

## **TAXATION**

### **Economic impact of COVID-19: Treasurer**

The Treasurer has delivered a ministerial statement to Parliament outlining the economic impact of the COVID-19 pandemic.

### **JobKeeper turnover test: ATO won't "nitpick"**

ATO has indicated it will adopt a "sympathetic" and "understanding" approach to businesses making a "reasonable estimate" of their turnover for JobKeeper.

### **JobKeeper: common questions to the ATO**

ATO has updated its webpage which provides answers to some common JobKeeper questions for both employers and employees.

### **Rental properties and COVID-19: Q&A**

ATO has updated its Frequently Asked Questions that addresses rental properties and the impact of COVID-19.

### **Foreign employment income and s23AG exemption: COVID-19**

ATO has issued a factsheet about taxpayers who have returned to Australia as a result of COVID-19 and their status in regards to the s23AG exemption.

### **TPB: CPE requirements temporarily relaxed**

In consideration of COVID-19, TPB has temporarily removed the 25% CPE hours cap on relevant technical/professional reading.

### **COVID-19 declared a disaster for tax-deductible purposes**

Government has declared COVID-19 pandemic a disaster which allow Australia Disaster Relief Funds that are established to receive tax-deductible donations.

## **Boosting philanthropic support for charities during COVID-19**

Government has announced that the ministerial guidelines for public and private ancillary funds will be amended to encourage funds to give more support to charities.

## **Federal Parliament to resume 10-18 June**

The latest Parliamentary sittings program released show that Parliament plans to sit for two weeks in June followed by four weeks in August/September.

## **Requirement registered to lodge 2020 tax and other returns**

Notice of requirements to lodge a return for the income year ended 30 June 2020 has been registered.

## **Deceased estates: agents can now access information online**

ATO has advised that registered tax or BAS agents can now access deceased person's information if they are a nominated legal personal representative.

## **Car cost limit for depreciation increased for 2020-21**

ATO has updated the car cost limit for depreciation for 2020-21 financial year to \$59,136, which is up from the previous financial year.

## **DGRs: government affirms intention to reform**

Government has reaffirmed its commitment to reforming the administration and oversight of organisations with DGR status.

## **TPB and JobKeeper: Code of Conduct Q&A**

TPB has set out its response to a number of frequently asked questions about the obligations of practitioners under the Code of Professional Conduct.

## **Lodgement deferrals - Further Joint advocacy yields more concessions**

Our members have been communicating to us throughout the duration of the crisis, that they have been inundated with pressing requirements to assist their clients with survival advice and accessing the variety of Stimulus Package measures, including the Cash Flow Boost and JobKeeper Schemes.

### **FINANCIAL SERVICES**

#### **Banking Royal Commission: measures deferred**

Government has deferred by six months its implementation of measures in response to the Banking Royal Commission due to the impacts of COVID-19.

#### **Financial product design obligations deferred**

ASIC has deferred by six months the commencement date of the mortgage broker best interests duty and remuneration reforms and financial product design obligations.

#### **AML-CTF Rules amended**

An instrument has been registered by AUSTRAC to amend the AML-CTF rules to assist reporting entities to meet their customer identification obligations during COVID-19.

#### **AFCA complaints scheme rules amended**

Instrument has been registered which requires the operator of the AFCA scheme to amend the scheme rules for SMEG loans that have been guaranteed by the government.

## **SUPERANNUATION**

### **Missed or underpaid super amounts: ATO reminder**

ATO has issued a reminder that employers are required to lodge their employees' super guarantee for the quarter ended 31 March 2020 on 28 May 2020.

### **Senate committee: latest JobKeeper and early release super numbers**

Appearing before the Senate Select Committee of COVID-19, the Secretary of the Department of the Prime Minister and Cabinet outlined some key figures.

### **COVID-19 super early release: APRA fund-level data report**

APRA has published its latest data collected from super funds on COVID-19 early release applications.

### **Consolidation of lost super: ASIC flags risks**

ASIC has published an article flagging risks that trustees must be careful about when encouraging people to consolidate their super.

### **SMSF in-house asset exemption for intermediary LRBAs**

ATO has registered a Legislative Instrument to provide an in-house asset exemption for a specific type of a limited recourse borrowing arrangement.

