TAXATION

JobKeeper extension – further ATO guidance

ATO has provided a summary of the proposed changes to the JobKeeper system announced by the government.

Financially distressed businesses: regulatory relief extended

Government has announced it will extend the temporary insolvency and bankruptcy protections until 31 December 2020.

TPB COVID-19 concessions extended: registrations and renewals

TPB has announced a further extension to its COVID-19 concessions to assist tax practitioners meet their registration and renewal requirements.

TPB draft practice: use of TFNs in emails

TPB has issued a draft Practice Note to provide practical guidance to registered tax practitioners in understanding their obligations when using and disclosing TFNs.

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TPB has issued a summary of its concessional arrangements supporting tax practitioners through the COVID-19 pandemic.

Bank loan deferrals coming up for re-assessment

Banks are beginning the process of re-assessing the initial wave of COVID-19 loan payment deferrals as the end of the deferral period approaches.

SA land tax relief scheme extended

SA government announced that its land tax relief scheme has been extended by six months to the end of April 2021.

Qld additional COVID-19 relief

Queensland government has announced additional relief measures to help protect small and medium businesses in Queensland through the pandemic.

WA moratorium on rent increases extended

WA government has announced the extension of its COVID-19 commercial tenancy laws for a further six months.

Call to abolish FBT for two years

Australian Small Business and Family Enterprise Ombudsman has called on the government to abolish FBT for two years.

JobKeeper payments extension Bill receives assent

The Bill to extend the end date of the JobKeeper scheme to March 2021 has received Royal Assent.

COVID-19 early release of super extended to 31 December

A regulation has been registered to give effect to the extension of the COVID-19 early release of super until 31 December 2020.

Coronavirus social security amendments

A determination has been registered to extend the period for payment of the COVID-19 supplement to 18 December 2020 at a reduced rate.

GST: Commissioner’s discretion on tax invoices

ATO has issued an updated version of Practice Statement Law Administration PS LA 2004/11 on the Commissioner’s discretion to treat a document as a tax invoice.

Structural trends in GST collections: PBO report

The Parliamentary Budget Office (PBO) has released a report which seeks to explain why growth in GST collections has not kept pace with growth in GDP.

Former BAS agent jailed for lodging fraudulent tax returns

A former registered BAS agent has been sentenced to jail after pleading guilty for dishonestly causing a loss to the Commonwealth.

GST: waiver of tax invoice for corporate cards

ATO has issued a draft legislative instrument which allows corporate card holders to claim input tax credits without holding a tax invoice in certain circumstances.

GST-free cars for the disabled – legislative instrument

ATO has registered a determination which modifies the operation of the GST Act to ensure continued access to GST-free supplies of cars and car parts for disabled people.

FINANCIAL SERVICES

ASIC commences legal action against AFS licensee

ASIC has commenced civil penalty proceedings in Federal Court against an ASX-listed financial advisory firm.

ASIC's strategic priorities

ASIC has set out its strategic priorities and regulatory work including its core purpose of ensuring confidence in the financial system.

APRA's corporate plan

APRA has released its corporate plan which continues its focus on delivering outcomes including maintaining financial sector resilience.

SUPERANNUATION

Super guarantee amnesty now closed

ATO has reminded employers that the super guarantee amnesty has now closed and outlined its approach post-amnesty.

Market linked pensions and transfer balance accounts

ATO has provided an update on when super funds have to start retrospective reporting for commutations of certain market linked pensions.

Super data collection: APRA consultation

APRA has released the final consultation package for Phase one of its multi-year project to expand its super data collection.

Former SMSF adviser charged with fraud

ASIC has reported that a former financial adviser has appeared before the Courts charged with 10 counts of fraud.

Super contributions bring forward flexibility Bill

The Bill to extend the bring-forward age limit of non-concessional contributions has been passed by the House of Reps without amendment.

SMSF membership limit increase to six: Bill introduced

The Bill to increase the maximum number of allowable members in a SMSF from four to six has been reintroduced in the Senate.

REGULATOR NEWS

Treasury corporate plan 2021-24 released

Treasury has published its corporate plan providing an overview of its purpose and priorities for the next four financial years.

IGTO publishes corporate plan 2021-24

IGTO has published its corporate plan outlining the actions and priorities to deliver on its purpose and strategic priorities.

