

Budget measures now law

A number of measures announced in the Federal Budget 2020–21 – and which we reported in the special Budget edition of *TaxWise News* – are now law. These are:

- bringing forward the personal tax cuts and the new low income tax offset by two years to 2020–21 – new PAYG withholding schedules are available (see below);
- retaining the low and middle income tax offset for 2020–21;
- introducing a temporary loss carry back for corporate tax entities with an aggregated turnover of less than \$5 billion – so a company will be able to carry back losses incurred in 2019–20, 2020–21 or 2021–22 to 2018–19, 2019–20 or 2020–21 and obtain a refundable tax offset when the 2020–21 or 2021–22 income tax return is lodged;
- the full expensing of depreciating assets first held, and first used or installed ready for use for a taxable purpose, at or after 7:30pm on 6 October 2020 and before 1 July 2022 by entities with an aggregated turnover of less than \$5 billion;
- extending some small business concessions to medium businesses (annual aggregated turnover between \$10 million and \$50 million); and
- R&D changes that apply from 1 July 2021.

Some of the measures benefiting medium businesses don't start until the 2021–22 income year or FBT year (as appropriate) e.g. the simplified trading stock rules and the FBT exemptions for car parking and multiple work-related portable electronic devices. The immediate deduction for certain start-up costs and prepayments apply from the current income year (2020–21).

Tip! Talk to your tax adviser about how to make the best of these new tax concessions.

JobKeeper update

New alternative decline in turnover test

To claim JobKeeper, you must have suffered a significant decline in turnover.

Generally, this is measured by comparing a relevant quarter in 2020 (called the turnover test period) with the equivalent quarter in 2019. However, there are alternative decline in turnover tests that apply in certain situations, such as:

- the business did not commence until early in 2020;
- there was a significant increase in turnover before the turnover test period;
- the business was affected by drought or other natural disaster; or
- in the case of a sole trader or small partnership, turnover was affected by leave, injury or illness.

An additional alternative decline in turnover test has been added – this applies to businesses that temporarily ceased trading for some or all of the relevant comparative period.

The new decline in turnover test requires the entity to have suffered the necessary decline based on its actual GST turnover for the September 2020 and/or the December 2020 quarter and not its projected turnover.

JobKeeper rates

The standard rate of JobKeeper of \$1,500 per fortnight has been replaced with a two-tiered rate of JobKeeper from 28 September 2020. The higher rate of JobKeeper from 28 September 2020 to 3 January 2021 is \$1,200 (per fortnight) and the lower rate is \$750 (per fortnight).

On 4 January 2021, the higher rate of JobKeeper reduces from \$1,200 to \$1,000 (per fortnight) and the lower rate reduces from \$750 to \$650 (per fortnight).

Whether the higher rate of JobKeeper applies is based on whether the individual worked 80 hours or more in the ‘reference period’. The higher rate will apply to:

- eligible employees whose total hours of paid work, paid leave and paid absence on public holidays was 80 hours or more in the 28-day period ending at the end of the most recent pay cycle that ended before 1 March 2020 or 1 July 2020 (the employer may choose which period applies);
- eligible business participants (including sole traders) who were actively engaged in the business carried on by the entity for 80 hours or more in February 2020. The individual must provide a notice to that effect to the entity (or to the Commissioner if the individual is a sole trader).

The lower rate will apply to all other eligible employees/business participants.

The JobKeeper scheme is scheduled to end on 28 March 2021.

JobKeeper overpayments

The ATO has published on its website a useful guide explaining what happens if you have incorrectly self-assessed yourself (or your employees) as eligible for a JobKeeper payment.

If the ATO considers it was an honest mistake, you may not have to repay the payment if:

- you relied in good faith on a statement made by an employee in their nomination notice;
- you fully passed on the benefit of the JobKeeper payment to the relevant employee;
- the mistake was made in the early days of JobKeeper when less public guidance was available.

If the ATO considers the mistake was not an honest one – which could include where the ATO has contacted you about a claim potentially being ineligible and you have not taken reasonable steps to check the eligibility before making future claims – the ATO will contact you and advise:

- why they think there has been an overpayment;
- how much you need to repay; and
- how to make the repayment.

There is a third scenario – the ATO decides that another entity that directly or indirectly benefited from the overpayment is also liable to repay the overpayment. The ATO can pursue you or the other entity for repayment (including for the whole amount).

Tip! If you think you have received a JobKeeper payment by mistake, talk to your tax adviser or the ATO as soon as you discover the error.



What has the ATO been up to?

PAYG withholding – new ATO schedules

If you have employees, you need to make adjustments in your payroll processes and systems to ensure the personal tax cuts announced in the Federal Budget 2020–21 (and which are now law) are reflected in your employees' take-home pay.

