

MTS



MY TAX SAVERS

***CORONAVIRUS* –
ALL YOU NEED TO KNOW**

30 JUNE TAX PLANNING

**PLUS
THE LATEST NEWS!**

MyTaxSavers

MAY/JUNE

2020

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Subject to various conditions, the Government will subsidise the wages of your employees for six months.

GENERAL ADVICE WARNING: The information contained in this publication is general information only. Any advice, if any, is general advice only. Your objectives, financial situation or needs have not been taken into consideration. You should consider if this information is suitable for your needs and seek the advice of relevant taxation, superannuation and/or other relevant advisers before any financial product information is acted on.

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KEY DATES

Many lodgement and payment deadlines are looming for business including those relating to Activity Statements, superannuation, and more.

MAY 2020

12 MAY

3rd Quarter 2020 Activity Statements – due for lodgement and payment if lodging electronically

21 MAY

April 2020 monthly Activity Statements – due for lodgement and payment

21 MAY

2020 FBT Annual Return – due for payment

28 MAY

Due date for lodgement and payment of the Superannuation Guarantee Charge Statement if you failed to pay Superannuation Guarantee on time for the January-March quarter. Superannuation Guarantee Charge is not deductible

JUNE 2020

21 JUNE

May 2020 monthly Activity Statements – due for lodgement and payment

30 JUNE

Superannuation Guarantee payments must be received by Superannuation funds by this date in order to be deducted in 2019/2020

30 JUNE

End of 2019/2020 financial year

Where one of these dates falls on a weekend or a public holiday, the due date is extended to the next business day





STIMULUS PACKAGE – CASHFLOW BOOST

In response to the novel coronavirus (COVID-19), the Government announced a series of measures for businesses and individuals. This article focuses on the cashflow boost for employers.



HOW IT WORKS

As we flagged recently, on 12 March the Government announced an economic stimulus package in response to the novel coronavirus COVID-19. A major plank of that package was boosting cashflow for employers with a PAYGW credit of up to \$50,000 based on a business's PAYG withholding.

Specifically, businesses with employees which have an aggregated turnover of less than \$50 million will be eligible. Those businesses which withhold tax on employee salary and wages will receive a credit equal to 50% of the amount withheld up to a maximum of \$50,000. Those businesses with employees but have not been required to withhold tax from salary and wages will nevertheless receive a minimum payment of \$20,000. This may apply for example to businesses whose employees all earn under the tax-free threshold, or where firms consisting solely of directors have not paid those directors salary or director's fees during the relevant period (they may have just paid dividends instead).

Not-for-profit organisations will also be eligible, including charities. To be eligible, not-for-profit organisations (excluding charities) must meet the same criteria as for business, namely:

- held an active ABN on 12 March 2020
- have an aggregate annual turnover of less than \$50 million
- made payments to employees.

Charities registered with the Australian Charities and Not-for-profits Commission are eligible, regardless of when they were registered, if they meet the other eligibility requirements.

DOUBLING DOWN – ADDITIONAL CASHFLOW BOOST

An additional cashflow boost is also being made from 28 July 2020 which essentially doubles the first. Eligible entities will receive an additional credit equal to the total of all of the Boosting Cash Flow for Employers payments received. The credits are tax-free, there will be no new forms and payments will flow automatically from the ATO as part of the Activity Statement process. The timing of Cashflow Boost Payments will depend on the basis of PAYGW registration (monthly or quarterly) – see examples and the Useful Resources listed below. The credits are tax-free, there will be no new forms and payments will flow automatically from the ATO as part of the Activity Statement process. The timing of Cashflow Boost Payments will depend on the basis of PAYGW registration (monthly or quarterly) – see examples below.

MONTHLY LODGERS

ATO EXAMPLE

Sarah owns and runs a building business in South Australia and employs 8 construction workers on average full-time weekly earnings, who each earn \$89,730 per year. Sarah reports withholding of \$15,008 for her employees on each of her monthly Business Activity Statements (BAS).

Under the Government's changes, Sarah will be eligible to receive the payment on lodgment of her BAS. Sarah's business receives:

- A credit of \$45,024 for the March period, equal to 300 per cent of her total withholding.
- A credit of \$4,976 for the April period, before she reaches the \$50,000 cap.
- No payment for the May period, as she has now reached the \$50,000 cap.
- An additional payment of \$12,500 for the June period, equal to 25 per cent of her total Boosting Cash Flow for Employers payments.
- An additional payment of \$12,500 for the July period, equal to 25 per cent of her total Boosting Cash Flow for Employers payments.
- An additional payment of \$12,500 for the August period, equal to 25 per cent of her total Boosting Cash Flow for Employers payments.
- An additional payment of \$12,500 for the September period, equal to 25 per cent of her total Boosting Cash Flow for Employers payments.

Under the previously announced Boosting Cash Flow for Employers measure, Sarah's business would have received a maximum payment of \$25,000. Under the Government's enhanced Boosting Cash Flow for Employers measure, Sarah's business will receive \$100,000. This is an additional \$75,000 to support her business and help her retain her staff.

QUARTERLY LODGERS

ATO EXAMPLE

Harry's clothing store employs 5 part-time workers with average income of \$30,000 per year. It reports total withholding of \$3,510 for its employees for each quarterly BAS. Under the Government's changes, Harry's will be eligible to receive the payment on lodgement of its BAS as it has a turnover of less than \$50 million. Harry's receives:

- A credit of \$10,000 for the March quarter, the minimum payment.
- An additional payment of \$5,000 for the June quarter, equal to 50 per cent of its total Boosting Cash Flow for Employers payments.
- An additional payment of \$5,000 for the September quarter, equal to 50 per cent of its total Boosting Cash Flow for Employers payments.

Under the Government's enhanced Boosting Cash Flow for Employers measure, Harry's will receive \$20,000. Under the previously announced Boosting Cash Flow for Employers measure, Harry's would receive just \$4,000



NO WITHHOLDING

ATO EXAMPLE

Tim owns and runs a small paper delivery business in Melbourne, and employs two casual employees who each earn \$10,000 per year. In his quarterly BAS, Tim reports withholding of \$0 for his employees as they are under the tax-free threshold.

Under the Government's changes, Tim will be eligible to receive the payment on lodgement of his BAS. Tim's business will receive:

- A credit of \$10,000 for the March quarter, as he pays salary and wages but is not required to withhold tax.
- An additional payment of \$5,000 for the June quarter, equal to 50 per cent of his total Boosting Cash Flow for Employers payments.
- An additional payment of \$5,000 for the September quarter, equal to 50 per cent of his total Boosting Cash Flow for Employers payments.

If Tim begins withholding tax for the June quarter, he would need to withhold more than \$10,000 before he receives any additional payment.

Under the previously announced Boosting Cash Flow for Employers measure, Tim's business would have received a total payment of \$2,000. Under the Government's enhanced Boosting Cash Flow for Employers measure, Tim's business will receive \$20,000. This is an additional \$18,000 to support his business.

Although the above ATO examples refer to a 'payment', the benefit is by way of the withholding that is paid to the ATO on the BAS, and that withholding amount is tax-free to the employer. Therefore, it is not a cash payment from the ATO as such, but rather the withholding that is paid to the ATO. For example, if an employer lodging their quarterly March Activity Statement was ordinarily due to withhold \$40,000 in PAYG withholding from their employee's salaries in that quarterly period, then they would just keep this money themselves (being 100% of the withholding that was due) rather than sending it to the ATO and it would be tax-free. The rest of that Activity Statement would be dealt with normally, for instance it may be the case that GST may be owed for that quarter

In summary, to receive the cashflow boost earlier than the 14-days promised by the ATO, businesses may wish to consider just not paying their PAYGW for that Activity Statement.

EXPLOITATION

Note that while this measure potentially is able to be exploited, for example by a director paying themselves a large wage in the March or June quarter when they had previously been receiving remuneration by way of a dividend, the legislation contains integrity provisions aimed at curtailing such strategies. On its website, the ATO says

"This may include restructuring your business or the way you usually pay your workers to fall within the eligibility criteria, as well as increasing wages paid in a particular month to maximise the cash flow boost amount.

Any sudden changes to the characterisation of payments made may cause us to investigate whether the payments are in fact wages. If the payments are wages, we may consider the characterisation of past payments, including whether they should have been subject to PAYGW and whether super guarantee contributions should have been made. You may also have FBT obligations that have not yet been met".



DIRECTOR PENALTY NOTICES EXTENDED

Legislation has recently been passed to extend the Director Penalty Notice (DPN) regime to GST, Luxury Car Tax, and Wine Equalisation Tax – potentially holding company directors personally liable if these amounts remain unpaid. Furthermore, directors may now under new legislation also face an increased likelihood of being held liable for unpaid superannuation guarantee (SG).

INTRODUCTION

One of the principal advantages of operating a business through a company structure is asset protection. In the absence of giving a personal guarantee, company directors are not liable for the debts/liabilities of the business. An exception to this is Director Penalty Notices which are issued by the ATO for outstanding GST and PAYG, subject to various other conditions being met (discussed below).