TAXATION

JobKeeper extension – further ATO guidance

The ATO has provided a summary of the proposed changes to the JobKeeper system announced on 7 August.

Split extension periods

The JobKeeper program has been extended to at least 28 March 2021. As part of this, there are two separate extension periods. For each extension period, an additional actual fall in turnover test applies and the rate of the JobKeeper payment is different.

The extension periods are:

- Extension one: from 28 September 2020 to 3 January 2021; and
- Extension two: from 4 January 2021 to 28 March 2021.

Rates of payment

The JobKeeper Payment rate will be split into two rates and will depend on the number of hours an eligible employee works (or an eligible business participant is actively engaged in the business).

The Tier one rate is expected to apply to:

- eligible employees who worked for 80 hours or more in the four weeks of pay periods before either 1 March 2020 or 1 July 2020; and
- eligible business participants who were actively engaged in the business for 80 hours or more in February and provide a declaration to that effect.

The Tier two rate is expected to apply to any other eligible employees and eligible business participants.

The rates of the JobKeeper Payment in JobKeeper Extension one are:

- Tier one: $1,200 per fortnight (before tax); and
- Tier two: $750 per fortnight (before tax).

The rates of the JobKeeper Payment in JobKeeper Extension two are:

- Tier one: $1,000 per fortnight (before tax); and
- Tier two: $650 per fortnight (before tax).

Measuring fall in turnover

Claimants will need to demonstrate that actual GST turnover has fallen in the September 2020 quarter (July, August, September) relative to a comparable period (generally the corresponding quarter in 2019). Similarly, for JobKeeper Extension two, claimants will need to demonstrate that actual GST turnover has fallen in the December 2020 quarter (October, November, December) relative to a comparable period (again, generally the corresponding quarter in 2019).

What needs to be done

Claimants must do the following from 28 September 2020:

- work out if the Tier one or Tier two rate applies to each of their eligible employees (and/or eligible business participants and/or eligible religious practitioners);
- notify both the Commissioner and eligible employees what payment rate applies to them; and
- during JobKeeper Extension one, ensure eligible employees are paid at least: (i) $1,200 per fortnight for Tier one employees; and (ii) $750 per fortnight for Tier two employees.

Claimants who are registered for GST and have outstanding BAS statements should lodge their BAS for the September 2019 and December 2019 quarters as soon as possible (or for equivalent months, for monthly reporters).

Financially distressed businesses: regulatory relief extended

In a media release, the Government announced that it will extend its temporary insolvency and bankruptcy protections until 31 December 2020. The Treasurer said regulations will be made to extend the temporary increase in the threshold at which creditors can issue a statutory demand on a company and the time companies have to respond to statutory demands they receive.

The changes will also extend the temporary relief for directors from any personal liability for trading while insolvent.

TPB COVID-19 concessions extended: registrations and renewals

The TPB has announced further extension to its COVID-19 concessions to assist tax practitioners meet their registration and renewal requirements during the pandemic. In addition to the existing extension of the annual declaration concession to 31 December 2020, the TPB has extended the following:

- continued professional education (CPE) (private reading and activities) concessions to be extended to 31 December 2020;
- renewal concession to continue to 30 June 2021; and
- relevant experience concession to continue to 30 June 2021.

"These extensions to the original concessions announced by the TPB in March are intended to provide tax practitioners with additional reassurance that their health and well-being is our number one priority," TPB Chair Ian Klug said. "We encourage tax practitioners to contact the TPB if they are encountering difficulties in meeting their TPB obligations so that we can consider their individual circumstances and work with them to find an appropriate outcome," Mr Klug added.

TPB draft practice: use of TFNs in emails

The Tax Practitioners Board (TPB) has issued a draft Practice Note (PN) to provide practical guidance to registered tax practitioners in understanding their obligations under the Code of Professional Conduct in the Tax Agent Services Act 2009 (the Code) when using and disclosing TFN information in email communications. The draft PN also sets out suggested steps that the TPB would expect registered tax practitioners to consider in compliance with the Code, particularly the obligation to maintain client confidentiality under Code Item 6.

