TAXATION

The Small business technology investment and Small business skills and training boosts

Eligible small businesses can now claim two new deductions to boost growth and help them thrive. Small business technology investment boost and Small business skills and training boost.

ATO Charter launch

The ATO has launched the ATO Charter which aims to empower the community with a concise and user-friendly resource that clearly outlines the ATO's commitments to everyone who works with the ATO, what the ATO ask of them and steps they can take if they are not satisfied.

ATO obtaining extensive data: insurance and sharing economy

ATO has issued a media release stating that it is obtaining extensive data on residential properties and income protection policies.

STP reporting exemption for certain class of entities extended

ATO has registered an instrument that exempts certain entities that do not have an ABN from STP reporting.

Car expenses: cents per km rate 2023-24

Government has registered a Determination which sets the rate at which work-related car expenses deductions may be claimed for 2023.24 income year.

Five year ban for Code breach: TPB case study

TPB has issued a case study where a tax agent's registration was terminated with a five year ban from reapplying for registration.

ANAO critical of Treasury approach to black economy

ANAO has issued a report which is critical of the way in which Treasury has responded to the implementation of the recommendations of the Black Economy Taskforce.

Measures (No 4) Bill 2022 awaits Assent

Bill that contains measures including small business skills and training, cryptocurrency, and FBT record keeping awaits Assent.

Measures (No 2) Bill 2023 passes Parliament

Bill to enact measures including the Medicare levy low-income thresholds and PAYG/GST instalment uplift factor awaits Assent.

Reporting period for electronic distribution platform operators

ATO has registered an instrument which replaces the default annual reporting periods for electronic distribution platform operators with six-monthly reporting periods.

QLD Budget

Queensland 2023-24 Budget has been delivered and contains tax related measures including payroll tax discount for regional employers and build to rent concessions.

SA Budget

2023-24 SA Budget has been delivered and mainly focuses on stamp duty concessions for first home buyers and a land tax reduction for eligible build to rent properties.

GST

GST: recipient created tax invoice determination

ATO has registered a Determination which allows a specific class of tax invoice to be issued by recipients of taxable supplies.

2023 Law Improvement Package Bill introduced

Bill has been introduced which will transfer matters currently contained in ASIC legislative instruments into primary law.

FINANCIAL SERVICES

ASIC invites Australian entities to assess their cyber resilience

'ASIC-regulated entities, including publicly listed companies and other entities holding licences and authorisations, are invited to take part in a survey to measure cyber resilience in Australia's corporate and financial markets. ASIC anticipates that the survey will close on **Sunday, 9 July 2023**.'

Compensation scheme of last resort Bills await Assent

Financial sector reform Bills to establish a framework for a compensation scheme of last report has passed all stages without amendment and await Assent.

Treasury Laws Amendment No 3 Bill introduced

Bill to refine the education and qualification framework for financial advisers has been introduced.

Quality of advice review: government response

Government has published its response to the Quality of advice review which looks to adopt the “bulk” of recommendations.

Financial adviser registration delayed to 1 October 2023

ASIC has deferred the requirements for AFS licensees to register financial advisers on the Financial Advisers Register until 1 October 2023.

SUPERANNUATION

Diverting property development profits to SMSFs

ATO has issued a taxpayer alert warning taxpayers against arrangements which divert profits of property development projects to SMSF using special purpose vehicles.

Proposed changes to NALE: draft legislation

Government has released draft legislation proposing to amend the non-arm’s length expense provisions for superannuation funds.

Super trustee performance tests: changes flagged

Government has issued a media release confirming that it will update regulations relating to assessing the performance of super trustees in time for the August 2023 test.

APRA: update on FAQ on super performance test

APRA has released a set of new and updated FAQs as guidance to registrable superannuation entity licensees for the administration of the super performance test.

Military invalidity payments: amending regulations

Government has registered regulations which will complement legislation to ensure that certain military invalidity payments are super lump sum payments.

REGULATOR NEWS

APRA's approach to super reporting standards revocation

APRA has published an update to its FAQ for the superannuation data transformation project.

APRA stakeholder survey findings

APRA has released its 2023 stakeholder survey of regulated entities which received a response rate of 67%.