### **Super contributions flexibility Bill introduced**

Bill to extend the bring forward age limit to 65 and 66 for non-concessional super contributions has been introduced in the House of Reps.

**REGULATOR NEWS****Recent FWC decisions re JobKeeper**

The Fair Work Commission (FWC) has noted the outcome of some recent JobKeeper dispute decisions.

**TPB: obligations when seeking COVID-19 stimulus**

TPB has published a factsheet outlining taxpayer's and tax practitioner's obligations when seeking assistance under the COVID-19 stimulus package.

**TPB: exercising supervision and control when working remotely**

TPB has provided some guidance on how to manage staff and exercise adequate supervision and control when working remotely.

**ATO issues new version of Self-managed superannuation fund independent auditors' report (IAR)**

Changes have been made to the Self-managed super fund independent auditor's report (IAR) (NAT 11466-07.2019) effective for reporting periods starting on or after 1 July 2019. You must use the new form for reporting periods starting on or after 1 July 2019.

## **TAXATION**

### **Economic impact of COVID-19: Treasurer**

The Treasurer, Josh Frydenberg has delivered a [ministerial statement](#) to Parliament outlining the economic impact of the COVID-19 pandemic. While the Government had previously been on track to get the Budget back in balance, Mr Frydenberg said the outbreak of COVID-19 has seen the underlying cash deficit blow out to \$22.4 billion by the end of March (\$9.9 billion higher than forecast in MYEFO). Tax receipts were also \$11.3 billion lower than forecast in MYEFO. Payments to the end of March were \$1.4 billion lower than in the MYEFO profile but the Treasurer warned this will change from the next statement onwards as the Government continues to roll out \$320 billion in financial support.

Mr Frydenberg said Treasury is forecasting GDP to fall over 10% in the June 2020 quarter, representing the biggest fall on record. Household consumption is expected to be 16% lower, and business investment 18% lower (with falls concentrated in the non-mining sector). Dwelling investment is also expected to be 18% lower. The Treasurer did not announce any further financial support measures or changes to the existing programs in response to COVID-19. Rather, he outlined the Government's previously-announced measures that are focused on getting through the crisis and positioning the economy to recover on the other side. These measures fall into three categories of (i) support for households; (ii) support for business and employment; and (iii) support for the financial system. Mr Frydenberg said there are now more than 835,000 businesses employing more than 5.5 million workers who are formally enrolled in the \$130 billion JobKeeper program. This is in addition to temporary cash flow boost program that has paid a total of \$8 billion to over 450,000 SME businesses.

Mr Frydenberg said the Government's future priorities will focus on reskilling and upskilling the workforce, maintaining the \$100 billion 10-year infrastructure pipeline, cutting red tape for businesses, and tax and industrial relations reform as a means of increasing international competitiveness. The Treasurer said an updated economic and fiscal outlook will be provided in June 2020, following the release of the March quarter National Accounts, with the 2020-21 Budget to be delivered on 6 October 2020.

## JobKeeper turnover test: ATO won't "nitpick"

The ATO has indicated that it will adopt a "sympathetic" and "understanding" approach to businesses making a "reasonable estimate" of their turnover for the purposes of the JobKeeper turnover test.

Appearing before the [Senate Select Committee on COVID-19](#), Mr Jeremy Hirschhorn, ATO Second Commissioner, Client Engagement Group, said a "reasonable estimate" is sufficient for the JobKeeper turnover test under the legislation. "If it ultimately turns out that the estimate was overly pessimistic and that a business only went down 29% instead of an estimated 35%, that is okay", Mr Hirschhorn said.

Obviously, there are a range of consequences if people apply for JobKeeper and they're not eligible, Mr Hirschhorn said. "But, when people make a good-faith estimate to comply and a good-faith decision that they're eligible, the Commissioner will be very understanding and sympathetic to their position, particularly where they have passed the benefit of the JobKeeper payment to their employees", he added.

## JobKeeper: common questions to the ATO

The ATO has updated its webpage which provides answers to some common JobKeeper questions, one for [employers](#) and one for [employees](#).

