TAXATION

JobKeeper Payment legislation awaits Assent

Bills to implement the government's JobKeeper Payment scheme awaits Royal Assent after being passed without amendment.

Federal child care relief package

The Prime Minister has announced the government will provide $1.6bn of assistance to early learning and child care operators to allow for the provision of free services.

Data matching between Centrelink and Medicare to be enhanced

Services Australia issued a gazette notice on its intent to enhance data matching practices between Centrelink and Medicare programs.

Medicare levy low-income thresholds 2019-20

The Medicare levy low-income thresholds have been updated for 2019-20 as a part of the Coronavirus Economic Response Package.

Fraudulent practices re relief not acceptable

Tax Practitioners Board has issued a warning that it is not acceptable to backdate or artificially change business structure or employment arrangements.

ATO shortcut to claim deductions for WFH

ATO has announced a new shortcut method which will allow taxpayers to claim a set rate for all their running expenses.

Commercial property tenancies: States to implement mandatory code

The Prime Minister has confirmed that the States and Territories will legislate to make mandatory an industry code of practice for commercial tenancy agreements.

Bank loan repayment deferral extended

Australian Banking association has announced that banks will extend the six-month repayment deferral package to more businesses.

NSW: grants for small businesses

The NSW government has announced a $750m Small Business Support Fund to enable small businesses to receive grants of up to $10,000.

ATO admin: COVID-19 Q&A updated

ATO is updating its COVID-19 frequently asked questions site on a rolling basis with some of the more salient measures including cessation of business and FBT impacts.

TPB: taking reasonable care

The Tax Practitioners Board has issued a compilation of questions received during its webinar.

Board of Taxation appointments

The Assistant Treasurer has announced the appointments of a part-time Chair and part-time member of the Board of Taxation.

GST: margin scheme valuation determination

ATO has registered a legislative instrument specifying requirements for making valuations for the purposes of the margin scheme.

GST revenue sharing arrangements with States

Treasurer has announced the government has accepted the recommendations of the Commonwealth Grants Commission on the GST revenue sharing relativities.

FINANCIAL SERVICES

Breach of duties by Storm Financial directors upheld

Full Federal Court has upheld the finding that the directors of Storm Financial Limited breached their duties as directors.

ASIC update on COVID-19 for AFS licensees

ASIC has provided an update and FAQs on issues impacting AFS licensees and financial advisers as a result of COVID-19.

APRA suspends issue of new banking and super licences

APRA has announced that it is temporarily suspending issuing new banking, insurance and super licences for at least six months.

Case studies of businesses that have reached out to their bank for help during COVID-19

The Australian Banking Association (ABA) invites the business community to share how the small business relief package works in practice.

SUPERANNUATION

SMSF annual return concessions for COVID-19

Trustees of SMSFs who need more time to lodge their SMSF annual returns can contact the ATO to request an extension.

SMSF rent reductions; in house assets

ATO has announced further administrative concessions for SMSFs due to COVID-19 re rent reductions and in-house assets.

ATO responsible for early release of super applications

Assistant Minister for Superannuation has confirmed that the ATO will be solely responsible for assessing applications for early release of super.

Liquidity a priority for super trustees amid COVID-19

ASIC and APRA has issued a joint letter to super trustees reminding them about their trustee obligations for dealing with the impacts of COVID-19.

REGULATOR NEWS

ASIC warning to real estate agents

ASIC has written to real estate institutes in each State outlining its concerns about real estate agents providing unlicensed financial advice to tenants.

ACNC: compliance changes and annual statement extension

ACNC has implemented a blanket extension to charities for their annual information statement and will also change its compliance approach temporarily.

FIRB approval required for all foreign investment

The Treasurer has announced that all proposed foreign investments into Australia will require approval from 29 March 2020.

Interim authorisations to support businesses affected by COVID-19

The Australian Competitor & Consumer Commission Small Business Information Network (SBIN) provide small business owners about new or updated resources, enforcement action, changes to Australia's competition and consumer laws, events, surveys and scams relevant to the small business sector.

