



News Bulletin

Accountants &
Business Advisors



DECEMBER 2023
Merry Christmas!

KAIAS PHILLIPS

129 Station St. Fairfield

Ph. (03) 9489 5888

www.kaiasphillips.com.au



IN THIS ISSUE:

- ❖ ATO Tax on Super Balances above \$3M
- ❖ ATO Data Matching of Super to payroll
- ❖ Consequences of Paying SG Super Late
- ❖ Taxation Consequences on Redrawing of Investment loans
- ❖ Top Tips to Avoid Giving the ATO a Christmas Tax Bonus
- ❖ The Danger of Misclassifying Contractors

TAX DEVELOPMENTS UPDATE



ATO Tax on super balances above \$3m hits Parliament

Legislation enabling an extra 15% tax on earnings on super balances above \$3m is before Parliament, and if enacted it will impose a significant impost for those with significant property or other illiquid assets in their superannuation fund, for example, business operators who own their business property in their self-managed superannuation fund (SMSF).

The issue is the way the tax is calculated. The tax captures both:

- Realised gains from the sale of assets, and
- Unrealised gains triggered by an increase in the value of superannuation assets. For example, if the value of a property increases.

The ATO will calculate the tax each year, with the first notice of assessment expected to be issued to those impacted in the 2026-27 financial year.

If you are likely to be impacted by the impending new tax, it is important to explore the implications on your personal situation and seek advice with a view to develop a strategy to ensure that you're in the best possible position to mitigate the effects of this new legislation.

ATO matching of payroll to super fund Data.

Single touch payroll (STP), the reporting mechanism employers must use to report payments to workers, provides a comprehensive, and near-real time data to the regulators on income paid to employees.

The ATO is now matching STP data to the information reported to them by superannuation funds to identify late payments, and under or incorrect reporting.

Super guarantee needs to be received by the employee's fund before the due date. Unless you are using the ATO's superannuation clearing house, payments are unlikely to be received by the employee's fund if the quarterly payment is made on the due date. The super guarantee (SG) laws do not have a tolerance for a 'little bit' late. Contributions are either on time, or they are not.

Consequences of Paying SG Super Late

If an employer fails to meet the quarterly SG contribution deadline, they need to pay the SG charge (SGC) and lodge a Superannuation Guarantee Statement within a month of the late payment.

The SGC applies even if you pay the outstanding SG soon after the deadline. The SGC is particularly painful for employers because it is comprised of:

- The employee's superannuation guarantee shortfall amount – i.e., the SG owing.
- 10% interest p.a. on the SG owing for the quarter - calculated from the first day of the quarter until the 28th day after the SG was due, or the date the SG statement is lodged, whichever is later; and
- An administration fee of \$20 for each employee with a shortfall per quarter.

*It should be noted that unlike normal SG contributions, SGC amounts are **not tax deductible**, even if you pay the outstanding amount.*

Also, the calculation for SGC is different to how you calculate SG. The SGC is calculated using the employee's salary or wages rather than their ordinary time earnings (OTE). An employee's salary and wages may be higher than their OTE, particularly if you have workers who are paid overtime.

It's important that employers that have made late SG payments lodge a superannuation guarantee statement quickly as interest accrues until the statement is lodged

The ATO can also apply penalties for late lodgment of a statement, or failing to provide a statement during an audit, of up to 200% of the SG charge. *And, where an SG charge amount remains outstanding, a company director may become personally liable for a penalty equal to the unpaid amount.*

TAX WARNING: REDRAWING INVESTMENT LOANS

There has recently been an uptick in ATO activity focussing on refinanced or redrawn loans. This activity is a result of a major data matching program of residential property loan data from financial institutions from 2021-22 to 2025-26. This data is being matched to what taxpayers have claimed on their tax returns. Those with anomalies can expect contact from the ATO to explain the discrepancy.

If you have an investment property loan and redraw on the loan for a different purpose to the original borrowing, *the loan account becomes a mixed purpose account. Interest accruing on mixed purpose accounts need to be apportioned between each of the different purposes the money was used for.*

On the other hand, if the redrawn funds are used to produce investment income, then the interest on this portion of the loan should be deductible. For example, if you have redrawn on the loan to pay for a private holiday, or pay down personal debt, then the interest relating to this portion of the loan balance is not deductible. Not only will the interest expenses need to be apportioned into deductible and non-deductible parts, but repayments will normally need to be apportioned too.

Withdrawals from an offset account are treated as savings rather than a new borrowing. If you have a loan account and an interest offset account is attached to this account that reduces the interest payable on the loan, withdrawing funds from the offset account will typically increase the amount of interest accruing on the loan, but won't change the deductible percentage of the interest expenses. That is, when you withdraw funds from the offset account this is really a withdrawal of savings and won't impact on the extent to which interest accruing on the loan account is deductible.