These are being regularly updated, so it can be difficult at times to ascertain what is new and what has been updated and/or changed. It is worth keeping half an eye on it, even if it only ends up as a reminder of some of the recurring issues employers may be facing with JobKeeper. Some of the more noteworthy items include:

- Super not included;
- Out of sync pay cycles;
- Proof of participation;
- Eligibility cut-off;
- Turnover recovery;
- Reporting current turnover;
- Evidence of turnover decline;
- Incorrect assessments of turnover and
- Job change; and

- Other income of employees stood down.

## Rental properties and COVID-19: Q&A

The ATO has updated its Frequently Asked Questions webpage that addresses [rental properties and the impact of COVID-19](#). Some of the more interesting issues are outlined below.

- Reduced or temporary cessation of rent: if tenants are not meeting their payment obligations under the lease agreement due to COVID-19 and landlords continue to incur normal expenses on the property, then they will still be able to claim these expenses.
- Reduced rent to assist tenants affected by C-19: if landlords reduce rent to enable tenants to remain in the property (thereby maximising rental return in a changed rental market), there will be no corresponding reduction for rental property expenses.
- Back payments/insurance: receipts of back payment of rent or an amount of insurance for lost rent should be declared as income in the tax year in which they are received.
- Interest on deferred bank loans: if a bank defers loan repayments for a period of time as a result of COVID-19, any interest accrued will be deductible.
- Instant asset write-off: the new instant asset write off deduction is not available for property investors.

The Q&A also addresses short-term accommodation used for private purposes, eg holiday homes which the owner is now using for private purposes (given the rental market for holiday homes is moribund). The issue of allowable deductions can become vexed.

## Foreign employment income and s23AG exemption: COVID-19

The ATO has issued a [fact sheet](#) about taxpayers who have returned to Australia as a result of COVID-19 and their status in regards of the income tax exemption under s 23AG of ITAA 1936 for foreign earnings. Foreign earnings include salary, wages, commission, bonuses and allowances earned from engagement in foreign service.

If the taxpayer had already completed 91 days of continuous foreign service and met all the other requirements in s 23AG, the foreign earnings earned while undertaking the foreign service will remain exempt income. However, if the taxpayer had not yet



completed 91 days of continuous foreign service, the foreign earnings from that period of foreign service are not exempt and therefore will be assessable.

While temporary absences from foreign service (such as time spent in Australia) can still count as a period of foreign service, the ATO says that an absence from foreign service because a taxpayer returns to Australia as a result of COVID-19 and commences working in Australia is not a temporary absence from foreign service that falls into the s 23AG exceptions. It states that the taxpayer is returning without knowing when he or she can recommence their service in the foreign country. This time in Australia cannot be characterised as a short work-related trip.

### **TPB: CPE requirements temporarily relaxed**

In consideration of the COVID-19 pandemic, the TPB has [temporarily removed](#) the 25% CPE hours cap on relevant technical/professional reading. The cap is removed until 30 September 2020. The TPB also advises members to first and foremost, explore and undertake online CPE offerings.

In addition, the TPB is accepting a small amount of educative health and wellbeing activities, such as attending webinars about how to manage stress and self-care, as being a relevant CPE activity that will count towards CPE hours for TPB purposes. The TPB stipulates that the vast majority of CPE activities must still be relevant to the tax agent in maintaining, developing or promoting skills, knowledge or attributes of the tax agent.

### **COVID-19 declared a disaster for tax-deductible purposes**

The ATO [advises](#) that the Federal Government declared the COVID-19 pandemic a disaster. This declaration allows Australian Disaster Relief Funds that are established for the relief of people affected by the COVID-19 pandemic to receive tax-deductible donations. Donations will be tax-deductible when made within two years from 18 March 2020.

In order to receive tax-deductible donations, Australian Disaster Relief Funds will need to:

- apply to the ATO for DGR endorsement as a Disaster Relief Fund for the purpose of COVID-19; and

- be registered as a charity with the Australian Charities and Not-for-profits Commission (ACNC).

## Boosting philanthropic support for charities during COVID-19

The Assistant Minister for Finance, Charities and Electoral Matters has [announced](#) that the ministerial guidelines for public and private ancillary funds will be amended to encourage philanthropic funds to give more support to charities, so that they can in turn offer more support to people. This is designed to counter an anticipated decline in donations at a time when demand will likely be increasing (ie due to C-19).