UNPAID PAYG OR SUPER

Before recent changes to the law, company directors could be held personally liable for unpaid PAYGW or SG amounts payable by their company unless the amounts were reported within three months of the due date. For SG purposes, this meant that for the June quarter, for example, to avoid a DPN, 'remission action' (see below) must be taken by 28 October (three-months after the 28 July due date). The DPN, which formally imposes the penalty, can be either a lockdown DPN or, on the other hand, a non-lockdown DPN, depending on the circumstances as follows:

1. **NON-LOCKDOWN 21-DAY DPN** *PAYGW OR SG Charge is unpaid but returns are lodged within three-months*

Where a company fails to pay PAYGW or SG Charge but lodges its BAS and SG charge statements respectively within three months of the due dates, the ATO can issue a DPN to the company's directors. However, personal liability can be avoided where remission action is taken within 21-days of the date of the DPN, namely:

- The PAYGW or SG Charge is paid, or
- A voluntary administrator is appointed, or
- The company is placed into liquidation under a Creditors Voluntary Liquidation.

2. **LOCKDOWN DPN** *PAYGW OR SG Charge unpaid and returns not lodged within three-months*

Where a company has failed to pay PAYGW and SG Charge and it has also failed to lodge its BAS and SG charge statement within three months of the due dates, the directors are automatically personally liable for unpaid PAYG and SG. In this circumstance:

- placing the company into liquidation or voluntary administration would not quash the director's liability and the ATO would be free to issue DPNs even after liquidation or voluntary administration occurs, and
- because there are no lodgements, the ATO can estimate a company's PAYGW and SG charge liability and issue DPNs on the basis of these estimates.

Therefore, under a lockdown DPN, the previous remission options are not available, and the amount outstanding becomes a debt of the directors.

As above, it's important to note that where amounts relating to PAYGW or SG charge are at least reported (even if not paid) within 3 months of the due date (either via the lodgement of an activity statement or an SG charge statement respectively), the directors can avoid liability by taking one of the above remission actions within the 21-day DPN period.

REFORM 1 – STRICTER SG RULES

In respect of the SG charge, last year the law was amended to remove the three-month period before a DPN is locked down, and the SG charge cannot be remitted if a company is placed into voluntary administration or insolvency. Under the new rules, the SG charge amounts must be reported by their due date. This change is restricted to the SG charge and does not impact the PAYGW liability. The amendments apply in relation to SG charge liabilities that first become payable on or after 1 July 2018, irrespective of whether the underlying liability arose before or after that date

The amendment means that a director penalty cannot be remitted if a company is placed into voluntary administration or insolvency where the company has an obligation to pay the SG charge and the company has not reported the SG charge liability to the ATO on or before the due date (which is one-month and 28 days after the original SG amount is due).

EXAMPLE

Ken is the director of a company, Nordo Pty Ltd.

Nordo fails to pay superannuation contributions for its employees for the quarter ended 30 June 2019. The company also fails to lodge the SG charge statement and fails to pay the SG Charge by the due date, being 28 August 2019.

Nordo subsequently lodges the SG charge statement on 30 September 2019, and on 15 October 2019, Nordo is placed into voluntary administration.

As a director, Ken has failed to ensure that his company meets its obligations in respect of the SG charge within the required timeframes. On 30 October 2019, the Commissioner issues Ken with a DPN for the outstanding SG charge liability.

Under the old law, Ken would not have been liable for the DPN amount as the SG charge statement lodgement and the voluntary administration occurred within the three-month period of the due date of the SG charge statement (within three months of 28 August 2019).

Under the new law, however, the DPN issued to Ken is not capable of being remitted, despite the company being placed into voluntary administration. This is because this was done more than one month and 28 days after the end of the relevant quarter for payment of SG charge and for the company to lodge the SG charge statement. To avoid personal liability for the SG charge under the DPN, Ken would had to have appointed a voluntary administrator on or before 27 August 2019.

REFORM 2 – GST

Pursuant to legislation that passed Parliament in February 2020, the DPN provisions have been extended to outstanding GST, luxury car tax (LCT), and wine equalization tax (WET) that a company has. This applies to quarters commencing 1 April 2020.

By way of background, companies (and other businesses) must lodge their Activity Statements and pay GST, LCT, and WET by the required due dates. Prior to this law change, the only recourse available to the ATO if a company failed to pay those amounts owing was against the company itself. This would typically be in the form of a garnishee notice (more than likely issued to a company's bank) or commencing to liquidate the company.

However, under the new legislation, the ATO is now able to issue DPN's for these unpaid amounts from 1 April 2020. These DPNs will apply in the same way that they apply to PAYGW therefore:

- If a company fails to pay these amounts owing but lodges its Activity Statements within three months of the due date, the ATO will be able to issue DPNs to the directors of that company. To avoid liability, the company needs to pay the amounts owing or place the company into liquidation or voluntary administration within 21-days of the date of the DPN
- If a company fails to pay the GST and also fails to lodge its Activity Statement within three months of the due date, the directors will automatically be personally liable for the unpaid amounts. Placing the company into liquidation or voluntary administration will not discharge this debt. The only way for the directors to avoid personal liability is for the company to pay the outstanding GST, LCT or WET.

The legislation also allows the ATO to estimate liabilities and issue Director Penalty Notices based on estimates, in the event that Activity Statements have not been lodged and therefore GST, LCT and WET

liabilities have not been determined. Accordingly, this type of Director Penalty Notice will most likely be a *lockdown DPN*, as the GST will not have been reported to the ATO within three months.

EXAMPLE

Peter is a director of a company that has failed to lodge its GST return in relation to a tax period. The Commissioner makes an estimate of Peter's net amount in the amount of \$20,000.

Peter pays \$10,000 to partially discharge the estimate liability. The estimate liability is reduced to \$10,000. Peter does not have a liability to pay an assessed net amount. The \$10,000 Peter has paid towards his estimate liability is held-over until Peter lodges his GST return.

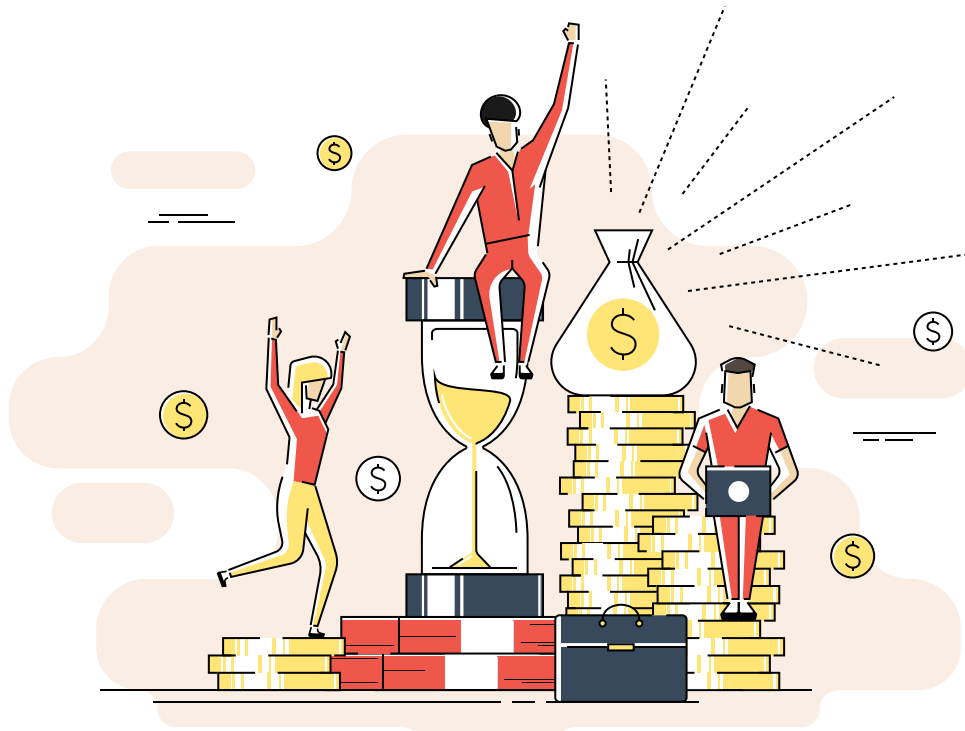
After making the initial \$10,000 payment Peter lodges his outstanding GST return. Based on the information in the return, Peter is assessed as having an assessed net amount of \$25,000 owing to the Commissioner. The held-over \$10,000 is applied to the liability to pay the assessed net amount, the balance of which is reduced to \$15,000.

Further, Peter makes an additional payment of \$5,000 towards the estimate liability. The estimate liability is reduced to \$5,000. The balance of the liability to pay the assessed net amount is reduced to \$10,000.

Peter then pays \$10,000 to fully discharge the liability to pay the assessed net amount. This amount is applied to Peter's estimate liability but, because the amount is greater than that liability, only the amount of outstanding estimate liability (\$5,000) is applied (subsection 268-20(5)), reducing the balance of liability to nil. Peter has now satisfied his obligations.

