client alert | explanatory memorandum

August 2020

CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 24 July 2020.

Federal Government releases economic update

On 23 July 2020, Federal Treasurer Josh Frydenberg released the Economic and Fiscal Update July 2020 to reconcile the Federal Budget position for the Government's $289 billion in COVID-19 measures.

The Treasurer has forecast an underlying cash Budget deficit of $85.8 billion for 2019–2020, rising to $184.5 billion for 2020–2021 (or 9.7% of gross domestic product [GDP]). Gross debt is expected to increase to $851.9 billion (45% of GDP) at 30 June 2021, while net debt will be $677.1 billion (35.7% of GDP). Once the economic recovery is established, the Treasurer expects stronger growth and an improvement in the country's fiscal position to help stabilise government debt as a share of GDP.

Tax receipts have been revised down by $95.6 billion, being $31.7bn in 2019–2020 and $63.9 billlion in 2020–2021, due to the severe contraction in economic activity resulting from the COVID-19 pandemic. The Treasurer said the outlook for tax receipts remains uncertain, reflecting uncertainty around the economic outlook and how it interacts with structural and administrative features of the tax system, such as the ability of taxpayers to carry forward losses to offset future income. Total tax receipts, including GST and indirect taxes, are estimated to fall from $432 billion in 2019–2020 to $416 billion for 2020–2021.

The Economic and Fiscal Update outlines the key COVID-19 policy response measures announced by the Government since March 2020. The Treasurer said the Government has provided economic support for workers, households and businesses of around $289 billion (14.6% of GDP) in response to COVID-19. The unemployment rate is forecast to peak at 9.25% in the December quarter of 2020.

JobKeeper extension

The economic update incorporates the extension of JobKeeper payments for six months beyond its legislated finish date of 27 September 2020, as announced by the Government on 21 July 2020. The total cost of the JobKeeper regime, as extended, is now estimated to be $85.7 billion over 2019–2020 and 2020–2021.

As announced on 21 July, the current JobKeeper per-employee payment of $1,500 per fortnight will be reduced to $1,200 per fortnight from 28 September (or $750 for employees working less than 20 hours per fortnight). From 4 January to 28 March 2021, the rate is $1,000 (or $650 for less than 20 hours per fortnight). Businesses will also be required to demonstrate an actual decline in turnover (rather than a predicted decline) from 28 September under the existing turnover test for each of the two periods of extension.

New measures announced

While the update did not include any major new financial support measure announcements, it brought information about the following changes that do not appear to have been previously announced:

- *Early super release of $10,000 extended to 31 December 2020:* the Government will extend the application period from 24 September 2020 to 31 December 2020 for the early release of superannuation (tax-free) by those dealing with adverse economic effects of COVID-19. Eligible Australian and New Zealand citizens and permanent residents were able to access up to $10,000 of their superannuation before 1 July 2020. A second application can be made via myGov to access a further $10,000 until 31 December 2020 (extended from 24 September).
- *Wage subsidy for apprentices and trainees extended:* the Supporting Apprentices and Trainees (SAT) wage subsidy will be extended for a further six months to 31 March 2021, and expanded to include medium-sized businesses (with less than 200 employees) from 1 July 2020 to 31 March 2021. The apprentices or trainees must have been in training with the business as at 1 July 2020. The SAT wage subsidy provides eligible employers with 50% of the apprentice or trainee's wages for nine months, up to $7,000 per quarter, to support the continuity of training. The original wage subsidy scheme enabled eligible employers to apply for the wage subsidy for nine months until 30 September 2020.

- *Personal income tax exemption for Operation Orenda:* a full income tax exemption will be provided for the pay and allowances of Australian Defence Force (ADF) personnel deployed on Operation Orenda as part of the United Nations Multidimensional Integrated Stabilisation Mission in Mali.
- *Unclaimed superannuation transfers to KiwiSaver:* the start date for the 2015–2016 Budget measure to allow the ATO to pay lost and unclaimed superannuation amounts directly to New Zealand KiwiSaver accounts, has been revised from 1 July 2016 to six months after the date of Royal Assent of the enabling legislation (which is yet to be introduced).
- *Eligible rollover fund (ERF) transfers to ATO:* the Government will amend the measures in the Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020 proposing to require all ERFs to exit the super industry. The start date of the proposal to prevent super funds transferring new amounts to ERFs will be deferred by 12 months – it had originally been proposed to apply from seven days after Royal Assent to the Bill. The requirement for ERFs to transfer to the ATO all ERF accounts less than $6,000 will be deferred to 30 June 2021 (instead of 30 June 2020). All remaining ERF accounts will need to be transferred to the ATO by 31 January 2022 (instead of 30 June 2021). The amendments will also allow all super funds to voluntarily transfer amounts to the ATO in circumstances where the trustee believes it is in the best interests of that member, such as where amounts would otherwise be transferred to an ERF. The Bill is currently before the Senate, having been passed by the House of Representatives without amendment on 11 February 2020.

