





# **Treasury Laws Amendment (2023 Measures No. 1) Act 2023**

**No. 101, 2023**

**An Act to amend the law relating to corporations,  
financial services, sustainability standards and  
taxation, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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**An Act to amend the law relating to corporations,  
financial services, sustainability standards and  
taxation, and for related purposes**

*[Assented to 27 November 2023]*

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Treasury Laws Amendment (2023 Measures No. 1) Act 2023*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	27 November 2023
2. Schedules 1 and 2	The day after this Act receives the Royal Assent.	28 November 2023
3. Schedule 3, Part 1	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 January 2024
4. Schedule 3, Part 2	1 July 2024.	1 July 2024
5. Schedule 3, Part 3	1 July 2024.	1 July 2024
5A. Schedule 3, Part 4	1 October 2024.	1 October 2024
5B. Schedule 3, Part 5	1 July 2024.	1 July 2024
6. Schedule 4	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 January 2024
7. Schedule 5	The day after this Act receives the Royal Assent.	28 November 2023

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedules**

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Registration of providers and assisted decision making

### Part 1—Multiple registrations of relevant providers

#### *Corporations Act 2001*

##### 1 Paragraph 921L(1)(b)

Repeal the paragraph, substitute:

- (b) a written order (a **registration suspension order**), in relation to a relevant provider, that suspends all of the relevant provider's registrations under section 921ZC for a period (the **suspension period**) specified in the order;

##### 2 Paragraph 921L(1)(c)

Repeal the paragraph, substitute:

- (c) a written order (a **registration prohibition order**), in relation to a relevant provider, that:
  - (i) cancels all of the relevant provider's registrations under section 921ZC at a time (the **cancellation time**) specified in the order; and
  - (ii) provides that the person who is or was the relevant provider is not to be registered under section 921ZC until after a day (the **prohibition end day**) specified in the order.

##### 3 Subsection 921L(1) (note)

Repeal the note, substitute:

- Note: If a registration prohibition order is in force against a person who is or was a relevant provider:
- (a) each registration of the person under section 921ZC will cease to be in force at the cancellation time specified in the order (unless the registration has ceased to be in force at an earlier time) (see sections 921ZD and 921ZE); and
  - (b) ASIC must refuse to register the person until after the prohibition end day specified in the order (see subsection 921ZC(3)).

**4 Subsection 921L(3)**

Omit “the relevant provider’s registration under subsection 921ZC(1) is”, substitute “all of the relevant provider’s registrations under section 921ZC are”.

**5 Section 921Y**

After “921ZC(1)”, insert “or (1A)”.

**6 Subparagraph 921Z(1)(c)(ii)**

After “921ZC(1)”, insert “or (1A)”.

**7 Subparagraph 921Z(2)(c)(ii)**

After “921ZC(1)”, insert “or (1A)”.

**8 Section 921ZA (heading)**

Repeal the heading, substitute:

**921ZA Application for registration—relevant providers who are financial services licensees applying to be registered**

**9 Section 921ZB (heading)**

Repeal the heading, substitute:

**921ZB Application for registration—financial services licensees applying to register relevant providers**

**10 Subsection 921ZB(1)**

Omit “921ZC(1)”, substitute “921ZC(1A)”.

**11 Subsection 921ZC(1)**

Repeal the subsection, substitute:

*Registration—relevant providers who are financial services licensees applying to be registered*

- (1) If an application for registration is made in accordance with section 921ZA by a relevant provider who is a financial services licensee, ASIC must register the relevant provider under this

subsection by recording in the Register of Relevant Providers that the relevant provider is registered.

*Registration—financial services licensees applying to register relevant providers*

- (1A) If an application is made in accordance with section 921ZB by a financial services licensee to register a relevant provider, ASIC must register the relevant provider under this subsection by recording in the Register of Relevant Providers that the relevant provider is registered in relation to the licensee.
- (1B) To avoid doubt, a relevant provider is able to be registered under subsection (1A) multiple times in relation to different financial services licensees.

Note: The relevant provider may provide personal advice on behalf of multiple licensees, so long as the relevant provider is registered in relation to at least one of them.

**12 Subsection 921ZC(2)**

Omit “ASIC must refuse to register the relevant provider”, substitute “Despite subsection (1) or (1A), ASIC must refuse to register a relevant provider under that subsection”.

**13 Subsection 921ZC(3)**

Repeal the subsection, substitute:

- (3) Despite subsection (1) or (1A), if a registration prohibition order is in force against a relevant provider, ASIC must refuse to register the relevant provider under that subsection until after the prohibition end day specified in the order.

**14 Subsection 921ZC(4)**

Repeal the subsection, substitute:

*Notice of registration*

- (4) If:
- (a) an application is made in accordance with section 921ZA by a relevant provider; and

- (b) ASIC registers the relevant provider under subsection (1) of this section;

ASIC must, as soon as practicable after recording in the Register of Relevant Providers that the relevant provider is registered, give a written notice of the registration to the relevant provider.

#### **15 Subsection 921ZC(5)**

Repeal the subsection, substitute:

- (5) If:
- (a) an application is made in accordance with section 921ZB to register a relevant provider; and
  - (b) ASIC registers the relevant provider under subsection (1A) of this section;
- ASIC must, as soon as practicable after recording in the Register of Relevant Providers that the relevant provider is registered in relation to the applicant, give a written notice of the registration to:
- (c) the relevant provider; and
  - (d) the applicant.

#### **16 Subsection 921ZC(6)**

Repeal the subsection, substitute:

*Notice of refusal to register relevant provider*

- (6) If ASIC refuses to register a relevant provider under subsection (1) or (1A), ASIC must, within 5 business days after the refusal, give a written notice of the refusal to:
- (a) the relevant provider; and
  - (b) if the refusal relates to an application made in accordance with section 921ZB—the applicant.

#### **17 Paragraph 921ZD(a)**

Omit “under subsection 921ZC(1)”.

#### **18 Section 921ZE**

Repeal the section, substitute:

**921ZE Period of registration—relevant providers who are registered in relation to financial services licensees**

If a financial services licensee makes an application in accordance with section 921ZB in relation to a relevant provider, and ASIC registers the relevant provider under subsection 921ZC(1A), the registration of the relevant provider in relation to the licensee:

- (a) comes into force when ASIC records in the Register of Relevant Providers that the relevant provider is registered in relation to the licensee; and
- (b) remains in force until the earliest of the following:
  - (i) the cancellation time specified in any registration prohibition order in force against the relevant provider;
  - (ii) the time when any banning order against the relevant provider takes effect;
  - (iii) the licensee ceases to authorise the relevant provider to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products.

Note 1: A notice must be lodged under section 922H when there is a change in a matter for a relevant provider.