TAXATION

The Small business technology investment and Small business skills and training boosts

Small business technology investment boost

The first boost is the Small business technology investment boost which allows eligible small businesses to claim an additional 20% tax deduction to support the uptake of digital technology, helping businesses grow by investing in their digital operations.

It applies to eligible expenses and depreciating assets capped at $100,000 of expenditure per income year, which means the maximum bonus deduction is $20,000 per income year.

It's available to businesses where the eligible expenditure is incurred between 7.30pm AEDT 29 March 2022 and 30 June 2023. An entity can claim the boost for expenditure on a depreciating asset only if the asset is first used, or installed ready for use, by 30 June 2023.

Small business skills and training boost

The second boost, the Small business skills and training boost offers eligible small businesses an additional 20% tax deduction to train new and existing employees. Small businesses are able to claim the deduction for the cost of external training courses delivered to employees either in person in Australia or online, by providers registered in Australia. This boost aims to help businesses build a better trained and more productive workforce.

It's available to businesses where the eligible expenditure is:

- incurred between 7.30pm AEDT 29 March 2022 and 30 June 2024; and
- related to training, where the enrolment or arrangement for the provision of the training occurs at or after 7.30pm 29 March 2022.

Both boosts are available to small businesses with an aggregated annual turnover of less than $50 million. When businesses claim the bonus deduction, depends on whether the business is a normal, early or late balancer.

For more information about what and when they claim, and how to correctly claim the bonus deductions, visit www.ato.gov.au/Technologyboost and https://www.ato.gov.au/Skillstrainingboost

Please note, the Small business energy incentive measure announced in the 2023—24 Budget is not yet law. We will provide more details and supporting communication for the measure once it does receive Royal Assent.

ATO Charter launch

About the ATO Charter

The ATO Charter aims to empower the community with a concise and user-friendly resource that clearly outlines the ATO’s commitments to everyone who works with them, what the ATO asks of them and steps they can take if they are not satisfied.

These commitments include:

- Fair and reasonable treatment
- Professional service
- Support and assistance
- Security of your data and privacy
- Keeping you informed

To help the ATO to provide you with the best possible service and help you meet your obligations, the Charter also outlines some things that the ATO asks of you.
These include meeting your obligations, keeping good records and responding to our queries.

Improvements to the ATO Charter

The ATO asked the community for their thoughts on the Charter and how they can strengthen it.

This feedback showed people wanted a simple resource which helped them understand what they can expect when interacting with the ATO.

On 26 June 2023 the ATO launched an improved Charter which is now shorter and easier to navigate.

The ATO have also increased the prominence within the Charter of steps people can take if they are not satisfied or believe the ATO have not followed the Charter.

This increased transparency and support helps ensure that people have a clear understanding of their options and feel empowered in their interactions with the ATO.

Many submissions to the review called for greater acknowledgment of the ATO's support and assistance, particularly for people experiencing vulnerability, difficult times or impacted by crisis events.

The ATO have included clear commitments in the Charter which acknowledge people may need help in different ways, at different times.

To learn more about the ATO commitments, visit ato.gov.au/atocharter

You can also speak to a professional advisor or contact the ATO via ato.gov.au/about-ato/contact-us

ATO obtaining extensive data: insurance and sharing economy

The ATO has issued a media release stating that it has and is obtaining extensive data on residential investment properties. The data is obtained from property managers, landlord insurance providers and financial institutions providing loans for residential investment properties, as well as income protection policy information.

The release also advised the following.

- Nine in 10 rental property owners are getting their return "wrong", eg interest from property loan refinance to purchase personal items is not tax deductible but insurance premiums paid for rental properties are tax deductible, while insurance payouts received in relation to an investment property must be reported as income.
- Income protection insurance purchases are generally deductible unless they are paid by the taxpayers' super fund. However, income protection insurance payout must be included as income regardless of source of policy funding (ie self or super fund).

The release notes that the Sharing Economy Reporting Regime ("SERR") starts from 1 July 2023, following the passage of legislation in 2022.

STP reporting exemption for certain class of entities extended

The ATO has registered the Taxation Administration (Single Touch Payroll Reporting Exemption for Withholding Payer Number Holders) Instrument 2023. The instrument exempts certain entities that do not have an ABN but instead have a Withholding payer number (WPN) from STP reporting.

