

## **TAXATION**

### **COVID-19 support measure for Victorian lockdown**

Victorian government has confirmed the extension of the small and medium-sized Victorian business support measures including automatic payments.

### **Victorian universities: payroll deferrals and additional funding**

Victorian government has announced economic support measures for the university sector in that State to offset the impact of the coronavirus pandemic.

### **COVID-19 support measures for Tasmania increased**

Tasmania has outlined details of an expanded business support package aimed at operators impacted by border closures.

### **COVID-19 support measures for SA**

SA government has released details of business support packages aimed at the tourism and hospitality industries as well as hardship grants.

### **COVID-19 support measures for ACT extended**

COVID-19 support measures including business grants for the tourism, accommodation, hospitality, arts and events have been extended and expanded.

### **COVID-19 support measures for businesses on QLD and NSW border**

Details have been released for the business support packages aimed at businesses on the NSW and QLD border including the hospitality sector and other businesses.

### **Data matching: apprentice programs**

Department of Education, Skills and Employment has issued a notice of a data matching program with the ATO to support apprentice programs.

**ATO: first-time share and ETF investors**

ATO has issued a worksheet aimed at first-time share and ETF investors recommending care be taken regarding CGT consequences.

**ATO communication of taxpayers' rights: IGTO survey results**

Inspector-General of Taxation and Tax Ombudsman has released its survey results into the effectiveness of the ATO's communication of taxpayers' rights to complain.

**IGTO investigation report: ATO JobKeeper decisions**

IGTO has released its latest report into the investigation of the ATO's administration of JobKeeper enrolment deferral decisions.

**Instrument: additional business support and data sharing**

Treasury has registered an instrument which includes additional business support programs in SA and ACT for the purposes of the government's data sharing program.

**Trio sentenced to jail for illegal phoenix operation**

ATO has issued a release on three convictions for illegal phoenix operations including companies that failed to remit both GST and PAYG withholding to the ATO.

**FINANCIAL SERVICES****AFS licensee breach reporting obligations: ASIC guidance**

ASIC has released regulatory guidance on the breach reporting obligations for AFS licensees that are set to commence on 1 October 2021.

## **AFS licensing: ASIC update shows increase in applications**

ASIC has released a 2021 update for its licensing and professional registrations activities report outlining key issues and changes to its processes.

## **Financial regulatory assessment authority appointments**

Government has announced appointments of inaugural members of the Financial Regulator Assessment Authority.

## **APRA super data transformation: additional FAQ**

APRA has published a set of additional FAQs on the reporting standards for Phase one of the Super Data Transformation project.

## **SUPERANNUATION**

### **Super COVID-19 recontributions: ATO approved form**

ATO has finalised its approved form to be used by individuals to notify their super fund of recontributions of COVID-19 early release amounts.

### **MySuper default insurance and occupational exclusions**

Treasury has released a consultation paper on its review into occupational exclusions in the default insurance offered through MySuper products.

### **Court finds super trustee mislead members about MySuper**

Federal Court has made declarations that a trustee of a super fund made false or misleading representations to members in relation to MySuper.

## **REGULATOR NEWS**

### **IGTO's latest newsletter**

IGTO has released its latest newsletter which provides a summary of website improvements and a summary of the ATO's approach in reporting business tax debts.

### **APRA connect is now live**

APRA has confirmed that its new data collection solution, APRA connect, is now live and an optional approval step has been introduced as a result of feedback.

### **Review of insolvency safe harbour for company directors**

Treasury has released a consultation paper on its review of the insolvent trading "safe harbour".

### **Commercial Tenancy Relief Scheme 2021**

You'll be aware that the Victorian Government has reintroduced the Commercial Tenancy Relief Scheme (the Scheme). The Scheme applies retrospectively from 28 July 2021 and will run until 15 January 2022.

## **TAXATION**

### **COVID-19 support measure for Victorian lockdown**

The Federal Treasurer and the Victorian State Treasurer have issued a [joint media release](#) confirming the extension of small and medium-sized Victorian businesses support measures. The business support payments referred to in the joint media release cover a four week period ending on 30 September 2021.

The support measures available to Victorian businesses are set out below.