ACCC Update And Key Developments Relating To COVID-19

The ACCC would like to share some updates and key developments relating to COVID-19 from the past week.

TAXATION

JobKeeper Payment legislation awaits Assent

The Bills to implement the Government's JobKeeper Payment scheme await Royal Assent after being passed without amendment by both houses of Parliament. The four Bills are:

- Coronavirus Economic Response Package (Payments and Benefits) Bill 2020;
- Coronavirus Economic Response Package Omnibus (Measures No 2) Bill 2020;
- Appropriation Bill (No 5) 2019-2020; and
- Appropriation Bill (No 6) 2019-2020.

There is an explanatory memorandum that covers both the main Bills.

This package of Bills seeks to provide the framework to implement the plan announced by the Prime Minister on 30 March 2020. Broadly, the scheme is designed to provide a wage subsidy of $1,500 per fortnight per employee. The payment will be paid to employers, for up to six months, for each eligible employee that was on their books on 1 March 2020 and is retained or continues to be engaged by that employer. Where a business has stood down employees since 1 March, the payment is designed to help the employer maintain connection with their employees. Employers will receive a payment of $1,500 per fortnight per eligible employee. Every eligible employee must receive at least $1,500 per fortnight from this business.

The first payments are to be received by eligible businesses in the first week of May from the ATO, as monthly arrears. The release notes that eligible businesses can begin distributing the JobKeeper Payment immediately and will be reimbursed from the first week of May. Eligible employers will be those with annual turnover of less than $1bn who self-assess that have a reduction in revenue of 30% or more, relative to a comparable period a year ago (of at least a month). Employers with an annual turnover of $1bn or more would be required to demonstrate a reduction in revenue of 50% or more to be eligible. Businesses subject to the Major Bank Levy will not be eligible.

Eligible employers include businesses structured through companies, partnerships, trusts and sole traders. Not-for-profit entities, including charities, will also be eligible.

Eligible employers who have stood down their employees before the commencement of this scheme will be able to participate, providing they re-engage those employees who were on their books at 1 March. Employers must elect to participate in the scheme. They will need to make an application to the ATO and provide supporting information demonstrating a downturn in their business. In addition, employers must report the number of eligible employees employed by the business on a monthly basis.

Full time and part time employees, including stood down employees, would be eligible to receive the JobKeeper Payment. Where a casual employee has been with their employer for at least the previous 12 months, they will also be eligible for the payment. Eligible employees include Australian residents, NZ citizens in Australia who hold a subclass 444 special category visa, and migrants who are eligible for JobSeeker Payment or Youth Allowance (Other). Self-employed individuals are also eligible to receive the JobKeeper Payment, where they have suffered or expect to suffer a 30% decline in turnover relative to a comparable prior period (of at least a month). Employees that are re-engaged by a business that was their employer on 1 March 2020 will also be eligible.

The JobKeeper Payments component is contained in Sch 2 of the Measures No 2 Bill. However, there are a number of other important non-tax related measures, which are outlined below that.

JobKeeper payments

The measures which allow the implementation of the JobKeeper Payments are contained in Sch 2 of the Measures No 2 Bill. The legislation mostly contains the legislative framework to allow for the operation of the Rules, which will contain the details of the JobKeeper Payments (ie there are no specific details in the legislation itself). The Rules will be issued by the Treasurer for administration by the Commissioner. The Bill introduces special record-keeping rules in relation to COVID-19 response payments. The important bit is that if the employer does not keep the correct records, then the employer will be taken to be ineligible to receive a Coronavirus economic response payment. This presumably means that the employer would be liable to repay it (even if it had been paid to an employee).

Fair Work Act amendments

A new Part 6-4C will be inserted into the Fair Work Act 2009, which temporarily enables employers to issue "JobKeeper enabling directions". These can provide (subject to various safeguards) for increased flexibility around employees' hours of work via a new JobKeeper enabling stand down direction, performance of duties and location of work. It also enables employers and employees to make agreements for increased flexibility around annual leave arrangements and days and times of work. The FWC will be able to resolve disputes, including by arbitration.

