

## **TAXATION**

### **Further changes to JobKeeper**

The Prime Minister has announced further changes to the JobKeeper with revised eligibility rules and a change in employment start date.

### **Pandemic leave disaster payment announced**

Government has announced a pandemic leave disaster payment which will be available to workers in Victoria who have no sick leave and have to self-isolate.

### **Parliamentary scheduled sitting confirmed**

Prime Minister has flagged his intention that Parliament will come back but pointed to the significant logistical problems.

### **ATO reminder: taxable payments annual report**

ATO has reminded businesses that pay contractors for certain services that they may need to lodge a taxable payments annual report for the 2019-20 income year.

### **Loans put on hold and debt forgiveness: ATO views**

ATO has clarified its position on loans put on hold during COVID-19 including when it will consider a debt to be forgiven for tax purposes.

### **ATO updates employees guides for work expenses**

ATO has updated its employees guide for work expenses for 2019-20, it is designed to help employees to determine whether incurred expenses are deductible.

### **Residency and source of income: COVID-19**

ATO has issued an update on residency and source of income that deals with the issue from the perspectives of an Australian resident and foreign resident.

## **PAYG withholding obligations for foreign resident employers**

ATO has issued a reminder of its guidance update on employer PAYG withholding obligations for employees working in Australia temporarily due to COVID-19.

## **Fifth person plead guilty and sentenced: Operation Elbrus**

AFP, the ATO and Commonwealth DPP have issued a joint release on the sentencing of an individual for his role in a syndicate alleged to have defrauded the Commonwealth.

## **TPB termination of tax agent owing a large debt to ATO**

TPB has issued a reminder that tax practitioners have an obligation to manage their personal tax obligations.

## **“Backpacker tax” applies to British national**

The Full Federal Court has allowed the ATO’s appeal against a decision that the “backpacker tax” did not apply to a British national.

## **Commissioner’s message to tax professionals in Vic**

ATO has released a message from the Commissioner to tax professionals in Victoria which addresses the State of disaster declaration by the State government.

## **JobKeeper – changes to employment reference date 1 July 2020**

The government has introduced further changes to the JobKeeper Payment rules. The rules have now been registered and are effective from 3 August 2020.

## **FINANCIAL SERVICES**

### **Former financial adviser sentenced to six years jail**

A former financial adviser has been sentenced to six years imprisonment for misappropriating client funds.

### **APRA actions: COVID-19 and Royal Commission**

APRA has provided an update on its plans and primary focus in the wake of COVID-19 and shared examples of focus in industries such as banking, insurance and super.

### **ASIC's statement to the Standing Committee on Economics**

ASIC has provided a statement to the House of Reps Standing Committee on economics tabling its core role in maintaining confidence in the financial system.

### **APRA to recommence policy consultations and issuing new licences**

APRA has announced it will recommence public consultations on select policy reforms and begin a phased resumption of the issuing of new licences.

## **SUPERANNUATION**

### **SG amnesty looming**

Government has issued a reminder that the deadline for the super guarantee amnesty is just a month away.

### **Super guarantee charge: remission post-amnesty**

ATO has released a draft PS LA setting out the proposed guidelines on the remission of additional super guarantee charge after the SG amnesty ends.

### **SMSF in-house asset exemption: rental income deferrals**

ATO has released a draft legislative instrument proposing to provide an in-house asset exemption for rental income deferrals due to COVID-19.

### **COVID-19 early release of super: fraud**

AFP has charged three women with allegedly submitting false claims for the early release of super under the COVID-19 condition of release.

### **Super guarantee jockey cases: decision impact statements**

ATO has issued decision impact statements on cases which involve super guarantee charge assessments with respect to riding fees paid to jockeys.

### **Design and implementation information: early release of super**

ATO has updated its release which provides design and implementation information for super funds dealing with COVID-19 early release of super measures.

**REGULATOR NEWS****Improved data analytics enhanced capability of TPB**

TPB has credited its use of data analytics and an increase in the number of investigations for an increase in the number of tax practitioner terminations in the current year.

**TPB: support for Vic tax practitioners**

Due to challenges in the current environment, the TPB has taken temporary measures in revising some of its policies and providing additional support around renewals.

