Not-for-profit financial reporting and tax update

December 2023

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Financial reporting for not-for-profit (NFP) entities continues to be an area of focus for the Australian Accounting Standards Board (AASB). We also discuss the AASB's new Exposure Draft (ED) on proposed Australian Sustainability Reporting Standards (ASRS) for the disclosure of climate-related financial information by both for-profit and NFP entities.

And we continue to see developments in taxation law for NFPs.

This publication outlines the latest developments in financial reporting and taxation for private sector NFPs.

Please contact your EY advisor for further details.

Financial reporting update

In case you missed these

The following changes come into effect for the first time for December 2023 reporters:

ACNC Financial Reporting Changes

Large and medium charities preparing Special Purpose Financial Statements (SPFS) are required to disclose related party transactions in their SPFS, effective from the reporting period covered by the 2023 Annual Information Statements (AIS).

Entities can provide the related party disclosures by applying the full disclosure requirements in AASB 124 *Related Party Disclosures* or the equivalent simplified disclosure requirements in AASB 1060 *General Purpose Financial Statements – Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities*. They can also apply the simplified disclosures in AASB 1060 for the other five Standards required by the Australian Charities and Not-for-profits Commission (ACNC) (i.e., AASB 101 *Presentation of Financial Statements*, AASB 107 *Statement of Cash Flows*, AASB 108 *Accounting Policies, Changes in Accounting Estimates and Errors*, AASB 124, AASB 1048 *Interpretation of Standards* and AASB 1054 *Australian Additional Disclosures*).

Comparative information is not required in the first year of application of the new requirements.

Resources

ACNC financial reporting changes for charities (June 2022)

Related party disclosures required for 2023 AIS

2023 Annual Information Statement Hub

Narrow-scope amendments to AASB 15 and AASB 16

The following narrow-scope amendments to AASB 15 *Revenue from Contracts with Customers* and AASB 16 *Leases* applicable to NFPs are effective for annual periods beginning on or after 1 July 2022:

- **AASB 15:** Additional Illustrative Example 7A to clarify the accounting for upfront fees
- **AASB 16:** Retain the accounting policy choice to initially measure a class of concessionary right-of-use assets at cost or fair value on an on-going basis for NFP private sector lessees only

ACNC review of 2021 AIS and AFR submissions

ACNC has released the results of its review of the 2021 AIS and Annual Financial Reports (AFR) submitted by a random sample of 250 registered charities. The review also focused on compliance with AASB 124 by charities preparing General Purpose Financial Statements (GPFS) and any voluntary disclosures under AASB 124 provided by preparers of SPFS.

The review found several key findings, including:

- Improvement in the correct identification of ACNC as the relevant reporting framework in both the AFR and Auditor's Opinion, inclusion of a complete set of financial statements and correct reporting of expenses by nature or function
- Decline in the accuracy of the type of financial report selected in the AIS
- Consistent with the results of last year's review, most common disclosure issues were insufficient or no disclosure of
  - Whether the entity was a for-profit or NFP for financial reporting purposes
  - Accounting estimates and judgements made
  - Fees paid to the auditor/reviewer of the financial statements
  - Incorrect reporting of audit modification in the AIS

Other observations

- Of the applicable charities, a large majority appropriately disclosed related party transactions. However, 14% did not disclose Key Management Personnel (KMP) compensation in their GPFS

- 5% early applied the GPFS simplified disclosure requirements under AASB 1060
- Only 54% of those preparing SPFS included new disclosure regarding compliance with the recognition and measurement requirements under AASB 1054

As part of the review results, the ACNC noted the focus areas for 2023 will continue to include related party transactions and KMP disclosures which are now mandatory for all reporters.

Resources

Reviewing charities' financial information and annual financial reports – 2021

Sustainability-related financial reporting standards

Recently, the International Sustainability Standards Board (ISSB) issued its first two IFRS Sustainability Disclosure Standards:

- IFRS S1 *General Requirements for Disclosure of Sustainability-related Financial Information* requires an entity to identify and disclose information about the sustainability-related risks and opportunities it faces over the short, medium and long term.
- IFRS S2 *Climate-related Disclosures* sets out climate-specific disclosure requirements, including disclosure of physical risks of climate change, transition risks associated with a shift to a lower-carbon economy and climate-related opportunities. Other topics include greenhouse gas emissions and an entity's progress towards any climate-related targets it has set.

These standards were developed to bring global consistency to the way entities disclose sustainability-related risks and opportunities throughout their value chain, helping to improve trust and confidence in those disclosures and to inform investment decisions.