Guarantee of lending to small and medium enterprises

Amendments to the Guarantee of Lending Act will ensure that certain categories of smaller non-ADI lenders will fall within the definition of financial institution in that Act. This measure has not previously been announced.

Childcare sector amendments

The Family Assistance Administration Act will be amended to:

- modify the calculation method used for Child Care Subsidy reconciliation to ensure a consistent outcome for individuals who have changed their relationship status during the financial year; and
- meet various circumstances of social and financial hardship being experienced by the childcare sector and families, arising from emergency and disaster events including the Coronavirus by ensuring that payments of Additional Child Care Subsidy and certain grants can draw upon standing appropriations.

The amendments also require that the Minister make rules which prescribe the total amount that can be paid in a financial year.

Modification of information and other requirements

There will be a temporary mechanism for responsible Ministers to change arrangements for meeting information and documentary requirements under Commonwealth legislation in response to the challenges posed by the Coronavirus.

Additional support for veterans

The Veterans' Minister will be able to:

- increase, by legislative instrument, the amount paid to persons receiving a payment under a provision of the Veterans' Law by the amount of the COVID-19 supplement; and
- vary the qualifications and eligibility for payments under the Veterans' Law by legislative instrument.

These instruments may only be made after consultation with the Social Services Minister. Both the powers and any instruments made using them will end on 31 December 2020. This measure was not previously announced.

Tax secrecy

The tax secrecy provisions in the TAA will be amended to allow de-identified protected information to be disclosed to the Treasury for the purposes of policy development, or analysis, in relation to the Coronavirus, including in relation to programs introduced in response to the economic impacts of the Coronavirus. These amendments will be repealed on 1 July 2023 and had not been previously announced.

Date of effect

The amendments will generally commence on the day after Royal Assent to the Bill. The Payments and Benefits Bill provides for Rules to be made allowing the Commissioner to make payments on or after the day of commencement, for the period between 1 March 2020 and 31 December 2020 (inclusive).

Federal child care relief package

The Prime Minister has announced that the Government will provide $1.6bn of assistance to early learning and child care operators to allow for the provision of free services. Under the plan, the Government will pay 50% of the sector's fee revenue up to the existing hourly rate cap based on a point in time before parents started withdrawing their children in large numbers, but only so long as services remain open and do not charge families for care. The funding will apply from 6 April based on the number of children who were in care during the fortnight leading into 2 March, whether or not they are attending services.

The plan means the sector is expected to receive $1.6bn over the coming three months from taxpayer subsidies. The new system will see payments start flowing at the end of next week. The system will be reviewed after one month, with an extension to be considered after three months. The payments will be paid in lieu of the Child Care (CCS) and Additional Child Care Subsidy payments.

Data matching between Centrelink and Medicare to be enhanced

Services Australia issued a gazette notice on its intent to enhance data matching practices between Centrelink and Medicare programs. The enhancement will look to match identities and details held in Centrelink records with those held in Medicare records. The objectives of the data-matching program include making sure Centrelink payments are only made to people who are entitled to those payments, detecting fraud and overpayments.

Information including names (first name, surname and aliases), gender, date of birth, address, email address, telephone number, and Medicare Benefits Schedule Usage will be data matched. It is expected approximately 9.8 million unique records will be matched. Based on fraud criteria, Services Australia anticipates it will examine approximately 5,000-9,000 records per year.

Medicare levy low-income thresholds 2019-20

The Medicare levy low-income thresholds were updated for 2019-20 as part of the Coronavirus Economic Response Package Omnibus Act 2020. For the 2019-20 income year, the Medicare levy low-income threshold for singles is $22,801 (up from $22,398 for 2018-19). For couples with no children, the family income threshold is

$38,474 (up from $37,794 for 2018-19). The additional amount of threshold for each dependent child or student is $3,533 (up from $3,471).