Note 2: For relevant providers with more than one registration, all registrations cease to be in force under subparagraph (b)(i) or (ii). For subparagraph (b)(iii), only the registration relating to the licensee referred to in that subparagraph ceases.

**19 Paragraph 922Q(2)(ua)**

Repeal the paragraph, substitute:

- (ua) whether a registration under section 921ZC of the relevant provider is in force;

**20 Section 1684L**

Repeal the section.

**21 Paragraphs 1684U(1)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) immediately before 1 January 2022, either:
  - (i) the person was a registered tax (financial) adviser; or
  - (ii) an application under section 20-20 of the old Tax Agent Services Act for the registration of the person as a

- registered tax (financial) adviser had not been finally determined; or
- (iii) an application under section 20-50 of the old Tax Agent Services Act for the renewal of the person's registration as a registered tax (financial) adviser had not been finally determined; and
- (c) on or after 1 January 2022, either:
- (i) the person's registration as a registered tax (financial) adviser continues in force because of item 139 of Schedule 1 to the amending Act; or
- (ii) the person's registration, or renewed registration, as a registered tax (financial) adviser comes into force because of item 140 of Schedule 1 to the amending Act.

## **22 Paragraph 1684U(3)(a)**

Omit "old".

## **23 Paragraph 1684U(3)(b)**

Omit "old registration" (wherever occurring), substitute "registration, or renewed registration,".

## **24 In the appropriate position in Chapter 10**

Insert:

# **Part 10.69—Transitional provisions relating to Schedule 1 to the Treasury Laws Amendment (2023 Measures No. 1) Act 2023**

## **1699 Definitions**

- (1) In this Part:

***amending Part*** means Part 1 of Schedule 1 to the *Treasury Laws Amendment (2023 Measures No. 1) Act 2023*.

- (2) An expression used in this Part that is also used in Part 7.6 has the same meaning as in that Part.

**1699A Transitional—registration of relevant providers**

- (1) This section applies to a registration of a relevant provider that was in force under subsection 921ZC(1) immediately before the commencement of the amending Part.
- (2) The registration of the relevant provider continues in force (and may be dealt with) on and after the commencement of the amending Part as follows:
- (a) if the application to register the relevant provider was made in accordance with section 921ZA—as if the relevant provider had been registered under subsection 921ZC(1) as substituted by the amending Part;
  - (b) if the application to register the relevant provider was made by a financial services licensee in accordance with section 921ZB—as if the relevant provider had been registered under subsection 921ZC(1A) as substituted by the amending Part in relation to the financial services licensee.

Note: See section 1699D for transitional arrangements in relation to a registration of a relevant provider that is suspended immediately before the commencement of the amending Part.

**1699B Transitional—relevant providers who are financial services licensees applying to be registered**

- (1) This section applies to an application for the registration of a relevant provider if:
- (a) the application was made in accordance with section 921ZA as in force immediately before the commencement of the amending Part; and
  - (b) ASIC had not made a decision under section 921ZC before the commencement of the amending Part in relation to the application.
- (2) The application continues in force (and may be dealt with) on and after the commencement of the amending Part, as if the application had been made to register the relevant provider under subsection 921ZC(1) as substituted by the amending Part.

**1699C Transitional—financial services licensees applying to register relevant providers**

- (1) This section applies to an application for the registration of a relevant provider if:
  - (a) the application was made in accordance with section 921ZB as in force immediately before the commencement of the amending Part; and
  - (b) ASIC had not made a decision under section 921ZC before the commencement of the amending Part in relation to the application.
- (2) The application continues in force (and may be dealt with) on and after the commencement of the amending Part, as if the application had been made to register the relevant provider under subsection 921ZC(1A) as substituted by the amending Part.

**1699D Transitional—registration suspension orders**

- (1) This section applies to a registration suspension order that:
  - (a) was in force immediately before the commencement of the amending Part in relation to a registration under subsection 921ZC(1) of a relevant provider; and
  - (b) specified a suspension period ending after that commencement.
- (2) The registration suspension order continues in force (and may be dealt with) on and after that commencement as if it were an instrument of a kind that:
  - (a) is specified in paragraph 921L(1)(b) as substituted by the amending Part; and
  - (b) suspends that registration for the remainder of the suspension period.
- (3) After the suspension period, that registration continues in force (and may be dealt with) as follows:
  - (a) if the application to register the relevant provider was made in accordance with section 921ZA—as if that registration had been under subsection 921ZC(1) as substituted by the amending Part;

- (b) if the application to register the relevant provider was made by a financial services licensee in accordance with section 921ZB—as if that registration had been under subsection 921ZC(1A) as substituted by the amending Part in relation to the financial services licensee.

Note: The provider’s registration will not already have been continued under section 1699A because that registration was suspended immediately before the commencement of the amending Part and therefore was not in force at that time (see subsection 921L(3)).

### **1699E Transitional—registration prohibition orders**

- (1) This section applies to a registration prohibition order that:
  - (a) was in force immediately before the commencement of the amending Part in relation to a registration under subsection 921ZC(1) of a relevant provider; and
  - (b) specified a cancellation time for that registration; and
  - (c) specified a prohibition end day that is after the commencement of the amending Part.
- (2) The registration prohibition order continues in force (and may be dealt with) on and after that commencement as if it were an instrument of a kind that:
  - (a) is specified in paragraph 921L(1)(c) as substituted by the amending Part; and
  - (b) if the cancellation time is at or after the commencement of the amending Part—cancels at the cancellation time the relevant provider’s registration under subsection 921ZC(1) or (1A) as substituted by the amending Part; and
  - (c) provides that the person who is or was the relevant provider is not to be registered under subsection 921ZC(1) or (1A), as substituted by the amending Part, until after the prohibition end day.

Note 1: If the cancellation time was before the commencement of the amending Part, then the cancellation of the provider’s registration will have already taken effect before that commencement.

Note 2: If the cancellation time is at or after that commencement, section 1699A will continue the provider’s registration up until the cancellation time. Paragraph (b) of this subsection confirms that the provider’s registration will then be cancelled at the cancellation time.

Note 3: Paragraph (c) confirms that the person is not to be registered again until after the prohibition end day.

**1699F Transitional—action by Financial Services and Credit Panels against relevant providers**

A Financial Services and Credit Panel may under subsection 921K(1) make an instrument of a kind specified in paragraph 921L(1)(b) or (c), as substituted by the amending Part, because of circumstances mentioned in subsection 921K(1) that happen before, on or after the commencement of the amending Part.

**1699G Application of amendment—requirement for relevant providers to be registered**

The repeal of section 1684L by the amending Part applies on and after 1 January 2023.

