TABLE OF COVID – 19 SUPERANNUATION RELIEF AND OTHER RELATED ISSUES

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1. Easier access to the Jobseeker Payment • The eligibility criteria for individuals, including sole traders, to access the jobseeker payment (formerly Newstart) has been temporarily broadened. • The base payment has been temporarily increased by an extra $550 per fortnight. https://www.servicesaustralia.gov.au/individuals/services/centrelink/jobseeker-payment	This measure is relevant to the early release of super discussed under 2. below as eligible persons include those eligible to receive a jobseeker payment.

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2. Early release of superannuation • Eligible members will be able to access up to $10,000, tax-free, from their super account in the current year to 30 June 2020 and in the 2020/21 year up until 30 September 2020 — providing a maximum of $20,000 per member. The withdrawals will not affect Centrelink or Veteran's Affairs payments. • Eligible members are those: ○ who are unemployed; ○ who are eligible under the Social Security Act 1991 (Cth) to receive a jobseeker payment, parenting payment (which includes the single and partnered payments) or special benefit; ○ who are eligible to receive youth allowance under the Social Security Act 1991 (Cth) (other than on the basis that the person is undertaking full-time study or is a new apprentice); ○ who are eligible to receive farm household allowance under the Farm Household Support Act 2014 (Cth); or ○ who on or after 1 January 2020: • was made redundant; • had their working hours reduced by 20% or more (including to zero); or • if they are a sole trader, had their business suspended or suffered a reduction in turnover of 20% or more. • The ATO announced on 3 April it will be deploying the application form for individuals on Monday, 20 April 2020. An individual can make one application in the 2019/20 financial year and one application in the 2020/21 year before the measure ends on 24 September 2020. The application is accessed in one of two ways: ○ members can authenticate themselves through myGov and complete the application form in ATO Online, or	There are existing early release rules that allow the release of up to $10,000 from a super fund in cases of hardship. This new measure extends the early release rules to allow additional temporary relief based on specified criteria. Early release should be a last resort. All members should carefully consider their individual circumstances, recognising that it may have a detrimental effect on long-term retirement savings. Members should consider discussing the decision with a financial planner. As to how the 20% reduction is to be measured it has been speculated that it will compare current hours/turnover from 1 January 2020 with the average for the period 1 July to 31 December 2019. This should be clarified shortly. See also MO Partner Mark Bland's article on this subject from the viewpoint of larger public fund trustees: https://www.millsoakley.com.au/thinking/covid-19-early-access-to-super/

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members who cannot access the form online can call the ATO to complete the application.

It will take approximately 1 to 2 business days for the fund to receive notifications about their members. Funds can expect to start receiving notifications from Tuesday, 21 April 2020.
AUSTRAC will introduce a rule under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF) to ensure that superannuation funds making payments to their members under this initiative, where the payment is approved by the ATO and processed through MyGov and ATO Online, will not have to conduct additional customer verification under the AML/CTF regime.

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3. Temporarily reduced minimum drawdown rates for retirees

Minimum drawdown rates from superannuation for retirees have been reduced by half for the 2019-20- and 2020-21-income years. The changes will allow more members to avoid the need to sell their assets during a period of economic downturn. See table on below:

<table>
<tr><th>AGE</th><th>USUAL MINIMUM PENSION %</th><th>REDUCED MINIMUM PENSION %</th></tr>
<tr><td>Under 65</td><td>4</td><td>2</td></tr>
<tr><td>65 to 74</td><td>5</td><td>2.5</td></tr>
<tr><td>75 to 79</td><td>6</td><td>3</td></tr>
<tr><td>80 to 84</td><td>7</td><td>3.5</td></tr>
<tr><td>85 to 89</td><td>9</td><td>4.5</td></tr>
<tr><td>90 to 94</td><td>11</td><td>5.5</td></tr>
<tr><td>95 plus</td><td>14</td><td>7</td></tr>
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The idea here is not to have to take as much cash, being the reverse of other measures, designed to allow members to leave more investments in super so that there is greater opportunity for growth in the future value of benefits, given the falls in the share markets.
If members have already taken more than the reduced minimum, they cannot pay it back! They can possibly decide what form the excess takes and should liaise with their financial planner.
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4. Members approaching retirement could take a TRIS

Apart from limited early release, members must reach their ‘preservation age’ before they can begin accessing their super benefits, depending on

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The commencement of a TRIS should be discussed with a financial planner.
From a tax viewpoint:
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when the member was born as shown in the table below:
<table>
<tr><th>YOUR DATE OF BIRTH</th><th>PRESERVATION AGE</th></tr>
<tr><td>Before 1 July 1960</td><td>55</td></tr>
<tr><td>1 July 1960 – 30 June 1961</td><td>56</td></tr>
<tr><td>1 July 1961 – 30 June 1962</td><td>57</td></tr>
<tr><td>1 July 1962 – 30 June 1963</td><td>58</td></tr>
<tr><td>1 July 1963 – 30 June 1964</td><td>59</td></tr>
<tr><td>From 1 July 1964</td><td>60</td></tr>
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If a member has reached their preservation age, but are still working, they can commence a Transition to Retirement Income Stream (TRIS) (within the Transfer Balance Cap – currently $1.6m), a form of pension that can be made regularly or annually. Annual withdrawal amounts are calculated based on the member's account balance and minimum pension factors each year (see 3. Above), with a maximum withdrawal of 10% of super account balances per year.