**Have your Say on ATO communications in a IGTU Survey**

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) has commenced an investigation into the effectiveness of Australian Taxation Office (ATO) written communications of taxpayer rights to review, investigate or appeal decisions made, and actions taken by the ATO.

## **TAXATION**

### **Further changes to JobKeeper**

The Prime Minister has [announced](#) further changes to JobKeeper. The changes will ensure that eligibility for the revised JobKeeper scheme to commence on 28 September 2020 will be based on a single quarter tax period, rather than multiple quarters as previously announced. Employees hired as at 1 July 2020 will now also be eligible to receive JobKeeper.

The changes mean that businesses will now only be required to show the requisite actual decline in turnover for the September quarter alone, rather than for both the June and September quarters (for the period to 3 January 2021, ie the December quarter). Similarly, businesses will only need to demonstrate a decline in turnover for the December 2020 quarter, rather than each of the June, September and December quarters (for the period to 28 March 2021, ie for the March quarter). The PM also announced a change for the start date for employees, with those hired as of 1 July to be eligible for JobKeeper Version 2 from 3 August. Previously, employees had to be on the books as at 1 March 2020.

Treasury has updated its fact sheet, [Extension of the JobKeeper Payment](#), to incorporate the further revisions to JobKeeper. The Treasury fact sheet notes that businesses will "generally" be able to assess eligibility based on turnover details reported in BAS. It is not specified in the fact sheet as to when businesses must self-assess their eligibility for revised JobKeeper, ie the precise date. However, it is implied in the fact sheet that this must be done before the relevant BAS is due to be lodged. The deadline to lodge a BAS for the September quarter or month is in late October. The December quarter (or month) BAS deadline is in late January for monthly lodgers or late February for quarterly lodgers.

This illustrates a major sticking point. Businesses will need to assess their eligibility for revised JobKeeper - to quote from the fact sheet - "in advance of the BAS deadline in order to meet the wage condition (which requires them to pay their eligible employees in advance of receiving the JobKeeper payment in arrears from the ATO)".

## **Pandemic leave disaster payment announced**

The Prime Minister has [announced](#) a "disaster payment" in the form of a pandemic leave disaster payment. The payment will be a one-off amount of \$1,500. The payment will be available to workers in Victoria who have no sick leave available who have to self-isolate for 14 days as a result of an instruction by a public health officer. It will only apply to workers in Victoria, where the Government has declared a "state of disaster" and imposed Stage Four lockdowns, which are expected at this point to run for six weeks.

The intention is that the payment will be made in the same way that Disaster Recovery Payments are made and the PM advised people to call the number 180-22-66. To this end, the Government has registered the [Financial Framework \(Supplementary Powers\) Amendment \(Home Affairs Measures No 4\) Regulations 2020](#), which establish the legislative authority for the Government to make pandemic leave disaster payment grants.

## **Parliamentary scheduled sitting confirmed**

Parliament is currently scheduled to resume sitting on Monday 24 August, sitting for two weeks until it rises until the October Federal Budget. The PM [flagged](#) his intention that "Parliament will come back". However, he pointed to the significant logistical problems in bringing into Canberra "over 200 people plus staff" from all over the country, some from "infected parts of the country". The PM concluded by saying that the appropriate arrangements will be put in place and that Parliament "will meet".

## **ATO reminder: taxable payments annual report**

The ATO has [reminded](#) businesses that pay contractors for certain services that they may need to lodge a TPAR with the ATO by 28 August 2020.

The Taxable Payment Reporting System (TPRS) already applies to the building and construction industry, and to businesses that provide cleaning or courier services. It has been further expanded this year to businesses that pay contractors to provide: (i) road freight services (forming a combined "courier and road freight" category); (ii) security, investigation or surveillance services; and (iii) information technology services.

The ATO points out that many more restaurants, cafés, grocery stores, pharmacies and retailers may have started paying contractors this year to deliver their goods to customers as a result of COVID-19, compared to last year. These businesses may not have previously needed to lodge a TPAR – and may not be aware of the requirement. The ATO provides four ways to lodge a TPAR online.