Registered tax practitioners should be aware that the TPB does not administer any specific legislation relating to the use and disclosure of TFNs but can find its previously published general information on the Notifiable Data Breaches scheme to raise awareness of considerations and where to find further guidance on the Office of the Australian Information Commissioner (OAIC) website. The TPB also highlighted that the OAIC's Notifiable Data Breaches Report for January-June 2020 reported that 17% of data breaches involved TFNs, 34% of data breaches were due to human error, and the top five industry sectors for human error included accounting and management services.

In developing the draft PN, the TPB initially consulted with a limited group of key stakeholders. The TPB now invites comments from tax practitioners and other interested stakeholders to be emailed to tpbsubmissions@tpb.gov.au.

Comments are due by 30 September 2020.

TPB summarises policy response to COVID-19

The TPB has issued a summary of its concessional arrangements supporting tax practitioners through the COVID-19 pandemic. Those arrangements were:

- A fast-tracked legislative instrument to expand BAS agents services to legally advise clients on the JobKeeper Payment and Cash Flow Boost initiatives;
- Renewal application assistance for tax practitioners who are unable to lodge their applications before their registration expires;
- Annual declaration extension;
- Private reading cap lifted and accepting educative health and wellbeing activities as relevant CPE activities until 31 December 2020;
- Renewal application assistance for tax practitioners who face challenges in meeting the relevant experience requirement to renew;
- Acceptance of alternate assessments (eg remote, online and software driven invigilation) where supervised assessments cannot be conducted in line with the TPB's existing requirements; and
- Provision of targeted and practical guidance to tax practitioners about their obligations under the Code of Professional Conduct when advising on the stimulus measures.

Bank loan deferrals coming up for re-assessment

Banks are beginning the process of re-assessing the initial wave of COVID-19 loan payment deferrals as the end of the six-month deferral period approaches in September and October 2020. Of the more than 900,000 loans which have been deferred due to COVID-19, the Australian Banking Association (ABA) said at least 450,000 loan deferral customers will be re-assessed in coming weeks.

ABA CEO, Anna Bligh, said those borrowers who can resume repayments at the end of their deferral, will be required to do so. Those still in difficulty, will need to work with their bank to restructure or vary their loan, including converting to interest only payments for a period of time, or extending the term of the loan. In some cases, a further four-month deferral may be granted, but this will not be automatic, Ms Bligh said.

SA land tax relief scheme extended

The SA government announced that its land tax relief scheme has been extended by six months to the end of April 2021. In an effort to ensure as many local landlords as possible were able to be supported, the scheme has also been expanded where (eligibility criteria apply):

- eligible landlords now can receive up to a 50% (up from 25%) reduction on their 2019-20 land tax liability on affected properties;
- the relief measure is now extended to include eligible commercial owner-occupiers.

The SA government also announced the extension of its protections for commercial SME tenants impacted by COVID-19 restrictions, under the COVID-19 Emergency Response Amendment Act, by three months up to 3 January 2021. A bill will be introduced to the State Parliament to the effect. Some key elements of the regulations:

- Landlords should negotiate with affected tenants rent relief, on a case by case basis, having regard to the economic impacts of the pandemic on both parties;
- A landlord must not increase an affected SME commercial tenant's rent during this period, unless otherwise agreed to by the parties;
- If a landlord receives land tax relief under the Government's emergency land tax relief scheme, then they must pass on the full benefit of that relief to their affected tenant;
- The Magistrates Court has broad powers to resolve a dispute, including making an order granting rent relief to the affected tenant, extending a tenant's lease for the period which rent is deferred; as well as modifying the terms and conditions of a lease.

Treasurer Rob Lucas also indicated that there is a facility to extend the regulations further to 28 March 2021, if required.

Applications for the land tax relief scheme will be available via www.revenuesa.sa.gov.au/ltcovid19relief.

Qld additional COVID-19 relief

The Queensland government has announced additional relief measures to help protect small and medium business in Queensland through the COVID-19 pandemic. The tax relief measures are:

- a two-month waiver of payroll tax for July and August 2020 for businesses with annual Australian taxable wages up to $6.5 million;
- continuing to exempt JobKeeper subsidy payments from payroll tax;
- allowing businesses to pay off existing payroll tax deferred liabilities over the course of 2021; and
- for businesses renting State Government premises and incurring a demonstrable COVID impact, extending existing rent relief to the end of calendar 2020.

