client alert | explanatory memorandum

April 2020

CURRENCY:

This issue of **CLIENT ALERT** takes into account developments up to and including 25 March 2020.

ATO coronavirus administrative support

A series of administrative measures to assist businesses experiencing financial difficulty as a result of the coronavirus (COVID-19) pandemic has been announced by the ATO. These include deferring the payment date and amounts due on Business Activity Statements (BASs), income tax assessments, FBT assessments and excise by up to four months. Businesses will also be allowed to change payment and reporting cycles for GST and vary PAYG instalment amounts. Any interest or penalties applied to tax liabilities incurred after 23 January 2020 may be remitted.

The ATO has recently announced that it will implement a series of administrative measures to assist taxpayers experiencing financial difficulty as a result of the COVID-19 pandemic. The measures that will apply are similar to those for taxpayers affected by the recent Australian bushfires. However, one important point of difference is that while the bushfire measures applied automatically to particular geographical areas, assistance for those impacted by COVID-19 will not be automatically implemented. Taxpayers who have been affected will need to contact the ATO to discuss their situation in order to come up with a tailored support plan.

ATO Commissioner Chris Jordan has said, “We know that many businesses and communities are being heavily affected by challenging economic conditions created by the outbreak of COVID-19 … we understand this is a time of significant uncertainty and that we will need to be flexible in how we help businesses.”

Businesses on a quarterly reporting cycle for GST will be able to change their reporting and payment to a monthly cycle in order to get quicker access to GST refunds. However, the ATO notes that businesses can only make the change from the start of a quarter, so any changes made now will take effect from 1 April 2020, and once a change is made the business must keep reporting monthly for 12 months before it can elect to revert back to quarterly reporting. Additionally, businesses that are registered for fuel tax credits and change to a monthly GST reporting cycle will also need to claim fuel tax credits monthly.

Another thing to note is that changing a business’s GST reporting cycle to monthly doesn’t mean you have to change your PAYG withholding reporting cycle – each is managed separately. Businesses that are quarterly PAYG instalment payers can vary their PAYG instalments on activity statements for the March 2020 quarter. To do this, they must lodge a revised activity statement before the instalment due date and before their tax return is lodged. Any business that vary its PAYG instalment rate or amount may also be eligible to claim a refund for any instalments made for the September and December 2019 quarters.

Additionally, the ATO will defer by up to four months the payment date of amounts due through the BAS (including PAYG instalments), income tax assessments, FBT assessments and excise. It will also consider remitting any interest and penalties applied to tax liabilities incurred after 23 January 2020 for businesses affected by COVID-19. Taxpayers who need help with paying existing and ongoing tax liabilities are encouraged to contact the ATO to arrange a low-interest payment plan.

The ATO has also clarified that emergency accommodation, food, transport, medical or other assistance provided by employers to employees affected by COVID-19 may be exempt from FBT, depending on the circumstances. However, employers will still need to meet their ongoing super guarantee obligations for their employees. The ATO says that by law, it cannot vary the contribution due date or waive the super guarantee charge where super guarantee payments are late or unpaid.

Source: www.ato.gov.au/Media-centre/Media-releases/Support-measures-to-assist-those-affected-by-COVID-19/.

Coronavirus stimulus: what’s in it for you?

In an effort to combat the economic effects of the global coronavirus pandemic, on 12 March 2020 the Federal Government announced an economic stimulus package worth $17.6 billion, which it said is expected to provide direct support for up to 6.5 million individuals and 3.5 million businesses. The package includes business investment initiatives, cash flow assistance payments to small and medium entities (SMEs), household stimulus payments and support for impacted sectors, regions and communities, as well as tax administration relief.

Business investment initiatives

The instant asset write-off threshold will be increased from $30,000 to $150,000 and expanded to include access for businesses with aggregated annual turnover of less than $500 million (up from $50 million) until 30 June 2020. The new threshold will apply from 12 March 2020 and, the Government says, is expected to support over 99% of businesses.