Other recently revised start dates

A range of other tax and super start dates were recently revised by the Assistant Treasurer on 30 June 2020, including:

- *Division 7A:* targeted amendments to Div 7A as part of the Ten Year Enterprise Tax Plan (originally announced at the 2016–2017 Budget) broadly propose to simplify the Div 7A loan rules, provide a "self-correction mechanism" for inadvertent errors and safe harbour rules for the use of assets. The start date has been revised from 1 July 2020 to income years commencing on or after the date of Royal Assent of the enabling legislation.
- *SMSF member limit:* the maximum number of allowable members in self-managed superannuation funds (SMSFs) and small APRA funds has been increased from four to six. The start date has been revised from 1 July 2019 to Royal Assent of the enabling legislation.
- *Super exempt current pension income (ECPI):* the changes to reduce red tape for super funds proposed in the 2019–2020 Budget will remove the requirement for super funds to obtain an actuarial certificate when the fund uses the proportionate method and all members of the fund are fully in the retirement phase for all of the income year. The start date has been revised from 1 July 2020 to 1 July 2021.
- *Managed investment trusts (MITs):* the measure removing the capital gains discount at the trust level for managed investment trusts and attribution MITs was originally announced in the 2018 Federal Budget. The start date had already been delayed from 1 July 2019 to 1 July 2020.
- *Petroleum Resource Rent Tax (PRRT):* PRRT changes to get a fair return (compliance and administration changes). The start date has been revised from 1 July 2019 to the income year commencing on or after three months after the date of Royal Assent of the enabling legislation.

Federal Budget in October

The Economic and Fiscal Statement on 23 July was never meant to be a "mini budget". The Federal Budget will be handed down on 6 October 2020. Mr Frydenberg has previously indicated that the Government is looking at the timing of the legislated personal income tax cuts and may consider bringing them forward as part of the Budget in October.

Under the existing personal income tax cuts legislated to apply from 1 July 2022, the $37,000 income threshold for the 19% rate will increase to $45,000, and the $90,000 threshold for the 32.5% rate will increase to $120,000. From 2024–2025, the rate that applies to taxable income between $45,000 and $200,000 will be 30% and the top marginal tax rate of 45% will apply to taxable income in excess of $200,000. That is, the 37% bracket will be abolished.

Source: https://budget.gov.au/2020-efu/economic-fiscal-update.htm; https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/economic-and-fiscal-update; https://treasury.gov.au/coronavirus/jobkeeper/extension.

Instant asset write-off further extended

The Government has announced that the $150,000 instant asset write-off will be extended for a further six months. It was due to finish on 30 June 2020, but will now cease on 31 December 2020. The instant asset write-off applies to entities with turnover of between $10 million and $500 million (up from $50 million for this limited period) for acquisitions during the period from 12 March 2020 to 31 December 2020. Up to 11 March, the threshold limit had been $30,000 but was increased as a COVID-19 stimulus measure.

JobKeeper extended, with changes

The Government has announced that JobKeeper payments will continue for six months beyond the legislated finish date of 27 September 2020, subject to revamped eligibility rules. Treasurer Josh Frydenberg said the Government will introduce two tiers of payment rates as part of "JobKeeper 2.0" to better reflect the pre-COVID-19 incomes of recipients.

The extension of JobKeeper from 28 September 2020 until 28 March 2021 will also include a requirement for businesses and not-for-profits to demonstrate an actual decline (not merely predict a decline) in turnover under the existing turnover test. The JobKeeper payment will also be stepped down and paid at two rates. Importantly, the existing arrangements for those receiving JobKeeper payments continue until 27 September 2020.

Treasury review finds "strong case" for continuing JobKeeper

The Government's JobKeeper extension was announced following the release of a Treasury review recommending that there was a "strong case" for continuing the JobKeeper wage subsidy, with some modifications. The Treasury review concluded that the JobKeeper payment has met its objectives to save businesses and jobs, maintain the formal connection between employer and employee, and provide income support. The Government has used these findings to help frame its six-month extension of the JobKeeper regime until 28 March 2020.

