TAXATION

Additional coronavirus stimulus package

Government has announced an additional $66.1bn economic stimulus package in response to the coronavirus.

Coronavirus economic response Bills receive Assent

Government's coronavirus economic response package of Bills have received Royal Assent after being passed by both houses of Parliament with amendments.

Coronavirus supplement: Minister confirms eligibility for students

Government has confirmed that the eligibility criteria for the fortnightly $550 Coronavirus supplement has been expanded to those receiving student support payments.

Coronavirus concessions: State governments

Various state governments have announced concessions for businesses including payroll tax deferrals or waivers and loan schemes.

Coronavirus: ATO clarifies timing for varying PAYG instalments

ATO has clarified its coronavirus administrative concession allowing businesses to vary their PAYG instalment amounts to zero.

ATO FAQ re Coronavirus impacts

ATO has released COVID-19 frequently asked questions as a resource tool for the community in relation to the impacts from the epidemic.

Commissioner's COVID-19 message to the tax profession

Commissioner has reassured the tax profession that the ATO is there to support practitioners and their clients to response to the impacts of COVID-19.

TPB support for practitioners affected by COVID-19

TPB has announced support for tax practitioners affected by COVID-19 including extension of time for registration renewals.

2020-21 Federal Budget deferred to 6 October

The Prime Minister has confirmed that the 2020-21 Federal Budget will be deferred until 6 October 2020 instead of May 2020 as originally scheduled.

ATO data-matching for ride sourcing extended

ATO has gazetted a notice to extend its data-matching program for ride sourcing for a further three financial years.

Tax agents and myGovID: machine credentials before 27 March

ATO says tax practitioners should be aware the AUSkey will be replaced by myGovID and Relationship Authorisation Manager on 27 March 2020.

ATO draft car expenses: cents per km rate for 2020

ATO has issued a draft instrument that sets a rate of 72 cents per kilometre for work-related car expense deductions.

FBT: LAFHA reasonable amounts

A Determination has been released which sets out the weekly amounts the ATO treats as reasonable for food and drink expenses incurred by employees receiving a LAFHA.

FBT: cents per kilometre rate

The cents per kilometre rates for calculating the taxable value of a fringe benefit in the 2020-21 FBT from private use of a motor vehicle has been released.

Expansion of estimates regime to GST, LCT and WET

ATO has issued a practical compliance guideline to explain how the Commissioner will administer the estimates regime.

Queensland director jailed for GST fraud

ATO has reported that a company director has been sentenced to two years and six months' jail for GST fraud.

FINANCIAL SERVICES

Bank support for SMEs: deferred loan repayments

Australian Banking Association member banks will defer loan repayments for six months for small businesses that need assistance due to COVID-19.

ASIC takes court action against Colonial First State

ASIC has commenced civil penalty proceedings in the Federal Court against Colonial First State Investments regarding communications in relation to MySuper accounts.

SUPERANNUATION

MySuper heatmaps: APRA releases new FAQs

APRA has released a new set of MySuper heatmap frequently asked questions for its plans to update its MySuper Product Heatmap in June 2020 with the latest information.

SMSFs and property development: ATO flags concerns

ATO has released a bulletin setting out its concerns over SMSFs entering into certain arrangements involving the purchase and development of real property.

Super guarantee changes from 1 January 2020

ATO has released a super guidance note to explain certain super guarantee changes that took effect on 1 January 2020.

Lump sum arrears of disability pay a tax-free super lump sum

AAT found that a lump sum in arrears of invalidity pay was a super lump sum and a disability super benefit and thus not ordinary income.

REGULATOR NEWS

ASIC and APRA refocus for COVID-19 challenges

ASIC and APRA have announced that they will refocus their regulatory priorities for the challenges created by COVID-19.

ASIC guidelines for upcoming AGMs and financial reporting

ASIC has set out guidelines for companies that may be temporarily impacted in relation to their ability to hold an annual general meeting due to COVID-19.

