

The Bottom Line



Bushfire relief

How the ATO can help

The ATO has announced various measures to help businesses and individuals in local government areas impacted by the bushfires. These include:

- automatic deferrals for lodgement of income tax, SMSF, FBT and excise returns and activity statements, and their associated payments, until 28 May 2020 (so there is no need to apply for a deferral);
- automatic priority for any refunds due;
- the remission of interest and penalties applied to tax debts since the commencement of the bushfires;
- the suspension of debt recovery action - for taxpayers with a tax debt or outstanding obligation, the ATO will not institute recovery action until at least 28 May 2020; and
- the temporary suspension of current audit activity.

(<https://www.ato.gov.au/Individuals/Dealing-with-disasters/In-detail/Specific-disasters/Bushfires-2019-20/>)

These measures apply to businesses, individuals and self-managed funds in the local government areas impacted by the bushfires. The ATO website lists the affected postcodes. Note that the deferrals do not apply to large withholders.

Here is the link to the postcodes:

(<https://www.ato.gov.au/Individuals/Dealing-with-disasters/In-detail/Specific-disasters/Bushfires-2019-20/?anchor=Ifyourpostcodeisnotinthislist#Ifyourpostcodeisnotinthislist>)

If you have lost documents in a bushfire, or they are damaged, the ATO can reissue income tax returns, business activity statements and notices of assessment, help you re-construct tax records and help you find your tax file number.

If you are impacted by the bushfires but you are not in an affected postcode (as included in the list on the ATO website) or are a large withholder, you can call the ATO's Emergency Support infoline on 1800 806 218 for assistance. The Commissioner of Taxation, Mr Chris Jordan, has said that he expects ATO staff to be "flexible, reasonable and pragmatic" when considering each request for assistance.

Monthly GST credits

If you are making purchases to replace stock and other losses, and you report and pay GST quarterly, you can elect to change to monthly reporting and payment, to get quicker access to net amount refunds. You can only change from the start of a quarter, so a change now will take effect from 1 April 2020.

Once you choose to report and pay GST monthly, you must keep reporting monthly for 12 months before you can elect to elect to revert to quarterly reporting (unless your GST turnover is more than \$20 million, in which case you must report and pay monthly).

Changing your GST reporting cycle to monthly doesn't mean you have to change your PAYG withholding reporting cycle. You can manage this by specifying the roles you are changing.

If you're registered for fuel tax credits, and change your GST reporting from quarterly to monthly, you will also need to claim your fuel tax credits monthly.

You can change your GST reporting cycle through your tax or BAS agent, in the business portal, or by phoning the ATO on 13 72 26.

PAYG instalments

If you are a quarterly pay as you go (PAYG) instalments payer, you can vary your PAYG instalments to nil on your activity statement for the December 2019 quarter by lodging a revised activity statement before you lodge your income tax return for the year.

You can also vary your PAYG instalments in future periods. The ATO won't apply penalties or charge interest to varied instalments for taxpayers within the impacted postcodes in the 2019–20 financial year.

If you have already lodged

- If you've already lodged any quarterly activity statements for 2019–20, you can claim a credit (at item 5B) on your next activity statement for the instalment amount you paid in the previous quarters, to receive a refund of the amount paid.
- You can also revise your latest lodged activity statement to nil, and claim a credit for amounts previously paid.
- If you realise you've made a mistake working out your PAYG instalment, you can correct it by lodging a revised activity statement or varying a subsequent.

Exemption for disaster relief payments

The Government has announced that various disaster relief payments received by individuals as a result of the 2019-20 bushfires will be tax exempt. The exemption will apply to the following payments:

- Disaster Recovery Allowance payments
- Payments that would otherwise be taxable under the Disaster Recovery Funding Arrangements, such as grants that may be made to small businesses and primary producers
- Payments made to eligible Rural Fire Service Volunteers for loss of income where they have been called out for extended periods of service.

Super guarantee obligations unchanged

The ATO has reminded employers impacted by the bushfires that they still need to meet ongoing super guarantee obligations for their employees. The ATO does not have the power to vary the contribution due date or waive the superannuation guarantee charge but, if an employer needs help, the ATO can agree to a payment plan.

<https://www.ato.gov.au/business/super-for-employers/paying-super-contributions/missed-and-late-payments/employers-affected-by-disaster/>



What has the ATO been doing?

Looking at your lifestyle

Do you own “lifestyle assets” such as an expensive car, fine art or a boat? If so, the ATO may be checking to see that your declared income can support your lifestyle.

The ATO has instructed over 30 insurance companies to provide information on clients with any of the following assets:

- aircraft valued at \$150,000 or more;
- marine vessels valued at \$100,000 or more;
- fine art valued at \$100,000 or more per item;
- motor vehicles valued at \$65,000 or more;
- thoroughbred horses valued at \$65,000 or more.

