

## **TAXATION**

### **JobSeeker Supplement extended**

The government has announced the temporary Coronavirus Supplement will be extended until 31 March 2021.

### **COVID-19 supplement instrument registered**

An instrument has been registered to ensure the continued payment of the COVID-19 supplement to recipients of various payments.

### **SME loan scheme turnover threshold increased**

Government has registered Rules to increase the annual turnover to access the Coronavirus SME Guarantee scheme.

### **Draft legislation: insolvency reforms for small business**

Government has released draft legislation which proposes to change Australia's insolvency framework for small businesses.

### **Regulation of auditing: Senate Committee report tabled**

Parliamentary Joint Committee on Corporations and Financial Services has tabled its final report into the Regulation of Auditing in Australia.

### **JobMaker Bill receives Royal Assent**

Bill to set up the basic machinery provisions to facilitate the JobMaker Hiring Credit scheme has received Royal Assent.

### **Coronavirus cash payments Bill receives Assent**

Bill to implement the payment of \$250 economic support payments for eligible income support recipients and concession card holders has received Royal Assent.

### **COVID-19 supplement extension etc: Bill introduced**

Bill to implement extension of temporary Coronavirus supplement and amend various social security legislation has been introduced into the House of Reps.

### **Insolvency reforms for small businesses: Bill introduced**

Government has introduced insolvency reforms which will apply to incorporated businesses with liabilities of less than \$1m.

### **NSW Budget 2020-21**

NSW Budget 2020-21 has been handed down including key tax relief measures aimed at supporting businesses and creating jobs.

### **TPB welcomes fine for unregistered tax agent**

TPB has welcomed the decision of the Federal Court in which a bookkeeper was ordered to pay a fine for providing tax agent services.

### **ATO tax prosecutions update**

ATO has updated its tax crime prosecution case studies including cases for November 2020.

### **Appeal in GST scrap gold case: input tax credits allowed**

The Full Federal Court has unanimously upheld a refiner's claim for input tax credits totalling \$122m.

## **FINANCIAL SERVICES**

### **FinTech: second issues paper released by Senate committee**

Senate Select Committee on Financial Technology and Regulatory Technology has released for comment a second issues paper.

## **Banking Royal Commission: further recommendations Bills**

Bills have been introduced in the House of Reps to implement further recommendations of the Banking Royal Commission.

## **Reference checking financial advisers: ASIC consultations paper**

ASIC has released on consultation paper on the proposed reference checking and information sharing protocol for financial advisers and mortgage brokers.

## **Limited financial advice: ASIC consultations paper**

ASIC has released a Consultation Paper seeking input on the impediments to the supply of affordable personal advice.

## **SUPERANNUATION**

### **Super trustees outcomes assessments: APRA FAQ guidance**

APRA has published new FAQs in relation to the outcomes assessment obligations for RSE licensees.

### **ASIC's superannuation priorities for 2020-21**

ASIC has outlined its superannuation priorities including focusing on the behaviour of trustees, and enhanced supervision and surveillance.

### **Revised APRA remuneration standards released**

APRA has released an updated version of its draft remuneration standard which will apply to all APRA-regulated entities (including super funds).

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

Practice Statement PS LA 2020/4 sets out guidelines for ATO officers on the remission of additional super guarantee charge.

## **REGULATOR NEWS**

### **Cloud computing: TPB Q&A**

Tax Practitioners Board has compiled a list of questions and answers following its webinar addressing topics surrounding cloud computing.

## **OTHER NEWS**

### **Victorian Small Business Digital Adaption Program**

The Program allows eligible businesses to trial and then receive access to digital products, tools and training to use to build digital capability in their day-to-day operations. Once purchased then an application can be made for a rebate of up to \$1,200.

## **TAXATION**

### **JobSeeker Supplement extended**

The Government has [announced](#) that the temporary Coronavirus Supplement will be extended until 31 March 2021 but the payment rate will be reduced from \$250 to \$150 per fortnight from 1 January 2021.

