



## What the ATO is doing to support small businesses

On 17 October 2019, Second Commissioner, Andrew Mills, addressed the Tax Institute's 2019 Tasmanian State Convention outlining what the ATO is doing to help support small businesses manage their competing demands. Some initiatives include:

- a new program of work at the ATO called 'Better as usual' – an ATO-wide initiative to continually provide a better level of service
- improvements to the ATO's dispute resolution process, including the small business independent review pilot
- the Dispute Assist program, specifically designed to support taxpayers going through exceptional circumstances, for example sudden illness or family breakdown.

### 3 attributes in a successful small business

The ATO sees 3 key attributes in successful businesses:

1. Effective cash flow management
2. Digital readiness
3. Having a professional adviser.

As a regulator, the ATO helps businesses maintain those behaviours.



## **Have you missed the STP start date?**

Small employers had until 30 September to start reporting through Single Touch Payroll (STP). There are 3 options if you missed the deadline:

### **1. Start reporting**

If you already use accounting or payroll software, check whether it offers STP reporting. If it does, enable the STP function and start reporting straight away. If you need new software or an upgrade, the ATO has a list of providers that offer STP reporting products.

### **2. Apply for a reporting concession if one exists**

Micro-employers (1–4 employees) who need more time to move to STP reporting can ask their registered tax or BAS agent to report on their behalf on a quarterly basis. This can continue until 30 June 2021.

### **3. Ask for more time by applying for a deferral or exemption**

For employers with 19 or less employees, you or your registered agent can ask the ATO for a deferral by logging into the ATO Business Portal or phoning the ATO.

For employers with 20 or more employees, your software provider may have applied to the ATO for a later start date for STP reporting. This deferral would cover you as an existing client.

The option you choose will depend on your circumstances but it's important to start reporting or get in touch with the ATO as soon as possible.



## Get your PAYG withholding obligations right

All businesses, including not-for-profits, are now required to meet their PAYG withholding obligations before they can claim deductions for payments to workers – for example, salary, wages, bonuses, directors' fees and payments under a labour hire agreement.

Payments to contractors where the contractor does not provide their ABN are also covered by these new rules.

**Note!** These new rules took effect from 1 July 2019 and apply to income tax returns lodged for the 2020 income year onwards.

### What you must do to claim a deduction

In order to claim a deduction, you need to:

- withhold the required amount (if applicable) before you pay your worker
- report that amount to the ATO.

If you make a mistake and withhold or report an incorrect amount, you won't lose your deduction. You will need to correct your mistake as soon as possible to minimise penalties.

**Tip!** If you are uncertain about the impact of these new rules, please speak with your tax adviser.

### Using contractors – PAYG obligations

The ATO has published a useful checklist about your PAYG obligations if you hire a contractor.  
***If the contractor doesn't provide you with their ABN:***

- you generally need to withhold 47% from payments to them
- give a completed PAYG payment summary – withholding where ABN not quoted to the contractor with their net payment, or as soon as practicable afterwards
- include the payments in your PAYG withholding where ABN not quoted – annual report and lodge the report with the ATO by 31 October.

***If the contractor is an individual who has a PAYG withholding voluntary agreement with you:***

- work out the PAYG amount to withhold from payments to the contractor – use the tax withheld calculator or tax tables online (take into account any information provided by the contractor in a withholding variation or withholding declaration)
- by 14 July, provide a PAYG payment summary – business and personal services income to the contractor showing the total amounts paid and withheld
- include the payments in your PAYG payment summary annual report and lodge the report with the ATO by 14 August.

***If you have to withhold PAYG amounts for any reason:***

- if you haven't withheld before, you need to register for PAYG withholding straightaway
- report and pay the PAYG withholding amounts to the ATO in your BAS which is usually quarterly or monthly for most businesses. A business withholding more than \$1 million per year reports and pays more often.

## **Withholding for employee shares**

Does your company have an employee share scheme (ESS)? If it does, you will have withholding obligations.

### **When does withholding apply?**

Withholding will apply if:

- you provide a discounted ESS interest to your employee
- that employee has not given you their TFN or ABN by the end of the relevant income year – so there is no withholding if your employee has provided their TFN.

If your employee has given you a TFN declaration for their employment, no withholding is payable.

### **How is withholding calculated?**

Withholding is calculated on the discount your employee should include in their assessable income under the ESS rules.

