TAXATION

Misc housekeeping amendments to Treasury Portfolio Laws

Treasury has issued two exposure drafts as part of its periodic housekeeping activity of correcting drafting errors.

Revenue forgone from tax concessions: 2023-24

Treasury has released the 2023-24 Tax Expenditures and Insights Statement which provides annual information on Australian Government tax benchmarks and variations.

Latest issue of ATO's interpretation NOW! released

The ATO has released Episode 104 of its series on statutory interpretation entitled interpretation NOW!.

EV home charging rates: cents per km (FBT and income tax)

PCG 2024/2 sets out a cents-per-kilometre methodology for calculating electricity costs where an electric vehicle ("EV") is charged at an employee's or individual's home.

Depreciating assets - composite items

Ruling TR 2024/1 provides guidance on determining whether a composite item is itself a depreciating asset or whether the component parts are separate assets.

Enhancing the Tax Practitioners Board’s sanctions regime

The Joint Bodies submitted a response on the Consultation paper, Enhancing the Tax Practitioners Board’s sanctions regime (the Consultation Paper), released on 10 December 2023.

Reduced input tax credits on adviser fees: ATO guidance update

The ATO has published an update to its guide to notify superannuation funds and investor-directed portfolio services regarding claims for reduced input tax credits.

BAS agent terminated with a five-year ban: TPB case study

The TPB has released its latest case study where a BAS agent was found to have breached 5 Code of Professional Conduct items.

FINANCIAL SERVICES

Financial adviser approved degree requirement update: draft

Treasury has issued draft Corporations (Relevant Providers -- Education and Training Standards) Amendment (2024 Measures No. 1) Determination 2024.

Extension for relevant financial advisers to register with ASIC

ASIC has issued a media release announcing the extension, by two weeks of the registration period for certain financial advisers to 16 February 2024

AASB Climate-related Financial Information Disclosure – Consultation

IPA members are 'invited to join the upcoming AASB outreach events across Australia in January and February 2024 on Exposure Draft ***ED SR1*** *Australian Sustainability Reporting Standards – Disclosure of Climate-related Financial Information'* **CLICK HERE TO REGISTER**

SUPERANNUATION

Pension transfer balance cap $1.9m for 2024-25

The release of the CPI index number for December 2023 has confirmed that the superannuation "general transfer balance cap" will remain at $1.9m for 2024-25.

Permanent incapacity benefits transitional rules extended

Treasury has registered the Income Tax (Transitional Provisions) (Permanent Incapacity Benefits) Rules 2024 ("Rules").

Family law superannuation payments not end benefits: Instrument

Treasury has registered the Taxation Administration (Meaning of End Benefit) Instrument 2024 which remakes an instrument before it sunsets.

ASIC and APRA keynote addresses on 2024 enforcement priorities

In a keynote address at the Connexus Super Chair Forum, ASIC Deputy Chair Sarah Court laid out three key themes around ASIC's enforcement priorities.

Interim 2024 supervision and policy priorities released: APRA

APRA has issued a letter outlining its regulatory agenda across banking, superannuation and insurance.

APRA's annual superannuation bulletin for 2022-23

APRA has released its Annual Superannuation Bulletin for 2022-23 showing total super assets of $3.570 trillion.

REGULATOR NEWS

ASIC News

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

APRA news

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

TAXATION

Misc housekeeping amendments to Treasury Portfolio Laws

Treasury has issued two exposure drafts as part of its periodic housekeeping activity of correcting drafting errors, repealing inoperative provisions, addressing unintended outcomes and other technical changes that are required.

- Treasury Laws Amendment Bill 2024: Miscellaneous and technical amendments -- Autumn 2024 - technical changes in relation to: (i) audit firm's and audit company's rotation obligations; (ii) insolvency safe harbour; (iii) financial services law; (iv) insurance coverage in the event of a successor fund transfer; (v) relocating certain requirements from the SIS Regulations into the SIS Act for actuaries and auditors of superannuation entities; (vii) financial reporting for superannuation entities, etc.
- Treasury Laws Amendment Instrument 2024: Miscellaneous and Technical Amendments -- Autumn 2024 - technical changes in relation to the: (i) definition of public sector superannuation scheme; (ii) obligations of actuaries and auditors of superannuation entities; (iii) duty of superannuation trustees to notify the Regulator of significant adverse events; (iv) First Home Super Saver Scheme, etc.