If you have a home loan that was used to acquire your private home and you have funds sitting in an offset account, withdrawing those funds to pay the deposit on a rental property won't enable you to claim any of the interest accruing on the home loan. However, if you redraw funds from the home loan to acquire a rental property then interest accruing on this portion of the loan should be deductible. The tax treatment always depends on how the arrangement is structured.

TOP TIPS TO AVOID GIVING THE ATO A CHRISTMAS TAX BONUS

Keep team gifts spontaneous

\$300 is the minor benefit threshold for FBT so anything at or above this level will mean that your Christmas generosity will result in a gift to the ATO at a rate of 47%. To qualify as a minor benefit, gifts also

must be ad hoc - no monthly gym memberships or giving one-person multiple gift vouchers amounting to \$300 or more.

Gifts of cash from the business are treated as salary and wages – PAYG withholding is triggered, and the amount is normally subject to the superannuation guarantee.

The FBT Christmas party crunch

If you really want to avoid tax on your work Christmas party, then host it in the office on a workday. This way, Fringe Benefits Tax (FBT) is unlikely to apply regardless of how much you spend per person.

If your work Christmas party is out of the office, keep the cost of your celebrations below \$300 per person if you want to avoid paying FBT. The downside is that the business cannot claim deductions or GST credits for the expenses if there is no FBT payable in relation to the party.

If entertainment is provided to employees and an FBT exemption applies, you will not be able to claim tax deductions or GST credits for the expenses.

If your business hosts slightly more extravagant parties and goes above the \$300 per person minor benefit limit, you will pay FBT, but you can also claim a tax deduction and GST credits for the cost of the event.

Avoid client lunches and give a gift instead

The most effective way of sharing the Christmas joy with customers is not necessarily the most tax effective. If, for example, you take your client out or entertain them in any way, it's not tax deductible and you can't claim back the GST. There are specific rules designed to prevent deductions and GST credits from being claimed when the expenses relate to entertainment, regardless of whether there is an expectation of generating goodwill and increased business sales. Restaurants, a show, golf, and corporate race days all fall into the 'entertainment' category.

However, if you send your customer a gift, then the gift is tax deductible as long as there is an expectation that the business will benefit (assuming the gift does not amount to entertainment).

Christmas bonuses

If you are planning to provide your team with a cash bonus rather than a gift voucher or other item of property, then this will be taxed in much the same way as salary and wages. A PAYG withholding obligation will be triggered and the ATO's view is that the bonus will also be treated as ordinary time earnings (unless it relates specifically to overtime work) which means that it will be subject to the superannuation guarantee provisions.

Here's our quick guide to the tax impact of Christmas celebrations. The table below provides a summary of Income Tax, FBT & GST implications for GST registered businesses (not tax exempt) that are not using the 50-50 split method for meal entertainment.

	Exempt from FBT?	Tax deductible	GST credits
Christmas party on employer premises on a weekday			
Employees	Yes	No	No
Associates of employee (spouses etc.)	If <\$300 per head	If \$300 or more per head	If \$300 or more per head
Customers	N/A	No	No
Christmas party on employer premises on a weekend or external venue			
Employees	If <\$300 per head	If \$300 or more per head	If \$300 or more per head
Associates (spouses etc.)	If <\$300 per head	If \$300 or more per head	If \$300 or more per head
Customers	N/A	No	No
Christmas gifts (assuming the gift doesn't involve entertainment)			
Employees	If <\$300 per head	Yes	Yes
Associates (spouses etc.)	If <\$300 per head	Yes	Yes
Customers	N/A	Yes	Yes
Christmas lunch with customer at external venue			
Employees	If <\$300 per head	If \$300 or more per head	If \$300 or more per head
Associates (spouses etc.)	If <\$300 per head	If \$300 or more per head	If \$300 or more per head
Customers	N/A	No	No

THE DANGER OF MISCLASSIFYING CONTRACTORS

Many business owners assume that if they hire independent contractors, they will not be responsible for PAYG withholding, superannuation guarantee, payroll tax and workers compensation obligations.

However, each set of rules operates slightly differently, and, in some cases, genuine contractors can be treated as if they were employees. There are significant penalties faced by employers that get it wrong.

A genuine independent contractor who is providing personal services will typically be:

- Autonomous rather than subservient in their decision-making.
- Financially self-reliant rather than economically dependent on your business; and
- Chasing profit (that is, a return on risk) rather than simply accepting a payment for the time, skill and effort provided.

SEASONS GREETINGS!

From all our Team, we want to take this opportunity to wish all our clients the very best for the festive season and for a happy, safe and prosperous New Year.

Thank you for your support over the past year, and we look forward to working with you again in 2024.

OFFICE CLOSURE:

Our office will be closed for the festive season from Friday 22nd of December, 2023 and will re-open on Monday the 15th of January, 2024.



Disclaimer:-

The News Bulletin is distributed by Kaias Phillips to provide information of general interest to their clients. The content of this newsletter does not constitute specific advic