Approximately 350,000 individuals are being targeted.

Trading stock taken for private use

It is common in a number of industries for trading stock to be used for private purposes. If you do this, you are treated as having sold it for its cost just before the change in use and as having bought it back for the same amount.

Because it is difficult in many cases to keep accurate records of transactions involving goods taken from stock for private use, the ATO publishes each year standard values (excluding GST) that can be used by proprietors of certain businesses. The latest amounts (for the 2019-20 tax year) were published in early January.

TYPE OF BUSINESS	AMOUNT (EXCLUDING GST) FOR ADULT/CHILD OVER 16 YEARS	AMOUNT (EXCLUDING GST) FOR CHILD 4 to 16 YEARS OLD
Bakery	\$1,350	\$675
Butcher	\$850	\$425
Restaurant/café (licensed)	\$4,640	\$1,750
Restaurant/café (unlicensed)	\$3,500	\$1,750
Caterer	\$3,790	\$1,895
Delicatessen	\$3,500	\$1,750
Fruiterer/greengrocer	\$880	\$440
Takeaway food shop	\$3,440	\$1,720
Mixed business (includes milk bar, general store and convenience store)	\$4,260	\$2,130

Table taken from Taxation Determination TD 2019/1

<https://www.ato.gov.au/law/view/document?docid=TXD/TD20201/NAT/ATO/00001>

When labour costs might not be deductible

It is commonly assumed that all labour costs are deductible when you incur them. But the ATO has released a draft taxation ruling saying that labour costs will not be deductible if they are incurred “specifically for constructing or creating capital assets”. Capital assets can be intangible (e.g. licences, intellectual property and trademarks) as well as tangible.

The cost of workers or employees whose role has a remote connection with constructing or creating capital assets, or who have a broader role that involves incidental activities, are likely to be deductible. An example would be a security guard who is responsible for the security of a project site where capital assets are being constructed. In some cases, the labour costs may have to be apportioned between deductible expenses and capital.

Do you provide car parking fringe benefits?

If you do, and you have engaged an arm's length valuer to value the benefits, the ATO may contact you from February.

According to the ATO, some valuers have prepared reports using a daily rate that doesn't reflect the market value. As such, the taxable value of the benefits is significantly discounted or even reduced to nil.

The ATO said that it is your responsibility to confirm the basis on which valuations are prepared. You must examine any valuation you suspect is incorrect or which considerably reduces your liability.

<https://www.ato.gov.au/Tax-professionals/Newsroom/Your-practice/Valuing-car-parking-fringe-benefits/>

Activity statement financial processing

The ATO has come up with another acronym - ASFP - which stands for “activity statement financial processing”. The ASFP project has moved all activity statement and franking deficit tax financial information into the one ATO system, delivering a single accounting system with multiple accounts.

The ATO says your business will benefit from ASFP as there will be more consistency when interacting with the ATO online. You will also have increased visibility of your activity statement information online, making it easier to understand your financial position with the ATO, and payment due dates are clearer.

The introduction of ASFP also means most taxpayers won't need to phone the ATO anymore to set up direct debit payment arrangements for your activity statement.

In addition, how activity statements and other account transactions are displayed online has been simplified. PAYG withholding director penalties are also viewable on the director's account.

Tip-off to keep the competition fair

Businesses that deliberately do the wrong thing by not meeting their tax and super obligations put others at an unfair disadvantage. So the ATO is encouraging people to tip them off if you know or suspect a business is taking part in phoenix, tax evasion or black economy activities, or feel something is going on that isn't quite right.

To make a tip-off:

- complete a Tip-Off Form on the ATO's website at [ato.gov.au/tipoff](https://www.ato.gov.au/tipoff) or in the 'contact us' section of the ATO app; or
- phone the Black Economy Hotline on 1800 060 062.

<https://www.ato.gov.au/Tax-professionals/Newsroom/Your-practice/Tip-off-to-keep-the-competition-fair/>

SMS scam - tax refund notification

The ATO has alerted taxpayers to another scam where messages are texted to people asking them to click on a link and provide personal identifying information to receive a refund. To make the messages seem more legitimate, scammers are using technology that causes them to appear in your genuine ATO message feed.

The text messages say something like “We've noticed you have a positive balance 320.70 AUD from last financial year. Please verify your information to provide the funds.” It then provides a link to a website. However, the website is a fake myGov website which asks users

to provide their bank details, along with other personal identifying information, for “verification purposes”.

The ATO warns people not to click on any links and not to disclose the information requested.

<https://www.ato.gov.au/General/Online-services/Identity-security/Scam-alerts/#January2020SMScamtaxrefundnotification>

Compensation for administrative bungles

No organisation is perfect, including the ATO. If you have suffered a loss because of an administrative bungle, you might be entitled to compensation under the Compensation for Detriment Caused by Defective Administration (CDDA) Scheme.

