

TAXATION

2021-22 Pre-Budget submissions open

The Government is seeking 2021-22 pre-Budget submissions from individuals, businesses and community groups on their views for priorities for the Budget.

JobKeeper update: fewer recipients than forecast

Treasurer has advised that there has been a lower-than-forecast take-up of the JobKeeper payment extension in October.

JobKeeper: deadline for December declaration extended

We asked for some flexibility to account for the fact that people will be away on holidays or taking time out during the festive season, and the ATO have responded.

The ATO have advised that the December business monthly declaration for JobKeeper eligibility has been extended for two weeks.

ATO data-matching for online sales

ATO has announced it will acquire data on Australian sales made through online selling platforms for the 2018-19 through to the 2022-23 financial years.

HomeBuilder program extended to March 2021

Government has advised it will extend the end date of the HomeBuilder program to 31 March 2021.

Man who attempted to obtain more than \$1m in tax refunds jailed

ATO has reported that a WA man was sentenced to two and a half years jail for attempting to obtain just over \$1m in fraudulent tax refunds.

Options to accelerate e-invoicing: consultation paper

Treasury has released a consultation paper following the mandate of adopting electronic invoicing by 1 July 2022.

Temporary full expensing changes etc: Bill introduced

Bill has been introduced to give effect to temporary full expensing amendments as well as the charities and national redress scheme.

Restriction on use of cash Bill dropped

The Bill that would have made it a criminal offence of entities to make or accept cash payments of \$10,000 or more has been discharged from the Senate Notice Paper.

Income withholding rate: seasonal labour mobility program

Legislative instrument has been registered to ensure that seasonal labour mobility program employees remain on the same income tax withholding rate.

Victorian Budget 2020-21

Victorian Budget 2020-21 has been handed down including measures such as the Jobs Tax credit, payroll tax changes, and land duty concessions.

GST fraud syndicate member sentenced to five years jail

ATO has reported a member of a GST fraud syndicate has been sentenced to five years jail for conspiring to defraud the Commonwealth of more than \$5m in GST refunds.

GST: waiver of tax invoice for corporate cards

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

JOBMAKER Hiring Credit – Registrations Now Open

The Government's proposed JOBMAKER Hiring Credit is now law. Employers can now check if they are eligible and register to participate via ATO online services. Through this scheme, eligible employers can receive JOBMAKER Hiring Credit payments of up to: \$200 a week - for each eligible employee aged 16 to 29 years old; and \$100 a week - for each eligible employee aged 30 to 35 years old.

Work Related Expenses - ATO update on Lambourne Case

Administrative Appeal Tribunal's decision in Lambourne and Commissioner of Taxation [2020] AATA 4562. The case created some uncertainty suggesting new principles regarding deductions for work-related expenses.

FINANCIAL SERVICES

ASIC to recover \$320m in costs

ASIC has registered instruments to specify how it will allocate regulatory costs of \$320m for the 2019-20 financial year.

Trustees of unregistered MIS: ASIC licensing requirements

ASIC has released an information sheet on the AFS licensing requirement for trustees of unregistered managed investment schemes.

SUPERANNUATION

Budget super reforms: draft legislation

Government has released draft legislation on various Budget measures including single default account for members and best interests duty.

Employer super contribution buoyed by JobKeeper

APRA has released its quarterly superannuation performance publication and MySuper statistics report for September 2020.

Australian retirement income system effective: report

Government has released the final report of its retirement income review indicating that the Australia retirement system is effective.

ASIC takes action on enforceable undertaking by SMSF adviser

ASIC has commenced civil proceedings in the Federal Court against a Gold Coast accountant for allegedly failing to comply with the terms of an enforceable undertaking.

SMSF in-house asset exemption for rent deferrals: Determination

ATO has registered a Determination to provide temporary in-house asset exemption for an SMSF asset that is attributable to the deferral of rental income due to COVID-19.

REGULATOR NEWS

TPB guidance: high-risk practitioners

TPB has released general guidance on how high-risk practitioners operate, and the types of high-risk tax practitioners.

Review of TPB

Government has released the final report of the independent review of the TPB as well as its response in the report.

Board of Taxation CEO update

Board of Taxation has issued its CEO update for November 2020 including overview of the reviews conducted by the Board.