The Coronavirus Supplement was originally set at \$550 per fortnight but was reduced to \$250 per fortnight from 25 September until 31 December 2020. The Prime Minister said both existing and new JobSeekers will be paid the Coronavirus Supplement at a rate of \$150 per fortnight from 1 January 2021 through to 31 March 2021 on top of their base rate of payment and other supplements. Mr Morrison said JobSeekers would continue to be able to earn up to \$300 per fortnight without their social security payments being reduced.

The Minister for Families and Social Services, Anne Ruston, said expanded criteria will continue to provide payment access for permanent employees who are stood down, sole traders and the self-employed until 31 March 2021. The relaxed partner income test will also continue meaning that a JobSeeker can still access payments where their partner earns about \$80,000 annually. The Ordinary Waiting Period, Newly Arrived Resident's Waiting Period and the Seasonal Work Preclusion Period will continue to be waived until 31 March 2021.

### **COVID-19 supplement instrument registered**

The Minister for Families and Social Services has registered the [Social Security \(Coronavirus Economic Response - 2020 Measures No 15\) Determination 2020](#) to ensure the continued payment of the COVID-19 Supplement until 31 December 2020 for recipients of JobSeeker Payment, Parenting Payment, Youth Allowance, Austudy Payment, Special Benefit, Partner Allowance and Widow Allowance.

The Determination provides for the Supplement to continue to be paid to recipients of these payments at a rate of \$250 a fortnight for social security instalment periods that begin on a day during the period 19 December 2020 to 31 December 2020 (inclusive). The Determination also extends the "nil rate period" to 31 December 2020 whereby a person continues to be treated as "receiving" a social

security pension or benefit where the person's standard 12-week employment income nil rate period ends.

(Note that the Social Services and Other Legislation Amendment (Extension of Coronavirus Support) Bill 2020 will extend the COVID-19 Supplement from 1 January 2021 to 31 March 2021, but at a reduced rate of \$150 per fortnight from 1 January 2021.)

**Date of effect:** 17 November 2020.

### **SME loan scheme turnover threshold increased**

The Government has registered the [Guarantee of Lending to Small and Medium Enterprises \(Coronavirus Economic Response Package\) Amendment Rules 2020](#) to increase the annual turnover to \$120 million (up from \$50 million) to access the Government's Coronavirus SME Guarantee Scheme established under the Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020.

The [SME loan guarantee scheme](#) provides Government support for lending to SMEs (including sole traders and not-for-profits) by guaranteeing 50% of new loans issued by participating lenders to SMEs. The scheme seeks to enhance the ability of lenders to provide cheaper credit to eligible SMEs.

**Date of effect:** The increased turnover threshold applies from 14 November 2020.

### **Draft legislation: insolvency reforms for small business**

The Government has released Draft [Insolvency reforms to support small business – subordinate legislation](#), which proposes to change Australia's insolvency framework by introducing new processes suitable for small businesses, reducing complexity, time and costs for small businesses. The Government had previously consulted on [draft primary legislation](#) which establishes the framework for the insolvency reforms, while details governing the operation of the new simplified processes have been included in this subordinate legislation, which includes both regulations amending the Corporations Regulations 2001 and rules made under the Corporations Act 2001.

**Proposed date of effect:** 1 January 2021.

**Submissions** are due by 24 November 2020.

## **Regulation of auditing: Senate Committee report tabled**

The Parliamentary Joint Committee on Corporations and Financial Services has tabled its [final report](#) into the *Regulation of Auditing in Australia*. The report builds on the interim report from February 2020 and makes 10 recommendations aimed at auditor independence and tenure.

The Committee welcomed the fact that the major auditors, including EY, KPMG, PwC, Deloitte, Grant Thornton and BDO, all published their ASIC audit inspection reports during the course of the inquiry. With this improved transparency, the Committee has called on ASIC to continually review its audit inspection methodology with the aim of producing reports of greater sophistication and clarity.

Given the importance of auditor independence, the Committee has recommended the establishment of defined categories, and associated fee disclosure requirements, in relation to audit and non-audit services, including a list of non-audit services that audit firms are explicitly prohibited from providing to an audited entity. The Committee said consideration should also be given to revising APES 110 Code of Ethics to include a safeguard that no audit partner can be incentivised, through remuneration advancement or any other means or practice, for selling non-audit services to an audited entity.