TAXATION

Additional coronavirus stimulus package

The Government has announced an additional $66.1bn economic stimulus package in response to the coronavirus (COVID-19). This second package includes a $550 per fortnight supplement for job seekers (doubling the current payment), a further $750 stimulus payment for pensioners, cash flow payments up to $100,000 (minimum $20,000) to SME employers and charities, regulatory protection for SMEs and directors, early release of superannuation measures, pension minimum drawdowns reduced by 50%, and deeming rates cut by a further 0.25%.

The Treasurer said this second COVID-19 stimulus package brings the Government's total package to $189bn (or 9.7% of GDP), when combined with the initial $17.6bn package announced on 12 March 2020, and the $105bn of RBA funding to support lending to SMEs.

Cash payments to SME employers and charities up to $100k (minimum $20k)

The Government said it will provide a tax-free payment up to $100,000 for eligible small and medium sized entities (SMEs), and not-for-profits (including charities) that employ people, with a minimum payment of $20,000. These payments seek to help businesses' and NFPs' cash flow so they can keep operating, pay their rent, electricity and other bills and retain staff.

Under the enhanced scheme from the first stimulus package, employers will receive a payment equal to 100% of their salary and wages withheld (up from 50%), with the maximum payment being increased from $25,000 to $50,000. In addition, the minimum payment will be increased from $2,000 to $10,000.

SMEs with aggregated annual turnover under $50m and that employ workers are eligible. NFPs entities, including charities, with aggregated annual turnover under $50m and that employ workers will now also be eligible. This will support employment at a time where NFPs are facing increasing demand for services.

The cash flow payment for employers will be available from 28 April 2020. An additional payment is also being made from 28 July 2020. Eligible entities will receive an additional payment equal to the total of all of the Boosting Cash Flow for

Employers payments received. By linking the payments to business to staff wage tax withholdings, the Treasurer said businesses will be incentivised to hold on to more of their workers. The payments are tax free, there will be no new forms and payments will flow automatically through the ATO.

Temporary relief for directors of distressed businesses

The Government will temporarily increase from $2,000 to $20,000 the threshold at which creditors can issue a statutory demand on a company, and the time companies have to respond to statutory demands will be extended from 21 days to six months. Temporary relief will also be provided for directors from any personal liability for trading while insolvent. The Corporations Act 2001 will also be amended to provide temporary and targeted relief for companies to deal with unforeseen events that arise as a result of the Coronavirus.

Job seeker supplement of $550 per fortnight

The Government will implement a new temporary Coronavirus supplement of $550 per fortnight, effectively doubling the current payment for job seekers. This Coronavirus supplement will be paid for the next six months to both existing and new recipients of the JobSeeker Payment, Youth Allowance jobseeker, Parenting Payment, Farm Household Allowance and Special Benefit. Eligible income support recipients will receive the full amount of the $550 Coronavirus supplement on top of their payment each fortnight.

Further $750 payment for pensioners

In addition to the $750 stimulus payment for pensioners announced on 12 March 2020, the Government will provide a further $750 payment to social security and veteran income support recipients and eligible concession card holders, except for those who are receiving an income support payment that is eligible to receive the Coronavirus supplement.

This second $750 payment will be made automatically from 13 July 2020 to around five million income support recipients and eligible concession card holders. Around half of those that benefit are pensioners. The first $750 payment will be made from 31 March 2020 to people who will have been on one of the eligible payments any time between 12 March 2020 and 13 April 2020.

Superannuation early release up to $20,000 over two years

The Government will allow individuals in financial stress as a result of the Coronavirus to access a tax-free payment up to $10,000 from their superannuation in 2019-20, and a further $10,000 in 2020-21.

Eligible individuals will be able to apply online to the ATO through myGov for access of up to $10,000 of their superannuation before 1 July 2020. They will also be able to access up to a further $10,000 from 1 July 2020 for another three months. They will not need to pay tax on amounts released and the money they withdraw will not affect Centrelink or Veterans' Affairs payments. Further details on the eligibility requirements are set out in a Treasury fact sheet.

Pension minimum drawdown rate reduced by 50%

The annual superannuation minimum drawdown requirements for account-based pensions and similar products will be reduced by 50% for 2019-20 and 2020-21. This measure will benefit retirees by providing them with more flexibility as to how they manage their superannuation assets.