TAXATION

2021-22 Pre-Budget submissions open

The Government is seeking submissions from individuals, businesses and community groups on their views for priorities for the 2021-22 Federal Budget. Further information on [how to lodge submissions](#) is available on the Treasury website. To ensure views can be incorporated into the Budget process at an early stage, submissions are due by Friday, 29 January 2021, Assistant Treasurer Michael Sukkar [said](#).

JobKeeper update: fewer recipients than forecast

The Treasurer has [advised](#) that there has been a lower-than-forecast take-up of the JobKeeper Payment extension in October. The JobKeeper end date was earlier extended from 28 September 2020 to 28 March 2021, incorporating differing payment rates and eligibility rules.

The first version of JobKeeper supported 3.6 million workers and around one million employers. In terms of the second version, the preliminary data indicates it is supporting around 1.5 million workers and 500,000 employers. In other words, around two million less workers and around 450,000 fewer employers qualified for JobKeeper in October than in September.

JobKeeper: deadline for December declaration extended

The ATO has [advised](#) that the December business monthly declaration for JobKeeper eligibility must be completed between 4 January 2021 and 28 January 2021. This is an extension of two weeks past the usual due date of the 14th day of each month.

The JobKeeper Payment extension two starts from 4th January 2021. Eligible employers need to complete a new decline in turnover test and the payment rates change for eligible employees.

To claim JobKeeper payments for this period, employers will need to show that their actual GST turnover has declined. Eligible employers will be able to submit their decline in turnover form for JobKeeper extension two from 4 January 2021 to 28 March 2021.

Employers will need to:

- pay their eligible employees at least the correct JobKeeper amount of either \$1,000 for tier 1 or \$650 for tier 2.
- tell us whether the tier 1 (higher) or tier 2 (lower) payment rate applies to each eligible employee, business participant or religious practitioner if you haven't already done so.

Key date changes in January 2021

Wage condition for JobKeeper Fortnight 20

- For JobKeeper Fortnight 20 (21 December 2020 to 3 January 2021), we are allowing employers until Monday 4 January 2021 to meet the wage condition for their eligible employees or business participant.

Business monthly declarations for JobKeeper Fortnights 18, 19 and 20 are now due 28 January 2021

- Employers can complete their business monthly declaration from 4 January 2021. We will continue to process monthly declarations to reimburse employers for December payments past the 14 January 2021 due date. These are now due by 28 January 2021.

Meeting the wage condition for JobKeeper Fortnights 21 and 22

- For the JobKeeper Fortnights 21 and 22 (starting 4 January 2021 and 18 January 2021), we are allowing employers until 31 January 2021 to meet the wage condition for their eligible employees or business participant.
- This is to make sure that employers have paid their eligible employees before claiming JobKeeper payments in their February monthly business declarations.

ATO data-matching for online sales

The ATO has gazetted the [Notice of Data Matching Program - Online Selling 2018-19 to 2022-23 financial years](#), which will enable it to acquire data on Australian sales made through online selling platforms for the 2018-19 through to the 2022-23 financial years.

The ATO estimates the total number of account records obtained to be between 20,000 and 30,000 each financial year. It expects around half of the matched accounts will relate to individuals.

These records will be electronically matched with ATO data holdings to identify non-compliance with registration, lodgment, reporting and payment obligations under taxation laws.

HomeBuilder program extended to March 2021

The Government has issued a [joint media release](#) advising that it has extended the end date of the HomeBuilder program from 1 January 2021 to 31 March 2021.

For all new build contracts signed between 1 January 2021 and 31 March 2021:

- eligible owner-occupier purchasers will receive a \$15,000 tax-free amount (\$25,000 up to 31 December); and
- the property price caps for new builds in NSW and Victoria will be increased to \$950,000 and \$850,000 respectively (unchanged for the other States and Territories at \$750,000).

In addition, the construction commencement deadline will be extended from three months to six months for all eligible contracts signed on or after 4 June 2020.

Man who attempted to obtain more than \$1m in tax refunds jailed

The ATO has [reported](#) that a WA man was sentenced to two and a half years jail for attempting to obtain just over \$1 million in fraudulent tax refunds. The man allegedly submitted five income tax returns (2012 to 2016) falsely stating that he was working for a meat company and that the company had withheld amounts of tax payments from him. As a result of his fraudulent claims, he received four electronic refunds totaling \$42,191.06 (which he was ordered to pay in reparations by the Perth District Court), while the remaining refunds amounting to just over \$1 million were stopped by the ATO pending further investigation.