- Business Costs Assistance Program payments will be automatically made at rates of \$2,800, \$5,600 and \$8,400 a week over September, depending on payroll size ("Business Costs Assistance Program Round four").
- Eligible cafes, restaurants and bars will continue to receive Licensed Hospitality Venue Fund payments of between \$5,000 and \$20,000 per week.
- A major boost to the Small Business COVID Hardship Fund will increase the grant amount to \$20,000 for around 35,000 businesses, and the deadline for applications will be extended.
- An Alpine Support Package will help sustain resorts through the remainder of the season and September school holidays with an automatic top-up payment of between \$10,000 and \$40,000, depending on business location and whether they employ staff.

Victoria has a webpage for [business grants and support](#).

### **Victorian universities: payroll deferrals and additional funding**

The Victorian Treasurer has [announced](#) economic support measures for the university sector in that State to offset the impact of the coronavirus pandemic.

Universities will be given more time to repay existing payroll tax deferrals worth \$130 million that were granted in 2020. Universities will also be granted further payroll tax deferrals worth approximately \$135 million for tax payable for 2021-22. These payments will be repaid in two instalments in 2024.

In addition, the Government announced a \$50 million International Education Resilience Fund. The release also outlines other support measures previously announced by the Victorian government to support the sector.

## COVID-19 support measures for Tasmania increased

The Federal Treasurer and the Premier of Tasmania have issued a [joint media release](#) outlining details of an expanded business support package aimed at operators impacted by border closures.

The existing Business Support Package will be boosted from \$20 million to \$50 million, with grants up to \$50,000 to be available to eligible businesses across two funding rounds. In addition, the Tasmanian Government will also provide around \$20 million in financial relief for eligible businesses through waiving fees and charges such as payroll tax, vehicle registration and passenger transport accreditation fees, and license fees payable to Parks & Wildlife.

Full details about the program can be accessed on the [Business Tasmania website](#), with eligible businesses able to apply immediately.

## COVID-19 support measures for SA

The Federal Treasurer and the SA Premier have issued a [joint media release](#) outlining details of business support packages aimed at SA businesses affected by the COVID downturn.

- The "COVID-19 Tourism and Hospitality Support Grant" is aimed at businesses in eligible tourism and hospitality sectors that have already received the "COVID-19 Additional Business Support Grant", with additional grants from \$1,000 to \$20,000 (depending on turnover).
- There is also a new "COVID-19 Business Hardship Grant" of \$6,000 for employing businesses with annual payrolls below \$10 million and \$2,000 for non-employing businesses who have experienced a minimum 50% reduction in turnover over the eligible period and haven't been eligible for previous business grant support since July 2021.
- In addition, the South Australian Government is increasing its State funded "Major Events Support Grant", to provide grants of up to \$100,000 for large cancelled or postponed events, where attendees at the event were expected to be greater than 10,000, recognising the significant costs incurred with large events. For eligible events that have already applied for the \$25,000 grant, they will now receive a top up of up to a further \$75,000 to bring total assistance to \$100,000.

The programs will be administered by the [State Government](#).

## COVID-19 support measures for ACT extended

The Federal Treasurer and the ACT Chief Minister have issued a [joint media release](#) announcing expanded and additional support for businesses affected by the COVID-19 lockdown.

There will be an additional ACT "COVID-19 Business Grant Extension" payment of \$10,000 for all employing businesses and \$3,750 for non-employing businesses, to be paid to all businesses who were eligible for the COVID-19 Business Support Grant in industries "still significantly impacted by the health restrictions".

The "COVID-19 Tourism, Accommodation Provider, Arts and Events and Hospitality Grant" is new and will provide further one-off grants to businesses in those industries, with amounts to be determined by reference to turnover. The eligibility criteria will match the eligibility criteria for the COVID-19 Business Support Grant. Approximately 2,000 businesses could be eligible for this additional one-off grant.

Businesses can find further information and apply for the grants on the ACT Government's [website](#).

## COVID-19 support measures for businesses on QLD and NSW border

The Federal Treasurer and the Queensland Premier have issued a [joint media release](#) outlining details of business support packages aimed at businesses on the NSW and Queensland border affected by the COVID-19 economic downturn.