Social security deeming rates reduced further

On top of the deeming rate changes made at the time of the first package, the Government will reduce the deeming rates by a further 0.25% to reflect the latest rate reductions by the RBA. As of 1 May 2020, the lower deeming rate will be 0.25% and the upper deeming rate will be 2.25%.

SME loan guarantee scheme

The Government will establish the "Coronavirus SME Guarantee Scheme" to support SMEs to get access to working capital. Under the Scheme, the Government will guarantee 50% of new loans issued by eligible lenders to SMEs. The Government said this support seeks to enhance the willingness and ability of banks to provide credit to SMEs with the Scheme able to support $40bn of lending to SMEs.

The Scheme will complement the original announcement by the Government to cut red-tape to allow SMEs to get access to credit faster. It also complements announcements made by banks to support small businesses with their existing loans by deferring repayments for up to six months. It further supports the Reserve Bank's

$90bn term funding facility for banks, that will reduce the cost of lending, with particular incentives to lend to SMEs. The Government said it will also guarantee up to $20bn to support $40bn in SME loans.

Further information

Treasury has released a range of fact sheets with further details on the eligibility requirements for the above measures (subject to the enactment of legislation), including:

- Cash flow assistance for businesses
- Providing temporary relief for financially distressed businesses
- Delivering support for business investment
- Income support for individuals
- Payments to support households
- Early access to superannuation
- Providing support for retirees
- Supporting the flow of credit
- Assistance for severely affected regions and sectors.

Coronavirus economic response Bills receive Assent

The Government's Coronavirus Economic Response Package of Bills have received Royal Assent, after being passed by both houses of Parliament with amendments. The package of Bills implement aspects of the Government's economic stimulus package announced between 12 March and 22 March 2020. Following the passage of these urgent Bills, Parliament has been suspended until 11 August 2020.

The 11 Government amendments made to the Omnibus Bill by the House or Reps confirm that the earlier commencement of the Bill from the day after Royal Assent will not affect the commencement of the COVID19 supplement which will apply to a person receiving from 27 April 2020 a jobseeker payment, parenting payment or sickness allowance. The amendments also expressly provide that the COVID-19 supplement of up to $550 per fortnight will apply to a person receiving youth allowance who is not undertaking full-time study and is not a new apprentice from 27 April 2020. The one amendment made by the Senate (and agreed to by the Reps) grants the Minister the power to vary or extend by legislative instrument (until 31 December 2020) the qualification or rate of a social security payment in response to the coronavirus (COVID-19).

The package of eight Bills, which are now law, include:

- Coronavirus Economic Response Package Omnibus Bill 2020, Act No 22 of 2020;
- Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Bill 2020, Act No 23 of 2020;
- Assistance for Severely Affected Regions (Special Appropriation) (Coronavirus Economic Response Package) Bill 2020, Act No 24 of 2020;
- Appropriation (Coronavirus Economic Response Package) Bill (No 1) 2019-2020, Act No 25 of 2020;
- Appropriation (Coronavirus Economic Response Package) Bill (No 2) 2019-2020, Act No 26 of 2020;
- Structured Finance Support (Coronavirus Economic Response Package) Bill 2020, Act No 27 of 2020;
- Australian Business Growth Fund (Coronavirus Economic Response Package) Bill 2020, Act No 28 of 2020;
- Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Bill 2020, Act No 29 of 2020.

Coronavirus supplement: Minister confirms eligibility for students

The Government has confirmed that the eligibility criteria for the fortnightly $550 Coronavirus supplement has been expanded for Australians receiving student support payments. This follows the amendments made to the Coronavirus Economic Response Package Omnibus Bill 2020, which was passed with Government amendments on 23 March 2020, and received Royal Assent on 24 March 2020.

The Minister for Families and Social Services, Senator Anne Ruston, said the amendments made to the Bill will benefit about 235,000 students who receive Youth Allowance (Student), AUSTUDY and ABSTUDY (Living Allowance). The Government said it made this decision to expand the fortnightly $550 supplement in recognition that many full-time students also supplement their income through part-time and casual work which may not be available over coming months.