The ATO [states](#) that the announced amendments will provide a credit for ancillary funds that make a distribution to DGRs of at least four percentage points above the minimum distribution in 2019-20 and 2020-21.

Private ancillary funds (PAFs) are required to distribute at least 5% of the market value of the fund's net assets, while public ancillary funds (PuAFs) are required to distribute at least 4%. These ancillary funds will receive a credit of half of the total percentage points that exceed their minimum distributions for both financial years. They may use this credit to reduce their minimum annual distribution by up to one percentage point in 2021-22 and for each financial year until the credit is exhausted, without applying to the Commissioner.

## Federal Parliament to resume 10-18 June

For some time, it looked as though Federal Parliament was going to sit for a very short time this year due to the Coronavirus pandemic. However, the latest Parliamentary sittings program, released on 14 May 2020, shows that Parliament plans to sit for two weeks in June (10-18 June). This will be followed by four weeks of sittings in August/September (4-13 and 31 Aug; and 1-3 Sept) before it resumes on Tuesday, 6 October for the 2020-21 Federal Budget.

The planned resumption of Parliament on 10 June 2020 for a two-week sitting period will at least provide a narrow window to pass a range of tax and related measures in Bills before Parliament that have 1 July 2020 commencement dates. For example, the [Treasury Laws Amendment \(More Flexible Superannuation\) Bill 2020](#) proposes to extend the bring-forward age limit from 1 July 2020 so that anyone under age 67 can access the bring-forward rule. Likewise, the [Treasury Laws Amendment \(2019](#)

[Measures No 3\) Bill 2019](#). That Bill proposes to ensure the tax concessions available to minors in relation to income from a testamentary trust only apply in respect of income generated from assets of the deceased estate that are transferred to the testamentary trust. In addition, the Bill contains minor and technical amendments across a range of Treasury laws including taxation, FBT, superannuation, market-linked pensions and corporations.

### **Requirement registered to lodge 2020 tax and other returns**

The [Notice of Requirement to Lodge a Return for Income Year Ended 30 June 2020](#) has been registered. This covers income tax returns, and other lodgments including: franking account returns; venture capital deficit tax returns; ancillary fund returns; trustees of SMSFs; and member information statements by superannuation providers. The Notice also covers use of approved forms for lodgment, lodgment deferrals, lodgment exemptions, and penalties for non-lodgment.

### **Deceased estates: agents can now access information online**

The ATO has issued a [fact sheet](#) advising that registered tax or BAS agents can now access a deceased person's information if they are nominated to represent a legal personal representative (LPR) for a deceased estate.

The ATO recognised the problems that agents and legal practitioners have had in accessing information that relates to a deceased's affairs, and took steps to rectify it. On 29 January 2020, it registered the Taxation Administration (Remedial Power - Disclosure of Protected Information by Taxation Officers) Determination 2020 ([CRP 2020/1](#)) which modifies the operation of the taxpayer confidentiality rules in s 355-25(2) of Sch 1 to the TAA. The CRP became operative on 15 May 2020.

Note that registered tax or BAS agents can only access a deceased person's information if the executor or administrator has a grant of probate or letters of administration (respectively). When agents use Online services for agents to add a deceased person to their client list, they are required to declare that they are either the LPR or have been appointed by the LPR to act on their behalf.

## Car cost limit for depreciation increased for 2020-21

The ATO has [updated](#) the car cost limit for depreciation for 2020-21 financial year to \$59,136 (previously \$57,581 since 2016-17 financial year). The car limit is indexed annually in line with movements in the motor vehicle purchase sub-group of the consumer price index.

## DGRs: government affirms intention to reform

The Assistant Minister for Finance, Charities and Electoral Matters [has reaffirmed](#) the Government's commitment to reforming the administration and oversight of organisations with Deductible Gift Recipient (DGR) status. Three reforms that were scheduled to be implemented on 1 July 2020 will "now be delayed", due to "legislative delays". These reforms will instead commence three months after assent. This relates to:

- requiring non-government organisations wishing to hold DGR status to be registered as a charity with the ACNC;
- the removal of public fund requirements for DGRs; and
- transferring the administration of the four DGR Registers to the ATO and the ACNC.

