

# Practice Update

April 2019

## 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."*

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.*

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## **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.

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## **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.

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## **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).*