As long as someone has applied for the Coronavirus supplement payment by 13 April 2020, the Minister said they will also be eligible for the $750 stimulus payment announced on 12 March 2020, which will give them extra relief until the fortnightly $550 Coronavirus supplement begins to flow from 27 April. More information is available on the Department of Social Services Website.

Coronavirus concessions: State governments

In the wake of the Federal Government's stimulus packages for the coronavirus (COVID-19), State governments have announced the following concessions for businesses:

- **NSW**: a waiver of payroll tax for three months for businesses with payrolls up to $10m; the next round of NSW payroll tax cuts will be brought forward by raising the threshold limit to $1m in 2020-21; and a range of fees and charges will be waived for small businesses (including bars, cafes, restaurants and tradies);
- **Qld**: a $500m loan facility will be created to support businesses (interest free for the first 12 months), while the initial six-month payroll tax deferral will be extended to all businesses across the State. This payroll tax relief means that businesses will not need to lodge or pay payroll tax returns until 3 August 2020. The Qld Office of State Revenue will also work with affected businesses to create repayment plans for the deferred tax liabilities; and
- **WA**: small businesses that pay payroll tax will receive a one-off grant of $17,500; the $1m payroll tax threshold will be brought forward by six months to 1 July 2020; and payroll tax payments to be deferred until 21 July 2020 for businesses impacted by COVID-19.
- **TAS**: up to three years of interest free loans to be made available to small businesses with turnover of less than $5m; payroll tax waiver for the last four months of this financial year for hospitality, tourism and seafood industry businesses; small and medium businesses with an annual payroll of up to $5m in Australian wages can apply for waiver of payroll tax payments for the three months up to 30 June 2020; youth employment payroll tax rebate scheme to encourage businesses to employ young people from 1 April 2020; and one-off $5,000 grants for businesses that hire an apprentice or trainee.

Coronavirus: ATO clarifies timing for varying PAYG instalments

The ATO has moved to clarify that its coronavirus administrative concession allowing businesses to vary their PAYG instalment amounts to zero applies to activity statements from the March 2020 quarter.

The ATO's original announcement of the administrative concessions for taxpayers impacted by COVID-19 said businesses would be allowed to vary PAYG instalment amounts to zero for the "April 2020 quarter". The ATO has subsequently revised this reference in its media release to clarify that it applies from the "March 2020 quarter" (not the April 2020 quarter). Businesses that vary their PAYG instalment to zero can also claim a refund for any instalments made for the September 2019 and December 2019 quarters.

The ATO's subsequent Website guidance on its COVID-19 concessions also makes it clear that a quarterly PAYG instalments payer can vary its PAYG instalments on its activity statement for the March 2020 quarter. This can be done by lodging a revised activity statement before an instalment is due, and before the business lodges its income tax return for the year. If a business is a monthly PAYG instalments payer and has a base assessment instalment income of $500m or less, and they want to vary their instalment rate and claim a refund on previous instalments paid, the ATO says the taxpayer will need to phone the ATO (tel: 13 72 26) to discuss the matter.

ATO FAQ re Coronavirus impacts

The ATO's COVID-19 frequently asked questions is a resource tool for the community who needs clarifications in relation to impacts from the epidemic. The site is broken into common questions for individuals; employers; businesses (including international); and SMSF's.

To-date, common questions centre around issues relating to the nationwide shutdown – late or deferring payment obligations; deductibles from working from home; residence status due to travel restrictions; GST and FBT impacts from cancellations; and SMSF losses and strategies.

The ATO advises that this FAQ will be updated regularly and welcomes suggestions and more questions from the community.

Commissioner's COVID-19 message to the tax profession

The Commissioner has moved to reassure the tax profession that the ATO is there to support tax practitioners and their clients to respond to the impacts of the coronavirus (COVID-19). Mr Jordan said the ATO has already been working closely with individual agents and the Tax Practitioners Stewardship Group to identify how best to respond to what the profession needs from the ATO. Tax practitioners have told the ATO that blanket measures are not a sufficient response as the COVID-19 challenges are diverse and complicated. "That's why we are committed to working closely with you and your clients, to tailor our response to individual circumstances and ensure we are offering the best possible support for your situation", Mr Jordan said.