TAKE-HOME MESSAGES

- The amendments apply in relation to GST, LCT, and WET liabilities that first become payable on or after 1 April 2020, irrespective of whether the underlying liability arose before or after that date
- The superannuation amendments significantly reduce the timeframe of where a DPN becomes locked down for the SG charge liabilities. Even if the amount is unpaid, clients should ensure amounts are at least reported within one month and 28 days of when the initial SG was due.
- Directors need to keep their address details up-to-date with ASIC as this will typically be where a DPN is sent.
- Before becoming a company director, you should do due diligence and ensure SG, GST, LCT, WET, and PAYGW payments and lodgements are up-to-date. DPNs can be issued to directors in relation to liabilities/debts that arose prior to their appointment. New directors have 30 days (starting on the day of their appointment) before they become liable to DPNs equal to all of the company's currently outstanding PAYGW liabilities, and all of the unpaid SG liabilities from 1 April 1992 onwards.
- SG compliance is a current focus for the ATO, and clients should ensure that they pay in full and on time moving forward. Super funds are now reporting to the ATO more regularly (at least monthly). Therefore, SG non-compliance is likely to be detected. Further, the Commissioner now has new powers to direct an employer to pay an SG liability or an estimate of that liability. Employers who fail to comply with the direction by the due date risk a monetary penalty (up to \$10,500) and/or jail time of up to 12-months.



STIMULUS PACKAGE – INVESTMENT

In response to the novel coronavirus (COVID-19), the Government announced a series of measures for businesses and individuals. This article focuses on the investment measures.

INSTANT ASSET WRITE-OFF EXTENDED

The instant asset write-off threshold has been increased from \$30,000 to \$150,000. Access to the write-off has also been extended to include businesses with aggregated annual turnover of less than \$500 million (up from \$50 million). These increases apply to assets acquired from 12 March 2020 and being used or installed ready for use in a business by 30 June 2020.

The increase to \$150,000 brings into play more expensive depreciable assets such as tractors, trucks, motor vehicles, and expensive machinery for instance. Cash-flow is one of the biggest problems for business, particularly small business. The instant asset write-off assists in this regard by bringing forward deductions for investments in equipment, machinery and other depreciating business assets. Under the current law as it stands, the \$150,000 threshold is set to reduce to \$1,000 for businesses with a turnover of less than \$10 million, or \$100 if your business has a turnover of more than this.

WHAT'S THE BENEFIT?

- *Cashflow* – The \$150,000 write-off improves business cashflow by bringing forward deductions rather than having them spread out over more than one year. Cashflow can be a significant issue when the economy is in a downturn.
- *Timing* – The “pay day” on the cashflow relief could however be as much as 22 months (longer if the business has a tax loss). That is, an asset may be purchased in July 2020 for example, but the tax agent may not lodge the tax return until the due date which can be as late as May 2021.
- *Perspective* – You are only getting back the tax rate on the asset, not the full value of the asset. This is the same as the old law. You don't get any extra cash than you would otherwise have received under the old rules (you simply get it sooner). Consequently, you should not let tax distort or blur your commercial instincts – as you don't get any extra cash than you would otherwise have under the old rules, you should continue to only buy assets that fit within your business plan.
- *Simplification* – Reduction in compliance costs, particularly for those businesses that are capital intensive, through simplifying their tax arrangements and the record-keeping required.



CASE STUDY – CASHFLOW BENEFIT

A company with a turnover of \$1 million purchases an eligible asset for \$110,000 on 2 July 2020. As the asset is not purchased and installed ready for use on or before 30 June 2020 the instant write-off threshold is only \$1,000. Therefore, the standard pooling rules apply, and the asset will be written off at:

- 15% in the first year of 2020/2021. Therefore, a deduction of \$16,500 and
- 30% in subsequent years.

The cash-flow benefit the company would receive from these depreciation claims is \$4,537 for the first year (company tax rate of 27.5%) and \$7,713 in the second year. The company would continue to depreciate its general pool at 30% until the pool was under \$1,000, at which point the entire pool could be written-off.

By contrast, if the purchase of the asset was brought forward a few days and the asset was used or installed ready for use on or before 30 June 2020... then under the \$150,000 threshold, the company would be able to immediately deduct the entire \$110,000 cost in the first income year (2019/2020).

The cash-flow benefit the company would receive from this is \$30,250 in the first year (\$25,713 more than in the first scenario – i.e. the benefit is brought forward rather than spread out). The company is then free to apply this brought-forward cash immediately (e.g. pay off debt or suppliers, or re-invest in the business etc.). In the second income year, there is no further depreciation of this asset as it has been written-off completely. This means that the company is paying more tax in the second year relative to the earlier scenario (but no more and no less tax overall).

This Case Study illustrates the importance of meeting the 30 June 2020 deadline this financial year. After this date, the write-off threshold is under the current law set to reduce to \$1,000 or \$100.

ASSET ELIGIBILITY

Having determined that a business is eligible, the asset itself must be eligible for the write-off. Basically, all depreciable assets (including second-hand assets) used in a business are eligible for the \$150,000 write-off – including motor vehicles, furniture, computer equipment, machinery etc. The following assets are however specifically excluded from the write-off as they have their own unique depreciation treatment:

- Horticultural plants
- Buildings (these are dealt with under the Capital Works provisions)
- Assets allocated to a low-value pool or software development pool
- Primary production assets for which an entity has chosen to use the Uniform Capital Allowance (UCA) depreciation rules rather than the small business depreciation rules, and
- Assets leased out to another party on a depreciating asset lease.

Financed assets are also eligible. Assets that are the subject of a commercial loan, chattel mortgage or hire purchase would all qualify. Assets that are the subject of a lease however do not qualify for the write-off due to the fact that the ownership of the asset under a lease remains with the finance company.

INVESTMENT ALLOWANCE

In a \$3.2 billion initiative to back business investment, there is now a time-limited 15-month investment incentive (through to 30 June 2021) to support business investment and economic growth over the short term.

In simple terms, the incentive allows a deduction equal to 50% of the cost of an eligible asset, with existing depreciation rules applying to the balance of the asset's cost.

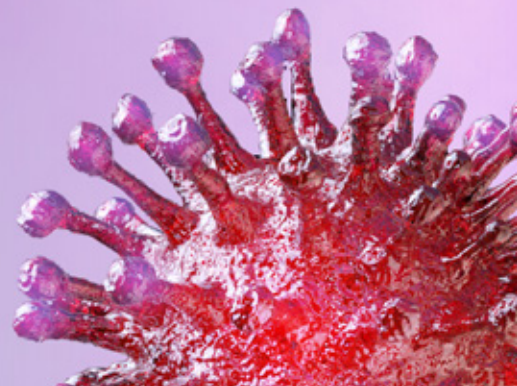
The amount that an eligible entity is (other than a Small Business Entity that is depreciating assets under its general small business pool) can deduct in the income year in which an eligible depreciating asset is first used or installed ready for use for a taxable purpose is:

- 50% of the cost of the asset (or adjustable value where applicable), and
- The amount of the usual depreciation deduction that would otherwise apply (if it were calculated on the remaining cost of the asset).

Different rules apply where a Small Business Entity is using the general small business pool (for assets that do not qualify for the write-off). In that case, the Small Business Entity may deduct an amount equal to 57.5% (rather than 15%) of the business use portion of the cost of an eligible depreciating asset acquired by the entity in the year it is allocated to the pool.

ATO AND FAIR WORK – YOUR CORONAVIRUS GUIDE

With the novel coronavirus COVID-19 pandemic upon Australia's doorstep, this article outlines the ATO's and Fair Work's position for those businesses and individuals who are impacted from a tax or workplace law perspective.



ATO ASSISTANCE

The ATO has announced a series of administrative concessions for taxpayers impacted by the coronavirus (COVID-19), as follows:

- deferring by up to six months the payment of tax amounts due through the BAS (including PAYG instalments), income tax assessments, FBT assessments and excise.
- allowing businesses on a quarterly reporting cycle to opt into monthly GST reporting to get quicker access to any GST refunds. A business can only make this change from the start of a quarter, so a change now will take effect from 1 April 2020.

Changing the GST reporting cycle to monthly doesn't mean that a business has to change its PAYG withholding reporting cycle. Rather, business can manage this by specifying the roles it is changing. Once a business chooses to report and pay GST monthly, the ATO says it must keep reporting monthly for 12 months before it can elect to revert to quarterly reporting.