**1699H Application of amendment—deemed registration of certain relevant providers**

The amendments of paragraphs 1684U(1)(b) and (c) and paragraphs 1684U(3)(a) and (b) by the amending Part apply on and after 1 January 2022.

## Part 2—Assisted decision making

### *Corporations Act 2001*

#### **25 At the end of Subdivision C of Division 8C of Part 7.6**

Add:

#### **921ZF Assisted decision making**

- (1) ASIC may arrange for the use, under ASIC's control, of processes to assist decision making (such as computer applications and systems) for any purposes for which ASIC may make decisions in the performance or exercise of ASIC's functions or powers under this Division.
- (2) A decision the making of which is assisted by the operation of such a process under an arrangement made under subsection (1) is taken to be a decision made by ASIC.
- (3) ASIC may substitute a decision for a decision (the *initial decision*) the making of which is assisted by the operation of such a process under an arrangement under subsection (1) if ASIC is satisfied that the initial decision is incorrect.

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## Schedule 2—Sustainability standards

### *Australian Securities and Investments Commission Act 2001*

#### **1 Subsection 5(1)**

Insert:

*international sustainability standards* means sustainability standards made by:

- (a) the International Sustainability Standards Board; or
- (b) another body specified by the regulations.

Note: Sustainability standards include standards relating to climate.

#### **2 Paragraph 224(a)**

Omit “accounting standards that require the provision of financial information”, substitute “accounting standards, and sustainability standards, that require the provision of financial and other related information”.

#### **3 Subparagraph 224(b)(iii)**

Repeal the subparagraph, substitute:

- (iii) having accounting standards, auditing standards and sustainability standards that are clearly stated and easy to understand; and

#### **4 At the end of section 224**

Add:

Note: Sustainability standards include standards relating to climate.

#### **5 Paragraphs 225(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) to provide broad oversight of the processes for setting in Australia:
  - (i) accounting standards; and
  - (ii) auditing standards; and
  - (iii) sustainability standards; and

## 6 Paragraph 225(1)(d)

Omit “paragraphs (a) and (b)”, substitute “paragraph (a)”.

## 7 Paragraph 225(1)(e)

Repeal the paragraph, substitute:

- (e) the functions specified in the following subsections:
  - (i) subsection (1A) (standards functions);
  - (ii) subsection (2) (AASB governance functions);
  - (iii) subsection (2A) (AUASB governance functions);
  - (iv) subsection (2B) (auditor quality functions); and

## 8 After subsection 225(1)

Insert:

### *Standards functions*

(1A) The FRC functions include:

- (a) monitoring the development of international accounting standards, international auditing standards and international sustainability standards; and
- (b) monitoring the development of the accounting standards, auditing standards, and sustainability standards that apply in major international financial centres; and
- (c) furthering the development of a single set of each of the following for world-wide use with appropriate regard to international developments:
  - (i) accounting standards;
  - (ii) auditing standards;
  - (iii) sustainability standards; and
- (d) promoting the continued adoption of international best practice:
  - (i) accounting standards; and
  - (ii) auditing standards; and
  - (iii) sustainability standards;in the Australian standard-setting processes if doing so would be in the best interests of both the private and public sectors in the Australian economy; and

- 
- (e) monitoring the operation of:
    - (i) accounting standards; and
    - (ii) auditing standards; and
    - (iii) sustainability standards;to assess their continued relevance and their effectiveness in achieving their objectives in respect of both the private and public sectors of the Australian economy; and
  - (f) monitoring the effectiveness of the consultative arrangements used by the AASB and the AUASB.

**9 Subsection 225(2) (heading)**

Repeal the heading, substitute:

*AASB governance functions*

**10 Paragraph 225(2)(c)**

Omit “direction; and”, substitute “direction.”.

**11 Paragraphs 225(2)(e) to (h)**

Repeal the paragraphs.

**12 Subsection 225(2A) (heading)**

Repeal the heading, substitute:

*AUASB governance functions*

**13 Paragraph 225(2A)(c)**

Omit “direction; and”, substitute “direction.”.

**14 Paragraphs 225(2A)(e) to (h)**

Repeal the paragraphs.

**15 Paragraph 227(1)(a)**

Repeal the paragraph, substitute:

- (a) to develop conceptual frameworks, not having the force of standards, for the purpose of evaluating:
  - (i) proposed accounting standards and international accounting standards; and

- (ii) proposed sustainability standards and international sustainability standards; and

#### **16 After paragraph 227(1)(c)**

Insert:

- (ca) to formulate sustainability standards; and

#### **17 Paragraph 227(1)(d)**

Repeal the paragraph, substitute:

- (d) to participate in and contribute to the development of each of the following for world-wide use:
  - (i) a single set of accounting standards;
  - (ii) a single set of sustainability standards; and

#### **18 Subsection 227(1) (note 3)**

Repeal the note, substitute:

- Note 3: The standards formulated under paragraph (ca) do not have legal effect but may be applied or adopted by some other authority.
- Note 4: For the framework within which the AASB is to formulate and make these standards, see section 224 and Division 2.

#### **19 Subsections 227(4) and (5)**

Repeal the subsections, substitute:

*Manner of making or formulating standards*

- (4) Without limiting subsection (1), the AASB:
  - (a) may make or formulate an accounting standard by issuing the text of an international accounting standard; and
  - (b) may formulate a sustainability standard by issuing the text of an international sustainability standard.
- (5) The text of an international standard referred to in subsection (4) may be modified:
  - (a) to the extent necessary to take account of the Australian legal or institutional environment; and
  - (b) in particular, to ensure that any disclosure and transparency provisions in the standard are appropriate to the Australian legal or institutional environment.

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*Manner of participating in the development of international standards*

- (6) Without limiting paragraph (1)(d), the AASB may distribute for consultation the text of:
- (a) a draft international accounting standard; or
  - (b) a draft international sustainability standard;
- (whether or not modified to take account of the Australian legal or institutional environment).

**20 Paragraph 227B(1)(b)**

Repeal the paragraph, substitute:

- (b) to formulate auditing and assurance standards for sustainability and other purposes; and

**21 Division 2 of Part 12 (heading)**

Repeal the heading, substitute:

**Division 2—Accounting standards and sustainability standards**

**22 Before section 228**

Insert:

**227C Scope of this Division**

This Division applies to the following standards (the *applicable standards*):

- (a) accounting standards;
- (b) sustainability standards.

**23 Subsections 228(1) and (2)**

Omit “an accounting standard”, substitute “an applicable standard”.

**24 Subsection 229(1)**

Omit “Accounting standards”, substitute “Applicable standards”.

**25 At the end of section 229**

Add:

- (3) In formulating sustainability standards, the AASB:
  - (a) must have regard to the suitability of a proposed standard for different types of entities; and
  - (b) may apply different sustainability requirements to different types of entities.