The joint Federal State package includes:

- \$40 million for the "Tourism and Hospitality Sector Hardship Program" to deliver one off grants of \$15,000, \$25,000 and \$50,000 for small, medium and large employing businesses across Queensland that have experienced a reduction in turnover of at least 70% for at least seven consecutive days between 1 July and 30 September;
- \$6.3 million to extend the existing "COVID-19 Business Support Grants" program;
- \$6.5 million to provide one-off "Hardship Scheme" grants of \$5,000 for employing businesses and \$1,000 for non-employing sole traders to recipients

of the "COVID-19 Business Support Grants" in the border zone in the event of an extended border closure.

The State elements include:

- up to \$1 million to match City of the Gold Coast Council and Destination Gold Coast's "Play Money" campaign, encouraging Gold Coasters to patronise border businesses;
- \$50,000 support for marketing campaigns in Coolangatta;
- \$700,000 for additional mental health support for business owners and their families in the border zone.

These special hardship grants will be available from mid-October 2021. Further details are available on the Queensland Business [webpage](#).

### **Data matching: apprentice programs**

The Department of Education, Skills and Employment has issued a [notice of a data matching program](#) with the ATO to support the administration of the Supporting Apprentices and Trainees (SAT), Boosting Apprenticeship Commencements (BAC) and the Australian Apprentice Wage Subsidy (AAWS) measures.

Information about businesses currently employing apprentices and apprentices contained in the Training and Youth Internet Management System will be electronically matched with ATO data holdings. The objectives of the data matching program are to:

- confirm that the employer is eligible to receive SAT, BAC or AAWS;
- validate information provided by the employer claiming SAT, BAC or AAWS; and
- confirm that employers claiming either SAT, BAC or AAWS have not concurrently claimed and received (if payment data is available) the JobKeeper Payment or the JobMaker Hiring Credit with respect to the same employee.

The Department estimates the data matching will capture records that relate to around 180,000 apprentices and trainees and 90,000 employers for SAT, 270,000 apprentices and trainees for BAC and 3,300 apprentices for AAWS.



## **ATO: first-time share and ETF investors**

The ATO has issued a [worksheet](#) aimed at first-time share and Exchange Traded Funds ("ETF") investors. The ATO states that the growth of micro-investment platforms has helped a "record number of new investors enter the market".

The release is mostly targeted at ETFs, which the ATO states is an increasingly popular investment option among "millennials". ETFs provide investors with a Standard Distribution Statement (SDS) that breaks down what they, or their registered tax agent, need to declare in their tax return. When an investor disposes of units, the SDS will show the capital gains or losses made from the sale of the units which also need to be included in tax returns.

The release recommends that care be taken with distribution/dividend reinvestment, ie the CGT consequences can be easily overlooked. It contains a useful listing of all the documentation that investors should retain.

## **ATO communication of taxpayers' rights: IGTO survey results**

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) has released its [survey results](#) into the effectiveness of the ATO's communication of taxpayers' rights to complain, review and appeal decisions or actions. The survey was conducted between August and September 2020 with participation from taxpayers and tax professionals. Key take-aways include:

- the majority respondents confirmed that the ATO regularly communicates taxpayer's right to lodge a formal objection against certain ATO decisions in accordance with Pt IVC of the TAA;
- more than 60% of respondents were unaware of or have not used the ATO complaints function; and
- 36% of respondents indicated that they do not get details of the decision maker, contact details, what information was considered and reasons for the decision in ATO communications.

The IGTO said that the survey observations provided "important early signals" for the IGTO to identify those areas of ATO communication that should be explored in further detail as part of its investigation.

## IGTO investigation report: ATO JobKeeper decisions

The Inspector-General of Taxation and Taxation Ombudsman (IGTO) has released its [latest report in the investigation of the ATO's administration of JobKeeper enrolment deferral decisions](#). As at the date of the report, the IGTO had investigated 20 complaints in relation to the matter.

