

### COVID-19 and SMSFs

Due to the economic fallout and market volatility created by the Coronavirus, the Australian Government and the ATO have each separately announced various measures designed to help retirees navigate this new financial landscape. Some law changes made by Government affecting super fund members are:

- Temporary halving of minimum pension payments;
- Temporary early release of super; and
- Reduction in the social security deeming rates.

Some changes that have been introduced by the ATO relating to SMSF members are:

- Changes to compliance action in response to rent reductions; and
- Temporary repayment holidays for related party lenders.

#### Government law change – Temporary halving of minimum pension payments

The Government has halved the minimum pension payment obligation for the 2020 and 2021 income years. The change is intended to prevent trustees from having to sell SMSF assets at a loss in order to make their minimum pension payments.

By way of background, SMSFs paying a pension (e.g., an account-based pension), must ensure that a pension payment is made at least annually to the pension recipient. The minimum pension payment is based on the recipient's age and pension account balance as at 1 July each year (or at the date of commencement). The default and reduced pension drawdown rates are:

Age at 1 July (or pension start date)	Default drawdown rate (% of total pension account balance)	Reduced rate for 2020 and 2021 income years (% of total pension account balance)
Under 65	4%	2%
65 – 74	5%	2.5%
75 – 79	6%	3%
80 – 84	7%	3.5%
85 – 89	9%	4.5%
90 – 94	11%	5.5%
95 or more	14%	7%

#### Practical considerations with the reduced drawdowns

Some points to consider for the reduced minimum pension payments are:

- **Multiple pensions** – members receiving multiple

### HIGHLIGHTS

#### COVID-19 and SMSFs

Government and ATO changes affecting SMSFs

#### ATO UPDATE

SMSF tax return lodgment and payment deferrals for tax agents

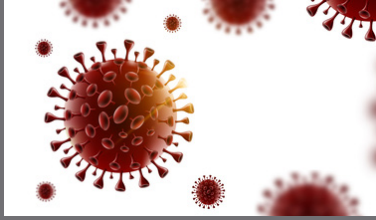
#### KEY DATES AND ANNOUNCEMENTS

30 June 2020 is fast- approaching

pensions (whether from the same or a different fund) can apply the reduced minimum pension payment to each pension.

- **1 July 2019 balances to be used** – the minimum pension payment for pensions on foot at 1 July 2019 is to be calculated based on the account balance at that time. A later balance cannot be used to determine the minimum payment for the 2020 income year (even if asset values have fallen).
- **Repayments are contributions** – members seeking to repay any overdrawn pension payments need to be aware that any repayments back to the fund will be treated as a contribution. Hence, such repayments are subject to the usual contribution rules (e.g., members over 65 will be subject to the work test and the contribution counts towards the concessional and/or non-concessional contributions cap).
- **Stopping the pension before 30 June 2020** – members who are thinking of stopping a 'retirement phase' pension before year-end should consider the implications of stopping the pension, including: any impact on the transfer balance cap, and/or the loss of the earnings exemption for the fund.

**TIP**–The minimum pension payment is reduced on a pro-rata basis if the pension stops during the income year. For example, the minimum pension payment for a member aged under 65 who ceases an existing pension on 31 May 2020 is: 2% x 336 ÷ 366.



*“The economic fallout from the pandemic has seen the ATO provide guidance on various compliance issues for affected SMSFs”*

## ATO UPDATE

The ATO’s ‘frequently asked questions’ cover the ATO’s approach to SMSFs and COVID-19. Google ‘QC 62260’ to read more.

The ATO has granted a lodgment (and payment) deferral for SMSF annual returns previously due on 15 May and 5 June 2020. These returns are now due by 30 June 2020. See ‘QC 62295’.

The ‘general’ transfer balance cap currently sits at \$1.6 million. The ATO anticipates this to be indexed up to \$1.7 million on 1 July 2021.

The implications of indexation for members with a ‘retirement phase’ pension on foot are complicated and vary from person to person. The ATO has issued a fact sheet explaining what indexation of the cap means for these members. Google ‘QC 60627’ and ‘QC 61303’ to learn more.

## COVID-19 and SMSFs – continued

### **Government change – Temporary early release from super**

Temporary changes to the law also allow super fund members (including SMSF members) financially affected by COVID-19 to access super before they meet a condition of release.

Individuals who satisfy certain [hardship conditions](#) (for example, they are unemployed) can access:

- Up to \$10,000 of super before 1 July 2020; and
- A further \$10,000 from 1 July 2020 until 24 September 2020.

Note that trustees do not need to withhold PAYG tax from amounts withdrawn under this condition of release. Further, the fund does not need to provide a payment summary to the member receiving an early access amount.

**WARNING**—Individuals can only access super under this temporary condition if the ATO authorises the release (i.e., members cannot self-assess their eligibility). Members should apply through myGov.

### **Government change – Reduced deeming rates**

The Government also announced that from 1 May 2020, the upper deeming rate will be reduced to 2.25%, and the lower deeming rate to 0.25%.

