Coster Galgut
Chartered Accountants

T AX UPDATE – NOVEMBER 2023

What did I miss?

The Bowerman case set the cat among the pigeons this month when a taxpayer successfully argued that she should be entitled to claim a deduction on revenue account on the loss that arose from selling a private residence.

Interestingly, the AAT considered the profit-making intention need not be the sole or dominant purpose of the transaction, but just needed to be one of the purposes in order for the arrangement to be taxed on revenue account – read the case here.

Regards,
Coster Galgut Pty Ltd
(03) 9561-1266

INSIDE

From Government 2
Independent evaluation of JobKeeper 2
From the Regulators 3
Top 500 and Next 5000 report 3
Tax agent linking 3
Tax debts on hold 4
Annual self-assessment of income tax exempt status 4
Late lodgment amnesty 4
Rulings, Determinations & Guidance 5
Updated risk framework for corporate tax residency 5
Corporate collective investment vehicle regime 5
Simplified transfer pricing record keeping records 6
Extension of non-commercial loss 'special circumstances' safe harbour 6
Qualifying as an early stage innovation company 6
Value of goods taken from stock for private use for the 2024 income year 7
Cases 7
Claiming a deduction from a loss on the sale of the main residence 7
Taxi payments 8
ATO view prevails despite Bendel case decision 9
Legislation 10
Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 10
Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023 11
Superannuation (Objective) Bill 2023 12

From Government

Independent evaluation of JobKeeper

Many practitioners would be familiar with the JobKeeper program, having assisted clients determine whether they are eligible for payments and manage administrative aspects of the program.

With the JobKeeper program well and truly over, Treasury has released an independent evaluation of the program by former senior Treasury official Nigel Ray.

JobKeeper was a central part of Australia's economic response to the COVID-19 pandemic which had significant health and economic implications globally and in Australia. In the early months of 2020, the effects of the COVID-19 pandemic were characterised by uncertainty.

Providing support to around four million individuals and one million businesses, the evaluation found that the JobKeeper program played a critical role in addressing this uncertainty and helped to stabilise the Australian economy during the crisis.

Some of the other key findings from the independent evaluation include the following:

- The initial announcement of JobKeeper had an immediate effect in partially reversing business and consumer sentiment declines.
- JobKeeper maintained the employee-employer relationship, thereby contributing to a faster and stronger labour recovery.
- The fiscal cost of JobKeeper was significant at a total cost of $88.8 billion with the initial six months of the program costing around $70 billion. Notwithstanding this, it was considered that JobKeeper provided value for money through its broad social benefits and the role it played in addressing uncertainty and averting the worst of the pandemic from an economic perspective.
- JobKeeper was implemented with incredible speed and was well managed with the use of established tax concepts and implementation assistance from the ATO.
- The incidence of fraud was low with an estimated payment gap of 2.4 per cent which is lower than many other ATO administered programs.

While the independent evaluation seemed to be largely positive, it also found that there were lessons to be learnt and areas where outcomes and value for money could be improved. Some of these lessons include:

- A more flexible design that would have enabled an earlier change towards retrospective eligibility thresholds, thereby allowing better targeting of payments.
- A tiered payment structure or a payment structure calculated with regard to previous earnings would have been better targeted. The report did acknowledge that the introduction of the two-tiered payment in the extension phase of the JobKeeper program partially addressed issues with the flat payment structure in the first phase.

- Communication of the key policy details and changes could have been clearer in order to reduce uncertainty for businesses receiving JobKeeper. The report acknowledges there was confusion over the changing rules and how to calculate turnover as part of the eligibility criteria.

More information
Independent Evaluation of the JobKeeper Payment Final Report

From the Regulators

Top 500 and Next 5000 report

One of the main ways the ATO engages and reviews the largest private groups is through its Top 500 or Next 5,000 program. In that context, the ATO has released its reports outlining their key insights and findings from these two programs.