**26 Subsection 231(1)**

Omit “a proposed accounting standard”, substitute “a proposed applicable standard”.

**27 Subsection 231(2)**

Omit “a proposed international accounting standard”, substitute “a proposed international applicable standard”.

**28 Section 234**

Repeal the section, substitute:

**234 Validity of standards**

A failure to comply with this Division in relation to the making or formulating of an applicable standard does not affect the validity of the standard.

**29 Subsection 236A(2)**

Repeal the subsection, substitute:

- (2) A meeting of the AASB, or a part of one of its meetings, must be held in public if the meeting or that part of it concerns the contents of any of the following:
  - (a) accounting standards or international accounting standards;
  - (b) sustainability standards or international sustainability standards.

**30 Subsection 236B(3)**

Omit “or government”, substitute “, government, science, sustainability or climate change”.

**31 Subsection 236F(4)**

Omit “or government”, substitute “, government, science, sustainability or climate change”.

**32 Paragraph 237(2)(c)**

Omit “or international auditing standards”, substitute “, international auditing standards or international sustainability standards”.

## **Schedule 3—Government response to the Review of the Tax Practitioners Board**

### **Part 1—Obligations relating to the provision of tax agent services**

#### ***Tax Agent Services Act 2009***

#### **1 Section 2-5**

Repeal the section, substitute:

#### **2-5 Object**

- (1) The object of this Act is to support public trust and confidence in the integrity of the tax profession and of the tax system by ensuring that \*tax agent services are provided to the community in accordance with appropriate standards of professional and ethical conduct.
- (2) This is to be achieved by (among other things) providing for:
  - (a) the registration and regulation, by a national Board, of entities that provide \*tax agent services; and
  - (b) a \*Code of Professional Conduct for \*registered tax agents and BAS agents; and
  - (c) sanctions to discipline entities in relation to their conduct as a \*registered tax agent or BAS agent; and
  - (d) sanctions where tax agent services are provided otherwise than in accordance with this Act.

#### **2 At the end of section 30-10**

Add:

- (15) You must not employ, or use the services of, an entity to provide \*tax agent services on your behalf if:
  - (a) you know, or ought reasonably to know, that the entity is a \*disqualified entity; and

- (b) the Board has not given you approval under section 45-5 to employ, or use the services of, the disqualified entity to provide tax agent services on your behalf.
- (16) You must not provide \*tax agent services in connection with an \*arrangement with an entity that you know, or ought reasonably to know, is a \*disqualified entity.
- (17) You must comply with any obligations determined under section 30-12.

### **3 At the end of Subdivision 30-A**

Add:

#### **30-12 Minister may determine Code of Professional Conduct obligations**

- (1) The Minister may, by legislative instrument, determine obligations for the purposes of subsection 30-10(17).
- (2) The obligations must relate to the professional and ethical conduct of \*registered tax agents and BAS agents. The obligations may elaborate or supplement any aspect of the \*Code of Professional Conduct but must not be inconsistent with the Code.

### **4 After Part 4**

Insert:

## **Part 4A—Disqualified entities**

### **Division 45—Disqualified entities**

#### **Guide to this Division**

##### **45-1 What this Division is about**

A registered tax agent or BAS agent must be approved to employ, or use the services of, a disqualified entity to provide tax agent services on the registered tax agent or BAS agent's behalf (see

subsection 30-10(15) and section 50-25). Approval is sought by application to the Board.

An entity is a disqualified entity if, among other things, the entity is subject to sanctions under this Act or has been convicted of certain offences.

A disqualified entity must give notice to a registered tax agent or BAS agent in relation to being a disqualified entity:

- (a) when seeking to provide, or providing, tax agent services on the registered tax agent or BAS agent's behalf; or
- (b) if the entity is seeking to enter an arrangement, or has an arrangement, with the registered tax agent or BAS agent in connection with the provision of tax agent services by the registered tax agent or BAS agent.

### **Table of sections**

45-5	Approval of disqualified entity providing tax agent services on your behalf
45-10	Obligation to give notice if you are a disqualified entity
45-15	Obligation to give notice if you become a disqualified entity
45-20	Transitional obligation to give notice if you are a disqualified entity on the commencement of this section

### **45-5 Approval of disqualified entity providing tax agent services on your behalf**

#### *Application*

- (1) If you are a \*registered tax agent or BAS agent, you may apply to the Board for approval to employ, or use the services of, a \*disqualified entity to provide \*tax agent services on your behalf.

Note: If you know, or ought reasonably to know, that an entity is a disqualified entity, you must be approved to employ, or use the services of, the disqualified entity to provide tax agent services on your behalf: see subsection 30-10(15) and section 50-25.

- (2) A **disqualified entity** is an entity that is neither a \*registered tax agent or BAS agent nor a \*qualified tax relevant provider and that, within the last 5 years:

- (a) has been convicted of:
    - (i) a \*serious taxation offence; or
    - (ii) a \*serious offence; or
    - (iii) an offence involving fraud or dishonesty; or
  - (b) has been penalised for being a \*promoter of a \*tax exploitation scheme; or
  - (c) has been penalised for implementing a \*scheme that has been promoted on the basis of conformity with a \*product ruling in a way that is materially different from that described in the product ruling; or
  - (d) has become an undischarged bankrupt or has gone into \*external administration; or
  - (e) has had action taken against it under subsection 30-15(2) (sanctions for failure to comply with the Code of Professional Conduct); or
  - (f) has had its registration terminated, under Subdivision 40-A; or
  - (g) has had an application for registration or renewal of registration rejected under section 20-25, other than a rejection on the ground that the Board is not satisfied that the entity meets the requirements in paragraph 20-5(1)(b); or
  - (h) has been found by the Board, after being investigated under section 60-95, or by a Court, to have contravened this Act.
- (3) Your application must be:
- (a) in the form approved by the Board; and
  - (b) accompanied by any documents that are required by the Board.

*Decision*

- (4) The Board must decide your application:
- (a) within 60 days of receiving your application; or
  - (b) if, within 60 days of receiving your application, you and the Board agree on a longer period for the Board to decide your application—within the agreed period.

- (5) If the Board does not decide your application within the applicable period under subsection (4), the Board is taken to have rejected the application.
- (6) The Board may decide to give you approval, having regard to:
  - (a) the reasons why the entity is a \*disqualified entity and the circumstances relating to those reasons; and
  - (b) the proposed role that the entity would perform in providing the \*tax agent services on your behalf; and
  - (c) the extent to which the reasons why the entity is a disqualified entity are relevant to the entity's ability to perform the proposed role to an appropriate standard of professional and ethical conduct; and
  - (d) any other matters that the Board considers relevant.