According to the ATO, the investigation found the man had been employed by the meat company only in 2012 and for the next four years claimed that he had received more than \$3 million in total salary and wages from the company, increasing his claims each time he lodged without realising the ATO was already investigating.

Options to accelerate e-invoicing: consultation paper

Treasury has released a consultation paper entitled [Options for mandatory e-Invoicing adoption by businesses](#). This follows the Prime Minister's previous announcement that the Government's Digital Business Plan included funding to mandate the adoption of electronic invoicing by 1 July 2022 for all Commonwealth government agencies, and to consult on options for mandatory adoption of e-invoicing by businesses.

It is intended that all Commonwealth Government agencies must be able to receive Pan European Public Procurement OnLine (Peppol) e-invoices by that date, with large agencies having to do so by 1 July 2021.

Submissions are due by 18 January 2020.

The Assistant Treasurer, Michael Sukkar, states in a [media release](#) that the Government has brought together over 20 business leaders in a roundtable discussion on options for the rollout of e-invoicing to cut red tape and running costs for Australia's businesses. The release contends that, when an e-invoice replaces a paper invoice, the businesses involved could share savings of up to \$20 per invoice.

Temporary full expensing changes etc: Bill introduced

The [Treasury Laws Amendment \(2020 Measures No 6\) Bill 2020](#) has been introduced in the House of Reps proposing to give effect to the previously announced tax and tax-related measures set out below.

Schedule 4 to the Bill also contains "minor and technical changes", ie amendments which correct typographical and numbering errors, bring provisions in line with modern drafting conventions, repeal inoperative provisions, remove administrative inefficiencies, address unintended outcomes and update references.

Temporary full expensing amendments

Temporary full expensing currently allows eligible businesses to deduct the full cost of eligible depreciating assets that are first held, and first used or installed ready for use for a taxable purpose, between 6 October 2020 and 30 June 2022. Businesses

are also able to deduct the full cost of improvements to these assets and to existing eligible depreciating assets made during this period.

Schedule 1 to the Bill:

- provides an alternative mechanism to the existing test for working out if the \$5 billion threshold applies to qualify for the temporary full expensing concession, to satisfy the new test, companies must have less than \$5 billion in total statutory and ordinary income (excluding non-assessable non-exempt income) in either the 2018-19 or 2019-20 income year, and invested more than \$100 million in tangible depreciating assets in the period 2016-17 to 2018-19; and
- allows entities to opt out of temporary full expensing on an asset-by-asset basis.

The Government has [said](#) this expand access to the legislated temporary full expensing measure (announced in the 2020-21 Budget and enacted in October) will enable more large Australian-based businesses with a track record of investing in Australia to be eligible for the measure. The full expensing measure currently allows businesses with aggregated turnover of less than \$5 billion to deduct the full cost of eligible depreciable assets of any value in the year they are first used or installed (up to 30 June 2022).

This change will mean businesses with an aggregated turnover of more than \$5 billion due to the income of an overseas parent or associate will now be able to qualify provided they meet the additional investment requirements. The Government also said that it will allow businesses to opt out of temporary full expensing and the backing business investment incentive on an asset-by-asset basis, to allow more flexibility for businesses by removing potential disincentives.

Date of effect: The measure will apply from the date of assent, but the Bill contains a transitional provision to provide that the balancing adjustment event for the temporary full expensing measure applies even if the balancing adjustment event (balancing adjustment time) occurs before the commencement date (ie it will effectively commence from 6 October 2020).

Charities and the National Redress Scheme

By way of background, the Redress Scheme was established 1 July 2018 in response to recommendations by the Royal Commission into Institutional Responses

to Child Sexual Abuse. The Bill contains measures to encourage religious charities that may be responsible for past institutional child sexual abuse to join the Redress Scheme to retain their basic religious charity status.

Specifically, it amends the definition of basic religious charity in s 205-35 of the ACNC Act to provide that an entity is not a basic religious charity if:

- the entity is identified as being involved in the abuse of a person, either in an application for redress or in response to a request for information from the Scheme Operator;
- the application for redress relating to the entity has not been withdrawn; and
- the entity does not join the Redress Scheme by becoming a participating non-government institution in the Redress Scheme by the relevant day.

