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

Has the ATO extended SMSF lodgement deadlines?

The ATO has confirmed that lodgement and payment obligations relating to the 2019 SMSF Annual Return are now deferred to 30 June 2020. There is no longer a need for Tax Agents to apply for an extension – it is automatic.

An automatic deferral of Transfer Balance Account Reporting (TBAR) obligations will apply for the same timeframe as the deferral to lodge the SMSF annual return. There is no need to seek a separate TBAR deferral.

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 member's 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.

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.

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.

Does the 50% reduction in minimum pension payments apply to a market-linked pension?

The Government's 50% reduction in minimum payments applies to market-linked pensions.

Ordinarily to meet the market-linked pension payment requirements, the trustee can pay no less than 90% or no more than 110% of the calculated amount. As part of the temporary minimum drawdown change, the lower limit has been reduced to 45% for the 2019/20 and 2020/21 financial year.

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.

Minimum pension withdrawal reduction (continued)

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. Any contributions made will be subject to the preservation rules and need to be held on accumulation account. New contributions cannot be added to the capital of an existing pension. 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 payments 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)).

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 are 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'](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.

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

The amount is not subject to PAYG withholding and does not need to be reported on a PAYG payment summary.

Even though the amount is received by a member tax free, does the trustee still have to determine the tax components?

The ATO have confirmed that the payment is subject to the proportioning rules.

Does temporary early release of super apply to account based pension interests?

The COVID-19 early access arrangements do not apply to unrestricted non-preserved benefits. If a member is receiving an account based pension, benefits can be cashed at any time by the member, subject to the rules of the fund, outside of the COVID-19 early release measure. Members in receipt of a transition to retirement income stream (TRIS) may face cashing restrictions where benefits are preserved or restricted non-preserved benefits.

Early release (continued)

Does the COVID-19 early release measure apply to members with a TRIS not in retirement phase?

These temporary amendments do not vary the circumstances in which pension payments or amounts can be commuted from a TRIS and the maximum 10% pension limit continues to apply.

Members whose TRIS comprises preserved or restricted non-preserved benefits are permitted to commute the TRIS back to the accumulation phase and may then be eligible to release these benefits under the COVID-19 early access arrangements.

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.

We understand banks are now offering concessions for their loans including deferral of scheduled loan repayments, waiving fees, and temporary interest-only periods.

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.

The rent relief offered for commercial property can be guided by the principles set out in the National Cabinet Rent Code, but what about SMSFs with residential property?

While residential protocols will apply on a state by state basis, in the absence of any state legislation, the principals set out in the National Code can equally apply to negotiating rent relief for tenants of residential property.

Provided the relief looks reasonable and the trustee is able to show evidence to their auditor that the relief was documented and offered as a result of the adverse financial impacts of COVID19 then auditors can use their professional judgment in forming an opinion on the commerciality of the arrangement.

The National Code requires, that a minimum 50% of rent is waived. Does this limit the SMSF from waiving 100% of the rent?

The National Code can be used as a guide and should be applied on a case-by-case basis, based on the reduction in the tenant's trade during COVID-19.

In accordance with the Code rental waivers must constitute no less than 50% of the total reduction in rent payable over the COVID-19 pandemic period. However, it is recognised that they can be greater than 50% in cases where failure to do so would compromise the tenant's capacity to fulfil their ongoing obligations under the lease agreement.

What documentation is required where an SMSF offers rent relief to a tenant, including a related party tenant?

The ATO have confirmed that any rent relief can be documented in a minute or a renewed lease agreement or other contemporaneous document. It may be best practice to ensure any agreement change is legally enforceable.

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.

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.

Relief announced by the ATO confirms that 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.

What happens if an SMSF is unable to execute a written plan to reduce its in-house assets in 2019/20?

Recognising the impact of COVID-19 in the 2020 financial year, the ATO has confirmed that it will not take compliance action against an in-house asset breach that occurred at 30 June 2019 however rectification plans were unable to be executed by 30 June 2020.

The ATO has also confirmed that the 2020 auditor contravention report (ACR) instructions will be amended to let auditors know not to report this type of breach.

What are the in-house asset implications where rent relief is offered to a tenant of a property held indirectly by the SMSF in a SIS Reg 13.22C trust?

Where an SMSF holds a property via an interposed company or unit trust, the rent relief may trigger the events in regulation 13.22D thereby causing the fund's investment in the interposed entity to become an in-house asset.

The ATO has confirmed that where an SMSF holds an interest in an interposed entity such as a non-geared company or unit trust and that interposed entity leases property to a tenant, they will not treat the investment in the interposed entity as an in-house asset for the current and future financial years as a result of a deferral of rent being provided to the tenant due to the financial effects of COVID-19.

Loan relief

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

The ATO have confirmed that temporary loan repayment relief may be offered in relation to an existing LRBA between an SMSF and a related party due to the financial effects of COVID-19, in line with what commercial lenders are offering.

Loan relief (continued)

Where a related party offers an SMSF trustee loan repayment relief in relation to a complying LRBA, will the NALI provisions apply?

Where the loan repayment relief reflects similar terms to what commercial banks are currently offering for real estate investment loans as a result of COVID-19, the ATO will accept the parties are dealing at arm's length and that the NALI provisions will not apply.

Can the loan relief extend beyond a deferral of loan repayments?

The ATO's relief applies to the deferral of loan repayments with an expectation that unpaid interest continues to be accrue on the loan. Any changes to the actual interest rate that is being charged on the loan or extension to the terms of the loan itself are beyond the scope of the ATO's relief and may constitute a refinancing of the LRBA.

Will there be NALI implications in the future when the SMSF will be required to make increased loan repayments to account for the accrued interest during the deferral period?

Documenting the deferral of loan repayments due to the impact of COVID-19 is critical to ensure no NALI implications arise in the future when the SMSF trustee commences to make catch-up payments. The ATO expects that an SMSF trustee will be required to catch up on any outstanding principal and interest repayments as soon as possible.

Can an SMSF trustee refinance a complying LRBA to take advantage of reduced interest rates?

The option to refinance a complying LRBA is available to SMSFs. Best practice is to adhere to the safe harbour provisions in PCG 2016/5 when dealing with a related party.

Refinancing an LRBA may have Total Superannuation Balance (TSB) implications.

Other

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.

Other (continued)

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
- monthly lodgers for the March 2020, April 2020, May 2020 and June 2020 periods.

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

Does a trustee have to physically sign the SMSF's 2019 financial statements?

The ATO has confirmed that the use of secure digital signature platforms is acceptable. However, acknowledgment of financial statements by a trustee over the phone or in the form of an email sent to an accountant will not meet the signature requirements under the law. An SMSF auditor will not be able to finalise the audit without a copy of signed financial statements.

In the current environment, market valuations are challenging - what will be acceptable to the ATO?

Trustees have an obligation to value the fund's assets in the financial statements at market and should do so in accordance with the ATO's valuation guidelines. Trustees need to attempt to obtain supportable and objective evidence where they can. A valuation from a qualified independent valuer remains the best form of evidence and the ATO recommends trustees getting one of these where the asset is material or is likely to be complex, although the ATO recognises that in the current environment this might be difficult.

What should auditor's do where they are unable to obtain sufficient appropriate audit evidence that the SMSF's assets are valued at market value?

Where auditors are unable to obtain supportable and objective evidence from Trustees, Reg 8.02B requires the auditor to modify the Independent Auditor's Report and the ATO at this stage expects the breach to be reported to them.

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