*Notification of decision*

- (7) The Board must, within a reasonable period after its decision to give you approval or to reject your application for approval, notify you in writing of:
  - (a) the decision; and
  - (b) if the Board rejects your application—the reasons for the decision.

However, failure to comply with this subsection does not affect the validity of the Board's decision.

**45-10 Obligation to give notice if you are a disqualified entity**

- (1) If:
  - (a) you are a \*disqualified entity; and
  - (b) you are seeking to provide \*tax agent services on behalf of a \*registered tax agent or BAS agent;you must notify the registered tax agent or BAS agent, in writing, that you are a disqualified entity before the registered tax agent or BAS agent:
  - (c) enters into a contract to employ you, or use your services, to provide tax agent services on the registered tax agent or BAS agent's behalf; or
  - (d) renews such a contract; or

(e) agrees to extend such a contract.

(2) If:

(a) you are a \*disqualified entity; and

(b) you are seeking to enter into an \*arrangement with a \*registered tax agent or BAS agent in connection with the provision of tax agent services by the registered tax agent or BAS agent;

you must notify the registered tax agent or BAS agent, in writing, that you are a disqualified entity before the registered tax agent or BAS agent:

(c) enters into an arrangement with you in connection with the provision of tax agent services by the registered tax agent or BAS agent; or

(d) renews such an arrangement; or

(e) agrees to extend such an arrangement.

*Civil penalty*

(3) You contravene this subsection if you fail to give a notice in accordance with subsection (1) or (2).

*Civil penalty:*

(a) for an individual—250 penalty units; and

(b) for a body corporate—1,250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B in Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

#### **45-15 Obligation to give notice if you become a disqualified entity**

(1) If you become a \*disqualified entity and:

(a) you are providing \*tax agent services on behalf of a \*registered tax agent or BAS agent; or

(b) there is an \*arrangement in force between you and a \*registered tax agent or BAS agent in connection with the provision of tax agent services by the registered tax agent or BAS agent;

you must notify the registered tax agent or BAS agent, in writing, that you are a disqualified entity.

- (2) You must notify the registered tax agent or BAS agent within 30 days of the day on which you become, or ought to have become, aware, that you are a disqualified entity.

*Civil penalty*

- (3) You contravene this subsection if you fail to give a notice in accordance with this section.

Civil penalty:

- (a) for an individual—250 penalty units; and  
(b) for a body corporate—1,250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B in Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

**45-20 Transitional obligation to give notice if you are a disqualified entity at the commencement of this section**

- (1) If:
- (a) immediately before the day this section commences a \*registered tax agent or BAS agent employs you, or uses your services, to provide \*tax agent services on the registered tax agent or BAS agent's behalf; and
  - (b) at the start of the day this section commences you are a \*disqualified entity; and
  - (c) immediately before the day that is 12 months after the day this section commences the registered tax agent or BAS agent employs you, or uses your services, to provide tax agent services on the registered tax agent or BAS agent's behalf; and
  - (d) you have not already notified the registered tax agent or BAS agent under section 45-10 or 45-15 that you are a disqualified entity;
- you must notify the registered tax agent or BAS agent, in writing, that you are a disqualified entity. You must give the notice within 30 days of the day that is 12 months after the day this section commences.

- (2) If:
-

- (a) immediately before the day this section commences there is an \*arrangement in force between you and a \*registered tax agent or BAS agent in connection with the provision of \*tax agent services by the registered tax agent or BAS agent; and
- (b) at the start of the day this section commences you are a \*disqualified entity; and
- (c) immediately before the day that is 12 months after the day this section commences there is an arrangement in force between you and the registered tax agent or BAS agent in connection with the provision of tax agent services by the registered tax agent or BAS agent; and
- (d) you have not already notified the registered tax agent or BAS agent under section 45-10 or 45-15 that you are a disqualified entity;

you must notify the registered tax agent or BAS agent, in writing, that you are a disqualified entity. You must give the notice within 30 days of the day that is 12 months after the day this section commences.

*Civil penalty*

- (3) You contravene this subsection if you fail to give a notice in accordance with subsection (1) or (2).

Civil penalty:

- (a) for an individual—250 penalty units; and
- (b) for a body corporate—1,250 penalty units.

Note: Subdivision 50-C of this Act and Subdivision 298-B in Schedule 1 to the *Taxation Administration Act 1953* determine the procedure for obtaining a civil penalty order against you.

## **5 At the end of section 50-25**

Add:

- (3) Subsection (1) does not apply if:
  - (a) the entity is a \*disqualified entity; and
  - (b) the Board has given you approval under section 45-5 to employ, or use the services of, the disqualified entity to provide \*tax agent services on your behalf.

## 6 After paragraph 70-10(h)

Insert:

- (ha) a decision under section 45-5 to reject an application for approval to employ, or use the services of, a \*disqualified entity;

## 7 Subsection 90-1(1)

Insert:

*disqualified entity* has the meaning given by subsection 45-5(2).

## 8 After subsection 90-10(1)

Insert:

(1AA) A \*tax agent service that relates to any of the following is also a **BAS service**:

- (a) section 9 of the *A New Tax System (Australian Business Number) Act 1999*;
- (b) sections 202CD and 202CF of the *Income Tax Assessment Act 1936*;
- (c) the *Superannuation Guarantee Charge Act 1992*;
- (d) Part 3B of the *Superannuation Industry (Supervision) Act 1993*;
- (e) Part 5-30 in Schedule 1 to the *Taxation Administration Act 1953*.

(1AB) A \*tax agent service that relates to the *Superannuation Guarantee (Administration) Act 1992* is also a **BAS service** to the extent that it relates to a payroll function or payments to contractors.

## 9 Application of Code of Professional Conduct obligations about disqualified entities

### *Application from commencement*

- (1) If, on or after the commencement of this Part, you:
  - (a) enter into a contract to employ, or use the services of, an entity to provide tax agent services on your behalf; or
  - (b) renew such a contract; or
  - (c) agree to extend such a contract;

subsection 30-10(15) of the *Tax Agent Services Act 2009*, as inserted by this Part, applies to you in relation to the entity on and after the date of entering or renewing the contract or the date of the agreement.

- (2) If, on or after the commencement of this Part, an entity:
- (a) enters into an arrangement with you in connection with the provision of tax agent services by you; or
  - (b) renews such an arrangement; or
  - (c) agrees to extend such an arrangement;

subsection 30-10(16) of the *Tax Agent Services Act 2009*, as inserted by this Part, applies to you in relation to the entity on and after the date of entering or renewing the arrangement or the date of the agreement.

***Application 12 months from commencement***

- (3) In addition to subitems (1) and (2) of this item, subsections 30-10(15) and (16) of the *Tax Agent Services Act 2009*, as inserted by this Part, apply to you in relation to tax agent services that you provide, or are provided on your behalf, on and after the day that is 12 months after the day this Part commences.

