

Your Success is our Business

April 2019 Update

Continued focus on the cash economy

ATO Assistant Commissioner Peter Holt has announced that, in the 2019/20 financial year, the ATO will be visiting a further 10,000 small businesses across the country, including up to 500 small businesses in Tasmania.

He further said that businesses that advertise as 'cash only' and businesses that are operating outside of the ATO's performance benchmarks for their industry will be especially targeted for a visit from the ATO.

"Businesses that pay cash in hand or fail to lodge income tax or business activity statements, get an unfair advantage and make it harder for other businesses who are doing the right thing. By detecting and addressing this behaviour, we're helping ensure a level playing field for honest small businesses."

Businesses in the following industries are most likely to get a visit from the ATO:

- ◆ Restaurants and cafes;
- ◆ Vehicle repairers;
- ◆ Personal care businesses including hairdressers and nail salons;
- ◆ Pharmacies;
- ◆ Construction businesses;
- ◆ Clothing stores;
- ◆ Grocery stores / small supermarkets; and
- ◆ Butchers.

Whilst on the road, ATO officers will also be available to help those businesses that are trying to do the right thing.

Mr Holt said the ATO will not hesitate to take strong enforcement action against those deliberately avoiding their tax and super obligations and the visits may uncover this deliberate non-compliance.

"If businesses know they have made mistakes we encourage them to let us know and work with us or their tax professional."

Common errors with new GST withholding rules

The ATO has noticed some common errors made in activity statements since the introduction of "GST at settlement" on 1 July 2018.

Editor: These new laws require purchasers to withhold GST on settlement (and pay it to the ATO directly) generally when buying 'new residential premises' from developers.

In particular, the new "GST at settlement" law does not affect a supplier's obligation to lodge their activity statement and report their GST liabilities on taxable supplies in the activity statement period in which settlement occurred.

In addition, suppliers are advised **not** to report GST that has been withheld at settlement and paid to the ATO by the purchaser.

Instead, a credit for the amount the purchaser withheld and paid will appear on the supplier's activity statement account once the activity statement is processed.

Latest ATO benchmarks released

The ATO has released updated benchmark data drawn from over 1.5 million small businesses around the country to *"help small businesses across the country . . . gauge the strength of their business and keep an eye on their competition"*.

Updated benchmarks for more than 100 industries are now available for the following categories:

- Accommodation and food;
- Building and construction trade services;
- Education, training, recreation and support services;
- Health care and personal services;
- Manufacturing;
- Automotive electrical services;
- Machinery and equipment repair and maintenance;
- Architectural services;
- Veterinary services;
- Retail trade; and
- Transport, postal and warehousing.

The benchmarks are one of the tools the ATO uses to crack down on the black economy, along with data matching and referrals from the community.

"Businesses operating outside the benchmarks may trigger a red flag for businesses we suspect could be engaging in the black economy," Mr Holt said.

"A frequent red flag is a business reporting minimal profit while the business owner seems to be maintaining a lifestyle far exceeding their personal income."

"If you use a registered tax professional, it's also a good idea to have a chat with them about where your business sits in comparison with our benchmarks. They might have some advice about steps you can take to improve your performance."

ATO warning regarding annual leave loading and OTE

The ATO has recently warned employers that it considers that annual leave loading should normally be part of ordinary time earnings ('OTE') for superannuation guarantee ('SG') purposes, unless it is referable to a *"lost opportunity to work overtime"*.

Therefore, if employers have self-assessed on the basis that their annual leave loading is not OTE, and there is a lack of evidence to demonstrate the purpose of the entitlement, there is a risk that they may have historical SG shortfalls and be liable for the SG charge.

However, the ATO acknowledges the uncertainty around this topic, and the evidentiary difficulties in identifying the purpose for annual leave loading entitlements and will apply a concessional compliance approach where certain requirements are met.

Editor: If this is a concern for your business, please contact our office and we can help with your SG obligations and (if necessary) determine whether you will be eligible for the ATO's concessional compliance approach.

Taxpayer living in serviced apartments overseas not a resident

The Full Federal Court has found that a taxpayer had a "permanent place of abode" in Bahrain, even though he lived in temporary accommodation, and therefore allowed his appeal against a decision that he was a resident of Australia.

This decision confirms that the correct focus of the "permanent place of abode" residency test is whether there has been an abandonment of Australian residence (i.e., to live permanently outside of Australia), rather than whether a person actually lives in permanent accommodation overseas.

In particular, the Full Court considered that the phrase "place of abode" is not a reference to a person's house or flat or other dwelling but rather the town or country in which a person is physically residing permanently.

Mostly vacant property still an 'active' asset

The AAT has held that a block of land next door to a taxpayer's main residence, which they used to store materials, tools and other equipment for their business, was still an 'active asset' for the purpose of the small business CGT concessions.

Editor: The small business CGT concessions can reduce, or completely eliminate, the tax payable on the sale of an 'active asset' (basically, a business asset).