Tax governance remains a key focus area for the ATO. One of the ATO's observations through its Top 500 program is that that there has been an increase in the number of Top 500 private groups that are developing or have developed a written tax governance policy and procedures over the last 12 months.

However, key areas for improvement remain, especially in ensuring there are adequate processes and procedures in place to identify and manage tax risks, as well as ensuring arrangements are in place for escalating tax issues and seeking tax advice.

In the context of the Next 5,000 program, the ATO is finding that a high proportion of the Next 5,000 private groups have governance processes and procedures. The problem is that most of these are not documented. The ATO considers that a lack of documented governance processes, together with poor record keeping, is causing common errors in the Next 5,000 private groups that could have otherwise been prevented.

Some of the common errors found by the ATO include:

- Tax return disclosure errors, late lodgement and lack of accompanying tax return schedules;
- Related party transactions where the reported income derived by a related party is less than the deductions claimed by the other related party payer;
- Inadequate record keeping for related party transactions;
- Division 7A issues, including where there are no written complying loan agreements or minimum yearly repayments;
- Errors when undertaking property disposals; and
- Issues relating to trust distributions, including where the beneficiaries are omitting distributions and section 100A risk.

More information
Next 5,000 findings report
Top 500 findings report

Tax agent linking

To improve the security of its online services the ATO has introduced additional steps that require taxpayers to authorise and nominate their agents through 'Online services for business'.

While these steps previously only applied to certain taxpayers, they now apply from 13 November 2023 to all taxpayers with ABNs excluding individuals and sole traders.

Taxpayers that are maintaining their current arrangements with their existing agents should not be impacted. This is because these additional steps apply to taxpayers that are either:

- Appointing a new agent as their representative; or
- Providing an existing agent with an authority for a new tax obligation.

The ATO has released a series of guides to assist taxpayers and agents with this process and has also flagged several common issues.

The ATO is reminding agents that they should only add themselves to an account (for example, the activity statement account) that they are authorised to represent their client for. By adding themselves inadvertently to an incorrect account, this will remove

any existing agents linked to that account which will then require the client to repeat the nomination process.

Agents should also consider asking clients to inform them when they have completed their nomination steps. This is because the agent is not automatically notified of this, but they only have 28 days to add the client to their client list before the nomination period normally expires (although this deadline can be extended for another 28 days).

More information
Think before you link - Client-to-agent linking for entities
Agent checklist for client-to-agent linking process
Client-to-agent linking steps
Troubleshooting guide for agents Client-to-agent linking

Tax debts on hold

While it seems the ATO has paused sending these letters for now, some clients and practitioners may have already received letters in connection with debts placed on hold that outline the ATO's approach to collecting these types of debts.

Debts on hold are considered uneconomical to pursue and the ATO wouldn't normally commit resources to try and collect them. However, if a client becomes entitled to any refunds or credits (for example, upon lodging their BAS or tax return), these will normally be used to pay the debts even if they are on hold.

Importantly, many clients may not be aware that they have debts that have been placed on hold. This is because they will not show up as an outstanding balance on the account. The ATO guidance sets out on how these debts can be specifically located using online services for both clients and registered agents.

Practitioners with clients expecting refunds that also have debts on hold should ensure those clients understand that these refunds can still be used offset these outstanding liabilities.

More information
Offsetting credits and refunds from debts on hold
Debts on hold

Annual self-assessment of income tax exempt status

Some not-for-profits are entitled to access an income tax exemption.

For many not-for-profits with an active ABN, the ATO is reminding taxpayers that they will now need to lodge a NFP self-review return annually to access this income tax exemption. This does not apply to charities that registered with the Australian Charities and Not-for-profits Commission.

This change applies from 1 July 2023, with the first 2024 income year self-review return required to be lodged online between July and October 2024.

While the lodgement is not required yet, the ATO is encouraging impacted not-for-profit entities to prepare for the lodgement by:

- Checking the organisation's contact details are up to date, including ABN registration details;
- Reviewing the organisation's main purpose and its governing documents;
- Setting up a myGovID with either a Standard or Strong identity strength; *and*
- Linking myGovID to the NFP's ABN in Relationship Authorisation Manager (RAM) so they can access Online services for business.