***Acquisition of property***

- (4) Despite subitems (1) to (3) of this item, subsections 30-10(15) and (16) of the *Tax Agent Services Act 2009*, as inserted by this Part, have no effect to the extent (if any) to which the operation of those subsections would result in the acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

## Part 2—Annual registration

### *Tax Agent Services Act 2009*

#### **10 Section 20-1**

Omit “3 years”, substitute “1 year”.

#### **11 Subsections 20-25(2) and (3)**

Omit “6 months”, substitute “4 months”.

#### **12 Subsection 20-25(4)**

Omit “3 years”, substitute “1 year”.

#### **13 Application of registration period amendments**

The amendments of section 20-25 of the *Tax Agent Services Act 2009* made by this Part apply in relation to an application made on or after 1 July 2024.

## **Part 3—Tax Practitioners Board Special Account**

### ***Tax Agent Services Act 2009***

#### **14 At the end of Part 6**

Add:

#### **Subdivision 60-G—Finance**

##### **Table of sections**

60-145	Tax Practitioners Board Special Account
60-150	Credits to the Tax Practitioners Board Special Account
60-155	Purposes of the Tax Practitioners Board Special Account

#### **60-145 Tax Practitioners Board Special Account**

- (1) The Tax Practitioners Board Special Account is established by this section.
- (2) The Tax Practitioners Board Special Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

#### **60-150 Credits to the Tax Practitioners Board Special Account**

There must be credited to the Tax Practitioners Board Special Account amounts equal to the following:

- (a) amounts received by the Commonwealth under this Act (other than amounts received by way of penalty or amounts related to such amounts);
- (b) amounts appropriated by the Parliament for the purposes of the Account.

Note: An Act appropriating money for expenditure out of the Consolidated Revenue Fund may contain a provision to the effect that, if any of the purposes of a special account is a purpose that is covered by an item in such an Act (whether or not the item expressly refers to the special account), then amounts may be debited against the appropriation for that item and credited to that special account.

### **60-155 Purposes of the Tax Practitioners Board Special Account**

The purposes of the Tax Practitioners Board Special Account are as follows:

- (a) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in the performance of the Board's functions under this Act;
- (b) paying any remuneration and allowances payable to any person under this Act (including APS employees mentioned in section 60-80);
- (c) reducing the balance of the account (and therefore the available appropriation for the account) without making a real or notional payment.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

### **15 Refund of amount received before commencement not to be debited from the Tax Practitioners Board Special Account**

If:

- (a) before the commencement of this Part, an amount is received by the Commissioner, on behalf of the Commonwealth, under the *Tax Agent Services Act 2009*; and
- (b) all or some of the amount is refunded by the Commonwealth on or after the commencement of this Part;

the refunded amount is not to be debited from the Tax Practitioners Board Special Account.

## **Part 4—Appointments to the Tax Practitioners Board**

### ***Tax Agent Services Act 2009***

#### **16 Paragraph 30-25(4)(a)**

Repeal the paragraph, substitute:

- (aa) Part 2 (Registration); and
- (ab) Subdivision 30-C (Notifying a change of circumstances); and
- (ac) Part 4 (Termination of registration); and
- (ad) section 60-25 (Appointment of Tax Practitioner Board members); and

#### **17 Section 60-1**

Omit:

Comprising at least 7 Board members, the Board has functions and powers relating to the operation of this Act, including investigating your application for registration and conduct that may breach this Act. For the purposes of an investigation, the Board may oblige you to give it information.

substitute:

Comprising at least 7 Board members, the Board has functions and powers relating to the operation of this Act. Board members must be individuals who are representatives of the community rather than representatives of larger registered tax agents or BAS agents.

One of the Board's functions is to investigate your application for registration and conduct that may breach this Act. For the purposes of an investigation, the Board may oblige you to give it information.

#### **18 At the end of subsection 60-10(1)**

Add:

Note: Board members must be community representatives (see subsection 60-25(4)).

## **19 At the end of section 60-25**

Add:

### *Community representatives*

- (4) In appointing an individual as a \*Board member, the Minister must be satisfied that the individual is a \*community representative.
- (5) An individual is a **community representative** if the individual is not any of the following:
- (a) a partner in a partnership that is a \*prescribed tax agent;
  - (b) an \*executive officer of a company that is a prescribed tax agent;
  - (c) a former partner in a partnership that is currently a prescribed tax agent, if the individual is receiving regular and ongoing benefits, or has within the last 6 months received a material benefit, from the partnership;
  - (d) a former executive officer of a company that is currently a prescribed tax agent if either of the following apply:
    - (i) the individual is receiving regular and ongoing benefits, or has within the last 6 months received a material benefit, from the company;
    - (ii) the individual holds \*shares in the company.
- (6) A **prescribed tax agent** means a company or partnership that:
- (a) is a \*registered tax agent or BAS agent; and
  - (b) has more than 100 employees.

Note: A company or partnership whose registration as a registered tax agent or registered BAS agent is suspended remains a registered tax agent or BAS agent for the purposes of this section (see subsection 30-25(4)).

- (7) An **executive officer** of a company means a director, secretary or senior manager (within the meaning of the *Corporations Act 2001*) of the company.

## **20 Subsection 90-1(1)**

Insert:

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*community representative* has the meaning given by section 60-25.

*executive officer* has the meaning given by section 60-25.

*prescribed tax agent* has the meaning given by section 60-25.

## **21 Application of Board member appointment amendments**

The amendments of the *Tax Agent Services Act 2009* made by this Part apply in relation to any appointment of a Board member made after the commencement of this Part.

## Part 5—The Code of Professional Conduct

### *Tax Agent Services Act 2009*

#### **22 At the end of subsection 30-20(1)**

Add:

- ; (d) requiring you to notify, in writing, all of your current clients about the findings of the Board’s investigation specified in the order.

#### **23 Subdivision 30-C (heading)**

Omit “**Notifying a change of circumstances**”, substitute “**Other obligations**”.

#### **24 After paragraphs 30-35(1)(b), (2)(b) and (3)(b)**

Insert:

- (ba) you have reasonable grounds to believe that:
  - (i) you have breached the \*Code of Professional Conduct; and
  - (ii) the breach is a \*significant breach of the Code; or

#### **25 Subsection 30-35(4)**

Repeal the subsection, substitute:

*When notice must be given*

- (4) You must give the notice within 30 days of the day on which:
  - (a) you become, or ought to have become, aware that the event occurred (unless paragraph (1)(ba), (2)(ba) or (3)(ba) applies); or
  - (b) if paragraph (1)(ba), (2)(ba) or (3)(ba) applies—you first have, or ought to have, reasonable grounds to believe that you have breached the \*Code of Professional Conduct, and that the breach is a \*significant breach of the Code.

