



# News Bulletin

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## TAX DEVELOPMENTS UPDATE



### Restriction on use of cash over \$10,000

The Government has introduced legislation to impose criminal offences for transacting in cash in excess of \$10,000 from 1 January 2020.

The legislation imposes an economy-wide cash payment limit of \$10,000 for payments made or accepted by businesses for goods and services. Transactions equal to, or in excess of this amount would need to be made using the electronic payment system or by cheque

Under the legislation, it would be a criminal offence if an entity makes or accepts cash payments with a value that equals or exceeds the cash payment limit.

Two of the offences apply if an entity makes or accepts a cash payment or series of payments (eg the purchase of a car by instalments), with *strict liability* applying to the circumstances of the payment including cash in equal to or exceeding the cash payment limit.

That is, the offences are committed regardless of whether the entity intended or was reckless about whether the payment or series of payments included cash that equaled or exceeded the cash payment limit.

However, the legislation does contain exceptions to the application of the new proposed law. For example, it exempts payments related to personal

or private transactions (other than transactions involving real property);

### Increased Liabilities under the Director Penalty Regime & Illegal Phoenixing.

Directors of Companies should be aware of New Laws to:-

- Impose new criminal offences and civil penalty provisions for company officers involved in illegal phoenixing,
- enable the Commissioner of Taxation to collect estimates of anticipated goods and services tax (GST) liabilities and make company directors personally liable for their company's GST liabilities in certain circumstances
- provide the Commissioner with powers to pursue criminal penalties for serious contraventions of employer superannuation guarantee obligations, including potential jail time for individual employers or directors of a company (including a trustee company) that employs staff.
- Extend the Director Penalty Regime to GST, luxury car tax and wine equalisation tax, in turn making directors personally liable for such tax debts of a company; and
- Address a limitation of the director penalty notice regime for unpaid SGC debts, to "lock down" unpaid superannuation guarantee liability as soon as it is incurred

### Illegal Phoenixing

Phoenixing" is a term used generally to describe the stripping and transfer of assets from a distressed company to another entity with the

#### Unreported Cash Payments No Longer Tax Deductible!

From 1 July 2019, employers are only able to claim deductions for payments made to workers where they have complied with the pay-as-you-go (PAYG) withholding rule or withheld tax on contractors without ABNs.

In other words, employers won't be able to claim a deduction if they are required to withhold an amount but do not do so.

intention of defeating the interests of the distressed company's creditors in those assets.

Stripped of its assets, the distressed company then stops trading and is ultimately liquidated, with insufficient assets available for creditors left behind. The "phoenix" is the new company which "rises from the ashes" to continue trading the business.

The amendments introduce:-

- new criminal offences and civil penalty provisions for company officers that fail to prevent the company from making creditor-defeating dispositions and other persons that facilitate a company making a creditor-defeating disposition;
- allow liquidators to apply for a court order in relation to a voidable creditor-defeating disposition;
- enable the Australian Securities and Investments Commission to make orders to recover, for the benefit of a company's creditors, company property disposed of or benefits received under a voidable creditor-defeating disposition;
- Directors are held accountable for misconduct by preventing directors from improperly backdating resignations or ceasing to be a director when this would leave the company with no directors, and
- Restrict the ability of related creditors to vote on appointment, removal or replacement of an external administrator

## Director Penalties

### Super Guarantee Charge

New legislative measures have been enacted by the Government to give the Commissioner increasing powers to pursue directors of companies for unpaid employer superannuation guarantee obligations.

Prior to the change, directors of a company could be held personally liable for unpaid Superannuation (and PAYG withholding) if the company debt remained unreported three months after the relevant due date.

If reported within the three month timeframe, personal liability could be avoided if a Director Penalty Notice (DPN) was issued and the director took either of the following options within the 21 day timeframe detailed in the DPN:-

- Pay the debt;

- Appoint a Voluntary Administrator to the company;
- Appoint a Liquidator to the company

However, from 1 April, 2019, there is now to be *no* three-month period allowed after the due for superannuation guarantee (SG) and SGC payments.

Under the new changes, the liability must now be reported by the superannuation guarantee charge due date (being within 1 month and 28 days of the end of each quarter). *Failure to do so will result in personal liability for directors.* The PAYG reporting period remains unchanged.

It is therefore of critical importance to a director that the entity report its obligations by due dates even if it's unable to discharge its liability.