### **Loans put on hold and debt forgiveness: ATO views**

The ATO states that it has "clarified" its position on [loans put on hold](#) during COVID-19. The ATO will consider a debt to be forgiven for tax purposes if:

- the debtor is somehow relieved from the legal obligation to repay it; or
- there is evidence that the creditor won't insist on repayment or rely on the obligation for repayment.

A debt is not considered to be forgiven if a creditor only postpones an amount payable and the debtor acknowledges the debt – unless there is evidence that the creditor will no longer rely on the obligation for repayment.

The Div 7A implications are specifically spelt out (as a debt forgiven by a private company can be treated as a deemed dividend). For these purposes, a debt is forgiven if a reasonable person would conclude a creditor will not insist on payment or rely on the borrower's obligation to pay. However, simply allowing more time to repay a debt due to COVID-19 will not result in the debt being treated as forgiven.

### **ATO updates employees guides for work expenses**

The ATO has updated its [employees guide for work expenses](#) for 2019-20. The document is designed to assist employees to determine whether incurred expenses are deductible and outlines the substantiation requirements.

The following are highlighted as being new for 2019-20:

- the additional method for calculating running expenses incurred as a result of working from home ("shortcut method") was introduced to help employees working from home during the COVID-19 pandemic (ie the 80 cents per hour deduction). This method was initially only available to use from 1 March 2020 to 30 June 2020 but has now been extended to 30 September 2020; and



- Taxation Ruling TR 2020/1 Income tax: employees: deductions for work expenses under s 8-1 of ITAA was released. This Ruling provides guidance on when an employee can claim a deduction for a work expense.

## **Residency and source of income: COVID-19**

The ATO has issued an [update](#) on residency and source of income. It deals with the issue from the perspectives of an Australian resident and a foreign resident in the context of a change of residency due to COVID-19.

Where a foreign resident usually works overseas but instead performs that same foreign employment in Australia due to COVID-19 (ie is effectively marooned here), the ATO says that individual circumstances need to be examined to determine if his or her employment is connected to Australia. For working arrangements longer than three months, this includes whether:

- the terms and conditions of the employment contract change;
- the nature of the job changes;
- a person starts performing work for an Australian entity affiliated with his or her employer;
- the economic impact or result of work shifting to Australia;
- the person's "economic employer" is in Australia (ie the entity for which the person is providing services: as per TR 2013/1);
- work is performed with Australian clients;
- the performance of work is wholly or to a significant degree dependent on the person being physically present in Australia to complete it;
- Australia becomes the person's permanent place of work;
- the person's "intention towards Australia" changes.

## **PAYG withholding obligations for foreign resident employers**

The ATO has issued a reminder of its [guidance update](#) on employer PAYG withholding obligations for employees working in Australia temporarily due to COVID-19 travel restrictions. From 1 July 2020, foreign resident employers must withhold PAYG in respect of:

- Australian resident employees; and/or
- foreign resident employees whose employment income is Australian sourced income.

There is no requirement in respect of foreign resident employees for whom a DTA exception applies. Australia's double tax agreements may allow foreign residents to earn employment income in Australia for a short period – usually 183 days – without being taxed in Australia. The ATO advises employers to check each DTA carefully as wording, conditions and time periods vary from one DTA to another.

The foreign resident employer must withhold if they believe at the time that employment income is paid, based on the facts and circumstances of that employee, that the DTA exception will not apply because the employee is likely to remain in Australia for more than the applicable time period.

### **Fifth person plead guilty and sentenced: Operation Elbrus**

The Australian Federal Police (AFP), the ATO and the Commonwealth Director of Public Prosecutions have issued a [joint release](#) on the sentencing of Simon Anquetil for his role as a principal conspirator in a syndicate that is alleged to have defrauded the Commonwealth of more than \$105 million over three years. Described as one of the founders of the payroll services company, Plutus Payroll, and one of the architects of the fraudulent scheme, Mr Anquetil was sentenced in the Supreme Court of NSW to seven years and six months in jail, with a non-parole period of five years.