The Queensland government will also be working with regional councils to help them refinance their existing debt on more favourable terms. Treasurer Cameron Dick said that a number of councils have fixed interest loans with rates "as high as 8.82%" and that with Queensland Treasury Corporation's 20-year loan rate currently at 1.92%, "refinancing could release as much as $280 million". "We expect councils to use this funding for job-creating capital works programs, across Queensland," the Treasurer said.

WA moratorium on rent increases extended

The WA Government has announced the extension of its COVID-19 commercial tenancy laws for a further six months until 28 March 2021. The extension means that the existing measures under the Commercial Tenancies (COVID-19 Response) Act 2020 (WA), including the moratorium on evictions, freeze on rent increases and code of conduct for small business commercial lease rent relief negotiations, will continue to apply in a more targeted manner until 28 March 2021.

After 29 September 2020, when the current arrangements were due to end, the WA Government said the commercial tenancies COVID-19 legislation will be refined to offer assistance to small businesses that continue to experience financial hardship resulting from the pandemic and qualify for JobKeeper (or their loss in turnover is more than 30%). Further details are available on the WA Government website at http://www.dmirs.wa.gov.au/covidcomten.

Call to abolish FBT for two years

The Australian Small Business and Family Enterprise Ombudsman, Kate Carnell, has called on the Government to abolish FBT for at least two years to provide a cash flow boost to the economy and small businesses. In a letter to Treasurer, Ms Carnell said small businesses are required to pay FBT on items that large businesses often provide in-house to retain staff such as meals, gyms and childcare centres. However, small business es providing the same benefits to their teams offsite have to pay FBT, Ms Carnell said.

According to the Ombudsman, abolishing the FBT would cost no more than $4bn per year but would stimulate cash flow and be an effective support measure for small businesses. EY modelling done on behalf of Tourism Accommodation Australia (TAA) and the Australian Hotels Association (AHA) suggests that suspending FBT on accommodation, meals and beverages alone, would produce economic returns of up to 3.8 times the direct cost to Government.

JobKeeper payments extension Bill receives assent

The Coronavirus Economic Response Package (Jobkeeper Payments) Amendment Bill 2020 received Royal Assent as Act No 81 of 2020 after the House of Reps agreed to the six Government amendments passed by the Senate. Those minor Senate amendments apply to the Fair Work measures in Sch 2 of the Bill.

The Bill extends the end date of the JobKeeper scheme from 27 September 2020 to 28 March 2021. The extension of the end date was announced by the Prime Minister on 21 July 2020. The Bill also amends the tax secrecy provisions in relation to JobKeeper and extends certain provisions of the Fair Work Act 2009 implemented in response to COVID-19.

Note that the JobKeeper split payment rate and retrospective eligibility testing will be implemented via Statutory Rules, which have yet to be made. From 27 September until March 2021, there will be a two-tiered JobKeeper payment. For the December quarter, payments will be reduced from $1,500 to $1,200 per fortnight per employee, or $750 for workers who were employed for less than 20 hours a week. For the March quarter, payments will be $1,000 per fortnight, or $650 for workers employed for less than 20 hours a week.

In welcoming the passage of the JobKeeper extension Bill, Treasurer Frydenberg said the Government's COVID-19 economic support now totals $314 billion.

COVID-19 early release of super extended to 31 December

The Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations (No 3) 2020, has been registered to give effect to the Government's extension of the COVID-19 early release of superannuation up to $10,000 until 31 December 2020.

As part of the Economic and Fiscal Update in July, the Government announced that it would extend the application period to allow those dealing with adverse economic effects of COVID-19 to access up to $10,000 of their super (tax-free) for the 2020-21 year. The Regulations amend reg 6.19B(2) of the SIS Regs to allow an application via the myGov website to access $10,000 of super until 31 December 2020 (extended from 24 September). Eligible Australian and New Zealand citizens and permanent residents were also able to access up to $10,000 of their super for the 2019-20 year by 1 July 2020.

Date of effect: 4 September 2020.

Coronavirus social security amendments

The Social Security (Coronavirus Economic Response - 2020 Measures No 14) Determination 2020, has been registered to extend the period for payment of the COVID-19 supplement from 25 September to 18 December 2020, but at the reduced rate of $250 per fortnight (down from $550 per fortnight).