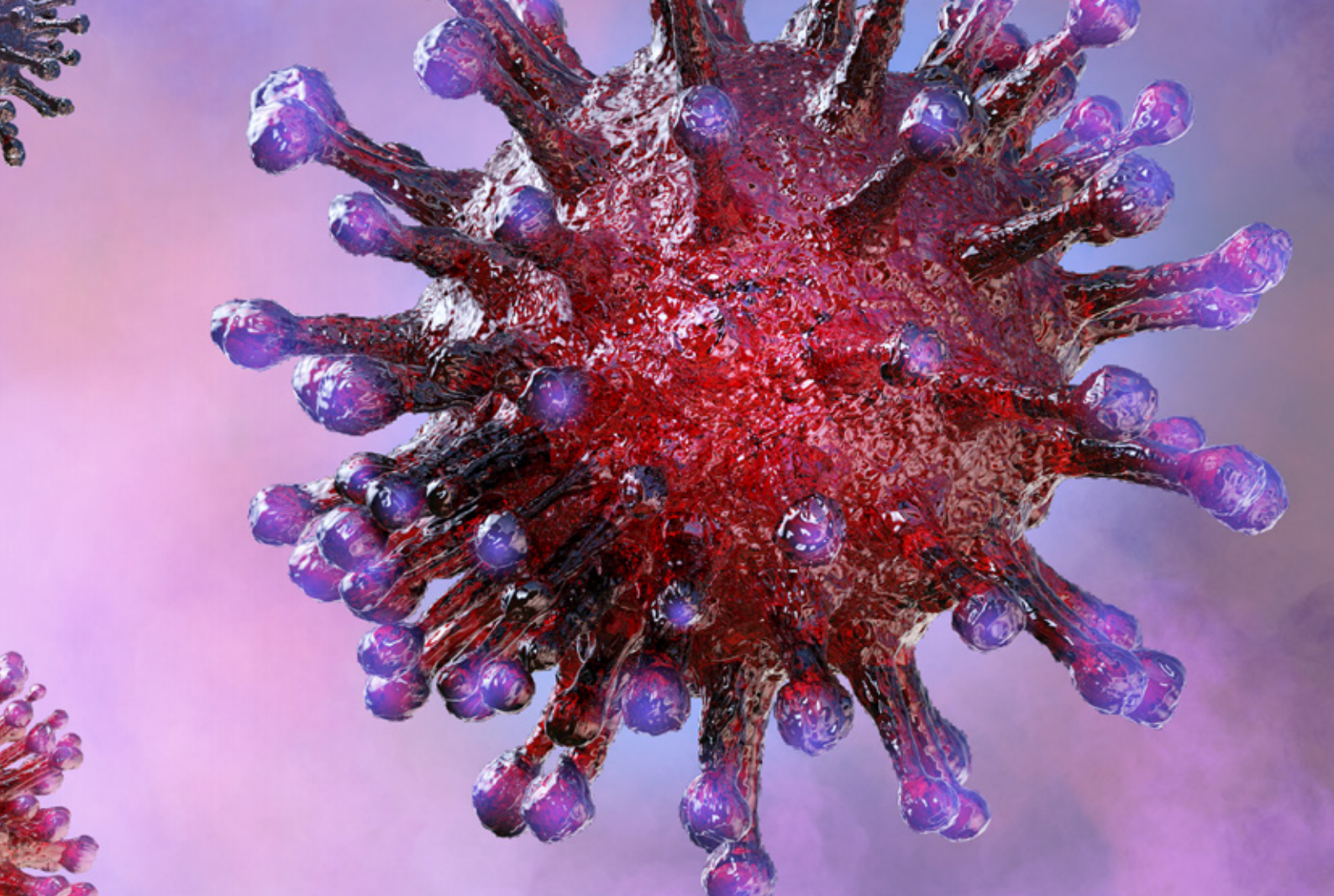
- allowing businesses to vary PAYG instalment amounts to zero for the April 2020 quarter. Businesses that vary their PAYG instalment to zero can also claim a refund for any instalments made for the September 2019 and December 2019 quarters. A quarterly PAYG instalments payer can vary its PAYG instalments on its activity statement for the March 2020 quarter. This can be done by lodging a revised activity statement before an instalment is due, and before the business lodges its income tax return for the year.

If a business is a monthly PAYG instalments payer and has a base assessment instalment income of \$500m or less, and they want to vary their instalment rate and claim a refund on previous instalments paid, the ATO says the taxpayer will need to phone the ATO (13 72 26) to discuss the matter. If a taxpayer realises that they have made a mistake working out their PAYG instalment, the ATO says they can correct it by lodging a revised activity statement or varying a subsequent instalment.

- remitting any interest and penalties, incurred on or after 23 January 2020, that have been applied to tax liabilities and
- allowing affected businesses to enter into low-interest payment plans for their existing and ongoing tax liabilities.

Importantly, these measures **will not be implemented automatically by the ATO** (unlike the relief measures for the recent bushfires).

Therefore, anyone impacted is required to contact the ATO Emergency Support Infoline (1800 806 218) when they are ready to request assistance. Once a taxpayer contacts the ATO, the Commissioner says a support plan will be tailored for the taxpayer/business.



EMPLOYEES WORKING FROM HOME

Due to health concerns employees may request or be requested to work from home. Working from home arrangements are usually agreed between an employer and employee. An employer who wants to direct an employee to work from home should review their obligations under any applicable enterprise agreement, award, employment contract or workplace policy. Employers should also consider the nature of the work involved and the suitability of the employee's home. Workplace health and safety laws still apply even when an employee is working from home.

Where employees are required to record their hours of work (for example, in relation to annualised wage arrangements under some modern awards), this needs to continue when they are working from home. Employers and employees are encouraged to discuss how this should occur.

Because workplace health and safety laws apply, the employee's residence will need to be suitably safe which may involve meeting all or most of the following criteria:

1. Is there a working smoke detector?
2. Is there an ergonomic chair and adequately sized work surfaces?
3. Is a fire extinguisher readily available?
4. Is a basic first aid kit easily accessible?
5. Are exits from the work area clear and unobstructed?
6. Are all electrical cords and appliances safely secured?

7. Are there any tripping hazards?
8. Are all floor coverings safe and non-slip?
9. Are there appropriate handrails on any stairs?
10. Is the lighting appropriate for the work being undertaken?
11. Is there proper ventilation and adequate heating/cooling?
12. Are there any hazards that might cause harm?

IF AN EMPLOYER WANTS THEIR WORKERS TO STAY AT HOME AS A PRECAUTION

Under workplace health and safety laws, employers must ensure the health and safety of their workers and others at the workplace as far as is reasonably practicable. Workers also have responsibilities under those laws.

If an employee is at risk of infection from coronavirus (for example, because they've recently travelled through mainland China, Iran, the Republic of Korea or Italy, or have been in close contact with someone who has the virus), employers should request that they seek medical clearance from a doctor and work from home (if this is a practical option – see earlier), or not work during the risk period. Employees can be directed to obtain medical clearance, which may include being tested for coronavirus, provided this is reasonable and based on factual information about health and safety risks.

You can find information on quarantine requirements on the Australian Government Department of Health's website.

Where an employer directs a full-time or part-time employee not to work due to workplace health and safety risks but the employee is ready, willing and able to work, the employee is generally entitled to be paid while the direction applies. Employers should consider whether their obligations are impacted by any applicable enterprise agreement, award, employees' employment contracts or workplace policies.

Under the Fair Work Act, an employee can only be stood down without pay if they cannot be usefully employed because of equipment break down, industrial action or a stoppage of work for which the employer cannot be held responsible. The most common scenarios are severe and inclement weather or natural disasters.

Standing down employees without pay is not generally available due to a deterioration of business conditions or because an employee has the coronavirus. Enterprise agreements and employment contracts can have different or extra rules about when an employer can stand down an employee without pay. Employers are not required to make payments to employees for the period of a stand down, but may choose to pay their employees.

Employers need to balance their legal obligations, including those relating to anti-discrimination.

IF AN EMPLOYEE WANTS TO STAY AT HOME AS A PRECAUTION

Employees who want to stay at home as a precaution need to come to an arrangement with their employer that best suits their workplace, such as making a request to work from home (if this is a practical option) or to take some form of paid or unpaid leave, such as annual leave or long service leave. Normal leave application processes in the workplace apply. If the employee does not enter into an arrangement with their employer or use paid leave, they are not entitled to payment in these circumstances. You can find information on quarantine requirements on the Australian Government Department of Health's website.

Employees are encouraged to discuss their level of risk of contracting coronavirus with their doctor, workplace health and safety representative or the appropriate Commonwealth, State or Territory workplace health and safety body.

Employees who do not work because they have a reasonable concern about an imminent risk to their health or safety are not taking industrial action. This is provided they are not failing to comply with a direction to perform other appropriate and safe work.

WHAT ABOUT CASUAL EMPLOYEES AND INDEPENDENT CONTRACTORS?

Casual employees do not have paid sick or carer's leave entitlements under the National Employment Standards and usually are not entitled to be paid when they do not work (for example, if they miss a shift because they are sick due to coronavirus or because they are otherwise required to self-isolate). Casual employees are paid a casual loading instead of paid leave entitlements. Employers should also consider their obligations under any applicable enterprise agreement, award, employees' employment contracts or workplace policies.

Independent contractors are not employees and do not have paid leave entitlements under the Fair Work Act. However, there are special provisions that deem contract outworkers in the textile, clothing and footwear industry to be employees for the purposes of most protections under the Fair Work Act. Where these provisions apply, the contract outworker should be treated as an employee.

WHAT IF I NEED TO LET EMPLOYEES GO OR REDUCE THEIR WORKING HOURS?

Some employers may need to make employees' positions redundant in response to a business downturn. If an employee's job is made redundant their employer may have to give them redundancy pay. The Fair Work Act has requirements that employers have to meet before they can terminate an employee's employment, such as providing notice.

If an employer seeks to vary employees' work rosters, they should review any applicable enterprise agreement, award, employment contracts or workplace policies. Particularly for full-time and part-time employees, an employer is usually required to seek employees' agreement to change their rosters.

Under the Fair Work Act, an employee is protected from being dismissed because of a temporary absence due to illness or injury. The Fair Work Act also includes protections against being dismissed because of discrimination, a reason that is harsh, unjust or unreasonable or another protected right. These protections continue to operate in relation to employees impacted by coronavirus.

WHAT IF AN EMPLOYEE IS STUCK OVERSEAS OR IS REQUIRED TO BE QUARANTINED OR SELF-ISOLATE?