Operation Elbrus was a 2017 investigation led by the AFP, with significant assistance from the ATO, into a large-scale and organised tax fraud conspiracy which revealed a group of people that used payroll services companies to divert PAYG withholding tax and GST owed to the ATO. 16 people were charged as part of Operation Elbrus. Mr Anquetil's sentencing marks the fifth sentencing outcome for the operation.

### **TPB termination of tax agent owing a large debt to ATO**

The TPB has issued a [reminder](#) that tax practitioners have an obligation to manage their personal tax obligations and that a failure to do so raises serious doubts about a practitioner's capacity to competently handle other people's tax affairs. Case in point, [Bell and TPB \[2020\] AATA 2424](#) where the AAT affirmed the TPB's decision to terminate the tax agent registration of a Darwin based tax agent for not complying with his own personal tax affairs and owing a significant tax debt to the ATO, which at times was as large as \$750k since 2012. In the case the tax agent argued that the

TPB's decision to terminate his registration was not a proportionate response to his conduct.

Speaking about the case Deputy President Bernard J McCabe said, "The behaviour (of Mr Bell) sets a poor example – for his clients, and for other tax agents. It also threatens the effective working relationship that must exist between each agent and the ATO". "Mr Bell's behaviour undermines the integrity of the system of self-assessment. That system depends on the expectation that individual taxpayers, shepherded by their tax agents, will comply with their basic obligations", Mr McCabe continued.

### **“Backpacker tax” applies to British national**

The Full Federal Court has allowed the ATO's appeal against a decision that the so-called "backpacker tax" did not apply to a British national who was a tax resident of Australia because of a non-discrimination clause in the Australia-UK DTA: [FCT v Addy \[2020\] FCAFC 135](#) (Full Federal Court, Davies, Derrington and Steward JJ, 6 August 2020).

The taxpayer is a British citizen who arrived in Australia on 20 August 2015 on a 12-month working holiday visa. She obtained a second 12-month visa (by working on a farm in WA) and eventually returned to the UK on 1 May 2017. For most of her time in Australia, the taxpayer lived with a friend in share house accommodation in Earlwood in Sydney, having arranged it before leaving the UK. It was also her postal address here. She had two bank accounts and a pre-paid mobile phone account in Australia. From 18 July 2016 to 30 April 2017 the taxpayer worked as a waitress in Sydney. Her wages were paid into one of the Australian bank accounts. The ATO eventually accepted she was a resident for 2016-17, but assessed her to pay tax on the taxable income derived from 1 January 2017 at the working holiday tax rate (the "backpacker tax"). (Under the "backpacker tax" the first \$37,000 of taxable income is taxed at 15% and the balance is taxed at the standard resident rates.) In *Addy v FCT* [2019] FCA 1768, Logan J held that the taxpayer was a tax resident, both within the ordinary meaning of that term and under the 183-day test. His Honour also held that, by virtue of a "non-discrimination clause" (Art 25) in the Australia-UK DTA, the taxpayer was entitled to be taxed at the same rates that apply to Australian citizens who are tax residents, including getting the benefit of the tax-free threshold.

The Full Federal Court has allowed the ATO's appeal. Derrington J (Davies and Steward agreeing) held that the taxpayer was not a tax resident according to the ordinary meaning of that term. In particular, her intention was to visit Australia for a holiday, even if she had to work to support herself, the nature of her presence here was always temporary and for a finite duration and purpose, at no time did she establish any legally enforceable right to occupation of any dwelling in Australia and she had no significant assets here. Derrington and Steward JJ (Davies J agreeing) also held that the taxpayer was a resident under the 183-day test because there was no evidence that the Commissioner was satisfied that her usual place of abode was outside Australia and that she did not intend to take up residence in Australia. A majority (Derrington and Steward JJ, Davies J dissenting) then held that Art 25 of the Australia-UK DTA did not apply as the taxpayer was not discriminated against on grounds of nationality. The "backpacker tax" applied because she derived "working holiday taxable income" and it was not her nationality that compelled her to obtain a working holiday visa to enter Australia. There was a wide range of visas which would permit a British national to enter Australia and earn income. In other words, the holding of a working holiday visa was a matter of choice and there no necessary nexus between her nationality and her liability to pay the "backpacker tax".