For single seniors and pensioners eligible for the SAPTO, the Medicare levy low-income threshold is $36,056 (up from $35,418 for 2018-19). The family threshold for seniors and pensioners is $50,191 (up from $49,304), plus $3,533 for each dependent child or student.

Date of effect: The increased thresholds apply to the 2019-20 and later income years.

Fraudulent practices re relief not acceptable

In the wake of Government relief measures to help the economy to withstand and recover from the economic impact of COVID-19, the TPB issued a warning that it is aware that some businesses are already making changes to their business structures and employment arrangements following the stimulus announcements. Some advisors may be grappling with the tax consequences associated with the stimulus payments and wondering what will attract the attention of the authorities.

The TPB reminds its members that it is not acceptable to backdate or artificially change a business structure or employment arrangements, including changing the characterisation of payments, in order to obtain a benefit or payment that would not otherwise have been paid. The TPB encourages anyone who needs advice to seek assistance from the TPB or if anyone becomes aware of any wrongdoing, to report them to the TPB or the ATO.

ATO shortcut to claim deductions for WFH

To make it easier for people to claim deductions for working from home, the ATO has announced a new shortcut method which will allow taxpayers to claim a rate of 80 cents per hour for all their running expenses, rather than needing to calculate costs for specific running expenses. Assistant Commissioner Karen Foat said the shortcut method "will only require you to keep a record of the number of hours worked from home".

Claims for working from home expenses prior to 1 March 2020 cannot be calculated using the shortcut method and must use the pre-existing working from home approach and requirements. The ATO will review the special arrangement for the next financial year as the COVID-19 situation progresses.

See additional resources available to taxpayers – Employees working from home.

Commercial property tenancies: States to implement mandatory code

The Prime Minister has confirmed that the States and Territories will legislate to make mandatory an industry code of practice for commercial tenancy agreements impacted by COVID-19. However, the industry code will not apply to residential tenancies which will instead be dealt with by each of the State and Territory jurisdictions.

Mr Morrison said the Code will apply to commercial landlords and tenants with a turnover less than $50m, and participants in the JobKeeper measure (which requires a minimum 30% reduction in turnover). Both parties will be expected to negotiate in good faith according to a "proportionality principle", ie the reduction in tenant turnover should be reflected in any rental waiver, reduction or deferral over a longer revised tenancy agreement. For example, if a landlord agrees to a rent deferral it can be recovered over the balance of the term (at least 12 months).

The arrangements under the Code will be overseen by a binding mediation process. Landlords and tenants will need to sit down and work it out, the Prime Minister said. If a landlord does not engage with a tenant according to the Code, they will forfeit their rights under the lease. Mr Morrison said banks must also come to the table, including international banks.

Bank loan repayment deferral extended

The Australian Banking Association (ABA) has announced that banks will extend the six-month loan repayment deferral package to 30,000 more businesses. Businesses with total business loan facilities of up to $10m (up from the $3m small business threshold) will now be able to defer principal and interest repayments for loans attached to their business for six months. ABA CEO Anna Bligh said this extension of support will apply to an additional $100bn of business loans. Combined with measures already announced, it will mean a six-month deferral of loan payments will apply to up to $250bn worth of loans.

The ABA said banks have also agreed to not enforce business loans during this six-month period for non-financial breaches of the loan contract (such as changes in valuations). The new measures will apply in all sectors of the economy, and on an opt-in basis, under certain conditions. This measure seeks to help small businesses from being evicted if they are struggling to pay the rent as it covers approximately 90% of commercial property owners who have loans with an Australian bank, Ms Bligh said.

NSW: grants for small businesses

The NSW Government has announced a $750m Small Business Support Fund to enable small businesses across the State receive grants of up to $10,000. "This is about getting cash into small businesses when they are struggling right now in the face of an unprecedented situation", Premier Gladys Berejiklian said.

To be eligible, businesses will need to:

- have between one and nineteen employees and a turnover of more than $75,000;
- a payroll below the NSW Government 2019-20 payroll tax threshold of $900,000;
- have an Australian Business Number as at 1 March 2020, be based in NSW and employ staff as at 1 March 2020;
- be highly impacted by the Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020 issued on 30 March 2020;
- use the funding for unavoidable business costs such as utilities, overheads, legal costs and financial advice;
- provide appropriate documentation upon application.