Date of effect: This measure will commence three months after the date of assent (ie to allow charities time to join the Scheme).

Restriction on use of cash Bill dropped

The [Currency \(Restrictions on the Use of Cash\) Bill 2019](#) has been discharged from the Senate Notice Paper, which means the Government will not proceed with it.

It would have made it a criminal offence for entities to make or accept cash payments of \$10,000 or more. The measures would not have applied to individual-to-individual transactions.

The Senate Economics Legislation Committee report in February 2020 had recommended that the Bill be passed. There has been no reason provided for the discharge.

Income withholding rate: seasonal labour mobility program

The Government has registered legislative instrument, [Taxation Administration \(Remedial Power – Seasonal Labour Mobility Program\) Determination 2020](#), which modifies the operation of s 840-905(b)(ii) of ITAA 1997 and s12-319A(b)(ii) of Sch 1 TAA 1953 to include foreign resident employees of Approved Employers under the Seasonal Labour Mobility Program (the "Program") who previously held a Temporary Work Visa (subclass 403) and have extended their stay in Australia using a different temporary visa granted under the Migration Act 1958. The modifications enable

employees under the Program who now hold a different temporary visa (eg Temporary Activity Visa (subclass 408)) and previously held a Temporary Work (International Relations) Visa (subclass 403) to continue to remain liable to a final withholding tax rate of 15% and their employers to withhold tax at this rate. The modifications only apply to employees under the Program as the other legislative requirements must be met.

The instrument, which applies retrospectively, ensures that foreign resident employees under the Program, that previously held the Temporary Work (International Relations) Visa (subclass 403) and now hold a different temporary visa, are liable to pay income tax at 15% under the Program and not at a much higher non-resident tax rate from the time they started to hold a different temporary visa until the modification commenced. The modifications also ensure that these employees would not have the added burden of being required to lodge an income tax return in relation to that income and their employers to withhold tax at the higher non-resident tax rates.

Date of effect: The instrument applies with retrospective effect from 24 March 2020 to ensure that taxation arrangements for employees under the Program and their employers do not change as a result of some employees having been granted other temporary visas. It will be repealed at the start of 1 April 2024, as part of the usual sunseting procedures..

Victorian Budget 2020-21

Victorian Treasurer, Tim Pallas has handed down the [Victorian Budget 2020-21](#). Additional tax relief measures to note include:

- New Jobs Tax Credit – businesses with annual Australian group wages less than \$10 million will receive a non-refundable credit of 10 cents for every dollar of Victorian wages paid in 2020-21 and 2021-22 above the previous year's wages. As a result, the more these businesses re-hire staff and employ new workers, the less payroll tax they'll have to pay. Special rules will apply for new businesses;
- Threshold for paying payroll tax annually increased from \$40,000 to \$100,000 - the State government estimates that over 7,000 extra businesses will be able to pay their payroll tax annually, rather than monthly;
- A land transfer duty waiver of 50% will apply for new residential properties (and 25% for existing residential properties) for purchases up to \$1 million for

contracts entered into between 25 November 2020 and 30 June 2021. This relief is over and above existing concessions. A first home buyer, for example, purchasing an existing home worth \$700,000 will be eligible for both the first home buyer duty concession and then the new 25% waiver, totalling tax relief of more than \$18,500;

- The 50% commercial and industrial land transfer duty concession for eligible properties anywhere in regional Victoria will be brought forward to apply to contracts entered into from 1 January 2021 (rather than 1 July 2023 as per the 2019-20 Budget);
- Build-to-rent sector in Victoria - from 1 January 2022, Victoria's Big Housing Build will provide a 50% land tax discount for eligible new developments until 2040. These developments will also be exempt from the Absentee Owner Surcharge over the same period.

GST fraud syndicate member sentenced to five years jail

The ATO has [reported](#) that a member of a GST fraud syndicate has been sentenced in the Melbourne County Court to five years jail (with a non-parole period of three years) for conspiring to defraud the Commonwealth of more than \$5m in GST refunds.