More information
Changes in reporting requirements for not-for-profits

Late lodgment amnesty

In the most recent Federal Budget the Government announced that an amnesty would be provided in connection with late lodgement penalties. However, the amnesty period expires on 31 December 2023 and the ATO is reminding small business clients that the

opportunity to take advantage of the amnesty will end soon.

The amnesty ensures that late lodgment penalties will be automatically remitted where tax obligations (including income tax and business activity statements) that were originally due between 1 December 2019 and 28 February 2022 are lodged between 1 June 2023 and 31 December 2023.

To qualify for the amnesty, the small business must have had aggregated annual turnover of less than $10m when the original lodgment was due. However, it is not available to private groups or individuals controlling over $5m of net wealth.

While late lodgment penalties will be remitted where eligible, the amnesty doesn't apply to general interest charge amounts that might have accrued on outstanding tax debts.

More information
Don't wait! Our lodgment penalty amnesty is ending

Rulings, Determinations & Guidance

Updated risk framework for corporate tax residency

The ATO has finalised some amendments to its practical compliance guide which considers the central management and control test for companies that have been incorporated overseas. This concept can become relevant when determining whether a foreign incorporated company is a resident of Australia for tax purposes.

The practical compliance guide contained a transitional period for foreign incorporated companies to make changes to ensure their central management and control is not in Australia, reducing the risk of the company being classified as an Australian resident.

With the transitional period having ended on 30 June 2023, PCG 2018/9 now includes a risk assessment framework that assists foreign incorporated companies when applying this test.

The framework contains a list of risk factors that allow taxpayers to determine their overall risk rating (i.e., very low, low, moderate or high risk) on this issue. This then impacts on the likelihood of ATO compliance activity.

Practitioners assisting a foreign incorporated company who are concerned about the location of the company's central management and control should review the framework to determine their client's overall risk rating. The risk framework should be reviewed together with TR 2018/5 which contains the ATO's view on this issue.

More information
PCG 2018/9
Central management and control test of residency

Corporate collective investment vehicle regime

The ATO has issued draft LCR 2023/D1 to provide guidance on how the tax rules apply to the corporate collective investment vehicles (CCIV) regime.

CCIVs are a relatively new investment vehicle that were introduced to increase the competitiveness of Australia's managed funds industry internationally and to attract offshore investors. The CCIV regime began on 1 July 2022.

A CCIV is a registered company that operates as an umbrella vehicle comprising of one or more sub-funds. Each sub-fund may offer investors a different investment strategy under the CCIV umbrella vehicle.

The regime is broadly intended to provide CCIVs with access to the same attribution and flow-through tax treatment as Attribution Managed Investment Trusts (AMITs) if the entity meets a modified version of the AMIT eligibility criteria.

If the CCIV does not qualify for the AMIT regime, the general trust taxation rules apply, subject to some modifications.

The draft LCR explains the tax treatment of CCIVs and provides the ATO's view on specific interpretative issues.

More information
LCR 2023/D1

Simplified transfer pricing record keeping records

PCG 2017/2 contains a number of simplified options that certain smaller businesses can use to stay under the ATO's radar on transfer pricing issues.

The simplified options are intended to reduce the compliance burden and record-keeping requirements that might otherwise apply to small businesses that have dealings with international related parties.

Two of the simplified options relate to low-level inbound and low-level outbound loans. In order to take advantage of these options it is necessary to consider the interest rate that is charged on the loans. The ATO has now updated and increased the interest rates for the 2024 income year:

- To apply the simplified option for inbound loans for the 2024 income year the interest rate must be no more than 5.81%;
- To apply the simplified option for outbound loans for the 2024 income year the interest rate must be at least 5.81%.

