FAQ: COVID-19 and what it means for the SMSF sector

JobKeeper

Can the self-employed access the JobKeeper allowance?

Yes. Self-employed and sole traders that have seen the revenue from their business affected by COVID-19 are eligible to receive the JobKeeper payments.

What is the eligibility for JobKeeper for someone on maternity leave that had planned to come back now?

An individual is still eligible for payments so long as they remain employed by the business. There does not appear to be an exclusion for employees who are on unpaid leave such as maternity leave.

If employee now gets the JobKeeper payment and this is not 20% less, then they previously earned then they now would not be able to access?

The JobKeeper payment may affect the ability to access superannuation depending on which eligibility an individual claims under. An individual may be receiving the JobKeeper payment and still have a reduction in their hours of 20% and would meet the requirements to access superannuation.

If my turnover falls in April by more than 30% but only fell by 25% in March, can I claim JobKeeper from April?

Our understanding is that if you are not eligible in one month, you may become eligible in another month.

What about businesses not open for more than 12 months. Such as a new local cinema? Will they be able to compare trading to the prior month/s and can their casual staff qualify?

If the employee started on 01 April 2019, so will be with the business for 12 months from 01 April 2020. Can the business claim the JobKeeper Payments?

Casual employees eligible for the JobKeeper Payment are those employees who have been with their employer on a regular basis for at least the previous 12 months as at 1 March 2020.

Are JobKeeper payments assessable income to the employer?

Our understanding is that the JobKeeper payments should be treated as assessable income of the employers, and will effectively be offset by a deduction as the funds are used directly or indirectly to meet payroll or other expenses.

Can the JobKeeper be paid to top up annual leave that is being taken to bring the employee to $1500?

Where an employee ordinarily receives less than $1,500 per fortnight before tax, their employer must pay them, at a minimum, $1,500 per fortnight, before tax.
SMSFs with property which is leased to related parties can now defer or waive rent without having SIS breach ramifications. Are they safe to give 3 months rent free to 30 June and another 3 months to September at this stage and then review situation again in October?

Any rent relief offered to a related party by the SMSF trustee will need to be reasonable and measured against the impact that COVID-19 has had on the tenant. The length of the relief is also to be negotiated and you may consider a 3 month relief period, subject to an extension thereafter following a review of the tenant’s financial situation.

Will a part time casual employee get more money than they earned whilst working?

Yes. It is possible for a long-term casual or part-time worker to receive more than their ordinary pay. Where an employee ordinarily receives less than $1,500 per fortnight before tax, their employer must pay them, at a minimum, $1,500 per fortnight, before tax.

Regarding SG on the $1,500, if the employee usually receives more than $1,500 per fortnight but they are only getting the $1,500 due to reduction in hours is SG still payable on the $1,500?

If the staff member was stood down after the March 1, is SGC payable on the full $1,500?

An employer must pay superannuation on all ordinary time earnings (OTES) for individuals that are still employed and getting paid. Where an employee’s hours have been reduced then this will be reflected in reduced OTES and therefore reduced SG obligations.

If an employee is receiving above $1,500 can the employer reduce the payment to the employee to the $1,500 amount or must they continue to pay the full wage?

The JobKeeper payment is a wage subsidy and it is not meant to cover the wages of all employees. We expect employers will make employee remuneration decisions based on the viability of their individual business.

Is the 30% reduction tested each month?

From what we know, a business should assess their revenue by comparing one month’s revenue against the same month the previous year. The revenue of the month in the affected period must be at least 30% less than it was in the month it was compared against. Until we see more detail, it would suggest that this could be a monthly test.

Will employer SG apply to the $1,500 JobKeeper payment?

An employer must pay superannuation on all ordinary time earnings for individuals that are still employed and getting paid. If the scheme results in an employee’s earnings increasing, the employer does not have to pay SG on the extra amount the employee is now receiving because of the JobKeeper payment.

To register your interest in claiming JobKeeper, visit the ATO’s website here.
Minimum pension withdrawal reduction

Can lower pension be paid for 2020 year without changes to pension documentation?

Essentially the pension arrangement between a member and trustee does not change, however where a member chooses to nominate a lesser pension drawdown in line with the Government’s announcement there should be a record of the members request plus a trustee minute to acknowledge the reduction. This would ordinarily need to happen each financial year as the minimum is always calculated based on the member’s pension account on 1 July.

Can you confirm that if the minimum % for a TRIS will be reduced by 50%, whether the maximum is also affected or if this stays at 10%?

The Government’s 50% reduction in minimum payments for account based pensions applies to a TRIS in the 2019/20 and the 2020/21 financial years. This reduction does not apply to the maximum pension drawdown limit applicable to a TRIS.

