

# COVID-19 Stimulus Measures

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As has been well reported, both the Federal and State governments have issued stimulus packages in response to the economic impact of the spread of the novel coronavirus disease (COVID-19).

The Federal Government's stimulus package has now passed both houses of Parliament, with some amendments. The NSW Government's stimulus package has also passed both houses of the NSW Parliament.

The ATO has also outlined administrative measures to assist businesses.

## Federal Government Stimulus Measures

The *Coronavirus Economic Response Package Omnibus Bill 2020 (Cth)* (**Federal Bill**), which is comprised of 8 separate Bills, was passed by both houses of Parliament on 23 March 2020. The Federal Bill incorporates the measures contained in the 2 stimulus packages announced by the Federal Government on 12 March 2020 (a \$17.6 billion fiscal package) and 21 March 2020 (a \$66 billion fiscal package).

The measures include:

1. an enhanced instant asset write-off. Details of this measure are outlined below;
2. accelerated depreciation for assets not deducted under the instant asset write off;
3. a cash boost payment to small and medium sized businesses with an aggregated turnover of less than \$50 million and that employ staff. The details of this measure are outlined below;
4. wage assistance to help small businesses keep their apprentices and trainees;
5. an economic support payment of \$750 to Social Security and Veterans' income support recipients, Farm Household Allowance recipients, Family Tax Benefit recipients and holders of a Pensioner Concession Card, Commonwealth Seniors Health Card or Commonwealth Gold Card;
6. a second economic support payment of \$750 to Social Security and Veterans' income support recipients, Family Tax Benefit recipients and holders of a Pensioner Concession Card, Commonwealth Seniors Health Card or Commonwealth Gold Card;

7. short term changes to the Corporations Act and Bankruptcy Act to provide relief for persons unable to meet their obligations under that Act. The details of this measure are outlined below;
8. enabling persons to obtain early release of their superannuation benefits and to reduce the minimum amount to be paid for account-based pensions. The details of this measure are outlined below;
9. a scheme to grant guarantees to financial institutions in connection with loans made, or to be made, to SMEs. The details of this measure are outlined below.

### **Enhanced instant asset write off**

Under the enhanced instant asset write off rules eligible entities are entitled to an immediate deduction for depreciating assets that cost less than \$150,000, provided that the asset is first acquired at or after 7.30 pm (Australian Capital Territory time) on 12 March 2020, and first used or installed ready for use on or after 12 March 2020, but before 1 July 2020.

Further, eligible entities are entitled to a deduction for a cost included in the second element of the cost of a depreciating asset where the amount of the cost is less than \$150,000 and the cost was incurred on or after 12 March 2020 but before 1 July 2020.

The second element of the cost of a depreciating asset includes each economic benefit that has contributed to bringing the asset to its present condition and location from time to time since the person started to hold the asset (i.e. improvement costs) and the expenditure a person incurs that is reasonably attributable to a balancing adjustment event occurring for the asset.

The threshold below which an entity can immediately deduct the balance of its small business low value pool at the end of an income year is also increased from \$30,000 to \$150,000.

Eligible entities for the enhanced instant asset write off are entities that carry on a business in the income year and that have an aggregated turnover (this includes turnover of affiliates of, and entities connected with, the entity) of less than \$500 million.

#### **Comment**

The enhanced instant asset write-off will likely be of limited utility given the current economic climate and the fact that the asset must be acquired in the period of 12 March and 1 July 2020 and must also be used or installed for use in that period. However, for taxpayers that have established a low value pool, the increase of the balance at the end of the income year that they can deduct (from \$30,000 to \$150,000) will be beneficial.

### **Accelerated depreciation**

This measure enables an eligible entity to apply an accelerated rate of deductions for depreciating assets that they start to hold and start to use, or have it installed ready for use for a taxable purpose in the period beginning on 12 March 2020 and ending on 30 June 2021 that are not eligible for the immediate write-off.