If you have engaged the services of a third party to administer your ESS, you may give them your employee's TFN. In these circumstances, no withholding is payable.

The rate of withholding is the highest individual marginal tax rate plus the Medicare levy, i.e 47% for the current tax year. Under no circumstances can you withhold in excess of this rate.



## Pay the amounts withheld

You must pay amounts you withheld to the ATO within 21 days after the end of the income year your employee is taxed on the discount.

If you pay amounts withheld to the ATO, you can recover these amounts from your employee. You can do this by offsetting the amount of withholding paid against any amount you owe to your employee, such as salary and wage income.



## Are you changing your business structure?

If you are changing your business structure (e.g from a sole trader to a company), you will need to apply for a new ABN.

Examples of when you need to cancel your ABN and apply for a new ABN under the new structure include moving from either:

- individual/sole trader to partnership or trust
- individual/sole trader to company or trust
- partnership to company or trust.

You must ensure that your ABN details are updated on your tax invoices. This is essential as your ABN is used to:

- identify your business identity to others when ordering and invoicing
- claim GST credits.

Other businesses and entities must withhold payment at the top tax rate if the ABN quoted on the invoice is incorrect or the details do not match up.

**Tip!** Ensure that you update your GST registration details whenever you get a new ABN.

**To do!** Contact your tax adviser if you are considering changing your business structure. There are also likely to be tax issues.

## **Did you know that you can lose your ABN?**

The ATO will cancel your ABN if your business is no longer operating. Not keeping lodgements up to date is a key indication of this. So that they get it right, the ATO uses information from:

- your tax returns
- other lodgements; and
- third party information.

## **What happens if the ATO cancels your ABN?**

If the ATO cancels your ABN and you want to start your business again, or the ATO gets it wrong, you can reapply and get the same ABN back (as long as your business structure remains the same).

If the business structure is different – for example, you were a sole trader, but your new business is a company – you will get a different ABN.

**Tip!** If you have changed your business structure, you'll need to get a new ABN in these circumstances – see above.



## Working out if you have to pay super

An ATO factsheet provides a useful reminder about when you have to make contributions under the superannuation guarantee (SG) scheme.

Generally, if you pay an employee \$450 or more (before tax) in a calendar month, you have to pay them super on top of their wages.

If your employee is under 18 or is a private or domestic worker, e.g a nanny, they must also work for more than 30 hours per week to qualify.

You pay super regardless of whether the employee:

- is full-time, part-time or casual - working holidaymakers are included
- receives a super pension or annuity while still working
- is a company director
- is a family member working in your business – provided they are eligible for SG.

**Note!** You may also have to pay for some contractors, even if they quote an ABN.

## Superannuation guarantee amnesty a step closer

The proposed amnesty allowing employers to self-correct superannuation guarantee (SG) non-compliance has been reactivated.

