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Client Information Newsletter - Tax & Super April 2020



Covid-19: Your stimulus and rescue package explained

A legislative package has been pushed through Parliament which contains a number of bills that implement the government's economic response to the spread of the coronavirus.

Contact Us

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The relief package of legislation consisted of several separate bills, which were all introduced to Parliament within a short period of time. The legislation has now passed both houses, with most applying from mid-March.

The government further announced at the end of March a further massive subsidy for businesses to help them retain employees so they are ready to get back to business when the current coronavirus issues subside. The new subsidy is called the JobKeeper payment.

The key points of the JobKeeper payment follow, with the relief package explained after that.

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Covid-19 stimulus and rescue package *cont*

Key points: The JobKeeper package

1 The payment will be made to eligible employers for eligible employees. The payment will be $1,500 per fortnight per employee for a period of six months. It will be paid in respect of full time and part time employees who were employed as at 1 March 2020. Also, casual employees will be eligible if they have been with their employer on a regular basis for at least the pervious 12 months as at 1 March 2020.

2 The employees must continue to be engaged by the business. If an employee has been stood down or has had their employment terminated, they can still be eligible. If an employee's employment has been terminated, the employee must be re-engaged by the business.

3 Not all employers are eligible for the payment. A business will be eligible:

a. If the business has a turnover of less than $1 billion and its turnover will be reduced by more than 30% relative to a comparable period a year ago, of at least one month; or

b. If the business has a turnover of $1 billion or more and its turnover will be reduced by more than 50% relative to a comparable period a year ago, of at least one month; and

c. If the business is not subject to the Major Bank Levy.

4 Employers must elect to receive the JobKeeper payment and provide supporting information. This can be done through the ATO website.

5 Employers must report the number of eligible employees employed by the business on a monthly basis.

6 Where an employee is accessing support through Services Australia because they have been stood down or had their hours reduced and the employer is eligible for the JobKeeper payment, the employee will need to advise Services Australia of their new income. An individual cannot receive both the JobKeeper and JobSeeker payments.

7 If an employee has more than one employer, only one JobKeeper payment will be made to one employer. The employer claiming the JobKeeper payment will usually be the one from whom the employee claims the tax-free threshold.

8 Superannuation Guarantee contributions (9.5%) need not be made on the JobKeeper payments. However, to the extent an employee is paid their normal salary or wages, the 9.5% contributions still need to be paid as normal.

9 If an employee ordinarily receives less than $1,500 in income per fortnight before tax, their employer must pay their employee, at a minimum, $1,500 per fortnight, before tax.

10 If an employee has been stood down, their employer must pay the employee, at a minimum, $1,500 per fortnight, before tax.

11 If an employee was employed on 1 March 2020, subsequently ceased employment with their employer, and then has been re-engaged by the same eligible employer, the employee will receive, at a minimum, $1,500 per fortnight.

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Covid-19 stimulus and rescue package ***cont***

12 With regard to the timing of payments, the payments will be made to an employer monthly in arrears by the ATO. The Prime Minister has pointed out that this should not delay employers from making payments to employees. This is because the employer can make payments to their employees in the knowledge that the employer will receive the JobKeeper payment. Of course, this assumes that the employer has the cashflow to make the payment in the first place!

13 The JobKeeper entitlement will start on 30 March 2020, with the first payments to be received by employers in the first week of May.

14 For most businesses, the ATO will use the Single Touch Payroll system data to pre-populate the employee details for the business.

15 Employers must notify all eligible employees that they are receiving the JobKeeper payment.

16 The JobKeeper payment will be available for not-for-profit organisations.

17 The JobKeeper payment will also be available for the self-employed where they expect to suffer a 30% decline in turnover relative to a comparable prior period. ■

Coronavirus stimulus package

INSTANT ASSET WRITE-OFF

The income tax law was amended to increase the cost threshold below which certain business entities can access an immediate deduction for the full cost of depreciating assets from $30,000 to $150,000. This change to the rules is only available from 12 March 2020 to 30 June 2020. For an asset to be eligible for the instant asset write-off it must be first used for a taxable purpose in the period 12 March 2020 to 30 June 2020. Alternatively, the asset must be installed and ready for use in that period.

