



Small business updates

Welcome to 2022! January is traditionally a quiet time for many businesses, but the ATO hasn't stopped providing useful information to help small business owners and workers navigate what is sure to be another busy year.

Here are the latest updates from the ATO.

ATO help for small businesses

The ATO has a range of support available for small businesses experiencing difficult situations, such as natural disasters, mental health challenges or financial hardship. The difficulties may be related to the COVID-19 pandemic.

Depending on your circumstances, the ATO may be able to:

- give you extra time to pay your tax;
- set up a payment plan tailored to your situation;
- re-issue tax returns, activity statements and notices of assessment (e.g. if you need to access government payments or concessions);
- help you reconstruct lost or damaged tax records;
- prioritise any refunds you are owed;
- remit penalties or interest charged during the time you have been affected.

Do your employees travel for work? Is it a travel allowance or LAFHA?

If you have employees who travel for work, the ATO has published new guidance ([Taxation Ruling TR 2021/4](#) *Income tax and fringe benefits tax: employees: accommodation and food and drink expenses travel allowances, and living-away-from-home allowances*) to help you determine whether to pay them a travel allowance or a living-away-from-home allowance (LAFHA).

It is necessary to determine whether that allowance is a travel allowance or a LAFHA as they are subject to different tax treatments.

What is a travel allowance?

A travel allowance is an allowance that an employer pays to an employee to cover losses or outgoings that:

- an employee incurs for travel away from their ordinary residence (either within or outside Australia) that they undertake in the course of their duties as an employee; and
- are incurred for accommodation or for food or drink expenses, or expenses that are incidental to the travel.

A travel allowance will need to be included as an amount in your employee's assessable income and may need to have tax withheld from it under the PAYG withholding rules.

What is a LAFHA?

A LAFHA fringe benefit may arise if you pay an employee an allowance to cover additional expenses and any disadvantages suffered due to them being required to temporarily live away from their normal residence to perform their employment duties. Additional expenses are not considered deductible expenses.

A LAFHA payment you provide to your employee may be considered a LAFHA fringe benefit and will need to be reported in your annual fringe benefits tax (FBT) return.

Note: As a rule of thumb, the ATO will treat an allowance as a travel allowance if the period away from home does not exceed 21 days.

Cancelling your GST registration

You or your tax adviser must cancel your GST registration within 21 days of:

- selling or closing your business; or
- changing your business structure – this includes changing from a partnership to a company, unless the old entity carries on another business.

You can choose to cancel your GST registration if your GST turnover is below the threshold for compulsory registration (\$75,000) unless you:

- are a taxi driver (including ride-sourcing or chauffeur services);
- represent an incapacitated entity who is registered or required to be registered for GST – for example, an individual who is bankrupt or a company in liquidation;

- are an Australian resident who acts as an agent for a non-resident that is registered (or required to be registered) for GST.

The ATO advises on its website that the date you choose to cancel your GST registration should be the last day you want to be registered. The ATO usually cancels your GST registration from the date you choose. However, you cannot:

- cancel your registration retrospectively if you are still operating on a GST-registered basis after the date you choose;
- continue to operate on a GST-registered basis after your cancellation date; and
- cancel if you have already lodged an activity statement for the period containing the date of cancellation.

You can cancel your GST registration:

- through Online services for business;
- through your registered tax adviser;
- by phone on 13 28 66 – between 8.00am and 6.00pm, Monday to Friday; or
- by completing the Application to cancel registration (NAT 2955) through online ordering and posting it to the ATO.

Note: GST adjustments to previous input tax credits claimed may be required on cancellation of your GST registration for certain acquisitions.



COVID-19, FBT, RATs and other acronyms!

You may provide your employees with benefits you do not usually provide as a result of the COVID-19 pandemic.

For example, you might provide non-cash benefits to employees for getting COVID-19 vaccinations. Other benefits could be provided to help employees work from home, to protect employees from COVID-19 or to help them recover from COVID-19.

FBT and RATs: Protecting employees from COVID-19

You may need to pay FBT on items you give your employees to help protect them from contracting COVID-19 while at work. These include rapid antigen tests (**RATs**), gloves, masks, sanitisers and antibacterial spray.

However, these benefits are exempt from FBT under the emergency assistance exemption if you provide them to employees who:

- have physical contact with – or are in close proximity to – customers or clients while carrying out their duties; or
- are involved in cleaning premises.

Examples of this type of work include:

- medical (such as doctors, nurses, dentists and allied health workers);
- cleaning;
- airline;
- hairdressing and beautician;
- retail, café and restaurant.

