

## **TAXATION**

### **Tax adviser regulatory framework: draft leg/regs**

Treasury has released a package of materials that will implement reforms to address the severe shortcomings in regulatory frameworks relating to tax adviser misconduct.

### **NSW Budget 2023-24 handed down**

NSW Treasurer has handed down the 2023-24 Budget which projects a deficit of \$7.8bn this financial year.

### **TPB encourages tax professionals to report GST schemes**

TPB has released an article in relation to Operation Protego, the ATO's response to GST fraud.

### **ATO consultation report – August 2023**

**The ATO have released the** August 2023 ATO consultation report with details of consultation matters, draft advice and guidance products and recent news from stewardship and other consultation groups.

## **FINANCIAL SERVICES**

### **Financial advice registration requirement extended**

ASIC has registered an instrument that puts in place further interim measures to delay the requirement for relevant providers to be registered with ASIC.

## **SUPERANNUATION**

### **Divorce and superannuation: amending Regulation**

Regulations have been issued to clarify the meaning of key terms such as lifetime pension, defined benefit interest, unsplittable payment and unsplittable interests.

## **REGULATOR NEWS**

### **ASIC News**

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

## **Appointment of new Chair of Auditing and Assurance Standards Board**

The Albanese Government has appointed Douglas Niven as the full-time Chair of the Auditing and Assurance Standards Board for a period of five years.

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## **TAXATION**

### **Tax adviser regulatory framework: draft leg/regs**

Treasury has released a [package of draft materials](#) that will implement reforms to address the "severe shortcomings" in regulatory frameworks relating to "tax adviser misconduct".

The materials consist of draft legislation and draft regulations, along with detailed explanatory materials. There are separate consultation packages on information sharing between the ATO, the Tax Practitioners Board ("TPB") and Treasury – as well the important changes to the promoter penalty regime, and a consultation on the proposed changes to whistleblower protections.

This means that there are some four consultation packages in all – all related – containing changes which are extensive and profound. The closing date for these consultations is 4 October 2023. In addition, the Government has flagged more related reviews and consultations to come in 2023 and 2024.

### **Tax promoter penalties**

The proposed changes to the tax promoter penalty regime are contained in a package under the banner [Response to PwC – reform of promoter penalty rules](#). The changes include the following.

- Tax promoter penalties – broadened scope – the Government will make it easier for the ATO to apply the promoter penalty laws by broadening the scope of important definitions, including "promoter", "benefits" from the promotion of a scheme (rather than the current "consideration" requirement); expanding the meaning of "tax exploitation scheme" to cover schemes that breach, or would breach, the multinational anti-avoidance law or diverted profit tax rules; and expanding the coverage of the rules prohibiting the misrepresentation of a tax scheme's conformance with an ATO product ruling, whether the scheme is implemented or not, to all types of ATO rulings – private, public and oral rulings.

- Increased penalties and extension to SGEs – the Government will significantly increase the maximum civil penalties for promoters of tax exploitation schemes, consistent with the penalties in the Corporations Act 2001.
- More time for ATO investigations – the Government will extend the time the ATO can commence civil penalty proceedings related to the promotion of tax exploitation schemes or schemes not conforming to ATO rulings. Generally, the ATO can commence proceedings up to four years from the last time the conduct was engaged in – this will increase to six years.

### Increased regulatory powers

Proposed changes include the following.

- Secrecy laws – the Government will amend the secrecy provisions that apply to the ATO and TPB to enable them to disclose suspected breaches in confidence against government agencies to the Treasury. In addition, the Government will amend the secrecy provisions that apply to the ATO and TPB to enable the regulators to disclose suspected misconduct of professionals to their professional associations or professional disciplinary bodies. The changes to the secrecy laws are subject to a consultation process under the banner [Response to PwC – information sharing](#).
- TPB investigations and Register – currently, the TPB is required to complete formal investigations within six months. Legislation will extend the timeframe the TPB has to complete investigations into tax practitioners suspected of misconduct and breaching registration requirements to 24 months. In addition, the Government aims to lift the functionality and utility of the TPB Register and enhance information about tax agent misconduct, improving transparency of the regulation of tax advisers. The consultation package on this is entitled [Response to PwC – Tax Practitioner Board reforms](#).
- Whistleblower reforms – the Government will extend the tax whistleblower protections to eligible whistleblowers who wish to disclose alleged misconduct to the TPB. The Government will also authorise the ATO and the TPB to share information they have received from whistleblowers with the Australian Charities and Not-for-profits Commission ("ACNC"), as well as each other, where the information received relates to their regulatory responsibilities. The changes to the whistleblower laws come under the banner [Response to PwC – whistleblower protections](#).

### NSW Budget 2023-24 handed down

The NSW Treasurer Daniel Mookhey handed down the [2023-24 NSW Budget](#) on 19 September 2023. It projects a deficit of \$7.8bn for this financial year, with a return to a surplus of \$800 million in 2024-25, followed by a \$1.5 billion surplus by 2026-27. Tax revenue is expected to be \$44.9 billion in 2023-24.

Highlights include the following.

- First Home Buyers Assistance Scheme – the scheme has been expanded, which will reduce transfer duty paid by first home buyers. The Government has also closed off access to First Home Buyer Choice.
- Land tax – changes to the Land Tax Management Act 1956 will close a loophole where people with as little as a 1% stake in a property can claim the principal place of residence land tax exemption. The changes will require individuals who use and

occupy the land as a principal place of residence together to have a minimum 25% stake in a property to claim the exemption.

