SUSTAINABILITY

Climate-related financial disclosures member survey

In December, the government released a consultation paper about the release of mandatory climate-related financial disclosures. As the IPA prepares its submission, we are consulting members to consider your views in our response to Treasury.

TAXATION

AAT to be replaced

The government has announced that it will legislate to abolish the Administrative Appeals Tribunal and replace it with a new federal review body.

2023-24 pre-budget submissions

The government is seeking submissions from individuals, businesses and community groups on their priorities for the 2023-24 Federal Budget.

Exclusions from shorter period of review for SMEs

Government has released amending regulations to exclude certain entities with particularly complex tax affairs from a shortened two year review period.

Personal tax and bracket creep: Budget outlook report

PBO has projected that the average personal income tax rate will increase across the medium term due to bracket creep even after Stage 3 tax cuts.

Electronic sales suppression tools: ATO raids

ATO and Federal Police have raided business across Australia suspected of supplying and using illegal electronic sales suppression tools or software to avoid tax.

Trust reimbursement agreements: ATO position

ATO has finalised its guidance on 100A trust reimbursement agreements with the released of a Taxation Ruling and companion Practical Compliance Guideline.

PAYG withholding: employees or contractors

ATO has released a Draft Taxation Ruling and associated Practical Compliance Guideline which explains the meaning of employee for PAYG withholding purposes.

Doubling of foreign investment residential land penalties

Treasurer has issued a media release advising that penalties for investors who break foreign investment laws for residential property have been doubled.

Reporting period change for electronic distribution networks

ATO has released an exposure draft instrument which proposes to amend the annual reporting period of electronic distribution platform operators.

Employee share schemes: ASIC legislative relief

An instrument has been registered to provide technical relief to facilitate the ESS provisions in the Corporations Act 2001.

Foreign-incorporated companies: transitional compliance extended

ATO has issued an updated practical compliance guideline which extends its transitional compliance approach to 30 June 2023.

Residential colleges and GST-free supplies

Practical Compliance Guideline PCG 2022/3 sets out ATO's compliance approach for universities and residential colleges that are endorsed charities re certain supplies.

FINANCIAL SERVICES

Financial Sector Reform Bill passed

The Financial Sector Reform Bill has passed all stages although without the proposed Financial Accountability Regime and Compensation Scheme of Last Resort.

Financial adviser registration delayed

Regulations have been registered to delay the requirements for AFS licensees to register financial advisers on the FAR for six months to 1 July 2023.

APRA prudential standard on recovery and exit planning

APRA has released its final Prudential standard aimed at ensuring APRA-regulated entities are better prepared to manage periods of severe financial stress.

Financial adviser imprisoned for super fraud

A former financial adviser has been sentenced after pleading guilty to dishonestly obtaining over $35,000 from his clients' super.

Tax (financial) advice services status to be displayed on FAR

ASIC has stated that its Financial Advisers Register (FAR) will soon display whether a financial adviser can provide tax (financial) advice services.

SUPERANNUATION

Superannuation audits: APRA standards

APRA has registered its new Prudential Standard for audit and related matters which applies to RSE licensees and RSE auditors.

ASIC warns super trustees to improve complaints handling

ASIC has called on super trustees to improve their internal dispute resolution systems after an ASIC review found sub-standard complaints handling arrangements.

ASIC guidance on SMSF advice

ASIC has updated its guidance on the provision of SMSF advice via the publication of an Information Sheet.

APRA 2022 Heatmap for MySuper products

APRA has released its 2022 MySuper Heatmap together with an Insights Paper to illustrate key concepts.

APRA super data reporting: strategic forum minutes

APRA has released the minutes from its first super data transformation strategic forum including concerns of members.

APRA annual super fund statistics 2022

APRA has released its annual fund level super annual statistics and Annual MySuper statistics for the period to June 2022.

SMSF auditor registration fees: regs remade

Regulations in relation to the fees payable by approved SMSF auditors have been remade to reflect the costs which ASIC incurs for each activity.