You must make sure you withhold the correct amount from salary or wages paid to employees for any pay runs processed from no later than 16 November 2020 onwards.

The ATO has updated the tax withholding schedules to reflect the tax cuts. They are available on the [ATO website](#).

Single Touch Payroll (STP) – having problems?

Are you having problems with STP? The ATO has published troubleshooting tips on its website (see *Troubleshooting STP reporting*) dealing with issues such as:

- You have started reporting and your software is not connecting to the ATO.
- You use multiple payroll solutions and you are unsure which Business Management Software (BMS) ID to use.
- You submitted an STP report when you didn't mean to, or your report contained a significant amount of incorrect data.
- You have entered an incorrect ABN in your STP report.
- You missed sending an STP report.
- Your last STP report employees' year-to-date information does not match the information in your payroll software.

Need an STP exemption?

The ATO will consider granting an exemption for reporting through STP for:

- a financial year; and/or
- a particular employee or group of employees.

Small employers with 19 or fewer employees may be exempt from STP reporting if they meet any of the following criteria:

- no or low digital capability;
- no or unreliable internet service;
- other special circumstances.

Employers who run their business in an area with no internet service can seek an exemption for one or more financial years.

Don't forget that a quarterly STP reporting concession may be available until 30 June 2021 for micro employers (1 to 4 employees) who use a registered tax or BAS agent.

Employers with 19 or fewer employees and are exempt from STP reporting for payment made to their closely held payees until 30 June 2021.

Tip! Your tax adviser can apply for an exemption on your behalf or let you know if you qualify for the temporary quarterly STP reporting concession.

Shareholder loans – minimum yearly repayments

If you have a loan from a private company you control (or from an interposed entity) and a complying loan agreement is in place, you must make a minimum yearly repayment by the end of the company's income year throughout the loan term. Failure to do so may result in your being taken to have received an unfranked dividend.

The ATO realises that, as a result of the COVID-19 pandemic, some borrowers are facing difficult circumstances beyond their control. If you are in that situation, and were unable to make the minimum repayment for 2019–20 by the due date (30 June 2020 in most cases), the ATO will look favourably on a request to extend the repayment period (up to 30 June 2021). Note the minimum yearly repayment for 2020–21 is due as normal by 30 June 2021.

You can request an extension by completing a streamlined [online application form](#).

Advising businesses through early engagement

The ATO recommends that you engage early with them to avoid mistakes if entering into complex tax and super arrangements. The ATO will work with you and your tax adviser to:

- explore your tax arrangement;
- provide advice to help you arrive at the right outcome; and
- request a draft application for a ruling (if relevant).

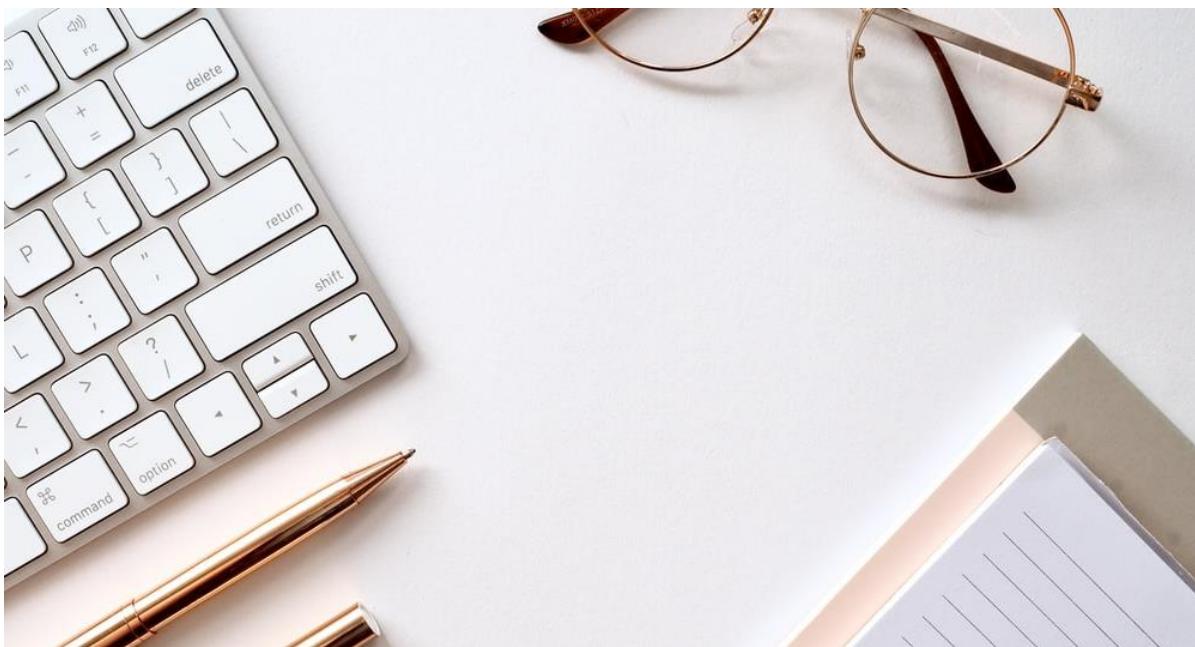
Foreign investment real estate rules

A foreign person must apply for foreign investment approval before they purchase Australian residential real estate and vacant land, unless they purchase it as joint tenants with a permanent resident or Australian citizen.