The instrument amends multiple legislative instruments that have modified aspects of the Social Security Act 1991 as part of the Government's Coronavirus economic response. For example, the assets tests and the liquid assets test waiting period is reinstated for certain payments from 25 September 2020.

The instrument also temporarily increases the income free area to $300 a fortnight for certain JobSeeker Payment recipients for the period 25 September to

31 December 2020. It also increases the partner income taper rate for JobSeeker Payment recipients from 25 cents to 27 cents for every dollar over the partner income free area. The instrument also extends to 31 December the temporary pension portability measure.

GST: Commissioner’s discretion on tax invoices

The ATO has issued an updated version of Practice Statement Law Administration PS LA 2004/11 on the Commissioner's discretion to treat a document as a tax invoice or adjustment note under ss 29-70(1B) and 29-75(1) of the GST Act.

Where a document does not meet the requirements for a valid tax invoice or adjustment note, ATO officers can exercise the Commissioner's discretions to treat the document as a valid tax invoice (or adjustment note) so that a taxpayer can claim an input tax credit (ITC), or attribute a decreasing adjustment in their activity statement.

PS LA 2004/11 provides guidance on how the Commissioner's discretion will be exercised, including as part of an objection, review or appeal. It has been updated to streamline the content and incorporate additional information about administrative review rights and disputes (with reference to PS LA 2009/9 about disputes and litigation). A detailed flowchart explains the decision-making process in exercising the Commissioner's discretion.

While there are no rights to object against a decision to exercise the Commissioner's discretion, taxpayers may ask for an independent internal review by someone not involved in making the original decision. Alternatively, taxpayers may seek judicial review by a Court. A taxpayer can also object to an assessment that excludes an ITC or adjustment as a result of that decision.

An ATO officer will only consider exercising the Commissioner's discretion where the time limits to claim the ITC have not expired. The ATO will not exercise the discretion if it is less than 28 days since the recipient asked the supplier to provide a valid tax invoice or adjustment note. The ATO will consider if the recipient has first made a reasonable and genuine attempt to obtain a tax invoice from the supplier. The Commissioner's discretion is not required if the law allows an ITC to be claimed without a valid tax invoice, for example, where the value of the taxable supply is $75 or less.

Structural trends in GST collections: PBO report

The Parliamentary Budget Office has released a report entitled Structural Trends in GST. It seeks to explain why growth in GST collections has not kept pace with the growth in GDP over the last 20 years (despite being touted as a "growth tax" when first being spruiked).

Since 2000, total GST revenue has increased by 130% – however, GDP increased by 180%. The result is that the GST-to-GDP ratio declined from 4% in 2003-04 to 3.3% in 2018-19. This represents a loss of revenue of some $9 billion in 2018-19 had the ratio remained constant at the earlier levels.

The report notes that GST collections account for some 25% of revenue for the States and Territories and, consequently, the downward trend has significant implications for Commonwealth-State financial relations.

Former BAS agent jailed for lodging fraudulent tax returns

A former registered Business Activity Statement (BAS) agent has been sentenced to one year and eight months jail after having pleaded guilty for dishonestly causing a loss to the Commonwealth of nearly $180,000. He was also ordered to pay $179,826 in reparation.

The former BAS agent was alleged to have lodged 22 fraudulent income tax returns and 108 false tax return amendments which resulted in refunds that he kept for himself.

"As demonstrated in today's case, even registered tax professionals can be dishonest and take advantage of their clients. That is why it's important for the ATO to maintain the integrity of the tax profession and weed out those who try to undermine their trusted position," Assistant Commissioner Adam Kendrick said. Mr Kendrick also reminded the public that the ATO has a program dedicated to identifying and addressing agents whose behaviour has an immediate and ongoing threat to the integrity of the tax and super systems, their clients, and the wider Australian community.

GST: waiver of tax invoice for corporate cards

The ATO has issued draft legislative instrument GST: Waiver of Tax Invoice Requirement (Corporate Card Statements) No 2 Determination 2020 which allows corporate card holders (under s 29-10(3) of the GST Act) to claim input tax credits without holding a tax invoice in certain circumstances.