The Government has previously released a [consultation paper](#) on the proposed reforms..

## TPB and JobKeeper: Code of Conduct Q&A

The TPB has set out its responses to a number of [frequently asked questions](#) about the obligations of practitioners under the Code of Professional Conduct when assisting clients with COVID-19 stimulus measures, in particular JobKeeper.

- Mistakes in decline of turnover calculation: In terms of whether a practitioner will be in breach of the Code if there is a mistake in the client's turnover projection for the purposes of JobKeeper Payment eligibility, the TPB states that where information provided by a client seems credible (and for existing clients is consistent with previous statements) and there is no basis on which to doubt the information supplied, the practitioner may accept the statement provided by the client without further checking (ie any responsibility under the Code is discharged). However, if the information does not seem credible, or

appears to be inconsistent with a previous statement, further enquiries would be required.

- Consequences of incorrect turnover: The TPG states that the ATO's guidance is that if, at a later stage, it eventuates that the client's actual turnover for their test period is greater than the prediction of their projected turnover, the client does not lose access to JobKeeper. The ATO will accept the practitioner's assessment of these turnovers – unless it has reason to believe that the calculation of the projected turnover was not reasonable.
- Recovering overpaid JobKeeper: If it is later determined that a client is ineligible for the JobKeeper Payment, any resulting overpayment may be recovered by the ATO directly from the client. The TPB says all practitioners should ensure that a written agreement is in place to ensure that clients understand that they will be personally liable.
- Monthly statements: The JobKeeper rules allows practitioners to make the monthly business declaration on behalf of clients provided the practitioner has first received a signed declaration in writing from a client. The TPB says that this JobKeeper requirement aligns with the requirements in the Code.

### **Lodgement deferrals - Further Joint advocacy yields more concessions**

Our members have been communicating to us throughout the duration of the crisis, that they have been inundated with pressing requirements to assist their clients with survival advice and accessing the variety of Stimulus Package measures, including the Cash Flow Boost and JobKeeper Schemes. As a result of this priority focus, they have had very limited capacity to attend to their clients' routine tax obligations.

Compliance with the Stimulus Package measures has been an obvious priority given the short timeframes in which taxpayers have had to determine if they are eligible to access these measures. Many of our members are quite stressed and anxious about not being able to meet their lodgement requirements, which for some will be for the first time ever. Further, taking a 'client by client' approach to lodgement deferral requests is prohibitively time consuming for practitioners at this time. A streamlined (ideally bulk) approach is their preference.

The professional bodies representing the tax profession wrote to the ATO on 2 April 2020 to request an extension of the lodgement date for a number of income tax returns that have been due for lodgement during the ongoing COVID-19 crisis. The ATO responded by granting an extension to lodge all income tax returns for individuals, partnerships, trusts and companies to 5 June 2020 which we were grateful. Our members however are tired and stressed and need more time to deal

with the lodgement backlogs. The professional bodies wrote again to the ATO requesting a [deferral of the lodgement date for all 2018-19 income tax returns for individuals, companies, partnerships and trusts from 5 June 2020 to 30 June 2020](#).

**The ATO responded quickly providing further concessions as follows:**

“We also understand that under the current circumstances additional time may be needed. We want to reassure you that if you are unable to meet all your lodgment program obligations, our approach is to support you and your clients.

If you are unable to meet the lodgment due date for these obligations, you can be assured that no late lodgment penalty will be imposed if the return is lodged by 30 June 2020. You will not lose access to your lodgment program, and it will not negatively impact your future dealings with us.

While the general interest charge will still be applicable, you can apply for remissions and we will take a reasonable approach in assessing your request. You can still access other assistance through ATO assessed payment deferrals.”

**What does this mean**

There will be no further blanket deferral changes to lodgment and payment due dates for obligations due in May and June 2020 beyond 5 June 2020.