### **Commissioner's message to tax professionals in Vic**

The ATO has released the [Commissioner's message to tax professionals in Victoria](#), which addresses the State of disaster declaration by the State Government. In it, the ATO states that, while it is important to continue to lodge activity statements and tax returns "where possible", the ATO will not be applying penalties for late lodgment of Business Activity Statements that fall due during August and September. This measure will be in place until the end of September, when the ATO will review and extend it if necessary.

This is in addition to various other concessions offered by the ATO that have been in place Australia-wide since the COVID-19 pandemic began, eg providing lodgment deferrals for upcoming lodgment dates and allowing for flexible payment plans, etc.

### **JobKeeper – changes to employment reference date 1 July 2020**

The government has introduced further changes to the JobKeeper Payment rules. The rules have now been registered (see below) and are effective from 3 August 2020. These changes include:

- employees' eligibility for the JobKeeper Payment can now be assessed in reference to 1 July 2020
- employees can now be nominated by alternative employers if their employment has changed since the JobKeeper Payment began. However, they can still only be nominated by one employer at any given time
- for the fortnights commencing on 3 and 17 August 2020, employers have until 31 August 2020 to meet the wage condition for new eligible employees under the 1 July eligibility test.

**Important - Application of 'one-in all-in' rule for new employees since 1 March 2020:**

The 1 July 2020 employment date is designed to include additional employees in JobKeeper who may currently be ineligible due to not meeting the 1 March 2020 employment condition. This compel employers to include in JobKeeper any new employees employed after 1 March but before 1 July 2020 (who meet the other conditions in s 9 of the JobKeeper Rules) from 3 August due to the 'one-in all-in' rule. Employers would need to quickly consider eligible employees, send nomination forms and consider if any new employees need 'topping up' to meet the wage condition so they are not exposed to penalties under the *Fair Work Act*. For any employees that become eligible employees from 1 July 2020, an employer on the JobKeeper scheme must provide notice to the new eligible employees (per the existing notice requirements) within 7 days of commencement of the Legislative Instrument (commenced 15 August 2020).

**More details on above changes as follows:**

The legislative instrument, Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 7) 2020 (the Legislative Instrument), has been registered to provide a new employment reference date of 1 July 2020 for employees to be eligible for JobKeeper scheme.

For JobKeeper fortnights beginning on or after 3 August 2020, the amendments allow qualifying employers to receive JobKeeper payments in respect of individuals who are newly employed by the entity if these individuals meet the eligibility requirements on 1 July 2020.

The amendments also allow individuals who have nominated as an eligible employee or eligible business participant with one entity to re-nominate as an eligible

employee of another entity in limited circumstances. To re-nominate, the individual must have ceased their employment or business participation with the first entity before 1 July 2020, and commenced their employment with the new entity by 1 July 2020.

For any employees that become eligible employees from 1 July 2020, an employer on the JobKeeper scheme must provide notification of the new eligible employees to the Commissioner within 7 days of commencement of the Legislative Instrument (commenced 15 August 2020). More detail can be found in the [explanatory statement](#) for the Legislative Instrument including examples and commentary on the 'one-in, all-in' principle.

## **FINANCIAL SERVICES**

### **Former financial adviser sentenced to six years jail**

A former financial adviser [has](#) recently been sentenced on 31 July 2020 to six years' imprisonment (eligible for parole after four years) for misappropriating \$1.865m of client funds. He had earlier pleaded guilty to six counts of engaging in dishonest conduct in the course of carrying on a financial services business where he misappropriated client funds for his own purposes.

Acting Judge Woods of the Downing Centre District Court also made reparation orders of approximately \$1.777m in favour of the 10 clients who were the subject of the charges against the former financial adviser.

"As a financial adviser Mr Miller ought to have protected the interests of his clients. His sentencing should send a strong message that such conduct will lead to individuals involved being brought before the court to face criminal charges," ASIC Deputy Chair Daniel Crennan QC said.