A time-limited 15-month investment incentive (through to 30 June 2021) will also be provided to support business investment by accelerating depreciation deductions. Businesses with a turnover of less than $500 million will be able to deduct an additional 50% of the asset cost in the year of purchase.

Cash flow assistance payments for SMEs

Eligible SMEs will receive a Boost Cash Flow for Employers payment of up to $25,000 (with a minimum payment of $2,000). The payment will provide cash flow support to businesses with a turnover of less than $50 million that employ staff between 1 January 2020 and 30 June 2020. The payment will be tax-free. This measure will benefit around 690,000 businesses employing around 7.8 million people. Businesses will receive payments of 50% of their Business Activity Statement (BAS) or Instalment Activity Statement (IAS) from 28 April 2020, with refunds to be paid within 14 days.

Small businesses will also receive a total of $1.3 billion to support the jobs of 120,000 apprentices and trainees. Eligible employers can apply for a wage subsidy of 50% of an apprentice's or trainee's wage for up to nine months from 1 January 2020 to 30 September 2020. Where a small business is not able to retain an apprentice, the subsidy will be available to a new employer that employs that same apprentice.

Household stimulus for pensioners

A one-off $750 stimulus payment will be made to pensioners, social security, veteran and other income support recipients and eligible concession card holders. Payments will be made from 31 March 2020 on a progressive basis, with over 90% of payments expected to be made by mid-April. This payment will be tax-free and not count as income for social security, farm household allowance and veteran payments.

TIP: In addition to this initial $750 stimulus payment, the Government announced on 22 March that a further $750 payment will be provided (as part of a secondary stimulus package) to social security and veteran income support recipients and eligible concession card holders (see the following article, "Coronavirus stimulus: round 2"). Payments of the secondary $750 amount will be made automatically from 13 July 2020.

There will be one payment per eligible recipient under the first stimulus package, and one payment under the second. If a person qualifies for either or both payments in multiple ways, they will still only receive each payment once (ie there will be a maximum of two $750 payments per eligible person).

Support for impacted sectors, regions and communities

Support of $1 billion will be provided for sectors, regions and communities that have been disproportionately impacted by the economic impacts of COVID-19, including those heavily reliant on industries such as tourism, agriculture and education. This will include the waiver of fees and charges for tourism businesses that operate in the Great Barrier Reef Marine Park and Commonwealth National Parks. It will also include additional assistance to help businesses identify alternative export markets or supply chains.

Source: https://treasury.gov.au/coronavirus; www.pm.gov.au/media/economic-stimulus-package.

Coronavirus stimulus: round 2

To further support businesses and workers in riding out the COVID-19 pandemic and minimise the impact on the overall economy, on 22 March 2020 the Federal Government announced a second round of stimulus measures in addition to the initial $17.6 billion package announced on 12 March. This second package, worth $66.1 billion, is not only aimed at businesses but also includes support for individuals and households, including casual workers, sole traders, retirees and people who receive income support payments.

Business measures

Cash payments for small to medium employers

Tax-free payments of up to $100,000 (with a minimum payment of $20,000) will be available for eligible small and medium entities (SMEs) and not-for-profits that employ people and have an aggregated annual turnover under $50 million. Employers will receive a payment equal to 100% of the withholding tax liability on their salary and wages, subject to monetary limits. This payment will be available to most employers from 28 April 2020.

Temporary relief for directors of distressed businesses

The threshold at which creditors can issue a statutory demand on a company will be temporarily increased from $2,000 to $20,000, and the time companies have to respond to those statutory demands will be extended from 21 days to six months. Directors will also be provided with temporary relief from any personal liability for trading while insolvent.

SME loan guarantee scheme

A Coronavirus SME Guarantee Scheme will be established to support SMEs in getting access to working capital. Under the scheme, the government will guarantee 50% of new loans issued by eligible lenders. The scheme is able to support $40 billion worth of lending to SMEs.

Personal measures

Increase in income support payments supplement

A new temporary "Coronavirus Supplement" of $550 per fortnight will be implemented for people receiving certain income support payments. Eligible recipients will receive the full amount of $550 on top of their payment each fortnight, effectively doubling the current payment amount. The supplement will be paid for the next six months to existing and new recipients of the various Centrelink payments including the JobSeeker Payment (formerly called Newstart Allowance), Youth Allowance Payment for job seekers, Parenting Payment, Farm Household Allowance and Special Benefit Payments.