If practitioners or clients are having trouble meeting lodgment or payment obligations, or are concerned about new and ongoing debts, Mr Jordan said it is vitally important that they reach out to the ATO for help. "You don't need to agonise over academic, technical tax arguments: contact us, and we'll try our best to give pragmatic, practical advice". The ATO said it has already done this on a range of issues, from central management and control, to SMSF residency issues, to expat tax issues. The ATO is also looking to keep practitioners updated through the Frequently Asked Questions section on its COVID-19 webpage.

TPB support for practitioners affected by COVID-19

The TPB has announced support for tax practitioners affected by COVID-19, including extensions of time for practitioners facing challenges to meet registration obligations, such as registration renewals or annual declaration forms. Specifically, it announced two measures designed to support and lessen the administrative load of practitioners at this time. First, it has temporarily waived the requirement to complete annual declarations for some tax practitioners, ie if an annual declaration is due on or before 31 December 2020, it does not have to be completed until 2021 or 2022 (if the registration renewal is due in 2021). Second, the CPE policy which sets a 25% cap for relevant technical/professional reading activity has been removed until 30 September 2020. The TPB emphasises that the importance of practitioners contacting it asap if they are facing specific issues.

2020-21 Federal Budget deferred to 6 October

The Prime Minster has confirmed that the 2020-21 Federal Budget will be deferred until Tuesday 6 October 2020 (instead of May 2020 as originally scheduled) given the ongoing uncertainty surrounding financial forecasts. Mr Morrison said he has spoken to the Leader of the Opposition and thanked him for his support of these arrangements.

ATO data-matching for ride sourcing extended

The ATO has gazetted a notice to extend its data-matching program for ride sourcing (such as Uber) for a further three financial years, ie up to and including 2021-22. The ATO said this extension will enhance its compliance strategies for drivers who do not comply with their obligations. Under the data-matching program, the ATO will acquire ride sourcing data to identify individuals that may be engaged in providing ride sourcing services during the 2019-20 to 2021-22 financial years. The data items include:

- identification details - driver identifier; ABN; driver name; birth date; mobile phone number; email address; address;
- transaction details - bank account details; aggregated payment details (gross fares, net amount paid to driver, and all other income to which GST may or may not apply to) of all payments received in the relevant period.

The ATO expects to obtain records relating to 250,000 individuals each financial year. This data will then be matched to with certain sections of ATO data holdings to identify taxpayers that can be provided with tailored information to help them meet their tax and superannuation obligations, or to ensure compliance with taxation law. These obligations may include registration, lodgment, reporting and payment responsibilities.

Tax agents and myGovID: machine credentials before 27 March

As all tax practitioners should now be aware, AUSkey will be replaced by myGovID and Relationship Authorisation Manager (RAM) on 27 March 2020 for all practitioner lodgment service (PLS)-enabled software.

The ATO says if tax professionals use a desktop or locally hosted practice management software, they will need to create a machine credential, which performs the same function as a device AUSkey or an Administrator or Standard AUSkey in their software. [Machine credentials replace any AUSkey used in practitioners' software. Details of how to create a machine credential are on the ATO website.]

If practitioners have not established their machine credential by 27 March, the ATO warns they will not be able to use their desktop practice management software to interact with ATO systems. To obtain a machine credential, the ATO says practitioners should contact their software provider immediately. To get their machine credential, they will need to have:

- established their myGovID; and
- link their practice in RAM.

The ATO says if practitioners' software is cloud-based (ie a web-based service accessed through their browser, not software on their own computer), they do not need to get a machine credential. Their service provider will manage the change for them.

ATO draft car expenses: cents per km rate for 2020

The ATO has issued draft MVE2020/D1 - Income Tax Assessment Act 1997 - cents per kilometre deduction rate for car expenses 2020. This instrument applies to work-related car expense deductions and sets the rate at 72 cents per kilometre (previously 68 c/km) at which those deductions may be calculated. The instrument is proposed to commence on 1 July 2020.

Comments due by 14 April 2020.