If you are unable to meet 5 June lodgment due dates:

- no late lodgment penalties will be imposed for returns lodged by 30 June 2020.
- you will not lose access to your lodgment program.
- you will not be adversely affected in your future dealings with the ATO

GIC will still be applicable, however you can apply for remissions and the ATO will take a reasonable approach in assessing your request. Members are reminded that they can use online services to request GIC remission.

If members still require further lodgement of payment deferrals then this will be considered by the ATO on a client by client basis.

Whilst this is not a blanket deferral to 30 June, it does provide further relief and if tax agents need more time, they can still apply for deferrals.

## **FINANCIAL SERVICES**

### **Banking Royal Commission: measures deferred**

The Government has [deferred](#) for six months its implementation of measures in response to the Banking Royal Commission due to the impacts of COVID-19. The Treasurer said the six-month deferral will enable the financial services industry to focus their efforts on supporting customers and their staff during the COVID-19 pandemic, and planning for a recovery.

Under the updated timetable, the measures that the Government had indicated would be introduced into the Parliament by 30 June 2020, will now be introduced by December 2020. Similarly, those measures originally scheduled for introduction by December 2020 will now be introduced by 30 June 2021. The commencement dates contained in the [exposure draft legislation](#), released on 31 January 2020, will also be extended by six months.



## Financial product design obligations deferred

ASIC has [deferred](#) for six months the commencement date of the mortgage broker best interest duty and remuneration reforms and the financial product design and distribution obligations (DDO). ASIC said the commencement of the mortgage broker reforms will be deferred until 1 January 2021, while the financial product DDO regime will be deferred until 5 October 2021. This follows the Government's announcement deferring for six months its implementation of measures in response to the Banking Royal Commission due to the impacts of COVID-19.

## AML-CTF Rules amended

The [Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2020 \(No 2\)](#) has been registered by AUSTRAC, it amends the AML-CTF Rules to assist reporting entities to meet their customer identification obligations during COVID-19.

The amendment makes it explicit that where it is not possible to verify information, in accordance with an applicable customer identification procedure, based on an original, or certified copy or certified extract, of a document due to COVID-19, a reporting entity may rely on a copy of a document. This includes documents such as trust deeds, partnership agreements, association constitutions, and co-operative registers.

**Date of effect:** 8 May 2020.

## AFCA complaints scheme rules amended

The [ASIC Corporations \(AFCA Regulatory Requirement\) Instrument 2020/0433](#) has been registered and requires the operator of the AFCA scheme to amend the scheme rules for SMEG loans that have been guaranteed by the Commonwealth under the Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020.

The amendments allow a borrower to make a complaint to AFCA relating to a SMEG Loan (or any other loan) to the extent the loan is related to or connected with the SMEG loan. For example, where a lender agrees to defer loan repayments in



relation to the business loan because the borrower has advised the lender of COVID-19 impacts on their business.

- AFCA and a person making an AFCA decision must consider SMEG loan complaints on the basis that:
- the lender was permitted to disregard the impact of COVID-19 when determining the financial situation of the borrower;
- the purpose of the SMEG Act is to encourage the quick and efficient provision of loans to borrowers as a response to the economic impact of COVID-19;
- the lender is required to comply with the terms of the SMEG Act; and
- the above considerations must be given priority by AFCA over other matters when making any preliminary assessment or determination.

**Date of effect:** 8 May 2020.

## **SUPERANNUATION**

### **Missed or underpaid super amounts: ATO reminder**

The ATO has [issued a reminder](#) that employers are required to lodge their employees' super guarantee for the quarter ended 31 March 2020 on 28 May 2020. By law, the ATO is unable to extend this deadline. To meet these super obligations employers should lodge a Superannuation guarantee charge (SGC) statement by 28 May 2020 to avoid penalties – even if the employer can't pay the liability in full. The ATO also states that if employers use Single Touch Payroll (STP), they still need to lodge an SGC statement for unpaid super. If necessary, the ATO will set up a payment plan.

### **Senate committee: latest JobKeeper and early release super numbers**

Appearing before the [Senate Select Committee of COVID-19](#), the Secretary of the Department of the Prime Minister and Cabinet, Mr Philip Gaetjens, stated that as at midnight 11 May 2020:

- JobKeeper Payments to 399,425 eligible employers and business participants to the value of \$4.3 billion had been paid; and

- the ATO had approved 1.399 million of early release of superannuation applications (of 1.418 million applications received), with \$11.5 billion approved for release.