In the Federal Budget announced on 2 April 2019, the Federal Government extended the instant asset write-off to businesses that have a turnover of between $10 million and $50 million. This was in addition to small businesses that have a turnover of less than $10 million.

The instant asset write-off will now also apply to businesses with an aggregated turnover of less than $500 million. However, it will only apply to these businesses for the period 12 March 2020 to 30 June 2020.

This means that there will be two periods that you will need to consider in relation to purchases of assets in the year ending 30 June 2020. The first period is from 1 July 2019 to 11 March 2020. Eligible assets costing less than $30,000 can be written off completely in this period by businesses that have an aggregated turnover of less than $50 million. From 12 March 2020 to 30 June 2020, eligible assets costing less than $150,000 (GST exclusive), can be written off by businesses that have an aggregated turnover of less than $500 million.

It should be noted that from 1 July 2020, the instant asset write-off threshold will revert to its original level of $1,000 and will only be applicable for businesses with an aggregated turnover of less than $10 million. Accordingly, the coronavirus measures offer a strong incentive for most businesses to obtain a significant tax deduction that will no longer exist in the new financial year.

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Covid-19 stimulus and rescue package *cont*

ACCELERATED DEPRECIATION

This provides an incentive for businesses with aggregated turnovers of less than $500 million a year to invest in plant and equipment and other depreciating assets.

Specifically, the bill amends the income tax law to temporarily allow businesses with aggregated turnovers of less than $500 million in an income year to deduct capital allowances for depreciating assets at an accelerated rate of 50% of the cost of an asset. This will be in addition to the normal depreciation that is claimed on the cost of the asset after deducting the 50% amount.

Generally, to be eligible to apply the accelerated rate of deduction, the depreciating asset must satisfy a number of conditions, including that the asset:

- is new and has not previously been held by another entity (other than as trading stock or for testing and trialling purposes);
- is an asset for which an entity has not claimed depreciation deductions, including under the instant asset write-off rules; and
- is first held, and first used or installed ready for use, for a taxable purpose between 12 March 2020 and 30 June 2021 (inclusive).

BOOSTING CASH FLOW FOR EMPLOYERS

The cash flow boost provides for payments to support employers by boosting their cash flow. Another intention with this measure is to encourage the retention of employees through any follow-on downturn.

Undoubtedly, this part of the stimulus package is the most confusing. Unfortunately, it also has the potential to be rorted by unscrupulous people. That is why the measures contain an anti-avoidance provision.

Before explaining the detail, here are a number of statements about this part of the package that will assist with explaining certain aspects of what is known as the "cash flow boost".

1. There are two rounds of cash flow boost.
2. The second cash flow boost is determined from the amount of the first cash flow boost.
3. The amount of the first cash flow boost is determined by the amount of withholdings from (broadly) wages or the minimum cash flow boost payment ($10,000), whichever is larger.
4. The maximum first cash flow boost amount is $50,000.
5. If eligible, the minimum "payment" to an entity will be $20,000 and the maximum will be $100,000 from the two cash flow boost payments.
6. The "payments" are actually credits given to the entity through the lodgement of activity statements. If credits exceed the amount owing, a refund will be paid by the ATO to the entity within 14 days of the due date for lodgement of the activity statement.
7. The payments will operate in a different manner for monthly and quarterly lodgers of activity statements. The examples below will explain this.