The draft instrument repeals and replaces Goods and Services Tax: Waiver of Tax Invoice Requirement (Corporate Card Statements) Legislative Instrument 2020, which was registered on 10 February 2020. The purpose of its re-issue was to include a corporate credit card provider that has requested to be included in the list of approved providers. The draft is otherwise the same as the 10 February version.

Date of effect: This determination applies to net amounts for tax periods that start on or after 10 February 2020, being the application date in the previous determination.

Comments are due by 2 October 2020.

GST-free cars for the disabled – legislative instrument

The ATO has registered the Taxation Administration (Remedial Power - Certificate for GST-free supplies of Cars for Disabled People) Determination 2020. The determination modifies the operation of s 38-510(1)(a) of the GST Act to ensure continued access to GST-free supplies of cars and car parts for disabled people who:

- have lost the use of one or more limbs to such an extent that they are unable to use public transport, and
- intend to use the car for personal transportation to or from gainful employment.

The critical change is that a registered medical practitioner will be able to issue a certificate, now titled "certificate of medical eligibility", to certify that the individual has lost the use of one or more limbs to such an extent that they are unable to use public transport. Previously certification was restricted to employees of a government owned corporation (MHS). The determination is unchanged from the draft issued in July 2020.

FINANCIAL SERVICES

ASIC commences legal action against AFS licensee

ASIC has commenced civil penalty proceedings in the Federal Court against Dixon Advisory and Superannuation Services Limited, a subsidiary of ASX-listed Evans Dixon Limited. The action relates to financial advice given to eight sample clients, who were allegedly advised to invest in the US Masters Residential Property Fund (URF) and related products between September 2015 and May 2019.

ASIC's concise statement alleges that Dixon Advisory representatives failed to act in their clients' best interests and to provide advice that was appropriate to the clients' circumstances. ASIC also alleged that, in giving the relevant advice, Dixon Advisory representatives knew or ought to have known that there was a conflict between their clients' interests and the interests of entities associated with Dixon Advisory, and failed to give priority to the clients' interests.

ASIC's strategic priorities

ASIC has released its Corporate Plan for 2020-24 setting out its strategic priorities and regulatory work for the next four years. ASIC's Chair, James Shipton, said the regulator's core purpose is to ensure confidence in a financial system that, even under stress, can remain fair, strong and efficient.

ASIC said its work in response to COVID-19 will be guided by five strategic priorities: (i) protecting consumers from harm; (ii) financial system resilience and stability; (iii) supporting businesses to respond to the effects of COVID-19; (iv) enforcement action against harmful conduct; and (v) building organisational capacity. ASIC said it has also resumed many of its workstreams that were temporarily disrupted by COVID-19, including its implementation of the recommendations of the Banking Royal Commission.

ASIC's longer term focus areas include: improving the management of key risks by entities; addressing consumer harm from elevated debt levels and hardship (eg predatory lending); reducing poor product design and mis-selling; reducing misconduct by directors and professional service providers; deterring misconduct through ASIC's "Why not litigate?" approach; and delivering as a conduct regulator for superannuation.

In the superannuation space, ASIC will be working with trustees, advisers and other stakeholders to minimise member harms and inappropriate advice. Insurance within super will also be a focus area with ASIC to review trustee communications and a sample of policy documents for insurance. A new ASIC-wide working group will look to identify unlicensed financial advice and take swift action against any misconduct. ASIC will also be monitoring its temporary relief measures for COVID-19 to ensure it is not abused.

APRA's corporate plan

APRA has released its corporate plan 2020-24 which continues its focus on delivering four key outcomes: (i) maintaining financial sector resilience; (ii) improving outcomes for superannuation members; transforming governance, culture, remuneration and accountability (GCRA) across regulated institutions; and (iv) improving cyber resilience across the financial system. APRA also remains committed to delivering the recommendations of the Royal Commission and Capability Review.

While the financial sector has responded well to the initial operational and liquidity pressures arising as a result of COVID-19, APRA notes that the challenges will be ongoing. Rising unemployment will continue to impact the cash flow of super funds as contributions are likely to slow and outflows are expected to remain elevated. The COVID-19 pandemic and associated impacts will also accelerate viability and sustainability issues facing some super funds, particularly those who were already showing indications of challenges in continuing to be able to sustainably deliver quality outcomes for members.