An eligible entity is one that carries on business in the income year and has an aggregated turnover of less than \$500 million (this includes turnover of affiliates of, and entities connected with, the entity).

The amount the entity can deduct in the income year the asset is first used or installed ready for use for a taxable purpose is 50% of the cost (or adjustable value where applicable) of the depreciating asset and the amount of the usual depreciation deduction that would otherwise apply for the balance.

There are exclusions for assets as follows:

1. assets that can be depreciated under the enhanced instant asset write-off;
2. assets that can be depreciated under subdivision 40-E (low value or software development pools) or 40-K (farm in farm out arrangements);
3. the asset is not a qualifying asset for one of the following reasons:
  - a. prior to 12 March 2020, the entity:
    - i. entered into a contract to hold the asset;
    - ii. started to construct the asset; or
    - iii. started to hold the asset in some other way;
  - b. it is a second hand asset;
  - c. Division 40 does not apply to the asset due to section 40-45 of the *Income Tax Assessment Act 1997* (Cth) (**ITAA 1997**) (i.e. capital works and eligible work-related items);
4. if it is reasonable to conclude that at the time the asset is first used or installed ready for use that:
  - a. it will not be used principally in Australia for the principal purpose of carrying on a business; or
  - b. it will never be located in Australia.

### Comment

Once the impact of the current economic circumstances is known for businesses, this measure may be useful as it applies to assets acquired up until 31 June 2021 and provides for accelerated depreciation of assets where the cost exceeds the \$150,000 cap under the enhanced instant asset write off.

### Cash flow boost to employers

There are 2 cash flow boost payments for employers. Under cash flow boost measure, eligible entities will receive at least \$20,000 up to a total of \$100,000 under both payments.

Entities are eligible to receive the first cash flow boost payment if:

1. the entity makes a payment of salary or wages or similar remuneration in the period between 1 January 2020 and 30 June 2020 (whether or not any amount is actually withheld in the period);
2. the entity is a small or medium business entity (i.e. carrying on a business and with an aggregated turnover of less than \$50 million) in the income year or the Commissioner is reasonably satisfied that the entity will likely be a small or medium business entity for the income year;
3. the entity has notified the Commissioner of its entitlement in the approved form (expected to be the lodgement of a BAS or IAS);
4. the period is one of the following:
  - a. for a small withholder, either 31 March 2020 or 30 June 2020; or
  - b. for a medium or large withholder, any of 31 March 2020, 30 April 2020, 31 May 2020 or 30 June 2020;
5. where the entity is not a charity, it:
  - a. held an ABN as at 12 March 2020; and
  - b. either:

- i. derived assessable income from carrying on a business in the income year ended 30 June 2019; or
  - ii. made one or more supplies for consideration in the course of carrying on of an enterprise after 1 July 2018 and before 12 March 2020, and
6. notice of the income or supplies was held by the Commissioner or before 12 March 2020; and
7. the entity has not engaged in a scheme for the sole or dominant purpose of seeking to make the entity entitled to the first cash flow boost or increase the entitlement of the entity to the first cash flow boost (**Integrity Measure**).

The first cash flow boost payment is between \$10,000 and \$50,000 based on the amount the entity has withheld for the period, but eligible entities will receive a minimum of \$10,000 irrespective of whether they have withheld an amount in the period.

In the March 2020 period, monthly withholders will receive an amount equal to 300% of the amount withheld (but still capped at \$50,000) to provide them with an equivalent benefit to entities that lodge quarterly.

The second cash flow boost payment is an amount equal to the amount of the first cash flow boost payment received and is payable in equal instalments as follows:

1. for monthly withholders – over the periods of June, July, August and September 2020; or
2. for quarterly withholders - over the periods of June and September 2020 quarters.

The cash flow boost payment for small and medium withholders is payable at the later of when the entity notifies the Commissioner of its entitlement or the time the entity was required to lodge its activity statement for the period. For large withholders, the cash flow boost payment is payable at the time that the entity pays or are paid its GST net amount for the period most closely corresponding to the period for which payment is made.