Employees should contact their employer immediately if they are unable to attend work because they cannot return from overseas, are required to enter quarantine or to self-isolate because of the coronavirus.

You can find up-to-date information on quarantine requirements on the Department of Health's website

The Fair Work Act does not have specific rules for these kinds of situations so employees and employers need to come to their own arrangement. This may include:

- working from home or another location (if this is a practical option), noting they should review any applicable enterprise agreement, award, employment contracts or workplace policies
- taking sick leave if the employee is sick
- taking annual leave
- taking any other leave available to them (such as long service leave or any other leave available under an award, enterprise agreement or employment contract)
- arranging any other paid or unpaid leave by agreement between the employee and the employer.

Where an employer directs a full-time or part-time employee to stay home in line with advice, for example in line with the Australian Government's health and quarantine advice, and the employee is not sick with coronavirus, the employee should ordinarily be paid while the direction applies. Employers should consider whether their obligations are impacted by any applicable enterprise agreement, award, employees' employment contracts or workplace policies.

If an employee cannot work due to travel restrictions (for example, they are stuck overseas), they are not entitled to be paid (unless they use paid leave entitlements). Again, employers should consider whether their obligations are impacted under any applicable enterprise agreement, award, employees' employment contracts or workplace policies.



SUPER CATCH-UP CONTRIBUTIONS

Over the coming months many individuals will be eligible to make extra personal super contributions compared to previous financial years. In doing so, you may be eligible to claim a larger tax deduction than in previous years, as well as providing for your retirement.

CATCH-UP CONTRIBUTIONS

From 1 July 2018, if you have a total super balance of less than \$500,000 on the previous 30 June and you make or receive concessional contributions of less than the concessional contributions cap of \$25,000 per year, you may be able to accrue unused cap amounts for use in subsequent financial years.

2018/2019 was the first financial year you can carry forward unused cap amounts and these amounts can be used from 1 July 2019. Unused cap amounts can be carried forward for up to five years.

Before this change to the law, the concessional operated on a year-by-year basis – any unused amounts from a previous year could not be carried forward and used in subsequent years. You either used it, or you would lose it! Practically speaking, the first year that you can take advantage of this reform is 2019/2020 (for any unused 2018/2019 cap).

EXAMPLE – Carry-Forward Concessional Cap

Catelyn is a lawyer who earns \$95,000. As a result her employer would normally contribute \$9,025 in Superannuation Guarantee on her behalf. From 1 July 2018, she was on unpaid maternity leave, and returned to work exactly 12 months later.

Under the old rules, unable to carry-forward her unused concessional caps from previous years, in 2019/2020, Catelyn's concessional cap would be \$25,000 and not take into account her unused 2018/2019 cap. However, under the new rules, Catelyn's cap in 2019/2020 would be \$40,975 (\$25,000 unused carry-forward amount from 2018/2019 + \$15,975 standard \$25,000 cap in 2019/2020).

Assuming she made no contribution while on maternity leave in 2019/2020, under the new rules Catelyn would be able to make a personal contribution of up to \$40,975 in 2019/2020 (the unused \$25,000 cap + \$15,975 of the unused 2019/2020 cap, taking into account the \$9,025 in Superannuation Guarantee paid by her employer). This would give her extra capacity to catch-up on her superannuation contributions that were not made during her time off work – either by salary sacrificing, or making an after-tax contribution for which she could claim a tax deduction. The maximum amount of the tax deduction allowed in 2019/2020 would also increase by \$25,000 (being the unused cap amount from the previous year).

The ability to carry forward the unused portion of superannuation concessional contribution cap may come in particularly handy for:

- Those who are returning to the workforce, such as parents who have taken time out to look after new-born children
- Those whose income has increased from prior years, such as individuals who now work full-time or who have been promoted
- Those who have received a one-off windfall gain.

DEDUCTIONS

Even if you do not use the extra capacity offered by the catch-up provisions, subject to eligibility you can claim a tax deduction for your personal contributions you make to superannuation leading up to 30 June 2020.

If you are unable to salary sacrifice – perhaps your employer does not allow it, or you are not an employee – you can still access the same taxation benefits, and simultaneously provide for your retirement. This includes people who derive their income from:

- Salary and wages
- Self-employment
- Investments (such as interest, dividends, rent, capital gains)
- Government pensions and allowances
- Superannuation
- Partnership or trust distributions
- Foreign source.

Since 1 July 2017, most individuals up to age 75 can claim an income tax deduction for personal superannuation contributions. Before this date, you could only claim a deduction for your personal contributions where less than 10% of your assessable income, your reportable fringe benefits and your reportable employer superannuation contributions (e.g. salary sacrifice contributions) for the year were from being an employee – this was known as the ‘10% Rule’. This rule prevented most employees from claiming a tax deduction for this type of contribution. This rule no longer exists.

EXAMPLE

Assume Cameron’s employer did not offer salary sacrifice (employers are not required to). By making a \$10,000 after-tax contribution, this entire amount can be claimed as a tax deduction. Cameron however should consider his concessional contributions cap (which includes employer contributions and salary sacrifice contributions) of \$25,00 per year.

To claim a deduction, the following conditions must be satisfied:

- **Age** – All individuals under the age of 65 are eligible. Those aged 65 and over may need to meet a ‘work test’ (work for at least 40 hours in a period of not more than 30 consecutive days in the financial year in which you plan to make the contribution).
- **Minors** – If the individual is under 18 at the end of the income year in which the contribution is made, they must derive income in that year from being an employee or carrying on a business.
- **Complying Fund** – The contribution must be made to a complying superannuation fund.
- **Notice Requirements** – To claim the deduction you must provide your superannuation fund with a Notice of intention to claim a deduction form before you lodge your tax return in respect of that financial year.

Having met these conditions, you can claim the full amount of the contribution (up to the concessional contribution caps – see later) in your personal tax return at Label **D12**.

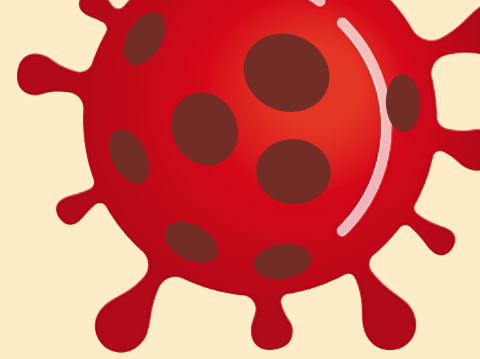
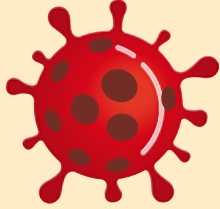
TAX TIP – EARNING LESS THAN THE TAX-FREE THRESHOLD?

From a tax perspective, no tax benefit will be enjoyed if you earned less than \$18,200 as those earning less than this amount do not pay tax anyway (after factoring in the low-income tax offset).

TAX TIP – LOSSES NOT ALLOWED

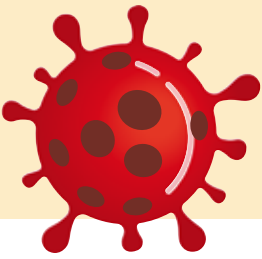
You generally make a tax loss when the total deductions you can claim for an income year exceed the total of your assessable income and net exempt income for the year. Individuals can generally carry forward a tax loss indefinitely, and use it to offset income in a future year. Carried-forward tax losses are offset first against any net exempt income and only then against assessable income.

However, personal superannuation contributions cannot be claimed as deductions where they would give rise to a tax loss. Therefore, if your deductions already exceed your assessable income, the superannuation deduction cannot be claimed and therefore cannot increase or create a tax loss which would normally be carried forward to future years!



CORONAVIRUS BANKING ASSISTANCE

Over the coming weeks, as the impact of COVID – 19 worsens, businesses may need assistance from their lending institutions. This article details what is available.



GOVERNMENT ASSISTANCE

Banks are working with their customers to provide support through the COVID-19 pandemic. This is on the back of a range of measures announced by the government as part of their Coronavirus Stimulus Package, including:

LOAN REPAYMENT RELIEF

Originally, the Australian Banking Association announced a **six-month deferral** of all loan repayments for small businesses hit by the coronavirus pandemic. This relief has **now been extended** to all businesses that have loans of up to \$10 million. That accounts for just on 98% of all Australian businesses that have loans with Australian banks. This is for all loans connected with the business, including equipment and vehicles.

On an individual level, homeowners may be granted a six-month holiday from repayments – with no repayments required to be made during this period. However, during this period, interest and fees will add to the loan balance. Note the criteria here is generally fairly strict. Your loan term will be extended so that your repayment amounts (e.g. monthly) do not increase after the six-month holiday. Note the criteria for relief is quite strict in that you will need to demonstrate that you have been materially impacted by the coronavirus such as by way of loss of income or employment. Wanting to build a bank of savings because you are worried about your employment being terminated in the future, will generally not be sufficient.

SME LOAN GUARANTEE SCHEME

The Government will establish the Coronavirus SME Guarantee Scheme which will support small and medium enterprises (SMEs) to get access to working capital to help them get them through the impact of the

Coronavirus. Under the Scheme, the Government will guarantee 50 per cent of new loans issued by eligible lenders to SMEs. The Government's support will enhance lenders' willingness and ability to provide credit to SMEs with the Scheme able to support \$40 billion of lending to SMEs.