### **APRA actions: COVID-19 and Royal Commission**

The Australian Prudential Regulation Authority (APRA) has provided an [update](#) on its plans and primary focus in the wake of COVID-19, an update to its 2019-2023 Corporate Plan released in December 2019. In his opening statement to the House



of Representatives Standing Committee on Economics, APRA Chair, Wayne Byres said that APRA has had to significantly adjust its operations to give primacy to managing the impact of the economic and social crisis created by the pandemic. Mr Byres said that financial safety and resilience had become the primary focus. As a result, since the onset of COVID-19 APRA has:

- reduced operational burden on the industry by postponing a range of activities – most notably, suspending all policy initiatives until 30 September this year – and granting additional time to satisfy some supervisory requirements;
- provided targeted and temporary concessions to assist in facilitating the broader package of economic and financial support being offered by the government, the RBA and the industry itself. The most important of these had been the capital treatment of the loan repayment deferrals being offered by banks to household and small business borrowers; and
- made clear that the financial strength the government had required the industry to build up over the past four to five years is now available to be used to absorb losses and support customers.

In making his point on APRA's aim in seeking balance between regulatory flexibility and maintaining a prudent level of resilience in the financial system, Mr Byres shared examples of focus and examination in each major industry such as banking, insurance and superannuation. Mr Byres also said that APRA is in the midst of finalising its Corporate Plan for 2020-2024, which will be published at the end August.

### **ASIC's statement to the Standing Committee on Economics**

ASIC has provided a [statement](#) to the House of Representatives Standing Committee on Economics, tabling its core role in maintaining confidence in the Australian financial system and focus areas in the COVID-19 pandemic environment. Providing examples, ASIC highlighted its proactive actions to mitigate areas of increased vulnerability in the financial system, maintaining up-to-date information for consumers and businesses via its MoneySmart website and warning of scams especially those taking advantage of COVID-19 circumstances. ASIC also highlighted actions it had taken and continues to take to ensure the financial system continues to be fair and robust despite being under the strain of the pandemic.

## APRA to recommence policy consultations and issuing new licences

APRA has [announced](#) that it will recommence public consultations on select policy reforms and begin a phased resumption of the issuing of new licences.

In March 2020, APRA suspended for six months the majority of its planned policy and supervision initiatives in response to the impact of COVID-19. The issuing of new licences was also suspended due to economic uncertainty for new entrants. APRA said it now believes that it can restart both policy consultations and licensing activity. However, APRA Chair, Wayne Byres, said it is neither possible nor desirable to pursue APRA's full policy agenda for the time being. APRA therefore intends to narrow its policy activities in the remainder of 2020 to a small number of high-priority prudential policy reforms.

The policy reforms that will be recommenced in 2020 through public consultation are:

- the cross-industry prudential standard for remuneration;
- ADI capital reforms incorporating APRA's unquestionably strong framework, Basel III and measures to improve transparency, comparability and flexibility;
- insurance capital reforms to incorporate changes in the accounting framework (AASB 17); and
- the prudential standard for insurance in superannuation, and updated guidance on the sole purpose test (s 62 of the SIS Act).

Aligned with its policy agenda, APRA will also restart consultation on a limited number of its data collections, including the recommencement of its Superannuation Data Transformation project. APRA's recommencement of assessing and issuing new banking, insurance and superannuation licences will occur in two phases, with phase one starting in September 2020 and phase two in March 2021. New licences issued during phase one will be issued to applicants that are branches or subsidiaries of foreign entities with significant financial resources and a strong operational track record in a similar business. APRA will also accept new licence applications from any entity from September 2020. From March 2021, APRA envisages new licences may be issued to any entity that meets the relevant prudential requirements. APRA is also reviewing the pathways to an ADI licence, including the Restricted ADI licensing framework that was launched in 2018, to incorporate experiences to date, while continuing to support competition in the sector.



## **SUPERANNUATION**

### **SG amnesty looming**

The Government has [issued a reminder](#) that the deadline for the super guarantee amnesty is just a month away, ie it ends on 7 September 2020. The amnesty provides an opportunity to employers to disclose and pay super guarantee shortfalls as far back as 1 July 1992.

For the amnesty to apply, employers must come forward and disclose to the ATO before 11:59pm on 7 September 2020 and either pay the unpaid amounts of superannuation in full, with interest or put a payment plan in place to do so in the future. Payments made by 7 September 2020 will be tax deductible.

