

### Practice Update

May 2020

#### SMSFs may be able to offer rental relief to related party tenants

As a result of the financial effects of the COVID-19 pandemic, some self-managed superannuation funds ('SMSFs') which own real property may want to give a tenant – who is a related party – a reduction in rent because the related party tenant has had a collapse in revenue.

Charging a related party a price that is less than market value is usually a contravention of the strict legislative rules SMSFs and their trustees are required to follow.

The ATO has recently advised that its approach for the 2019–20 and 2020–21 financial years is that it will not take action if an SMSF gives a tenant – even one who is also a related party – a temporary rent reduction, waiver or deferral because of the financial effects of COVID-19 during this period.

If there are temporary changes to the terms of the lease agreement in response to COVID-19, it is important that the parties to the agreement document the changes and the reasons for the change. You can do this with a minute or a renewed lease agreement or other contemporaneous document.

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#### ATO reminder about salary packaged super

The ATO has provided employers with a recent reminder that, from 1 January 2020, there has been a legislative change to ensure that when an employee sacrifices pre-tax salary in return for an additional concessional contribution into superannuation, it will not result in a reduction in the 9.5% Superannuation Guarantee ('SG') obligation their employer has even though doing so reduced their Ordinary Time Earnings.

The ATO has provided information for employers, payroll software providers and intermediaries who may need to change the way they calculate SG.

The ATO advises that, from 1 January 2020, you calculate the minimum amount of SG on the employee's 'OTE base'. This is the sum of the employee's OTE and any OTE amounts they sacrifice in return for super contributions.

Additionally, super contributions to an employee's fund under an effective salary sacrifice arrangement no longer count towards an employer's super guarantee obligations.

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#### New laws can make directors personally liable for GST

The government recently passed new legislation designed to strengthen laws to *"crack down on illegal phoenixing activity by dodgy business operators who try to avoid their obligations to their customers, employees and creditors."*

In particular, the changes allow the ATO to collect estimates of anticipated GST liabilities, and make company directors **personally liable** for their company's GST liabilities in certain circumstances (basically by including these liabilities in the director penalty notice regime).

Importantly, the expansion of the director penalty notice regime to include GST liabilities will commence from 1 April 2020.

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#### New super guarantee amnesty

On 6 March 2020, the government introduced a superannuation guarantee ('SG') amnesty.

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This amnesty allows employers to disclose and pay previously unpaid super guarantee charge ('SGC'), including nominal interest, that they owe their employees, for quarter(s) starting from 1 July 1992 to 31 March 2018, without incurring the administration component (\$20 per employee per quarter) or Part 7 (double SGC) penalty.

In addition, payments of SGC made to the ATO after 24 May 2018 and **before 7 September 2020** will be tax deductible.

Employers who have already disclosed unpaid SGC to the ATO between 24 May 2018 and 6 March 2020 don't need to apply or lodge again.

Employers who come forward from 6 March 2020 need to apply for the amnesty.

The ATO will continue to conduct reviews and audits to identify employers not paying their employees SG.

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### New vacant land tax measures

A new 'vacant land' measure limits the deductibility of costs incurred on or after 1 July 2019 (i.e. from the 2020 income year) that relate to holding vacant land, even if the land in question was first held before that date.

Importantly, however, the new provisions include (amongst other exceptions) a '**carrying on a business**' exception. This exception means that the limitations will not apply to the extent that the 'vacant land' is used, or available for use in carrying on a business, including a business carried on by either the taxpayer (i.e., the owner of the land) or by a specified related entity.

Further, an additional business exception also applies where 'vacant land' is leased at arm's length for use in any business (i.e., not just a business of the taxpayer or of a related entity).

In addition, land is considered to be "available for use" if it is held for future use in a business currently carried on by the taxpayer or is made available to a specified related entity for future use in a business that entity currently carries on.

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### ATO on property investments

The ATO has reminded taxpayers in a property business or thinking about investing in property that there are things they should know, such as:

- they need a clearance certificate from the supplier when buying property over \$750,000;
- they may have to pay the GST on the sale of brand new residential property separately to the ATO; and
- income from property activities could increase their total business turnover.

The ATO says taxpayers with property should keep accurate and complete records where they:

- rent it out as a residential property (even short-term through the sharing economy);
- flip houses; and/or
- build a new house to sell for a profit.

In addition, when it's time to lodge, taxpayers should remember:

- ❖ Some expenses need to be claimed over time.
- ❖ It is only possible to claim expenses for:
  - periods when the property is genuinely available for rent; and
  - travel related to renting property, if the taxpayer is in the business of letting properties.

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### A reminder about ATO scams

Even during the COVID-19 pandemic, scammers continue to impersonate the ATO in order to solicit cash or personal information from unsuspecting individuals. Sometimes text messages or emails from scammers can be sophisticated, and may appear to be formal or official.

The following is a recent, real-life example of a phishing scam text message:

*"You are due to receive an ATO refund of \$1786.51 .  
Visit <https://ato.gov.au.taxmanager.info/claim/>  
And complete security check to claim refund."*

Remember that the ATO will never request payments in vouchers, and check that any links you follow direct you to the official ATO website at [ato.gov.au](https://ato.gov.au) (and not ".info" as with the above example) or to myGov at [my.gov.au](https://my.gov.au).

## A reference index for COVID-19 economic measures

Many Practice Updates concerning the economic measures taken by the Australian government in response to the COVID-19 pandemic have been sent in recent weeks. To make this information easier to navigate, here is a brief index. Please note that the more comprehensive and definitive information will appear in the later issues (in cases where topics are spread across multiple issues).

### *ATO Guidelines for Working from Home*

Practice Update: Special Edition - April, Issue 3

### *Cash Flow Assistance for Businesses*

Practice Update: Special Edition - March, Issue 1  
(only labelled as "Practice Update: Special Edition")

Practice Update: Special Edition - March, Issue 2

Practice Update: Special Edition - March, Issue 3

### *Childcare and Early Childhood Education Relief Package*

Practice Update: Special Edition - April, Issue 1

### *Coronavirus Response Stimulus Package*

Practice Update: Special Edition - March, Issue 3

### *Jobkeeper Payment*

Practice Update: Special Edition - March, Issue 4

Practice Update: Special Edition - April, Issue 5

### *Income Support for Individuals*

Practice Update: Special Edition - March, Issue 2

Practice Update: Special Edition - March, Issue 3

### *NSW Payroll Tax Waivers*

Practice Update: Special Edition - April, Issue 2

### *NSW Small Business Support Fund*

Practice Update: Special Edition - April, Issue 2

### *SME Rent Waivers*

Practice Update: Special Edition - April, Issue

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