The Committee has called for the disclosure of auditor tenure by corporate entities and recommended a mandatory tendering regime, under which corporate entities may elect not to undertake a public tender process as long as the reasons for not doing so are disclosed. In its interim report, the Committee recommended a period of 10 years. To be clear, the Committee recognises that there may be very good reasons why an entity would wish to continue with the same auditor for more than 10 years, and it would not be a mandatory requirement to change auditors every 10 years. Rather, the Committee said the measure was a recognition that boards should not "set and forget" arrangements with their auditor.

The Committee acknowledged that its recommendation for this new tendering regime to begin in 2022 is no longer realistic and the Government should consider a

staggered implementation timeline. The Committee also called on the Government to undertake a review to make digital financial reporting standard practice.

## **JobMaker Bill receives Royal Assent**

The [Economic Recovery Package \(JobMaker Hiring Credit\) Amendment Bill 2020](#) has received Royal Assent as Act No 96 of 2020, after passing both Houses (the Senate agreed not to insist on its amendments which were earlier rejected by the House of Reps).

The Bill sets up the basic "machinery" provisions to facilitate the JobMaker Hiring Credit scheme. The actual Rules for the new JobMaker payment are set out in the [Exposure Draft - Coronavirus Economic Response Package\(Payments and Benefits\) Amendment Rules \(No 9\) 2020](#). Those Draft Rules are yet to be finalised and remain open for comment until 27 November 2020. Broadly, an entity may receive up to \$200 per week for each eligible additional employee aged 16-29 years (\$100 per week for those aged 30-35) to be paid quarterly in arrears by the ATO.

To be eligible for the JobMaker Hiring Credit, the Treasurer said an employee must have been receiving JobSeeker Payment, Youth Allowance (Other) or Parenting Payment for at least one of the previous three months, assessed on the date of employment. Employees also need to have worked for a minimum of 20 hours per week of paid work to be eligible, averaged over a quarter and can only be eligible with one employer at a time.

In welcoming the passage of the legislation, Mr Frydenberg noted that the hiring credit is not available to an employer who does not increase their headcount and payroll. The legislative framework also prohibits both employers and employees from entering into contrived schemes in order to gain access to or increase the amount payable. Existing rights and safeguards for employees under the Fair Work Act will continue to apply, said Mr Frydenberg. (Source: [Treasurer's media release, 11 November 2020](#).)



## **Coronavirus cash payments Bill receives Assent**

The [Social Services and Other Legislation Amendment Coronavirus and Other Measures Bill 2020](#) received Royal Assent as Act No 97 of 2020 after passing all stages without amendment.

The Bill implements the 2020-21 Budget measure to pay two \$250 economic support payments for eligible income support recipients and concession card holders. These additional economic support payments will be made from November 2020 and early 2021. The Bill amends the ITAA 1997 to ensure the payments are tax exempt. They also do not count as income for social security purposes.

In addition, the Bill amends the social security legislation to temporarily amend the circumstances in which a person may be regarded as independent for Youth Allowance purposes and create a temporary pathway for young people who are seeking to qualify as independent for Youth Allowance (student) purposes to encourage seasonal agricultural work. The Bill also introduces a revised Paid Parental Leave work test to acknowledge the impact of COVID-19. Assistance has also been improved for families affected by stillbirth and infant death in respect of payments for newborn children.

## **COVID-19 supplement extension etc: Bill introduced**

The [Social Services and Other Legislation Amendment \(Extension of Coronavirus Support\) Bill 2020](#) has been introduced in the House of Reps. It was immediately referred to the Senate Community Affairs Legislation Committee for a report by 27 November 2020.

The Bill will implement the extension of the temporary Coronavirus Supplement from 1 January 2021 to 31 March 2021. This follows the announcement by the Prime Minister that the Coronavirus Supplement will be extended until 31 March 2021, but the payment rate will be reduced from \$250 to \$150 per fortnight from 1 January 2021. The Bill will also ensure that the Supplement can be made available to all persons in receipt of youth allowance, whether because they are a student or otherwise.

