

SUSTAINABILITY

IAASB advances timeline for consultation for proposal on sustainability assurance

The International Auditing and Assurance Standards Board (IAASB) recently confirmed its intention to advance the consultation on its proposed new standard for sustainability assurance. Subject to the expected IAASB approval of the Exposure Draft in June, stakeholders can now expect the public consultation in the coming months.

ISSB Update April 2023

The International Sustainability Standards Board (ISSB) met in Frankfurt on 19 April 2023. On the agenda were two key projects, being the 'International Applicability of the SASB Standards' and 'ISSB Consultation on Agenda Priorities'.

TAXATION

Measures to increase housing supply: announcement

Government has announced measures designed to increase the supply of housing including increase in depreciation rate for eligible new build-to-rent projects.

ATO data-matching: ride sourcing data

The ATO will acquire ride sourcing data to identify individuals that may be engaged in providing ride sourcing services during the 2022-23 financial year.

Draft legislative instrument: ATO's general remission power

ATO has issued a draft legislative instrument that seeks to codify its long-standing practice of remitting interest or penalties in certain circumstances.

Consultation paper: anti-money laundering regime extension

Government has released a consultation paper on proposed reforms to the anti-money laundering and counter-terrorism financing regime.

Decision Impact Statement on Guardian case

The ATO has released a decision impact statement on the Full Federal Court's decision in *FCT v Guardian AIT Pty Ltd ATF Australian Investment Trust* [2023] FCAFC 3.

Disclosure by ATO and ASIC to NDIS fraud taskforce

The government has issued regulations which will allow officers of the ATO and ASIC to freely share specified information with the NDIS fraud taskforce.

New lodgment deferral function is available

A new lodgment deferral function is now available in Online services for agents. Agents no longer need to download and complete different spreadsheets. The new function will soon be the single-entry point for deferral requests.

FINANCIAL SERVICES

Financial adviser professional standards and exam

Treasury has released draft legislation intended to refine the education and qualification framework for financial advisers.

AFS licensees: ASIC guidance on reportable situations

ASIC has updated its regulatory guide for AFS licensees on making notifications to ASIC under the reportable situations regime.

SUPERANNUATION

Personal super contributions: ATO draft instrument

ATO has released a draft legislative instrument proposing to use the Commissioner's remedial power to modify the work test to deduct personal super contributions.

RSE licensees: proposed class exemption for certain directors

A draft class exemption will ensure that RSE licensee directors who own less than a 15% controlling interest in the licensee do not have to obtain APRA approval.

Super fund performance test: draft approach to combining histories

APRA has issued two releases on combining product performance histories for the annual APRA super performance test.

APRA issues latest Choice Heatmap

APRA has published its latest Choice Heatmap publication which focusses on the super product segment where investment options are actively chosen by consumers.

SMSF auditor competency standards: class order repealed

ASIC has registered an instrument to repeal competency standards for approved SMSF auditors as they are no longer required.

REGULATOR NEWS

Measuring what matters: second phase consultation

Treasury has released a consultation pack as part of the government's plan to have a new standalone Measuring What Matters statement published in 2023.

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When complete, ISSA 5000 will be a stand-alone, overarching standard suitable for both limited and reasonable assurance of sustainability information reported across any sustainability topics. The standard will enable engagements of sustainability information prepared under multiple frameworks and be profession-agnostic, supporting its use by both professional accountant and non-professional accountant assurance practitioners in performing sustainability assurance engagements.

Click [here](#) to read the full release from the IAASB.

ISSB Update April 2023

The International Sustainability Standards Board (ISSB) met in Frankfurt on 19 April 2023. On the agenda were two key projects, being the 'International Applicability of the SASB Standards' and 'ISSB Consultation on Agenda Priorities'.

International Applicability of the SASB Standards:

- The ISSSB decided to ratify the Exposure Draft and allow 90 days for comment.

ISSB Consultation on Agenda Priorities:

- Having started with general sustainability requirements and climate disclosures, the ISSB now has its sights on its future work program.
- The Consultation on Agenda Priorities will request feedback from stakeholders to inform the ISSB's two-year work plan.
- The ISSB decided to allow 120 days for comment and to publish this request for information for public comment. This is expected to be published this month (May 2023).

The ISSB next meets across 15-19 May.