Further $750 for pensioners

In addition to the initial $750 stimulus payment previously announced, a further $750 payment will be provided to social security and veteran income support recipients and eligible concession card holders. This does not apply to those receiving the temporary Coronavirus Supplement. Payments of this secondary $750 amount will be made automatically from 13 July 2020.

TIP: This secondary $750 stimulus payment is in addition to the initial payment that the Government announced on 12 March (see the previous article, "Coronavirus stimulus: what's in it for you?"). The first payment will be made from 31 March 2020 on a progressive basis, with over 90% of payments expected to be made by mid-April.

There will be one payment per eligible recipient under the first stimulus package, and one payment under the second. If a person qualifies for either or both payments in multiple ways, they will still only receive each payment once (ie there will be a maximum of two $750 payments per eligible person).

Superannuation early release allowed

Individuals in financial distress as a result of the pandemic will be allowed to access a tax-free payment of up to $10,000 from their superannuation in 2019–2020 and a further $10,000 in 2020–2021. Eligible individuals will need to apply online to the ATO through myGov before 1 July 2020 to receive the payment for the 2019–2020 income year.

TIP: Amounts withdrawn from super in this way will not affect any Centrelink payments the person may be receiving.

Pension drawdown rate and social security deeming rates reduced

The annual superannuation minimum drawdown requirements for account-based pensions and similar products will be reduced by 50% for 2019–2020 and 2020–2021. In addition to the deeming rates changes made in the first stimulus package, the Government will further reduce rates by another 0.25%. From 1 May 2020, the lower deeming rate will be 0.25% and the upper deeming rate will be 2.25%.

Source: https://treasury.gov.au/coronavirus.

Coronavirus concessions: state governments

Some states have followed in the Federal Government's footsteps to provide their own stimulus and concessions for mostly small to medium businesses and in some cases to individuals and families. Most of the measures are payroll-tax-related, aimed at giving small to medium businesses a cash flow boost during this difficult time, while other measures including fee waivers, grants, relief payments and concessional loans.

New South Wales

Businesses with payrolls of up to $10 million will have their payroll tax waived for three months (essentially the rest of the 2019–2020 financial year), which means they will save a quarter of their annual payroll tax bill. In addition, the NSW Government will seek to bring forward the next round of payroll tax cuts by raising the threshold limit to $1 million starting from the 2020–2021 financial year. For small businesses including bars, cafes, restaurants and tradies, the government will waive a range of fees and charges.

Queensland

In order to help workers in businesses affected by COVID-19, the Queensland government will create a new $500 million concessional loan facility. It will comprise loans of up to $250,000 with an initial interest-free period for businesses to retain stuff. In addition, it is also extending the six-month payroll tax deferral, which was originally only aimed at small businesses, to all affected businesses across the state. The Office of State Revenue will be working with affected businesses to create repayment plans for the deferred tax liabilities.

Western Australia

The WA Government is intending to freeze household fees and charges until at least 1 July 2021. This includes the entire "household basket", including electricity, water, motor vehicle charges, emergency services levy and public transport fares. (The household fees and charges were originally set to increase by a rate of 2% in line with estimated inflation rate for the 2020-2021 financial year.) Additionally, the energy assistance payment will be increased from $300 to $600 for eligible concession cardholders, including pensioners.

Small to medium businesses with payrolls between $1 million and $4 million will receive a one-off grant of $17,500 to assist them with managing the impacts of COVID-19. The payroll tax threshold increase to $1 million will also be brought forward by six months to 1 July 2020. In addition, affected employers that pay $7.5 million or less in Australian taxable wages can apply to defer payment of their 2019–2020 payroll tax until 21 July 2020.

Tasmania

Small businesses in the hospitality, tourism, seafood and exports sectors with a turnover of less than $5 million will have access to loans for the purpose of purchasing equipment or restructuring business operations. The loans will be interest-free for a period of up to three years.