The Treasurer said the JobKeeper payment of $1,500 per fortnight for an eligible employee has been in operation since 30 March for 960,000 businesses and 3.5 million workers (or about 30% of the private sector workforce). Treasury found businesses receiving the payment had on average a decline in turnover in April of 37% compared with the same month last year. Sole traders represented 40% of the organisations receiving the payment but only 12% of individual recipients.

One of the consequences of the flat $1,500 fortnightly payment since 30 March has been that some people are receiving more income under JobKeeper than they did pre-COVID-19. About a quarter of JobKeeper recipients saw their income increase by an average of about $550. Accordingly, the Government said it will introduce a second-tier payment from 28 September 2020, reflecting varied working arrangements. Businesses will also be required to demonstrate an actual decline in turnover.

The new JobKeeper arrangements are expected to cost an additional $16.6 billion. The total cost of the JobKeeper regime, as extended, is now estimated to be $85.7 billion over 2019–2020 and 2020–2021. As recommended by the Treasury review, an independent evaluation will be conducted at the conclusion of the program.

The JobKeeper payment rate ($1,500 per fortnight until 27 September) is to be reduced and paid at the following two rates.

Period	Full rate per fortnight	Rate per fortnight where <20 hours worked per week
28 September 2020 to 3 January 2021	$1,200	$750
4 January 2021 to 28 March 2021	$1,000	$650

Phase 1: 28 September 2020 to 3 January 2021

- *Tier 1 – $1,200 per fortnight:* from 28 September 2020 to 3 January 2021, the payment rate will be reduced from $1,500 to $1,200 per fortnight for all eligible employees who, in the four weeks before 1 March 2020, were working in the business for 20 hours or more per week on average and for eligible business participants who were actively engaged in the business for more than 20 hours per week on average in the month of February 2020.
- *Tier 2 – $750 per fortnight*: for employees who were working in the business for less than 20 hours a week on average and business participants who were actively engaged in the business less than 20 hours per week in the same period.

Phase 2: 4 January 2021 to 28 March 2021

- *Tier 1 – $1,000 per fortnight:* from 4 January 2021 to 28 March 2021, the payment rate will be $1,000 per fortnight for all eligible employees, who in the four weeks before 1 March 2020, were working for 20 hours or more a week on average and for eligible business participants who were actively engaged in the business for more than 20 hours per week on average in the month of February 2020.
- *Tier 2 – $650 per fortnight:* for employees who were working for less than 20 hours a week on average and business participants who were actively engaged in the business for less than 20 hours per week in the same period.

Businesses and not-for-profits will be required to nominate which payment rate they are claiming for each of their eligible employees (or business participants).

The ATO will have discretion to set out alternative tests where an employee's or business participant's hours were not usual during the February 2020 reference period. For example, this will include where the employee was on leave, volunteering during the bushfires, or not employed for all or part of February 2020. Guidance will be provided by the ATO where the employee was paid in non-weekly or non-fortnightly pay periods and in other circumstances the general rules do not cover.

The JobKeeper Payment will continue to be made by the ATO to employers in arrears. Employers will continue to be required to satisfy the "wage condition" by making payments to employees equal to, or greater than, the amount of the JobKeeper payment (before tax), based on the payment rate that applies to each employee.

Note that under the existing rules, employers are not obliged to make superannuation guarantee (SG) contributions in relation to salary or wages that do not relate to the performance of work, and are only paid to an employee to satisfy the wage condition for getting a JobKeeper payment. That is, an employer is not required to make SG contributions in respect of top-up amounts of additional wages paid using a JobKeeper Payment. However, an employer's super guarantee obligations are unchanged where an employee is paid more than the JobKeeper Payment amount (before tax) per fortnight.

Business eligibility: additional turnover tests

From 28 September 2020, businesses and not-for-profits seeking to claim JobKeeper payments will have to meet a further decline in turnover test for each of the two periods of extension, as well as meeting the other existing eligibility requirements. That is, businesses will be required to reassess their eligibility for the JobKeeper extension with reference to their actual turnover in the June and September quarters 2020.

In order to be eligible for the first JobKeeper payment extension period of 28 September 2020 to 3 January 2021, businesses and not-for-profits will need to demonstrate that their actual GST turnover has significantly fallen in the both the June quarter 2020 (April, May and June) and the September quarter 2020 (July, August and September) relative to comparable periods (generally the corresponding quarters in 2019).