The following example has been given by Treasury for a business that does not withhold in the March 2020 period:

*Tim owns and runs a small paper delivery business in Melbourne, and employs two casual employees who each earn \$10,000 per year. In his quarterly BAS, Tim reports withholding of \$0 for his employees as they are under the tax-free threshold.*

*Under the Government's changes, Tim will be eligible to receive the payment on lodgment of his BAS.*

*Tim's business will receive:*

- *A credit of \$10,000 for the March quarter, as he pays salary and wages but is not required to withhold tax.*
- *An additional payment of \$5,000 for the June quarter, equal to 50 per cent of his total Boosting Cash Flow for Employers payments.*
- *An additional payment of \$5,000 for the September quarter, equal to 50 per cent of his total Boosting Cash Flow for Employers payments.*

*If Tim begins withholding tax for the June quarter, he would need to withhold more than \$10,000 before he receives any additional payment.*

*Under the previously announced Boosting Cash Flow for Employers measure, Tim's business would have received a total payment of \$2,000.*

*Under the Government's enhanced Boosting Cash Flow for Employers measure, Tim's business will receive \$20,000. This is an additional \$18,000 to support his business.*

#### **Comment**

Attention should be paid to the Integrity Measure. An example of where the ATO may seek to apply the Integrity Measure is if an entity was to pay a wage to an owner instead of dividends or trust distributions that may have been paid in earlier years or was to pay a bonus despite there being no history of paying bonuses.

#### **Comment**

We understand that the ATO is not currently accepting electronic PAYG registrations.

#### **Trap**

If the reporting in the 31 March 2020 and 30 June 2020 quarters is not consistent with reporting in prior periods, it would be expected that the ATO may consider whether the Integrity Measure should be applied.

#### **Comment**

The ATO retains the power to apply the refunds to pre-existing tax debts. We understand no internal guidance has been issued on whether the ATO will apply refunds to pre-existing debts.

### **Corporations Act and bankruptcy relief**

The Corporations Act has been amended to extend the period within which to comply with a Creditors Statutory Demand from 21 days to 6 months and to increase the amount for which a Creditors Statutory Demand can be issued from \$2,000 to \$20,000.

There are similar amendments to the Bankruptcy Act to increase the time by which a person must comply with a bankruptcy notice from 21 days to 6 months and to increase the amount for which a bankruptcy notice can be issued from \$5,000 to \$20,000.

Further, a temporary safe harbour has been introduced to relieve the personal liability of directors for insolvent trading of a company for any debt incurred in the ordinary course of a company's business and during the 6 months from the date of Royal Assent or such longer period as prescribed.

#### **Trap**

While the Creditors Statutory Demand measure is a positive to enable a business to stay afloat, it will be a double-edged sword, in that businesses will not be able to effectively use the threat of a Creditors Statutory demand to obtain payment from recalcitrant creditors.

## Superannuation measures

The Federal Bill makes amendments to enable persons to apply for release of their superannuation benefits on the ground that the benefits are required to assist the person to deal with the adverse economic effects of COVID-19 if the person is:

1. unemployed;
2. eligible to receive a jobseeker payment, parenting payment or special benefit under the *Social Security Act 1991* (Cth) (**SS Act**);
3. eligible to receive youth allowance under the SS Act, other than because of undertaking full-time study or that they are a new apprentice;
4. eligible to receive farm household allowance under the *Farm Household Support Act 2014* (Cth);
5. on or after 1 January 2020, made redundant or had their working hours reduced by 20% or more; or
6. if they are a sole trader, on or after 1 January 2020, their business was suspended or suffered a reduction in turnover of 20% or more.

Eligible persons are entitled to access up to \$10,000 of their superannuation before 1 July 2020 and a further \$10,000 in the period from 1 July 2020 to 6 months from when the Federal Bill receives Royal Assent.

The Federal Bill also reduces the minimum pension payment requirements by 50% for the years ended 30 June 2020 and 30 June 2021.