### **COVID-19 super early release: APRA fund-level data report**

APRA has [published](#) its latest data collected from super funds on COVID-19 early release applications showing that trustees are processing 96% payments within five business days. As of 3 May 2020, APRA's second weekly publication of industry-level data from its Early Release Initiative (ERI) data collection showed that super funds had issued early release payments to 830,000 members worth a total of \$6.3 billion. The average payment was \$7,629 and the average payment processing time was 3.1 days after receiving the application from the ATO.

The fund level data shows that of the 142 funds to make payments, 117 (82%) have made more than 90% of payments within the five business days guideline indicated by APRA. That includes 57 funds that made all payments within five business days, 24 that paid 99% within that timeframe, and another 18 funds that paid 98% within five business days. Further, with very few exceptions, APRA said all payments have been made within 10 business days of receipt of applications from the ATO.

APRA Deputy Chair, Helen Rowell, said APRA recognises that in some cases it may be both necessary and appropriate for trustees to take longer to make a payment. Reports about the recent attempted fraud being investigated by the Australian Federal Police emphasises that care is needed to ensure payments go to the right people, Mrs Rowell said. In addition to concerns about possible fraud, other reasons that payments may take longer than five business days include: incomplete information provided by the ATO; application errors by members that require clarification; verification of mismatches between member information provided by the ATO and that held by the fund; and defined benefits members whose applications require additional processing.

### **Consolidation of lost super: ASIC flags risks**

ASIC has published an article flagging risks that trustees must be careful about when encouraging people to consolidate their super. The [article](#), by ASIC's Superannuation Senior Executive Leader, Jane Eccleston, notes that both the Government and industry have done significant work to raise awareness of the

potential harms from having multiple accounts (such as unnecessary fees). However, ASIC said it has seen instances of advertisements using lost super searches as a "hook" to gain new business, with consumers often being poorly served. If not done appropriately, ASIC warns that consolidation can lead to a loss of valuable insurance and the payment of higher fees. It said it is also concerned that some advisers may use the current uncertainty from COVID-19 as part of their pitch to consumers to carry out broader super activities, such as the seeking the early release of benefits. ASIC said trustees should have good oversight practices over any third-party use of their SuperMatch2 authorisation. The ATO has also recently taken steps to increase its oversight of trustees' use of SuperMatch2.

### **SMSF in-house asset exemption for intermediary LRBA**

The ATO has registered a Legislative Instrument to provide an in-house asset exemption under s 71(1)(f) of the SIS Act for a specific type of a limited recourse borrowing arrangement (LRBA) - called an "Intermediary LRBA".

The [Superannuation Industry \(Supervision\) In-house Asset Determination - Intermediary Limited Recourse Borrowing Arrangement Determination 2020](#) provides an in-house asset exemption for an investment by a self-managed super fund (SMSF) in a related trust (ie a holding trust) for an "intermediary LRBA" under s 67A, where the trustee does not borrow directly (but maintains the borrowing of a third party).

The [Explanatory Statement](#) notes that a holding trust in an LRBA is a "related trust" of the SMSF, and would be an "in-house asset" of the fund but for the exemption under s 71(8) of the SIS Act. This exclusion provided by s 71(8) only covers circumstances where an LRBA (covered by s 67A) is undertaken by the trustee of the fund. That is, to be excluded from being an in-house asset under s 71(8), the fund must borrow the amount directly.

However, s 67A of the SIS Act provides for LRBAs in circumstances where the trustee of the fund borrows or "maintains a borrowing" (including where a fund trustee has become liable for obligations under a borrowing arrangement entered into by another party). That is, while s 67A may apply to LRBAs where the trustee of a fund borrows directly or maintains the borrowing of a third party, the in-house asset exclusion under s 71(8) only applies where the trustee of a fund borrows directly.