For the second JobKeeper payment extension period of 4 January to 28 March 2021, businesses and not-for-profits will again need to demonstrate that their actual GST turnover has significantly fallen in each of the June, September and December 2020 quarters relative to comparable periods (generally the corresponding quarters in 2019).

The ATO will have discretion to set out alternative tests that would establish eligibility in specific circumstances where it is not appropriate to compare actual turnover in a quarter in 2020 with actual turnover in a quarter in 2019, in line with the ATO's existing discretion. Information about the existing discretion is available on the ATO website.

Businesses and not-for-profits will generally be able to assess eligibility based on details reported in the Business Activity Statement (BAS). Alternative arrangements will be put in place for businesses and not-for-profits that are not required to lodge a BAS (eg if the entity is a member of a GST group).

As the deadline to lodge a BAS for the September quarter or month is in late October, and the December quarter (or month) BAS deadline is in late January for monthly lodgers or late February for quarterly lodgers, businesses and not-for-profits will need to assess their eligibility for JobKeeper in advance of the BAS deadline in order to meet the wage condition (which requires them to pay their eligible employees in advance of receiving the JobKeeper payment in arrears from the ATO). The ATO will also have discretion to extend the time an entity has to pay employees in order to meet the wage condition, so that entities have time to first confirm their eligibility for the JobKeeper payment.

To be eligible for JobKeeper payments under the extension, the decline in turnover test remains the same as the existing rules. That is:

- charities registered with the Australian Charities and Not-for-profits Commission (ACNC), excluding schools and universities: 15%;
- entities with turnover less than $1 billion: 30%; and
- entities with turnover greater than $1 billion: 50%.

Registered religious institutions responsible for religious practitioners will continue to be eligible to receive the JobKeeper payment provided they meet existing eligibility requirements and the additional turnover tests during the extension period.

The eligibility rules for employees remain unchanged. The self-employed will be eligible to receive the JobKeeper payment where they meet the relevant turnover test, and are not a permanent employee of another employer.

Example

The Treasury fact sheet sets out the following example to illustrate the operation of the turnover test under the JobKeeper extension.

Retesting turnover under JobKeeper extension

Carmen owns and runs the City Cafe. Carmen started claiming the JobKeeper Payment for her eligible staff and herself as a business participant when the JobKeeper Payment commenced on 30 March 2020. At the time, Carmen estimated that the projected GST turnover for City Cafe in April 2020 would be 70% below its actual GST turnover in April 2019. To be eligible for the JobKeeper Payment from 30 March 2020 to 27 September 2020, Carmen needed to show the turnover for the City Cafe was estimated to decline by at least 30%.

As a monthly BAS lodger, Carmen submitted her BAS for the City Cafe in April, May and June. For each of these, her actual turnover was as follows:

June quarter	**2020**	**2019**
April	20,000	200,000
May	50,000	200,000
June	100,000	200,000
Total for June quarter	170,000	600,000
Decline for June quarter	72%	

From July to September, actual turnover improved as follows:

September quarter	**2020**	**2019**
July	110,000	200,000
August	140,000	200,000
September	150,000	200,000
Total for September quarter	400,000	600,000
Decline for September quarter	33%	

The actual turnover decline for both the June and September 2020 quarters was still greater than 30%, so City Cafe was eligible for the JobKeeper Payment for the period of 28 September 2020 to 3 January 2021.

Business continued to improve for the City Cafe, and actual turnover for the December 2020 quarter was 20% less than the December quarter 2019, so the City Cafe was no longer eligible to claim the JobKeeper for the second extension period starting from 4 January 2021.

Working out JobKeeper payment rate to be claimed

In this scenario, Carmen also needs to calculate how much to claim for each of her staff, and for herself as a business participant. As Carmen was working full-time at the cafe herself throughout February 2020, she is entitled to claim $1,200 per fortnight from 28 September 2020 to 3 January 2021, as an eligible business participant.

She has three full-time employees who are also eligible to be paid $1,200 per fortnight because they each worked 20 hours or more per week throughout February 2020.

Carmen has an employee, Chris, who works part-time with different hours every other week: 14 hours one week; and 22 hours the next week. During the 2 pay fortnights prior to 1 March 2020, Chris was employed for 36 hours in each fortnight. On average, Chris worked less than 20 hours per week for City Cafe. Carmen is eligible to claim $750 per fortnight for Chris, from 28 September 2020 to 3 January 2021.