In a joint investigation between the Australian Federal Police (AFP) and the ATO, Operation SPINEL identified and charged the man along with two other members of the fraud syndicate in 2017. The syndicate scheme involved illegally obtaining personal identification details which were then used to create false entities, registered for GST. Business activity statements (BAS) were then lodged to claim false GST refunds, which were directed to bank accounts that had been created using the stolen identities.

ATO Assistant Commissioner, Ian Read, said \$1.5m has been recovered and those who had their identity compromised have been provided with support to get their affairs back on track.

GST: waiver of tax invoice for corporate cards

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

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

Date of effect: The determination applies to net amounts for tax periods that start on or after 10 February 2020.

JOBMAKER Hiring Credit – Registrations Now Open

Employers can register using ATO online services or the Business portal, or via their registered tax or BAS agent.

Employers can register at any time until the program closes.

It is important to note that while receiving the JobMaker Hiring Credit, an employer cannot also receive:

- a wage subsidy under another Commonwealth program for that employee
- any JobKeeper payments.

These payments apply to new positions eligible employers create between 7 October 2020 and 6 October 2021.

These newly created positions must also meet additionality criteria, requiring an increase in both the employers:

- total employee headcount from 30 September 2020, and
- payroll for the JobMaker period, compared to the three months to 6 October 2020.

Eligible employers can make a claim every three months, for up to 12 months from an eligible employee's start date. Claims can be made each quarter from 1 February 2021.

Employer and employee eligibility requirements can be checked:

- Employer eligibility requirements <https://www.ato.gov.au/General/JobMaker-Hiring-Credit/Employers/Eligible-employers/>
- Employee eligibility requirements <https://www.ato.gov.au/General/JobMaker-Hiring-Credit/Employers/Your-eligible-employees/>

Additional information – including user guide, factsheets and video:

<https://www.ato.gov.au/General/JobMaker-Hiring-Credit/JobMaker-Hiring-Credit-resources/>

We will publish additional resources on the website.

Work Related Expenses - ATO update on Lambourne Case

Administrative Appeal Tribunal's decision in Lambourne and Commissioner of Taxation [2020] AATA 4562.

The case created some uncertainty suggesting new principles regarding deductions for work-related expenses.

The ATO has responded to this uncertainty and has provided the following response:

- The ATO view on 'discretionary' expenditure by employees and the relevance of employer requirements is set out in Taxation Ruling TR 2020/1 Income tax: employees: deductions for work expenses under section 8-1 of the Income Tax Assessment Act 1997. The Ruling says:
- Employer requirements do not determine the question of deductibility - it is always a question of relevant nexus to earning income
- Expenses with a sufficiently close connection to earning income will be deductible notwithstanding they are 'discretionary'
- Expenses without a sufficiently close connection do not become deductible simply because they are encouraged or required by the employer.
- Employer requirements can be relevant, however, to determine the proper scope of an employee's income-producing activities, which is relevant to assess the true character of an outgoing (Example 8 in paragraph 36 is a good illustration)
- The recent Administrative Appeals Tribunal decision in Lambourne and the Commissioner of Taxation does not change the ATO view in terms of the application of s 8-1. We consider that comments made in the decision were not intended to introduce a necessity requirement into first limb of s8-

1. Rather, they were made in response to arguments put for the taxpayer and in light of the specific facts and circumstances of the case. We do not think they represent an expression of any broader principle.

More information [here](#).

FINANCIAL SERVICES

ASIC to recover \$320m in costs

The [ASIC \(Supervisory Cost Recovery Levy - Regulatory Costs\) Instrument 2020/1074](#) and [ASIC \(Supervisory Cost Recovery Levy - Annual Determination\) Instrument 2019/1073](#), has been registered to specify how ASIC will allocate its regulatory costs of \$320m for the 2019-20 financial year (up from \$277m in 2018-19) to calculate the levies payable by each leviable entity across the 48 subsectors. For example, ASIC has attributed \$23.8m of its costs to the supervision of 114 superannuation trustees, and \$56.2m for 2,991 AFS licensees that provide personal advice on financial products to retail clients.

ASIC will use the figures set out in the Instruments to calculate the levies payable by each leviable entity for the 2019-20 pursuant to the formula in the ASIC Supervisory Cost Recovery Levy Regulations 2017. ASIC is expected to send out the invoices for the levies in January 2021.

