



# News Bulletin

Accountants &  
Business Advisors

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## TAX DEVELOPMENTS UPDATE



### ATO Focus on Cash-Only Businesses

The ATO announced recently that it is visiting businesses around Australia that appear to be trading as, or advertise as, cash-only businesses as part of its focus on the cash economy.

"While most businesses do the right thing, some get an advantage by not declaring all their income and taking cash only makes this easier to do", the ATO said.

The ATO will particularly focus on, among other things, businesses:

- (i) that operate and advertise as "cash only",
- (ii) where ATO data matching suggests they don't take electronic payments,
- (iii) that are part of an industry where cash payments are common,
- (iv) that indicate unrealistic income relative to the assets and lifestyle of the business and owner.

### Behaviours And Characteristics That Attract The Attention Of The ATO

The ATO has recently published a list of behaviours, characteristics and tax issues that attract the ATO's attention.

Broadly, the following behaviours and characteristics have been identified:-

- tax or economic performance is not comparable to similar businesses
- low transparency of your tax affairs
- large, one-off or unusual transactions, including transfer or shifting of wealth

- a history of aggressive tax planning
- tax outcomes inconsistent with the intent of tax law
- choosing not to comply or regularly taking controversial interpretations of the law
- lifestyle not supported by after-tax income
- accessing business assets for tax-free private use or
- poor governance and risk-management systems.

The above behaviours, characteristics and tax issues will be examined in relation to various tax areas, including capital gains tax, franking credits, fringe benefits tax, trusts, and tax crime.

### Superannuation Guarantee Crack-down

The Government announced the introduction of further reforms to crack down on employer non-compliance with their SG obligations.

The package includes measures to:

- have super funds report contributions monthly;
- rollout Single Touch Payroll across the board – from 1 July 2018 for employers with 20 or more employees and from 1 July 2019 for employers with less than 20 employees.
- employers from 1 July 2019;
- strengthen director penalty notices and use security bonds for high-risk employers; and
- give the ATO the ability to seek court-ordered penalties in the most egregious cases.

## ABOLITION OF 10% SUPERANNUATION RULE & SALARY SACRIFICE IMPLICATIONS



With the 10% income test being abolished effective from 1 July, 2017, *it is no longer necessary for employees to enter into salary sacrifice arrangements with their employers in order to benefit from the superannuation tax concessions.*

Previous to 1 July, 2017, you could only claim a tax deduction for a super contribution when your income as an employee was less than 10 per cent of your total income. As such, employees whose employment income was more than 10% of their total income could only benefit from making

superannuation contributions by entering into a salary sacrifice arrangement with its employer.

From 1 July 2017, employees under the age of 75, like all other taxpayers, can make personal tax deductible super contributions subject to the new concessional cap, and taking account of previously-made super contributions for a financial year.

It should be noted that the concessional contribution cap has been reduced to \$25,000 and applies to all taxpayers, regardless of age.

## TERMINATION OF EMPLOYMENT



Most businesses from time to time will need to dismiss a staff member.

Employers must ensure they follow the correct procedures to ensure dismissal is not considered harsh, unjust or unreasonable.

Small business employers (with fewer than 15 employees) must follow the Small Business Fair Dismissal Code to protect against unfair dismissal claims.

Small business employees cannot make a claim for unfair dismissal in the first 12 months following their engagement. However, if an employee is dismissed after this period, it is the employer's responsibility to follow the code.

Employers can dismiss an employee without notice or warning when the employer believes on reasonable grounds that the employee's conduct is sufficiently serious to justify immediate dismissal. For example, serious misconduct such as theft, fraud, violence and serious breaches to OH&S procedures.

For a dismissal to be deemed fair it is sufficient, though not essential, that an allegation of theft, fraud or violence be reported to the police.

In other circumstances, employers must give the employee a valid reason why he or she is being dismissed. A verbal warning or written notice should be given to the employee that he or she risks dismissal if there is no improvement.

Employers must provide the employee with an opportunity to respond and rectify the problem within a reasonable amount of time. This may mean providing training or opportunity to develop their skills.

If an employee makes a claim for unfair dismissal to Fair Work Australia, the employer will be required to provide evidence that a warning has been given (except in cases of summary dismissal). Evidence may include:-

- a completed checklist,
- copies of written warning(s),
- a statement of termination, etc.

Employers must also ensure to provide the correct entitlements on termination. Employees must receive the following in their final pay:

- Outstanding wages
- Any payments in lieu of notice
- Accrued annual leave or long service leave entitlements
- Redundancy or severance pays entitlements where applicable.