Reduction in eligibility age for downsizer super contributions

Treasurer has issued a media release reminding taxpayers that the eligibility age for downsizer super contributions has been reduced to 55.

REGULATOR NEWS

Board of Taxation CEO update

The CEO of the Board of Taxation has issued a December 2022 update providing a brief overview of the Board's activities in the 2022 calendar year.

ASIC regulatory costs for 2021-22

ASIC has published its 2021-22 annual dashboard of regulatory costs, including recovery through industry levies.

SUSTAINABILITY

Empowering the AASB to deliver sustainability standards

In December, the government released a consultation paper about the release of mandatory climate-related financial disclosures. As the IPA prepares its submission, we are consulting members to consider your views in our response to Treasury.

We would appreciate your feedback by Friday 20 January. Access the survey here.

TAXATION

AAT to be replaced

The Government has announced that it will legislate to abolish the Administrative Appeals Tribunal (AAT) and replace it with a new federal administrative review body.

As part of the reform, the Government has developed new AAT Appointment Guidelines for a merit-based appointments process. The Government said it will also appoint an additional 75 new members to the AAT to clear existing backlogs and implement an updated case management system.

All cases currently before the AAT will continue, and AAT members will consider applications for review of administrative decisions until the AAT is abolished. Any remaining cases will transition to the new federal administrative review body when it is established.

2023-24 pre-budget submissions

The Government is seeking submissions from individuals, businesses and community groups on their views for priorities for the 2023-24 Federal Budget. Further information on how to lodge submissions is available on the Treasury website.

Submissions are due by 27 January 2023.

As we do every year, the IPA will be making a pre-Budget submission to the Treasury. We welcome member input on any matter relating to tax, superannuation, financial services, or any other matter impacting the economy. Please send your input to: vicki.stylianou@publicaccountants.org.au.

Exclusions from shorter period of review for SMEs

The Government has released the Income Tax Assessment (1936 Act) Amendment (Period of Review) Regulations 2022 (the "Amending Regulations"). These amend the Income Tax Assessment (1936 Act) Regulation 2015 to exclude certain entities with "particularly complex tax affairs or significant international tax dealings" from a shortened two year period of review in respect of income tax assessments. Such entities will continue to have a four year amendment period.

The regs were issued in draft form in August 2022 and the final version is largely unchanged, other than "providing more certainty to when the period of review would apply to entities that engaged in certain activities".

Entities affected by the changes are highlighted below.

- The Amending Regulations remove the requirement that a four year period of review only applies where at least one of related parties already has a four year period of review.
- The standard four year period of review applies to certain foreign entities that derive assessable income of at least $200,000 from any source that is not an Australian source.
- Certain entities that are either foreign controlled Australian entities or non-resident entities at any time during the income year are excluded from the two year period of review. This definition is intended to capture Australian companies, trusts and partnerships that are controlled by foreign entities.
- The Amending Regulations exclude certain relevant assessed entities that engage in schemes captured by either the Diverted Profits Tax (DPT) or Multinational Anti-Avoidance Law (MAAL) from the two year period of review.
- Assessed entities with at least 10 other entities connected with or affiliated with the entity are excluded from the two year period of review – and accordingly will automatically be subject to the four year period of review.
- Assessed entities that may be entitled to the R&D tax offset or certain related deductions, recoupments and adjustments are to be excluded from the two year period of review.

- There are four categories of CGT relief that will be ineligible for the shortened period of review, ie the four year period will continue to apply entities that have claimed that CGT relief (Div 615 restructure; Div 125 demerger; Subdiv 126-B rollovers; Div 855 disregard of capital gain/loss).

Date of effect: The amendments are now in operation, ie they apply to assessments lodged after 9 December 2022 that relate to income years starting on or after 1 July 2022.

Personal tax and bracket creep: Budget outlook report

The Parliamentary Budget Office (PBO) has projected that the average personal income tax rate will increase across the medium term due to bracket creep, even after the Stage 3 tax cuts from 2024-25.