Cathy is an eligible employee who worked on a long-term casual basis during February 2020. To determine what rate of JobKeeper Payment to claim for Cathy, Carmen looks at pay records for the two fortnightly pay periods before 1 March 2020. She sees that Cathy was employed on average less than 20 hours per week, so Carmen claims $750 per fortnight for Cathy, from 28 September 2020 to 3 January 2021.

Carmen also started employing Charles from September 2020. Because Charles was not employed at City Cafe on 1 March 2020, Carmen cannot claim the JobKeeper Payment for Charles.

Treasury fact sheets updated

In addition to the fact sheet *Extension of the JobKeeper Payment*, Treasury has updated its other JobKeeper fact sheets to incorporate the extension of the regime, and the reduced payment amounts and additional turnover tests from 28 September 2020. The other previously-released Treasury fact sheets, updated to 21 July 2020, include:

- *JobKeeper Payment:* updated to note the extension of JobKeeper payments until 28 March 2021, subject to reduced payment amounts and eligibility changes;
- *JobKeeper Payment – protecting integrity:* includes a cross-reference to the JobKeeper extension fact sheet; and
- *JobKeeper Payment – changes to the Fair Work Act:* Treasury notes that the amendments to the Fair Work Act 2009 that enable employers entitled to receive JobKeeper payments to temporarily vary working arrangements for eligible employees will cease entirely on 28 September 2020. Authorised JobKeeper Enabling Stand Down Directions will remain in effect until revoked or replaced by the employer, or until the provisions cease completely on 28 September 2020.

Legislative amendments required

The extension of the JobKeeper regime beyond 27 September is expected to require legislative amendments once Parliament resumes from 24 August 2020.

Source: https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/jobkeeper-payment-and-income-support-extended; https://treasury.gov.au/publication/jobkeeper-review; https://treasury.gov.au/sites/default/files/2020-07/Fact_sheet-JobKeeper_Payment_extension.pdf; https://treasury.gov.au/coronavirus/jobkeeper; https://treasury.gov.au/sites/default/files/2020-07/Fact_sheet-JobKeeper_Payment_0.pdf; https://treasury.gov.au/sites/default/files/2020-07/Fact_sheet_Protecting_integrity_0.pdf; https://treasury.gov.au/sites/default/files/2020-07/Fact_sheet-Changes_to_Fair_Work_Act.pdf.

JobKeeper payments to childcare providers end

The ATO's key dates for JobKeeper have been updated to note that payments for childcare providers will stop from 20 July 2020.

This follows the changes to the rules by the Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No 5) 2020, registered on 6 July 2020, to transition certain approved providers of childcare services out of the scheme. The Government has instead decided to extend separate support to this sector by the reintroduction of the Child Care Subsidy and the introduction of an additional Transition Payment as part of the Early Childhood Education and Care transition arrangements.

The ATO said the changes to the rules have been confirmed so that eligibility for JobKeeper payments ends from 20 July for:

- employees of an approved provider of childcare services where those employees whose ordinary duties are that they are engaged principally in the operation of the childcare centre; and
- eligible business participants where the business entity is an approved provider of a childcare service.

The ATO says childcare providers need to ensure that they do not claim JobKeeper for employees and eligible business participants who are no longer eligible. Likewise, childcare providers will not be reimbursed for payments made after JobKeeper Fortnight 8 (6 July to 19 July).

Source: www.ato.gov.au/General/JobKeeper-Payment/JobKeeper-key-dates/; www.legislation.gov.au/Details/F2020L00884; www.ato.gov.au/Non-profit/Newsroom/Looking-after-your-workers/JobKeeper-rule-changes-for-child-care-providers/.

Coronavirus Supplement extended, with changes

The Government has announced that it will extend the temporary Coronavirus Supplement payment from 25 September to 31 December 2020 but the rate will be reduced from $550 to $250 per fortnight.

Since 27 April 2020, a Coronavirus Supplement of $550 per fortnight has effectively doubled the social security payments for job seekers, sole traders and students in receipt of the JobSeeker Payment, Sickness Allowance, Youth Allowance for jobseekers, Parenting Payment Partnered, Parenting Payment Single, Partner Allowance, Sickness Allowance and the Farm Household Allowance. Individuals eligible for these payments receive the full amount of the $550 Coronavirus Supplement on top of their payment each fortnight.

The Supplement will continue to be $550 per fortnight for payments up to and including the reporting period ending 24 September 2020.

Supplement $250 from 25 September

From 25 September to 31 December 2020, the Government will continue to pay the Supplement to existing and new income support recipients but at a reduced rate of $250 per fortnight.