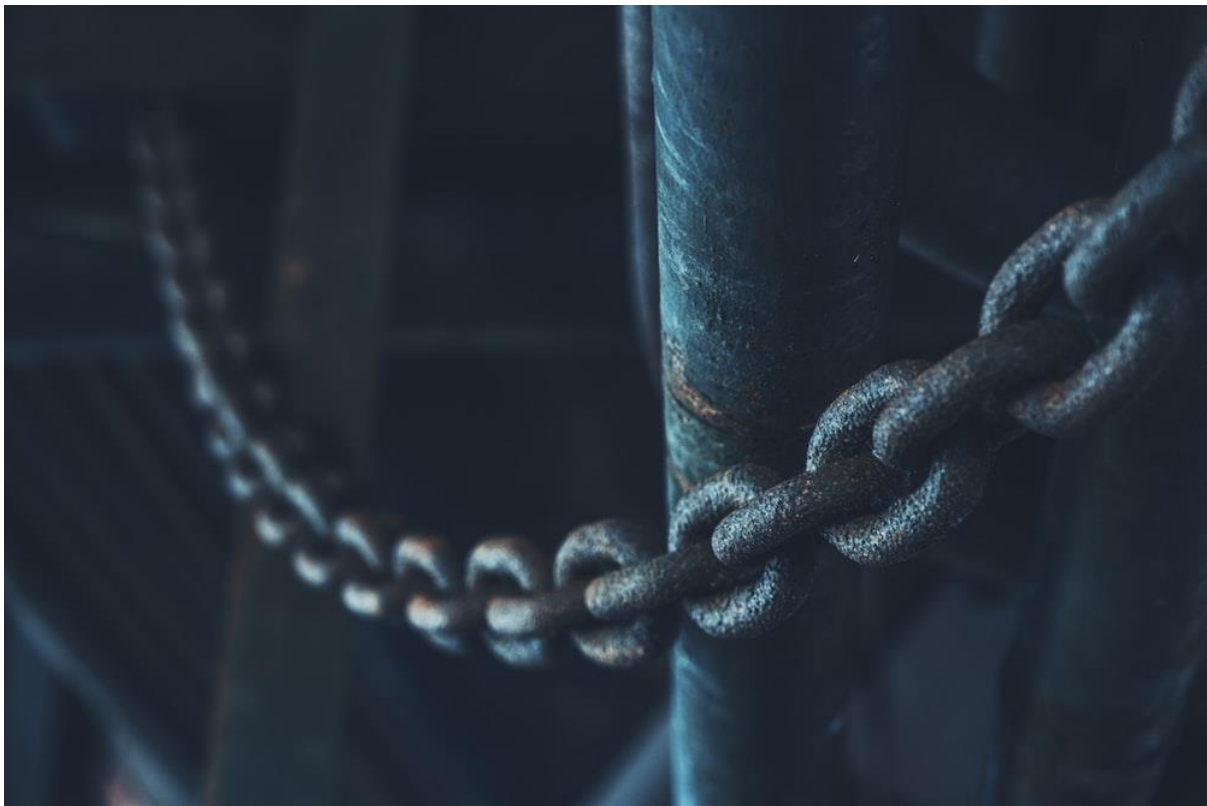
### What does this mean for employers?

If the *Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019* (the Amnesty Bill) is passed by the Parliament, employers will be given a one-off amnesty, with reduced penalties and fees, to disclose historical SG non-compliance and pay any SG charge imposed in relation to the disclosed SG shortfall.

The amnesty allows employers who qualify for the amnesty to claim tax deductions for payments of SG charge and contributions made to offset any SG charge made during the amnesty period.

The amnesty period starts on 24 May 2018 and ends 6 months after the day the Amnesty Bill becomes law. This is a longer period than the original 12-month amnesty.

**Tip!** If you are concerned that you may have SG corrections to make, please speak with your tax adviser.



## Disclosure of business tax debts

The ATO can now disclose tax debt information of businesses to registered credit reporting bureaus (CRBs), but only if certain criteria are met. Those criteria will be set out in a Legislative Instrument that is being finalised.

The Government has said that the ATO will only disclose tax debt information to a CRB if the business has an ABN and one or more tax debts of at least \$100,000 that are overdue by more than 90 days.

It's also important to note that businesses that are engaging with the ATO to manage their tax debts or are disputing the calculation of a tax debt through the AAT or the courts, will not have their tax debt information reported to CRBs.



The ATO has also said that it will apply administrative safeguards above and beyond the legislative ones before reporting the tax debt information of a business.



## Are you holding vacant land?

If you are holding vacant land, the law changed from 1 July 2019 so that any expenses you have relating to the land are generally not deductible. This is the effect of legislation (the *Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Act 2019*) that became law on 28 October.

### What are the exceptions?

There are certain exceptions. You can still claim a deduction to the extent the land is used, or held available for use, in a business including where the business is carried on by your spouse or child or by an affiliate or a connected entity. A deduction is also available where the land is held by a company or a partnership of companies.

The legislation was amended during its passage through the Parliament to add additional exceptions. These apply to vacant land:

- held by primary producers;
- used for business purposes under arm's length arrangements; or
- on which there is situated a substantial and permanent structure, and the land effectively becomes vacant because of an event outside your reasonable control, such as a natural disaster, fire or substantial building defects (for up to 3 years).

So, you can still claim a deduction in those circumstances.

**To do!** Contact your tax adviser if you hold vacant land.



## The end of \$10,000 + cash transactions?

You may have read about a proposal to ban cash transactions in excess of \$10,000. Well, that is a step closer to becoming law as the Parliament is now considering it (the *Currency (Restrictions on the Use of Cash) Bill 2019*).

If the Bill is passed by the Parliament, it will be a criminal offence for all individuals, companies, partnerships, trusts and other entities to make or accept cash payments (including gifts and loans) of \$10,000 or more. Why \$10,000? Because it is consistent with the reporting threshold under the anti-money laundering/counter terrorism financing (AML/CTF) regime.