More information
PCG 2017/2

Extension of non-commercial loss 'special circumstances' safe harbour

PCG 2022/1 was introduced to provide a safe harbour position for those looking to rely on the Commissioner's discretion in relation to the non-commercial loss rules on the basis that the business has been impacted by 'special circumstances'.

An individual who carries on business as a sole trader or as a partner in a partnership and is not able to pass the non-commercial loss tests to apply a business loss against their other income has the option of applying for the Commissioner's discretion to allow the use of the tax losses. They generally need to convince the Commissioner that the business activity was affected by special circumstances that were outside the control of the operators of the business.

The PCG sets out a safe harbour position that allows taxpayers to utilise the losses as if the Commissioner had exercised discretion, without needing to apply for this. The safe harbour approach is primarily aimed at businesses that have been affected by flood, bushfire and/or COVID-19.

While the safe harbour originally applied from the 2020 to the 2023 income year and had now expired, the ATO has extended the application of the PCG for an additional year so that it also applies to the 2024 income year.

More information
PCG 2022/1

Qualifying as an early stage innovation company

Certain investors in qualifying early stage innovation companies (ESICs) are able to take advantage of concessional tax treatment, including tax offsets and special CGT concessions.

There are a number of conditions that need to be met for a company to qualify as an ESIC.

One of the requirements is that the company and its 100% subsidiaries (if any) incurred total expenses of $1 million or less in the income year prior to issuing the shares.

Depending on when the company was incorporated or registered in the Australian Business Register, the company and its 100% subsidiaries (if any) may also need to ensure that it incurred total expenses of $1 million or less across the last three income years prior to issuing the shares.

TD 2023/6 sets out the ATO's finalised view on these conditions, with the final determination remaining largely unchanged from its draft form.

The determination confirms that the company being tested must only take into account 'expenses' which have been 'incurred' as at the 'test time', and that for these purposes:

- Expenses are amounts recognised as expenses under general accounting concepts,
- 'Incurred' has the same meaning as for the purposes of the general deduction provisions in section 8-1; and
- The test time means the time immediately after the company has issued shares to the investor.

Consistent with the draft determination, the ATO consider there is low compliance risk in a company and its investors relying on the amount reported as 'total expenses' at item 6 of the company tax return, without separately identifying whether those expenses have been 'incurred' from a tax perspective.

However, just be aware that the ATO may still take compliance action to verify that the amount of 'total expenses' at item 6 of the company tax return is correct.

More information
TD 2023/6

Value of goods taken from stock for private use for the 2024 income year

The ATO has updated the amounts that they will accept in determining the value of goods taken from trading stock for private use for the 2024 income year.

More information
TD 2023/7

Cases

Claiming a deduction from a loss on the sale of the main residence

In *Bowerman and Commissioner of Taxation [2023] AATA 3547,* the taxpayer successfully argued that she should be entitled to claim a deduction on revenue account on the loss that arose from selling a private residence.

The facts of this case are broadly summarised as follows:

- Following the passing of her husband in the 2015, the taxpayer signed a contract to purchase an off the plan apartment in Woolaware Bay (i.e., Foreshore Boulevard Unit) which she intended to live in on completion.
- Approximately two years later in November 2017, the taxpayer signed a second contract to purchase another off the plan apartment in the same development (i.e., Dune Walk Unit) which was expected to complete earlier than the Foreshore Boulevard Unit.
- While the taxpayer acknowledged that she had the intention to live in the Dune Walk Unit during the period that the Foreshore Boulevard unit was being developed, she also stated that she purchased the unit with the expectation of making on a profit on the sale. In fact, the taxpayer said that she would not have bought the apartment if she thought she would not make money on it.

- Ultimately, the taxpayer lived in the Dune Walk Unit for 26 months before she sold the property at a loss due to lack of buyer interest as a result of COVID-19 restrictions.

The taxpayer sought to claim a deduction for the loss on revenue account in her original tax return, but the ATO denied the deduction arguing the sale of the Dune Walk Unit was the mere realisation of a capital asset. Not only was the loss capital in nature, but the ATO considered that the capital loss was ignored under the main residence provisions.