The Government will also reintroduce a range of means testing arrangements to ensure that social security payments are appropriately targeted.

Adjusted income taper test

From 25 September 2020 until 31 December 2020, the income-free area for JobSeeker Payment and Youth Allowance (other) will increase to $300 per fortnight from $106 per fortnight for JobSeeker Payment (and $143 per fortnight for Youth Allowance (other)). This means that recipients of these payments can earn income of up to $300 per fortnight and still receive the maximum payment rate of JobSeeker Payment or Youth Allowance (other).

The taper rate will be simplified. The previous JobSeeker Payment income test of 50 cents for each dollar between $106 and $256 per fortnight, and 60 cents for every dollar over $256 per fortnight, will be replaced with a single income test of 60 cents for every dollar of income earned above $300 per fortnight.

The Coronavirus Supplement will remain outside the income test, meaning that anyone eligible for the Coronavirus Supplement will receive the full rate of the Supplement.

A lower income taper rate of 40 cents in the dollar continues to apply for JobSeeker Payment recipients who are principal carer parents. The current income free area for principal carer parents also continues to apply.

Asset tests and waiting times

From 25 September 2020, the assets test and the liquid assets waiting period (LAEP) will be reintroduced and the JobSeeker Payment partner income test will increase from 25 cents for every dollar of partner income earned over $996 per fortnight to 27 cents for every dollar of partner income earned over $1,165 per fortnight. The partner income test cut-out will increase to $3,086.11 per fortnight (or $80,238.89 per annum) for individuals with no personal income, from 25 September 2020.

Reduced waiting times, including the ordinary waiting period, newly arrived resident's waiting period (NARWP) and the seasonal work preclusion period, will continue to be waived until 31 December 2020.

Job-seeking mutual obligation

The mutual obligation requirements are being reintroduced so that individuals are required to take a job on offer. The gradual reintroduction of mutual obligation requirements commenced on 9 June 2020.

Source: https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/jobkeeper-payment-and-income-support-extended.

ATO alert on fraudulence and non-compliance: COVID-19 measures

The ATO is on the look-out for fraudulent schemes designed to take advantage of the Government's COVID-19 stimulus measures. This includes JobKeeper, early release of superannuation, and boosting cash flow for employers.

The ATO will be using its wide array of data sources (eg STP, income tax returns, information from super funds, etc) to assess and identify inappropriate behaviour. The ATO has also established a confidential tip-off line for the public to raise concerns of any wrongdoing.

"We've received intelligence about a number of dodgy schemes, including the withdrawal of money from superannuation and re-contributing it to get a tax deduction. Not only is this not in the spirit of the measure (which is designed to assist those experiencing hardship), severe penalties can be applied to tax avoidance schemes or those found to be breaking the law. If someone recommends something like this that seems too good to be true, well, it probably is", ATO Deputy Commissioner Will Day said.

Mr Day said the ATO will be conducting checks, "so if you've received a benefit as part of the COVID-19 stimulus measures and we discover you are ineligible, you can expect to hear from us. If you think this may apply to you, you should contact us or speak to your tax professional". Penalties for fraud can include financial penalties, prosecution, and imprisonment for the most serious cases.

Mr Day also cautioned the community to protect their identities and be vigilant of scammers.

The following is a summary of the ATO's compliance efforts for each stimulus measure:

- *JobKeeper:* ensuring eligibility criteria is met (business income, eligible employees, etc) and no manipulation of turnover to satisfy decline in turnover test;
- *early release of superannuation*: identifying dishonest behaviour such as applying when there is no change in salary or employment information, artificially arranging affairs or making false statements to meet the eligibility criteria and withdrawing and re-contributing super for a tax advantage; and

- *boosting cashflow for employers:* identifying schemes designed to create entitlement such as artificially restructuring businesses, artificially changing the character of payments to salary or wages, inflating reported withholding amounts, resurrecting dormant entities or phoenixing and making false statements.

Source: www.ato.gov.au/Media-centre/Media-releases/ATO-zeroes-in-on-COVID-19-fraud/.

Top tax time myths for 2020 that slow down returns

The ATO has published a list of common mistakes and misconceptions taxpayers have around tax time.

"Our main priority is to help people get the facts straight before they lodge so that it's a smooth, easy and fast process", Assistant Commissioner Karen Foat said.

The ATO has said that last year nearly 500,000 individual tax returns were amended, with some taxpayers even amending their own returns before they were processed, which actually slows down the processing of their return.