The instrument renews the existing exemption provided for by the Taxation Administration - Single Touch Payroll - 2021-22 and 2022-23 years Withholding Payer Number Exemption 2021 (F2022L00016) which is due to end on 30 June 2023. This instrument extends the exemption for the specified class of entities from STP reporting until after 30 June 2033, at which point a further extension of the exemption may be considered.

Date of effect: 1 July 2023.

Car expenses: cents per km rate 2023-24

The Government has registered the Income Tax Assessment (Cents per Kilometre Deduction Rate for Car Expenses) Determination 2023. The instrument sets the rate at which work-related car expense deductions may be claimed at 85 cents per kilometre for the 2023-24 income year.

Date of effect: 1 July 2023. The rate shall remain applicable to subsequent income years until such time as it is varied.

Five year ban for Code breach: TPB case study

The TPB has issued a case study where a tax agent's registration was terminated with a five-year ban from re-applying for registration. The Board Conduct Committee (BCC) found the agent breached six items of the Code of Professional Conduct (Code):

- Code item one - making false statements to the Board in their renewal applications and annual declarations;
- Code item two - failing to declare over $16 million in assessable income in personal income tax returns (ITRs) lodged with the ATO;
- Code item four, seven, nine - lodging ITRs on behalf of a client which incorrectly declared their income, despite the agent being the director of the corporate trustee of the company employing the client; and
- Code item 11 - preparing multiple versions of ITRs and maintaining two or more sets of financial records. The ITRs contained different amounts of assessable income, with different versions provided to the ATO and to financial institutions.

ANAO critical of Treasury approach to black economy

The Australian National Audit Office has issued a report which is at times scathing of the way in which Treasury has responded to the implementation of the recommendations of the Black

Economy Taskforce. In contrast, the Implementation of the Government Response to the Black Economy Taskforce Report stated that the ATO and Department of Home Affairs were "largely effective" in implementing recommendations.

The report states the following.

- Treasury did not establish a framework to assess the effectiveness of the whole-of-government implementation of the Government response to the Taskforce report and, as such, it cannot demonstrate that the objectives of the Taskforce's strategy have been achieved.
- Treasury did not effectively coordinate the implementation of the Government response to the Taskforce report. It failed to fully establish governance and coordination arrangements, did not adequately monitor and report on progress in implementing the report's recommendations and has not established evaluation arrangements. Treasury's management of information in relation to the implementation of the Taskforce report did not support effective whole-of-government coordination.
- The ATO and Home Affairs are implementing the recommendations that they have responsibility for in a largely effective manner. Treasury is not implementing the recommendations that it has responsibility for in an effective manner.

The report makes four recommendations to overcome this. Treasury agreed in part to the first, and in full to the other three.

Measures (No 4) Bill 2022 awaits Assent

The Treasury Laws Amendment (2022 Measures No 4) Bill 2022 awaits assent after the House of Reps agreed to the Senate amendments to the Bill. Those Government amendments remove the DGR provisions (Sch 7) from the Bill (which were instead included in the Treasury Laws Amendment (2022 Measures No 5) Bill 2022 and enacted in February 2023).

The 2022 Measures (No 4) Bill contains the following measures:

- small business skills and training – an additional 20% of eligible expenditure incurred on external training provided to their employees;
- small business digital operations – an additional 20% of eligible expenditure on expenses and depreciating assets for their digital operations or digitising their operations;
- digital games tax offset – a refundable tax offset will be available for eligible expenditure incurred in the development of digital games;
- cryptocurrency not a foreign currency – digital currencies (such as bitcoin) will continue to be excluded from the foreign currency tax arrangements;
- FBT record keeping – employers may be able to rely on adequate alternative records;
- super fund financial reporting and auditing – APRA-regulated super funds will be required to prepare and lodge audited financial reports with ASIC.

Measures (No 2) Bill 2023 passes Parliament

The Treasury Laws Amendment (2023 Measures No 2) Bill 2023 has passed Parliament and awaits assent. It will enact the following measures.