In Australia, the Commonwealth Department of the Treasury (Treasury) has proposed that entities lodging financial reports under Chapter 2M of the *Corporations Act 2001* and that either meet prescribed size thresholds or are within scope of the *National Greenhouse and Energy Reporting Act 2007* should be required to make climate-related financial disclosures. These developments prompted the AASB to develop sustainability-related reporting requirements as a suite of standards separate from Australian Accounting Standards (AAS).

In October 2023, the AASB published ED SR1 *Australian Sustainability Reporting Standards – Disclosure of Climate-related Financial Information*. The draft ASRS are based on the ISSB Standards with the main exception being that the draft ASRS only require disclosure of sustainability-related financial information for climate.

The ED includes proposals for specific modifications to support the application by NFP entities in the private and public sectors in Australia. Comments to the AASB are requested by 1 March 2024.

Treasury is expected to soon publish an Exposure Draft of amendments to the *Corporations Act 2001* that will clarify:

- Which entities will be required to make climate-related financial disclosures
- When they will be required to make these disclosures
- The timetable for the assurance of these disclosures, progressing from limited assurance to reasonable assurance

It is worth noting that it will be the responsibility of regulators and authorities other than the AASB to mandate which NFP entities should comply with ASRS.

Resources

Navigating the new frontier of sustainability standards | EY Australia

AASB Exposure Draft SR1 - Australian Sustainability Reporting Standards – Disclosure of Climate-related Financial Information

Update on AASB NFP projects

NFP Financial Reporting Framework and proposed Tier 3 Standard for NFPs

In the light of the feedback received on its Discussion Paper, the AASB is developing an ED for a Tier 3 Standard for NFPs. At its September and November 2023 meetings, the AASB decided, inter alia, to take the following approaches:

- Flexibility to adopt an accounting policy from Tier 1 or Tier 2 AAS, if not specifically addressed in the Tier 3 Standard
- Use judgment in developing accounting policies for transactions not covered in the Tier 3 Standard, referring first to Tier 3 principles and reporting requirements, followed by the Conceptual Framework and Tier 2 requirements and guidance
- Apply a single Conceptual Framework to NFPs reporting under any tier of AAS
- Apply Tier 2 to specific topics
- Specifically address or scope-out some topics from Tier 3 Standard
- Accounting policy choice when preparing separate financial statements with disclosures required for notable relationships with other entities as an alternative to consolidated accounts
- Accounting policy choice when preparing separate financial statements in measuring investments in subsidiaries, associates and joint ventures at cost, fair value or equity method
- Require related party disclosures consistent with Tier 2, except for related party donations
- Tier 2 requirements to apply to more complex and not commonly held financial instruments
- Transaction costs arising from financial assets and financial liabilities to be expensed when incurred
- Require financial assets held for capital return and income in scope of Tier 3 to be measured subsequently at fair value through profit or loss
- Not to require recognising provisions for non-vesting accumulating employee benefits and
- Require a modified retrospective approach to correction of prior period accounting errors

Resources

Discussion Paper – Development of Simplified Accounting Requirements (Tier 3 NFP Private Sector Entities)

AASB NFP Framework Project Summary

AASB Action Alert No. 225, Sept 2023

AASB Action Alert No. 227, Dec. 2023

Post-implementation review - AASs that apply to NFPs

The AASB is undertaking post implementation review of a number of NFP specific standards, having issued the following Invitations to comment (ITC):

- Income for Not-for-profit entities (ITC 50) sought feedback on the application of AASB 1058 *Income of Not-for-Profit Entities* and AASB 15
- Control, Structured Entities, Related Party Disclosures and Basis of Preparation of Special Purpose Financial Statements (ITC 51) sought feedback on the application of NFP specific requirements and guidance in AASB 10 *Consolidated Financial Statements*, AASB 12 *Disclosure of Interests in Other Entities*, AASB 124 and AASB 1054

The comment period for these ITCs ended on 31 March 2023. In response to the feedback received on topic 1 and topic 2 of ITC 50, the AASB decided to conduct further targeted outreach and noted the need for additional guidance. The AASB will continue to discuss feedback at future meetings.

Tax update

New small business incentives

Technology investment boost

Businesses with an aggregated turnover of less than $50m per annum will be entitled to an additional 20% tax deduction for eligible expenses and assets acquired relating to digital uptakes, such as portable payment devices, cyber security systems or subscriptions to cloud-based services. There is an annual spending cap of $100,000.

