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Australia Tax Update

The past month has seen the extended JobKeeper scheme under which payments are to be scaled back and eligibility re-tested. The Australian Taxation Office (ATO) activity has included the release of guidance on when it will clawback JobKeeper overpayment amounts. The ATO has also indicated it will be reviewing the early release of superannuation amid eligibility concerns.

LEGISLATION UPDATE

With the July sitting of Parliament being cancelled there has been no legislation passed. The next sitting is currently due on 24 August 2020.

COVID-19 STIMULUS PACKAGES UPDATES

JobKeeper Scheme—Extension

The Government has announced an extension of the Job Keeper scheme by 6 months to 28 March 2021.

From 28 September 2020 to 3 January 2021:

- The payment rate of \$1,500 per fortnight for eligible employees and business participants will be reduced to \$1,200 per fortnight, and a lower payment rate of \$750 per fortnight will apply for those that worked fewer than 20 hours per week.
- Businesses and not-for-profits will need to demonstrate that actual GST turnover has declined in the June and September 2020 quarters relative to comparable periods.

From 4 January 2021 to 28 March 2021:

- The maximum payment rate will be further reduced to \$1,000 per fortnight and the lower payment rate will be reduced to \$650 per fortnight.
- Businesses and not-for-profits will need to demonstrate that their actual GST turnover has declined in each of the June, September and December 2020 quarters relative to comparable periods.

The 20 hours per week requirement will be based on average hours worked during February 2020. The Commissioner will have discretion to set out alternative tests if the hours worked in this period were not usual. The decline in turnover required will be the same as the existing rules, and the Commissioner will have the same discretion to set out alternative tests.

JobKeeper Scheme—ATO Activity and Overpayments

The ATO has written to 8,000 businesses advising that they were ineligible for JobKeeper and their payments will be ceased. However, the ATO have also released guidance on clawing back overpayments and when it will not seek the amounts to be repaid.

The ATO has stated it will typically not require repayment of the amounts where an honest mistake has been made. Factors relevant to whether the ATO will seek repayment include whether:

- The business relied in good faith on a statement made by an employee in their nomination notice.
- The business fully passed on the benefit of the JobKeeper payment to the relevant employee.
- The mistake was made earlier in JobKeeper when there was less public guidance.

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JobKeeper Scheme—ATO Activity and Overpayments (cont.)

A mistake will not be considered honest if, for example, the entity nominated employees or eligible business participants that it should have known would not have been eligible; or the employer has deliberately not met the wage condition.

The ATO also state that, generally, it will not impose administrative penalties for JobKeeper overpayments that were the result of a mistake. However, administrative penalties will apply if there is evidence of deliberate actions to get JobKeeper payments that an entity would not have otherwise been entitled to.

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Other Federal Government measures

Changes to SME loan guarantee scheme: From 1 October until 30 June 2021 the scheme, under which the Government is guaranteeing 50% of new unsecured loans to SMEs, will continue to be available with the following changes:

- extend the purpose of loans able to be provided beyond working capital;
- permitting secured lending (excluding commercial or residential property);
- increasing the maximum loan size to \$1m and increasing the maximum loan term to 5 years; and
- allowing lenders the discretion to offer a repayment holiday period.

Early Release of Superannuation: The application period will be extended from 24 September 2020 to 31 December 2020.

ATO RULINGS AND ACTIVITY

Demergers

The ATO has issued TD 2020/3 which finalises its view of the meaning of 'restructuring' under the demerger rollover relief provisions. Demerger rollover relief can apply where shareholders receive interests in a demerged entity under a restructuring and 'nothing else', and they maintain the same proportional interest holding. The broader the transactions included within a restructure the greater the risk that the interest holder may not meet these requirements.

The Ruling includes examples of when a restructuring may include the subsequent sale of the head entity, such that the nothing else requirement is not met, or a subsequent capital raising by the demerged entity in the context of meeting the proportionality requirement. Based on the final ruling, demerger relief is now only likely to apply in very plain demerger transactions.

GST withholding regime—transitional rules end

Since 1 July 2018 purchasers of new residential premises and potential residential land have generally been required to withhold an amount at the date of settlement and pay it directly to the ATO. However, this withholding requirement did not apply if the contract was entered into before 1 July 2018.

The ATO has issued a reminder that these transitional provision ended on 30 June 2020 and any contracts that were entered into before 1 July 2018 and have not yet settled will now be subject to the GST withholding rules. Notification requirements must be satisfied by the vendor prior to settlement and the ATO online lodgement obligations must be completed by the purchaser.

FBT car parking threshold

The FBT car parking threshold has increased to \$9.15 for the FBT year starting on 1 April 2020 (up from \$8.95 for the 2019-20 FBT year). This threshold is relevant in determining whether car parking provided to employees is a fringe benefit.