The AAT disagreed with the ATO's position, concluding that the taxpayer was entitled to claim a deduction for the loss on revenue account under section 8-1 ITAA97. This was based on the *Myer* principle. That is, the AAT was satisfied that she had acquired the property for the purpose of profit-making in the short term and that this transaction had taken place in the context of a 'business deal' or 'commercial transaction'.

The AAT reached this decision having regard to the following:

- The taxpayer knowing at the time of purchasing the Dune Walk Unit that she would have needed to sell this apartment to fund the completion of the Foreshore Boulevard Unit; and
- The taxpayer's awareness of growth in the off the plan units in the development acknowledging that she probably would have made a profit had it not been for the COVID-19 restrictions.

Interestingly, the AAT considered the profit-making intention need not be the sole or dominant purpose of the transaction, but just needed to be one of the purposes in order for the arrangement to be taxed on revenue account. Also, the AAT considered that the buying of the Dune Walk Unit with the intention of re-sale at a profit was the sort of thing a businessperson would do. The AAT concluded that the fact that the taxpayer lived in the property as their private residence across the ownership period didn't mean that the loss was private in nature.

The AAT also reached an interesting outcome on the timing of the deduction.

Because the taxpayer relied upon the ATO's ruling TR 97/7 which considers when an expense is incurred and this binds the ATO, the AAT held that the loss on the sale of the Dune Walk Unit was incurred and deductible in the income year in which the sale contract for the Dune Walk Unit was entered into.

Absent TR 97/7, the AAT conceded that the loss would not have been incurred and deductible until settlement.

This AAT decision has potential flow-on implications especially for those who buy and sell properties within a short period of time who were hoping to argue that the property is held on capital account on the basis that they've used the property as their main residence.

This is because the decision arguably sets a low bar for when the sale of a property could be taxed on revenue account as a commercial or business transaction.

In a way, the facts of this case are somewhat unique because most properties are sold for a profit. If the profit on the sale of a property is taxed solely on revenue account, the problem is that taxpayers will lose the ability to access the 50% general discount as well as other CGT concessions including the main residence exemption.

We will need to wait and see if the ATO appeals to the AAT decision. If the ATO does appeal, there is no guarantee that the Federal Court will reach the same conclusion as the AAT. If the ATO doesn't appeal the decision, then hopefully a decision impact statement will be released which provides guidance on how the ATO plans to deal with the AAT decision. Remember that the ATO is not bound by an AAT decision.

More information

Bowerman and Commissioner of Taxation (Taxation) [2023] AATA 3547

Taxi payments

The ATO has issued a Decision Impact Statement on a recent AAT decision that considered the treatment of payments received by a taxpayer from the Victorian Taxi Reform Fairness Fund. The AAT decision considered whether the payment was income according to ordinary concepts.

The payment was made in recognition of significant financial hardship suffered as a result of reforms in the Victorian tax industry, including the reduction in value of taxi licenses and reduced income due to increased competition.

Compensation payments are normally taxed on revenue account if they are designed to replace lost income or profits. However, the AAT considered that the income was not classified as ordinary income having regard to the following factors:

- The payment was a one-off discretionary payment that was paid as a matter of public policy for the relief of unfair financial hardship;
- The payment was not a product of the taxpayer's remaining taxi business or a substitute for, or estimate of, income forgone; and
- The payments were designed to provide relief arising from the financial hardship suffered resulting from the Victorian taxi industry reforms.

In recognition of the significant disruption to the taxi industry, a number of other schemes including those introduced by other States and Territories have been paying compensation in recent years to taxi licence holders.

The ATO in its Decision Impact Statement considers that this AAT decision does not impact on its position on other types of financial assistance payments made to Victorian taxi licence holders. Presumably, this will also include those made under financial assistance schemes introduced by other States and Territories for taxi licence holders.

