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The Bottom Line

- Business -



FROM THE ATO

January is traditionally a quiet time for many businesses, but the ATO hasn't stopped publishing useful information.

Hiring contractors

You have a choice between hiring contractors and employees – both are legitimate as long as the conditions of the working contract match the worker's classification.

It's important to understand the difference between employees and independent contractors because:

- it changes your obligations for paying and reporting tax, superannuation and other entitlements for your workers; and
- penalties and charges may apply if you incorrectly classify an employee as a contractor and fail to meet the relevant obligations or entitlements for that worker.

Although you generally don't need to make super guarantee contributions for independent contractors, you may be required to make contributions for a contractor where the contract engaging them is wholly or principally for their labour.

If they're registered for GST, you will need to pay the appropriate GST to them for the services or work they provide to your business.

PAYG withholding - employee or contractor?

As noted above, it is important to understand the difference between employees and independent contractors.

Last year the High Court handed down 2 important decisions on whether a worker is an employee or an independent contractor. The High Court placed particular importance on the terms of any valid written contract between the individual providing services and the entity using those services.

The High Court's decision has prompted the ATO to issue a draft ruling explaining when an individual is an "employee" for the purposes of the PAYG withholding rules. It is important to note that the label attached to the arrangement between the parties – employee or contractor – is not relevant. The previous Taxation Ruling on this issue has been withdrawn.

The ATO also issued a draft a Practical Compliance Guideline (PCG) outlining its compliance approach for businesses that engage workers and classify them as employees or independent contractors. It sets out how the ATO allocates compliance resources, based on the risk associated with the classification.

So, this may be a good time to check with your tax adviser whether individuals providing services to your business are genuine independent contractors or are, in fact, employees.

Employee for super guarantee purposes?

It is also important to know for super guarantee purposes whether an individual providing services to your business is an employee.

You pay super on behalf of an employee regardless of whether they:

- are full-time, part-time or casual - working holidaymakers are included;
- receive a super pension or annuity while still working; or
- are a company director.

There was an important change last year (from 1 July 2022) – you now have to pay super for employees who are paid less than \$450 in a month.

The rules for determining whether someone is an "employee" for super guarantee purposes are a bit different to the rules that are relevant for PAYG withholding purposes. Thus, the ATO has said that the draft ruling mentioned above will not be binding on them for super guarantee purposes.

Tip! If you are uncertain whether you need to pay super on behalf of a person working for you, talk to your tax adviser.

Are you still using your ABN?

Your ABN may be flagged for cancellation if you haven't reported business activity in your tax return, or there are no signs of business activity in other lodgments or third-party information.

If the ATO identifies your ABN as inactive, they will contact you by email, letter or SMS.

If you:

- still require your ABN, the ATO will explain what you need to do to keep it;
- are no longer in business, no action is required and the ATO will cancel your ABN.

If your ABN has been cancelled and you are still entitled to it, you'll need to reapply.

You can reapply for the same ABN unless your business structure has changed, for example, if you were a sole trader and you now operate the business through a company.

All ABN holders have a responsibility to keep their business details up to date. This includes cancelling your ABN if your business is no longer operating. You must tell the ATO of any changes to your business details within 28 days of the change.

Are you changing your business structure?

If you are changing your business structure, for example from a sole trader to a company, you will need a new ABN. Other situations where you need to cancel your ABN and apply for a new ABN include where changing from:

- 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; and
- 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.

Received a business support grant?

You may have received a business support grant recently to help your business through tough times. If so, it is important to know whether you will have to pay tax on the grant.

The basic principle is that business grants are treated as assessable income. However, some grants are not taxable, which means you don't need to include them in your business' tax return if the relevant eligibility requirements are met.

COVID-19

A COVID-19 business grant or support program payment you received in the 2020–21 or 2021–22 financial year from a State or Territory government, or in the 2021–22 financial year from the Commonwealth Government, will not be taxable if:

- the payment is received under an eligible program - the ATO has published on its [website](#) a list of eligible grants and support programs (ref QC 66889); and
- you carried on a business and have an aggregated turnover of less than \$50 million in either the income year the payment was received or the previous income year.