Entities with an aggregated turnover under $50 million are generally eligible to receive the first cash flow boost for a period if:

- the entity makes a payment that is subject to withholding obligations (broadly, a payment of wages or salary or similar remuneration), whether or not any amount is actually withheld, in the period; and
- the period is one of the following:
  - the quarters ending in March 2020 or June 2020 for quarterly payers; and
  - the months of March 2020, April 2020, May 2020 or June 2020 for monthly payers; and
- if the entity:
  - held an ABN on 12 March 2020; and
  - either derived assessable income from carrying on a business in the 2018-19 income year or made one or more supplies for consideration in the course of an enterprise it carried on within Australia in tax periods commencing after 1 July 2018 and ending before 12 March 2020 and notice of the income or supplies was held by the Commissioner on or before 12 March 2020 or within such further time as the Commissioner allows (this notice appears to be either activity statements or an income tax return); and
- the entity (or an associate or agent of an entity) has not engaged in a scheme for the sole or dominant purpose of seeking to make the entity entitled to the first cash flow boost or increase the entitlement of the entity to the first cash flow boost.

There are some other conditions that we can help work through if you are an eligible business.

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Covid-19 stimulus and rescue package *cont*



The timing of the cash flow boost needs to be noted as well. Quarterly lodgers will be eligible to receive the payment for the quarter ending March 2020 and June 2020. Monthly lodgers will be eligible to receive the payment for the March 2020, April 2020, May 2020 and June 2020 lodgements. To provide a similar treatment to quarterly lodgers, the payment for monthly lodgers will be calculated at three times the rate (300%) in the March 2020 activity statement.

The minimum payment [$10,000] will be applied to the entities' first lodgement.

The additional payment [the second cash flow boost] will be applied to a limited number of activity statements. Where this places the entity in a refund position, the ATO will deliver the refund within 14 days.

Quarterly lodgers will be eligible to receive the additional payment for the quarters ending June 2020 and September 2020. Each additional payment will be equal to half of their total initial Boosting Cash Flow for Employers payment (up to a total of $50,000).

Monthly lodgers will be eligible to receive the additional payment for the June 2020, July 2020, August 2020 and September 2020 lodgements. Each additional payment will be equal to a quarter of their total initial Boosting Cash Flow for Employers payment (up to a total of $50,000).

THE ANTI-AVOIDANCE PROVISION

Be aware that the cash boost legislation contains an anti-avoidance provision. This states: "Neither the entity nor any associate or agent of the entity has entered into or carried out a scheme or part of a scheme for the sole or dominant purpose of achieving any of the following:

1. making the entity entitled to the cash flow boost for the period;
2. increasing the amount of the cash flow boost to which the entity is entitled (disregarding this paragraph) for the period.

Many taxpayers however may wonder about those owners of businesses (through trusts or otherwise) that don't pay themselves a wage. Instead they take trust distributions, receive dividends or simply draw on the profits of the business. As legislated, the cash flow boost is only available in respect of (broadly) employment related withholdings. There may be a strong risk of falling foul of the anti-avoidance provision if someone who has not been paid salary or wages for a long period is now put on wages.

The ATO is veryaware that schemes are being entered into to take advantage of this handout, and we will let clients know if an announcement is made in this regard.

SUPERANNUATION CONTRIBUTIONS

Employers should note that there are no changes to the requirement to make superannuation contributions in accordance with the Superannuation Guarantee law.

SGC AMNESTY

The SGC amnesty period started on 6 March 2020 and will conclude at midnight on 7 September. No change has been made to this period. It should be remembered that payments after 7 September 2020 in relation to the SGC amnesty will not be tax deductible.

STIMULUS PAYMENTS TO HOUSEHOLDS

Also provided for is the payment of the first economic support payment of $750 to Social Security and Veterans' income support recipients, Farm Household Allowance recipients, Family Tax Benefit recipients and holders of a Pensioner Concession Card, Commonwealth Seniors Health Card or Commonwealth Gold Card.

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Covid-19 stimulus and rescue package *cont*

There will also be a second economic support payment of $750 to the above people who receive a qualifying payment or hold a qualifying concession card on 10 July 2020. This second payment will not be paid to a person who receives, on 10 July 2020, the new Coronavirus supplement detailed below.