Notwithstanding this, it will be important for practitioners to be aware that payments made in other jurisdictions or under different schemes might still have different tax implications. For example, there is specific guidance on the New South Wales Point to Point Financial Assistance Scheme which indicates that those payments trigger CGT event C2 and a capital gain or loss can potentially arise – see the link here.

While the AAT concluded that the payment should not be classified as ordinary income, another issue is that unfortunately there was no consideration of how the payment should be dealt with for tax purposes. For example, the AAT didn't look at possible CGT implications associated with receiving the payment or whether the payment could potentially fall within the scope of the CGT exemption in section 118-37 which deals with compensation payments that meet certain conditions.

The ATO has announced that it will be publishing guidance on what clients need to do if they are impacted by this decision. This will be published in due course in its fact sheet 'Taxi licence holders – industry assistance payments and passenger movement levies'. Hopefully, the ATO's guidance will clarify the CGT treatment.

More information

Decision Impact Statement - Bains and Commissioner of Taxation

ATO view prevails despite Bendel case decision

Last month's round up covered the AAT decision in *Bendel and Commissioner of Taxation* [2023] AATA 3074.

This AAT decision challenges the ATO's long held position that unpaid distributions owed to a private company can be treated as a loan for Division 7A purposes.

While the decision is being contested before the Federal court, the ATO has issued a Decision Impact Statement in the interim to explain its administrative approach.

Pending the final outcome of the case, the ATO will continue to apply its existing view as expressed in TD 2022/11. This determination essentially outlines the ATO's view that a corporate beneficiary's failure to call for the payment of its trust entitlement and allowing the trustee to use these funds amounts to a loan to the trust for Division 7A purposes.

Until the appeal process is finalised, the ATO will also generally not finalise objection decisions where the decision concerns whether an unpaid trust distribution is a loan for Division 7A purposes. The main exception to this is where the taxpayer gives notice requiring the Commissioner to make an objection decision and in

such a case, the decision will be made based on the ATO's existing view in TD 2022/11.

Importantly, the ATO has reminded practitioners and taxpayers that the AAT decision deals specifically with Division 7A. Leaving trust distributions owed to corporate beneficiaries unpaid could trigger other tax implications including under the reimbursement provisions in section 100A.

In broad terms, section 100A is an integrity provision dealing with trust distributions which can apply in situations where income is appointed to a beneficiary of a trust, but the real economic benefit of the funds is provided to another party. This potentially includes situations where the funds are retained by the trust.

Many practitioners would be aware that the ATO has recently released guidance on section 100A in the form of TR 2022/4 and PCG 2022/2.

While the PCG in particular sets out a number of scenarios that would be considered low risk from a compliance perspective, it is important to be aware that some of the low risk scenarios essentially require the amount owed to the beneficiary to be placed on complying Division 7A loan terms.

Ultimately this AAT decision challenges an important ATO position, however it might be some time before this issue is resolved through the courts. In the meantime, practitioners should be aware of how the ATO is approaching this issue and also appreciate that unpaid trust distributions owing to corporate beneficiaries may trigger other tax considerations, including under the reimbursement provisions in section 100A.

More information

Decision Impact Statement - Bendel and Commissioner of Taxation

Legislation

Treasury Laws Amendment (2023 Measures No. 1) Bill 2023

This Bill has been passed by Parliament and targets several areas.

One of the key areas targeted by the Bill relates to the implementation of recommendations relating to the Tax Practitioners Board (TPB). These measures are broadly summarised below:

- An updated and modernised objects clause for the Tax Agents Services Act.
- The establishment of a special account for the TPB to ensure funding for the TPB will be largely independent from the ATO.
- The introduction of an obligation on tax practitioners to:
  - Not employ or use disqualified entities to provide tax agent services on their behalf unless approved by the TPB; and
  - Not provide tax services in connection with an arrangement with a disqualified entity.
- The introduction of an obligation on disqualified entities to disclose their disqualified status to a tax practitioner if:
  - They are being employed or used to provide tax agent services on behalf of a tax practitioner; or
  - They are entering an arrangement with a tax practitioner in connection with providing tax agent services.
- The change in the registration period from at least every three years to at least every year.
- Enabling the Minister to specify additional obligations through a legislative instrument that registered tax agents and BAS agents must comply with.

