuation payments under a Federal Government COVID-19 scheme.

## **APRA releases quarterly superannuation statistics**

APRA has released its Quarterly Superannuation Performance publication and the Quarterly MySuper Statistics report for the March 2024 quarter.

## **FINANCIAL SERVICES**

### **Proposed Financial Institutions Supervisory Levies for 2024-25**

Treasury has released its Proposed Financial Institutions Supervisory Levies for 2024-25 paper, seeking submissions on proposed levies for the 2024-25 financial year.

### **ASIC to launch new Professional Registers Search**

ASIC has announced that its new Professional Registers Search will launch in late June 2024.

## **REGULATOR NEWS**

### **ASIC News**

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

### **APRA news**

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

### **Legislative amendments**

Updates on recent legislative amendments.

### **Attorney-General's Department - AML / CTF survey**

Your assistance is requested in responding to a survey commissioned by AUSTRAC through the 'Nous Group to support analysis of the expected regulatory costs and intended benefits of the proposed reforms top AML / CTF obligations. The industry survey will inform the assessment of expected costs and benefits of the reforms' and closes on **Thursday 13 June 2024**.

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## **TAXATION**

### **DIS on Minerva: Pt IVA did not apply to scheme redirecting income via trusts**

The ATO released a [Decision Impact Statement](#) on *Minerva Financial Group Pty Ltd v FCT* [2024] FCAFC 28. In that case, the taxpayer successfully appealed to the Full Federal Court from a decision that Pt IVA applied to cancel tax benefits obtained when a financial services business was restructured so that income flowed through trusts to foreign residents rather than being derived by resident companies. The Full Court unanimously held that the primary judge erred in holding that the schemes in question were carried out for the dominant purpose of obtaining a tax benefit. The Court also rejected an additional scheme relied on by the Commissioner in the appeal, consisting solely of the non-exercise of a trustee's discretion to make distributions to certain beneficiaries.

The ATO says that the Full Federal Court's decision does not disturb the Commissioner's long-held position that Pt IVA can apply to schemes that include the exercise of a trustee's discretion to distribute income. Rather, the decision was reached "on the basis of a conclusion of the particular facts in this case of a non-bank lender with an 'IPO ready' business structure". For this reason, the ATO considers that the case has no effect on its current advice and guidance.

**Comments** on the DIS are due by 28 June 2024.

### **MLI: synthesised text of DTA with China**

The ATO has released the [synthesised text](#) of Australia's double taxation agreement with China. The synthesised text incorporates the modifications made to the DTA by the Multilateral Convention to Implement Tax Treaty Measures to Prevent Base Erosion and Profit Shifting (MLI). These modifications generally apply from 1 January 2023 and include:

- replacing the tie-breaker test for dual resident companies with the requirement to apply to the revenue authority of Australia or China for a determination of residency status for treaty purposes;
- replacing an anti-treaty shopping rule with the MLI principal purpose(s) test; and
- extending the article on the disposal of interests in land rich companies to interests in partnerships and trusts. However, China has not adopted the general MLI rules concerning transparent entities.

In addition, China has not adopted the mandatory arbitration rules, so they have not been incorporated into the DTA.

### **Administrative Review Tribunal Bill 2024 passed by Parliament (with amendments)**

The [Administrative Review Tribunal Bill 2024](#), the [Administrative Review Tribunal \(Consequential and Transitional Provisions No 1\) Bill 2024](#) and the [Administrative Review](#)

[Tribunal \(Consequential and Transitional Provisions No 2\) Bill 2024](#) were passed by Parliament on 28 May 2024 and await assent.

The main Bill will establish the Administrative Review Tribunal (the "Tribunal"), a new Federal administrative review body to replace the current Administrative Appeals Tribunal ("AAT") to conduct merits reviews of decisions (including Taxation and Business decisions). The Consequential Bills will amend over 138 Commonwealth Acts to accommodate the changes.

The Bills were subject to a number of Government amendments, including the insertion of a new Pt 5A which will provide a pathway for parties to reviews of social services decisions (which include social security, family assistance, child support, paid parental leave and student assistance reviews) to seek a second review of Tribunal decisions.

Further amendments aimed to:

- clarify the circumstances in which proceedings can be continued where an applicant dies, or is bankrupt, wound up or in liquidation or administration;
- reinstate the approach to secrecy and non-disclosure obligations that currently applies to staff and members of the AAT; and
- strengthen reporting requirements and transparency in relation to systemic issues in the making of reviewable decisions identified in the Tribunal's caseload, by requiring Commonwealth entities and Ministers to inform the Council of actions taken in relation to such issues.