FBT: LAFHA reasonable amounts

Taxation Determination TD 2020/4 sets out the weekly amounts the ATO treats as reasonable for food and drink expenses incurred by employees receiving a living-away-from-home allowance fringe benefit for the 2020-21 FBT year.

For Australian locations, the reasonable weekly amounts are: one adult - $276; two adults - $414; three adults - $552; one adult and one child - $345; two adults and one child - $483; two adults and two children - $552; two adults and three children - $621; three adults and one child - $621; three adults and two children - $690; and four adults - $690.

For larger family groupings, $138 is added for each additional adult and $69 for each additional child. An "adult" for this purpose is an individual aged 12 years or more at 31 March 2020.

Date of effect: 1 April 2020 to 31 March 2021.

FBT: cents per kilometre rate

The cents per kilometre rates for calculating the taxable value of a fringe benefit arising in the 2020-21 FBT year from the private use of a motor vehicle (other than a car) are:

- vehicles with an engine capacity of up to 2,500cc - 56 cents/km;
- vehicles with an engine capacity of over 2,500cc - 67 cents/km; and
- motorcycles - 17 cents/km.

These rates are set out in Taxation Determination TD 2020/3.

Date of effect: 1 April 2020 to 31 March 2021.

Expansion of estimates regime to GST, LCT and WET

The ATO has issued Practical Compliance Guideline PCG 2020/2 to explain how the Commissioner will administer the estimates regime as a result of the GST, Luxury Car Tax and Wine Equalisation Tax being brought within the regime from 1 April 2020. These taxes are also now part of the director penalty regime. The Guideline states that the Commissioner's new power to estimate a taxpayer's unpaid net amount will generally only be used if there are reasonable grounds to believe that the taxpayer, and any related entities, are involved in phoenix behaviour. Further, an estimate will generally not be made unless the ATO has made multiple attempts to contact the taxpayer to establish the overdue and unpaid amount, and the taxpayer has failed to engage with the ATO or refused to cooperate in establishing the overdue and unpaid amount.

Date of effect: Applies from 1 April 2020.

Queensland director jailed for GST fraud

The ATO has reported that a company director has been sentenced in the Maroochydore District Court to two years and six months' jail for GST fraud totalling $200,553. The director was also ordered to repay that entire sum back to the ATO. In her capacity as director of a company, the ATO said the woman had unlawfully lodged 10 false BAS overstating the company's GST credits and refunds owed. The ATO said it also stopped the director from attempting to obtain an additional $55,413 in fraudulent refunds, as a result of conducting an audit into the company's tax affairs, during the period of offending.

FINANCIAL SERVICES

Bank support for SMEs: deferred loan repayments

The Treasurer has welcomed the announcement by the Australian Banking Association (ABA) that their bank members will defer loan repayments for six months for small businesses who need assistance because of the coronavirus (COVID-19). Mr Frydenberg said this relief by the banks will allow more than $100bn of existing small business loans to be deferred, and in doing so provide repayment relief of up to $8bn over the next six months.

This banking relief package for small business follows the announcement by the Reserve Bank (RBA) to inject $105bn into the economy to support lending to small and medium-sized (SME) businesses. The RBA announced that it will provide a three-year funding facility (at least $90bn) for banks at a fixed rate of 0.25%. Banks will be able to obtain initial funding of up to 3% of their existing outstanding credit. They will have access to additional funding if they increase lending to business, especially SMEs.

ASIC takes court action against Colonial First State

ASIC has commenced civil penalty proceedings in the Federal Court against Colonial First State Investments Limited (CFSIL) for alleged breaches of the ASIC Act and the Corporations Act 2001 regarding alleged misleading or deceptive communications with members of the FirstChoice Fund in relation to MySuper accounts. ASIC's concise statement, filed on 17 March 2020, is seeking declarations of breaches of s12DA of the ASIC Act and ss 912A(1)(a) and (c), 949A and 1041H of the Corporations Act, and the imposition of civil penalties under ss12DB and 12DF of the ASIC Act in relation to the communications.