LOW-COST LOANS FROM SMALLER LENDERS

\$15 billion in stimulus investment will be made available to enable small banks and non-banks to supply low-cost loans to customers and small business. This will enable customers of smaller lenders to continue to access affordable credit.

STRATEGIES FOR DEALING WITH YOUR BANK

Personal and business customers should consider making the following requests of their bank:

- deferring principal reductions; and
- pausing asset finance repayments immediately; and
- moving home loans to interest only, or pausing principal and interest repayments; and
- amending or deferring conversations surrounding covenants / conditions, or having covenants waived altogether.

Importantly, the time to act on this is now to preserve flexibility moving forward, remembering that whilst planning for the worst and hoping for the best, the ability to be able to grow profitably on the other side is something that can be planned for now.



INSOLVENCY

On the related issue of insolvency, new rules have been put in place by the Government to cushion financially-distressed businesses.

These new rules aim to provide a safety net by reducing the threat of actions against businesses and attempting to provide confidence to directors to continue to trade during this difficult time.

To create that safety net, the government is temporarily changing the following insolvency rules:

INSOLVENT TRADING

For six months from March 2020, directors will be relieved from their duty to prevent a company from trading whilst insolvent with respect to debts incurred in the ordinary course of carrying on its business. Consequently, directors will not become personally liable for such debts as would normally be the case under the normal insolvent trading regime.

TEMPORARY INCREASE IN TIME TO COMPLY

For both personal and corporate insolvency matters, there will be a temporary increase to the amount required to issue a Statutory Demand against a company and a Bankruptcy Notice against an individual. The government is also increasing the time within which a company and an individual has to comply with a Statutory Demand and a Bankruptcy Notice respectively. Set out below are the new temporary changes:

1. Statutory Demand

The threshold is increasing from \$2,000 to \$20,000. The time period within which to comply is going from 21 days to six months.

2. Bankruptcy Notice

Similarly, the threshold amount for a Bankruptcy Notice to be issued is also increasing, this time from the current amount of \$5,000 to \$20,000. The government is also increasing the time within which to comply with a Bankruptcy Notice from the existing 21 days to six months.

30 JUNE TAX PLANNING

Leading up to the end of the financial year, there are a number of tax strategies available and matters to address.



INCOME DEFERRAL AND EXPENSE ACCELERATION

If you will be earning more money this financial year (2019/2020) than next year (2020/2021) then consider deferring income until after 30 June 2020 where possible. This may involve for example deferring taxable capital gains by simply delaying the sale of the asset. Or it may involve delaying your retirement slightly and thus receiving any payout in 2020/2021 when you will likely be earning less income than when you were working.

On the other hand, if you are looking to minimise your taxable income in 2019/2020 (perhaps you will be earning more money this financial year than next year, or you just need some cash-flow relief) consider bringing forward some planned deductible expenditure to before 1 July. Or if you have made a capital gain, and are holding a loss making CGT asset, you may wish to consider crystallising that loss – however, pursuing this strategy, we recommend you speak to your investment and tax advisor before any sale.

TAX TIP

Sammy is a sole trader operating a painting business. He accounts on a cash basis. He is on track to earn an estimated \$210,000 in 2019/2020, but anticipates it will fall to less than \$100,000 next year due to the impact of COVID-19. Coming up to 30 June, he is nearing completion of a \$10,000 repair job.

If Sammy went ahead and completed the job, his tax liability on this \$10,000 would be \$4,700 (including Medicare Levy).

On the other hand, if Sammy were to delay the completion of this task by a few days until 1 July, his tax liability on the \$10,000 would be \$3,900...a total tax saving of \$800.

TRUSTEE RESOLUTIONS

If you operate your business through a Trust (including Family Trusts), ensure you make trustee resolutions to distribute the 2019/2020 Trust income by 30 June. Failure to do could result in the undistributed trust income being assessable to the Trustee at 47%.

The manner in which resolutions are to be made is governed by your Trust deed. While some deeds will allow for oral resolutions, other deeds will require written, documented resolutions for distributing the Trust income. It is vital therefore that trustees are familiar with the terms of their trust deed and what it requires in this respect.

It is advantageous if Trustee resolutions can be made orally. This provides a further defence if ever a written trust resolution were deemed to be out of time. That said, where the deed allows you to make oral resolutions, it's still recommended that these oral resolutions be documented in official minutes, even if the official minutes are not made at the time of the oral resolution. In an ATO audit scenario, some documentation to fall back on is always preferable. Remember however that regardless of whether your Deed allows you to make oral resolutions, the ATO has ruled that a written record is essential if you wish to effectively stream capital gains or franked dividends.

Finally, it's important to note that most Trust deeds contain a default beneficiary clause which makes a particular beneficiary entitled to the trust's income if no other resolution is made by 30 June. Therefore, if the Trust wishes to distribute income to someone other than this default beneficiary it will need to have a resolution in place by 30 June 2020.

SMALL BUSINESS PREPAYMENTS

As a Small Business Enterprise (SBE with a turnover of less than \$10 million including affiliates and connected entities) you can claim an immediate deduction for certain prepaid business expenses where the payment is for a period of 12 months or less and ends in the following income year that the payment was made.

The prepaid expenditure concession provides SBEs with cash-flow relief by enabling them to bring forward deductions that would otherwise be apportioned over two income years. Examples of business expenditure items that you may wish to prepay over the coming months before 1 July include:

- Rent
- Insurance
- Advertising
- Repairs to business assets
- Subscriptions
- Business trips
- Deductible interest
- Seminars and conference bookings
- Contract payments
- Deductible car registration fees
- Leases, and Telephone and internet services.

DEAL WITH PRIVATE COMPANY 'LOANS'

Have you received a 'loan' amount from your private company in 2019/2020 – that is taken money other than franked dividends, Director's Fees, or salary and wages from your company? If so, you may need to take urgent action by 30 June in order to avoid some harsh income tax consequences imposed by Division 7A of the Tax Act.

If you have received one of these from your private company during 2019/2020, then unless you take corrective action by 30 June the full dollar value of these 'loans' may be assessed to you personally as an unfranked dividend. 'Corrective action' involves one of the following:

- A written loan agreement (formal Division 7A agreement) is put in place – annual minimum interest and principal repayments are required in subsequent income years
- You repay the amount before the lodgement date or due date for lodgement (whichever is earlier) of the company's income tax return in the year in which the loan is made.

RENTAL PROPERTY OWNERS

Leading up to 30 June rental property owners can also optimise their 2019/2020 tax position:

PREPAY INTEREST

Many lenders allow borrowers to prepay interest on loans. By prepaying before 1 July you can claim a tax deduction for up to 12 months interest. Of course, you should also factor in your own cash-flow in making a decision to prepay any expense. This is only available for SBE taxpayers (see earlier) and non-business individuals.

QUANTITY SURVEYOR REPORT

At this time of year, many owners have their depreciation/capital allowances schedules prepared. The reports itemise all of the depreciable items in the property, as well as the available capital works deductions. We recommend that this report be done by a qualified Quantity Surveyor. Their expertise can add thousands of dollars worth of deductions to your rental property claim. Payments for their services are also tax deductible.

DIRECTORS FEES

If your company is planning on paying directors fees prior to 1 July, you may need to have a resolution in place by this date.

A popular year-end tax strategy for companies is to make a resolution to pay directors fees in the current financial year, but not actually make the payment of the fees until the following financial year. This is what is known as 'accrued directors fees' i.e. the fees are accrued but not actually paid. The benefit in such a strategy is that while the company claims a tax deduction for the director's fees in the year that it makes the resolution, it doesn't actually make the payment until the following financial year. This is a win-win for the company (they can claim a deduction and improve their current year tax position, but without having incurred any cost).

In *Income Tax Ruling IT 2534* the ATO outlines its views on the taxation treatment of directors' fees stating that accrued directors' fees are only deductible at the point in time that a company is definitely committed to making the payment. Consequently, it's essential that your company, via an appropriately worded minute, makes an unconditional resolution in a shareholders' meeting making the company "definitely committed" to making the payment. The resolution must not be conditional; it must not be subject to cash-flow considerations etc. Directors Fees are subject to PAYGW and SGL requirements.

EXAMPLE RESOLUTION

COMPANY ABC PTY LTD

Minutes of Shareholders Meeting

Venue: Brisbane St, Brisbane

Date: 30 June 2020

Present John Smith, Sue Jones

Directors' Fees:

It was resolved to pay directors' fees to the directors for their services to the company during the 2019/2020 income year.

The following amounts are payable:



STIMULUS PACKAGE – INDIVIDUALS

The Government has also announced a range of measures for individuals who are impacted by the economic fallout from the coronavirus.



SUPERANNUATION

EARLY ACCESS

The Government is granting certain individuals early access to their superannuation. By way of background, before this change to the law, early access to superannuation on hardship grounds was only available where either:

1. You have been receiving Commonwealth income support payments for at least 26 continuous weeks and were in receipt of this when you applied to have your benefits released), and you are unable to meet reasonable and immediate family living expenses. If this is met, the payment must be a single lump sum of no more than \$10,000 and no less than \$1,000 (or, if your balance is less than this, the lesser amount). Only one payment is allowed each 12 months.