In its latest report, Beyond the budget 2022-23: Fiscal outlook and scenarios, the PBO projects total tax revenue to increase from 25.2% of GDP in 2022-23 to 26.2% of GDP in 2032-33, largely driven by bracket creep, and superannuation taxes due to higher employer contributions. The increase in personal income tax also reflects a small impact from the extension of the ATO's personal income tax compliance program. Company tax revenue is projected to decrease to 4.5% of GDP in 2032-33 (down from 5.2%).

Electronic sales suppression tools: ATO raids

The ATO and Federal Police have raided 35 businesses suspected of supplying and using illegal electronic sales suppression tools (ESST) or software to avoid tax. The ATO said raids in New South Wales, Queensland, Western Australia, and Tasmania were coordinated as part of a global ESST investigation by the Joint Chiefs of Global Tax Enforcement (J5). While no charges have been laid, the ATO said investigations are ongoing.

The ATO said it has seen ESSTs appear in hardware connected to the point of sales system, cloud-based software, and capability built directly into the software. ATO Deputy Commissioner and J5 Chief, John Ford, said it has been illegal to produce, supply, possess, use or promote ESST or software since October 2018. The ATO called on businesses using ESST to come forward to correct past tax returns and activity statements.

Trust reimbursement agreements: ATO position

The ATO has finalised its guidance on s 100A trust reimbursement agreements with the release of Taxation Ruling TR 2022/4 and the companion product Practical Compliance Guideline PCG 2022/2. The ATO has taken into account feedback received on Draft TR 2022/D1 and Draft PCG 2022/D1 (some of which was quite harsh), and also refers to two recent Federal Court decisions (Guardian AIT and BBlood Enterprises), now on appeal.

TR 2022/4 focuses on the basic requirements for s 100A of the ITAA 1936 to apply (a present entitlement arising out of or in connection with a reimbursement agreement, a benefit to another, a tax reduction purpose and the non-application of the ordinary dealing exception). The ATO's view on the availability of this exception is rather narrow. The ATO also considers that s 100A can apply to the streaming rules, even though those rules are concerned with specific entitlement, not present entitlement.

PCG 2022/2 explains how the ATO differentiates and manages risk for a range of trust arrangements to which s 100A might apply. It contains three risk zones: white (for pre-1 July 2014 arrangements); green (the green "scenarios" cover distributions to family members - this includes using the funds for superannuation contributions or deductible gifts, receipt of the entitlement within two years, the trustee's retention of funds and ordinary dealings); and red (high risk - eg arrangements the subject of a Taxpayer Alert, including TR 2022/1). The ATO will not generally dedicate compliance resources to consider the application of s 100A to white and green zone arrangements.

Date of effect: retrospective. However, for present entitlements arising before 1 July 2022, the ATO will stand by any administrative position reflected in a 2014 website guide, to the extent that view is more favourable to the taxpayer's circumstances.

PAYG withholding: employees or contractors

Earlier this year, the High Court handed down two landmark decisions on whether an employee-employer relationship exists - Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd [2022] HCA 1 and ZG Operations Australia Pty Ltd v Jamsek [2022] HCA 2. The ATO subsequently released a decision impact statement, indicating it would review the implications of these decisions for its relevant products, including TR 2005/16 (PAYG withholding from payments to employees) and various superannuation guarantee rulings. The ATO has now:

- withdrawn TR 2005/16 with effect from 15 December 2022;
- replaced it with Draft Taxation Ruling TR 2022/D3; and
- issued a companion product, Draft Practical Compliance Guideline PCG 2022/D5.

Draft TR 2022/D3 explains the meaning of "employee" for PAYG withholding purposes. In accordance with the High Court's decisions, the Draft states that whether a worker is an employee of an entity is a question of fact, determined by reference to an objective assessment of the totality of the relationship between the parties and having regard only to the legal rights and obligations which constitute that relationship. The central question is whether the person is working in the entity's business, based on the construction of the contractual terms, and having regard to the various indicia of employment identified in case law (eg control, specified result, risk, delegation).

Proposed date of effect: retrospective.