The action relates to a referral made by the Banking Royal Commission in relation to CFSIL's conduct which was the subject of a case study by the Royal Commission: see Final Report, Vol 2 - Part 2, p 91. ASIC said the court action has been commenced against CFSIL in its own capacity, and as the trustee for the Colonial First State FirstChoice Superannuation Trust (FirstChoice Fund). ASIC has alleged that, between March 2014 and August 2016, CFSIL communicated with 12,911 members of the FirstChoice Fund in a misleading or deceptive manner regarding the provision of investment directions to stay within CFSIL's FirstChoice Fund rather than transitioning to CFSIL's MySuper product. The matter will be listed for a first case management conference on a date to be fixed by the Court.

SUPERANNUATION

MySuper heatmaps: APRA releases new FAQs

APRA has released a new set of MySuper heatmap frequently asked questions (FAQs) for its plans to update its MySuper Product Heatmap in June 2020 with the latest fees and costs data from MySuper funds. The five new FAQs cover APRA's plans to publish in June 2020 the concise and expanded "fees and costs" metrics included in the December 2019 heatmap with updated data. APRA says its decision to solely publish fee data reflects the purpose of the update - to show actions taken by trustees to address areas of underperformance, which APRA considers to reasonably be expected to have occurred since the heatmap was published in December 2019.

In terms of trustees looking to ensure updated fees and costs are reflected in the heatmap, APRA said any ad-hoc submission of Reporting Standard SRS 703.0 (Fees Disclosed) received by APRA by 5pm on 29 May 2020 via Direct to APRA (D2A) will be included in the updated heatmap to be released in June 2020. Trustees can make a request to submit an ad-hoc submission of Reporting Standard SRS 703.0 via email: DataAnalytics@apra.gov.au. Any updated fees and costs submitted to APRA after 29 May 2020 will be reflected in the next iteration of the heatmap, planned for release in December 2020.

SMSFs and property development: ATO flags concerns

SMSF Regulator's Bulletin SMSFRB 2020/1, sets out the ATO's concerns about self-managed superannuation funds (SMSFs) entering into certain arrangements, with related or unrelated parties, involving the purchase and development of real property for subsequent disposal or leasing.

While there are no specific prohibitions preventing an SMSF investing directly or indirectly in property development, the ATO said it is concerned about any arrangements that are being used to inappropriately divert income into superannuation. SMSF assets that are used to fund property development ventures must also be consistent with the sole purpose test and other provisions of the SIS

Act and SIS Regs. SMSFRB 2020/1 sets out the ATO's guidance on the relevant regulatory provisions, including the in-house asset rules, LRBAs, non-arm's length dealings, joint ventures and record keeping.

SMSF trustees also need to be conscious of the non-arm's length income (NALI) provisions in s 295-550 of the ITAA 1997 which can result in an SMSF being taxed at 45%. The ATO warns that the parties must take care to ensure the parties are dealing with each other at arm's length in relation to the purchase of land or other assets, the value of services provided, the terms of any borrowing arrangements, and the return on the investment. Similarly, the ATO said it is concerned about arrangements that appear to manipulate the members' transfer balance accounts. For example, by deliberately undervaluing an asset when it enters retirement phase to allow a greater amount of earnings within the SMSF to be treated as exempt pension income.

Super guarantee changes from 1 January 2020

The ATO has issued Super Guidance Note GN 2020/1 to explain certain superannuation guarantee (SG) changes that took effect on 1 January 2020. From that date, amounts that are sacrificed to superannuation under an effective salary sacrifice arrangement do not count towards the employer's SG obligations and do not reduce the base amount on which SG is calculated. Accordingly, an employer must calculate the minimum amount of SG on the employee's ordinary time earnings (OTE) base, including any OTE amounts that are sacrificed in return for superannuation contributions. The ATO advises employers to review their salary sacrifice arrangements to ensure the correct calculations are being made. The ATO confirms that other sacrificed amounts (such as SSAs for cars, property or expense payments) are not affected by these changes.

Lump sum arrears of disability pay a tax-free super lump sum

A lump sum payment in arrears of invalidity pay was a superannuation lump sum and a disability superannuation benefit and thus not assessable as ordinary income: Douglas and FCT [2020] AATA 494 (AAT, File No 2016/6964, Logan DP 13 March 2020).