If you included a grant in your tax return that is not taxable, you can amend your return.

Storms and floods

Small businesses and primary producers affected by storms and floods may be eligible to receive special disaster recovery grants.

Grants may be administered by a State or Territory government or the Commonwealth Government.

You don't need to pay tax on certain categories of grants for the following storms and floods:

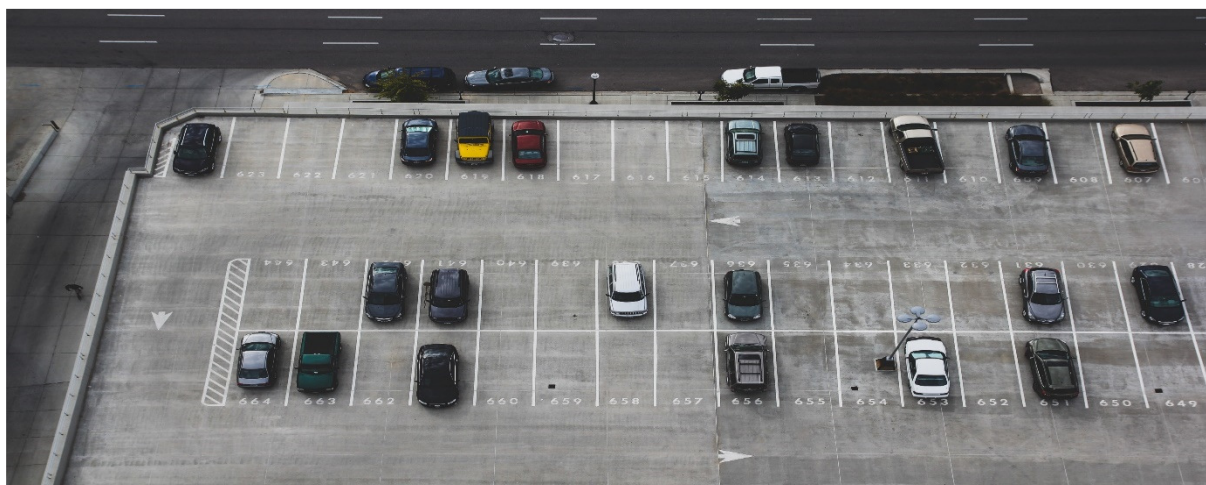
- Cyclone Seroja (occurred on 11 and 12 April 2021) – Category C disaster recovery grants paid under the *Disaster Recovery Funding Arrangements 2018* to small businesses and primary producers who were affected by Cyclone Seroja are not taxable. If you have lodged your 2021–22 tax return and included a Category C recovery grant in your assessable income, you should amend your return. You may get a refund.
- 2021 Storms and floods (occurred between 19 February 2021 and 31 March 2021) – Category D recovery grants are not taxable as from the 2020–21 financial year.
- 2019 North Queensland floods (occurred between 25 January 2019 and 28 February 2019) – Category C or D recovery grants are not taxable as from the 2018–19 financial year. Category C or D recovery grants paid to not-for-profit organisations in response to the 2019 North Queensland Floods are also not taxable.
- 2019 North Queensland floods - restocking, replanting or repairing farm infrastructure grants are not taxable as from the 2018–19 financial year and onwards.

Bushfires

2019–2020 Bushfires Relief Recovery payments and benefits provided by any level of government, including local governing bodies, are not taxable.

Deductions

Remember, you can only claim deductions for expenses associated with non-taxable grants if they relate directly to earning assessable income. You can't claim expenses related to obtaining the grant, such as accountant's fees.



Do you provide car parking for employees?

If you provide car parking for your employees, you may have to pay fringe benefits tax (FBT) on those benefits.