Draft PCG 2022/D5 sets out the ATO's proposed compliance approach for businesses that engage workers and classify them as employees or independent contractors. Specifically, it includes a risk framework for "worker classification" arrangements, based on the actions taken by the parties when entering into the arrangement.

Proposed date of effect: when the final guidance is issued.

Comments on both drafts are due by 17 February 2023.

Doubling of foreign investment residential land penalties

The Treasurer has issued a media release advising that penalties for investors who break foreign investment laws for residential property have been doubled, with effect from 1 January 2023.

Under Australia's foreign investment framework, foreign persons seeking to purchase residential real estate in Australia generally need to apply for foreign investment approval. This applies to new dwellings, vacant residential land for development and in some circumstances, established property.

The changes to penalties, along with technical updates to the fee cap amount to incorporate indexation, were contained in Sch 1 to the Treasury Laws Amendment (2022 Measures No 3) Act 2022 and Sch 1 to the Foreign Acquisitions and Takeovers Fees Imposition Amendment Act 2022.

Reporting period change for electronic distribution networks

The ATO has released an exposure draft entitled the Taxation Administration (Reporting by Electronic Distribution Platform Operators) Legislative Instrument 2022. This draft instrument proposes to amend the annual reporting period of electronic distribution platform operators (pursuant to item 15 of the table in s 396-55 of Sch 1 to the TAA 1953) to an alternate six monthly reporting period.

The draft proposes to take effect from different dates, depending on the type of transaction. It applies to transactions entered into on or after:

1. 1 July 2023, for transactions that relate to a supply of taxi travel;
2. 1 July 2023, for transactions that relate to a supply of short-term accommodation; and
3. 1 July 2024, for all other transactions to be reported under item 15 of the table in s 396-55 of Sch 1.

The instrument does not change the lodgment deadlines for the report. Under s 396-55(b)(i), the report must be given to the Commissioner on or before the 31st day after the end of each reporting period.

Comments are due by 3 February 2023.

Employee share schemes: ASIC legislative relief

ASIC Corporations (Employee share schemes) Instrument 2022/1021, has been registered to provide technical relief to facilitate the employee share schemes (ESS) provisions in the Corporations Act 2001 that commenced on 1 October 2022. The Instrument makes several modifications to the legislation, including technical relief so that salary sacrifice arrangements can comply with the ESS requirements for contribution plans (s 1100T). The relief also provides for expert valuations of ESS interests that are not ordinary shares.

The ESS regime is intended to replace ASIC's existing relief in Class Orders [CO 14/1000] and [CO 14/1001]. From 1 March 2023 entities will be unable to make new offers under these class orders: see ASIC Corporations (Amendment) Instrument 2022/1022.

Date of effect: 20 December 2022.

Foreign-incorporated companies: transitional compliance extended

The ATO issued an updated version of PCG 2018/9 on 22 December 2022. This guidance sets out a transitional compliance approach for companies that treated themselves as foreign residents on the basis of withdrawn TR 2004/15 but qualify as residents under the replacement ruling, TR 2018/5, due to their central management and control being in Australia. In particular, PCG 2018/9 gives companies time to change their governance arrangements so that their central management and control is exercised outside Australia.

Companies "impacted" in their efforts to change their governance arrangements now have until 30 June 2023 to make the necessary changes.

This is the fourth extension of the transitional compliance approach (initially applicable from 15 March 2017 (when TR 2004/15 was withdrawn) to 30 June 2019). However, the ATO says it will not be providing any further extensions.

Residential colleges and GST-free supplies

Practical Compliance Guideline PCG 2022/3 sets out the ATO's compliance approach for universities and residential colleges that are endorsed charities in relation to certain supplies to resident students. The relevant supplies are accommodation, meals, tertiary residential college courses and religious services. The Guideline can be used to determine if some or all of these supplies are GST-free under s 38-250 GST Act.

The ATO undertakes not to allocate compliance resources to review the GST outcomes of an arrangement if:

- the entity's GST position has been calculated in accordance with PCG 2022/3; and
- in relation to accommodation and meals - the ATO charity benchmark market values have been correctly applied.