ADDITIONAL SUPPLEMENT FOR INCOME SUPPORT RECIPIENTS

The stimulus package also amends the Social Security legislation to provide financial assistance to people who are affected by the COVID-19 crisis. Australians can claim Jobseeker payment or Youth Allowance (other) if they are an Australian resident (or exempt from the residence requirements). If qualified, a person receives the current rate of Jobseeker payment or Youth Allowance (other) along with a fortnightly supplement of $550 or such other amount determined by legislation.

The supplement is also available to existing recipients of Jobseeker payment, Youth Allowance (other), Parenting Payment, Special Benefit, and the Farm Household Allowance. The Minister for Families and Social Services may extend the supplement to other social security payments by legislative instrument should a need arise.

The supplement is available for an initial six month period, although this may be extended depending on how the current crisis unfolds.

Recipients of Jobseeker payment or Youth Allowance (other) (which includes new and existing recipients) and Parenting Payment are also exempt from the assets test, liquid assets waiting period, ordinary waiting period, newly arrived resident's waiting period and seasonal worker preclusion periods. The exemption from the newly arrived resident's waiting period also applies to special benefit. The supplement and exemptions also apply to recipients of the Farm Household Allowance.

Note that the date of effect for these measures is 27 April.

SUPERANNUATION DRAWDOWNS

The bill amends the regulations to give effect to the Government's announced measure to reduce the minimum payment amounts for account-based pensions (and for the equivalent annuity products) by half for the 2019-20 and 2020-21 financial years.

EARLY RELEASE OF SUPERANNUATION

The stimulus legislation allows individuals affected by coronavirus to have up to $10,000 released from their superannuation or retirement savings account on compassionate grounds. Each person is permitted to have up to two releases – one for an application made during the 2019-20 financial year and another for an application made during the 2020-21 financial year. The amounts that are released are not subject to tax.

From mid-April eligible individuals will be able to apply online through myGov to access up to $10,000 of their superannuation before 1 July 2020. They will also be able to access up to a further $10,000 from 1 July 2020 until 24 September 2020.

The legislation states that to apply for the determination for such early releases, the person must satisfy any one of the following requirements about their employment or business status.

At the time the person applies for the determination, they are:

- unemployed;
- eligible to receive a Jobseeker payment, Youth Allowance, Parenting Payment (which includes the single and partnered payments) or special benefit under the Social Security Act; or
- eligible to receive the Farm Household Allowance; or

On or after 1 January 2020 the person:

- was made redundant;
- their working hours were reduced by 20% or more; or
- if the person is a sole trader – their business was suspended or there was a reduction in their turnover of 20% or more. ■

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.



e-bikes, FBT, and salary sacrificing

Entering into a remuneration package to secure a vehicle through a salary sacrifice arrangement is a popular option offered to employees. However the ATO has issued a ruling on another particular set of wheels that opens up both a tax and health incentive.

ATO guidance covering the use of an electric bicycle (e-bike*) by an employee has been released, which applies from 1 April 2019 to 31 March 2024. In it, the ATO sets out the fringe benefits tax consequences of employers providing their employees with the use of e-bike under a salary packaging arrangement.

Briefly, the FBT consequences are quite different to the more common vehicle supplied under such arrangements (that is, a car). The ruling says that a "car benefit" will not arise from an employee's use of an e-bike because, simply, the e-bike is not a car.

A "property benefit" will not arise from an employee's use of an e-bike as in this arrangement the e-bike leasing company retains the ownership of the e-bike during the term of the lease.

However a "residual benefit" will arise. But the residual benefit will be an exempt benefit under the FBT rules if the private use of the e-bike is restricted to:

- travel to and from work
- use that is incidental to travel in the course of performing employment-related duties, and
- non-work-related use that is minor, infrequent and irregular.

Where a residual fringe benefit does arise from an employee's use of an e-bike, the taxable value of the fringe benefit can be calculated using either:

- the proportion of total operating costs that relates to private use, or
- a cents per kilometre basis (the same as motorcycles, 16c for FBT year 2019-20) if there is extensive business use.