Applications for a small business grant of up to $10,000 will be available through Service NSW within a fortnight and remain open until 1 June 2020.

ATO admin: COVID-19 Q&A updated

The ATO is updating its Covid-19 frequently asked questions site on a rolling basis. Some of the more salient measures include:

- cessation of business - temporary or permanent cessation, tax obligations, and STP reporting;
- FBT - emergency assistance, medical assistance, and hospital expenses; and
- Adjusting an existing payment arrangement - suspending, varying or cancelling payment arranagements.

TPB: taking reasonable care

The TPB has issued a compilation of questions received during its webinar - Taking reasonable care. The Q&A is broken into four distinct categories:

- Reasonable care requirements;
- Corporations Act;
- Work-related expenses; and
- Engagement letters.

Board of Taxation appointments

The Assistant Treasurer, Michael Sukkar, has issued a media release announcing the appointments of Ms Rosheen Garnon as part-time Chair of the Board of Taxation, and Mr Christopher Vanderkley as a part-time Member, for a three-year period from 25 March 2020.

GST: margin scheme valuation determination

The ATO has registered a legislative instrument, A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination 2020, specifying requirements for making valuations for the purposes of the margin scheme under Div 75 of the GST Act. For the purposes of Div 75, various requirements are proposed for the following valuation methods: valuation by a professional valuer; valuation based on the consideration received by the supplier under the contract of sale; State or Territory Government department valuation; and valuation obtained by the Commissioner in certain circumstances. This determination repeals A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2009/1 (F2009L03954) which was registered on 20 October 2009.

Date of effect: 31 March 2020.

GST revenue sharing arrangements with States

The Treasurer has announced that the Government has accepted the recommendations of the Commonwealth Grants Commission (CGC) on the GST revenue sharing relativities for 2020-21.

The Treasurer states that the CGC's recommendations are designed to ensure that GST revenue is distributed in a fair and sustainable way. The recommended GST relativities are based on the CGC's assessment of each States' fiscal capacity over the three years from 2016-17 to 2018-19.

The CGC's report was released publicly on 16 March 2020. The executive summary states that the GST share for the following States has been reduced: Victoria, Queensland, Western Australia, South Australia and the ACT. Conversely, the assessed fiscal capacities of the other three States have fallen, which means that their GST share(s) will increase – ie NSW, Tasmania and the Northern Territory.

FINANCIAL SERVICES

Breach of duties by Storm Financial directors upheld

The Full Federal Court has upheld the finding that the directors of Storm Financial Limited breached their duties as directors. At first instance in 2016, the Federal Court ruled that the directors of Storm Financial, Mr Emmanuel George Cassimatis and Mrs Julie Gladys Cassimatis, had breached their duty of care and diligence under s 180(1) of the Corporations Act 2001 by exercising their powers in a way which caused inappropriate advice to be given to certain investors: Cassimatis v ASIC [2020] FCAFC 52 (Full Federal Court, Greenwood, Rares and Thawley JJ, 27 March 2020).

Storm Financial had operated an investment model since 1994 whereby almost 90% of its clients were advised to adopt a "double gearing" strategy. This advice involved borrowing against the security of their homes, obtaining a margin loan, using the funds from these loans to invest in index share funds, and establishing a "cash dam" to pay expenses and Storm's fees. Investors also made additional "step" investments if the market rose or fell by a certain amount. In 2008, the global financial crisis had a devastating impact on the Storm model and left many clients with significant losses.

The Storm directors were found to have breached their duties of care and diligence by causing or permitting Storm Financial to provide advice to investors in a manner which caused Storm to contravene s 945A (reasonable basis for advice) and s 1041E (misleading and deceptive statements) of the Corporations Act. The directors maintained that the only reason the Storm model failed was because of a "Black Swan" event, namely the GFC. In dismissing the appeal by the Cassimatises, the Full Federal Court by a majority 2:1 (Rares J dissenting), ruled that the primary judge had not erred in finding that a director of a company in Storm's circumstances would have considered that it was likely that persons in the position of the relevant investors would be given inappropriate advice in breach of former s 945A.