Trustees of unregistered MIS: ASIC licensing requirements

ASIC has released an Information Sheet ([INFO 251](#)) on the AFS licensing requirement for trustees of unregistered managed investment schemes (MIS) that issue, vary or dispose of interests in unregistered schemes that are financial products. ASIC notes that a trustee that issues, varies or disposes of interests in an unregistered MIS must generally hold an AFS licence authorising it to deal in such interests.

The ASIC information sheet outlines limits in the scope of the two exemptions from the AFS licensing requirements in ss 911A(2)(a) and (b) of the Corporations Act 2001 - the authorised representative exemption and intermediary authorisation

exemption. A trustee of an unregistered scheme who relies on the intermediary authorisation exemption cannot also be an authorised representative in relation to making offers to arrange to issue, vary or dispose of a financial product under an arrangement for that unregistered scheme.

As an authorised representative of an AFS licensee, ASIC says the trustee of an unregistered scheme can only rely on the authorised representative exemption if it provides a financial service on behalf of the AFS licensee. However, the trustee cannot rely on this exemption to avoid the requirement to hold an AFS licence to issue, vary or dispose of an interest in an unregistered scheme for which it is the trustee. ASIC says the action of issuing, varying or disposing of an interest in a scheme as a trustee is, by its nature, the action of a principal.

SUPERANNUATION

Budget super reforms: draft legislation

The Government has released [exposure draft legislation](#) proposing to implement its Your Future, Your Super reforms announced in the 2020-21 Federal Budget. The package of draft legislation includes the following measures aimed at improving outcomes for super members:

- Single default account "stapled" to member - employers will be required to make contributions into an employee's existing fund (that is "stapled" to the member), if new employees have one and do not choose a fund to receive contributions. The choice of fund rules in the Superannuation Guarantee (Administration) Act 1992 will be amended so that if a new employee from 1 July 2021 has an existing "stapled" super account, and does not choose a fund to receive contributions, their employer will be required to make contributions for the employee into the stapled fund. Employers will need to request the Commissioner to identify whether there is a stapled fund for the employee. A digital service will be established and maintained by the ATO for this purpose. Employees who are employed by their employer before 1 July 2021 will not be affected by the changes.
- Best "financial" interests duty for super trustees - a new duty will require super trustees (including SMSF trustees) to act in the best "financial" interests of their members. The new duty will be implemented by amending the existing covenants in the SIS Act (which requires trustees to perform their duties in the

"best interests" of the beneficiaries) so that they refer to the "best financial interests". The new duty will specifically apply to payments to third parties. The SIS Act will also allow regulations to be made to specify that certain payments are prohibited, or prohibited unless certain conditions are met. The evidential burden of proof for the best financial interests duty will be reversed so that the onus is on the trustee/director to adduce evidence to support compliance.

- APRA benchmarking of super funds - APRA will be required to conduct an annual performance test for MySuper products, and other products to be specified in regulations. Trustees will be required to give notice to members when a product fails the test. Where a product has failed the performance test in two consecutive years, the trustee will be prohibited from accepting new beneficiaries into that product. APRA may lift the prohibition if circumstances specified in the regulations are satisfied. Superannuation products will also be ranked and published on a website maintained by the ATO.

Date of effect: Generally, 1 July 2021.

Submissions are due by 24 December 2020.

Employer super contribution buoyed by JobKeeper

APRA has released its [Quarterly Superannuation Performance](#) publication and the *Quarterly MySuper Statistics* report for the September 2020 quarter showing that total super assets were down -1.6% to \$2.891 trillion over the year to 30 September 2020. MySuper total assets were \$754bn (down -3.3%). Self-managed super fund (SMSF) assets totalled \$728bn as at 30 September 2020 (down -4% from September 2019).

While annual member contributions of \$23.3bn were -1.8% lower than the previous year, employer contributions were buoyed by JobKeeper payments and increased by 4.1%. Super Guarantee contributions in the September 2020 quarter of \$16.5bn were lower than trend but exceeded the September 2019 quarter contributions by \$0.4bn. Conversely, personal contributions for the September 2020 quarter of \$4.4bn were 19.1% lower than for the September 2019 quarter.

Benefit payments for the September 2020 quarter were \$33.9bn which was slightly lower than the \$36.9bn paid during the prior quarter. Benefit payments for the year to September 2020 were \$112.3bn, including \$33.9bn paid under the COVID-19 early release scheme which came into effect on 20 April 2020 (and ends on 31 December 2020).