Submissions are due by 12 February 2024.

Revenue forgone from tax concessions: 2023-24

Treasury has released the 2023-24 Tax Expenditures and Insights Statement. The Statement provides annual information on Australian Government tax benchmarks and variations, as required by the Charter of Budget Honesty Act 1998.

The majority of estimates included in the Statement are provided on a "revenue forgone" basis. Treasury advises that this is consistent with the approach taken by most OECD countries in their equivalent tax benchmarks and variations publications (see below).

It reflects policy decisions up to and including the 2023-24 Mid-Year Economic and Fiscal Outlook.

The 10 costliest concessions

The 10 largest measured positive benchmark variations in 2023-24 are listed below (in descending order).

- ***Concessional taxation of employer superannuation contributions*** (revenue

foregone: $28.55 billion ($23.3 billion in the 2022-23 Statement)).
- ***Rental deductions*** (revenue forgone: $27.1 billion ($24.4 billion in 2022-23)).
- ***Main residence exemption*** – discount component (revenue forgone: $25 billion ($26 billion in 2022-23)).
- ***Main residence exemption*** (revenue forgone: $22.5 billion ($22 billion in 2022-23)).
- ***Concessional taxation of superannuation entity earnings*** (revenue forgone: $20.05 billion ($21.5 billion in 2022-23)).
- ***CGT discount for individuals and trusts*** (revenue foregone: $19.05 billion ($23.7 billion in 2022-23)).
- ***Work-related expenses*** (revenue foregone: $10.8 billion ($9.9 billion in 2022-23)).
- ***Exemption for NDIS amounts*** (revenue foregone: $10.48 billion ($8.08 billion in 2022-23)).
- ***Food*** (GST revenue forgone: $9.1 billion ($8.4 billion in 2022-23)).
- ***Accelerated depreciation for business entities*** (revenue forgone: $7.4 billion ($7.8 billion in 2022-23)).

Latest issue of ATO's interpretation NOW! released

The ATO has released Episode 104 of its series on statutory interpretation entitled interpretation NOW!..

EV home charging rates: cents per km (FBT and income tax)

Practical Compliance Guideline PCG 2024/2 sets out a cents-per-kilometre methodology for calculating electricity costs where an electric vehicle ("EV") is charged at an employee's or individual's home. The employer or individual can choose to use this methodology instead of determining the actual electricity costs. The choice is per vehicle and applies for the whole income or FBT year. However, it can be changed by the employer or individual from year to year.

The "EV home charging rate" for the FBT or income year starting on or after 1 April 2022 is 4.2 cents per km. This rate is multiplied by the total number of relevant kilometres travelled by the electric vehicle in the year in question.

Taxpayers wishing to rely on PCG 2024/2 must keep relevant records. However, if odometer records have not been maintained as at the start of the 2022-23 or 2023-24 year (FBT or income), the ATO allows a reasonable estimate to be used based on service records, logbooks or other available information.

Date of effect: 1 April 2022 for FBT purposes and 1 July 2022 for income tax purposes.

PCG 2024/2 finalises Draft PCG 2023/D1 and contains some changes, including in relation to commercial charging stations and extending the transitional approach by one year.

Depreciating assets - composite items

Ruling TR 2024/1 provides guidance on determining whether a composite item is itself a depreciating asset or whether the component parts are separate assets. In particular, it sets out a series of "guiding principles" to assist in identifying the relevant depreciating asset.

These include whether the item has a separate identifiable function, whether it performs a discrete function, the degree of physical or functional integration of the components, and whether multiple components are purchased as a system to function together as a whole.

Other issues considered include whether a modification or alteration to an existing depreciating asset can itself be a depreciating asset, intangible depreciating assets and jointly held tangible assets.

The Ruling includes 14 examples, covering items such as a desktop computer package, a mainframe computer, a local area network, a car GPS, rail transport infrastructure, a solar power system and photographic lighting equipment.

Date of effect: retrospective. TR 2024/1 finalises Draft TR 2023/D2, which had replaced an earlier draft (TR 2017/D1). There are no changes to the ATO's approach.

Enhancing the Tax Practitioners Board's sanctions regime

'The Joint Bodies support the proposition that the Tax Practitioners Board (TPB) should have a robust sanctions regime to deter misconduct and impose appropriate penalties proportionate to the level of wrongdoing. It is important for the tax profession to be held to the highest standard, a standard to which the vast majority of the profession already adheres. This will ensure that the community has confidence in the operation and administration of our taxation and superannuation system.