The IGTO investigation observed that the ATO:

- only granted lodgment deferral of JobKeeper enrolments where there were exceptional circumstances which matched one of the circumstances on a list of ATO-specified circumstances;
- did not properly apply the fair and reasonable threshold, despite this threshold being set out in the Commissioner's instructions to ATO staff (as per PS LA 2011/15);
- did not consider the particular facts and circumstances of each case to determine whether lodgment deferral was appropriate;
- disseminated guidance materials to staff, including Practice Note 2020/002 and scripting for frontline staff, which confined JobKeeper enrolment deferral approvals to only those cases with circumstances that matched those on the ATO-specified list of circumstances;
- did not allow staff to refer requests to a more senior decision-maker unless the officer considered that the case may fall within that ATO-specified list.

The report noted that the ATO improved its decision making post-April 2021.

The IGTO investigation has resulted in the ATO changing a number of decisions on JobKeeper enrolment deferrals. The ATO has also advised the IGTO in writing that the "fair and reasonable threshold" should be clarified, so that the list of ATO-specified circumstances provides a basis for ATO officers to grant JobKeeper enrolment deferrals (rather than being an exclusive code).

## Instrument: additional business support and data sharing

Treasury has registered legislation instrument [Taxation Administration \(Data Sharing—Relevant COVID-19 Business Support Program\) Amendment Declaration \(No. 1\) 2021](#). The instrument includes additional business support programs in SA and the ACT for the purposes of the Government's data sharing program.

The following programs have been added:

- SA - (i) COVID-19 Additional Business Support Grant; (ii) COVID-19 Business Support Grant; and (iii) Major Events Support Grant.
- ACT - (i) Accommodation and Tourism Venue Operator Support Program; (ii) Commercial Tenancy Relief; (iii) COVID-19 Business Support Grant; (iv) COVID-19 Small Business Hardship Scheme; and (v) Small Tourism Operator COVID Recovery Payment.

**Date of effect:** 4 September 2021.

### **Trio sentenced to jail for illegal phoenix operation**

The ATO has issued a [release](#) on three convictions for illegal phoenix operations. The three men were alleged to have established multiple labour hire companies to provide workers to vineyards, fruit and vegetable growers, and meat processors around South Australia and in Queensland. The companies failed to remit both GST and PAYG withholding to the ATO, despite charging their clients GST and including figures supposedly withheld for PAYG on employee payslips. Across six entities, the trio allegedly withdrew more than \$23m over a 25 month period, leaving the entities cashless at the time of liquidation to enable the recovery of outstanding tax debts.

It was also alleged that the trio attempted to hide their illegal activities by appointing shadow directors for the companies, exploiting their relationship with employees or acquaintances living in Australia, at least three of whom were on student visas.

One of the men, identified as the "instigator and architect of the scheme" was sentenced to eight years imprisonment while the other two were sentenced to four and five years.

## **FINANCIAL SERVICES**

### **AFS licensee breach reporting obligations: ASIC guidance**

ASIC has released [Regulatory Guide RG 78](#) on the breach reporting obligations for AFS licensees that are set to commence on 1 October 2021. ASIC also published [INFO 259](#) which sets out actions that must be taken by AFS licensees to notify

affected customers of a breach of the law, investigate the breach and remediate impacted customers.

The new breach reporting obligations for AFS licensees differ from the existing obligations by deeming certain breaches to be significant, such as a breach which results in material loss or damage to a customer. AFS licensees are required to lodge breach reports with ASIC in a prescribed form within 30 calendar days after the licensee first knows, or is reckless with respect to whether, there are reasonable grounds to believe a reportable situation has arisen.

ASIC Deputy Chair, Karen Chester, said ASIC can now accommodate batch uploading of breach reports where they derive from a single root cause. An additional 15 worked examples have been incorporated into RG 78 in response to industry feedback. ASIC said it will take a reasonable approach in the initial stages of these new obligations provided licensees are using their best efforts.

### **AFS licensing: ASIC update shows increase in applications**

ASIC has released a [2021 update](#) for its Licensing and professional registration activities report (REP 700) outlining key issues and changes to its licensing processes. For the 2020-21 financial year, ASIC said it received 1,883 AFS licence and credit licence applications (up from 1,346 in 2020). The increase was mainly due to the licensing reforms relating to insurance claims handling and debt management services.