The Bill will also amend the social security legislation to:

- provide that the Coronavirus Supplement and the temporary COVID-19 exemptions from the ordinary waiting period, newly arrived resident's waiting period and seasonal work preclusion period cannot be extended beyond 31 March 2021;
- extend (from 1 January 2021 to 31 March 2021) the temporary COVID-19 qualification rules for JobSeeker payment and youth allowance;
- permanently end the temporary COVID-19 exemptions from the liquid assets test waiting period and assets tests, from 1 January 2021;
- allow certain specified provisions of the social security law to be temporarily modified by the Minister by disallowable legislative instrument, as appropriate to respond to the changing economic and social impacts of COVID-19 until 31 March 2021;
- introduce a discretionary power under the social security and veterans' entitlements assets tests to extend the principal home temporary absence provisions where a person, for reasons beyond their control, cannot return to Australia within the allowable absence period; and
- permit JobKeeper information provided to Services Australia on or before 28 March 2021 to continue to be used after that date.

## **Insolvency reforms for small businesses: Bill introduced**

The Government has introduced the [Corporations Amendment \(Corporate Insolvency Reforms\) Bill 2020](#) into Parliament.

The measures were announced on 24 September 2020 and will apply to incorporated businesses with liabilities less than \$1 million. The Treasurer [states](#) that the measures will change from rigid one-size-fits-all model to a more flexible "debtor in possession" model, which will allow eligible small businesses to restructure their existing debts while remaining in control of their business. For those businesses that are unable to survive, a new simplified liquidation pathway will be introduced for small businesses to allow faster and lower-cost liquidation.

Specifically, the Bill includes:

- a formal debt restructuring process for eligible companies;
- extended temporary relief for eligible companies intending to undertake a formal debt restructuring process;
- a simplified liquidation process for eligible companies in a creditors' voluntary winding up;

- refinements to the requirements for registration as a liquidator; and
- the greater use of electronic documents and electronic signatures in an external administration.

**Date of effect:** 1 January 2021.

## NSW Budget 2020-21

The NSW Treasurer, Dominic Perrottet, has handed down the [NSW Budget 2020-21](#) projecting a deficit of \$16 billion for 2020-21. Key tax relief measures aimed at supporting businesses and creating jobs include:

- **payroll tax** - rate to be cut from 5.45% to 4.85% for a two-year period, backdated to 1 July 2020. The payroll tax threshold will also be permanently increased from \$1 million to \$1.2 million;
- **\$1,500 digital voucher for SMEs** - available for SMEs that do not pay payroll tax to cover the cost of government fees and charges;
- **\$100 digital vouchers** - each adult NSW resident will be eligible to claim up to \$100 in digital vouchers to spend on eating out and entertainment (including restaurants, visitor sites and cultural attractions);
- **Jobs Plus Program** - starting 15 December 2020 and ending on 30 June 2022, the program will support companies who that relocate their head offices to NSW or expand their jobs footprint in NSW. It includes payroll tax relief, up to a four-year period, for every new job created where a business creates at least 30 new net jobs. It will also provide fast-tracked planning approval pathways and subsidised training programs etc;
- **COVID-19 relief for landlords and tenants** - a temporary extension of the National Cabinet Mandatory Code of Conduct - SME Commercial Leasing Principles to 28 March 2021 for retail tenants only with an annual turnover of less than \$5 million. Landlords who provide rent reductions between 1 January 2021 to 28 March 2021, to eligible retail tenants experiencing financial distress due to the pandemic, can apply for land tax relief of up to 25% on the land leased for the 2021 land tax year;
- **property tax reform** - a consultation process will commence to seek feedback on a stamp duty overhaul to allow buyers to opt out of stamp duty and instead choose to pay a smaller annual property tax.

## TPB welcomes fine for unregistered tax agent

The Tax Practitioners Board (TPB) has [welcomed](#) the decision in *TPB v Caolboy* [2020] FCA 1559 where a bookkeeper (Ms C) was ordered to pay \$40,000 by the Federal Court for providing and advertising tax agent services when not registered under the Tax Agent Services Act 2009. The Court also imposed an injunction on the unregistered tax agent, preventing her from providing tax agent services or BAS services for the next three years whilst she remains unregistered.