- The Medicare levy low-income thresholds and the Medicare levy surcharge low-income threshold for 2022-23.
- The PAYG and GST instalment uplift factor for 2023-24 (6%).
- To allow primary producers to treat certain carbon abatement income as primary production income for the purposes of the Farm Management Deposit Scheme and accessing income tax averaging arrangements for primary producers.
- To amend the National Housing Finance and Investment Corporation Act 2018 to enable the relevant Minister to issue directions to the National Housing Finance and Investment Corporation through the Investment Mandate. This will facilitate changes to the Home Guarantee Scheme.
- The Bill will ensure that those members will continue to have the assurance of the existing Commonwealth guarantee if the CBA Super fund is merged with another superannuation fund.

The Senate added a Sch 6 to the Bill which provides DGR status to an entity known as Australians for Unity.

Reporting period for electronic distribution platform operators

The ATO has registered the Taxation Administration (Reporting by Electronic Distribution Platform Operators) Legislative Instrument 2023.

Under table item 15 in s 396-55 in Sch 1 to the Taxation Administration Act 1953 (the "Act"), operators of electronic distribution platforms are required to report information about certain supplies made through their platforms to the ATO. The Instrument replaces the default annual reporting period with six-monthly reporting periods. The substituted reporting periods will be from 1 January to 30 June, and 1 July to 31 December, in each calendar year.

Date of effect: Depending on the type of transaction, the Instrument applies to transactions entered into on or after:

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

QLD Budget

The Queensland 2023-24 Budget has been delivered and contained the following tax-related measures. The measures are contained in the Revenue Legislation Amendment Bill 2023.

- Payroll tax discount for regional employers: Queensland currently has a 1% discount on the payroll tax rate for employers that had an ABN registered business address in regional Queensland and at least 85% of their taxable wages paid to employees

located outside south-east Queensland. This measure was set to expire in June 2023, but has been extended for 7 years, ie until 30 June 2030.
- Apprentice and trainee payroll tax rebate: the 50% payroll tax rebate for wages paid to apprentices and trainees will be extended for 12 months until 30 June 2024 (ie, it was due to expire on 30 June 2023).
- Build to Rent concessions: the Government is to implement tax concessions for "Build to Rent" developments. Such developments must provide at least 10% of dwellings as affordable housing, ie with discounted rents. To qualify, discounted rents must be 25% below market rents of similar dwellings in the build to rent development.

Eligible Build to Rent developments will be able to benefit from the following tax concessions:

- 50% reduction in the taxable value of land for land tax, for land used for a Build to Rent development, up to a maximum term of 20 years;
- 100% reduction in the taxable value of land for land tax foreign surcharge for land used for a Build to Rent development up to a maximum term of 20 years;
- 100% discount on any additional foreign acquirer duty for land for a Build to Rent development.

SA Budget

The 2023-24 SA Budget has been delivered and, in terms of tax-related measures, focusses on first home buyers – with the keynote item being the targeted abolition of stamp duty. There was also an affiliated land tax measure announced. The measures are contained in the Statutes Amendment (Budget Measures) Bill 2023.

- Stamp duty will be abolished for eligible first home buyers who enter into a contract to purchase a new home or vacant land to build a new home on or after 15 June 2023. No stamp duty will be payable on the purchase of an eligible new home valued up to $650,000, with relief progressively phasing out for properties valued up to $700,000. For the purchase of vacant land on which a new home will be built, no stamp duty will be payable for vacant land valued up to $400 000 with relief phasing out for land valued up to $450,000.
- The 2023-24 State Budget introduces a land tax reduction for eligible build-to-rent properties on South Australian land, where construction commences on or after 1 July 2023. This will apply as a 50% reduction in the land value of relevant parcels of land, where the land is being used as an eligible build-to-rent project. The land tax reduction will be available from the 2023-24 financial year up to, and including, the 2039-40 financial year.

In addition, the existing First Home Owner Grant property value cap will be increased from $575,000 to $650,000 for eligible contracts entered into on or after 15 June 2023. The Grant provides eligible purchasers with $15,000 to assist with the purchase cost of a new home. The Government will also implement its election promise to introduce a low deposit home loan scheme for first home buyers building a new home. It will allow first home buyers to borrow to construct their first home with a 2% deposit (reduced from the previously announced 3%).