Payroll tax will be waived for this financial year for hospitality, tourism and seafood industry businesses. Other affected small to medium businesses with an annual payroll of up to $5 million in Australian wages can also apply to have their payroll tax payment waived for the period 31 March to June 2020.

In addition to waiving payroll tax, the Tasmanian Government will introduce a youth employment payroll tax rebate scheme for young people from 1 April 2020 and provide a one-off $5,000 grant to businesses that hire an apprentice or a trainee.

For individuals and families, one-off emergency relief payments of $250 and $1,000, respectively, will be available for those required to self-isolate by public health. There will also be various other grants and measures to help the tourism sector, communities, front-line workers and metal health organisations.

ATO's FAQ helps to clarify coronavirus impacts

The ATO's COVID-19 frequently asked questions (FAQ) is a resource tool for people and businesses in the community who need clarifications in relation to impacts from the COVID-19 pandemic. The FAQ is broken into common questions for individuals, employers, businesses (including internationals) and self managed superannuation funds (SMSFs).

Common questions centre around issues relating to the nationwide shutdown – late or deferring payment obligations; deductibles from working from home; residence status due to travel restrictions; GST and FBT impacts from cancellations; and SMSF losses and strategies.

The ATO advises that this FAQ will be updated regularly and welcomes suggestions and more questions from the community.

Source: www.ato.gov.au/Individuals/Dealing-with-disasters/In-detail/Specific-disasters/COVID-19/.

Working from home: what can I deduct?

Have you been directed by your employers to work from home to limit the spread of COVID-19? While working from home has its benefits, there may be extra expenses too, ranging from printing costs to the need for more internet data and perhaps even additional equipment. You may be able to claim a deduction for the additional running costs you incur. The costs you may be able to claim include the work-related portion of any heating, cooling and lighting for the area you're working from, work-related phone and internet costs, and work-related decline in value of a personally owned computer and associated office equipment. To claim these expenses, you must keep specific records ranging from diary entries to receipts.

If you have a work-issued computer, you cannot claim any decline in value for it, or for any work-issued office equipment such as additional screens, keyboards or mouse. However, if you have purchased your own equipment, such as a telephone, a printer or a computer chair, you can claim the full cost of those items up to $300, or decline in value (depreciation) for items over $300. This is provided you use the purchased equipment purely for work purposes.

The depreciation that can be claimed depends on the effective life of the asset purchased. For example, the effective life of a laptop is currently two years, so if you purchased a laptop for $800 this financial year and it is wholly used for work purposes, you can claim $400 as depreciation in this financial year and $400 in the next financial year. If the laptop (or other work-related equipment) is used both for work and personal purposes, you can only claim a deduction for the work-related portion of the expense. Work-related portions of other running expenses, including computer consumables such as printer paper, ink and various stationery, can generally be deducted outright.

To work out your expenses for heating, cooling, lighting, cleaning and the decline in value of furniture, you can use one of two methods: the fixed rate method or the actual value method. Under the fixed rate method, you keep records of your actual hours spent working at home for the year or keep a diary for a representative four-week period to show your usual pattern of working from home. You can then claim a deduction at a rate of 52 cents for each hour that your work from home. The actual value method is self-explanatory; however, it not only requires the keeping of a diary, but you'll also need receipts to show the actual amounts spent and will be required to work out the costs based on floor area as well as other factors.

For phone and internet expenses, you can claim up to $50 without having to analyse your bills in detail. The rates you can use to work out the cost of your work calls are 25 cents each for calls made from your landline, 75 cents each for calls made from your mobile or 10 cents each for text messages sent from your mobile. If you would like to claim more than $50, you will need to work out the percentage of work use over a four-week period using a reasonable basis (ie the number of work calls made as a percentage of total calls).

Scams targeting natural disaster victims

Victims of the recent natural disasters beware: there is an SMS scam circulating that purports to give you "an 8% bonus" on your 2020 tax return. The scam urges victims to start the process by filling out a form and provides a link to a what looks like the genuine myGov website. According to the ATO, this website is fake and this scam is a classic case of scammers impersonating the ATO in an effort to collect personal information including names, birth dates, addresses, emails, phone numbers and online banking login details.