## **Delivering Better Financial Outcomes: passes House (with amendments)**

The [Treasury Laws Amendment \(Delivering Better Financial Outcomes and Other Measures\) Bill 2024](#) was passed by the House of Reps on 29 May 2024 with a number of Government amendments.

The amendments impact Sch 1, ie the Quality of Advice Review recommendations. There are 2 principal changes, which will:

- expand the circumstances in which providers of financial product advice can make FSG information available on their website, as an alternative to providing an FSG to a retail client; and
- ensure that commissions for relevant insurance products received by persons who provide general advice remain exempted from the ban on conflicted remuneration.

## **Small Business and Charities Bill: Senate proposal to expand instant asset write-off concession again rejected**

The House of Reps has again voted against proposed Senate amendments to the [Treasury Laws Amendment \(Support for Small Business and Charities and Other Measures\) Bill 2023](#) which would:

- extend the coverage from small businesses to medium businesses, ie all entities with an aggregated turnover of less than \$50 million; and
- increase the threshold from \$20,000 to \$30,000.

Technically, the House voted in favour of a motion that it "insist on disagreeing to the amendments insisted on by the Senate". The Bill will now go back to the Senate, which is not due to resume sitting until 24 June 2024 – meaning that instant asset write-off proposal is still in limbo (as are the other measures in the Bill).

## **Joint submission on Breach reporting under the Tax Agent Services Act 2009 - Draft TPB(I) D53/2024**

The Joint Bodies recognise the intent of introducing new breach reporting requirements which are expected to enhance the quality of tax practitioner services, strengthen client protection, and instil greater trust in the integrity of the tax system. However, the Joint Bodies reiterate our concerns over the lack of proper consultation, particularly in relation to the amendments introduced by the Australian Greens to Part 5 of Schedule 3 to the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023. Those amendments were not subject to the usual process of public consultation and were tabled without an accompanying explanatory memorandum. This has resulted in vaguely expressed law that imposes a significant compliance burden on practitioners and will be challenging to apply and regulate in practice. We also acknowledge that the vaguely expressed law has made the task of the TPB as the regulator to practically implement and administer the law a challenging exercise.

You can read more on the Joint bodies key observations and recommendations to improve the draft guidance on the [IPA website](#).

## **SUPERANNUATION**

### **Queensland women convicted for COVID-19 scheme fraudulent claims**

The Australian Federal Police ("AFP") and the ATO has issued a [joint release](#) in relation to 3 Queensland women sentenced to prison for illegally attempting to access superannuation payments under a Federal Government COVID-19 scheme.

The women were charged in August 2020 and were alleged to have used myGov accounts to claim to be other superannuation fund-holders.

Two of the women pleaded guilty to 3 offences, including: (i) dealing in identification information that involves use of a carriage service; (ii) dealing in identification information (in relation to opening of bank accounts); and (iii) dishonestly influencing a Commonwealth public official. Both were sentenced to 3 years and 6 months imprisonment, to be released immediately on a 2-year good behaviour bond.

The third woman pleaded guilty to 2 of the 3 offences and was sentenced to 5 months imprisonment, to be released immediately on a 12-month good behaviour bond.

### **APRA releases quarterly superannuation statistics**

APRA has [released](#) its Quarterly Superannuation Performance publication and the Quarterly MySuper Statistics report for the March 2024 quarter. Total superannuation assets reached \$3.85 trillion as at 31 March 2024.

Copies of the publication are available on APRA's website at: [Quarterly superannuation statistics](#).

## **FINANCIAL SERVICES**

### **Proposed Financial Institutions Supervisory Levies for 2024-25**

Treasury has released [Proposed Financial Institutions Supervisory Levies for 2024-25](#). This paper, prepared in conjunction with APRA, seeks submissions on the proposed financial institutions supervisory levies for the 2024-25 financial year. The financial industry levies are set to recover the operational costs of APRA and other specific costs incurred by certain Commonwealth agencies, including Treasury and the ATO.

The levy minimum and maximum for large APRA regulated funds in 2024-25 remain unchanged, at \$12,500 and \$800,000 respectively.

The levy amount for Small APRA Funds will be maintained at a flat rate of \$590 per fund.

Total levies for the superannuation industry will be up 9% to \$121.6m for 2024-25.

**Submissions** are due by 10 June 2024

### **ASIC to launch new Professional Registers Search**

ASIC has [announced](#) its new Professional Registers Search ("PRS") will launch in late June 2024. The register will provide an improved search functionality, allowing users to search for a licence or registration across multiple register databases, including Australian Financial Services licensees and authorised representatives, using just one search.