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The fund's earnings (not contributions) may be tax-free during retirement phase though refundable franking credits still apply. A TRIS can be in retirement phase if the member is age 65+ or has retired or is permanently incapacitated or subject to a terminal illness. Otherwise fund earnings are taxed in the usual manner.
Payments received by members under age 60 are assessable on the taxable component of the pension with a 15% rebate. Pension payments received by members over age 60 are tax-free.

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5. Members could retire or otherwise satisfy a condition of release

If the member has reached their preservation age and either retired from the workforce or otherwise satisfied a condition of release, they may be eligible to start a retirement pension (income stream).
By transferring the balance of their accumulation super account into a pension account (within the Transfer Balance Cap – currently $1.6m), the member can withdraw regular pension payments or lump sum amounts.
Conditions of release include:

Under 60: leave gainful employment and no intention to become gainfully employed in the future (i.e. retire);
60 to under 65: As above, plus when you leave a job;
65 plus: satisfied automatically, even if still working;
Terminal medical condition, certified by 2 medical practitioners

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The commencement of a Retirement pension should be discussed with a financial planner.

The taxation comments under 4. above apply equally here regarding pensions.

Separate complex rules apply for lump sum benefits for members under age 60 (above age 60 they are tax free) or for death benefits. A terminal medical condition benefit is tax free.
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<tr><td>6. Claiming insurance
Some super fund members may have taken out Income Protection or Salary Continuance Cover in the fund, which can allow for temporary benefits for up to 2 years.
If a member is temporarily unable to work as a result of contracting COVID-19, they may be able to claim a regular monthly payment to help them meet their living expenses.
If the member holds current Income Protection cover, they may typically be eligible to claim on their insurance if the member:
Has as a result of illness become incapable of performing their regular occupation necessary to produce income,
Is not engaging in any work, for wages or profit; and
Is under the care of a medical practitioner.</td><td></td></tr>
<tr><td>7. Temporary residents permanently leaving Australia
If the member has entered Australia on an eligible temporary resident visa, they may be able to withdraw their super as a Departing Australia superannuation payment (DASP) once they have left Australia. https://www.ato.gov.au/Forms/Applying-for-a-Departing-Australia-super-payment/</td><td></td></tr>
<tr><td>8. Asset protection
Self-managed super funds should have corporate trustees to protect the individual members and the SMSF alike - should address this now. Should also have an enduring power of attorney to enable acting for bankrupt director if necessary – should address this now.
Bankruptcy Act protects benefits in superannuation, but not to the extent of contributions made to defeat creditors. So, need to make contributions before member is about to become insolvent (if not too late!) – contribution strategies should be discussed. Note the super fund itself has no special protection from its own creditors.</td><td>Asset protection is something that can be overlooked until it is too late. Immediate action should be taken to address certain key issues mentioned to protect family superannuation benefits.

See MO flyer on importance of addressing Estate issues:

https://www.millsoakley.com.au/thinking/covid-19-securing-your-familys-future/</td></tr>
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Measure/Related Issue	Mills Oakley Comment
• Benefits paid before bankruptcy are not protected. After bankruptcy lump sums are protected (apart from any clawback of contributions) but half of any pensions go to the bankruptcy trustee. So, best to: ○ Keep money in super except for current use if at risk; ○ Consider commuting pensions back to accumulation phase; ○ Pay lump sums after bankruptcy as required (best practice also to keep those funds identifiable to demonstrate that any assets purchased with such funds are also protected) • Death benefits of a bankrupt are protected if paid to beneficiaries directly, but not if paid via the estate, so if benefits are to go via the estate, there must be discretionary testamentary trusts and/or a super proceeds trust in the Will.	
9. Crystallise tax losses by 30 June • This is a usual year end tax strategy for SMSFs in accumulation mode to minimise the net capital gains realised and therefore the tax payable. It is important to realise that just because the value of your assets have diminished due to share market decline, does not mean there are realised losses to utilise. • Super funds are regarded as holding their investments under the capital gains tax regime. Disposals of investments such as directly held shares can be treated as made on a FIFO basis or in accordance with specific identification. Capital losses must be offset against gross capital gains before any discount, so it is best to offset capital losses against non-discount gains to the extent available.	This issue should be reviewed with tax and financial advisers. We can assist regarding the tax/super law aspects. Action must be taken before 30 June 2020 to benefit in the current year. Note that if you sell a stock in one financial year to take advantage of a capital loss event, only to buy that stock again in the new financial year, the ATO says it will disallow the loss if the sole intention of the "wash sale" was to minimise tax.
10. Transfer business real property into SMSF • There is a prohibition from transferring assets into an SMSF from a related party, with an important exception for business real property. • An SMSF can also acquire such property utilising a limited recourse borrowing arrangement (LRBA), which may be necessary in order to accomplish the transfer. • This may enable the release of moneys outside the SMSF.	This issue should be reviewed with tax/legal and financial advisers. We can assist regarding the tax/legal aspects.