May 2019 Update

The Government handed down the 2019/20 Federal Budget on Tuesday 2 April 2019.

Some of the important proposals include:

- ❑ Increasing and expanding access to the instant asset write-off from 7:30 pm (AEDT) on 2 April 2019 (i.e., 'Budget night') until 30 June 2020, as follows:
 - Increasing the instant asset write-off threshold from \$25,000 to **\$30,000**.
 - Making the instant asset write-off available to medium sized businesses (with aggregated annual turnover of \$10 million or more, but less than \$50 million).

Editor: The legislation to make the above changes to the instant asset write-off has already been passed and received Royal Assent.

- ❑ Allowing individuals aged 65 and 66 years to:
 - make voluntary superannuation contributions (both concessional and non-concessional) without meeting the work test from 1 July 2020; and
 - make up to three years of non-concessional contributions under the bring-forward rule (without satisfying the work test).
- ❑ Increasing the upper threshold of the 19% personal income tax bracket to \$45,000 from 1 July 2022, and reducing the 32.5% marginal tax rate to 30% from 1 July 2024 (in addition to changes already legislated).
- ❑ Increasing the Low and Middle Income Tax Offset ('LAMITO'), with effect from the 2019 income year, to provide tax relief of up to \$1,080 per annum, as well as an increased base amount of \$255 per annum.

New industries entering the taxable payments reporting system

The ATO has reminded businesses that provide road freight, information technology ('IT'), security, investigation, or surveillance services that they need to lodge a *Taxable payments annual report* ('TPAR') each year to tell the ATO about the payments they make to contractors who use an Australian business number ('ABN') (even if these services are only part of their business activities).

Such clients' first TPAR will be due by 28 August 2020 for payments made from 1 July 2019 to 30 June 2020.

Editor: We can help with the lodgment of this report, but affected clients will need to keep records of the payments made to contractors. The required information, including the contractor's ABN, name, address, and total amounts paid during the financial year (including GST) will normally be contained in the invoices received from the contractors.

Scammers impersonate ATO phone numbers

The ATO is warning that scammers have adopted 'Robocall' technology to target taxpayers across the country.

Assistant Commissioner Gavin Siebert said: *"Scammers are sending pre-recorded messages in record numbers and are manipulating caller identification so that your phone displays a legitimate ATO phone number despite coming from an overseas scammer".*

"If the scammers do make contact, they will request payment of a tax debt – usually through unusual methods like bitcoin, gift cards and vouchers. Legitimate ways to pay your tax debt are listed on our website. The scammers will threaten you with immediate arrest, attempt to keep you on the line until payment is made and may become rude or aggressive."

The technique of displaying misleading phone numbers is known as "spoofing" and is commonly used by scammers in an attempt to make their interactions with taxpayers appear legitimate.

FBT issues on the ATO's radar

The ATO has updated its list of *'What attracts our attention'*, with six items that specifically relate to fringe benefits tax ('FBT'), as follows:

- ◆ Failing to report motor vehicle fringe benefits, incorrectly applying exemptions for vehicles or incorrectly claiming reductions for these benefits.
- ◆ Incorrectly calculating car parking fringe benefits due to:
 - significantly discounting market valuations;
 - using non-commercial parking rates; or
 - parking rates not being supported by adequate evidence.
- ◆ Mismatches between the amount reported as an employee contribution on an FBT return compared to the income amounts on an employer's tax return.
- ◆ Claiming entertainment expenses as a deduction but not correctly reporting them as a fringe benefit, or incorrectly classifying entertainment expenses as sponsorship or advertising.
- ◆ Not reporting fringe benefits on business assets that are provided for the personal enjoyment of employees or associates.
- ◆ Not lodging FBT returns (or lodging them late) to delay or avoid payment of tax.

FBT: Record-keeping exemption threshold

The exemption threshold for the FBT year commencing 1 April 2019 is \$8,714 (up from the amount of \$8,552 that applied in the previous year).

FBT: Benchmark interest rate

The benchmark interest rate for the FBT year commencing on 1 April 2019 is 5.37% per annum (up from the rate of 5.20% that applied for the previous FBT year).

This rate is used to calculate the taxable value of:

- a fringe benefit provided by way of a loan; and
- a car fringe benefit where an employer chooses to value the benefit using the operating cost method.

Example

On 1 April 2019 an employer lends an employee \$50,000 for five years at an interest rate of 5% p.a. with interest charged and paid six-monthly, and no principal being repaid until the end of the loan.

The actual interest payable by the employee for the current year is \$2,500 (i.e., \$50,000 x 5%).

However, the notional interest, with a 5.37% benchmark rate, is \$2,685, so the taxable value is \$185 (i.e., \$2,685 – \$2,500).

Give Richard Ferraro a call on (03) 9322 2026 (1300 131 809) to arrange a FREE appointment.

APS Tax, Accounting & Business Services

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<p>Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.</p>