The top tax time myths of 2020:

- *bank details don't update themselves:* the ATO does not keep track of changes to bank nominations for taxpayers to receive tax refunds (if any);
- *it's not okay to double dip:* "It's important to remember that if you're claiming under the shortcut method (of working from home expenses), you cannot claim a separate additional deduction for any expenses you incur as a result of working from home," Ms Foat said;
- *home to work travel is not claimable*: generally, most people cannot claim the cost of travelling from home to work unless, they are required by their employer to transport bulky tools or equipment and there is not a safe place to store these at the workplace;
- *you can't just claim a flat $300 if you had no expenses:* "We often see people claiming a deduction despite not purchasing anything. When we question them, we often find it's because they thought everyone is entitled to claim $300. While you don't need receipts for claims of expenses up to $300 but you must have actually spent the money and be able to show us how you worked out your claim", Ms Foat said;
- *work-related expenses need to be work-related*: taxpayers can only claim for expenses that are directly related to earning their income;
- *lodging earlier doesn't always mean getting your refund earlier*: each year the ATO automatically includes information from employers, banks, private health insurers (and this year JobKeeper for employees and JobSeeker amounts) in people's returns. For most people this information is ready by the end of July. Taxpayers are advised to include all relevant information if lodging before the ATO automatically updates the information to avoid delays in return.

Source: www.ato.gov.au/Media-centre/Media-releases/Don-t-let-these-Tax-Time-myths-slow-down-your-return/.

Working from home deductions: "shortcut" rate extended

The ATO has extended, from 30 June 2020 to at least 30 September 2020, the "shortcut" rate outlined in Practical Compliance Guideline PCG 2020/3 for claiming work-from-home running expenses. The ATO also says it will give further consideration as to whether the date the Guideline will cease to apply "may be extended beyond 30 September 2020".

As amended on 8 July 2020, PCG 2020/3 allows eligible taxpayers to claim additional running expenses incurred between 1 March 2020 and 30 September 2020 at the rate of $0.80 per work hour, provided they keep a record of the number of hours worked from home.

Taxpayers eligible to use the shortcut rate are employees and business owners who:

- work from home to fulfil their employment duties or to run their business during the period from 1 March 2020 to 30 September 2020; and
- incur additional running expenses that are deductible under s 8-1 or Div 40 of the *Income Tax Assessment Act 1997* (ITAA 1997).

The additional running expenses covered by the shortcut rate are listed at para 26 of PCG 2020/3 and comprise lighting, heating, cooling and cleaning costs, electricity for electronic items used for work, the decline in value and repair of home office items such as furniture and furnishings in the area used for work, phone and internet expenses, computer consumables, stationery and the decline in value of a computer, laptop or similar device. Taxpayers who use the shortcut rate to claim a deduction for their additional running expenses cannot claim any further deductions for the listed expenses.

Taxpayers who choose not to use the shortcut rate can:

- claim $0.52 per work hour for heating, cooling, lighting, cleaning and the decline in value of office furniture (in accordance with PS LA 2001/6), plus the work-related portion of phone and internet expenses, computer consumables, stationery and the work-related portion of the decline in value of a computer, laptop or similar device; or
- claim the actual work-related portion of all running expenses, which need to be calculated on a reasonable basis.

IGTO investigates ATO communication of taxpayer rights

The Inspector General of Taxation and Taxation Ombudsman (IGTO) has launched a new investigation into effective communication of taxpayers' rights to review, complain and appeal decisions made and actions taken by the ATO. The investigation will seek to understand and confirm how effectively, clearly and completely the ATO communicates appropriate information to taxpayers and their representatives on these taxpayers' rights. Initially, the review will focus on ATO communications which concern debt decisions in relation to individuals and small business taxpayers as they have been deemed most "vulnerable".

The communication of taxpayers' rights is an important but often overlooked feature of the tax system. Essentially, it is the right of taxpayers to be informed of their rights and obligations when the ATO makes decisions about them and their right to question those decisions. It ensures procedural fairness and is consistent with the Taxpayers' Charter which states that the ATO will outline the taxpayer's options if they want a decision or action reviewed including legal review rights and the formal complaints process.

Where a taxpayer is affected by a decision or action taken by the ATO, the principles of procedural fairness generally require that they should be given an opportunity to dispute the decision made and have the matter reviewed independently. This can be done through various avenues including formal review rights (eg the Administrative Appeals Tribunal [AAT] or Federal Court), review rights within the ATO (eg objections and internal reviews), and external complaints investigation services such as the IGTO.