GST

GST: recipient created tax invoice determination

The ATO has registered the A New Tax System (Goods and Services Tax): Recipient Created Tax Invoice Determination 2023. The instrument allows a specific class of tax invoice, called a recipient created tax invoice (RCTI), to be issued by recipients of taxable supplies (ie government related entities; large business entities; and business entities) that meet specific requirements.

This instrument replaces 51 instruments, one of which is the Goods and Services Tax: Classes of Recipient Created Tax Invoice Determination (No 1) 2012 (which sunsetted on 1 April 2023). The Commissioner will not initiate any compliance action with respect to transactions affected by the instrument that sunsetted for the period from 1 April 2023 to 15 June 2023.

Date of effect: 15 June 2023.

2023 Law Improvement Package Bill introduced

The Treasury Laws Amendment (2023 Law Improvement Package No 1) Bill 2023 has been introduced into the House of Reps. It will transfer "longstanding and accepted matters" which are currently contained in ASIC legislative instruments into the primary law. It also proposes a number of technical amendments which are not expected to have any compliance or financial impact.

The technical amendments will impact two aspects of GST. The first change will apply to the certification requirements for individuals who wish to obtain a motor vehicle GST-free on the basis of medical eligibility (yet again). The second impacts the GST withholding rules relating to supplies of certain new residential premises, where the liability to remit GST is transferred to the purchaser (ie rather than the vendor). It will amend s 18-60(1)(a) of the Sch 1 to the TAA 1953 "to make it clear" that the supplier is entitled to the credit for the GST paid by the purchaser.

FINANCIAL SERVICES

ASIC invites Australian entities to assess their cyber resilience

'Participation in the survey is voluntary, with all responses anonymised. The survey has been designed to help an entity assess its ability to:

- govern and manage organisational-wide cyber risks
- identify and protect information assets that support critical business services
- detect, respond to and recover from cyber security incidents.

The survey is accessible to ASIC regulated entities by logging into the ASIC Regulatory Portal, and following the link provided.

ASIC will publish a report with key findings from the survey later this year.
After the survey closes, participants who elected to receive an individual report will receive insights into how they have assessed their current cyber resilience capability compared to those of industry peers.

More information on ASIC's cyber pulse survey is at asic.gov.au/cyberpulse.

All information collected will be de-identified and anonymised and cannot be used in any regulatory or enforcement action.'

Compensation scheme of last resort Bills await Assent

The following financial sector reform Bills await assent after passing all stages without amendment:

- Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Bill 2023;
- Financial Services Compensation Scheme of Last Resort Levy Bill 2023; and
- Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2023.

The Bills establish the framework for a Compensation Scheme of Last Resort (CSLR) for eligible consumers up to $150,000 who have received a relevant determination from the Australian Financial Complaints Authority (AFCA) which remains unpaid relating to personal financial advice, credit intermediation, securities dealing and/or credit provision. The scheme will be funded by an annual levy payable by members of a sub-sector as part of the cost recovery levy framework.

Date of effect: The establishment of the CSLR and supporting levy framework will commence from the day the Bills receive assent. To ensure the CSLR can commence as soon as possible, the Assistant Treasurer, Stephen Jones, said the Government will fund the costs to establish the body that will operate the CSLR, including funding the costs of the first levy period through to the end of the 2023-24 financial year. The scheme will then be funded by industry for future years. Eligible victims of financial misconduct will be able to lodge claims for compensation from April 2024, with the first compensation payments to follow shortly thereafter, said Mr Jones.

Treasury Laws Amendment No 3 Bill introduced

The Treasury Laws Amendment (2023 Measures No 3) Bill 2023 has been introduced into the House of Reps. It is intended to refine the education and qualification framework for financial advisers as well as fulfilling the Government's election commitment to better recognise the experience of long-serving advisers to encourage their retention in the industry.

It also proposes technical amendments to the TAA 1953 and the ITAA 1997 to improve the flexibility of the First Home Super Saver Scheme. In addition, there are two other non-tax related measures – (i) a proposal to introduce new rules into the Corporations Act dealing with product intervention orders; and (ii) changes impacting competition in the clearing and settlement of cash equities.