Minor benefits exemption

If your employees' specific employment duties are not of the kind described above, the minor benefits exemption may apply (for minor, infrequent and irregular benefits under \$300).

Providing COVID-19 tests to employees is exempt from FBT, if both of the following two conditions are met:

- Testing is carried out by a legally qualified medical practitioner or nurse; and
- Testing is available to all employees.

Note:

- If only some of your employees get COVID-19 tests, the tests are still exempt from FBT as long as they are offered to all employees.
- If the tests you provide or reimburse do not meet these requirements, you may need to pay FBT unless the minor benefits exemption or 'otherwise deductible rule' apply.

Working from home

You may have provided employees with items to allow them to work from home (or from another location) due to COVID-19.

Some items will usually be exempt from FBT if they are primarily used by your employees for work. The items include laptops, portable printers and other electronic devices.

The minor benefits exemption (for minor, infrequent and irregular benefits under \$300) or the otherwise deductible rule may apply if you:

- allow your employee to use a monitor, mouse or keyboard they otherwise use in the workplace; or
- provide them with stationery or computer consumables or pay for their phone and internet access.

The 'otherwise-deductible rule' allows you to reduce the taxable value of benefits by the amount that your employee can claim as a once-only deduction (if they can claim a deduction).

Emergency health care

Benefits you provide by way of emergency health care are exempt from FBT if the health care is provided:

- by an employee of yours (or of a related company) – e.g. a company doctor;
- on your premises (or on the premises of a related company); or
- at or near an employee's worksite.

If you pay for your employee's ongoing medical or hospital expenses, FBT will apply. However, if you pay to transport your employee from the workplace to seek medical help, the cost is exempt from FBT.

Rewarding staff for getting their COVID-19 vaccination

If you've provided incentives or rewards to your employees for getting their COVID-19 vaccination or booster dose, it's important to understand what your tax and superannuation obligations are.

Incentives and rewards may include cash payments, paid leave, non-cash gifts, such as vouchers and gift cards, and transport to and from the vaccination site.

If you've provided your employees with a cash payment, you must:

- report the payment via Single Touch Payroll (**STP**) as part of the employee's salary and wages;
- withhold tax from the payment amount under the PAYG withholding rules; and
- include the amount in your employee's ordinary time earnings. This is for the purpose of determining your superannuation guarantee contributions for your employee.

If you've already made a cash payment and did not withhold tax, you should contact the ATO (or your tax adviser) straight away so that the ATO can consider the remission of any applicable failure-to-withhold penalties.

If you provide or pay for an employee's transport to and/or from a place to get their COVID-19 vaccination, the travel is associated with work-related preventative health care and is exempt from FBT.



Do you employ working holiday makers?

In November last year, the High Court ruled in the ‘backpacker tax case’ (*Addy v Commissioner of Taxation*) that a British working holiday maker – Ms Addy – who was a tax resident of Australia, should be taxed at the rates that apply to residents and not at the ‘backpacker tax’ rates.

The resident rates include the tax-free threshold (\$18,200) whereas the backpacker tax taxes the first \$45,000 (or in Ms Addy’s case due to the timing of when she earned the income, the first \$37,000) at 15%. The High Court’s decision reduced her tax bill.

The High Court reached that conclusion because of the terms of the double tax agreement (DTA) between Australia and the UK.

What does the High Court’s decision mean?

The decision means that a working holiday maker from the UK, or from Chile, Finland, Germany, Israel, Japan, Norway or Turkey (those countries have DTAs with Australia that are similar to the UK DTA), may be taxed the same as an Australian resident if they are an Australian resident for tax purposes (which is unlikely – Ms Addy’s case was somewhat unusual).

The ATO has advised employers that they need not do anything if they employ a working holiday maker from one of those eight countries. They should continue to withhold 15% tax from the working holiday maker’s pay – unless the ATO sends them a PAYG variation notice.

It will be up to the working holiday maker to claim a tax refund if they are entitled to one.



JobMaker Hiring Credit

There are four periods left for claiming the JobMaker Hiring Credit. The most recent period ended on 28 January 2022.

Note: Remember, you can only claim payments relating to employees hired up until 6 October 2021. Employees hired after that date are not eligible employees.

The scheme will end on 6 October 2022.

JobMaker period	Single Touch Payroll (STP) reporting due date	Claim period
7 January 2022 – 6 April 2022	28 July 2022	1 May 2022 – 31 July 2022
7 April 2022 – 6 July 2022	28 October 2022	1 August 2022 – 31 October 2022
7 July 2022 – 6 October 2022	28 January 2023	1 November 2022 – 31 January 2023



Do you have your Director identification number?