## **REGULATOR NEWS**

### **ASIC News**

ASIC has released the following updates in its Newsroom section:

- [30 May 2024 – SPEECH – Three principles for better compliance](#) – ASIC Commissioner Simone Constant addressed the Australasian Investor Relations Association in Sydney about regulatory change for listed entities. The core matters for compliance are transparency, accountability and consistency. ASIC's role includes promoting and ensuring strong governance to bolster confidence to encourage investor participation and enhance the performance of Australia's financial system.
- [30 May 2024 – MEDIA RELEASE – ASIC permanently bans Melbourne director from financial services and credit activities](#) – Christopher David Nairn has been banned from participating in the financial services and credit industries with effect from 22 May 2024. He had been a director of Equus Private Wealth Pty Ltd and an authorised representative of Capstone Financial Planning Pty Ltd. ASIC found that he had forged documents and client signatures to access their funds and, as a result, he lacked the honesty, integrity and professionalism required in the financial services and credit



industry.

- [29 May 2024 – MEDIA RELEASE – Auditor and audit firm admit to independence failures](#) – ASIC has accepted a court-enforceable undertaking from registered company auditor Robert Johnson and audit firm Hardwicks, based in Canberra. Having audited a company for 32 years, Mr Johnson admitted that the long association had resulted in a high degree of familiarity and a threat to his independence. In doing so, he failed to ensure that the audits were performed in accordance with accounting standards. Mr Johnson will cancel his registration as an auditor; Hardwicks has undertaken to implement a quality control system.
- [29 May 2024 – MEDIA RELEASE – ASIC suspends AFS licence of Aurora Funds Management Limited](#) – ASIC has suspended the Australian financial services licence of Aurora Funds Management Ltd, the responsible entity for six managed investment schemes, until 20 September 2024. Aurora had failed to meet statutory requirements for auditing and financial reporting for the schemes and for itself. Aurora is barred from taking on new business in the schemes but may still provide financial services that are necessary for operating the schemes for current investors.
- [29 May 2024 – MEDIA RELEASE – ASIC disqualifies NSW director for five years](#) – ASIC has disqualified Andrew Liam Parry of Wentworth Falls, NSW, from managing corporations for the maximum period of five years under s 206F of the *Corporations Act 2001* (Cth) due to the failure of four companies with which he was associated between 2014 and 2023. He had failed to maintain company books and, in one case, falsified books, and also failed to exercise his powers and perform his duties with care and diligence, prevent insolvent trading, and assist a liquidator.
- [28 May 2024 – MEDIA RELEASE – Former Queensland financial adviser Brett Gordon banned following fraud conviction](#) – Following his conviction and imprisonment for fraud, ASIC has permanently banned Brett Gordon from providing financial services and engaging in credit activities. The former director of Refocus Financial Group Pty Ltd dishonestly used over \$650,000 of client funds for personal purposes and to pay for Refocus business expenses.
- [28 May 2024 – NEWS ITEM – ASIC to launch new Professional Registers Search](#) – ASIC has announced that it will launch a new Professional Registers Search in late June 2024, enabling users to review all databases with a single search and find information more easily. The PRS will bring together Australian Financial Services licensees, AFS authorised representatives, credit licensees and representatives, official liquidators, registered auditors (registered company auditors and authorised audit companies), registered liquidators, registered managed investment schemes, and approved self-managed super funds (SMSF) auditors that are currently visible on ASIC Connect registers.
- [27 May 2024 – MEDIA RELEASE - DanFX Trade former director Daniel Ali jailed for fraud](#) – Daniel Farook Ali, former director of DanFX Trade Pty Ltd, was sentenced in the Brisbane District Court to seven years and three months imprisonment for fraud, following an ASIC investigation. DanFX Trade had operated an unlicensed foreign exchange trading business. In a period spanning 2016 and 2017, he dishonestly used over \$770,000 of client funds for his own personal trading and investment purposes, and then left Australia in 2018 during an ASIC investigation and while civil proceedings were underway. He has also been permanently banned from managing corporations.