Date of effect: tax periods starting on and from 1 January 2023.

FINANCIAL SERVICES

Financial Sector Reform Bill passed

The Financial Sector Reform Bill 2022 has passed all stages and awaits Royal Assent after the House of Reps agreed to the seven Government amendments made in the Senate. Those amendments have removed from the Bill the consequential amendments for the proposed Financial Accountability Regime (FAR) and Compensation Scheme of Last Resort (CSLR). The Government said this will enable further consultation on the FAR and CSLR without holding up the consumer credit reforms in the Bill. As a result, the Bill, as finally passed by both Houses, only includes the consumer credit reforms.

The Financial Sector Reform Bill 2022 was introduced on 8 September 2022 together with the Financial Accountability Regime Bill 2022; Financial Services Compensation Scheme of Last Resort Levy Bill 2022; and Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2022. Those other Bills remain before the Senate.

Financial adviser registration delayed

The Corporations Amendment (Registration of Relevant Providers) Regulations 2022, has been registered to delay the requirement for AFS licensees to register financial advisers on the Financial Advisers Register (FAR) for six months to 1 July 2023. This measure was previously announced by the Assistant Treasurer on 1 November 2022.

APRA prudential standard on recovery and exit planning

APRA has released its final Prudential Standard CPS 190 (Recovery and exit planning) aimed at ensuring APRA-regulated entities are better prepared to manage periods of severe financial stress. Under CPS 190, entities will be required to develop and maintain credible plans for managing stress, including actions that could be taken to stabilise and restore financial resilience and actions that effect an orderly and solvent exit from regulated activity.

Date of effect: 1 January 2024 for banks and insurers (and 1 January 2025 for RSE licensees).

Financial adviser imprisoned for super fraud

A former financial adviser has been sentenced in the Perth District Court after pleading guilty to dishonestly obtaining over $35,000 from his clients' superannuation. The former adviser was sentenced to three years (to be released after 18 months upon entering a $5000 recognisance to be of good behaviour for two years).

ASIC said the former advised had obtained First Nations consumers' super details and submitted falsified benefit access or hardship applications. The applications were made in the members' names without their specific consent and contained the bank account details for the adviser or his associates. After funds were released into the bank accounts, the former adviser retained up to 100% of the pay out in fees.

Tax (financial) advice services status to be displayed on FAR

ASIC has stated that its Financial Advisers Register (FAR) is soon to display whether a financial adviser can provide tax (financial) advice services. This will take effect from 1 February 2023.

ASIC also reminds Australian Financial Services (AFS) licensees that it is their responsibility to ensure that the details recorded on the FAR about their financial advisers is correct. If ASIC is not notified whether a financial adviser is qualified to provide tax (financial) advice services by 1 February 2023, the FAR will not display that the adviser can indeed do so.

SUPERANNUATION

Superannuation audits: APRA standards

APRA has registered Superannuation (prudential standard) determination No 4 of 2022 to determine its new Prudential Standard SPS 310 (Audit and related matters), which applies to RSE licensees and RSE auditors.

Date of effect: SPS 310 commences on 30 June 2023. The instrument will also revoke the existing standard made under the 2018 determination.

ASIC warns super trustees to improve complaints handling

ASIC has called on superannuation trustees to improve their internal dispute resolution (IDR) systems after an ASIC review found that some trustees had sub-standard complaints handling arrangements.

ASIC report (REP 751) outlines findings from a review of compliance with the IDR obligations in RG 271. While a few trustees did the right thing, in many cases ASIC found serious deficiencies in trustees' dispute resolution processes. ASIC said a number of trustees did not respond to a significant portion of complaints within the time limits. REP 752 also provides practical tips for writing responses to complaints.

ASIC guidance on SMSF advice

ASIC has updated its guidance on the provision of SMSF advice via the publication of Information Sheet INFO 274 (Tips for giving self-managed superannuation fund advice). When providing personal advice about SMSFs, ASIC says that AFS licensees and their representatives must highlight SMSF risks and ensure that any comparisons between SMSFs and APRA regulated funds remain relevant and up to date.

