

Tel: (08) 9444 9711
Web: www.infocusaccounting.com.au



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JOBKEEPER 2.0 LEGISLATION

The Coronavirus Economic Response Package (Jobkeeper Payments) Amendment Bill 2020 received Royal Assent on 3 September 2020. Apart from extending the end date of the JobKeeper scheme from 27 September 2020 to 28 March 2021, the bill contains amendments to the Fair Work Act 2009 which will have a significant impact on Employer clients.

Decline in Turnover Certificate

Under the current rules, an employer who is eligible for the JobKeeper subsidy is allowed to make certain JobKeeper enabling directions under the Fair Work Act, such as directions to reduce an employee's hours, the type of duties to be performed and performing duties at a different location.

Employers who will be eligible for the extended JobKeeper scheme from 28 September 2020 will be able to continue providing JobKeeper enabling directions. However, employers who will not be eligible for the extended scheme, will only be allowed to continue with JobKeeper enabling directions if they can demonstrate a **10% decline in turnover**.

The 10% decline in turnover test requires that for a JobKeeper enabling direction made between:

- 28 September 2020 – 27 October 2020, the employer must have suffered a 10% decline in GST turnover for the June 2020 quarter compared to the June 2019 quarter;
- 28 October 2020 – 27 February 2021, the employer must have suffered a 10% decline in GST turnover for the September 2020 quarter compared to the September 2019 quarter; and
- 28 February 2021 – 28 March 2021, the employer must have suffered a 10% decline in GST turnover for the December 2020 quarter compared to the December 2019 quarter.

Importantly, employers will need to obtain a **10% decline in turnover certificate** from an eligible financial service provider, such as their tax agent or qualified accountant.

Accordingly, clients who do not expect to be eligible for JobKeeper payments after 27 September, but will need to continue JobKeeper enabling directions to their staff after 27 September 2020, should contact us to prepare the decline in turnover certificates.

If you have any queries on JobKeeper in general, please contact Andrew Lowry or Leonard Tebbutt on 08 9444 9711.

CORPORATES & PRIVATE GROUPS ALERT!

ATO's GST Assurance Reviews Extended to Top 500 Private Groups

August 2020 marked the ATO's recommencement of its GST Assurance Reviews (GAR) program and the extension of a similar GAR program focused on the Top 500 private groups.

The ATO considers an entity's GST business systems as **one of the most significant focus areas** for a GST assurance review. This is because the ATO views incorrectly reported transactions to be of significant GST revenue impact. Thus specialist GST review teams from the ATO will comprehensively review a Taxpayer's GST governance and management, focusing on how a Taxpayer's business systems create, capture, collate and report their GST transactions.

A GST assurance review will focus on the last complete financial year and will include systems and BAS walkthroughs. Data and transactions testing is also undertaken, focusing on a minimum of three consecutive BAS periods.

In the GARs, the ATO is seeking assurance that:

- Appropriate GST controls exist, are designed effectively;
- None of the GST risks that the ATO has flagged are present;
- The GST outcomes of abnormal, large or new transactions are appropriately treated; and
- Differences in GST and accounting figures can be explained and reconciled (ATO has developed a comprehensive **GST Analytical Tool** to formally assess this).

The ATO expects Taxpayers to undertake **their own** assurance and verification procedures on their data and transactions and Taxpayer selection for review is based on a range of risk factors including "significance to the GST system". Given that high wealth individuals and their associated private groups are considered to be of significance to the tax system, there is a high possibility that individuals previously selected for "high wealth individual" reviews may be subject to a GAR.

ATO Rating on GAR

Following their comprehensive review, the ATO will give a rating to each entity reviewed ranging from a Stage 1 to Stage 3 with a "Red Flag" rating given to Taxpayers with insufficient controls or where the ATO has significant concerns with a Taxpayer's GST compliance and/or its tax risk management and governance.

A GAR usually runs for **six months** where the ATO identifies mistakes and over or under payment of GST, penalties and general interest charges may be imposed, with the Taxpayer being subject to on-going governance issue if a bad ATO rating results from the GAR.

When considering eligibility for the best GAR rating of "Stage 3", the ATO takes into account whether an independent review has tested a Taxpayer's GST policies, procedures, controls and processes and identified gaps in these areas. Furthermore, a Taxpayers' efforts to reduce identified gaps is also considered by the ATO in assessing a Taxpayer's efforts to ensuring its GST data and reporting integrity.

Businesses that are not proactively preparing for a GAR may be increasing their GST risk exposure.

If you would like to discuss how we can assist in undertaking a GAR based on the ATO's target areas, please contact Andrew Lowry or Leonard Tebbutt on 08 9444 9711.

FBT ISSUES DURING COVID-19

Employers may have provided non-cash benefits to employees that they do not usually provide during the COVID-19 lockdown period. For example, electronic devices, health-related protective items, flu vaccines and COVID-19 testing. Employers should be aware of potential FBT issues with the provision of the benefits above and specifically any FBT exemptions available for the provision of these benefits.