The taxpayer received "retirement pay" under the Defence Force Retirement and Death Benefits Act 1973 (DFRDB Act) when he was discharged from the ADF in September 2002. In June 2014 it was determined that he could have been retired on the ground of "invalidity or of physical or mental incapacity to perform his duties". In November 2014 the taxpayer was classified as a Class A invalidity for the purposes of the DFRDB Act, with effect from the date of his discharge from the ADF in September 2002. As a result he became entitled to invalidity pay, backdated to September 2002. In June 2015 he received a lump sum of invalidity pay in arrears (the net amount was $105,050, tax of $167,592 having been deducted from the gross amount of $272,642). The ATO had assessed the arrears payment on the basis that it constituted periodic payments of invalidity pay and thus was ordinary income. The taxpayer, however, contended that the arrears payment ought to have been treated in the manner prescribed in s 307-145(1) of the ITAA 1997.

The AAT agreed with the taxpayer that s 307-145(1) applied because the arrears payment was (a) a superannuation benefit (not disputed), (b) a superannuation lump sum and (c) a disability superannuation benefit (as it was paid to the taxpayer because he suffered "from ill-health (whether physical or mental)". The central issue was whether the arrears payment was a "superannuation lump sum". The AAT decided it was because it was not a "superannuation income stream benefit", as it was not a "superannuation benefit specified" in the ITA Regs. At the time of the payment, the ITA Regs did not, via the definition of "superannuation income stream benefit" in reg 995-1.01(2), specify any "superannuation benefit" for the purposes of s 307-70. Further, a 2018 amendment to the ITA Regs (with retrospective effect to 1 July 2007) specifying all superannuation benefits, with certain immaterial exceptions, for the purposes of s 307-70 could not affect the taxpayer. Sections 7(2) and (12) of the Acts Interpretation Act 1901 protected the taxpayer as his assessed income tax liability and right of review by the AAT had accrued before the 2018 amendment.

REGULATOR NEWS

ASIC and APRA refocus for COVID-19 challenges

ASIC and APRA have announced that they will refocus their regulatory priorities for the challenges created by COVID-19. Until at least 30 September 2020, ASIC said it will afford priority to COVID-19 issues, and matters that pose a risk of significant consumer harm, serious breaches of the law, risks to market integrity and time-critical matters.

APRA also announced that it has suspended the majority of its planned policy and supervision initiatives in response to COVID-19 to allow APRA-regulated entities to focus on their operations and supporting customers. As a result, APRA's supervision priorities outlined in January 2020 will be largely suspended until at least 30 September 2020, particularly where they involve intensive engagement with regulated entities.

ASIC said it has immediately suspended a number of near-term activities which are not time-critical. These include consultation, regulatory reports and reviews, such as the ASIC report on executive remuneration, updated internal dispute resolution guidance and a consultation paper on managed discretionary accounts. Where warranted, ASIC relief or waivers from regulatory requirements will also be provided. ASIC has already announced a "take no action" stance in relation to the timing of AGMs until 31 July and the conduct of AGMs by electronic means. However, ASIC will maintain its enforcement activities and continue to investigate and take action where the public interest warrants it.

ASIC guidelines for upcoming AGMs and financial reporting

ASIC has set out guidelines for companies that may be temporarily impacted in relation to their ability to hold an annual general meeting (AGM) due to the coronavirus (COVID-19). This issue is most immediately relevant for listed and unlisted public companies with 31 December balance dates that are required to hold an AGM by 31 May 2020. For these entities, ASIC has confirmed that it will take no action if the AGMs are postponed for two months (ie until the end of July 2020).

In terms of financial reporting obligations, ASIC said it is closely monitoring COVID-19 developments that may affect financial reporting, talking to market participants and auditors, and considering possible impacts and responses. At present, ASIC said there appears to be no widespread indications of any significant issues for entities in meeting their full-year and half-year financial reporting obligations at 31 December 2019. For entities with 31 March or 30 June balance dates, ASIC said it will carefully monitor how market conditions and COVID-19 are affecting financial reporting and AGM obligations for these entities and may update this guidance if needed.