Thawley J considered that the primary judge's conclusion that Storm had not sufficiently considered and investigated the subject matter of the advice, in particular because it did not consider or investigate the consequences of "negative growth", was open on the evidence and not shown to be affected by error. If Storm had made such an investigation, it might be expected to have told the investors about that investigation rather than stating that the "viability cash flow" (which did not countenance "negative growth") was the "worst case scenario".

In dissent, Rares J agreed with the majority and dismissed the grounds of appeal challenging the primary judge's findings that Storm committed civil contraventions of s 945A(1)(b) and (c) of the Corporations Act. However, Rares J considered that ASIC had failed to prove that Mr and Mrs Cassimatis contravened s 180(1) of the Corporations Act in the way in which ASIC alleged - the "stepping stone approach", and, accordingly, their appeal should be allowed on that ground.

ASIC update on COVID-19 for AFS licensees

ASIC has provided an update and FAQs on issues impacting AFS licensees and financial advisers as a result of COVID-19. To reduce the regulatory burden on financial advisers, ASIC said it is delaying work on grandfathered conflicted remuneration and it will not ask product issuers for data at this time. In the meantime, ASIC expects product issuers to turn-off their arrangements as soon as possible and by no later than 1 January 2021. All rebates and/or reductions in fees should be passed on to consumers as quickly as possible.

In the current volatile economic environment, ASIC said financial advisers have a role to play in reassuring clients about their investment strategies as well as providing personal advice in response to their changing circumstances. These changes may involve employment status or external factors, such as legislative changes arising out of the economic stimulus package. While the *Corporations Act 2001* is neutral about the way financial advice is delivered, ASIC reminded advisers to keep records of the financial services provided during the COVID-19 period. ASIC said these records should allow an adviser to demonstrate compliance with the best interest duty and related obligations. Records include more than just the fact find and statement of advice (SoA). They include other documents such as working papers, research and file notes.

ASIC also reminded AFS licensees that they must maintain oversight of the advice provided by authorised representatives. As difficult as the operating environment currently is, ASIC said advice licensees should review existing oversight processes. For example, if a licensees audit program involves on-site visits, measures should be put in place that allow these audits to be conducted remotely.

APRA suspends issue of new banking and super licences

APRA has announced that it is temporarily suspending issuing new banking, insurance and superannuation licences for at least six months in response to the economic uncertainty created by COVID-19..

Case studies of businesses that have reached out to their bank for help during COVID-19

Did you know:

- That if your business has been adversely impacted by COVID-19, your bank will allow you to defer principal and interest repayments for all loans attached to the business for a period of six months. While you won't make any principal or interest payments for the six months, interest will continue to be accrued, it can then be paid off over the life of the loan once repayments begin again, or the length of the loan can be extended.
- Australian banks are now offering small and medium sized businesses, and not for profit organisations, with a turnover of up to $50 million, special unsecured loans under the SME Loan Guarantee scheme. These loans have a 50% guarantee from the government, which means they can be offered more cheaply and freely compared to ordinary business loans. No loan repayments will be required for the first six months of the loan and applies to new loans made until 30 September 2020.

Invitation to share your story

The Australian Banking Association (ABA) invites the business community to share how the small business relief package works in practice.

The ABA is searching for real-life examples of how businesses are working with their banks and the kinds of solutions that they're putting in place to get through this tough time.

What we want to know:

- Your name and business sector.
- How you've been impacted by COVID-19 (e.g: hotel occupancy dropped)?
- Did you speak to your bank for assistance, and what was the process?
- How is this assistance helping your business to stay afloat?
- What's your advice to other businesses affected by COVID-19?

The details:

- Interviews will be about 15 minutes by phone or ZOOM, at a time that suits you.
- Your comments / final article is approved by you before being published. Your approved comments will be used in our media releases, website, and social media.