Employers will face significant penalties if they do not take advantage of the amnesty and subsequently audited and found to have underpaid employees. Acknowledging the challenging times brought on by COVID-19, the ATO has pathways in place to work with businesses and create payment plans to encourage the taking up of the amnesty.

### **Super guarantee charge: remission post-amnesty**

The ATO has released [Draft PS LA 2020/D1](#) setting out proposed guidelines on the remission of additional super guarantee charge (SGC) after the SG amnesty ends on 7 September 2020. Under Pt 7 of the Superannuation Guarantee (Administration) Act 1992 (SGAA), this additional SGC (Part 7 penalty) is up to 200% of the SGC amount. The SG amnesty runs from 24 May 2018 and ends on 7 September 2020. It applies to SG shortfalls back to 1 July 1992 and up until the quarter starting on 1 January 2018 (inclusive). An employer who qualifies for the amnesty can deduct an SGC payment (or offsetting contribution) made during the amnesty period (the SG charge is otherwise non-deductible). In addition, the employer will not be liable for the additional 200% penalty for failing to provide an SGC statement.

If an employer does not come forward and take advantage of the amnesty before 7 September 2020, they will face significantly higher penalties when they are caught by the ATO - a minimum 100% penalty on top of the SG shortfall. The ATO says it will take a very strict approach to penalties where an employer could have come forward voluntarily to disclose an SG shortfall and failed to do so. The ATO will

generally expect remission not to exceed 50% (100% of the SGC) where an employer did not come forward voluntarily and it took ATO compliance action for them to disclose, even for quarters where there is no legislated restriction on remission.

The Draft Practice Statement sets out a four-step process for what the ATO will consider in making a decision on the remission, in whole or part, of the additional SGC.

**Date of effect:** When finalised, the Practice Statement will apply from 8 September 2020 (ie after the SG amnesty ends).

**Comments** are due by 28 August 2020.

### **SMSF in-house asset exemption: rental income deferrals**

The ATO has released a Draft Legislative Instrument proposing to provide an in-house asset exemption for an asset that is attributable to the deferral of rental income measures implemented to provide financial relief as a result of COVID-19. The [Draft Superannuation Industry \(Supervision\) In-house Asset Determination – Intermediary Limited Recourse Borrowing Arrangement Determination 2020 \(SPR 2020/D1\)](#) will ensure that a deferral of rental income under a lease (on arm's length terms) amounting to a loan provided during the 2019-20 and 2020-21 financial years does not result in an in-house asset or cause the SMSF to lose its in-house asset exemption in a related party covered by reg 13.22B or 13.22C of the SISR.

The [Draft Explanatory Statement](#) states that the instrument is "minor and machinery in nature".

**Date of effect:** 2019-20 and 2020-21 financial years.

**Comments** due by 31 August 2020.

### **COVID-19 early release of super: fraud**

The Australian Federal Police (AFP) has [charged](#) three women with allegedly submitting false claims for the early release of superannuation under the COVID-19 condition of release. This brings to seven the total number of people charged by the AFP anti-fraud Taskforce "Iris".

The AFP will allege that the group, based in South East Queensland, submitted several fraudulent applications, claiming to be other superannuation fund-holders, to attempt to access the early release of superannuation totalling \$113,500. The charges include conspiring to dishonestly obtain or deal in personal financial information, contrary to s 480.4 of the Criminal Code 1995 (Cth). Other charges involve conspiring to give false or misleading information to a Commonwealth entity, contrary to s 137.1(1) of the Criminal Code, and conspiring to receive a designated service using a false customer name, contrary to s 140.1 of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth).

### **Super guarantee jockey cases: decision impact statements**

The ATO has issued decision impact statements on each of the following decisions of the Full Federal Court in *FCT v Scone Race Club Limited* [2019] FCAFC 225 (the DIS is [here](#)) and *FCT v Racing Queensland Board* [2019] FCAFC 224 (the DIS is [here](#)). In both cases, the Full Court had upheld the ATO's SG charge assessments issued to a NSW thoroughbred race club and Queensland's principal racing authority with respect to riding fees paid to jockeys.