A car parking fringe benefit will generally arise if an employer provides car parking to an employee and various conditions are satisfied, including:

- the car is parked at premises owned or leased by, or otherwise under the control of, the provider (usually the employer);
- the car is parked for a total of more than 4 hours between 7am and 7pm on any day of the week;
- the car is parked at or near the employee's primary place of employment on that day – in one case a car park that was almost 2 km from the primary place of employment was considered not to be near the place of employment;
- the car is used by the employee to travel between home and work (or work and home) at least once on that day;
- there is a commercial parking station that charges a fee for all-day parking within one kilometre of the premises on which the car is parked; and
- at the beginning of the FBT year (1 April 2022 for the current FBT year), the commercial parking station fee for all-day parking was, generally speaking, more than the car parking threshold (\$9.72 for the current FBT year).

“All-day parking” basically means parking for a continuous period of 6 hours or more during the period from just after 7 am to just before 7 pm (on the same day). So a fee charged after 1 pm is not a fee for “all-day parking”, as there cannot be a continuous period of at least 6 hours ending before 7.00 pm.

Exemptions

Car parking benefits are exempt from FBT where the benefits are provided:

- by employers who meet the conditions of the small business car parking benefits exemption (see below);
- by certain research, education, religious and charitable institutions; and
- for employees with a disability (irrespective of the type of employer).

The small business car parking benefits exemption applies if the following conditions are satisfied:

- the parking is not provided in a commercial car park; and
- for the last income year before the relevant FBT year, either the employer's gross total income was less than \$50 million or their turnover was less than \$50 million.

This exemption is not available to listed public companies, subsidiaries of listed public companies and government bodies.

As from 1 April 2022, the ATO has updated guidance on what qualifies as a commercial car parking station. Talk to your tax adviser if you provide car parking for employees as you may be affected.

Shortfall interest charge

If your income tax assessment is amended and your tax liability is increased (in other words, there is a tax shortfall), the ATO will apply the shortfall interest charge (SIC) on a daily compounding basis to the shortfall.

The SIC is applied for the period from the due date for payment of the earlier, understated assessment until the day before the ATO issues the notice of amended assessment.

The SIC rate is updated quarterly using a formula set by law. For example, the SIC rate for the period from 1 January to 31 March 2023 is 6.06% (the daily rate is 0.01660274%). The SIC rate is 4 percentage points lower than the general interest charge (GIC). The GIC is payable when a tax bill is not paid on time or an amount withheld from a payment is not paid to the ATO.

The due date for payment of the SIC (and the extra tax payable under the amended assessment) is 21 days after the day the ATO issues the notice of the amended assessment. Once the due date has passed, the GIC will apply automatically to any unpaid tax and SIC.

The ATO has the power to remit an amount of SIC in extenuating circumstances, for example, if the ATO contributes to an error that leads to a shortfall, if the shortfall amount is paid before the notice of amended assessment issues or if a delay in supplying documents or other information is directly attributable to a natural disaster such as a flood.

If the ATO refuses to remit the SIC you have objection and review rights, but only if the SIC is more than 20% of the tax shortfall amount.



Five new year's tax resolutions

The ATO has published on its website 5 new year's resolutions to keep if you want to stay on top of your tax in 2023.

1. Know if you're in business or not!

Are you earning an increasing income from a hobby? You might already be in business for tax purposes.

2. Keep your business details and registrations up to date!

If you're the director of an Australian company, you need to apply for a director ID. If you missed the 14 December 2022 deadline, you can request an extension of time. The ATO has said it is taking a reasonable approach to those directors who try to do the right thing.

It's important to update your ABN details. Also, if you're going to earn over \$75,000 this financial year, you'll need to register for GST.

3. Keep accurate and complete records!

Good record keeping helps you manage your business and its cash flow.

4. Work out if the Personal Services Income (PSI) rules apply to you!

PSI is income produced mainly (more than half) from your skills or efforts as an individual. If you're earning PSI, you'll need to work out if you're a personal services business to determine whether the PSI rules apply to your income. The rules affect how you report your income and the deductions you can claim.

5. Look after yourself!

The last few years have thrown some curve balls at small business, so it's good to be prepared.

Protect your business from cyber scams

The ATO has warned small businesses about business email compromise scams.