If you'd like to help other businesses by sharing your story and advice, please contact: Lisa Murray lisa.murray@ausbanking.org.au.

SUPERANNUATION

SMSF annual return concessions for COVID-19

Ttrustees of self-managed super funds (SMSFs) who need more time to lodge their SMSF annual return can contact the ATO to request an extension. The ATO has acknowledged that COVID-19 is affecting many SMSF trustees and their service providers as they prepare to lodge their SMSF annual returns (SARs).

The next SAR due date is 15 May. If a trustee, tax agent or auditor needs more time to lodge, they should contact the ATO or their tax agent *before the due date* to request an extension. The ATO said tax agents can apply for a deferral for SMSF clients for up to 6 weeks (ie lodgments can be deferred until 30 June 2020). SMSFs are unique in that they must be audited before lodging the SAR. An auditor must be appointed 45 days before the lodgment due date.

SMSF rent reductions; in house assets

The ATO has announced further administrative concessions for self-managed super funds (SMSFs) to enable trustees with property investments to give related-party tenants a temporary rent reduction due to the impacts of the COVID-19. Via an update to its COVID-19 frequently asked questions the ATO has also granted some relief for SMSFs that breach the in-house asset limit of 5% for asset valuations impacted by COVID-19:

- SMSF temporary rent reductions - the ATO has confirmed that it will not take compliance action for the 2019-20 and 2020-21 financial years where an SMSF landlord gives a tenant (who is also a related party) a temporary rent reduction during this period. Without this ATO concession, an SMSF with real property investment would typically contravene the SIS Act (and trigger the non-arm's length income provisions) if the trustee charges a related party a price that is less than market value.
- in-house assets - if, at the end of a financial year, the level of in-house assets of an SMSF exceeds 5% of a fund's total assets, the trustees is required by s 82 of the SIS Act to prepare a written plan to reduce the market ratio of in-house assets to 5% or below. This plan must be prepared before the end of the next following year of income. If an SMSF exceeds the 5% in-house asset threshold as at 30 June 2020, a plan must be prepared and implemented on or before 30 June 2021. However, the ATO has advised that it will not undertake compliance activity if the rectification plan was unable to be executed because the market has not recovered or it was unnecessary to implement the plan as the market had recovered.

ATO responsible for early release of super applications

The Assistant Minister for Superannuation has confirmed that the ATO will be solely responsible for assessing applications for the early release of superannuation by members impacted by the Coronavirus. The Government has legislated to allow eligible members to release tax-free up to $10,000 over two financial years from their superannuation on compassionate grounds. Eligible members can apply to access up to $10,000 in this financial year to 30 June 2020, and a further $10,000 from July until September 2020.

In a recent address, the Assistant Minister, Senator Jane Hume, said the administration of this measure will be as simple as possible, using existing mechanisms. Application can be made from mid-April 2020 directly to the ATO through the myGov website. A person will need to certify that they meet the eligibility criteria. The ATO will verify the applicant, assess the application, record the bank account details, and make a decision. The ATO will then direct the nominated super fund to release the requested amount to the bank account specified by the member. Ms Hume said AUSTRAC has also confirmed that super funds can rely on the ATO's customer verification. The member does not need to contact the super fund at all in the process, Ms Hume said.

The ATO also notes that a member of a self-managed super fund (SMSF) who is eligible for this early release measure can apply through myGov from mid-April. The ATO will then issue the member with a determination advising of their eligibility to release an amount. When the SMSF receives the determination from the member, the ATO says the SMSF trustee will be authorised to make the payment. SMSF trustees are responsible for ensuring that a member is eligible for the early release of their super before the trustee releases any funds to a member.

Liquidity a priority for super trustees amid COVID-19

ASIC and APRA has issued a joint letter to superannuation trustees reminding them about their trustee obligations for dealing with the impacts of COVID-19. The regulators said the challenging circumstances associated with COVID-19 require trustees to make new business arrangements, amend priorities and adjust their short-term investment strategies. What does not change is the duty on trustees to comply with the law, including the duty to act in the best interests of their members.