ASIC also called for the removal of any statements about a minimum balance for an SMSF reflecting that balance alone is not the driving indicator of suitability. Other factors include the risks and costs associated with setting up and/or switching to an SMSF, investment strategies, diversification, liquidity, asset choice, insurance, trustee responsibility and the time-commitment with running an SMSF. INFO 274 replaces INFO 205 and INFO 206, which have been withdrawn.

APRA 2022 Heatmap for MySuper products

APRA has released its 2022 MySuper Heatmap together with an Insights Paper to illustrate key insights from the Heatmap data. Of the 69 MySuper products evaluated, 6 were found to have "significantly poor" investment returns (8 years), with 3 of those 6 having failed the annual performance test for the second time. While there are 350,000 fewer members in MySuper products with significantly poor investment returns than in 2021, APRA said around 800,000 members' accounts remain in such underperforming products.

APRA super data reporting: strategic forum minutes

APRA has released the minutes from its first Superannuation Data Transformation Strategic Forum (SDTSF) held on 22 November 2022. APRA said it intends to publish a timeline for the key SDT dates in response to industry concerns about the multiple regulatory changes and consultations impacting superannuation entities, coupled with resourcing challenges. SDTSF members also raised the impact of the SDT Phase 1 Minor Amendments on the SPG 310 (Audit and Related Matters) final response, particularly in relation to expenses reporting for the year 1 July 2022 to 30 June 2023.

APRA annual super fund statistics 2022

APRA has released its Annual fund-level superannuation statistics and Annual MySuper statistics for the period to June 2022. The fund-level superannuation statistics contain detailed information on fund profiles and structure, financial performance and financial position, conditions of release, fees and membership.

SMSF auditor registration fees: regs remade

The Superannuation Auditor Registration Imposition Regulations 2022, has been registered to repeal and remake the Superannuation Auditor Registration Imposition Regulations 2012 before they sunset on 1 April 2023.

The Regulations prescribe the ASIC fees payable by approved SMSF auditors and have been updated to reflect the costs which ASIC incurs for each activity. For example, the fee for registering as an approved SMSF auditor has been increased to

$2,191 (up from $1,927). The application fee to cancel the registration of an approved SMSF auditor has been reduced to $193 (down from $899).

Date of effect: 22 December 2022.

Reduction in eligibility age for downsizer super contributions

The Treasurer has issued a media release stating that the eligibility age for downsizer super contributions has been reduced to 55, with effect from 1 January 2023.

The measure was implemented by the Treasury Laws Amendment (2022 Measures No 2) Act 2022. People previously needed to be 60 or older to be eligible. There is no maximum age limit.

The maximum downsizer contribution is $300,000 per contributor (ie $600,000 for a couple), although the entire contribution must come from the capital proceeds of the sale price. A downsizer contribution must also be made within 90 days after the home changes ownership (generally the date of settlement).

REGULATOR NEWS

Board of Taxation CEO update

The CEO of the Board of Taxation, Ms Christina Sahyoun, has issued the CEO Update - December 2022 providing a brief overview of the Board's activities in the 2022 calendar year and further updates on its current work program:

- Review of CGT roll-overs - the final report was submitted to the Government on 11 November 2022 but is yet to be publicly released; and
- Review of Digital Assets and Transactions - the Board has met with numerous stakeholder groups (including regulatory bodies) and received over 40 written submissions to the review. The Board will continue to engage with interested parties throughout the remainder of the review.

The next Board meeting is on 20 December 2022.

ASIC regulatory costs for 2021-22

ASIC has published its 2021-22 annual dashboard of regulatory costs. ASIC's total regulatory costs to be recovered through industry levies is $313.3 million for 2021-22 (which is $19m less than the original estimate).

Overall, ASIC's actual costs for superannuation trustees is $32.165m for 2021-22. This is $5.8m (15%) less than ASIC's original estimate. The main driver for the variance was that ASIC's court awarded costs for successful matters were 62% higher than estimated. Invoices for these levies for 2021-22 will be issued between January and March 2023.