Cybercriminals send fraudulent emails posing as a legitimate business contact or staff member. They typically request a change in bank account details for a deposit, wages or invoice payment. Victims then unknowingly send money to the cybercriminal.

These fraudulent emails may come from hacked email accounts, or cybercriminals might register domain names that are similar to legitimate companies.

The ATO advises that you can protect yourself, and the reputation of your business, by taking a few simple steps:

- verify payment details. If you hold sensitive financial records, ensure you confirm the identity of anyone who requests changes to their information;
- alert your staff. Train your employees to identify suspicious requests or emails that may link to fake websites built to capture passwords; and
- secure your email account. Use multi-factor authentication or, if this is not possible, a strong unique passphrase that would be difficult to hack.

Taxpayers have also been advised to be wary of scammers impersonating ATO officers on Twitter, Facebook and other social media platforms.

Scammers scan public conversations on social media, where taxpayers ask questions or make complaints about the ATO. The scammers then use a fake ATO profile to contact the taxpayer directly with an offer to help resolve a complaint or follow up on a comment. Once trust is established, the scammers then ask the taxpayer to click on a link or provide personal details.

The ATO is working with social media platforms and other government agencies to address this.

Phoenix Taskforce - targeting dodgy businesses

The Phoenix Taskforce, which was established in 2014, brings federal, state and territory agencies together to combat illegal phoenix activity.

Illegal phoenix operators deliberately liquidate, wind up, or abandon their business to avoid paying their debts. Just like the mythological phoenix, these “dodgy individuals” often rise up with a near-identical business and restart the process.

As well as short-changing employees, suppliers and sub-contractors, illegal phoenix operators can put honest businesses at a competitive disadvantage. They cost businesses, employees, and the community an estimated \$2.85 billion to \$5.13 billion a year.

The Phoenix Taskforce takes action against phoenix operators by:

- working to disrupt their business model and make it financially unviable;
- removing their ability to operate;

- applying financial penalties; and
- prosecuting the worst offenders.

The most serious cases are referred to the Serious Financial Crime Taskforce (SFCT).

The director identification number initiative will:

- help prevent the use of false and fraudulent director identities; and
- make it easier for government regulators to trace directors' relationships with companies over time to help better identify and eliminate director involvement in unlawful activity.

If you know or suspect phoenix or shadow economy activity or tax evasion, you can report it by:

- completing the tip-off form (the form is also available in the Help & support section in the ATO app);
- phoning the ATO on 1800 060 062;
- lodging an unpaid super enquiry about your employer (but not about another business); or
- writing to the ATO (mark all letters "in confidence") and posting it to Australian Taxation Office, Tax Integrity Centre, PO Box 188, ALBURY NSW 2640.

Foreign incorporated companies

A company that is incorporated overseas will be treated as a resident of Australia for tax purposes if it carries on business and has its central management and control (CM&C) in Australia. This is called the CM&C residency test.

In 2018, following a High Court decision, the ATO revised its views on the CM&C residency test. It issued a new ruling stating that a company incorporated overseas which carries on a business will be treated as a tax resident of Australia if its CM&C is in Australia. It does not matter where the company's actual trading or investment operations take place, whether in Australia or overseas.

The ATO also issued a Practical Compliance Guideline (PCG) in 2018 advising that it would not apply resources to review or seek to disturb a company's status as a foreign resident if the company:

- changed its governance arrangements so that its CM&C was exercised outside Australia by 30 June 2019;
- did not start carrying on business in Australia (other than because its CM&C was exercised here); and
- did not undertake or enter into any artificial or contrived arrangement affecting the location of its CM&C, or any tax avoidance scheme whose outcome depended, in whole or part, on its residency status.

This compliance approach in the PCG has now been extended for a 4th time, to 30 June 2023, for "companies impacted in their efforts to change their governance arrangements", for example, because of COVID-19.



WHAT HAS PARLIAMENT DONE?

FBT exemption for electric vehicles

In the *September 2022 Business edition of TaxWise® News*, we told you about the fringe benefits tax (FBT) exemption for electric and other low emission cars used by employees for private use. At the time, this measure was being considered by the Parliament. It is now law.