Once this information is obtained, scammers can use it to commit identify theft, including porting your phone, accessing your bank account, obtaining a loan in your name, lodging tax returns, stealing your superannuation and committing other types of fraud, or they could on-sell the information to others who may commit these offences.

Over the past few years the ATO has seen an increasing number of reports of scammers contacting members of the public by SMS, email and phone and pretending to be from the ATO. The scams are also becoming more sophisticated, by means such as the use of software to imitate ATO phone numbers, and setting up three-way conversations between the scammer, the victim and another scammer impersonating the victim's tax agent.

If you receive a call from someone saying they are from the ATO but you aren't sure, the best course of action is to hang up and call the ATO back on the appropriate number listed on its website, or to call your tax agent directly on their listed number to seek advice. While the ATO does send SMS messages and emails and calls taxpayers, it's important to remember that the ATO will never:

- send an SMS message or email asking you to click on a hyperlink to log into myGov or other government websites;
- ask for personally identifying information in order for you to receive a refund;
- use aggressive or rude behaviour, or threaten you with immediate arrest, jail or deportation;
- project its number onto caller ID; or
- request that you make payments of debt via cardless cash, iTunes or Google Play cards, prepaid Visa cards, cryptocurrency, or direct credit to a personal bank account.

If you've fallen victim to this or other tax-related scams, don't be ashamed, but contact the ATO as quickly as possible. With increasingly sophisticated scams in play, last year over 15,000 people reported to the ATO that they had provided scammers with their personally identifying information. The sooner you notify the ATO, the better the outcome is likely to be.

TIP: Remember, these types of phishing activity are not the only way to fall victim to a scam. Recently, a Sydney man who advertised tax services through Facebook and Gumtree was sentenced for pretending to be a tax agent. He charged more than 1,000 people for his services and used their myGov login details to submit tax returns on their behalf, then stole the refunds by diverting them to his own bank account.

If it sounds too good to be true, it usually is. Never give away your personal information by clicking on links sent to you, unless you're absolutely sure the link is legitimate. The ATO and Tax Practitioners Board also recommend checking the official register to ensure that your tax practitioner is registered and you're not exposed to identity theft.

Source: www.ato.gov.au/Media-centre/Media-releases/SMS-scam-targeting-natural-disaster-victims-promises-8--bonus-on-tax-returns/.

Independent review of ATO audit position: small business pilot extended and expanded

The ATO has advised that it has extended and expanded its pilot program which offers an independent review service to eligible small businesses disputing income-tax-related audits. The pilot will continue until 31 December 2020.

The pilot commenced on 1 July 2018, and was originally set to continue for 12 months. It involves an independent review whereby an independent technical officer from outside the ATO's audit area reviews the merits of the ATO's audit position before an assessment or amended assessment is issued.

The independent review is conducted by an officer from the ATO's Review and Dispute Resolution business line. This officer will not have been involved in the particular audit and will bring an independent "fresh set of eyes" to the review. The independent reviewer will consider the documents setting out the taxpayer's position and the ATO audit position. They will schedule a case conference with the taxpayer and the ATO audit officer, generally within one month of receiving the taxpayer's review request. The case conference is an opportunity for all parties to assist the independent reviewer with understanding the facts and contentions.

The independent reviewer will then consider both parties' positions and prepare recommendations as to the appropriate outcome. They will communicate the outcome to the taxpayer and the ATO audit officer. The ATO audit team will finalise the audit in accordance with the independent reviewer's recommendations.

Expansion in dispute areas covered

As originally set up, the pilot was limited to small business disputes involving income tax audits in Victoria and South Australia. It has now been expanded to include eligible small businesses with disputes involving:

- income tax;
- GST;
- excise;
- luxury car tax;
- wine equalisation tax; and
- fuel tax credits.

There is no indication that geographical restrictions still apply.

However, a number of important areas are still excluded from the small business independent review service, namely:

- superannuation;
- FBT;
- fraud and evasion findings; and
- interest.