By way of background, ‘deeming’ refers to the rules that are used to determine the income received from financial assets for social security means testing purposes.

Broadly, income from financial assets for social security purposes (income test) is based on a ‘deemed’ rate, rather than actual income earnings.

### **ATO response to COVID-19 fallout**

The economic fallout from the pandemic has seen the ATO provide guidance on various compliance issues for affected SMSFs. Key issues raised by the ATO are outlined below.

### *ATO guidance – Investment strategies*

Steep falls in markets have resulted in the asset mix (or asset levels) of some SMSFs falling outside the scope of their investment strategies. In these situations, the ATO advises that:

- Significant events (such as the recent market correction) should prompt a review of the strategy.
- This review should be over and above the regular review of the fund’s investment strategy (which, under normal circumstances, should be done at least annually).
- Where the asset mix (or asset levels) falls outside the scope of the investment strategy, trustees should act to address this.
- Such actions could include adjusting the fund’s investment levels or updating the investment strategy to account for the changed market conditions.

### *ATO guidance – Rent relief due to COVID-19*

It is not uncommon for an SMSF to own business premises (e.g., a retail store) which it rents to a related tenant.

However, the COVID-19 pandemic has led to some businesses being unable to afford paying the full amount of rent due under a lease agreement. Normally, failing to enforce the lease would cause the fund to breach the super rules (e.g., the arm’s length rule).

Given the circumstances, the ATO will not take compliance action for the 2020 and 2021 income years if a fund provides a tenant (including a related tenant) with:

- A temporary reduction in rent; or
- A waiver or deferral of rent.

However, the ATO’s reprieve only applies if the rent relief is provided because of the financial effects of COVID-19.

**INFO**—The ATO requires any changes (including to the lease agreement) to be documented – for example, by a minute or a renewed lease agreement. Reasons should also be documented.

## COVID-19 and SMSFs – continued

### *ATO guidance – Unrealised losses*

Some SMSFs have suffered substantial falls in their asset values. In these circumstances, the ATO advises that:

- ‘Unrealised losses’ have no effect on a fund’s income. (Note that an ‘unrealised loss’ is where an asset’s value falls, but the asset itself has not been sold).
- If a fund makes a capital loss from selling an asset, the fund can only offset the loss against other capital gains (not other fund income).
- Any capital losses that cannot be offset against current year losses must be carried forward. Further, the loss cannot be used personally by any fund members.

**WARNING**–Schemes such as selling and immediately repurchasing an asset for tax reasons (i.e., a ‘wash sale’) should be avoided.

### *ATO guidance – Loan repayment holiday (related party lender)*

In some circumstances, an SMSF may be permitted to borrow under a ‘limited recourse borrowing arrangement’.

Under these arrangements, related parties (such as the member) are permitted to advance loans (i.e., in place of a bank) where strict conditions are met.

More often than not, SMSFs have entered into these loan arrangements in order to purchase real property. Given the reduced rent that some SMSFs are having to accept (see above), this may cause the fund difficulties in meeting its loan repayment obligations.

The ATO advises that the related lender can offer a temporary repayment holiday if the following conditions are met:

1. The repayment relief terms are similar to the relief being offered by the banks for real estate investment loans.

For example, terms provided by the banks currently include temporary repayment deferrals of up to 6 months (with any unpaid interest added to the loan balance).

2. The parties document the changes to the loan terms, together with the reasons for the changes being made.

**TIP**–The SMSF will need to start making loan repayments once the deferral period of the loan repayment holiday (e.g., 6 months) is finished. At that time, the parties can check whether further relief is required (but this relief needs to be comparable to what commercial banks are offering).

## Key dates and reminders

### 30 June 2020

Tax return and payment due date for SMSFs lodged via a tax agent if the original due date was 15 May or 5 June.

Trustees should ensure that by Tuesday 30 June 2020:

- The minimum annual pension payment (if required) is made before this time in order to avoid the payment being processed in July; and
- If intending to deduct a contribution in the 2020 income year, the contribution should be received by the fund before this time (other conditions apply).

Also, note that contributions generally count toward the fund’s concessional or non-concessional contributions in the year they are credited to the fund’s bank account.

### Proposals that are not yet law

The following super-related proposals are due to commence from 1 July 2020, but they **are not yet law**:

- Allowing people aged 65 and 66 to make voluntary super contributions without meeting the ‘work test’;
- Allowing individuals aged 70 to 74 to receive spouse contributions (if the work test is met) – people aged 70+ cannot currently receive spouse contributions;
- Allowing people aged 65 and 66 to make up to three years of non-concessional contributions under the ‘bring-forward rule’ (if set requirements are met); and
- The relaxation of rules used to determine tax-exempt income for funds paying a ‘retirement phase’ pension.

## CERTIFIED PRACTICING ACCOUNTANTS

ABN 76 755 957 857

Unit 6, First floor  
1345 The Horsley Drive  
Wetherill Park 2164

PO Box 6292  
Wetherill Park BC 2164  
E admin@nua.net.au

P 61 2 9725 4000  
F 61 2 9725 4500  
www.nua.net.au

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