

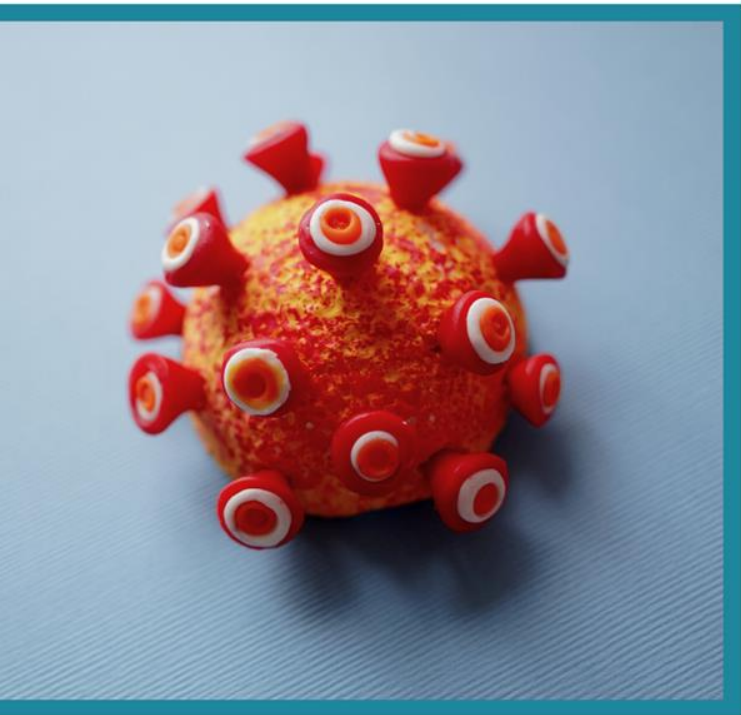


TriSuper Auditors

# Rent relief for SMSF tenants

IN THE TIME OF COVID-19





## Context

- The COVID-19 induced business shutdown caused a lot of financial stress for small businesses and it was clear that there would be need for potential rent relief.
- In April 2020, the National Cabinet announced a Mandatory Code of Conduct for commercial tenancies. Those tenants eligible for JobKeeper program are also eligible for rental reductions, waiver & deferrals.

# ATO Guidance



- 01 The ATO extended that to businesses that were tenants of an SMSF.
- 02 Given that an SMSF owned property can be leased members for business purposes, at arm's length commercial rates.
- 03 That for FY20 & FY21 the ATO has said it "will not take action where an SMSF gives a tenant — who is also a related party — a temporary rent reduction."

# But...

Covid-19 is not a pretext for lax compliance. The ATO expects that the business case for rent relief will be properly documented.

They are already auditing JobKeeper claims and the Government has announced that there will be an eligibility review for the JobKeeper program in July.

It is a moving target and the ATO spotlight will fall on SMSF tenancy agreements.



# Paper Trail

The ATO will expect auditors to police this and determine if the rent relief is legitimate and a commercial or arm's length assessment.


To protect trustees from future scrutiny we make the following recommendations:

## From tenants

- Evidence that the grounds for JobKeeper was compliant, and Covid-19 related
- Evidence that the tenant had a good track record in paying rent
- Evidence about the extent of the rental concessions

## From trustees

- Documents from the tenant asking the landlord for rent relief
- Evidence to support the case for rent relief
- Documents from the landlord to provide rent relief and evidence as to why it was agreed (commercial)
- A written and signed agreement between both parties stipulating the amount of rent relief and its term



In an era of heightened ATO vigilance it pays to play sage. Evidence of a proper commercial arrangement will keep the ATO happy and your trustees safe from any future action and penalties.



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