It was noted that before the litigation, Ms C had admitted to the TPB all the contraventions and later voluntarily disclosed to the TPB and ATO all client records, outlining the tax agent services she had provided, including the cash income she had received. The TPB said a much higher penalty would have been accorded had it not been for Ms C's co-operation, as noted by the Court.

## ATO tax prosecutions update

The ATO has updated its [tax crime prosecution case studies](#) to include the following cases for November 2020:

- ***Bank executive work-related deductions*** - the ATO reported that a NSW bank executive has been convicted and fined \$1,500 for making false work-related expense claims in his 2016 and 2017 returns which were not legitimately incurred. According to the ATO, the bank executive wrongfully obtained \$24,239 in refunds (which he has now repaid) for travel expenses that did not occur and education expenses that were either already paid for by his employer or were from previous financial years. The ATO reminded taxpayers that work-related deductions must: (i) have been spent with their own money and not reimbursed; (ii) directly relate to earning their income; and (iii) have a record as proof.
- ***Bricklayer sentenced for understated income and GST shortfall*** - a Queensland bricklayer has been sentenced to more than two years' jail for evading nearly \$100,000 in tax by under-reporting sales in his BAS and understating income in his income tax return.

## Appeal in GST scrap gold case: input tax credits allowed

The Full Federal Court has unanimously upheld a refiner's claim for input tax credits totaling \$122 million. The issue of the possible application of the GST anti-avoidance provisions was remitted back to the AAT: [ACN 154 520 199 Pty Ltd \(in liquidation\) v FCT \[2020\] FCAFC 190](#) (Perram, Moshinsky and Thawley JJ, 6 November 2020).

The refiner of precious metal (the "taxpayer") claimed it was entitled to claim input tax credits for the scrap gold it acquired refining from third-party suppliers. It processed this scrap gold into investment-grade bullion with a metallic fineness of at least 99.5%. It then made what it claimed were GST-free supplies of precious metal to bullion dealers, relying on s 38-385 of the GST Act. At issue was whether the taxpayer was entitled to treat the supply of precious metal to dealers as GST-free supplies under s 38-385.

At first instance, the AAT decided that the taxpayer failed to satisfy the requirement in s 38-385(a) that the supply of precious metal would only be GST-free if "it is the first supply of that precious metal after its refining by, or on behalf of, the supplier" – as the taxpayer was not refining the scrap gold it acquired: ACN 154 520 199 Pty Ltd (In Liq) and FCT [2019] AATA 5981. This was because the scrap gold in question had already been refined to the requisite standard before it was delivered to the taxpayer's refinery. Rather, the scrap gold (which was already of 99.99% fineness) was effectively being recycled through the refinery in the course of a manufacturing process that did not include any meaningful refining. If there was no refining within the meaning of s 38-385(a), the AAT said the gold bullion that was manufactured and sold was necessarily input taxed pursuant to s 40-100 (which ruled out any input tax credit entitlement).

In the alternative that the taxpayer could satisfy s 38-385, the AAT also upheld the Commissioner's declarations applying the anti-avoidance provisions under Div 165. The AAT concluded that there was a "scheme" for the purposes of s 165-10(2)(a) of the GST Act involving a carousel type arrangement based on supplying gold for refining after deliberately altering its form. In addition, the AAT upheld the additional \$58m of administrative penalties imposed by the ATO for the GST shortfall.

The Full Federal Court concluded that the AAT erred in its construction of s 38-385. In its view, on the proper construction of s 38-385, the taxpayer's supplies of gold to the dealers constituted the "first supply of that precious metal after its refining

by ... the supplier". They were, therefore, GST-free supplies and not input taxed supplies. It allowed the appeal and set aside the AAT's decision.

In relation to Div 165 of the GST Act, the Court concluded that the AAT denied the taxpayer procedural fairness in its reliance on the three documents as a basis for adverse findings of knowledge of certain matters on the part of the taxpayer. Those findings were integral to the AAT's consideration of whether Div 165 operates. This aspect of the AAT's decision was also set aside and remitted to a differently constituted AAT for redetermination. Finally, no question of law was deemed to arise in relation to the penalties.