2. You have reached Preservation Age (between 55 and 60 depending on when you were born – see later table), and have received Commonwealth income support payments for a cumulative period of 39 weeks after reaching Preservation Age, and you were not gainfully employed either full-time or part-time when you applied to have your benefits released. There are no cashing restrictions.

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.

Individuals will not need to pay tax on amounts released and the money they withdraw will not affect Centrelink or Veterans' Affairs payments.

To qualify, an individual must fall into at least one of the following categories:

- You are unemployed.
- You are eligible to receive a job seeker payment, youth allowance for jobseekers, parenting payment (which includes the single and partnered payments), special benefit or farm household allowance.
- On or after 1 January 2020, either
 - » you were made redundant
 - » your working hours were reduced by 20% or more
 - » your business was suspended or there was a reduction in your turnover of 20% or more, if you are a sole trader.

Aside from this newly-introduced condition of release, you can also access your superannuation on compassionate grounds. Your benefits may be released if all of the following conditions are met:

- You do not have the financial capacity to meet an expense
- The release is allowable under the rules of your fund, and
- The Department of Human Services (DHS) approves in writing the release.

Once DHS approval is obtained, the final decision to release rests with the Trustees of your fund. If they approve, they can only release an amount limited to what is reasonably needed. This must be paid in a lump sum.

MDHS GROUNDS

DHS will only approve your application if you do not have the financial capacity to:

- a. Pay for medical treatment for a life-threatening illness, or to alleviate acute or chronic pain or mental disturbance, or for medical transport for you or a dependant.
- b. Enable payments to prevent foreclosure by a mortgagee or the exercise of an express or statutory power of sale over the family home,
- c. Pay for home and vehicle modifications to accommodate the special needs of a severely disabled person or dependant,
- d. Pay for expenses associated with palliative care for you or a dependent, in the case of impending death,
- e. Pay for expenses associated with , funeral or burial, or
- f. To meet expenses in other cases where the release is consistent with (a) to (e).

MINIMUM DRAWDOWN REQUIREMENTS

Minimum drawdown requirements for account-based pensions and similar products have been reduced.

Account-Based Pensions (also referred to as Allocated Pensions) is the most common type of superannuation pension. It is drawn from money you have accumulated in superannuation and is available once you have reached Preservation Age as follows:

PRESERVATION AGE	
Date of Birth	Preservation Age (Years)
Before 1 July 1960	55
1 July 1960 – 30 June 1961	56
1 July 1961 – 30 June 1962	57
1 July 1962 – 30 June 1963	58
1 July 1963 – 30 June 1964	59
After 30 June 1964	60

Despite there being no maximum limit on the amount you can draw down, there is a minimum amount that must be drawn down each year depending on your age as follows:

Age	Minimum Annual Payment as a Percentage of Account Balance (2019/2020 and 2020/2021)
55-64	4% (down to 2%)
65-74	5% (2.5%)
75-79	6% (3)
80-84	7% (3.5)
85-89	9% (4.5)
90-94	11% (5.5)
95+	14% (7)

Failing to pay the minimum amount is quite a common error made by SMSFs. If the minimum amount is not paid, this may result in the income earned from pension assets not being tax exempt, so it's important to understand how this requirement works. The "percentage of account balance" is calculated at the start of each financial year on 1 July. Your age is also measured at the same time or, on the commencement day of your pension if you commenced a pension during the financial year.

Minimum drawdown requirements for account-based pensions and similar products have been reduced by 50% less than the above table for 2019/2020 and 2020/2021. This measure will benefit retirees with account-based pensions and similar products by reducing the need to sell investment assets to fund minimum drawdown requirements.

EXAMPLE

Mike is 72. The value of Mike's account-based pension at 1 July 2019 was \$200,000. Under current minimum drawdown requirements, Mike is required by legislation to drawdown 5% of his account balance over the course of the 2019/2020 and 2020/2021 income years.

This means Mike has to drawdown \$10,000 by 30 June 2020 to comply with the minimum drawdown requirements.

Following the temporary reduction in minimum drawdown requirements, Mike will now only be required to drawdown 2.5% of his account balance, that is, \$5,000, by 30 June 2020. If Mike has already withdrawn over \$5,000 for 2019-20, he is not able to put the amount above \$5,000 back into his superannuation account.

On 1 July 2020 the value of Mike's account-based pension is \$180,000 (after drawdowns and investment losses). During 2020-2021, Mike is required to drawdown 2.5% of his account balance, which is \$4,500, instead of \$9,000.

As a result of this change to minimum drawdown requirements, Mike is able to preserve his capital while still drawing an income from his superannuation.

INCREASED INCOME SUPPORT

The Government is temporarily expanding eligibility to income support payments and establishing a new, time-limited Coronavirus supplement to be paid at a rate of \$550 per fortnight. This supplement will be paid to both existing and new recipients of the eligible payment categories. These changes will apply for the next six months.

The income support payment categories eligible to receive the Coronavirus supplement are:

- Jobseeker Payment¹ (and all payments progressively transitioning to JobSeeker Payment; those currently receiving Partner Allowance, Widow Allowance, Sickness Allowance and Wife Pension)
- Youth Allowance Jobseeker
- Parenting Payment (Partnered and Single) • Farm Household Allowance
- Special Benefit recipients

Anyone who is eligible for the Coronavirus supplement will receive the full rate of the supplement of \$550 per fortnight.

PAYMENTS TO SUPPORT HOUSEHOLDS

The Government is providing two separate \$750 payments to social security, veteran and other income support recipients and eligible concession card holders. The first payment will be made from 31 March 2020 and the second payment will be made from 13 July 2020. Around half of those that benefit are pensioners. This payment will help to support confidence and domestic demand in the economy. The second payment will not be made to those eligible for the Coronavirus supplement.

REDUCING SOCIAL SECURITY DEEMING RATES

On 12 March, the Government announced a 0.5 percentage point reduction in both the upper and lower social security deeming rates. The Government will now reduce these rates by another 0.25 percentage points.

As of 1 May 2020, the upper deeming rate will be 2.25 per cent and the lower deeming rate will be 0.25 per cent. The reductions reflect the low interest rate environment and its impact on the income from savings. The change will benefit around 900,000 income support recipients, including around 565,000 Age Pensioners who will, on average receive around \$105 more of the Age Pension in the first full year the reduced rates apply.

EXAMPLE

Helen receives a single part-rate Age Pension. She has \$200,000 in financial assets with \$175,000 held in a term deposit which returns 1.5% and the remainder in a cash transaction account earning a negligible rate of interest.

Under the former deeming rates, Helen's Age Pension would have been reduced by \$8.50 per fortnight as her income was above the income test threshold. With the change in deeming rates Helen has less deemed income and will now be eligible for a maximum rate Age Pension.

EXAMPLE

Leslie and Brian are an age pensioner couple. They have \$550,000 worth of financial assets. They hold \$300,000 in a superannuation account with a conservative investment strategy which returned around 5 % last year. They have invested \$130,000 in a term deposit with an annual return of 1.5% and hold the remainder in a cash transaction account earning a negligible rate of interest.

Under the former deeming rates, Leslie and Brian's Age Pension would have been reduced by \$65 each per fortnight. Under the new deeming rates, Leslie and Brian's Age Pension will only be reduced by around \$32 each per fortnight.

SUPER AMNESTY



Employers now have the opportunity to catch up on prior period superannuation guarantee payments due to workers and, in doing so, avail themselves of a number of tax concessions.

INTRODUCTION

In late February, the superannuation guarantee (SG) amnesty legislation was finally passed by both houses of Parliament and is now law. The legislation provides tax and financial incentives for non-compliant employers to pay SG that is owing to employees for prior quarters. The amnesty was originally announced in May 2018 to apply from 24 May 2018 until 23 May 2019, but the legislation to establish the amnesty did not pass the last parliament before the May 2019 election. Now it has passed.

QUALIFYING

To qualify for the amnesty, a disclosure of an SG amount owing must be made during the amnesty period. The amnesty period is the period that started on 24 May 2018 and ends 6 months after the day the legislation received Royal Assent. As this was received on 4 March, the amnesty disclosure period ends on 4 September 2020. Any disclosures made during this period (24 May 2018 to 4 September 2020) may qualify. Disclosures are made in this period by lodging an SG Charge Statement with the ATO, and paying the amount owing or entering into a payment arrangement (see later).

A disclosure will not qualify if before the disclosure, the ATO informed the employer that the ATO is already examining the employer's SG compliance for that quarter. Therefore, the disclosure must be purely voluntary – not as a result of ATO scrutiny.

Therefore, if an employer has already lodged an SG Charge Statement (and in that Statement disclosed particular SG Shortfalls), then those particular Shortfalls are not eligible for the Amnesty even if the amount of the Shortfall has yet to be paid. Likewise, Shortfalls that the ATO uncovers during current, future, or past audits of the employer are not eligible for the Amnesty.

Prior periods shortfalls that are eligible for the Amnesty span almost a whopping 26 years – that is, from 1 July 1992 when SG first became payable, to 31 March 2018. The disclosed shortfall must relate to those periods. It follows that shortfalls from 1 April 2018 to present do not qualify for the Amnesty.