**Date of effect:** The exemption applies retrospectively from 24 September 2007.

## **Super contributions flexibility Bill introduced**

The [Treasury Laws Amendment \(More Flexible Superannuation\) Bill 2020](#) has been introduced in the House of Reps, it proposes to implement the 2019-20 Budget measure to extend the bring forward age limit to 65 and 66 for non-concessional super contributions. Currently, individuals under age 65 in the financial year in which they make a non-concessional contribution may "bring forward" up to three times (ie \$300,000) of their annual non-concessional cap of \$100,000, provided that they meet the other eligibility rules.

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. This means that individuals aged 65 and 66 who were not previously able to access the bring-forward non-concessional cap due to their age may do so from the 2020-21 financial year, provided they satisfy the other eligibility rules.

**Date of effect:** Applicable to non-concessional contributions made from 1 July 2020.

Note that [exposure draft regulations](#), propose to amend reg 7.04 of the SIS Regs to allow people aged 65 and 66 to make voluntary super contributions without meeting the work test. The draft regs will also increase the age limit from 69 to 74 for making spouse contributions.

## **REGULATOR NEWS**

### **Recent FWC decisions re JobKeeper**

The Fair Work Commission (FWC) has noted the outcome of the following recent JobKeeper dispute decisions dealt with under Pt 6-4C of the Fair Work Act 2009, which enables employers to issue "JobKeeper enabling directions" to employees about their hours of work, performance of duties and location of work:

- [Mazzitelli v Qantas Airways Limited \[2020\] FWC 2413](#) - involves a dispute about the amount paid to an employee in JobKeeper fortnights in April 2020.

The employee, who is paid monthly by Qantas, believes that the JobKeeper "top up" paid to him by Qantas on 15 April 2020 should have been \$1,500 (gross), being an amount payable for the second JobKeeper fortnight for April 2020. On that basis the employee claims that he has been underpaid \$852.30 compared to other Qantas employees who are paid fortnightly (and who received the full \$1,500 for the second payment fortnight). Qantas maintains that it correctly applied the JobKeeper legislation, which it says permits an employer to apply payments to monthly paid employees across two fortnights, and to apply wages earned (if any) across those fortnights in a reasonable manner. Qantas opposed the application and also raised jurisdictional issues about whether the FWC has power to deal with the case. The FWC rejected the jurisdictional issues advanced by Qantas and concluded that the FWC has power to deal with the dispute under Pt 6-4C of the Fair Work Act. Qantas has appealed the decision which will be heard by a full bench on 18 May 2020.

- [McCreedy v Village Roadshow Theme Parks Pty Ltd \[2020\] FWC 2480](#) - the FWC ruled that an employee's refusal to take one day's annual leave per week was unreasonable. The employer had issued the employee with a JobKeeper enabling direction not to attend work. The employer also asked the employee to take one day of annual leave each week until either 27 September 2020, or the time when her leave balance has reduced to four days.

### **TPB: obligations when seeking COVID-19 stimulus**

As information to tax payers seeking assistance under the Government's COVID-19 stimulus package, the TPB has [published](#) a factsheet pertaining to:

- taxpayer's obligations to the ATO; and
- tax practitioner's (on behalf of taxpayers) legal obligations to the ATO and the TPB.

The factsheet contains scenarios of behaviours the TPB has observed and outlines possible consequences if obligations are not met.

### **TPB: exercising supervision and control when working remotely**

The Tax Practitioners Board has provided some [guidance](#) on how to manage staff and exercise adequate supervision and control when working remotely.

In the current environment of working online, the TPB states that it "becomes even more important" to have processes in place to ensure that adequate supervision and

control over staff is maintained to direct, oversee and check the services provided. All practitioners must abide with the Code of Professional Conduct to ensure that the services provided on their behalf are provided competently.

The guidance gives some quite detailed advice in bullet point form under the headings "General considerations" and "Supervising services provided on your behalf".

### **ATO issues new version of Self-managed superannuation fund independent auditors' report (IAR)**

The ATO understands that some auditors may have already used the previous version of the form (effective for reporting periods starting on or after 1 July 2016) for the reporting period commencing 1 July 2019, if they were auditing a fund that may have wound up during the 2019-20 income year. If this has occurred, the ATO has advised that it will still accept the previous version of the form as having met the 2019–20 reporting requirements.

For reporting periods starting on or after 1 July 2019, you can access the new form via [ATO SMSF Independent Auditor's Report](#).