## **FINANCIAL SERVICES**

### **FinTech: second issues paper released by Senate committee**

The Senate Select Committee on Financial Technology and Regulatory Technology has released for comment a [second issues paper](#) outlining the direction for the remainder of its inquiry. This follows the interim report which made 32 recommendations aimed at improving competition, productivity and support for FinTech and RegTech businesses. The Committee's final report is due by April 2021.

The second issues paper is focused on longer term issues to drive FinTech opportunities. The Committee is especially interested to gauge views about Australia's corporate tax settings in comparison with other countries. The committee is also interested in ideas to further encourage R&D activities.

**Submissions** on the second issues paper are due by 11 December 2020.



## Banking Royal Commission: further recommendations Bills

The [Financial Sector Reform \(Hayne Royal Commission Response\) Bill 2020](#) and [Corporations \(Fees\) Amendment \(Hayne Royal Commission Response\) Bill 2020](#) have been introduced in the House of Reps to implement further recommendations of the Banking Royal Commission. The package of legislation addresses 20 recommendations, and one additional commitment, from the Banking Royal Commission, including:

- strengthening the unsolicited selling (anti-hawking) provisions, including for superannuation and insurance products;
- introducing a deferred sales model for add-on insurance products, to promote informed purchasing decisions and prevent inappropriate sales of add-on insurance;
- making the handling and settlement of insurance claims a "financial service", which will require insurers to behave honestly, efficiently and fairly and comply with other licensing obligations, to improve claims handling practices;
- prohibiting the trustee of a superannuation fund from having a duty to act in the interests of another person, other than those arising from their duties as trustee of a superannuation fund; and
- allowing provisions in financial services industry codes to be enforceable, with breaches attracting civil penalties, ensuring better adherence by industry and certainty for consumers.

The Treasurer [said](#) these proposed changes will be complemented by providing further clarity regarding the role of the regulators (ASIC and APRA) and enhancing the requirements of financial institutions reporting breaches which will ensure significant misconduct is reported and investigated sooner. Exposure draft legislation for these measures was previously released on 31 January 2020.

With the introduction of these recommendations, Mr Frydenberg said the Government is now focussed on completing implementation of the remaining recommendations of the Royal Commission consistent with the [updated implementation roadmap](#) issued following the onset of COVID-19.

## Reference checking financial advisers: ASIC consultations paper

ASIC has released a Consultation Paper ([CP 333](#)) on the [proposed](#) reference checking and information sharing protocol for financial advisers and mortgage brokers. This follows the introduction of the Financial Sector Reform (Hayne Royal

Commission Response) Bill 2020 which will implement the Banking Royal Commission recommendation to mandate reference checking for financial advisers and mortgage brokers.

The consultation paper includes a [draft ASIC Protocol](#) setting out the proposed obligations for AFS licensees undertaking a reference check on an individual seeking to be employed or authorised as a financial adviser or mortgage broker. ASIC has also prepared a [draft information sheet](#) to help licensees understand the proposed obligations.

**Submissions** are due by 29 January 2021. ASIC expects to finalise the Protocol and information sheet before the new reference checking obligations in the Bill commence on 1 October 2021.

### **Limited financial advice: ASIC consultations paper**

ASIC has [released](#) a Consultation Paper ([CP 332](#)) seeking input on the impediments to the supply of "affordable" personal advice, and the practical steps that could be taken by ASIC and industry to improve access to good-quality advice.

The paper is particularly focused on how to promote access to quality "limited advice" and "scaled advice". ASIC said all personal advice can be scaled up and down to cover all areas relevant to the client, or one or some of the areas relevant to the client. "Limited advice" is personal advice that does not cover all areas that are relevant to the client. It is also known as "scaled", "piece-by-piece", "modular" or "episodic" advice.

ASIC acknowledged that many industry participants find it challenging to provide this type of limited advice given the stringent regulatory requirements and compliance costs. For example, ASIC is interested to receive feedback on which inherent costs to the provision of advice most impact the ability of AFS licensees to provide lower cost personal advice. ASIC is also interested to learn more about the experience of AFS licensees with digital personal advice (also known as robo-advice) and whether this is a good way to provide limited advice. ASIC is also seeking input on improving the example statements of advice (SoAs) in RG 244 and RG 90.