A Director identification number (**Director ID**) is a unique identifier that a director applies for once and keeps forever. All directors, including alternate directors, are required to have a Director ID.

Who needs a Director ID?

You will need a Director ID if you are a director or an alternate director (acting in that capacity) of:

- a company, a registered Australian body or a registered foreign company under the *Corporations Act 2001* (**Corporations Act**). This includes the director of the corporate trustee of a self-managed superannuation fund (**SMSF**);
- an Aboriginal and Torres Strait Islander corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (**CATSI Act**).

Applications for a Director ID are available at the new Australian Business Registry Services (**ABRS**) website. You'll need a myGovID with a Standard or Strong identity strength to apply for a Director ID online.

Note: You will need to apply for your Director ID yourself to verify your identity. We cannot apply for you.

When to apply?

When you must apply for a Director ID depends on the date you become (or became) a director.

Corporations Act directors

Date you became a director	Date you must apply
On or before 31 October 2021	By 30 November 2022
Between 1 November 2021 and 4 April 2022 (and not already a director at close of 31 October 2021)	Within 28 days of appointment
From 5 April 2022 (and not already a director at close of 31 October 2021)	Before appointment

CATSI Act directors

Date you became a director	Date you must apply
On or before 31 October 2022	By 30 November 2023
From 1 November 2022 (and not already a director at close of 31 October 2021)	Before appointment



Protect your business from cyber scams

The ATO has warned businesses that cybercriminals are targeting them with 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. ACCC Scamwatch reported that more than \$132 million was lost as a result of business email scams in 2019 alone.

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.
- **Secure your email account:** Use multi-factor authentication or, if this is not possible, a strong unique passphrase that would be difficult to hack.

Tax crime prosecution

From failing to lodge tax returns to submitting false work-related expenses, the ATO has made it clear that it will not tolerate any form of tax crime.

The ATO has reported a number of their latest prosecution outcomes.

Failure to provide documents

This case involved a well-known company, McDonald's Australia.

On 26 July 2019, the ATO issued a formal notice requiring McDonald's Australia to produce documents with a compliance date of 30 August 2019. However, the formal notice was not complied with, and the company was prosecuted.

McDonald's Australia pleaded guilty to one count of failing to comply with an information gathering notice and they were subsequently convicted and fined. In delivering his sentence, the Magistrate commented that general deterrence was important for this kind of offending.

In its media release, the ATO said that instances where taxpayers have failed to comply with requests for information rarely result in criminal convictions, as most work with the ATO to meet their obligations. However, the ATO said it will initiate prosecution action where taxpayers hold back necessary information or documents.

Jail time for phoenix operators

Three men have been jailed for orchestrating an elaborate illegal phoenix operation that saw them pocket more than \$4.6 million.

The men established multiple labour hire companies, providing workers to vineyards, meat processors, and fruit and vegetable growers across South Australia and in Queensland.

But despite charging their clients GST, the companies didn't remit these funds to the ATO, either failing to lodge the required BAS or lodging them as 'nil'. They also included PAYG withholding on the workers' payslips, but never passed these funds on to the ATO.

Significant debts were raised after the companies were audited. But because the men were withdrawing funds from company accounts on a regular basis, there were insufficient funds to cover the debts.

To continue the operation, they would simply create new companies, often appointing straw directors to cover their tracks.

The architect and instigator of the scheme was sentenced to eight-years' jail. The other two were sentenced to four- and five-years' jail, respectively. The trio were also ordered to pay back the full amount.

False claims catch up with tradie

A former painter and decorator – Mr K – who made a series of false claims in relation to his income and deductions has been handed a criminal conviction.

When Mr K lodged his 2018 income tax return, he received a warning that his claims were unusually high compared to other people with a similar income and occupation, but he proceeded with them anyway.

Later that month, he took it a step further, increasing his tax withheld and work-related expenses by more than \$5,000. He then made another five amendments, exaggerating his claims further and further each time to generate higher refunds.

The first few refunds were paid out, but the remaining four were stopped pending the result of an audit.

Mr K later admitted he didn't have any documents to substantiate the claims. As such, everything except a \$150 laundry deduction was disallowed.

Mr K was ordered to pay \$16,560 including fines. In delivering the sentence, the Magistrate commented that these were very serious charges, adding that everyone is expected to be truthful when submitting returns.

Refund and identity fraud

A payroll officer – Mr R – who tried to obtain more than \$180,000 by exploiting his colleagues' identities has been sentenced to four years' jail.

In his capacity as a payroll officer, Mr R had access to confidential employee information. He used this information to lodge 29 false income tax returns in the names of 28 different people. He tried to cover his tracks by using a false identity to withdraw the funds, but the ATO soon caught up with him.