Do you need to meet any requirements to half pension’s or is it accessible across board?

The reduction in the minimum pension drawdowns for account based pensions applies immediately to any existing pension or new pension commenced in 2019/20 or 2020/21.

Has the bill been Royal Assented for the reduction of minimum pension payment requirement for FY20 & FY21 yet?

Yes, this occurred on Tuesday 24 March.

With the halving of the minimum pension rates for the current year, has there been any discussion about permitting those that have already drawn the pension to be able to return the funds without a work test requirement?

Superannuation members will not be able to return funds to their accounts unless they meet contribution eligibility. We do not believe there will be amendments to allow individuals to return already drawn pension money.

Can we commute pension payments for the March quarter instead of accounting for pension payment if they have already taken the 50% minimum requirements?

It is important that all pension payment strategies are documented and are prospective. That means that actions should not be backdated, and strategies and the appropriate documentation are in place to detail the pension payments that have been taken.

Once the reduced minimum pension drawdown has been satisfied in the current financial year, members may choose to withdraw additional amounts as partial lump sum commutations from their pension. A partial commutation requires a conscious decision from a member to convert part of their income stream into a lump sum and needs to be prospective before the payment is made. For more information refer to TR 2013/5.

With the 50% pension reduction, how does this affect Complying Pensions, either term or lifetime. Does it apply to these?

The pension reduction applies to account based pensions including allocated pensions, transition to retirement pensions and market-linked pensions.

It will not apply to complying lifetime pension (SIS Reg 1.06(9)) or complying life expectancy pensions (SIS Reg 1.06(7)).
Minimum pension withdrawal reduction (continued)

If husband & wife SMSF have taken just the husband's minimum pension based on old percentage can we allocate some of this to the wife's pension payment requirement even if the money only hit his personal bank account to avoid erosion of capital?

Generally, a member can direct where their pension payment goes so depositing the money into the husband’s bank account is unlikely to be determinative of ‘who’ was the pension recipient. However, the trustee’s minutes will be important as they will reflect for whom the pension payment was made at the time it was made. This will be supported by the accounts of the fund which will reflect a reduction in that member’s balance accordingly.

Deeming rates

Will social security automatically increase pensions as a result of reductions to social security deeming rates?

We believe this will be the case.

Early release

If someone is eligible and they withdraw $10,000, but then put it back in and claim a tax deduction will the ATO look at this as a tax scheme?

The intention of the legislation is to allow individuals to access superannuation who need support due to

the economic impacts of COVID-19. If an individual withdraws money and then contributes to claim a tax deduction it back in it may be hard to justify this was not a tax scheme.

Early release mentions that separate arrangements will apply if you are a SMSF member. Do you have any further detail on that?

The early release provisions will apply to SMSF members that meet the eligibility criteria. Eligible members will be able to apply through myGov from mid-April.

The ATO will then issue them with a determination advising of their eligibility to release an amount. Only once the SMSF has received the determination from the member, will the trustee be authorised to make the payment.

For more information visit the ATO’s website and refer to the ‘Government’s COVID-19 economic response assists SMSFs and their members’.

What extra guidance do you anticipate for SMSF members accessing their super?

It will be important that SMSF trustees ensure their deed is compliant with the new temporary release condition and that they properly document the release and which eligibility criteria the member has satisfied.

It is also important trustees have the required liquidity and do not pay any superannuation benefits prior to having received the ATO determination from the member.

We also encourage SMSF members to seek specialist SMSF advice and explore other options which assist them in financial hardship.

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Early release (continued)

Will a PAYG lump sum payment summary be required for this early release even though the payment is tax free?

As the SMSF would have no withholding obligation it follows that the reporting obligations to the Commissioner and to the payee should also not apply.

We are hopeful consultation with the ATO will clarify the required process.

If a salaried employee’s pay is reduced by 20% without their hours being reduced, would they qualify for early release of super?

Our initial reading of the law suggests that if a salaried employee’s pay was reduced by 20%, they would not qualify for early release. The legislation only makes reference to working hours being reduced after 1 January 2020.

Please refer to the Government’s early access to superannuation factsheet.

Does early release not apply if you run your business through a partnership, trust or company, only as a sole trader, is this correct?

Does this measure mean where one partner loses their job and they are ineligible for job seeker payment can they access their super?

We believe that the early release will be able to apply if you are able to satisfy one of the below requirements due to the COVID-19 economic impacts:

- you are unemployed; or
- 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; or
- on or after 1 January 2020:
  - you were made redundant; or
  - your working hours were reduced by 20 per cent or more; or
  - if you are a sole trader — your business was suspended or there was a reduction in your turnover of 20 per cent or more.