Date of effect: Enacted in June 2023 and applies from 7.30pm (AEDT) on 29 March 2022 until 30 June 2023.

Skills and training boost

Small businesses will also be entitled to the same 20% additional deduction for eligible expenditure on Australian registered external training courses for employees only. There is an annual spending cap of $100,000.

Date of effect: Enacted June 2023 and applies to eligible expenditure from 7.30pm (AEDT) on 29 March 2022 until 30 June 2024.

Small Business Energy Incentive

Businesses with aggregated turnover of less than $50 million per annum will be entitled to an additional 20% tax deduction on spending that supports electrification and more efficient energy use.

Up to $100,000 of total expenditure will be eligible for the incentive, which will cap the additional deduction at $20,000. Eligible assets or upgrades will need to be first used or installed ready for use between 1 July 2023 and 30 June 2024.

Date of effect: Before parliament at the date of writing

ACNC updates

New PBI Commissioners Interpretation Statement

Following some recent case law relating to the definition of Public Benevolent Institution (PBI) the Commissioner issued an updated Interpretation Statement (CIS). Some key points from the CIS:

- A PBI must be organised, conducted or promoted for benevolent relief (rather than the main purpose concept previously used)
- There needs to be a "sufficiency of connection" between the organisation's activities and the relief of intended beneficiaries
- A PBI can charge fees for services, but these will need to be considered and balanced against the benevolent relief being provided (i.e., fees would be expected to be below market rate if the PBI is seeking to relieve poverty)
- Development assistance may qualify where the vast majority of the community are in need and the assistance is directed towards those needs
- In certain circumstances a PBI can engage in advocacy and still be considered a PBI

Date of effect: from 31 August 2023

ATO reporting and DGR reforms

New reporting requirements for self-assessing income tax exempt NFPs

The 2021-2022 Federal Budget brought in additional reporting obligations for non-charitable NFPs (e.g., sporting or agricultural organisations) that rely on a self-assessed income tax exemption. From 1 July 2023, NFPs with an active ABN must lodge an annual self-review in order to access an income tax exemption. Failure to complete the self-review could render the entity ineligible for an income tax exemption and penalties may apply under the Australian Taxation Office's (ATO) penalty framework.

Reporting will be online and available from 1 July 2024. Timing will depend on whether the entity has an approved substituted accounting period. Details of the reporting are limited but it will include questions on income tax exemption eligibility and some high-level financial information to assist the ATO in understanding the size of the organisation.

Date of effect: first reporting from 1 July 2024

Deductible gift recipients managed by ATO

From 1 January 2024 the administration of the following categories of Deductible Gift Recipients (DGR) will transfer to the ATO:

- Environmental organisations
- Harm prevention charities
- Cultural organisations
- Overseas aid organisations

ATO review of DGR status

In December 2023 the ATO plans to start reviewing the DGR status of 234 organisations listed in the tax law. The reviews will focus on proof of activity, purpose and use of donations.

Other tax matters

Single Touch Payroll Phase 2 (STP2) - Leveraging Payroll Data for Employer Obligation Testing

The ATO is expanding the use of payroll data to monitor compliance with employer obligations such as superannuation guarantee.

STP2 extended the detail of real-time reporting of payroll data to the ATO, changing the way employers report their payroll information. The majority of employers have now commenced reporting through STP2, with a small number of employers still under deferrals with the ATO.

The ATO has announced it is seeking improvements to leverage data reported through STP2 in conjunction with information provided by other entities such as superannuation funds and Services Australia to conduct robust employer obligation testing to ensure fair and accurate reporting of employee entitlements.

Given some employers have now been live for one to two years, now is the right time to think about how your data is being used by the ATO. Given we are increasingly experiencing the ATO raise queries in respect of STP2 data, it is crucial for employers to be one step ahead by having confidence in the data submitted to the ATO and promptly addressing any potential discrepancies.

Key implications for employers:

By proactively addressing any compliance gaps and diligently monitoring your employer obligations, you can confidently navigate the continuously changing landscape.

This may include data testing to verify historical compliance and assisting to implement robust compliance measures going forward, and review of employment taxes payroll processes, including documentation.

ATO Superannuation compliance statistics

On 6 November 2023 the ATO released its superannuation compliance activity results for the 2023 financial year. Some of the information from ATO is provided here:

- Superannuation Guarantee compliance rate (i.e. superannuation paid on time without ATO intervention) is over 94%
- $973m in Super Guarantee Charge (SGC) was collected through voluntary disclosures and ATO compliance action. 56,000 employers made voluntary disclosures.
- $157m total in Part 7 penalties was raised.
- 3,659 director penalty notices were issued.