Given that the ATO was successful in the matter, the DIS's could be described as unsurprisingly perfunctory. Each sets out the ATO's summary of facts and issues decided by the Court. They go on to say that the Court's decision is consistent with the ATO's view of how s 12(8) of the Superannuation Guarantee (Administration) Act 1992 works. It then advises other racing authorities to "review their arrangements". It reminds such authorities of the SG amnesty (although this finishes on 7 September 2020).

### **Design and implementation information: early release of super**

The ATO has updated its [release](#) which provides design and implementation information for super funds dealing with the COVID-19 early release of super measures.

Matters addressed in the release include:

- the accounts from which a member can request amounts (up to a total of \$10,000);
- varying or revoking an application;

- eligibility (including the self-assessment process and identification requirements);
- application process (myGov only);
- deadlines (applications for the 2020-21 financial year can be made from 1 July 2020 to 24 September 2020);
- fund notification;
- tax and payment summaries (not required);
- successor fund transfer; and
- application to non-regulated funds.

## **REGULATOR NEWS**

### **Improved data analytics enhanced capability of TPB**

The TPB has issued a [media release](#) reporting a 122% increase in terminations in 2019-20 compared to the previous year, crediting better data analytics and more investigators onboard. Over 300 cases were presented to the TPB in 2019-20 where 178 resulted in terminations. Suspensions increased to 60 in 2019-20 compared to nine in the previous year.

The TPB said that the use of data analytics and the increase in the number of investigators has improved its ability to resolve and act on complaints, referrals and intelligence. Similarly, greater automation of personal tax obligation checks for registration renewals as well as an increased ability to check individual practitioners' compliance with continuing professional education requirements has also helped.

## TPB: support for Vic tax practitioners

The TPB has issued a reminder to its members that it understands the challenges tax practitioners are facing in the current environment who may have difficulty meeting their obligations with the TPB. The TPB has taken temporary measures in revising some of its policies and providing additional support around registration renewals. Apart from encouraging its members to contact TPB where their ability to meet obligations are affected, some concessions and support measures have already been put in place – as follows:

- [Annual declaration and renewal concessions](#);
- [CPE activities relaxed](#);
- [Assistance gaining relevant experience for renewal](#);
- [BAS services expanded](#);
- [Board approved course requirements concession](#).

For those experiencing anxiety or stress, particularly in Victoria, the TPB encourages them to seek mental health support services such as:

- [Beyond Blue Coronavirus Wellbeing Support Service](#);
- [Lifeline](#);
- [Head to Health](#) – the Government's digital mental health gateway.

## Have your Say on ATO communications in a IGTO Survey

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) has commenced an investigation into the effectiveness of Australian Taxation Office (ATO) written communications of taxpayer rights to review, investigate or appeal decisions made, and actions taken by the ATO. The ATO's communication of taxpayers' rights is an important feature of procedural fairness, is consistent with the Taxpayers' Charter and is important for maintaining confidence in the fairness of the tax administration system.

### Have your Say and Share your experiences ...

#### You can participate in a Short (10 minute) Survey.

There are 10 survey questions - 7 about ATO written communications and 3 demographic questions. The survey can be accessed [here](#).

Please use the direct Survey link above to respond to the survey.

**The Survey will also close on 30 September 2020.**

The purpose of the survey is to understand what information is currently typically provided (or not) to taxpayers and their representatives on their rights to review, complain and appeal ATO decisions made.

What information Should be provided and What is provided? This will help the IGTO to better direct the investigation into the relevant business lines within the ATO and assist to identify ATO communications for improvement. This includes (for example):

- Whether taxpayers are aware of their formal rights to complain about ATO decisions made (see the IGTO web page on [Making a Taxation Complaint](#) for further information);
- What Taxpayer rights should be communicated to taxpayers in relation to decisions made;
- Whether reasons for ATO decisions made are adequately communicated;
- Opportunities to improve communications about taxpayer rights

The survey is completely anonymous with results being collated and aggregated independently by Orima Research Pty Ltd.

For more information on this investigation, you may visit the IGTO's website at [www.igt.gov.au](http://www.igt.gov.au).