A series of payments totalling \$10,000 or more will be caught by the new rules if the payments are for the same supply or part of a single gift or loan. An example would be the purchase of a car by instalments. Regular payments under \$10,000 between the same parties will be acceptable where distinct things are supplied.

The new laws will apply to foreign currency as well as Australian currency.

**Note!** If a partnership breaks the law, each partner can be prosecuted. If a trust breaks the law, the trustee (or each trustee if more than one) can be prosecuted.

### What are the exceptions?

Draft rules released by the Government specify a number of exceptions. These will include:

- personal or private transactions unless involving real property
- digital currency transactions
- payments that are subject to reporting obligations under the AML/CTF regime



- exceptional transactions where no alternative method of payment could reasonably be used.



## 7 tips to stay smart online and avoid cybercrime

As part of Stay Smart Online week (in early October), the ATO published some useful tips about improving online safety.

1. **Be careful about what information you share online.** Thieves look to steal personal information with the intent to commit identity fraud.
2. **Strong passwords are vital.** Use two-factor authentication to add an extra layer of security where possible.
3. **Keep software updated** on all devices to protect information.
4. **Back up important information** regularly using a storage device or online cloud service.
5. **Be on the lookout** for suspicious emails and text messages and think twice before clicking links or opening attachments.
6. **Never transfer funds to an unverified bank account.**
7. **Be wary of online scams.** For example, promoters of illegal schemes promise early access to your super. Check with the ATO if you suspect a scam. If something seems too good to be true it probably is.



## Recent real-life case: You can't always rely on ATO website

The ATO website contains lots of useful information but a recent case shows you should be wary of relying on the website.

The taxpayer (a Mr Lacey) had until 31 December 2017 to bring his transfer balance account below the \$1.6m cap. So, he transferred \$30,000 from that account to his accumulation account, believing that, when combined with pension drawdowns, it would bring him within the \$1.6m cap. This belief was based on a statement on the ATO website that that "you will not have to pay excess transfer balance tax" if "you remove" the excess by 31 December 2017.

Unfortunately, it didn't work that way and the taxpayer/Mr Lacey was eventually told to pay excess transfer balance tax of \$596. So, he took the matter to the Administrative Appeals Tribunal (AAT), claiming that he would not have been misled if the ATO website had used "commute" rather than "remove".

Although the AAT accepted that the taxpayer/Mr Lacey genuinely believed that the steps he took would operate to bring his transfer balance below the \$1.6m cap (and the ATO did not dispute that), the AAT ruled that it did not have the jurisdiction to hear the case. In the end, the taxpayer/Mr Lacey still had to pay \$596.

**Tip!** The lesson to be learnt. Speak with your tax adviser if you have any tax or superannuation issues.

**Note!** We should point out that the ATO website has been updated and, in the words of the AAT, "it is objectively a much more instructive document than its predecessor".



## Top 4 weird tax time excuses

31 October is, of course, the due date for individual tax returns where you don't use a registered tax agent to lodge your return. The ATO has published some of the weirder excuses it has heard for why the tax return was late or the taxpayer did not have supporting documents. Hopefully they will make you smile – some may even sound familiar (who hasn't misplaced a document).

### 1. Someone's stolen my pants

One taxpayer had a thief break into their car and walk off with their uniform pants. Unfortunately, the taxpayer had kept their receipt in his pocket and couldn't provide a record of their purchase.

The ATO recommends taxpayers keep digital records of all claims you intend to make. When you only keep physical receipts, you run a real risk of losing all evidence of your purchases.

### 2. A mouse ate my receipts

The most common problem that the ATO keeps seeing excuses for is missing receipts. One taxpayer contended that a mouse had broken into their car and eaten their receipts.

In cases where you've lost your receipt, check with the seller to see if they have a record of your transaction.



### **3. The car wash did it**

Leaving receipts in cars seems to frequently cause taxpayers strife. The ATO heard from one taxpayer, who, while trying to get their car squeaky clean, vanished all traces of their purchase.

The ATO advises you to close the windows when you're going through a car wash.

### **4. I've got 'holiday brain'**

One reason for late lodgement was that a taxpayer had gotten 'holiday brain' after returning from a trip and had forgotten to lodge their tax return.

The ATO knows that preparing your tax return may not be the most exciting date on your calendar, but it is an important one, and it may even result in you receiving a refund that you can put towards your next holiday.

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