Fundamentally, we consider it important that any sanctions regime be built on the core principles of proportionality and fairness. That is, the TPB's powers should be proportionate to the wrongdoing, be flexible so as to allow for consideration of a tax practitioner's circumstances, and include a fair process. To give effect to these principles, the TPB's powers should comprise a wider range of graduated sanctions that allow the TPB to impose the appropriate sanction proportionate to the severity of the relevant contravention or misconduct. We have explored these core principles and their application in the context of the matters considered in the Consultation Paper in greater detail below. In the Review of the TPB Final Report (2019), and the Government's response, it was acknowledged that a gap exists in the sanctions available to the TPB, particularly mid-range sanctions, which should be addressed. Further, it was identified that the TPB lacks interim powers that would allow it to respond more swiftly to curtail seriously egregious or harmful conduct with sufficient urgency. The Joint Bodies are broadly supportive of these two observations and the Government's objectives to enhance the TPB's sanction powers to address these identified shortcomings

Commentary was provided under the below specific headings

- Co-design and collective implementation
- A principle-based approach to designing the TPB sanctions regime
- The sanctions regime reform proposals
- Learnings from the financial services regulatory reforms

A copy of the submission is available on our website

Reduced input tax credits on adviser fees: ATO guidance update

The ATO has published an update to its guide entitled Eligibility of super funds and investor-directed portfolio services investment platforms to claim reduced input tax credits on adviser fees. The purpose of the guide is to notify superannuation funds and investor-directed portfolio services investment platforms (collectively referred to as "Funds") of certain matters relevant to claims for reduced input tax credits ("RITCs") in respect of adviser services fees.

The update to the guide states that the ATO will not devote compliance resources to review RITC claims for adviser services fees paid under arrangements of the kind described (within the guide) for tax periods that end before 1 July 2024. The ATO also makes clear that the compliance approach does not apply to a Fund if:

- they change their prior treatment by now seeking to claim RITCs for past or future tax periods in relation to these arrangements
- there is evidence of avoidance, fraud or evasion, or
- they otherwise take inappropriate advantage of the prospective compliance approach.

BAS agent terminated with a five-year ban: TPB case study

The TPB has released its latest case study where a BAS agent was found to have breached 5 Code of Professional Conduct items. The agent was found to have:

- lodged multiple original and amended monthly business activity statements on behalf of a client without the client's knowledge or authorization;
- failed to account to their client by not passing on refunds that arose from their lodgment, instead misappropriating them for personal use; and
- made false or misleading statements to the ATO when they lodged the BAS containing false information.

The Board Conduct Committee decided to terminate the agent and impose a five-year ban on re-applying for registration.

FINANCIAL SERVICES

Financial adviser approved degree requirement update: draft

Treasury has issued draft Corporations (Relevant Providers -- Education and Training Standards) Amendment (2024 Measures No. 1) Determination 2024. The draft determination proposes to amend the Corporations (Relevant Providers Degrees, Education and Training Standards) Determination 2021 to enable financial advisers to demonstrate that they satisfy the conditions of an approved degree/qualification via:

- an academic transcript(s) issued by the provider of the approved degree; and/or
- a statement(s) issued by the provider of the approved degree confirming that the person has met the condition(s) for the approved degree.

The draft legislation also proposes to amend the 2021 Determination to address current transitional limitations in the provision of tax (financial) advice services. This means an adviser will be taken to meet the education requirements to be a qualified tax relevant provider if they were registered with the Tax Practitioners Board or had a registration application pending before 1 January 2022 regardless of whether they were authorised as an adviser on that day.

Submissions are due by 27 February 2024.

Extension for relevant financial advisers to register with ASIC

Key points form the media release published on 18 January 2024 are:

ASIC records show that a significant number of financial advisers (known as relevant providers) are still not registered, despite a requirement to be registered commencing on 1 February 2024.

ASIC has extended the due date for registration by two weeks and confirms 16 February 2024 as the final date for the commencement of the registration requirement.

AFS licensees that have not already registered their Relevant Providers are urged to do so as a priority via ASIC Connect.

Advisers who provide personal advice to retail clients without being registered after 16 February, together with their authorising AFS licensee(s), will be in breach of the law and face potential regulatory action.