TAXATION**Measures to increase housing supply: announcement**

The Prime Minister [has announced](#) the following measures designed to increase the supply of housing:

- the depreciation rate for eligible new build-to-rent projects where construction commences after 9 May 2023 will be increased from 2.5% to 4%; and
- the withholding tax rate for eligible fund payments from managed investment trusts to foreign residents on income from newly constructed residential build-to-rent properties after 1 July 2024 will be reduced from the current 30% to 15%.

The Prime Minister stated that the reduction in the withholding rate on the MIT payments is "subject to further consultation on eligibility criteria". Further details will be advised upon release.

Given the commencement date of 9 May 2023 (for the building allowance), the measures obviously form part of the 2023-24 Federal Budget – due to be delivered that day.

ATO data-matching: ride sourcing data

The Commissioner has gazetted the [Notice of a ride sourcing data-matching program](#).

It will enable the ATO to acquire ride sourcing data to identify individuals that may be engaged in providing ride sourcing services during the 2022-23 financial year. The data items include:

- identification details (driver identifier; ABN, driver name; birth date; mobile phone number; email address; address); and
- transaction details (bank account details, aggregated payment details, gross fares, net amount paid to driver, and all other income to which GST may or may not apply to) of all payments received in the relevant period.

The ATO estimates that records relating to approximately 200,000 individuals will be obtained.

Draft legislative instrument: ATO's general remission power

The ATO has issued a draft legislative instrument that seeks to codify its long-standing practice of remitting interest or penalties to certain classes of entities, including where the charge or penalty has not yet become due and payable: Draft Taxation Administration (Remedial Power - Remission of Charges and Penalties) Determination 2023 ([LI 2023/D10](#)).

When final, the determination will apply to the General Interest Charge, Shortfall Interest Charge and the Failure to Lodge penalty that would otherwise be imposed on an individual or group:

- that the Commissioner is satisfied has been affected by a natural disaster or other serious and external adverse event;
- with a liability to a charge or penalty the Commissioner considers is a minor amount (eg where the cost of collection is greater than the amount to be collected); or
- where the Commissioner considers is appropriate to remit to encourage ongoing compliance with taxation laws (eg the remission of a charge or penalty for a taxpayers' first failure to lodge or pay on time).

Comments are due by 19 May 2023.

Consultation paper: anti-money laundering regime extension

The Attorney-General has released a [consultation paper](#) on proposed reforms to the anti-money laundering and counter-terrorism financing (AML/CTF) regime. Part two of this consultation paper proposes to extend the AML/CTF regime to certain high-risk professions (also known as tranche-two entities), including lawyers, accountants, trust and company service providers, real estate agents and dealers in precious metals and stones.

Comments are due by 16 June 2023.

Decision Impact Statement on Guardian case

In *FCT v Guardian AIT Pty Ltd ATF Australian Investment Trust* [2023] FCAFC 3, the Full Federal Court held that Pt IVA applied to a "washing machine" arrangement involving a non-resident controller, the trustee of a discretionary trust appointing unfranked income to a newly-formed corporate beneficiary, and the beneficiary distributing fully franked dividends back to the trust. This was the first time the Full Court has considered Pt IVA since its provisions were amended with effect from 16 November 2012.

However, the Full Federal Court concluded that the trust reimbursement agreement rules in s 100A ITAA 1936 did not apply because there was no agreement for s 100A purposes at the time the company's present entitlement arose (a requirement for s 100A to apply). In particular, there was insufficient evidence to show that, at that time, an understanding existed within the controller's advisers that the company would pay a dividend and that this understanding could be imputed to the controller because of his existing practice of following their advice.

The ATO focuses on s 100A in its [Decision Impact Statement](#). One month prior to the Full Federal Court's decision, the ATO finalised its long-awaited guidance on s 100A with the release of Ruling TR 2022/4 and the companion product PCG 2022/2. The ATO says it will only need to make "minor updates to TR 2022/4 to reflect aspects of the Court's decision", including in relation to the adoption of plans or recommendations from advisers. The ATO now accepts that a mere "general practice" of following advice will be insufficient but that "the requisite authorisation may exist in other cases where the evidence establishes that the

relevant parties have agreed in advance to follow an adviser's plans or recommendations".