During its progress through Parliament, the Government agreed to phase out the FBT exemption for plug-in hybrid electric cars. As a result, the exemption for such cars will cease from 1 April 2025 (the start of the 2025–26 FBT), unless the relevant car is made available to the employee before that date.

Tip! Talk to your tax adviser for more information about the FBT exemption for electric and other low emission cars.

Failing to keep correct records

From 12 March 2023, the ATO will be able to issue a “tax-records education direction” if your business has failed to comply with its tax-related record-keeping obligations (subject to certain exceptions). A tax-records education direction will require you to complete an approved tax record-keeping course. This will be an alternative to the existing administrative penalties.

You can nominate an appropriate person within the business to complete the course.

You will have to provide the ATO with evidence that the course was completed.

A tax-records education direction cannot be issued where the failure to keep records does not give rise to an administrative penalty. These include certain FBT statutory evidentiary records and records substantiating certain work and business expenses.

ATO decisions affecting small business

The Administrative Appeals Tribunal (AAT) can now order that certain decisions of the ATO affecting small business be stayed pending the outcome of the AAT's review of the decision. The AAT can also vary or revoke such an order.

For example, if your business is challenging an income tax assessment before the AAT, you can apply to the Small Business Taxation Division of the AAT for an order staying, or otherwise affecting, the operation or implementation of the assessment.

This measure applies to businesses with an annual aggregated turnover under \$10 million.

Note that the Government has proposed to abolish the AAT and replace it with a new federal administrative review body.

WHAT'S IN THE PARLIAMENTARY PIPELINE?

Bonus deductions for small and medium business

Legislation presently before Parliament will provide small and medium businesses (those with aggregated annual turnover of less than \$50 million) with bonus deductions equal to 20% of eligible expenditure incurred on external training or technology. The expenditure must already be deductible under the taxation law.

Training – the 20% boost is available for expenditure incurred on training employees, either in-person in Australia or online, between 7:30pm on 29 March 2022 and 30 June 2024. The training must be conducted by a third party registered training provider, which must not be an associate of the business.

Technology – the 20% boost is available for expenditure incurred between 7:30pm on 29 March 2022 and 30 June 2023 on the business' digital operations or on digitising its operations. If the expenditure is on a depreciating asset, the asset must be first used or installed ready for use by 30 June 2023. The technology bonus deduction is capped at \$20,000 per financial year.

Parliament is scheduled to resume on Monday 6 February 2023 so these measures could be passed by the end of February 2023.

Reducing FBT compliance costs

Another measure being considered by Parliament should reduce employers' FBT compliance costs.

The new rules will allow employers to rely on adequate alternative records (as determined by the ATO) which contain the information required for FBT record keeping purposes, instead of keeping and retaining the current designated statutory evidentiary documents such as prescribed employee declarations.

The ATO has already released 2 draft determinations specifying alternative records in certain circumstances where a fringe benefit consists of the reimbursement of car expenses or where a travel diary is presently required.



KEY TAX DATES

Date	Obligation
21 Feb 2023	January 2023 monthly BAS due
28 Feb 2023	December 2022 quarterly BAS due
	Pay December 2022 quarterly instalment notice
	Annual GST return due (if no income tax return due)
	December 2022 SG charge statement due (if required)
	SMSF 2021–22 annual return due (unless first return or late with return for previous financial year)
21 Mar 2023	February 2023 monthly BAS due
21 Apr 2023	March 2023 monthly BAS due
28 Apr 2023	March 2023 quarterly BAS due Pay March 2023 quarterly instalment notice Employee super guarantee contributions due
21 May 2023*	April 2023 monthly BAS due Lodge and pay annual FBT return (if your business lodges one)
28 May 2023*	March 2023 SG charge statement due (if required)

*The next business day will apply.

Note! Talk to your tax agent to confirm the correct due dates for your own tax obligations. For example, you may have more time to lodge and pay if impacted by COVID-19 or a natural disaster.

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