BENEFITS

Before the amnesty, if an employer had an SG shortfall for the quarter (i.e. they had not paid SG in full and on time), then they were liable for:

1. An administration fee of \$20 per employee for which there has been a shortfall
2. The shortfall
3. 10% interest
4. Further penalties of up to 200% of the SG Charge may be imposed at the discretion of the ATO
5. Being denied a deduction for the late payment.

Under the amnesty, components 1 and 4 will be waived, and the employer will be entitled to a deduction for the late payment.

However, if an employer already had an administration component in respect of an employee because of a previous assessment (for example, one that occurred prior to the amnesty), the amnesty does not affect the previous administration component.

EXAMPLE

An employer with 100 employees for a quarter covered by the amnesty, previously had individual SG shortfalls identified in respect of 40 of those employees for the quarter.

Prior to the amnesty, the employer's SG shortfall (calculated in respect of the 40 employees) included an administration component for each of those employees.

During the amnesty period (24 May 2018 to 4 September 2020), the employer discloses that they recently became aware of a small individual SG shortfall in respect of all 100 of their employees. For the original 40 employees, this amount was in addition to the individual SG shortfalls originally identified.

As this disclosure occurred under the amnesty, the employer does not have an administration component included in their (increased) SG shortfall for the quarter. However, the employer still has an administration component in respect of the original 40 employees.



TAKING UP THE OFFER

There are two alternative ways that employers can take advantage of the amnesty.

1. PAY DIRECT TO THE SUPER FUND

The employer can pay the full amount directly to the employee's superannuation fund. This will consist of the SG shortfall, and interest. Calculators are available on the ATO website. Under this option, the employer is required to complete an approved form and send it to the ATO. This form is the SG Amnesty fund payment form which can be submitted electronically via the Business Portal or, if you have an accountant, via Online Services for Agents. This form must be lodged on the same day payment is made to the superannuation fund.

This option is ideal for employers where the shortfall relates to current or recent employees where the employer can confirm that the superannuation account is open and the details are up to date. Be mindful that under this option, the amount owing must be paid in full.

2. PAY DIRECT TO THE ATO

In the event that an employer is unable to pay the full amount direct to the ATO, it must lodge the earlier-mentioned form with the ATO and make the payment direct to the ATO. In these cases because the amount is not paid in full upfront, the ATO will contact the employer to arrange a payment plan. This method is suitable for employers who cannot pay the amount upfront, or where the amount is owed to a past employee and you cannot ascertain their current superannuation fund details.

3. DISQUALIFICATION

An employer may no longer qualify for the amnesty where they have not paid the amount outstanding or have not entered into a payment arrangement or have failed to meet the terms of the payment arrangement (i.e. defaulted on a payment).

EXAMPLE

Lawyer Co Pty Ltd has three employees who collectively in the January – March 2018 quarter had ordinary time earnings (OTE) of \$65,000. This means that there was a \$6,175 SG liability. However, due to cashflow issues at the time, no SG was paid for this quarter, and no late payments were made.

AMNESTY

Provided the ATO had not commenced examining whether there was an SG shortfall for that quarter, the shortfall would qualify for the amnesty as it falls within the amnesty period of 1 July 1992, and 31 March 2018. Thus, the employer needs to disclose the shortfall between 24 May 2018 and 4 September 2020.

The financial benefits of doing so are that the SG Charge – consisting of the interest and shortfall – will be deductible. Even leaving aside the interest, a deduction of \$6,175 will save the company \$1,698 in tax (assuming a company rate of 27.5%).

Additionally, the admin fee (\$20 x 3 employees) will be waived as will the Part 7 penalties which could be as high as 200% x \$6,175 (\$12,350).



Irrespective of the Amnesty however, all employers should strongly consider coming forward to disclose and pay past shortfalls to get their Superannuation Guarantee affairs in order. Since the one-off amnesty was announced, over 7,000 employers have come forward to voluntarily disclose historical unpaid super. Upon releasing the new Amnesty legislation, the Assistant Treasurer said.

'The ATO estimates an additional 7,000 employers will come forward due to the extension of the amnesty. This means around \$160 million of superannuation will be paid to employees who would otherwise have missed out.'

'The amnesty reinforces recent changes to the superannuation system to improve the visibility employees have over their superannuation. We have given the ATO greater powers to ensure employers meet their obligations, and to help ensure employees receive their superannuation entitlements. The Government's legislated package of integrity measures which includes up to 12 months jail for employers who continue to do the wrong thing by their workers, and gives the ATO near real-time visibility of how much SG employees are owed and the contributions they actually receive.'

'This is a practical measure that is all about reuniting hardworking Australians with their super. My message to employers who owe super is: come forward now. Do not delay. This is a one-off opportunity to set things right, and going forward the ATO has the tools to spot unpaid super.'

Moving forward, with Single Touch Payroll having been introduced, each time employees are paid, employers must report year to date employee earnings and superannuation. Therefore, the actual superannuation liability, not the payment itself, is reported by the employer. This is because the payment information is now being captured and reported to the ATO via the Member Account Transaction Service (MATS) report (these reports

are lodged with the ATO by APRA-regulated superannuation funds when they receive employer contributions). Under STP, superannuation funds are now also required to report member information. The upshot is that there is now real time, and more granular reporting of superannuation liabilities and payments – down to the employee level. The ATO will now know in close to real time if an employer is not paying superannuation in respect of any employee. Therefore, it will be in a position to immediately follow up late payers. Says ATO Deputy Commissioner, James O'Halloran:

'We can now see patterns, volumes and contribution flows which, for the most part, confirm what we expect but also allow us to identify potential discrepancies or issues and to follow these up in a timely way. As we gain increased assurance in the data and the conclusions we can draw from it, we'll use it to move sensibly into proactive 'nudges' and warnings to clients; for example, directly notifying or nudging employers we've identified as not having paid superannuation guarantee (SG) to their employees per quarter as required. In fact, we recently piloted this approach with a small sample of 85 employers who we contacted regarding their late payment of SG. After our contact, some 50 per cent of these employers then lodged and paid the outstanding SG to the ATO for their employees. We intend to expand this approach to those employers who haven't paid SG to their employees within 30 days after the end of the reporting quarter.'

In its own words the ATO is now undertaking matching exercises right down to the employee level whereby they: "compare the amounts you report with information we receive from super funds. If we identify your contributions vary significantly from the liability reported, we will contact you".

JOBKEEPER PAYMENT

The Government announced the "JobKeeper Payment" as part of a wage subsidy measure to assist business during the anticipated downturn stemming from the coronavirus.

OVERVIEW

This new measure is designed to provide a wage subsidy of \$1,500 per fortnight per employee. The payment will be paid to employers, for up to 6 months, for each eligible employee that was on their books on 1 March 2020 and is retained or continues to be engaged by that employer. Where a business has stood down employees since 1 March 2020, the payment is designed to help the employer maintain connection with those employees.

Employers will receive a standard payment of \$1,500 per fortnight per eligible employee. Every eligible employee must receive at least \$1,500 per fortnight from this business.

TIMING OF PAYMENT

The first payments will be received by eligible businesses in the first week of May from the ATO, as monthly arrears. Eligible businesses can begin distributing the JobKeeper Payment immediately and will be reimbursed from the first week of May.

ELIGIBLE EMPLOYERS - MIN 30% REDUCTION IN REVENUE

Eligible employers will be those with annual turnover of less than \$1bn who self-assess that have a reduction in revenue of 30% or more, relative to a comparable period a year ago (of at least a month).

Employers with an annual turnover of \$1bn or more would be required to demonstrate a reduction in revenue of 50% or more to be eligible. Businesses subject to the Major Bank Levy will not be eligible.

Eligible employers include companies, partnerships, trusts and sole traders. Not-for-profit entities, including charities, are also eligible. Eligible employers who have stood down their employees before the commencement of this scheme will be able to participate, providing they re-engage those employees who were on their books at 1 March.

The key for employers wishing to access the per-employee payment, is to stay connected with your employees – whether that entails them continuing to work their normal hours from home, being cut back to part-time, taking paid annual leave or unpaid leave etc. Without that employment connection, eligibility is not met.

Employers must elect to participate in the scheme. They will need to register their interest on the ATO website and eventually provide supporting information demonstrating a downturn in their business. The full application process will be made clear once legislation has passed. In addition, employers must report the number of eligible employees employed by the business on a monthly basis.

ELIGIBLE EMPLOYEES

Full time and part time employees, including stood down employees, are eligible to receive the JobKeeper Payment. Where a casual employee has been with their employer for at least the previous 12 months, they will also be eligible for the payment.

An employee will only be eligible to receive the payment from one employer. The employee will need to notify their primary employer to claim the JobKeeper Payment on their behalf.

Eligible employees include Australian residents, NZ citizens in Australia who hold a subclass 444 special category visa, and migrants who are eligible for JobSeeker Payment or Youth Allowance (Other).

Self-employed individuals are also eligible to receive the JobKeeper Payment, where they have suffered or expect to suffer a 30% decline in turnover relative to a comparable prior period (of at least a month). Employees that are re-engaged by a business that was their employer on 1 March 2020 will also be eligible.

REGISTER

At this stage, the only action required is to register your details on the ATO website.

More information will be provided once the legislation is drafted, and the ATO sets up the accompanying online architecture.