APRA said it will continue to assess the evolving impacts on super funds and their members by focussing on key areas of liquidity and investment risk, defined benefit funds, vulnerabilities arising from loss of member accounts and changing member activity and the operational resilience of key service providers, including super administrators.

SUPERANNUATION

Super guarantee amnesty now closed

The ATO has reminded employers that the super guarantee (SG) amnesty closed on 7 September 2020. Any amnesty applications received by the ATO after 11:59pm on 7 September will not qualify for the amnesty and instead be treated as a standard lodgment of a SGC statement.

The ATO says it will notify late applicants in writing of the quarters that aren't eligible for the SG amnesty and charge the administrative component ($20 per employee per quarter). The ATO will consider whether to remit the additional SGC Part 7 penalty (up to 200%): see Draft PS LA 2020/D1. A minimum penalty of 100% will apply if the ATO subsequently commences an audit in respect of non-disclosed quarters covered by the amnesty. The ATO will issue a notice of amended assessment with the increased SGC amount owing. Any SGC payments made by an employer that don't qualify for the amnesty are not tax deductible.

To retain the benefits of the amnesty, the law requires an eligible employer to pay the outstanding SGC amount in full or enter into a payment plan with the ATO. Note that the SGC amount disclosed in an amnesty application must be paid to the ATO (not the employee's super fund). Amnesty payments made after 7 September 2020 are not deductible (including amounts paid under a payment plan after 7 September). If an employer is subsequently unable to maintain payments under a payment plan, the ATO will disqualify the employer from the amnesty and remove the amnesty benefits for any unpaid quarters.

Market linked pensions and transfer balance accounts

The ATO has advised that super funds have until November 2020 before they need to start retrospective reporting for commutations of certain market linked pensions. This follows retrospective amendments to s 294-145 of the ITAA 1997 to correct an error in the way that market-linked income streams (MLIS) are valued under the $1.6m pension transfer balance cap when they are commuted or rolled over, resulting in a nil debit in the individual's transfer balance account.

In June 2020, the ATO advised super funds that they must review any information they had already reported to the ATO where a member had commuted a market linked pension, which was a capped defined benefit income stream. At the time, the ATO undertook to provide guidance in August 2020 regarding the time frame for any review of a fund's reporting. While the ATO has published updated guidance on how the value of the debit should be calculated, it has acknowledged that calculating the debit retrospectively is "challenging" for funds.

Due to the ATO's delay in publishing this guidance, it has stated that funds do not need to begin their retrospective reporting until November 2020. The ATO said it intends to provide additional guidance before the end of November. Where an SMSF has been wound up, the ATO accepts that it will not be possible for the reporting to be reviewed. Reporting does not need to be reviewed for a member who is deceased, the ATO said.

Super data collection: APRA consultation

APRA has released the final consultation package for Phase one of its multi-year project to expand its superannuation data collection. Phase 1 of the project (Breadth) addresses the highest priority gaps in APRA's data collection, particularly for choice products and investment options.

The latest consultation package contains topic papers, draft reporting standards and data collection templates covering four areas: fees and costs; insurance arrangements; expense reporting; and asset allocation.

APRA Deputy Chair, Helen Rowell, said trustees should already be using this type of data to help them fulfil existing regulatory requirements, such as their Business Performance Review and legislated outcomes assessment. APRA is seeking feedback ahead of finalising the nine reporting standards linked to Phase one early in 2021.

Former SMSF adviser charged with fraud

ASIC has reported that a former financial adviser has appeared before the Maroochydore Magistrates Court charged with 10 counts of fraud. ASIC alleged that, between 2015 and 2017, the former adviser dishonestly caused a detriment to the trustees of 6 self-managed super funds (SMSFs) by withdrawing a total of $502,000 from the SMSF bank accounts without authorisation. The trustees of these SMSFs were his clients.

ASIC further alleged that the former adviser dishonestly paid $473,600 in personal debts and expenses, as well as his business expenses, from funds belonging to another company of which he was a director. Those funds had been invested by SMSF clients for the purpose of participating in property development activities. The matter has been adjourned to 25 September for further mention.