**Submissions** on CP 332 are due by 18 January 2021. ASIC said it will also hold industry roundtables in the first quarter of 2021.



## **SUPERANNUATION**

### **Super trustees outcomes assessments: APRA FAQ guidance**

APRA has published new [frequently asked questions \(FAQs\)](#) in relation to the outcomes assessment obligations for registrable superannuation entity (RSE) licensees. The FAQs address common areas of weakness identified from APRA's targeted review of trial outcomes assessments.

APRA expects the annual outcomes assessment to be undertaken by the end of February 2021, with a summary of this assessment to be published within 28 days of making the determination (as is required under s 52(9)(b)-(c) of the SIS Act).

APRA considers that the legislation provides an RSE licensee with discretion as to which 12-month period they utilise for the purposes of meeting the annual outcomes assessment requirements under s 52 of the SIS Act. APRA says the 12-month period could be the calendar year, financial year, income year for the RSE licensee or any other 12-month period.

APRA also said that RSE licensees should not place on hold work underway to comply with the outcomes assessment just because there may be changes to s 52(9) of the SIS Act to reflect the proposed 2020-21 Federal Budget measures. APRA's view is that the current obligations formalise what prudent trustees should be doing in the normal course of business to determine whether they are satisfying their duty to promote the financial interests of beneficiaries pursuant to s 52(12).

### **ASIC's superannuation priorities for 2020-21**

While COVID-19 remains a challenge, ASIC says it is committed to progressing its core regulatory priorities to address longer-term consumer harms. To achieve this vision, a wide range of regulatory work will progress in parallel to ASIC's pandemic responses, including its work to implement the recommendations of the Banking Royal Commission, said Jane Eccleston, ASIC's Superannuation Senior Executive Leader.

In a [recent article](#), Ms Eccleston said the unusual and challenging circumstances associated with COVID-19 require trustees to make new business arrangements, amend priorities and adjust their short-term investment strategies while also planning

for the long-term economic impacts. And as trustees continue to deal with the immediate issues, it must not be at the expense of long-term thinking, Ms Eccleston said.

ASIC is focusing on the behaviour of trustees to improve consumer outcomes in superannuation. Part of this work involves enhanced supervision and surveillance of trustees to ensure they act in the best interests of members and treat them fairly. Key areas for ASIC include insurance within superannuation, product design and distribution obligations (DDO), internal dispute resolution; and retirement income calculators and projections.

## Revised APRA remuneration standards released

APRA has released an updated version of its remuneration [Draft Prudential Standard \(revised CPS 511\)](#) that will apply to all APRA-regulated entities (including superannuation funds), in response to the recommendations of the Banking Royal Commission.

APRA has also issued a [Response Paper](#) setting out its response to feedback on the initial consultation proposals released in July 2019. APRA said the revised draft standard has moved to a more principles-based approach that is designed to be risk based and proportionate, with more comprehensive requirements for larger, more complex regulated entities - Significant Financial Institutions (SFIs). The key revisions to [revised CPS 511 \(Remuneration\)](#) for SFIs include:

- replacing the 50% cap on financial measures for variable remuneration with a requirement that material weight be assigned to non-financial measures, combined with a risk and conduct modifier that can potentially reduce variable remuneration to zero; and
- a reduction in the minimum deferral periods for variable remuneration from seven to six years for CEOs, from six to five years for senior managers and from six to four years for highly paid material risk takers.

**Submissions** on revised CPS 511 are due by 12 February 2021.

**Date of effect:** The prudential standard is scheduled to be finalised in mid-2021 and come into effect on 1 January 2023 (for SFIs that are ADIs); 1 July 2023 (for insurance and superannuation SFIs); and 1 January 2024 (for non-SFIs).