One of the primary areas of regulatory focus over recent weeks has been monitoring liquidity to ensure funds retain the means to fulfil their payment obligations, including the early release of superannuation payments recently announced by the Government. APRA/ASIC said liquidity is a top priority for trustees, who bear ultimate responsibility for maintaining sufficient levels of liquidity to sustain the operation of their funds. Trustees should also ensure that the valuation of unlisted and illiquid assets remains appropriate and consider whether any assets need to be revalued. APRA/ASIC also reminded trustees about COVID-19 issues involving member communication and insurance within superannuation.

REGULATOR NEWS

ASIC warning to real estate agents

ASIC has written to the real estate institutes in each State outlining its concerns about some real estate agents advising tenants who are unable to pay their rent to apply for the early release of their superannuation. This follows Government legislation that will allow eligible members impacted by COVID-19 to release from their super up to $10,000 over two financial years. ASIC said such conduct by real estate agents may breach the law, including unlicensed financial advice in contravention of s 911A of the Corporations Act 2001, or not being in the best interests of individuals (s 961B of the Corporations Act). ASIC said financial advice must only be provided by qualified and licensed financial advisers, or financial counsellors, not by real estate agents who neither hold the requisite licence, nor are an authorised representative of an AFS licensee. Significant penalties can apply for a contravention of s 911A. For individuals this can be up to five years imprisonment, and/or a fine of up to $126,000, and for corporations a fine of up to $1.260m.

ACNC: compliance changes and annual statement extension

Recent updates from the ACNC:

- A blanket extension to charities with a 2019 Annual Information Statement (AIS) due between 12 March and 30 August 2020. These charities will now need to submit their AIS by 31 August 2020.
- The ACNC will change its compliance approach temporarily - some charities may be in a position to help with the community response to COVID-19, and may be called upon to do so by the government which may have implications for a charity's compliance with certain obligations under the ACNC Act, other legislation including state legislation and its responsibilities to its members and donors. In recognition of the unique challenges brought about by COVID-19, the ACNC Commissioner has decided that the ACNC will not investigate certain breaches of the Governance Standards and the External Conduct Standards that occur from 25 March until 25 September 2020. See summary of changes here.

FIRB approval required for all foreign investment

The Treasurer has announced that all proposed foreign investments into Australia will require approval from 29 March 2020, regardless of value or the nature of the foreign investor. This temporary change will be achieved by reducing to $0 the monetary screening thresholds for all foreign investments subject to the Foreign Acquisitions and Takeovers Act 1975.

To ensure sufficient time for screening applications, the Foreign Investment Review Board (FIRB) will be working with existing and new applicants to extend timeframes for reviewing applications from 30 days to up to six months. The Treasurer said this is not an investment freeze, and Australia remains open for foreign investment that is in the national interest. The measure will remain in place for the duration of the current crisis, Mr Frydenberg said.

Interim authorisations to support businesses affected by COVID-19

The Australian Competitor & Consumer Commission Small Business Information Network (SBIN) provide small business owners about new or updated resources, enforcement action, changes to Australia's competition and consumer laws, events, surveys and scams relevant to the small business sector.

To view the latest newsletter, click here.

To subscribe to the newsletter, click here.

ACCC Update And Key Developments Relating To COVID-19

The ACCC would like to share some updates and key developments relating to COVID-19 from the past week.

Please see the following links:

- Oil companies allowed to co-operate to secure fuel supply during COVID-19 pandemic
- Shopping centres to co-operate to support retail tenants
- Scammers targeting superannuation in COVID-19 crisis
- Telecommunication priorities during the COVID-19 crisis
- Co-operation on funding to aid smaller lenders during COVID-19
- Speech by ACCC Chair Rod Sims, Gartner CEO Forum: Managing the impacts of COVID-19 disruption on consumers and business
- The Australian Cyber Security Centre has also released a tailored guide for small businesses about managing cyber risks during COVID-19. To view the tailored guide, click here.