For example, employees working from home may have been provided with work-related items, such as laptops, computer monitors and other electronic devices. The provision of portable electronic devices, such as laptops, tablets and mobile phones, to employees is exempt from FBT provided they are used primarily (e.g. more than 50%) for work purposes. The provision of non-portable electronic devices, such as desktop computers, monitors and printers, to employees is also exempt from FBT under the minor benefits exemption provided they are less than \$300 and are provided on an infrequent and irregular basis.

Employers may also provide health-related protective items, such as gloves, masks, sanitisers, and anti-bacterial spray, to employees while at work. The ATO accepts that these benefits are exempt from FBT under the emergency assistance exemption if they are provided to employees who have physical contact with, or are in close proximity to, customers or clients while carrying out their duties, or are involved in cleaning premises. For example, health care workers, hairdressers, beauticians and employees working in retail, café and restaurant. For other employees that do not fit the description above, employers may rely on the minor benefits exemption instead.

The provision of flu vaccines to employees is exempt from FBT provided it is available to **all employees**. Similarly, the provision of COVID-19 testing to employees should also be exempt from FBT provided the testing is carried out by a legally qualified medical practitioner or nurse and is available to all Employees.

The ATO has also issued a factsheet providing guidance on the FBT consequences of cars provided to employees during COVID-19. In particular, where an employee has an existing logbook in place, the ATO accepts that the employee can still use the logbook despite changes in driving patterns due to COVID-19. For the period impacted by COVID-19, the employee can make a reasonable estimate of the percentage of business use of the car, taking into account the logbook, odometer records and any changes in the pattern of business use during the period.

Finally, although there are various mechanisms to access the FBT exemption provisions as described above, employers must ensure that they satisfy the specific requirements for the exemption.

If you have any queries about the FBT issues on certain benefits provided during COVID-19, please contact Andrew Lowry or Leonard Tebbutt on 08 9444 9711.

SUPERANNUATION MEASURES- AN UPDATE

With Parliamentary sittings resuming, a number of Superannuation related measures have been introduced to Parliament, some of which are being re-introduced for a second time.

SMSF Membership Limit increase from 4 to 6

The Treasury Laws Amendment (Self-Managed Superannuation Funds) Bill 2020 was reintroduced in the Senate on 2 September 2020 proposing to increase the maximum number of allowable members in SMSFs from 4 to 6.

The Government had previously sought to enact this measure as part of the 2018/19 Federal Budget, however these changes were dropped as there was not enough support in the Senate to pass the measures at that time.

The Bill proposes to amend s 17A(1)(a) of the SIS Act to require an SMSF to now have fewer than 7 members (instead of fewer than 5) to satisfy the definition of an SMSF.

The Bill further proposes that for an SMSF with 3-6 directors or trustees, the Bill will also amend s 35B of the SIS Act to require the accounts and statements of the SMSF to be signed by "at least half of" the directors or individual trustees to also satisfy the trustee limit in the State legislation. An SMSF with 1-2 directors or individual trustees must have its accounts and statements signed by all of the directors or trustees.

The Bill has been referred to the Senate Economics Legislation Committee for a report by 4 November 2020.

Superannuation Bring Forward Contributions age limit Increase

The Treasury Laws Amendment (More Flexible Superannuation) Bill 2020 was passed by the House of Reps on 31 August 2020 without amendment. The Bill seeks to extend the bring-forward age limit from members under age 65 to those under the age of 67 in the financial year of the non-concessional contributions.

Individuals under age 67 in the financial year in which they make a non-concessional contribution will be able bring forward up to 3 times (ie \$300,000) of their annual non-concessional cap of \$100,000, provided that they meet the other conditions.

This aligns the bring forward provisions to the increase in the age before members need to satisfy the work test requirements prior to making contributions to their Superannuation accounts.

The Bill moved to the Senate but had not been passed when Parliament rose on 3 September 2020. This means that the Senate will not consider the Bill again until at least the Budget sittings scheduled for 6-8 October.

COVID-19 early release of Super application date extended

The Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations (No 3) 2020, registered on 3 September 2020, gave effect to the Government's extension of the COVID-19 early release of superannuation up to \$10,000 until 31 December 2020.

The Government, as part of their Fiscal update in July 2020, announced that they would extend the application period to allow those dealing with the adverse effects of COVID-19 to apply to access a further \$10,000 from their Superannuation until 31 December 2020 (rather than to 24 September 2020).

The Bill to alter the due date for the application only extends the date and makes no changes to the original criteria in the Bill passed in April 2020.

The requirements are that a person must either:

- Be unemployed;
- Be eligible to receive a jobseeker payment, parenting payment, special benefit, farm household allowance or youth allowance (other than on the basis that the person is undertaking full-time study or is a new apprentice);
- On or after 1 January 2020, the person was made redundant, or their working hours were reduced by 20% or more (including to zero); or
- For a sole trader, on or after 1 January 2020, the person's business was suspended or suffered a reduction in turnover of 20% or more.

Importantly the release of the Superannuation entitlement must be "required to assist the person to deal with the adverse economic effects of the coronavirus".

If you have any queries about Superannuation and the changes above, please contact Andrew Lowry or Leonard Tebbutt on 08 9444 9711.