Australian retirement income system effective: report

The Government has released the [Retirement Income Review Final Report](#) (the "Report"). The Report is based around "the three pillars of Australia's retirement income system": (i) a means tested Age Pension; (ii) compulsory superannuation; and (iii) voluntary savings, including home ownership. The Report states that the system fundamentally "allows Australians to achieve adequate retirement incomes, is fiscally sustainable and provides appropriate incentives for self-provision in retirement".

The Report did note that in the context of the COVID-19 pandemic, predicting and reflecting the economic impacts to the long-term performance of the retirement income system is outside the scope of review as the pandemic's full effects and any long-term economic consequences will not be known for some time. It does take into account the short- to medium-term effects of the pandemic in its analysis, where appropriate.

Treasurer Media Release

The Treasurer [said](#) that the Review provides confirmation of the policy direction being pursued with respect to the importance of increasing the efficiency of the superannuation system and lifting home ownership rates – both identified as key drivers of an adequate retirement income. Specifically, the Government's (i) "Your Future, Your Super" reforms will simplify and enhance member engagement with their superannuation and increase the efficiency of the superannuation system through lowering fees and improving returns; and (ii) First Home Loan Deposit Scheme, First Home Super Saver Scheme and HomeBuilder will allow more Australians to buy their first home sooner to enhance the wellbeing of Australians in retirement.

The Government also said that it will continue to carefully consider the observations made in the Review together with the findings of related reviews including the Aged Care Royal Commission and remaining recommendations of the Productivity Commission's report into Superannuation.

ASIC takes action on enforceable undertaking by SMSF adviser

ASIC has [commenced civil proceedings](#) in the Federal Court against a Gold Coast accountant for allegedly failing to comply with the terms of an enforceable undertaking (EU) previously entered with ASIC.

The EU required the accountant to provide information, including a copy of an ASIC media release, to each client that she had provided personal advice to while an authorised representative of an SMSF advice company. This followed ASIC allegations that the accountant had failed to act in the best interests of her clients and had prioritised her own interests above her clients' interests.

ASIC has now alleged that the accountant took deliberate steps to reduce the likelihood that her clients would receive the written information required by the EU. For example, ASIC alleged that the accountant directed that the letters not be sent to some clients that had made complaints about the company and other letters be sent to client addresses from expired driver's licences. ASIC is seeking orders from the Federal Court directing the accountant to comply with the relevant terms of the EU.

SMSF in-house asset exemption for rent deferrals: Determination

The ATO has registered the [Self Managed Superannuation Funds \(COVID-19 Rental income deferrals - In-house Asset Exclusion\) Determination 2020](#) to provide a temporary in-house asset exemption for an SMSF asset that is attributable to the deferral of rental income due to COVID-19. The wording of the final Instrument has been slightly revised from the previous draft SPR 2020/D2 released on 3 August 2020.

The Instrument ensures that an SMSF asset will not be considered an in-house asset where the SMSF, during the 2019-20 and 2020-21 financial years:

- allows a related party to defer the payment of rent owing under a lease agreement (on arm's length terms) to ease the financial impact of COVID-19 which creates the asset held by the fund; or
- holds an interest in a company or unit trust (a related party), which would otherwise be an exempt in-house asset under regs 13.22B or 13.22C of the SIS Regs, and that company or unit trust allows a tenant to defer the payment of rent under a lease (on arm's length terms) to ease the financial impact of COVID-19.

The exemption also means that SMSF auditors are not required to report a contravention to the ATO.

The exemption will only apply where the landlord has "acted in good faith" and agreed that the tenant can defer payment of rent on arm's length terms during one or both of the 2019-20 and 2020-21 income years in order to ease the financial hardship caused by COVID-19. The [National Cabinet Mandatory Code of Conduct](#) (or any relevant State based Codes or legislation) may assist in assessing whether the rental deferral has been negotiated in good faith and on arm's length terms. There must also be contemporaneous documentation reflecting the arm's length terms and that the lease remains enforceable. Any deferred amounts must also be repaid by the tenant as soon as practicable.

Date of effect: The Instrument applies to rent relief provided during 2019-20 and 2020-21.