The arrangement as described reflects novated lease arrangements that are more usually used for the four wheeled variety of vehicles that are provided to employees.

Of course the ancillary "real" benefits include reducing carbon emissions, easing traffic congestion, lessening demand on infrastructure, encouraging more modes of transport and actively promoting a healthy lifestyle with flow-on benefits to the general cost of health care. ■

*An e-bike is defined as a bicycle-like frame fitted with an electric motor, which provides support when the rider is actively pedalling — the rider therefore is still getting exercise, but the effort is supported by battery power. As with unpowered bicycles, there is no requirement for registration or a drivers licence.



Employers get an amnesty for missed super payments

It has been a long time coming, but a planned government amnesty for employers who have missed paying the superannuation guarantee (SG) to their employees has now become law. The amnesty was passed on 6 March 2020, and lasts until 7 September 2020.

The amnesty allows employers to make deductible payments, without penalties, of outstanding superannuation guarantee charge (SGC) amounts if:

- they relate to the period 1 July 1992 until 31 March 2018; and
- they are paid during the amnesty period (24 May 2018 until 11.59pm, 7 September 2020).

However interest calculated at a rate of 10% a year on the SG shortfall will still apply to compensate employees for these late payments.

The amnesty comes at a time when the ATO's ability to identify unpaid or underpaid SG has greatly increased. This has come about through a number of developments, including better technology and information systems, more frequent reporting requirements for super funds and employers, and a greater supply and cross-referencing of data from institutions and agencies that feeds into the tax system's increasingly utilised pre-fill capabilities.

The incumbent super rules (that is, before the amnesty) impose a penalty on employers who do not pay the minimum amount of compulsory contributions in respect of their employees' ordinary times earnings (OTE) for each quarter.

If the required minimum payments are not made by 28 days after the quarter to which they relate, SGC comprised of the following amounts is payable:

1. SG shortfall – the total of these amounts in respect of each affected employee;
2. interest on those SG shortfalls – currently 10% a year on each individual shortfall from the beginning of the relevant quarter until the date the SG charge is payable; and
3. an administration fee – calculated at a rate of $20 per employee, per quarter.
4. a penalty — up to 200% of the SGC.

In addition, payments of the SGC will not be deductible.

Importantly, employers should note that the ATO has stated that it will continue to apply the above rules should employers that have unpaid SG obligations not come forward and take advantage of the amnesty.

SUPERANNUATION GUARANTEE AMNESTY BENEFITS

The amnesty provides employers with a number of concessions if they pay qualifying outstanding SGC. If an employer qualifies for the amnesty, they:

- will be able to claim a tax deduction for the SGC amounts paid to the ATO by 7 September 2020
- won't be required to pay the administration component ($20 per employee per quarter)
- won't have the penalty applied.

If an employer has already been assessed for a quarter, they can amend a previously disclosed SG shortfall. However only newly-disclosed, additional amounts will be considered for the benefits of the amnesty.

If an employer has previously disclosed unpaid SG to the ATO in anticipation of the SG amnesty, they don't need to lodge again or apply on the SG amnesty form (more below). The ATO will review all disclosures received between 24 May 2018 and 6 March 2020.

continued page 10



Individual or corporate trustee for your SMSF?

When establishing a self managed superannuation fund (SMSF), one central decision to be made early on is if the trustee structure is to consist of individual trustees or a corporate trustee. Between these choices, you can have up to four individual trustees, or one company that acts as trustee (with that incorporated body having up to four directors).

There are differences between these two structures, which can matter depending on your circumstances and outlook on effective retirement savings. The decisions to be made when choosing between the two choices relate to member/trustee requirements, some costs, how assets are to be owned, possibly penalties, and ultimately any succession considerations.