In total, Mr R obtained \$64,541 in fraudulent refunds. He attempted to get his hands on an additional \$117,824, but the ATO stopped those refunds before they reached his bank accounts.



Corporate tax transparency report 2019–20

In December last year, the ATO published on its website the Corporate tax transparency report 2019–20. This is the 7th annual report on corporate tax transparency.

The report analyses aggregated data from the 2019–20 income tax returns of some of the largest corporations operating in Australia:

- Australian public and foreign-owned corporate tax entities with total income of \$100 million or more;
- Australian-owned resident private companies with total income of \$200 million or more;
- entities that have petroleum resource rent tax (**PRRT**) payable.

The ATO takes data from three labels in the tax return – total income, taxable income and tax payable. The data does not reflect any intervention or compliance work after lodgment of the returns. Nor does it provide additional detail on recipients of JobKeeper or other COVID-19 stimulus payments.

Data highlighted by the ATO includes:

- the data covers 2,370 entities (an increase of 59 on 2018–19);
- total income increased to \$2,184.5 billion (an increase of 2.6%);
- taxable income increased to \$208.4 billion (an increase of 0.1%);
- tax payable increased to \$57.2 billion (an increase of 2%);
- foreign-owned entities account for 58.2% of the corporate transparency population in 2019–20 and 28.9% of tax payable;
- Australian public entities account for 21.6% of the population and 62.8% of tax payable;
- Australian private entities account for 20.2% of the population and nearly 8.3% of tax payable;
- tax payable in the corporate tax transparency population was again dominated by the mining, energy and water segment. The share of tax payable attributable to that segment was again higher than in previous years, primarily due to high iron ore prices; and
- 33.0% of the population did not pay any tax (782 entities).



What's in the pipeline?

Federal election 2022

As we all know, there will be a Federal election in a few months. The 'pundits' seem to think it will be in May (it must be held by 21 May 2022).

If the pundits are right, Parliament is likely to sit only in February and March. Five days have been set aside for the House of Representatives and the Senate, and the House of Representatives only will sit for an additional five days – not much time to pass legislation!

Parliament is not likely to sit again once the election is called until 9 August 2022. This means that there are minimal opportunities for the Government to pass its legislative agenda before the election, and there can be ongoing uncertainty in relation to measures that have been announced but are not yet enacted.

The two major tax measures contained in bills that are still before Parliament are:

- the extension of **temporary full expensing** (for depreciating assets) by 12 months to 30 June 2023 – your business will be able to claim an outright deduction for the cost of depreciating assets you acquire (and install ready for use) before 1 July 2023 (this includes second-hand assets if your business has an aggregated turnover less than \$50 million); and
- the extension of the **loss carry back** measure for companies to include the 2022–23 income year (a loss can be carried back as far as 2018–19).

Other tax-related measures before Parliament include:

- removing the **superannuation guarantee \$450 monthly income threshold**;
- a change to the taxation of **employee share scheme** interests subject to deferred taxation; and
- making permanent some of the **company administration related measures** that were implemented to accommodate COVID-19 related lockdown restrictions – e.g. hybrid meetings and using technology in relation to company documents.

Cyclone Seroja grants

Qualifying grants made to small businesses and primary producers affected by Tropical Cyclone Seroja will be tax-free. The Government announced this measure in the 2021–22 Mid-Year Economic and Fiscal Outlook (**MYEFO**) last December.



Key tax dates

Date	Obligation
21 Feb 2022	<ul style="list-style-type: none"> • January 2022 monthly BAS due
28 Feb 2022	<ul style="list-style-type: none"> • December 2021 quarterly BAS due • Pay December 2021 quarterly instalment notice

	<ul style="list-style-type: none"> • Annual GST return due (if no income tax return due) • December 2021 SG charge statement due (if required due to an SG shortfall for the December 2021 quarter) • SMSF 2020–21 annual return due (unless first return or late with return for previous financial year)
21 Mar 2022	<ul style="list-style-type: none"> • February 2022 monthly BAS due
21 Apr 2022	<ul style="list-style-type: none"> • March 2022 monthly BAS due
28 Apr 2022	<ul style="list-style-type: none"> • March 2022 quarterly BAS due • Pay March 2022 quarterly instalment notice • Employee superannuation guarantee contributions due
21 May 2022*	<ul style="list-style-type: none"> • April 2022 monthly BAS due • Lodge and pay annual FBT return (if your business lodges one)
28 May 2022*	<ul style="list-style-type: none"> • March 2022 SG charge statement due (if required due to an SG shortfall for the March 2022 quarter)

* Next business day applies instead

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