## APRA news

APRA has released the following updates in its News and publications section:

- [31 May 2024 – NEWS ITEM – APRA releases Monthly Authorised Deposit-taking Institution Statistics for April 2024](#)
- [29 May 2024 – MEDIA RELEASES – Federal Court finds individual in contempt for breaching orders to stop unauthorised banking business](#) – In the Federal Court, Lee J found in favour of APRA in its case against Andrew Morton Garrett who had been permanently restrained from carrying on a banking business in 2023. In continuing to purport to operate “banks”, he had engaged in a contempt of court. The judgment is available [here](#).
- [28 May 2024 – MEDIA RELEASES – APRA releases superannuation statistics for March 2024](#) – APRA has released its Quarterly Superannuation Performance and Quarterly MySuper Statistics for the March 2024 quarter. In the 12 months to 31 March 2024, total superannuation assets in Australia grew by 11.3 per cent and APRA-regulated assets increased by 12.5 per cent.
- [28 May 2024 – MEDIA RELEASES – APRA applies additional licence conditions on Mercer Super](#) – APRA has imposed additional licence conditions on Mercer Superannuation (Australia) Ltd to ensure it addresses breaches of prudential standards that APRA identified in 2023. From 27 May 2024, Mercer must implement a remediation plan in conjunction with an independent legal expert to address the shortcomings, appoint an independent review of the plan and Mercer’s risk and compliance systems and formulate a plan to address deficiencies picked up in the review.

## Legislative amendments

- [29 May 2024 – LEGISLATION – Treasury Laws Amendment \(Delivering Better Financial Outcomes and Other Measures\) Bill 2024](#) – This bill has been passed by the House of Representatives, with amendments. With regard to corporations matters, the Bill amends the *Corporations Act 2001* (Cth) with regard to ongoing fee renewal and consent requirements, insurance commissions, and rules banning conflicted remuneration all in Part 7.7A; financial services guide requirements in Part 7.7; plus, miscellaneous and technical amendments. The Senate sits next in the session commencing 24 June 2024.
- [28 May 2024 – LEGISLATION – Attorney-General’s Portfolio Miscellaneous Measures Bill 2023 \(Cth\)](#) – This bill was passed after House of Representatives agreed to Senate amendments. With regard to corporations matters, the Bill amends the *Australian Securities and Investments Commission Act 2001* (Cth) and the *Corporations Act 2001* (Cth) to confer jurisdiction on the Federal Court of Australia to hear and determine a range of summary and indictable offences relating to conduct within ASIC’s remit. The bill now awaits assent. The corporations amendments will take effect the following day.



## Attorney-General's Department - AML / CTF survey

### Survey overview and instructions

‘Key information about the survey process:

- Businesses that are not currently regulated under the AML/CTF regime may complete either the full version of the survey or the streamlined version. Please only complete ONE survey per entity, and only complete either the full survey OR the streamlined survey
- If your organisation operates as a group of entities, please answer your chosen survey from the perspective of the specific entity in which you work. That means that if your organisation contains multiple entities that are expected to provide designated service then we invite all entities within that group to complete the survey once and answer questions separately.
- The types of information you will be asked to provide are summarised in the section below.
- The surveys have been structured around each of the proposed AML/CTF obligations.
- The surveys will close at 5:00pm on 13 June 2024.

### Completing the survey

#### *Full survey*

The full survey is anticipated to take approximately two to three hours to complete, assuming the relevant information is at hand, and you are familiar with the reforms outlined in the recent consultation papers.

The survey will present a range of multiple choice, numerical and text response questions asking you to provide estimates of the potential resourcing effort and costs to comply with AML/CTF regulation under the proposed reforms.

#### *Streamlined survey*

The streamlined survey is anticipated to take approximately 20 minutes to complete, assuming you are familiar with the reforms outlined in the recent consultation papers.

For each of the AML/CTF regulatory obligations that your organisation may be subject to under the proposed reforms, you will be presented with several multiple-choice questions asking about:

- The existing processes and procedures your business may be able to utilise to comply with the AML/CTF obligations.
- The level of uplift you expect your business will require to comply with the AML/CTF obligations.
- Whether you intend to outsource any of your AML/CTF obligations to third parties.

### Survey access

Please access the survey which you wish to complete using the links provided below. If you intend to complete the survey in multiple stages, please ensure that you use the same device and browser. This will allow any progress to be saved and resumed later.

Full survey: [SURVEY LINK HERE](#)

Streamlined survey: [SURVEY LINK HERE](#)

Responses provided to Nous Group and the Department will be treated confidentially and will be used only for the purposes of regulatory impact analysis.

## **Queries**

If you have any queries regarding the impact analysis survey process, please contact Nous Group at [amlctf@nousgroup.com](mailto:amlctf@nousgroup.com).

If you have any queries regarding the policy reform consultation process, please contact the department at [economiccrime@ag.gov.au](mailto:economiccrime@ag.gov.au).