

Moratorium on evictions and rent relief

The Prime Minister has stated that the States and Territories are moving to put a moratorium on commercial and residential evictions as a result of financial distress. A number of states have enacted legislation to enable them to put appropriate regulations in place, but these are yet to be enacted.

Bank support for landlords who do not evict commercial tenants

The banks have announced that they will provide relief to commercial property landlords who undertake that for the period of the interest capitalisation, they will not terminate leases or evict current tenants for rent arrears as a result of COVID-19.

SMSFs with commercial property that provide rent relief to a related party

For some businesses, the business owner's SMSF (or a related party) owns the commercial property that the business leases. Normally, the leasing arrangement between the business and the SMSF must be at market value to fulfil the SMSF's obligations under the *Superannuation Industry Supervision Act*.

If the SMSF reduces the rent because the business is in financial distress as a result of COVID-19, the SMSF will not face action by the ATO. The ATO has stated:

*"Some landlords are giving their tenants a reduction in or waiver of rent because of the financial impacts of the 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.**"*

To qualify for rent relief, there are a number of issues that trustees should document:

- The financial hardship of the tenant (substantiating the financial impact)
- Review the lease agreement and refer to any relevant provisions within the agreement that enable a reduction in rent
- Agree and document a reduced rental amount for a specified period of time. The period of time should be relevant to the financial impact.

Taking these steps will help mitigate any potential compliance breach by your fund and reduce the likelihood of audit activity by the ATO.

It is important to balance the immediate needs of the related business with the long-term goals of the SMSF. The fund's sole purpose to provide retirement benefits for members should be considered before any rent reduction is granted.