Encouragingly though, penalties appear to have arisen where the SGC was triggered from ‘employee notifications’ or ‘ATO initiated cases’ (as no amounts were separately reported for voluntary disclosures), this suggests that penalties imposed for voluntary disclosures were not significant.

Key implications for employers:

ATO activity continues in this area, through multiple triggers, including through its analysis of STP data provided by employers, and other notifications from employees. Employers should proactively address any compliance gaps (including considering Voluntary Disclosure with the ATO) and diligently monitoring your employer obligations (including through review of payroll system treatment of employment taxes).

Contractors – superannuation and PAYGW

In our last update we provided details of the ATO release of updated draft guidance on Pay-As-You-Go withholding (PAYGW) and Superannuation Guarantee obligations for contractors, following recent High Court decisions: Draft Taxation Ruling 2022/D3 Income tax: pay as you go withholding – who is an employee? (TR 2022/D3). Accompanying the draft ruling was a Practical Compliance Guide (PCG) 2022/D5 which outlines the Commissioner's risk framework for evaluating worker classification arrangements. It helps parties assess their compliance risk and outlines when the ATO will investigate and apply higher penalties.

We are continuing to see complexity and uncertainly from payers seeking to correctly classify contractor arrangements for superannuation and PAYGW. The case law provides that it is relevant to review contractual rights and obligations at the time the contract is entered into in making that assessment. However, it is the ATO's view that the multifactorial approach is still also relevant. The PCG provides for limited circumstances where a classification adopted is low risk (as the risk level determines penalty outcomes if the ATO review a scenario and disagree with the approach taken). We consider it is relevant to not only have a robust and reviewed contractual arrangement with a contractor for determining the superannuation and PAYGW obligations of the contractor, but also to have worked through the multifactorial tests as documentation of the matters which the ATO considers are also still applicable in line with its draft ruling.

Key implications for employers:

Review of existing contractor agreements and structure of new contractor arrangements, taking account of case law and ATO guidance to assess whether the classification of workers as contractors is supportable. You may also seek tax and legal guidance in undertaking that review. As the ruling is draft and has not yet been finalised, keep up to date on ATO revisions.

Payday Super

The government has proposed that employers will be required to pay their employees' super at the same time as their salary and wages, commencing 1 July 2026. These changes were announced in the 2023-24 Federal Budget, and the final design and requirements are expected to be provided in the 2024-25 Federal Budget. Currently, employers are only required to pay employee super on a quarterly basis. The Treasury released a Consultation Paper on 9 October 2023. We have provided our feedback in that consultation process relating to various matters including: implementation issues; alternative approaches; compliance burden impacts; changes to the superannuation guarantee charge mechanisms; applicable penalty regimes; superannuation threshold consequences. The consultation period has closed and further update from the Treasury is pending.

FBT: Adequate alternative records

The ATO has released 5 additional draft instruments on 12 October 2023 specifying acceptable record keeping obligations which, when finalised, can be used by employers as an alternative to employee declarations. Once finalised, these instruments will commence on 1 April 2024. The drafts propose the use of adequate existing corporate or alternative records with prescribed information, allowing taxpayers to avoid the need for additional statutory evidentiary documents. Specifically, the record keeping administrative concessions relate to: Temporary accommodation in respect of relocation; Otherwise deductible benefits; Living away from home, maintaining an Australian home; Fly-in fly-out and drive-in drive-out employees; Private use of Vehicles other than cars. Importantly, these instruments will allow for other, specific record keeping to satisfy the record keeping that is otherwise required as a formal declaration.

Key implications for employers:

Stay informed and keep updated on ATO revisions or final versions of the instruments. Only seek to utilise the alternate record keeping once it is finalised, and then ensure that you have satisfied the specific record keeping requirements as set out in the instruments.

ATO and ACNC regulatory activity

Key areas of interest are:

- Additional funding has been provided to the ATO for compliance programs
- The ATO has been undertaking a number of review programs for corporate entities and private groups and there is an expectation that this approach will be extended to government and not for profit entities in the near future
- The ACNC is implementing reviews where charities are at risk of failing to meet the governance standards
- The ACNC has a mandate to review 2% of all registered charities endorsed as DGRs
- Additional funding in the recent budget for disclosure of ACNC compliance activities

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