For more information on how to register, visit Registering a relevant provider.

Click here for a copy of the entire media release

AASB Climate-related Financial Information Disclosure – Consultation

'The outreach events are expected to be interactive and are an opportunity for stakeholders to share their thoughts on the proposals in ED SR1.

ED SR1 is open for comment until Friday, 1 March 2024. Stakeholders also can provide feedback on ED SR1 by:

- submitting a comment letter on the **AASB Website**; or
- completing an online survey – click **here** to access.

Education Webcast

Watch an **AASB staff webcast** for an overview of the key proposals in ED SR1 Australian Sustainability Reporting Standards - Disclosure of Climate-related Financial Information released in October 2023. The presentation slides are available **here** .

Please refer to 'outreach locations and dates' for more information

Superannuation

Pension transfer balance cap $1.9m for 2024-25

The release of the CPI index number for December 2023 has confirmed that the superannuation "general transfer balance cap" will remain at $1.9m for 2024-25 (unchanged from 2023-24). The general transfer balance cap, which is indexed to CPI in $100,000 increments, would have only increased to $2.0m for 2024-25 if the CPI index number for December 2023 was 137.5 or more. It was 136.1 for the December quarter 2023 and therefore not enough to trigger a $100,000 increase.

The "total superannuation balance" threshold for making non-concessional contributions (which is tied to the general transfer balance cap) will also remain at $1.9m for 2024-25. The "defined benefit income cap" will remain at $118,750 for 2024-25 (ie $1.9m divided by 16).

The other superannuation thresholds for 2024-25 (such as the contributions caps) are determined according to the increase in wages (rather than CPI). These AWOTE figures will be released in late February 2024.

Permanent incapacity benefits transitional rules extended

Treasury has registered the Income Tax (Transitional Provisions) (Permanent Incapacity Benefits) Rules 2024 ("Rules"). The purpose of the Rules is to continue transitional arrangements made by s 301-100 of the Income Tax (Transitional Provisions) Act 1997 (the "Act") for an additional 12 months to include the 2022-23 income year.

As background, following the Federal Court's decision in FCR v Douglas [2020] FCAFC 220, the Government made amendments to the Treasury Laws Amendment (2022 Measures No 4) Act 2023 to clarify that all defined benefit pensions paid from most defined benefit funds (including permanent incapacity benefits) are superannuation income stream benefits and not superannuation lump sums for the purpose of the ITAA 1997.

Section 301-100 of the Act is a transitional arrangement that applies for income years up to and including the 2021-22 income year. It applies to certain recipients of permanent incapacity benefits who had previously had their superannuation benefits assessed on the basis that they were a superannuation lump sum.

The Rules modify s 301-100 of the Act to extend the transitional arrangements for a further year to include the 2022-23 income year.

Family law superannuation payments not end benefits: Instrument

Treasury has registered the Taxation Administration (Meaning of End Benefit) Instrument 2024. The instrument remakes the Taxation Administration (Meaning of End Benefit) Instrument 2013 before it sunsets. The instrument ensures that family law superannuation payments are not end benefits under s 133-130 in Schedule 1 to the TAA and therefore do not trigger an individual's liability to pay Div 293 tax that has been deferred to a debt account.

Date of effect: 3 February 2024.

ASIC and APRA keynote addresses on 2024 enforcement priorities

In a keynote address at the Connexus Super Chair Forum, ASIC Deputy Chair Sarah Court laid out three key themes around ASIC's enforcement priorities in the superannuation sector in 2024:

- Member services failures - regardless of the phase of membership of the member, ASIC expects trustees to communicate proactively with members, deal responsibly with members' money, and deliver good value for money. Internal dispute resolution systems and death benefit claims handling were highlighted as areas of concern;
- Misleading conduct, including greenwashing - trustees making environmental, social or ethical claims to attract potential members need to back such claims with evidence and transparent about their basis; and
- Failures to protect superannuation balances - ASIC's recent enforcement actions indicate the sector is falling short in protecting superannuation balances. Boards that are engaged in their businesses and exercise appropriate oversight are reminded to identify, address and remediate harms to members before they come to the attention of ASIC.

APRA Deputy Chair Margaret Cole's keynote address to the same Forum highlights APRA's priority activities that address key challenges facing the super industry, including:

- building the resilience of superannuation funds as part of a stronger, more stable financial system. A "strong, stable and vibrant super system" is vital for the financial protection of fund members and Australia's social and economic wellbeing more broadly; and
- improving outcomes for fund members across the accumulation and retirement phases of superannuation. Australians "should be able to have confidence that the super system will support them in retirement".