Unsurprisingly, the ATO says that the Full Federal Court's decision on s 100A "largely turned on the particular facts of this case". (A similar observation is not made in relation to Pt IVA.)

The ATO also plans to update PS LA 2005/24 on Pt IVA to reflect the Court's views that, in identifying an alternative postulate for post-15 November 2012 schemes, particular regard must be had to the substance of the scheme and its result or consequence, while the income tax result of the alternative postulate must be disregarded.

Comments on the DIS are due by 19 May 2023.

Disclosure by ATO and ASIC to NDIS fraud taskforce

The Government has issued the [Treasury Laws Amendment \(Disclosure of Information to Fraud Fusion Taskforce\) Regulations 2023](#).

They will allow officers of the ATO and ASIC to freely share specified information with the Fraud Fusion Taskforce. This Taskforce has been established to detect, address and prevent fraud against the NDIS. Such information would qualify as protected information for the purposes of the s 355-155 of Sch 1 to the TAA 1953 and, without the regulations, officers would otherwise be in breach of this provision. The establishment of the Taskforce was announced in the October Federal Budget.

New lodgment deferral function is available

The ATO on their website state that 'the new function pre-populates information based on the client you're seeking a lodgment deferral for. It also allows you to view the lodgment deferral requests you've submitted.

Act now

To get ready to use the new function, the ATO 'recommend that you:

- check staff submitting lodgment deferral requests have standard myGovID identity strength

- have access to client registration add/update permission in Online services for agents. Refer to [Access Manager permissions](#) for further details.
- let your staff know that once we switch off the old process, this will be the only way to submit a lodgment deferral.'

The ATO websites states 'To access online deferrals, you need Standard myGovID strength.

From the Agent home page:

- select **Reports and Forms** then **Forms**
- select the **Lodgment deferral form**.

This takes you to the Lodgment deferral screen, where you can:

- add a new lodgment deferral request
- view submitted deferral requests for up to 90 calendar days.

The new online function pre-populates information based on the client you're seeking a lodgment deferral for, and it allows you to view the lodgment deferral requests you've submitted. For requests that meet agent-assessed guidelines, you'll receive a response within 48 hours.'

Support materials available

The ATO 'understand that any improvement means a change to how you do things in your practice'. So, the ATO have 'developed the following to support you:

- Help aside information in Online services for agents – this is available on every screen to guide you through each step
- updated web content – [general information](#) about the new function and how to request a lodgment deferral
- [Online services for agents user guide](#) – detailed information and instructions to guide you through the process of lodging single or multiple requests.'

ato.gov.au content links

- General information – [Lodgment program deferrals](#)

- Function instructional information – [Online services for agents user guide – Lodgment deferrals](#)
- ATO Tax professionals newsroom article – [New lodgment deferral function is here!](#)

Promotional video featuring ATO Assistant Commissioner, Kath Anderson

- [The new online service for requesting lodgment deferrals is here.](#)

FINANCIAL SERVICES

Financial adviser professional standards and exam

Treasury has released [draft legislation](#) intended to refine the education and qualification framework for financial advisers. In particular, it will fulfill the Government's election commitment to better recognise the experience of long-serving advisers.

Under the current law, existing financial advisers must complete an approved qualification by 1 January 2026 to meet the qualification standard. They must also pass the financial adviser exam and comply with CPE requirements.

The draft legislation would deem an adviser to have met the education requirements if they:

- have 10 years (cumulative) experience providing advice between 1 January 2007 and 31 December 2021; and
- have not recorded any disciplinary action on the Financial Advisers Register before 31 December 2021.

To be considered an experienced adviser, the adviser must still pass the exam.

There are also changes to the education requirements for new entrants. In addition, financial advisers who are also registered tax agents will not be required to meet the additional requirements to be a qualified tax relevant provider (ie as the current law requires).

Comments due by 3 May 2023. The changes will commence the day after the amending legislation receives assent.

AFS licensees: ASIC guidance on reportable situations

ASIC has updated its Regulatory Guide ([RG 78](#)) for AFS licensees on making notifications to ASIC under the reportable situations regime (formerly breach reporting). The updates to RG 78 seek to clarify aspects of the existing guidance and provide new guidance in response to operational issues identified since the regime started on 1 October 2021. ASIC said it will also make minor changes to the prescribed form for lodging reportable situations, to be implemented on 5 May 2023.