### Goods & Services Tax Liabilities

Previously, a director could be held personally accountable for his or her company's unpaid and overdue superannuation guarantee charge and PAYG withholding liabilities.

New Laws extend the director penalty regime to GST liabilities to make Directors personally liable for their company's unsatisfied GST Liabilities, and *in addition*, empower the Commissioner to make estimates of an entity's GST liability, and make the Directors *personally liable* for their company's estimated GST liabilities.

Importantly, *if the shortfall amounts are reported to the ATO within three months*, the director penalty is deemed "non-locked-down" — that is, unlike the SG Super, personal liability may be avoided by : paying the amounts owed, appoint an administrator, or begin winding up the company within 21 days after receiving a DPN.

### Vacant Land Expenses No Longer Deductible for "Build-To-Rent"

Currently, an entity may claim a deduction during the construction phase of a development when no income is being derived at that point, where the entity intends for the completed property to be income producing.

From 1 July 2019 deductions for expenses incurred that relate to holding vacant land such as interest, rates & taxes, incurred during the construction stage and before the property is completed and available for rental will no longer be tax deductible

## HOW TO INCREASE YOUR PROFITS



It may sound simplistic but there are essentially 4 ways to grow your business and increase profits.

1. Increase your prices (rate)
2. Increase volume (sales)
3. Reduce unit costs, and
4. Reduce overheads per unit of sale

While all the above are important in growing your business and increasing your profits, in most cases business can obtain substantial and timely increases in profitability by simply increasing prices

In terms of increasing your profit, the first variable, may be the most effective way of increasing your profits.

This is illustrated by looking at an example.

If your business turnover is, say, \$1,000,000 and cost of sales are \$700,000, this leaves a Gross Profit of \$300,000.

If you increase your prices by 10%, your profit will increase by 33.0% (Sales of \$1,100,000 less cost of sales \$700,000 gives you a Gross Profit of \$400,000). The \$100,000 revenue increase represents pure profit which ultimately becomes extra cash in the bank.

To achieve an increase a \$100,000 in profit by increasing the sales volume variable, you need to sell an extra 33.33% or \$333,333 in sales. It is significantly harder to bring about an increase of \$100,000 in profit by only focusing on the other 3 variables.

A clear lesson that can be learned from the above is not to discount. Following on the example from above, if you reduce the price by 10%, your turnover becomes \$900,000 leaving a Gross Profit of \$200,000, a 50% reduction in your profit.

For the above reasons, setting your selling price is perhaps the most critical variable. Ironically, it is also the driver that many business owners are most reluctant to tinker with.

In fact, in many cases, the biggest single barrier preventing small businesses from making an acceptable profit is their refusal to charge a price that enables them to achieve it.

There is an overwhelming fear that increasing price will result in lost customers and lower sales. While this may be the result if your very

product or service is one where customers are price-sensitive, it still does not necessarily mean that your profits will be less. This is because, following on the example above, for the profit of the business to drop below \$300,000, Sales must reduce by \$175,000

The only proviso is to be aware of demand sensitivity: if your business' particular demand curve is very price sensitive (for example, if you were raise to prices by 10%, you would lose over 25% of your customers) you will then end up making less money, not more.

## CENTRAL MANAGEMENT AND CONTROL TEST OF COMPANIES

For Australian tax purposes, a company that is not incorporated in Australia may nevertheless be a tax resident of Australia if:-

- it carries on business in Australia and has either its central management and control ("CMAC") in Australia, or
- its voting power is controlled by Australian resident shareholders.

A company's CMAC refers to those who make the decisions about the strategic policy and direction of the company.

The ATO has issued a final ruling (TR 2018/5) and a Practical Compliance Guideline (PCG 2018/9) about the 'central management and control' test for determining the tax residence of a company.

The ATO states that where a foreign incorporated company has central management and control in Australia this will be sufficient, in and of itself, for that company to be considered to be Australian tax resident.

This is a change from the position previously taken by the ATO in TR 2004/15 whereby a company that had its central management and control in Australia was considered a resident only if it also carried on business in Australia.

It is therefore important that taxpayers ensure that they have documentation evidencing the decision-making process as Resident companies are taxed very differently from non-resident companies and as such any misunderstanding in respect of residency status will likely have fundamental and potentially negative Australian tax consequences.

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