Note: A breach of this subsection is a breach of section 8C of the *Taxation Administration Act 1953* and of subsection 30-10(2) of this Act.

## **26 At the end of Subdivision 30-C**

Add:

### **30-40 Obligation to notify of significant breaches of the Code of Professional Conduct**

- (1) If you are a \*registered tax agent or BAS agent, you must notify the Board, in writing, if you have reasonable grounds to believe that:
  - (a) another registered tax agent or BAS agent has breached the \*Code of Professional Conduct; and
  - (b) the breach is a \*significant breach of the Code.
- (2) In addition, if at the time you have reasonable grounds to believe that other agent has breached the Code, and that the breach is a \*significant breach of the Code:
  - (a) the other agent is a member of a professional association accredited by the Board under the regulations; and
  - (b) you are aware of that other agent's membership;you must notify the association, in writing, of the breach.

*When you must notify*

- (3) You must notify under subsection (1) or (2) within 30 days of the day on which you first have, or ought to have, reasonable grounds to believe that the other agent breached the Code, and that the breach is a \*significant breach of the Code.

## **27 Subsection 90-1(1)**

Insert:

***significant breach of the Code*** means a breach of the \*Code of Professional Conduct by a \*registered tax agent or BAS agent if the breach:

- (a) constitutes an indictable offence, or an offence involving dishonesty, under an \*Australian law; or
- (b) results, or is likely to result, in material loss or damage to another entity (including the Commonwealth); or
- (c) is otherwise significant, including taking into account any one or more of the following:

- (i) the number or frequency of similar breaches by the agent;
- (ii) the impact of the breach on the agent's ability to provide \*tax agent services;
- (iii) the extent to which the breach indicates that the agent's arrangements to ensure compliance with the Code are inadequate; or
- (d) is a breach of a kind prescribed by the regulations for the purposes of this paragraph.

## **28 Application of obligation amendments**

- (1) The amendments of section 30-35 of the *Tax Agent Services Act 2009* made by this Part apply in relation to breaches that occur on or after the commencement of this Part.
- (2) Section 30-40 of the *Tax Agent Services Act 2009*, as added by this Part, applies in relation to breaches that occur on or after the commencement of this Part.

## **Schedule 4—Off-market share buy-backs**

### **Part 1—Off-market share buy-backs**

#### **Division 1—Main amendments**

##### *Income Tax Assessment Act 1936*

#### **1 Section 159GZZP (at the end of the heading)**

Add “if the company is not a listed public company”.

#### **2 At the end of section 159GZZP**

Add:

- (3) This section does not apply if the company is a listed public company.

#### **3 After section 159GZZP**

Insert:

#### **159GZZPA No part of off-market purchase price is a dividend if the company is a listed public company**

For the purposes of this Act, where a buy-back of a share by a listed public company is an off-market purchase, no part of the purchase price in respect of the buy-back of the share is taken to be a dividend.

#### **4 Subsection 159GZZQ(3)**

Omit “subsection (8)”, substitute “subsections (3A) and (8)”.

#### **5 After subsection 159GZZQ(3)**

Insert:

- (3A) Subsection (3) does not apply if the buy-back is by a listed public company.

***Income Tax Assessment Act 1997***

**6 Subsection 205-30(1) (cell at table item 9, column headed “If:”)**

Repeal the cell, substitute:

- (a) the entity purchases a  
\*membership interest  
in itself; and
- (b) the purchase is an  
\*on-market buy-back;  
and
- (c) the entity is a  
company

**7 Subsection 205-30(1) (table item 9, column headed “A debit of:”, paragraph (a))**

Repeal the paragraph, substitute:

- (a) the purchase of the interest were a \*frankable distribution equal to the one that would have arisen if the entity:
  - (i) purchased the interest \*off-market; and
  - (ii) in the case of a \*listed public company—were not a listed public company;  
and

**8 Subsection 205-30(1) (after table item 9)**

Insert:

- |    |  |   |   |
|----|--|---|---|
| 9A | (a) the entity purchases a *membership interest in itself; and<br>(b) the purchase is an *off-market buy-back; and<br>(c) the entity is a *listed public company | an amount equal to the debit that would have arisen if:<br><br>(a) the purchase of the interest were a *frankable distribution equal to the one that would have arisen if the entity were not a listed public company; and<br><br>(b) the distribution were *franked at the entity's *benchmark franking percentage for the *franking period in which the purchase was made or, if the entity does not have a benchmark franking percentage for the period, at a *franking percentage of 100% | on the day on which the interest is purchased |
|----|--|---|---|

## 9 Application of amendments

- (1) The amendments made by this Division apply to a purchase by a listed public company if:
- (a) both:
    - (i) the purchase is announced to the market at or before the time the purchase occurs; and
    - (ii) the purchase is first announced to the market after 7:30 pm, by legal time in the Australian Capital Territory, on 25 October 2022; or
  - (b) both:
    - (i) the purchase is not announced to the market, or the purchase is first announced to the market after the purchase occurs; and

**Schedule 4** Off-market share buy-backs

**Part 1** Off-market share buy-backs

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(ii) the purchase occurs after 7:30 pm, by legal time in the Australian Capital Territory, on 25 October 2022.

- (2) The purchase is ***announced to the market*** if:
- (a) the rules of an approved stock exchange require the company to notify the stock exchange of the purchase for the purpose of release to the market; and
  - (b) notification of the purchase is released to the market following such disclosure.

**Division 2—Other amendments**

***Income Tax Assessment Act 1936***

**10 Subsection 6(1)**

Insert:

***listed public company*** has the same meaning as in the *Income Tax Assessment Act 1997*.

Note: For the meaning of ***listed public company*** in Schedule 2F to this Act, see section 272-135 in that Schedule.

**11 Paragraph 6BA(6)(a)**

Omit “(within the meaning of the *Income Tax Assessment Act 1997*)”.

**12 Subsection 45D(2)**

Omit “within the meaning of the *Income Tax Assessment Act 1997*”.

***Income Tax Assessment Act 1997***

**13 Paragraph 202-45(c)**

Omit “that Act”, substitute “the *Income Tax Assessment Act 1936*”.

**14 Paragraph 202-45(d)**

Omit “distribution”, substitute “\*distribution”.

**15 At the end of paragraph 202-45(f)**

Add “of this Act”.

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**16 Subparagraph 202-45(g)(i)**

After “109RC(2)”, insert “of the *Income Tax Assessment Act 1936*”.

**17 Subparagraph 202-45(h)(i)**

Omit “that Act”, substitute “the *Income Tax Assessment Act 1936*”.