Super contributions bring forward flexibility Bill

The Treasury Laws Amendment (More Flexible Superannuation) Bill 2020 has been passed by the House of Reps without amendment and now moves to the Senate.

The Bill will amend s 292-85(3)(c) of the ITAA 1997 to extend the bring-forward age limit to 65 and 66 (ie under age 67) in the financial year of the non-concessional contributions. Individuals under age 67 in the financial year in which they make a non-concessional contribution will be able bring forward up to three times (ie $300,000) of their annual non-concessional cap of $100,000, provided that they meet the other conditions. Currently, only individuals under age 65 in the financial year in which they make a non-concessional contribution may access the bring forward rule.

Date of effect: 1 July 2020.

SMSF membership limit increase to six: Bill introduced

The Treasury Laws Amendment (Self Managed Superannuation Funds) Bill 2020 has been reintroduced in the Senate proposing to increase the maximum number of allowable members in SMSFs from four to six. The Bill has been referred to the Senate Economics Legislation Committee for a report by 4 November. The Government had previously sought to implement this 2018-19 Budget measure via the Measures (No 1) Bill 2019. The SMSF changes were dropped from that Bill in April 2019 as it was not supported by the Opposition at that time.

The reintroduced Bill proposes to amend s 17A(1)(a) of the SIS Act to require an SMSF to have fewer than seven members (instead of fewer than five) to satisfy the definition of an SMSF. An increase in the maximum number of SMSF members will also have implications for the fund's trustee arrangements as s 17A also requires each member to be a trustee of the fund (or a director of the corporate trustee). In some instances, the number of individual trustees that a trust can have may still be limited to less than five or six trustees by State legislation. In such cases, an SMSF with five to six members may need to consider using a corporate trustee.

For an SMSF with one to six directors or trustees, the Bill will also amend s 35B of the SIS Act to require the accounts and statements of the SMSF to be signed by "at least half of" the directors or individual trustees.

Date of effect: The amendments will commence from the start of the first quarter after Royal Assent.

REGULATOR NEWS

Treasury corporate plan 2021-24 released

The Treasury has published its corporate plan providing an overview of its purpose and priorities for the next four financial years up to 2023-24. The corporate plan provides a view of the Treasury's key activities as follows:

- support the COVID-19 economic response measures and recovery work;
- deliver the 2020-21 and 2021-22 Budgets, the Mid-Year Economic and Fiscal Outlook (MYEFO) and any other economic updates as required by Government;
- promote a stronger, more sustainable tax system in line with Government priorities;
- deliver the next Intergenerational Report that will assess the long-term sustainability of current Government policies over the next 40 years;
- ensure payments to the States and Territories are timely and accurate;
- strengthen the foreign investment review framework;
- strengthen the financial system and promote sound corporate and consumer regulation in line with Government priorities; and
- deliver measures focused on supporting small to medium business, the digital economy and reducing the regulatory burden on business.

The corporate plan also discusses Treasury's operating environment, including how the bushfire and COVID-19 pandemic affected 2020. In its objective of providing informed and impactful advice to Treasury Ministers, the corporate plan has laid out its targets and methodologies in enhancing its quality of advice and analysis to meet the Government's economic agenda, legislative program and delivery of the Budget.

IGTO publishes corporate plan 2021-24

The IGTO has published its corporate plan covering four reporting periods from 1 July 2020 to 30 June 2024. The corporate plan serves as a principal planning document for the IGTO and outlines the actions and priorities to deliver on its purpose and strategic priorities. Beginning with its vision statement – "To assure and ensure that there is fair, equitable, and transparent administration of the tax system consistent with community expectations", the IGTO provides an overview of its functions and its powers to investigate.

The corporate plan lays out the IGTO's key activities which encompasses: (i) providing independent advice to the Government; and (ii) the assurance of the fairness of taxation laws and systems. It also provides a high-level overview of how the IGTO manages complaints.

The corporate plan also provides an outline of the context in which the IGTO operates, covering its:

- environment – interestingly, it has a team of about 29 people from a single office location with national responsibility for 16.8 million taxpayers;
- capabilities – organisational structure, values, rewards and recognition, communication strategy;
- risk oversight and management systems – legislative compliance, risk framework etc; and
- co-operation with other organisations – such as the Treasury, ATO, TPB etc.