### Comment

It is not clear whether this measure will apply to partners in a partnership. Further, where a person is employed by an entity that the person controls and reduces their working hours due to a downturn in business, it is not certain whether the ATO will accept that they meet the conditions for release.

## Guarantee of small business loans

The Government will commence a scheme of providing guarantees to financial institutions in connection with loans made, or to be made, to SME entities.

The power to grant a guarantee is conditional on the guarantee being likely to assist in dealing with the economic impacts of COVID-19. The example provided is that the guarantee could assist in boosting confidence in lending by financial institutions to SME entities affected by the economic downturn as a result of the pandemic.

Rules will be introduced setting out the conditions of the guarantees. Treasury has indicated that the guarantees will be for loans with the following terms:

- made to SMEs, including sole traders, with a turnover of up to \$50 million;
- maximum total size of loans of \$250,000 per borrower;
- loans will be for up to 3 years, with an initial 6-month repayment holiday; and
- unsecured finance, meaning that borrowers will not have to provide an asset as security for the loan.

The guarantees are only available for new loans made after the Government's announcement.

Treasury has noted that, while the scheme will officially commence from April 2020, banks or other lenders may be able to provide credit sooner, and still benefit from the guarantee.

### **Comment**

It is not clear whether Treasury will provide for longer repayment holidays if economic conditions do not improve in the 6-month period presently contemplated.

## **ATO Measures**

The ATO has announced the following measures:

1. PAYG concessions;
2. payment deferral of BAS amounts and FBT;
3. ability to change from being a quarterly BAS lodger to a monthly BAS lodger to obtain refunds; and
4. interest and penalty remission.

### **PAYG concessions**

This concession is expressed to be available for small and medium businesses, but large businesses are also encouraged to apply to the ATO.

The concessions enable PAYG instalments for the March 2020 to be varied to \$0 and for instalments for the September 2019 and December 2019 to also be varied to \$0 and for a refund to be claimed of the instalment paid for those quarters.

The ATO advises that the reason given on the variation should be “significant change in trading conditions”.

No interest or penalties will be imposed in respect of the varied instalments.

### **Payment deferrals of BAS amounts and FBT**

Taxpayers who can show that they have been impacted by the COVID-19 can apply for a 4-month deferral on payments due on BASs.

The ATO has indicated that it is prepared to consider deferrals of income tax and FBT to 12 September 2020.

Requests can be made to the ATO by telephone.

### **Change to monthly BAS lodger**

From 1 April 2020, quarterly BAS lodgers may elect to become a monthly lodger and claim refunds.

### **Interest and penalty remission**

The ATO has indicated that it will consider remitting interest and penalties incurred after 23 January 2020 where a business is affected by COVID-19.

The ATO has also noted that it is prepared to enter into low interest payment plans and to vary existing payment arrangements.

## NSW Government Stimulus

The *Treasury Legislation Amendment (COVID-19) Bill 2020* (NSW) (the NSW Bill) passed NSW Parliament on 24 March 2020. The NSW Bill makes amendments to the *Payroll Tax Act 2007* (NSW) and the *Long Service Leave Act 1995* (NSW) to:

1. provide that an employer is only required to pay 75% of the payroll tax on wages for the financial year commencing on 1 July 2019 if all Australian wages paid or payable are \$10,000,000 or less. For employers that are members of groups, there will be no discount unless Revenue NSW has been provided with the details of other members in the group and the taxable wages and interstate wages;
2. increase the payroll tax threshold to \$1 million from 1 July 2020. Previously this increase was not expected to commence until 1 July 2021;
3. enable an employer to give an employee long service leave of less than 1 month prior to the employee's entitlement for long service.

### Comment

The payroll tax concession for the year ended 30 June 2020 is only a 25% reduction in payroll and may only provide limited relief.

### Trap

The exclusion for members of a group where they have not provided details of all group members may make the 25% reduction potentially illusory given the catch-all nature of the grouping provisions in the *Payroll Tax Act 1997* (NSW).

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