### **Financial regulatory assessment authority appointments**

The Government has [announced](#) the following appointments of the inaugural members of the Financial Regulator Assessment Authority (FRAA):

- Nicholas Moore, appointed as Chair, is a former CEO of Macquarie Group Limited.
- Gina Cass-Gottlieb is a partner within the Competition and Regulation Group of Gilbert + Tobin.
- Craig Drummond served as CEO of Medibank from 2016 to 2021 and previously Group Executive Finance and Strategy at NAB and CEO and Country Head of Bank of America Merrill Lynch (Australia).

In response to the recommendations of the Banking Royal Commission, the FRAA has been established to review and report on the effectiveness and capability of ASIC and APRA. The Treasurer said that, in its first year, the FRAA will assess the effectiveness and capability of ASIC to assist the new ASIC Chair, Joseph Longo, in ensuring ASIC is operating consistently with the Government's Statement of Expectations.

### **APRA super data transformation: additional FAQ**

APRA has published a set of [additional FAQs](#) on the reporting standards for Phase one of the Superannuation Data Transformation project. The FAQs clarify reporting issues raised by RSE licensees and help them meet their reporting obligations.

## **SUPERANNUATION**

### **Super COVID-19 recontributions: ATO approved form**

The ATO has finalised its approved form to be used by individuals to notify their super fund of re-contributions of COVID-19 early release amounts. Since 1 July 2021, individuals have been able to re-contribute super amounts they withdrew under the COVID-19 early release program without them counting towards their non-concessional contributions cap.

The [ATO approved form \(NAT 75394\)](#) only needs to be used by individuals making personal contributions to be treated as a COVID-19 re-contributions that will not be counted towards their non-concessional cap. The form must be provided to the individual's super fund on or before the time when the contribution is made. The super fund will then report COVID-19 re-contributions to the ATO.

### **MySuper default insurance and occupational exclusions**

Treasury has released a [consultation paper](#) on its review into occupational exclusions in default insurance offered through MySuper products. The review will focus on default cover in respect of life and total and permanent disability (TPD) insurance which trustees are required to provide to MySuper members. The Government has expressed concern that occupational exclusions may result in

default insurance cover not being available (or only partially available) for certain occupations that an insurer has classified as higher risk.

**Comments** are due by 14 October 2021.

## **Court finds super trustee mislead members about MySuper**

The Federal Court has made [declarations](#) that Colonial First State Investments Limited (CFSIL), as trustee of the Colonial FirstChoice Fund, made false or misleading representations to members in relation to MySuper. CFSIL's conduct was the subject of a case study by the Banking Royal Commission.

The Court declared that on at least 12,978 occasions, CFSIL made misleading representations regarding investment directions which may have encourage members not to move to a MySuper product. The misleading or deceptive conduct included CFSIL telling members that legislative changes required them to obtain an investment direction to stay in the FirstChoice Fund when that was not the case. CFSIL also failed to tell members that if it did not receive an investment direction from the member, it was required to transfer the member's contributions to a MySuper product. ASIC said CFSIL has consented to the Court's declarations. A penalty hearing has been listed for 12 October 2021.

## **REGULATOR NEWS**

### **IGTO's latest newsletter**

The Inspector-General of Taxation and Taxation Ombudsman (IGTO), Karen Payne, has released [edition 17](#) of the IGTO's newsletter - "IGoT News".

This edition provides:

- a summary of IGTO's website "refresh" and improvements;
- a summary of the ATO's approach in reporting business tax debts to Credit Reporting Bureaus, which commenced in August 2021;
- confirmation from the ATO that a practitioner's lodgement program will not be adversely affected if they do not meet the 85% lodgement program performance benchmark in the 2020-21 lodgment program year;

- an update on two review investigation reports - (i) Investigation and Exploration of Undisputed Tax Debts in Australia (published on 30 June 2021); and (ii) Death and Taxes (published in July 2020) now with a progress report from the ATO on its implementation of agreed recommendations;
- updates on IGTO's complaints investigation service and some of its corporate compliance undertakings.