SUPERANNUATION

Personal super contributions: ATO draft instrument

The ATO has released a Draft Legislative Instrument proposing to use the Commissioner's remedial power (CRP) to modify the "work test" under s 290-165(1A) of the ITAA 1997 to deduct personal super contributions.

The [Exposure Draft - Taxation Administration \(Remedial Power - Work Test for Personal Superannuation Contributions\) Determination 2023](#) (Draft LI 2023/D11) proposes to modify s 290-165(1A) to ensure that individuals aged 67-75 who are "employees" under the expanded meaning in ss 15A(2) to 15A(10) of the SIS Act can continue to deduct a personal super contributions as if the work test had not been relocated from the SIS Regs to the ITAA 1997 in 2022. The proposed modification will ensure that such "covered persons" (eg company directors, constitutional or statutory office holders, parliamentarians and ADF members) who may not otherwise be common law employees under the ITAA 1997, are capable of meeting the "work test", provided that they otherwise meet the relevant criteria.

Date of effect: 1 July 2022.

Comments are due by 5 May 2023.

RSE licensees: proposed class exemption for certain directors

A [draft class exemption](#) will ensure that RSE licensee directors who own less than a 15% controlling interest in the licensee do not have to obtain APRA approval.

Individuals must obtain approval from APRA to own or hold a controlling stake of more than 15% in an RSE licensee. As directors are considered to be associates of each other, each director shareholder is treated as having a 100% stake in the RSE licensee and thus is deemed to have a controlling stake (under the separate change and control provisions).

This means that all RSE licensee directors required to hold shares must obtain APRA approval, even those with shareholdings less than 15%. The proposed exemption will ensure that approval will not be required for those who hold a stake in the RSE licensee of more than 15% only as a result of the aggregation of the person's direct control interest and the direct control interests held at that time by associates.

Comments due by 17 May 2023.

Super fund performance test: draft approach to combining histories

APRA has issued two releases on combining product performance histories for the annual APRA superannuation performance test:

- [Proposed technical determination for combining MySuper product performance histories](#): Draft Superannuation Technical Determination No 1 of 2023 proposes to remove the need for APRA to make individual determinations for lifecycle MySuper products for which performance histories are required to be combined. Comments are due by 11 May 2023.
- [Information paper: Combining trustee-directed product performance histories - APRA's approach](#): This information paper outlines APRA's methodology for combining performance histories of trustee-directed products for the 2023 performance test.

APRA issues latest Choice Heatmap

APRA has [published](#) its latest Choice Heatmap publication which focusses on the superannuation product segment "where investment options are actively chosen by consumers".

In comparing it to the 2021 Choice Heatmap, APRA highlights the following.

- One in five Choice investment options with an eight-year history has significantly underperformed the heatmap benchmarks.
- Two-thirds of Choice investment options that are closed to new members had poor or significantly poor performance relative to the heatmap benchmarks.
- Average fees are higher in Choice products that are closed to new members.

SMSF auditor competency standards: class order repealed

[ASIC Superannuation \(Repeal\) Instrument 2023/222](#) repeals ASIC Class Order [[CO 12/1687](#)] which contained competency standards for approved SMSF auditors. ASIC considers that CO 12/1687 is no longer required as the relevant auditor knowledge requirements are covered by the applicable AUASB standards and APES 110.

REGULATOR NEWS

Measuring what matters: second phase consultation

Treasury has released a [consultation pack](#) as part of the Government's plan to have a new standalone Measuring What Matters statement published in 2023.

The Government set out early ideas on a Measuring What Matters statement in its October 2023 Budget and organised a consultation process (ie First Phase) which ran to 31 January 2023.

The Second Phase consultation pack has been prepared to facilitate a broad range of people – such as members of Parliament, community groups, businesses, academics, unions, local government as well as non-aligned individuals – to discuss and provide feedback on an emerging set of Measuring What Matters policy themes. It includes suggestions on consulting, frequently asked questions and a suggested feedback form. The closing date for comments is 26 May 2023.

The statement will cover things like: income and wealth; work and job quality; housing; health; knowledge and skills; environmental quality; subjective well-being; safety; work-life balance; social connections; and civic engagement.