Following a review of the ATO’s implementation of the CDDA Scheme, small business should see some improvements, including:

- claims being investigated by ATO officers who are separate to the officers involved in the tax matters that led to the claim;
- an independent reviewer for the most complex or sensitive cases;
- the adoption of a lesser standard of proof; and
- ATO staff being required to take into account a small business’ financial and personal capacity to respond to review, audit or other compliance processes.

<https://www.ato.gov.au/Media-centre/Articles/ATO-statement-on-the-Review-of-the-CDDA-Scheme/>

Small business CGT concessions

The CGT concessions for small business are complicated. Two recent cases have not made them any easier to understand.

In the first case, a property used to store materials, tools and equipment for use in a building, bricklaying and paving business was not considered to be used in the course of carrying on that business. This was because storing materials did not have a “direct functional relevance” to the daily income-producing activities of the business.

As a result, the property was not an active asset and therefore the capital gain made on the sale of the property did not qualify for the CGT concessions.

In the second case, 3 shareholders sold their shares in a company (each owned one-third) to a single purchaser. The sale contract included a restrictive covenant whereby the 3 vendors agreed not to compete with the purchaser for 5 years (not uncommon when a business is sold).

One of the vendors argued that as the restrictive covenant did not come into existence until the sale contract was concluded, its value should be excluded in working out if he satisfied the maximum net asset value test (\$6 million). Under that test, only assets in existence just before the sale contract was concluded would be taken into account. If the value of the shares for the purposes of that test was the amount specified in the sale contract, the vendor would not satisfy the test and would not qualify for the CGT concessions.

The vendor was unsuccessful as the restrictive covenant impacted on the value of the shares. The purchaser would naturally want the covenant as the success of the business depended on the contribution of the 3 shareholders. The value of the shares was increased by the covenant. Without it, the sale price would have been less.



Super guarantee changes

From 1 January this year, an employer can no longer use salary sacrificed contributions to satisfy their super guarantee obligations.

This measure was announced in July 2017 and was finally approved by Parliament in October last year.

The change also means that if an employer has a shortfall, any amounts sacrificed into superannuation that would have been salary or wages will be taken into account in calculating the amount of the shortfall.



A faraway DIN for directors

A new regime requiring company directors to have a unique identification number - a director identification number (DIN) - is on the way. The purpose of the DIN regime is to assist regulators and external administrators to investigate a director's involvement in what may be repeated unlawful activity including illegal phoenix activity.

Phoenixing occurs when the controllers of a company deliberately avoid paying liabilities by shutting down an indebted company and transferring its assets to another company. The Government estimates that the total cost of phoenixing to the Australian economy is between \$2.9 billion and \$5.1 billion annually.

The DIN will require all directors (but not “shadow directors”) to confirm their identity and it will be a unique identifier for each person who consents to being a director. The person will keep that unique identifier permanently, even if they cease to be a director.

The new DIN regime won't commence until administrative arrangements supporting the new regime are in place. This will take up to 2 years (hence a faraway DIN). Persons who are existing directors when the new regime begins will be given time (yet to be determined) to apply for a DIN.



Jail for GST fraud

Two people have been jailed for GST fraud.

The one person was a building developer who claimed more than \$500,000 in fraudulent GST refunds. He was sentenced to 3 years in jail.

The other person was a woman who purchased, developed and sold 10 luxury properties over a 6 year period. She did not register for GST and did not lodge business activity statements, thereby evading paying \$1.7 million in GST. She was sentenced to 2 years and 10 months in jail.



Key tax dates

Date	Obligation
21 Feb 2020	- Lodge and pay January 2020 monthly BAS
28 Feb 2020	- Lodge and pay December 2019 quarterly BAS
	- Lodge and pay December 2019 quarterly instalment notice
	- Lodge annual GST return (if no tax return due)
	- Lodge and pay December 2019 SGC (if required)
	- Lodge and pay SMSF annual return for new SMSFs (unless otherwise advised)
21 Mar 2020*	- Lodge and pay February 2020 monthly BAS
31 Mar 2020	- Lodge and pay tax return for companies and super funds with income >\$2m (unless due earlier)
21 Apr 2020	- Lodge and pay March 2020 monthly BAS
28 Apr 2020	- Lodge and pay March 2020 quarterly BAS
	- Pay March 2020 quarterly instalment notice
	- Employee super guarantee contributions due
15 May 2020	- Lodge 2019 income tax returns not due earlier
21 May 2020	- Lodge and pay April 2020 monthly BAS
	- Lodge and pay annual FBT return (if your business lodges one)
28 May 2020	- Lodge and pay March 2020 quarterly SGC (if required)

*Next business day applies instead

Disclaimer

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