Amendments were also subsequently made to the Bill after it was originally introduced to ensure that:

- Partners and executive officers of a tax firm with more than 100 employees are ineligible for appointment to the TPB. This can also include former partners and executives receiving or recently receiving regular and ongoing benefits from the tax firm; and

- Registered agents must notify the TPB in writing if they have reasonable grounds to believe that they or another agent have breached the Code of Professional Conduct where it involves a significant breach of the Code.

The other area targeted by the Bill involves changes to the share buy-back rules.

First, the Bill contains measures to ensure the tax treatment of off-market share buy-backs undertaken by listed public companies is aligned with the tax treatment of on-market share buy-backs. This is done by amending the legislation so that no portion of the buy-back price will be treated as a dividend for tax purposes. This also means that franking credits cannot be attached to the buy-back price.

The key point for practitioners to remember is that the changes only apply to listed public companies. Buy-backs conducted by private companies could still have a dividend component to the extent that the buy-back is not sourced from the company's share capital account.

Second, an integrity measure has been introduced to prevent certain dividends paid by companies from being franked where they are funded by capital raising.

More information
Treasury Laws Amendment (2023 Measures No. 1) Bill 2023

Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023

Following consultation on the exposure draft legislation and materials issued in response to recent scandals involving tax adviser misconduct and the leaking of confidential information to their clients, *Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023* has been introduced.

This Bill mainly deals with the following areas:

Reform of promoter penalty laws

- Increasing the time the ATO has to bring an application for civil penalty proceedings in the Federal Court of Australia in response to a contravention of the promoter penalty laws from 4 years to 6 years.
- Strengthening the penalty provisions in relation to a contravention of the promoter penalty laws.
- Expanding the application of the promoter penalty regime, including broadening the scope of certain definitions, to overcome difficulties in applying this penalty regime.

Whistleblower protections

- Extending whistleblower protections for disclosures to the Commissioner or TPB in order to assist the TPB to perform its functions or duties under the TAS Act.
- Ensuring disclosures of information made to medical practitioners or psychologists can also qualify for protections.
- Ensuring that an individual that makes a claim for protection bears the onus of substantiating their claim for protection.

Tax Practitioners Board reform

- Updating the TAS Act to enable the TAS regulations to specify the circumstances in which unregistered entities are to be included in the Register and to specify how long the information must remain on the Register.
- Extending the default period that the TPB has to conclude investigations into potential breaches of the TAS Act from 6 months to 24 months.
- Allowing the TPB to decide whether to publish information about the entity on the Register on completing an investigation and finding a breach of the TAS Act.

Information sharing

- Allowing the ATO and TPB to share protected information with Treasury about misconduct arising out of breaches (or suspected breaches of confidence) by intermediaries engaging with the Commonwealth for the purpose of the Commonwealth appropriately responding to the breach (or suspected breach).
- Allowing the ATO and TPB to share protected information with prescribed disciplinary bodies where they reasonably believe a person’s actions

may constitute a breach of the prescribed disciplinary body's code of conduct or professional standards.

- Allowing Treasury to on-disclose protected information to the Minister or Finance Minister in relation to a breach (or suspected breach) and any proposed measure or action directed at dealing with such a breach (or suspected breach).

More information

Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023

Superannuation (Objective) Bill 2023

Following consultation on exposure draft legislation, this Bill has been introduced to enshrine the following objective of superannuation into legislation:

> *'To preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way.'*

The intent of legislating the objective of superannuation is to ensure any future legislated changes to the system are consistent with this objective.

The explanatory memorandum recognises superannuation as an increasingly important source of capital, with an opportunity to leverage investment in areas where there is alignment between members and national economic priorities.

More information

Superannuation (Objective) Bill 2023