Interim 2024 supervision and policy priorities released: APRA

APRA has issued a letter outlining its regulatory agenda across banking, superannuation and insurance, including major cross-industry issues including cyber security, operational resilience, climate risk and governance. The letter serves as an interim update of its priorities for the first six months of 2024 prior to publishing its policy and supervision priorities in its annual Corporate Plan, which is due by the end of August.

In the letter, APRA outlines its focus on:

- operational and cyber resilience for all regulated entities, reflecting the growing reliance on digital technologies by entities and the community;
- embedding lessons from last year's global banking turmoil through targeted changes to the prudential framework for authorised deposit-taking institutions;
- lifting superannuation trustees' practices on retirement incomes, implementing recommendations from the Financial Regulator Assessment Authority (FRAA) review, enhancing transparency and aligning APRA's heatmaps with the performance test; and
- across insurance, continuing to balance financial sustainability with the need to enhance affordability and availability.

The letter also includes a high-level timeline of key initiatives and a detailed table of planned supervision and policy activities.

APRA's annual superannuation bulletin for 2022-23

APRA has released its Annual Superannuation Bulletin for 2022-23 showing total super assets of $3.570 trillion (of which $995bn was held in MySuper products) A total of $876bn was held in self-managed super funds (SMSFs).

REGULATOR NEWS

ASIC news

ASIC has released the following updates in its Newsroom section:

- 02 February 2024 – SPEECH Inquiry into insurers' responses to 2022 major floods claims - Opening statement by ASIC Commissioner Alan Kirkland, 2 February 2024.
- 02 February 2024 - MEDIA RELEASE 24-012MR ASIC accepts court enforceable undertaking from buy now, pay later provider Elepay - ASIC has accepted a court enforceable undertaking from buy now, pay later provider Elevare Pay Easy Pty Ltd, trading as Elepay. Elepay offers funding to property owners for expenses relating to the preparation of their property for sale, including home improvements and renovation, design and marketing. Elepay's buy now, pay later products do not include charges for providing credit, but do include a merchant fee payable to Elepay by a third-party supplier.
- 1 February 2024 – SPEECH - ASIC's 2024 enforcement priorities in the superannuation sector – Ms Sarah Court, ASIC Deputy Chair, addressed the Connexus Super Chair Forum and emphasised ASIC's focus on member services failures, misleading conduct (including greenwashing), and failures to protect superannuation balances for the coming year.
- 1 February 2024 – NEWS ITEM - ASIC's guidance for market intermediaries on pre-hedging - Pre-hedging is a practice in financial markets that can help the effective functioning of markets by facilitating trades that may otherwise significantly impact market pricing. However, ASIC is concerned with the way that differences in market intermediaries' approaches to pre-hedging can disrupt fair competition and the effective functioning of markets.
- 31 January 2024 – NEWS ITEM – ASIC releases summary document for Indigenous Financial Services Framework Workshop - ASIC has published a summary document on Understanding and Responding to Identification Challenges for First Nations Consumers following a November workshop.
- 31 January 2024 – MEDIA RELEASE - Court declares Westpac engaged in unconscionable conduct for interest rate swap, maximum penalty applied – The Federal Court has imposed a maximum fine of $1.8 million (plus costs) on Westpac for unconscionable conduct in engaging in pre-hedging before an interest rate swap with a consortium of superannuation entities.
- 1 February 2024 – SPEECH - We're not there yet: Current regulation around AI may not be sufficient - ASIC Chair Joe Longo spoke at the UTS Human Technology Institute Shaping Our Future Symposium on the current and future state of AI regulation and

governance. All participants in the financial system have a duty to balance innovation with the responsible, safe, and ethical use of emerging technologies – and existing obligations around good governance and the provision of financial services don't change with new technology. ASIC will continue to act, within our remit, to deter bad behaviour whenever appropriate.

APRA news

- 31 January 2024 – NEWS ITEM - APRA outlines 2024 supervision and policy priorities - The Australian Prudential Regulation Authority (APRA) has published its supervision and policy priorities for the first six months of 2024. In a letter to entities that it regulates, APRA highlighted banking, superannuation and insurance, plus cyber security, operational resilience, climate risk and governance.