REQUIREMENTS

For individual trustees, a fund is required to have two to four members, with each member of the fund also a trustee and vise versa (for single-member funds, see below). A member cannot be an employee of another member — unless they are relatives.

With a corporate trustee, there needs to be one to four members, with each member of the fund a director of the corporate trustee and vise versa. Again, a member cannot be an employee of another member — unless they are relatives.

For single-member funds with individual trustees, there must be two trustees, one of which must be the fund member. If that member is an employee of the other trustee, they must be relatives.

For single-member funds with a corporate trustee, the trustee company can have one or two directors, but no more. The fund member must be the sole director or one of the two, and if there are two directors and the fund member is an employee of the other, the member and the other director must be relatives.

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Individual or corporate trustee for your SMSF? *continued*

COSTS

Individual trustees cost less because there are no fees to be paid to ASIC for incorporation, which includes establishment and administrative costs. Note: a trustee cannot be paid for their duties and services as a trustee.

Corporate trustees on the other hand are charged a fee to register with ASIC, and there is an annual review fee. This however is lower if the incorporated body acts solely as a super fund trustee, but is higher if the corporate also performs another function, such as running a business. A corporate trustee cannot be paid for its services, and its directors cannot be paid for their duties or services in relation to the fund.

ASSET OWNERSHIP

If an individual trustee is removed or another added, you must change the titles of the SMSF's assets. This can take time and can cost, as state government authorities may charge a fee for title changes and most financial institutions also charge a fee for title changes.

For corporate trustees, recording and registering assets can be simpler, particularly for changes in membership — the corporate trustee doesn't change, so the titles of the SMSF's assets are unchanged. When a person starts or stops being a member of the SMSF, they become, or cease to be, a director of the corporate trustee. It is required however to notify the ATO and ASIC of any change in directors.

SEPARATION OF ASSETS

An important aspect of SMSFs is that the fund's assets must be kept separate from any assets that members hold personally.

With individual trustees, the funds assets must be held in the fund's name, and must not be combined with any member's personal assets.

It is the same for corporate trustees, however as the company (the corporate trustee) will have limited liability, there is greater protection should the trustee be sued for damages.

PENALTY DIFFERENCES

If superannuation laws are breached, administrative penalties are levied on each trustee. Remember however that while a fund can have up to four individual trustees, the alternative structure results in one corporate trustee.

Take for example a fund that fails to prepare financial accounts and statements — a breach of the rules that results in a liability of 10 penalty units (each unit is valued at $210). A corporate trustee would therefore be hit with a penalty of $2,100, but with four individual trustees, the fund is looking at a penalty of $8,400.

SUCCESSION

Where changes to individual trustees occur, if one trustee of a fund passes away for example, the fund will not be able to remain compliant and will not be able to operate as usual in most cases — unless an appropriate succession strategy has been prepared.

The corporate trustee on the other hand, not being a natural person, continues in the event of a member's death. With this situation, or even the incapacity of a member, control of the SMSF and its assets by the corporate trustee is more certain. ■

Employers get an amnesty for missed super payments *continued*

ELIGIBILITY

To be eligible for the amnesty, and for qualifying SGC, an employer must meet and fulfil all the following criteria. They must:

- have not been informed the ATO is examining or intends to examine the SG obligation for the quarter(s) the disclosure relates to
- disclose an SG shortfall for an employee that hasn't already been disclosed to the ATO (or disclose additional amounts of SG shortfall for a quarter previously disclosed)
- disclose for quarter(s) starting from 1 July 1992 to 31 March 2018
- lodge the completed SG amnesty form with the ATO so it is received no later than 7 September 2020.

Note that we can provide the necessary form. Also note that you will need to pay the amount owing to the ATO or set up a payment plan after you lodge the SG amnesty form. You need to do this to avoid being disqualified and losing the benefits of the amnesty.

Should an employee ask, the ATO has further stated that should an individual's contribution caps be exceeded due to these catch-up SG payments, discretion will be exercised to disregard the contributions made under the amnesty. ■