In terms of financial advisers, the Bill proposes the following.

- Experienced financial advisers who have been authorised to provide personal advice to a retail client for a minimum of 10 years and have a clean disciplinary record, are not required to complete an approved qualification by 1 January 2026 to meet the qualifications standard. Without the change, existing financial advisers must complete the qualification by that time. They are still required to comply with continuing professional development requirements.
- The Minister may, in the Approved Qualifications Determination, approve one or more ways of satisfying the conditions for an approved qualification.
- New entrants with a domestic qualification may apply to the Minister for individual approval, where that person has completed an approved qualification, as determined by the Minister in the Approved Qualifications Determination, but not met all the conditions attached to that qualification.
- Financial advisers who are also registered tax agents are not required to meet the additional education requirements to be a qualified tax relevant provider.

The measures were previously released in draft form in April 2023.

Quality of advice review: government response

The Government has published the Delivering Better Financial Outcomes detailed overview as its response to the Quality of Advice review. The Quality of Advice review report, prepared by Michelle Levy, includes 22 recommendations aimed at making financial product advice more accessible and more affordable.

The response looks to adopt the "bulk" of Quality of Advice review recommendations. It includes a package of reforms that will be progressed in three streams:

- removing onerous red tape that adds to the cost of advice with no benefit to consumers;
- expanding access to retirement income advice; and
- exploring new channels for advice.

The Government also added that the final positions on Delivering Better Financial Outcomes package are expected before the end of 2023.

Financial adviser registration delayed to 1 October 2023

ASIC has deferred the requirement for AFS licensees to register financial advisers on the Financial Advisers Register (FAR) until 1 October 2023. The ASIC Corporations (Registration of Relevant Providers) Instrument 2023/490 has been registered.

This is the second deferral. The measures were due to commence on 1 January 2023, but were deferred in December 2022 until 1 July 2023. The delays are to allow extra time for amendments to be made to the Stage 1 registration process for AFS licensees who are obliged to register their financial advisers.

SUPERANNUATION

Diverting property development profits to SMSFs

The ATO has issued Taxpayer Alert TA 2023/2: Diverting profits of a property development project to a self-managed superannuation fund, through use of a special purpose vehicle, involving non-arm's length arrangements. The Alert states that the ATO is reviewing arrangements under which:

- one or more self-managed super funds (SMSFs) have, or acquire, direct or indirect ownership of a special purpose vehicle (SPV) that undertakes a property development project, and
- because of the non-arm's length arrangements between the SPV and other entities, the SPV derives a profit that ultimately benefits the SMSFs which is more than what it would have been if all the parties had dealt with each other at arm's length.

The Commissioner will consider whether such dividends and other income received by the SMSFs are non-arm's length income (NALI) as defined in s 295-550 of the ITAA, and the application of the regulatory requirements in the Superannuation Industry (Supervision) Act 1993 (SISA) and other relevant law in respect of these arrangements.

Trustees of or advisers to an SMSF that is looking to participate in a property development are urged to refer to the SMSF Regulator's Bulletin Self-managed superannuation funds and property development on how SMSF trustees can ensure they meet their income tax and regulatory obligations when participating in property development activities.

Proposed changes to NALE: draft legislation

The Government has released draft legislation proposing to amend the non-arm's length expenses ("NALE") provisions for superannuation funds. The Treasury Laws Amendment (Measures for Consultation) Bill 2023: Non-arm's Length Expense Rules for Superannuation Funds is available on the Treasury website.

The proposals will limit the income taxable as non-arm's length income ("NALI") to twice the level of a general expense for SMSFs and small APRA funds (as announced in the 2023-24 Federal Budget). In addition, fund income taxable as NALI will exclude contributions to effectively exempt large APRA regulated funds from the NALI provisions for both general and specific expenses of the fund. Expenditure that occurred prior to the 2018-19 income year will also be exempted.

The amendments will apply different treatment depending on the type of expense that is incurred on a non-arm's length basis, ie any non-arm's length expense will be either a "specific expense" or a "general expense":

- a general expense will be an expense that is not related to gaining or producing income from a particular asset of the fund;
- a specific expense will be any other expense.