**18 Paragraph 202-45(j)**

After “220-105”, insert “of this Act”.

## Part 2—Selective share cancellations

### *Income Tax Assessment Act 1997*

#### 19 At the end of section 202-45

Add:

; (k) a distribution by a \*listed public company that is consideration for the cancellation of a \*membership interest in the company as part of a selective reduction of capital, including a selective reduction within the meaning of section 256B of the *Corporations Act 2001*.

#### 20 Subsection 205-30(1) (before table item 10)

Insert:

9B	the entity makes a *distribution to which paragraph 202-45(k) applies (consideration for cancellation of membership interest as part of selective reduction of capital)	an amount equal to the debit that would have arisen if:	on the day on which the distribution is made
		(a) the distribution were a *frankable distribution equal to the one that would have arisen if the entity were not a *listed public company; and	
		(b) the distribution were *franked at the entity's *benchmark franking percentage for the *franking period in which the distribution was made or, if the entity does not have a benchmark franking percentage for the period, at a *franking percentage of 100%	

## 21 Application of amendments

- (1) The amendments made by this Part apply to a cancellation of a membership interest by a listed public company if:
  - (a) both:
    - (i) the cancellation is announced to the market at or before the time the cancellation occurs; and
    - (ii) the cancellation is first announced to the market on or after 18 November 2022; or
  - (b) both:
    - (i) the cancellation is not announced to the market, or the cancellation is first announced to the market after the cancellation occurs; and
    - (ii) the cancellation occurs on or after 18 November 2022.
- (2) The cancellation is ***announced to the market*** if:
  - (a) the rules of an approved stock exchange require the company to notify the stock exchange of the cancellation for the purpose of release to the market; and
  - (b) notification of the cancellation is released to the market following such disclosure.

## Schedule 5—Franked distributions funded by capital raisings

### *Income Tax Assessment Act 1997*

#### **1 After paragraph 202-45(e)**

Insert:

- (ea) a distribution or a part of a distribution to which subsection 207-159(1) of this Act applies (distributions funded by capital raising);

#### **2 After section 207-158**

Insert:

#### **207-159 Distributions funded by capital raising**

- (1) This subsection applies to a distribution (the *relevant distribution*) of a kind, or a part (the *relevant part*) of a distribution (also a *relevant distribution*) of a kind, made by an entity if all of the following conditions are satisfied:
  - (a) either:
    - (i) the entity has a practice of making distributions of that kind on a regular basis and the relevant distribution is not made in accordance with that practice; or
    - (ii) the entity does not have a practice of making distributions of that kind on a regular basis;
  - (b) there is an issue of \*equity interests in the entity or any other entity (whether before, at or after the time at which the relevant distribution was made);
  - (c) it is reasonable to conclude having regard to all relevant circumstances that:
    - (i) the principal effect of the issue of any of the equity interests was the direct or indirect funding of a substantial part of the relevant distribution or the relevant part; and
    - (ii) any entity that issued, or facilitated the issue of, any of the equity interests did so for a purpose (other than an

incidental purpose) of funding a substantial part of the relevant distribution or the relevant part;

- (d) the issue of the equity interests was not a direct response in order to meet a requirement, direction or recommendation from \*APRA or \*ASIC.

*When an entity has a practice of making distributions of a certain kind on a regular basis*

- (2) In considering whether the condition in paragraph (1)(a) is satisfied, take the following matters into account:
- (a) the nature of distributions made by the entity before the time at which the relevant distribution was made (including the extent to which such distributions were a return on capital);
  - (b) the timing of such distributions;
  - (c) the amount of such distributions;
  - (d) any explanations given by the entity for making such distributions;
  - (e) the amount of the \*franking credits on, and the \*franking percentages for, such distributions;
  - (f) any other relevant consideration.

*Distributions funded by issuing equity interests are to be disregarded in determining past practice*

- (3) In considering whether the condition in paragraph (1)(a) is satisfied, disregard a distribution if:
- (a) the distribution:
    - (i) is a \*franked distribution; or
    - (ii) would be a franked distribution if subsection (1) did not apply to it; and
  - (b) subsection (1) would apply to all or any part of the distribution if paragraph (1)(a) were omitted.

*When issue of equity interests has the effect or purpose of funding all or part of a distribution*

- (4) In considering whether the condition in paragraph (1)(c) is satisfied, take the following matters into account:

- (a) the extent to which the time (or times) at which any of the \*equity interests mentioned in that paragraph were issued differs (or differ) from the time at which the relevant distribution was made;
- (b) the extent to which the amount of the funds from the issue of any of those equity interests differs from the amount of the relevant distribution or the relevant part (as the case may be);
- (c) the extent to which the financial position of any of the following entities changed as a result of the relevant distribution (or any part of the relevant distribution) and the issue of any of those equity interests:
  - (i) the entity that made the relevant distribution;
  - (ii) an entity that, before, at or after the time at which the relevant distribution was made, was a \*connected entity of that entity;
  - (iii) if the entity in which those equity interests were issued is not the entity that made the relevant distribution—the entity in which those equity interests were issued;
- (d) the use of the funds from the issue of any of those equity interests;
- (e) whether there are any reasons for the issue of any of those equity interests other than the funding of the relevant distribution (or any part of the relevant distribution);
- (f) the extent to which the issue of any of those equity interests was underwritten (whether formally or informally);
- (g) how the history of the amounts of \*franking surplus or \*franking deficit for the \*franking account of the entity that made the relevant distribution compares to:
  - (i) the history of profits and or loss of that entity; and
  - (ii) the history of the balance of the share capital account of that entity;
- (h) if the entity that made the relevant distribution is not the entity in which those equity interests were issued—the nature and extent of the relationship between those entities;
- (i) the extent to which:
  - (i) the entity to which the relevant distribution was made; and

- (ii) other entities to which analogous distributions were made;
  - (iii) other entities to which analogous distributions were *not* made, but which were entitled to analogous distributions;
- are the same as the entities to which those equity interests were issued;
- (j) other distributions (if any) made by the entity that made the relevant distribution (whether before, at or after the time at which the relevant distribution was made);
  - (k) any other relevant consideration.

### **3 Application of amendments**

- (1) Subsection 207-159(1) of the *Income Tax Assessment Act 1997* (as inserted by this Schedule) applies to a relevant distribution mentioned in that subsection that is made on or after the commencement of this Schedule.
- (2) To avoid doubt, for the purposes of paragraph 207-159(1)(a) of the *Income Tax Assessment Act 1997* (as inserted by this Schedule), a practice of making distributions referred to in that paragraph may be evidenced by distributions that were made before the commencement of this Schedule.

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[*Minister's second reading speech made in—  
House of Representatives on 16 February 2023  
Senate on 9 March 2023*]

(10/23)

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