REGULATOR NEWS

TPB guidance: high-risk practitioners

The Tax Practitioners Board (TPB) has released [general guidance](#) on how high-risk tax practitioners operate, the types of high-risk tax practitioners, how the TPB identifies and assess the risk they pose to the tax system, and the consequences of tax practitioners failing to comply with the Tax Agent Services Act 2009.

Review of TPB

The Government has released the [final report](#) of the independent review of the Tax Practitioners Board, as well as its [response to the report](#). The report makes 28 recommendations, with the Government supporting 20 of these in full, in part or in-principle. The Assistant Treasurer [states](#) that additional consultation will be undertaken prior to implementing some of these recommendations.

The TPB itself [welcomed](#) what the Assistant Treasurer's statement, which it felt recognised the "essential service of the TPB to the community, its good work in

regulating the tax profession, and seeks to further enhance its independence, effectiveness, and legislative framework".

Some of the key recommendations that have been accepted by the Government include the following.

- The TPB and ATO should maintain and publish a plan that sets out how they will work together, encouraging early engagement, strengthening information sharing, providing clear responsibilities and accountabilities and setting agreed strategic goals.
- The TPB and ATO – and the TPB and ASIC – should be legally obliged to co-operate, share information and notify the other where breaches have been detected.
- The eligibility requirements for company and partnership tax practitioners should be amended to include a requirement that the entity has "appropriate governance arrangements" in place that demonstrate who is accountable for the delivery of tax agent services.
- The fit and proper person test be amended to ensure greater consistency with the requirements of other Government regulators, such as ASIC and APRA.
- The fit and proper person test be extended to cover any close associates relevant in the provision of tax agent services, and/or employees involved in the provision of such services.

The registration period be converted to an annual period (currently three years).

Subsequently, the TPB issued more details about the Government's response to the report of the independent review of the TPB. The TPB initially welcomed the Assistant Treasurer's statement, which it felt recognised the "essential service of the TPB to the community, its good work in regulating the tax profession, and seeks to further enhance its independence, effectiveness, and legislative framework".

The [latest release](#) advises that there will be further consultation on a range of possible reforms, including the following:

- a contemporary review of the education and relevant experience requirements for tax practitioners;
- reviewing the "fit and proper" requirements to "reduce compliance risks and enhance red tape reduction";
- reviewing the TPB's sanction powers to determine the appropriateness of providing new sanctions powers to the TPB;

- consideration of the current limitation on formal information gathering and the 6-month timeframe to conduct an investigation;
- reviewing the scope of information to be included on the TPB Register; and
- possible changes to the company and partnership tax practitioner registration requirements relating to accountability and governance.

Board of Taxation CEO update

The Board of Taxation has issued its [CEO Update – November 2020](#).

The Board was "encouraged" to see that the Budget included a number of significant announcements drawing on the Board's recent work on corporate tax residency and granny flats, as well as the announcement to allow employers to rely on corporate records for FBT (consistent with the Board's findings on compliance "pain points" through its [FBT Compliance Cost Review](#)).

This update provides an overview of the following reviews conducted by the Board.

- [Corporate Tax Residency Review](#) – the Board "understands" the business community's desire to see further implementation detail, including how the concept of "core commercial activities undertaken in Australia" is to be expressed in the law. The Board's report outlines a list of factors that the Board considered relevant in determining whether "core commercial activities" are undertaken in Australia (see s 5.32). In addition, a number of examples that illustrate how the factors listed may be applied in practice is outlined in Appendix C to the report.
- [Review of Granny Flat Arrangements](#) – the Government has announced a CGT exemption for the creation of a granny flat arrangement, as well as other CGT events that happen over the life of the arrangement to apply from 1 July 2021 (which draws on the Board's report). It also appears that the exemption will be available for arrangements involving people with disabilities in addition to older Australians.
- [CGT Roll-overs Review](#) – the Board is currently working towards releasing a discussion paper before the end of the year as part of its Review of CGT Rollovers.

As part of its Sounding Board initiative, the Board advised of an idea it had received relating to the [indirect value shifting provisions](#). The Board would welcome comments from those with "insight" on the subject.



The Board also noted that the ATO is responsible for the centralised hosting of published reports for businesses who have adopted the Tax Transparency Code. Information on ATO's notification addresses were also included for convenience.

The next meeting is scheduled for 11 December 2020..