Ineligible disputes

Taxpayers are not eligible for an independent review if:

- when requested, the taxpayer does not complete a consent to extend the amendment period to allow the review to take place;
- the relevant notice of assessment or amended assessment has already issued;
- a taxpayer was "disengaged" throughout the audit process; or
- the ATO has serious concerns that the taxpayer does not intend to comply with the payment of any potential assessments following the outcome of the independent review.

By “disengaged”, the ATO means that a taxpayer:

- failed to respond to attempts of contact from the audit team by failing to return phone calls or reply to correspondence;
- failed to provide requested information or documents, or failed to attend meetings with the audit team; and/or
- failed to respond to the audit teams’ interim position paper.

Other dispute options

The audit case officer will contact taxpayers if they are eligible for an independent review. A written offer of independent review will also be included in the audit finalisation letter.

The ATO emphasises that taxpayers will retain their full dispute and objection rights even if they seek an independent review. Taxpayers will also retain these rights if they are not eligible for an independent review or if they choose not to seek an independent review.

This means that an eligible small business taxpayer may:

- lodge an objection;
- use the ATO’s in-house facilitation service;
- raise the matter with the Inspector General of Taxation; and/or
- raise the matter with the Australian Small Business and Family Enterprise Ombudsman.

Source: www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/In-detail/Avoiding-and-resolving-disputes/Independent-review/Independent-review---small-business-pilot/.

Super guarantee amnesty for employers

The super guarantee amnesty Bill has finally received Royal Assent, which means that the amnesty for employers to come forward to declare any super guarantee (SG) shortfalls will run from 24 May 2018 to 7 September 2020. Under the super guarantee amnesty, employers can self-correct SG underpayments with reduced penalties, and can also claim a tax deduction for payments of SG charge or contributions made during the amnesty period.

The amnesty will apply to historic SG shortfalls as far back as 1 July 1992 up until the quarter starting on 1 January 2018 (inclusive).

To qualify, employers must first disclose the super guarantee shortfall to the ATO in the approved form between 24 May 2018 and 7 September 2020. The shortfall must not have been previously disclosed to the ATO; however, additional amounts of SG shortfalls disclosed during the amnesty period may be subject to beneficial treatment.

Employers must also pay an employee’s full SG entitlement, including the employee’s individual SG shortfall amount, nominal interest and any general interest charge (GIC). Where the employer has the capacity to pay on the day they make the disclosure, they can choose to make contributions directly into an employee’s super account and offset these amounts against their liability for SG charge.

In situations where the employer is unable to pay the amounts to their employee’s super accounts, they will be required to pay the SG charge to the ATO. Those that have difficulty paying by the due date can negotiate a payment plan with the ATO.

For employers that qualify, they will not have to pay the administrative component ($20 per employee per period) for employees that have an individual SG shortfall identified. They will also not be liable for the additional Part 7 penalty (up to 200%) for failing to provide an SG statement by the time they were required to do so.

In addition, employers will be able to claim a deduction for SG charge payments (and offsetting contributions) made on qualifying payments. Note, however, that payments made after the end of the amnesty period will not qualify for a deduction, even if they relate to SG shortfalls disclosed under the amnesty. Similarly, payments made in accordance with a payment arrangement that are not paid until after the end of the amnesty period will not qualify for a deduction.

All this beneficial treatment on offer for employers who have underpaid SG amounts to employees is perhaps not coincidental in timing given the recent revelations of underpayment and wage theft at various big-name businesses. But the amnesty is not just for the big end of town: any small businesses that have inadvertently failed to make super payments on time or have not made super payments due to cash flow difficulties should review their SG compliance status and take advantage of the amnesty where they are able.

Time is ticking on this one-off amnesty and the Fderal Government has flagged tougher penalties when it ends. Remember that the ATO has been greater powers to deal with SG non-compliance, including real-time visibility about how much SG employers are paying and up to 12 months jail for non-compliant employers.

Source: https://www.ato.gov.au/Business/Super-for-employers/Superannuation-guarantee-amnesty/.

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