Rental and loan relief and related parties

We have an SMSF that rents equipment to a related party? Does the rent relief apply?

At this stage, the ATO’s rent relief only applies to property lease agreements.

Are SMSFs required to enforce a lease agreement against third party tenants if rent is not paid on time?

In the current environment, it is probably best practice that the actions of the SMSF trustee are consistent with the actions of other landlords dealing with tenants impacted by COVID-19. The SMSF should enter into negotiations with the tenant with respect to rent relief options, before taking harsher action.
Rental and loan relief and related parties (continued)

What happens when a SMSF property tenant goes broke and the income is lost to the fund and the fund cannot meet its minimum pension payment?

The relief announced by the ATO at the moment is limited to rent relief only. Relief does not extend to SMSFs who are unable to meet minimum pension drawdowns which may result in the pension ceasing for tax purposes. SMSFs are strongly encouraged to review their investment strategy to ensure that diversification and liquidity are adequately addressed at all times.

Is there any concern that the ATO might apply NALI where there is no rent reduction in a marketplace where rent reductions are common?

The rent relief that has been announced by the ATO is to assist tenants that are in financial difficulty due to the impact of COVID-19. Where this is not the case and current lease terms could be maintained, it would be unlikely that the SMSF would be penalised.

Will there be any guidelines on SMSFs with property leased to related parties and rental relief?

The Association is pleased to announce the ATO has responded to our requests for guidance regarding rent concessions.

Some landlords are providing rent concessions to tenants because of the financial impacts of COVID-19. We believe this will now be a standard feature of many commercial market arm’s length operations.

The ATO’s compliance approach for the 2019–20 and 2020–21 financial years is that they will not take action where an SMSF gives a tenant – who is also a related party – a temporary rent reduction during this period.

In-house-asset relief

Given the large fall in superannuation balances, SMSF trustees may be in potential breach of the 5% in-house asset rules, where an in-house asset can’t be more than 5% of your fund’s total assets.

We have made representation to the ATO to provide temporary relief and they have provided the below response:

If, at the end of a financial year, the level of in-house assets of an SMSF exceeds 5% of a fund’s total assets, the trustees must prepare a written plan to reduce the market ratio of in-house assets to 5% or below. This plan must be prepared before the end of the next following year of income. If an SMSF exceeds the 5% in-house asset threshold as at 30 June 2020, a plan must be prepared and implemented on or before 30 June 2021. However, the ATO will not undertake compliance activity if the rectification plan was unable to be executed because the market has not recovered, or it was unnecessary to implement the plan as the market had recovered.
Other

Is there related party LRBA relief also that reflects current commercial reality of banks offering relief to businesses?

The ATO are currently considering relaxing their compliance approach for the 2019-20 and 2020-21 financial years, where SMSFs offer a related party with a compliant loan agreement already in place, any concessions that result from the impact of COVID-19.

Any timeframe on when ATO will clarify re LRBA and rent reduction implications for reg 13.22C trusts?

These are both matters currently under consideration by the ATO and we expect an answer in the coming days.

Do you know whether people applying for jobseeker payments will be ineligible based on spouse income?

As it currently stands, if you lose your job and your partner earns more than $1,850 a fortnight ($79,762 a year) you will not be eligible for the Jobseeker Payment.

Do those on ATO Paid Parental Leave qualify for the extra $550 Coronavirus Supplement?

You’ll automatically get the supplement if you’re getting one of these payments:

- JobSeeker Payment
- Youth Allowance for job seekers
- Youth Allowance for students
- Austudy for students
- ABSTUDY for students
- Parenting Payment
- Farm Household Allowance
- Special Benefit.

Does varying of PAYG also extend to individuals e.g. those that receive distributions from their trust structure?

We believe they may be eligible. For more information visit the ATO’s website and refer to COVID-19 frequently asked questions.

When does the PAYG payment get applied?

The credit is available to:

- quarterly lodgers for the quarters ending March 2020 and June 2020

What benefits apply to sole traders?

- JobKeeper
- Potentially early release of superannuation
- The increased instant asset write-off
- Backing Business Investment (BBI)
- Increased and accelerated income support
- SME Guarantee Scheme
Other (continued)

Any word from the ATO on extending SMSF lodgement deadlines?

At this stage, the ATO is not offering a general relaxation of the lodgement deadline for the 2019 SMSF Annual Return. The ATO is encouraging TAs concerned about not meeting their upcoming lodgement due date to contact the ATO to request a deferral. Where a deferral beyond a standard 6 week timeframe is required, it is essential for TAs to discuss with the ATO at the time of requesting the deferral.

Remain up to date with the SMSF Association’s COVID-19 response webpage which is regularly updated with resources for SMSF professionals and the latest developments.

Visit:

smsfassociation.com