## APRA connect is now live

APRA has [confirmed](#) that its new data collection solution, APRA Connect, is now live. All entities need to prepare for APRA Connect and nominate their initial Regulatory Reporting Administrator via the D2A form. APRA Connect can be accessed at <https://connect.apra.gov.au>.

In response to feedback on the auto-submission functionality for data returns, APRA said it has introduced an optional approval step in the form of a validation rule (a warning) prior to submission of a completed data return. Entities may elect to activate the rule for all data returns. Currently, this rule only applies to the Superannuation Data Transformation collection.

## Review of insolvency safe harbour for company directors

Treasury has released the [consultation paper](#) concerning its review of the insolvent trading "safe harbour".

The safe harbour was established under the Treasury Laws Amendment (2017 Enterprise Incentives No 2) Act 2017 (as part of the Government's so called National Innovation and Science Agenda). It provides protection for company directors from personal liability for insolvent trading if the company is genuinely attempting to restructure.

The intention of the safe harbour is to encourage directors to seek advice early on how to restructure and save financially distressed but viable companies, rather than closing down prematurely to avoid personal liability. This is intended to provide "breathing space" for distressed businesses.

**Submissions** may be made up to 1 October 2021. IPA is making a submission and attending consultation with Treasury. We welcome member feedback and comments



to [vicki.stylianou@publicaccountants.org.au](mailto:vicki.stylianou@publicaccountants.org.au) for inclusion in the IPA submission. The list of consultation questions are included below.

Questions from the consultation paper for comment:

1. Are the safe harbour provisions working effectively?
2. What impact has the availability of the safe harbour had on the conduct of directors?
3. What impact has the availability of the safe harbour had on the interests of creditors and employees?
4. How has the safe harbour impacted on, or interacted with, the underlying prohibition on insolvent trading?
5. What was your experience with the COVID-19 insolvent trading moratorium, and has that impacted your view or experience of the safe harbour provisions?
6. Are you aware of any instances where safe harbour has been misused?
7. Are the pre-conditions to accessing safe harbour appropriate?
8. Does the law provide sufficient certainty to enable its effective use?
9. Is clarification required around the role of advisers, including who qualifies as advisers, and what is required of them?
10. Is there sufficient awareness of the safe harbour, including among small and medium enterprises?
11. In relation to potential qualified advisers, what barriers or conflicts (if any) limit your engagement with companies seeking safe harbour advice?
12. Are there any other accessibility issues impacting its use?
13. Are there any improvements or qualifications you would like to see made to the safe harbour provisions and/or the underlying prohibition on insolvent trading?

## Commercial Tenancy Relief Scheme 2021

You'll be aware that the Victorian Government has reintroduced the Commercial Tenancy Relief Scheme (the Scheme). The Scheme applies retrospectively from 28 July 2021 and will run until 15 January 2022.

Under the Scheme, the Victorian Small Business Commission (VSBC) will support tenants and landlords by providing information to assist with negotiating a rent relief agreement and access to free and impartial mediation if a fair agreement can't be reached. The VSBC is also offering help with negotiations and free mediation in situations where the tenant isn't eligible for the Scheme. We encourage applications for assistance from both tenants and landlords.



We have updated our [website](#) with detailed information including [the regulations](#), [FAQs for the Scheme](#) and our [step-by-step process for tenants and landlords](#).

Examples of material available include:

- guidance for tenants who can't keep paying rent – see question 12 of our [FAQs](#);
- letter templates that eligible tenants can use to request rent relief – question 13 of our [FAQs](#) has links to these helpful resources (tenants just need to fill in the parts highlighted in yellow);
- information to help with negotiating a rent relief agreement – question 22 of our [FAQs](#) explains what 'good faith negotiations' mean;
- [access to free and impartial mediation](#) if a fair agreement can't be reached.

I would appreciate you sharing our news update on these supports among the small business owners, landlords and business advisers in your network.

We are also available to answer questions regarding the scheme on 13 8722.

Information regarding further government support is available at [Business Victoria website](#).

If you would like more information or if you would like to express your interest in attending an upcoming VSBC virtual session on tenant and landlord supports, please contact Linda Bailey at [linda.bailey@vsbc.vic.gov.au](mailto:linda.bailey@vsbc.vic.gov.au).