

## **COVID-19 – Providing rental relief for the tenant in my SMSF property**

The economic impacts of the COVID-19 crisis are causing significant financial distress for many businesses and individuals.

If your SMSF has a property and a tenant in financial distress, you may be able to provide your tenant with rental relief under an agreed commercial arrangement. This may even be the case when the tenant is a related party or yourself.

Ordinarily, charging a tenant a price that is less than market value in an SMSF is usually a breach of superannuation laws. However, the ATO have provided guidance which allows SMSF landlords to provide for a reduction in or waiver of rent because of the financial impacts of the COVID-19.

For the 2019–20 and 2020–21 financial years, the ATO will not take action where an SMSF gives a tenant – who may also be a related party – a temporary rent reduction during this period.

### **What do you need to do?**

There are some important things you should ensure are in place when you are providing a rent reduction to a tenant, especially when this is a related party.

- Ensure the relief only applies to rent.
  - Any relief offered to a tenant can only relate to the rent component of the lease agreement. The ATO concession does not extend to other lease incentives.
- Ensure that the reduction in rent is only temporary.
  - This means it should have an agreed period of time or agreed date where the rent is reviewed in light of the economic circumstances.
- The financial difficulty faced by the tenant is linked to the financial impacts of COVID-19.
  - Any negotiated rent relief will need to be measured against the COVID-19 financial impact suffered by your tenant.

- Clear arrangements which detail the amount of discount, waiver or deferral of the rent.
  - In evidencing that the rent relief is reasonable, it would be best practice if it is consistent with an approach taken by an arm's length landlord.
- Ensure you have proper documentation which allows your independent auditor to be satisfied that the temporary rent relief satisfies all of the above.
  - This may take the form of a signed minute, renewed lease agreement or anything deemed appropriate to amend the terms of the lease temporarily.
  - Even if you are both the tenant and landlord, the above should all be documented.

These are extraordinary times and the ATO is providing this guidance to allow SMSF trustees to be flexible and agile.

If trustees act in good faith in implementing a reasonable and measured reduction in rent because of the impacts of COVID-19 they should not fall foul of the law.

#### **How can we help?**

If you need assistance providing rental relief or whether this is the right action for you and your specific circumstances, please feel free to give me a call so that we can discuss in more detail. Alternatively, you can refer to the SMSF Association's trustee education platform, [SMSF Connect](#).