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• There are many asset protection, prudential, tax, GST and duty issues to consider with this strategy.	
11. Maximise contributions into super to invest at the low point of markets • This is a potential strategy for those with ample funds outside super, where the main market exposure may be within their SMSFs. • Contributions per member may be, for example: ○ Concessional contributions up to $25k pa ○ Non-concessional contributions up to $100k pa, or $300k advance contributions if under age 64 at the start of the financial year – subject to Transfer Balance Cap (currently $1.6m) restrictions. ○ Contributions under CGT cap such as under small business CGT concessions e.g. retirement exemption up to $500k lifetime limit. Downsizer contributions for eligible person age 65+ up to $300k.	This issue should be reviewed with tax/legal and financial advisers. We can assist regarding the tax/legal aspects. Key issues need to be considered in relation to each type of contribution and how to achieve it tax-effectively and whether other incidental issues arise that must be addressed.
12. COVID-19 rent relief • If dealing with an *unrelated tenant*, it is fine to negotiate rent relief in the form of deferral or rent reduction to take account the circumstances of the tenant caused by COVID-19, such as loss of jobs or closure of business temporarily. This should be based on proper consideration of what is in the interests of the Fund and documented accordingly. • If rent relief means difficulties in paying off a borrowing under an LRBA, negotiations on that front may also be required. • Where the tenant is a *related party* in relation to business real property and/or the lender under the LRBA is a related party, there are prudential rules that could apply including the sole purpose test, a prohibition on financial assistance to members and their relatives and a requirement for arm's length dealing. Nevertheless, the trustee may negotiate and agree temporary revised arrangements without breaching these provisions. However, greater effort is required in the consideration of what is appropriate and documenting the reasons for what is agreed and recording/documenting the arrangement itself.	The ATO's response to concerns about rent relief was announced on 30 March 2020 as follows: "Some landlords are giving their tenants a reduction in or waiver of rent because of the financial impacts of COVID-19 and we understand that you may wish to do so as well. Our compliance approach for the 2019–20 and 2020–21 financial years is that we will not take action where an SMSF gives a tenant — who is also a related party — a temporary rent reduction during this period." We can assist with negotiations and with documenting temporary arrangements for relief in relation to leases and loans.

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13. Administering the super guarantee amnesty • The ATO announced on 3 April 2020 that it will work with businesses who apply for the superannuation guarantee amnesty to enter into special payment arrangements if they have difficulty making payments because of the COVID-19 pandemic. • These arrangements include: ○ making flexible payment terms and amounts which the ATO will adjust if the employer's circumstances change; and ○ extending the payment plan to beyond 7 September 2020. However, only payments made by 7 September 2020 will be deductible. • Those employers who are still unable to adhere to these payment arrangements would be disqualified and would not be able to benefit from the amnesty. However: ○ the disqualification will only apply to any unpaid quarters; ○ the ATO will advise the employer which quarters are unpaid — for these quarters the ATO will re-apply the administration component of $20 per employee included in the disqualified quarter; and ○ the ATO will also take the employer's circumstances into account when deciding whether a penalty should be applied to its disclosure; and a review of its circumstances may result in the penalty being reduced to nil. • In addition, the ATO has said that some employers may be eligible to receive a refund as a result of applying the amnesty. In such a situation: ○ for those who lodged a super guarantee charge (SGC) statement between 24 May 2018 and 6 March 2020, the ATO is amending their returns as quickly as possible so that any refunds could be processed, and ○ those who have made payments of SGC or contributions to employee super funds in 2017/18 or 2018/19 would be eligible for income tax	The one-off amnesty for underpayment of superannuation guarantee (SG) was recently legislated. Employers must apply to the ATO before 7 September 2020 for the amnesty, which applies to SG shortfalls arising from 1 July 1992 to the March 2018 quarter. Key features that make the amnesty attractive are: • No administrative component of $20 per employee per quarter; • No penalties; and • Payments deductible subject to payment by 7 September 2020 The announcements may assist cash flow but certain of the benefits of the amnesty may be lost, in particular only payments made by 7 September 2020 will be deductible.

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deductions — these employers should include this deduction in their tax return for the relevant year. Once the ATO has amended their return it will pay any refund due as soon as possible. Generally, this will be within 14 days.	
14. Request an extension for SMSF annual return obligations • The ATO announced on 3 April that SMSFs trustees or their tax agents should contact the ATO before 15 May 2020 to request an extension for lodgement of the SMSF's annual return, if they need more time, due to the impact of COVID-19. Tax agents can apply for the deferral for their SMSF clients for up to 30 June 2020.	

6 April 2020

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