- Land tax thresholds – the Government will revise the operation of the land tax thresholds system, with effect from the 2024 land tax year. According to the Budget papers, an anomaly in the land tax indexation formula and an error in calculations underpinning the 2021 land tax threshold have produced higher than intended land tax thresholds for the last three land tax years. This has resulted in under-collection of land tax of around \$250 million.
- Landholder duty on private unit trusts – landholder duty is applied when someone acquires a "significant interest" in a company or unit trust that owns \$2 million or more worth of land in NSW. The threshold for the acquisition of a "significant interest" in a private unit trust will be reduced from the current 50% to 20%. The threshold for acquisition of a "significant interest" in a wholesale unit trust or imminent wholesale unit trust will remain at 50%.
- Stamp duty/transfer duty on corporate reconstructions – duty relief on corporate reconstructions will change. The transfer of assets between the members of a single corporate group for the purpose of restructuring is exempt from transfer duty under certain circumstances. This exemption for corporate reconstructions will be replaced with concessional duty charged at 10% of the duty otherwise payable, applying to transactions occurring on or after 1 February 2024.
- Fixed and nominal duties to increase – fixed and nominal duties applied by Revenue NSW on some transactions will also see "modest rises". These fixed charges have not increased since 2009.
- Removal of stamp duty exemption and rebate for EVs – from 1 January 2024, stamp duty exemptions and rebates for the purchase of EVs will cease. The liability for the Road User Charge ("RUC") will also change so that all zero and low emissions vehicles (including plug-in hybrids) registered for the first time or transferred from 1 January 2024, will be liable to pay the RUC from the earlier of 1 July 2027 or when EVs amount to 30% of new vehicle sales.
- Increased revenue collections – additional investment in the compliance systems of Revenue NSW is expected to increase payroll tax revenue by \$337.0 million, land tax revenue by \$225.5 million and transfer duty revenue by \$87.5 million over the four years to 2026-27.

## TPB encourages tax professionals to report GST schemes

The Tax Practitioners Board ("TPB") has released an [article](#) in relation to Operation Protego, the ATO's response to GST fraud. The article encourages tax professionals to disclose information about those who may be promoting schemes or frauds, including unregistered preparers. It also includes notable links to information and resources around ethics and rules and regulations that may be applicable.

## ATO consultation report – August 2023

The report is also published on [ato.gov.au](https://ato.gov.au).

In addition to the monthly consultation report you can access further information on all 9 of the ATO's stewardship groups, including key messages, on the stewardship group pages of the ATO [website](#).

## **FINANCIAL SERVICES**

### **Financial advice registration requirement extended**

ASIC has registered the [ASIC Corporations \(Amendment\) Instrument 2023/730](#) (the "Amending Instrument"). The Amending Instrument puts in place further interim measures to delay the requirement (the "Registration Requirement") for "relevant providers" to be registered with ASIC as a precondition for providing personal advice ("Financial Advice") to retail clients about relevant financial products.

By way of background, the requirement for relevant providers to be registered was introduced by the Financial Sector Reform (Hayne Royal Commission Response -- Better Advice) Act 2021 ("Better Advice Act"). The registration provisions, as inserted by the Better Advice Act, staggered commencement dates so that Australian financial services ("AFS") licensees and relevant providers could continue providing Financial Advice without being registered up to 1 January 2023. Subsequent steps were taken by the Government to delay the Registration Requirement to 1 October 2023.

The Amending Instrument provides for a further delay to the Registration Requirement to 1 February 2024 in order to allow:

- Parliament to further consider the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 ("TLAB 1"), which gives ASIC the power to use assisted decision-making systems when processing registration applications and facilitate multiple registration of relevant providers;
- ASIC to implement TLAB 1 if TLAB 1 is enacted;
- industry to understand its rights and obligations concerning the Registration Requirement; and
- AFS licensees to register their relevant providers with ASIC prior to the Registration Requirement commencing.

## **SUPERANNUATION**

### **Divorce and superannuation: amending Regulation**

The [Family Law \(Superannuation\) Amendment \(2023 Measures No 1\) Regulations 2023](#) were issued to clarify the operation of the Family Law (Superannuation) Regulations 2001 (the "FTS Regulations") "operate as intended".

Specifically, the amendments clarify the meaning of key terms such as lifetime pension, defined benefit interest, unsplittable payments and unsplittable interests.

The amendments will also ensure that the FLS Regulations clearly provide that pension payments from lifetime pensions are considered splittable payments from the time they become payable.

The amendments also prescribe that an interest that a member spouse has in the scheme provided for by the Australian Defence Force Cover Act 2015, and is in the payment phase, is to be considered a defined benefit interest for the purpose of the FLS Regulations.

## **REGULATOR NEWS**

### **ASIC news**

ASIC has released the following updates in its Newsroom section:

- [21 September 2023 - MEDIA RELEASE 23-257MR Licensing and professional registration activities - 2023 update](#)
- [21 September 2023 - MEDIA RELEASE 23-256MR ASIC sues crypto exchange alleging design and distribution failures](#)
- [20 September 2023 - MEDIA RELEASE 23-255MR Interactive Brokers pays \\$832,500 penalty for 'negligent' and 'reckless' conduct](#)
- [20 September 2023 - NEWS ITEM ASIC extends date for financial adviser registration requirement](#)
- [18 September 2023 – SPEECH Marconi's illusion: What a 120-year-old magician's trick can teach us about cyber preparedness](#)

### **Appointment of new Chair of Auditing and Assurance Standards Board**

'The AUASB plays an incredibly important role in our economy by developing, issuing and maintaining auditing and assurance standards.

Douglas Niven has 40 years of private and public sector experience in the field of financial reporting, accounting and auditing, including most recently leading ASIC's financial reporting and audit programs.

This appointment will add to the considerable skills and experience available to the AUASB.

On behalf of the government, I thank outgoing Chair Bill Edge for his commitment to the AUASB and the Financial Reporting Council since 2016.'