## Super guarantee charge: post-amnesty remission

[Practice Statement PS LA 2020/4](#) sets out guidelines for ATO officers on the remission of additional super guarantee charge (SGC) following the ending of the one-off SG amnesty on 7 September 2020. It finalises Draft PS LA 2020/D1 and is substantially the same as the draft, although further examples have been added.

An additional penalty of 200% of the SGC amount is automatically imposed if an employer fails to lodge an SG statement by the due date or otherwise fails to provide information relevant to assessing the employer's liability to pay the SGC for a quarter. The Commissioner has the discretion to remit the penalty, in full or in part, during the original assessment stage or through an objection decision. However, where a historical quarter is assessed for SGC after 7 September 2020, the penalty cannot be remitted below 100% of the SGC unless:

- the employer voluntarily came forward to lodge an SG statement prior to being notified of any ATO compliance action; or
- exceptional circumstances prevented the employer from lodging an SG statement either during the amnesty period or prior to being notified of ATO compliance action.

The ATO has consistently maintained that it will take a "very strict approach" to penalties if an employer could have come forward voluntarily to disclose an SG shortfall but failed to do so. The ATO will generally expect minimum penalties of 100% of the SGC if an employer's disclosure is due to ATO compliance action, even for quarters where there is no legislated restriction on remission.

PS LA 2020/4 sets out a four-step penalty remission process, which the ATO considers in making a decision on the remission, in whole or part, of the additional SGC imposed:

- Step one: set a base penalty level based on the employer's attempt to comply with their SGC obligations. If the employer took voluntary action prior to notice of compliance action, there is no restriction on remission.
- Step two: determine any penalty uplift based on the employer's compliance history.
- Step three: identify other mitigating facts and circumstances. If an employer did not take voluntary action prior to notice of ATO compliance action at Step one, it would generally not be considered appropriate for the ATO to remit the penalty at this step any lower than the base penalty set at Step one.

- Step four: identify any exceptional circumstances that prevented lodgment of an SG statement prior to notice of ATO compliance action. In the case of a natural disaster or COVID-19, the ATO says that this circumstance must have directly impacted the employer's ability to lodge (eg if the employer was displaced interstate or overseas and unable to access business records).

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

**Previous Practice Statement on remission of additional 200% penalty withdrawn**

**PS LA 2019/1** (Remission of additional superannuation guarantee charge) has been **withdrawn**.

## **REGULATOR NEWS**

### **Cloud computing: TPB Q&A**

The Tax Practitioners Board has compiled a list of [questions and answers](#) following its webinar – Using the cloud, addressing the following topics surrounding cloud computing: (i) benefits and functionalities; (ii) security; (iii) questions to ask when seeking for providers; (iv) confidentiality of client information; and (v) compliance.

### **Victorian Small Business Digital Adaption Program**

The Program allows eligible businesses to trial and then receive access to digital products, tools and training to use to build digital capability in their day-to-day operations. Once purchased then an application can be made for a rebate of up to \$1,200 **more**

#### **Types of support**

Businesses can register to trial selected digital business management tools to adapt websites, transition to e-commerce and manage finances, from suppliers who have partnered with the Victorian Government.

After the trial period, businesses can purchase a product they have trialled and apply for a rebate of \$1,200 to access the product for 12 months.

**Eligibility requirements**

Small businesses, sole traders, and micro businesses.

- Operate a business in Victoria
- Hold an Australian Business Number (ABN) and held that ABN on 13 September 2019
- Registered for Good and Services Tax (GST) on 13 September 2020.
- Applicants need to attest that they are currently operating and intend to adapt their business to a digital operating environment.

**Steps**

- Complete the online [registration form](#)
- Sign up for and purchase their preferred digital product through one of the partner product suppliers
- Apply for the purchase rebate of \$1,200 to cover 12 months' access

**Key dates**

Open from 15 November 2020 to 31 March 2021.

Register before trial period closes on 28 February 2021.

Purchase rebates open from 1 December 2020 to 31 March 2020 or until funds are exhausted.

**More information**

[Business Victoria website](#)

Business Victoria phone: 13 22 15

**Frequently Asked Questions (FAQs)**

A list of FAQs have been published and can be accessed [here](#).

**Acknowledgement:**

The above information is an extract from the [Business Victoria](#) website.