An expense incurred in relation to gaining or producing income as a beneficiary of a trust through holding or acquiring a fixed entitlement to the income of a trust will always be a specific expense.

For specific expenses the existing treatment will continue to apply, and the amount of income that will be taxed as non-arm's length income will be the amount of income derived from the scheme in which the parties were not dealing at arm's length.

For general expenses the amount of income that will be taxed as non-arm's length income will be twice the difference between the amount of the expense that might have been expected to be incurred had the parties been dealing at arm's length, and the amount the entity did incur.

Comments are due by 7 July 2023. The amendments will take effect from the first day of the quarter following assent.

Super trustee performance tests: changes flagged

The Assistant Treasurer has issued a [media release] confirming that the Government will update regulations relating to assessing the performance of superannuation trustees, in time for the August 2023 test.

The updated test will address unintended consequences identified in the Your Future, Your Super review, while ensuring it is more "fit-for-purpose". The changes include:

- the minimum testing period will be increased in line with the increase of the longer-term investment testing "lookback" period;
- key benchmarks will be calibrated to ensure that funds are not unintentionally discouraged from investing in certain assets;
- in assessing the RAFE (representative administration fee) for trustee-directed products ("TDPs"), platform and non-platform products will be benchmarked against a median fee relevant to this category.

The Minister then flags the following eight areas that will be affected: platform products; minimum testing period; notification letters; benchmarks; asset class; Australian fixed income; international credit; and Australian and international listed infrastructure.

The changes announced were as a result of the consultation and feedback following the issue of draft regulations, which closed on 2 May 2023.

APRA: update on FAQ on super performance test

APRA has [released] a set of new and updated FAQs as guidance to registrable superannuation entity (RSE) licensees for the administration of the Government's Your Future, Your Super Performance Test.

The FAQs clarify the following topics regarding the implementation of the 2023 Performance Test: (i) determination of Trustee Directed Product status; (ii) resubmission of SRS 550.0 reporting; (iii) determination of Strategic Asset Allocations; (iv) reporting forms used; and (v) use of data collected as part of the Superannuation Data Transformation project.

Military invalidity payments: amending regulations

The Government has registered the Treasury Laws Amendment (Military Superannuation Benefits) Regulations 2023 (the "Regulations"). The Regulations will complement Sch 9 of Treasury Laws Amendment (2022 Measures No 4) Bill 2022 (the "Bill") (which is currently awaiting assent).

Briefly, Sch 9 ensures that invalidity benefits under the Military Superannuation and Benefits Act 1991 ("MSB") and Defence Force Retirement and Death Benefits Act 1973 ("DFRDB") are superannuation lump sum payments, while ensuring that all other defined benefit pensions are treated as superannuation income streams for the purposes of s 307-70 of the ITAA 1997.

The Regulations amend the Income Tax Assessment (1997 Act) Regulation 2021 and the Superannuation Industry (Supervision) Regulations 1994 to make consequential amendments, including:

- the application of the proportioning rule to invalidity benefits under the DFRDB and MSB;
- treatment as a capped defined benefit income stream for benefits that are superannuation income streams because of Sch 9; and
- "payment standards" for superannuation lump sum payments relating to reversionary pension benefits under the MSB.

Date of effect: Immediately after the commencement of Sch 9.

REGULATOR NEWS

APRA's approach to super reporting standards revocation

APRA has published an update to its FAQ for the Superannuation Data Transformation (SDT) project. The update is in relation to APRA's approach to revoking pre-SDT Reporting Standards that were replaced under Phase one.

APRA stakeholder survey findings

APRA has released its 2023 Stakeholder Survey of regulated entities ("REs"), ie the latest survey received responses from 282 APRA-regulated entities - a response rate of 67%.

The survey found 98% of respondents saying it benefitted their industry, 94% agreeing that it helped protect the community, and 90% believing it enhanced the strength of their entity.

There are some areas of relatively lower perceptions, notably the Superannuation/Trustee respondents gave distinctly the lowest ratings for almost all items in the 2023 survey, and the smaller Super REs were especially less positive, especially with questions related to the balance of burden and benefit of regulation.