## LOG BOOK REQUIREMENTS FOR CLAIMING CAR EXPENSES



From 1 July 2015 car expenses such as petrol, registration, insurance, repairs, depreciation etc can only be claimed as a tax

deduction under the log book method.

If you do not have a valid log book, then the only other way to claim car expenses is by the use of the cents per kilometre method, which may provide a worse tax result, especially if you do use your car extensively for business purposes.

Taxpayers wanting to use the log book method need to ensure that their car usage is recorded for a minimum continuous period of 12 weeks. This means that if you are planning to use the log book method, you may want to consider starting a log book as soon as possible if you have not already done so.

## IS THAT CONTRACTOR REALLY AN EMPLOYEE?

Coping with the typical ebbs and flows of running a small business sometimes requires an extra pair of hands.

This has seen independent contractor appointments become a frequent alternative to traditional Pay as You Go (PAYG) employment, particularly when specialist skills cannot be readily obtained by recruiting full or part-time employees.

However, there are dangers in engaging an individual as a contractor without properly understanding relevant legislation. You may find the person that is treated as a contractor is considered an employee at law, which involves a range of legal obligations – and liabilities – if you get it wrong.

Common indicators that may help to ascertain a person's employment status include:-

- the degree of control they have over work performed;
- whether hours are standard or set by the employer (as opposed to negotiation),

- expectations from work performed (i.e. ongoing or for a specific task);
- superannuation entitlements;
- provision of tools and equipment (by the employer or provider);
- method of payment (regular or on completion of a contract or project); and
- if paid leave is accrued.

It's not uncommon for businesses that fail to fully appreciate the key distinctions between the two working arrangements to find themselves in hot water.

Smaller businesses and solo operators often outsource work without properly recording the terms of engagement in writing.

Should a dispute arise about whether a provider was a contractor or employee – or there is disagreement between the parties about the terms of the contract – it could ultimately lead to litigation.

In the event a contractor is deemed to have actually been an employee, such obligations include Fringe Benefits Tax (FBT), Superannuation Guarantee Charge (SGC), Payroll Tax, Workers Compensation, Back Pay (if award conditions were not met), and Leave Entitlements.

In this regard, the ATO has issued a fact sheet on the common conundrum of whether a person is an employee or a contractor. It includes a number of 'myths' that employers can often tend to believe.

Below is an abridged version of the fact sheet:-

### Having an ABN

**Myth:** *If a worker has an ABN they're a contractor.*

**Fact:** Having or quoting an ABN makes no difference to whether a worker is an employee or contractor for a job.

Businesses sometimes request or pressure a worker who is an employee to obtain an ABN in the belief this will make the worker a contractor.

If the working arrangement is employment, whether the worker has or quotes an ABN will not make the worker a contractor.

### Contracts

**Myth:** If a worker's contract has a section that says they are a contractor, then legally they're a contractor.

**Fact:** If a worker is legally an employee, a contract specifying the worker is a contractor makes no difference and will not:

- override the employment relationship or change the worker into a contractor; or

- change the PAYG withholding and super obligations

### Contracting on different jobs

**Myth:** If a worker is a contractor for one job, they will be a contractor for all jobs.

**Fact:** The working arrangement and specific terms and conditions under which the work is done will determine whether a worker is an employee or contractor for each job.

Depending on the working arrangement, a worker could be:

- an employee for one job and a contractor for the next job; or
- an employee and a contractor if completing two jobs at the same time for different businesses.

### Paying super

**Myth:** My business should only take on contractors so we don't have to worry about super.

**Fact:** If you pay an individual contractor under a contract that is wholly or principally for the person's labour, you have to pay super contributions for them.

### Worker wants to be a contractor

**Myth:** My worker wants to be a contractor, so my business should take them on as a contractor.

**Fact:** Just because a worker has a preference to work as a contractor doesn't mean your business can engage them as a contractor.

Whether a worker is an employee or contractor is not a matter of choice, but depends entirely on the working arrangement and the terms and conditions under which the work is done.

### Using invoices

**Myth:** If a worker submits an invoice for their work, they're a contractor.

**Fact:** Submitting an invoice for work done or being 'paid on invoice' doesn't automatically make a worker a contractor.

If, based on the working arrangement, a worker is an employee, submitting an invoice or being paid on the basis of an invoice will not make the worker a contractor.

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