Therefore, it is imperative to procedural fairness and the Taxpayers' Charter that taxpayers are aware of their rights to object, appeal and/or raise a taxation complaint in relation to legal correctness and fairness of ATO's decisions or decision-making processes.

In examining the taxation complaints service, the IGTO has observed that information on rights of appeal and opportunities to raise complains varies across different types of ATO-issued correspondence. In particular, the IGTO found in a number of investigations that ATO correspondence may not clearly and/or completely advise taxpayers and their representatives of their rights to review, complain and appeal.

For example, the IGTO uncovered correspondence in some instances which includes information regarding formal review rights with no reference to taxpayers' rights to an internal ATO review or the ability to lodge a complaint with the ATO or the IGTO. This may result in taxpayers not being fully aware of their review options and lead to significant Court and/or professional fees.

As such, the IGTO has launched a new investigation into effective communication of taxpayers' rights to review, complain and appeal decisions made and actions taken by the ATO. The investigation will seek to understand and confirm how effectively, clearly, and completely the ATO communicates appropriate information to taxpayers and their representatives on these taxpayers' rights. It will also involve an investigation of a selection of written communications of ATO decisions made, to look for clear communication of taxpayers' rights to review or otherwise.

This substantial review will take place in stages, focusing initially on ATO communications which concern debt decisions in relation to individuals and small business taxpayers. IGTO has decided to initially focus on this narrow group as it has noted that these taxpayers are most likely not to have significant financial resources to appeal taxation decisions in the Courts. After the initial stage, the review will also seek to confirm ATO communications around access to the AAT Small Business Taxation Division (SBT Division).

Source: www.igt.gov.au/news-publications/news/review-announcement-investigation-how-effectively-ato-communicates-taxpayers-rights-complain-review-and-appeal.

Banks further extending loan repayment deferrals

The Australian Banking Association (ABA) has announced a new phase of support to assist customers to get back to making their loan repayments. With the six-month loan repayment deferral period set to end on 30 September, the ABA said customers with reduced incomes due to COVID-19 will be eligible to apply for an extension of their deferral for up to four months.

A deferral extension of up to four months will not be automatic. It will only be provided to those who genuinely need some extra time. Bank customers with reduced incomes and ongoing financial difficulty due to COVID-19 will be contacted as they approach the end of their initial deferral period. Wherever possible, borrowers are expected to return to a repayment schedule through a restructure or variation to their loan.

ABA CEO Anna Bligh said many customers may need less than four months to either restructure their loan or get back into full repayments. Banks will work with customers to find the best options to restructure or vary their loan. Options may include: extending the length of the loan; converting to interest only payments for a period of time; consolidating debt; or a combination of these and other measures.

While over 800,000 borrowers have deferred their repayments throughout the COVID-19 crisis, "many customers have already chosen to resume making repayments", Ms Bligh said.

If, during or at the end of any deferral, customers continue to be severely financially impacted and are unable to make repayments, Ms Bligh said they will be assisted through their bank's hardship process to determine the best long-term solution for their circumstances.

Source: www.ausbanking.org.au/banks-enter-phase-two-on-covid-19-deferred-loans/.

Super contributions beyond age 65 from 1 July 2020

The Assistant Minister for Superannuation Senator Jane Hume has welcomed the recent amendments to the SIS Regulations that will allow more people to make voluntary superannuation contributions from 1 July 2020.

The Superannuation Legislation Amendment (2020 Measures No 1) Regulations 2020, registered on 29 May 2020, allow people aged 65 and 66 (ie under age 67) to make voluntary super contributions (both concessional and non-concessional) without meeting the work test. The amendments bring these contribution rules into line with those for individuals under 65 years, providing greater flexibility to make contributions as they approach retirement. The age limit for making spouse contributions has also been increased from 69 to 74 from 1 July 2020.

These changes to the super contributions rules were previously announced in the 2019–2020 Federal Budget. Another change in that Budget package will allow people aged 65 and 66 (ie under age 67) to make up to three years of non-concessional contributions (ie $300,000) under the bring-forward rule from 1 July 2020. Senator Hume said this additional measure is still before the House of Representatives in the Treasury Laws Amendment (More Flexibility Superannuation) Bill 2020.

Source: https://ministers.treasury.gov.au/ministers/jane-hume-2019/media-releases/delivering-greater-superannuation-flexibility-new-financial; www.legislation.gov.au/Details/F2020L00645.