If you think you may have broken the foreign investment rules, you should contact the ATO. If you tell the ATO about your breach of the rules, the penalty amount may be lower than if the ATO detects your breach.

The ATO also encourages people to provide information about someone else who may be breaking the foreign investment rules. The ATO will investigate all reports of suspected breaches if enough information is provided.

You can complete the tip-off form on the ATO website or in the **Contact us** section of the ATO app, or phone the tip-off hotline on **1800 060 062**.



Tax tips

Varying your PAYG instalments

You can vary your PAYG instalments throughout the year if you think you will pay too much tax, compared with your estimated tax for the year.

To assist businesses affected by the COVID-19 pandemic, the ATO won't apply penalties or interest for the 2020–21 income year for excessive variations when you make your best attempt to estimate your end of year tax. However, general interest charges may apply to outstanding PAYG instalment balances.

Variations don't carry over into the new income year, so if you made variations in the 2019–20 income year, you may need to vary again in 2020–21. Your varied amount or rate will apply for all your remaining instalments for the income year, or until you make another variation.

Calculating and paying the right PAYG instalment amounts will help you manage your cashflow.

Tip! Talk to your tax adviser if you want to vary your PAYG instalments.

Small business CGT concessions

The small business CGT concessions (aggregated turnover under \$2 million – *not* \$10 million) are important, but very complex. Disputes with the ATO about the concessions are not uncommon.

In good news for small business, the Full Federal Court recently found that as the small business CGT concessions are intended to “help small business”, they should be construed beneficially rather than restrictively.

This approach assisted a taxpayer (Mr E) who sold a property used to store materials, tools, equipment and vehicles used in a building, bricklaying and paving business operated by Mr

E (and his wife) through a family trust. Some materials, etc. were stored in two 4m x 3m sheds and other materials, etc. were stored in the open. The property was visited a number of times a day in between jobs and tools and other items were collected on a daily basis.

The Court decided that the property was “used, or held ready for use, in the course of carrying on a business” and was therefore an “active asset”. This meant that Mr E could access the small business CGT concessions to reduce the capital gain made on the sale of the property.

Tip! If you are thinking about selling a business or business assets, talk to your tax adviser about how to minimise the tax that might be payable if you make a profit on the sale.

Calculating aggregated turnover

Whether a business is entitled to certain tax concessions – e.g. the simplified depreciation rules and the small business CGT concessions – depends on the business’ “aggregated turnover”.

Aggregated turnover is generally the business’ annual turnover plus the annual turnovers of affiliates of the entity and entities connected with the entity.

Annual turnover is all ordinary income the business derived in the ordinary course of carrying on a business for the income year.

The ATO has confirmed that JobKeeper payments are *not* included in annual turnover. This is because they are not derived in the ordinary course of carrying on a business, even though they are ordinary income (and therefore should be included in your assessable income). Other amounts that are not included in annual turnover are:

- GST charged on a transaction;
- amounts borrowed for the business;
- proceeds from selling business capital assets;
- insurance proceeds for the loss or destruction of a business asset; and
- amounts received from farm management deposit repayments

Closing a small business

Unfortunately, some businesses may need to close their doors – either temporarily or permanently – due to the COVID-19 pandemic. The ATO has called on such businesses that are closing temporarily to “do their best to keep up with tax and superannuation obligations”.

If you are in this situation and you need additional time or support, you should contact your registered tax professional or the ATO on **1800 806 218**.

If a business is forced to close permanently as a result of the COVID-19 pandemic, or for any other reason, it must still lodge any outstanding activity statements and instalment notices, make GST adjustments on the final activity statement and lodge final tax returns. This will enable the ATO to finalise the taxpayer’s account and issue any refunds that might be owed.

Once the entity’s tax affairs are finalised, the ABN and GST registration should also be cancelled. Business records must be kept for at least 5 years after the end of the financial year in which a business is sold or closed.



Other matters

Are your ABN details up-to-date?

Did you know that emergency services and government agencies use ABN details to help identify businesses in affected areas during times of emergency or natural disaster? It is therefore important to ensure your ABN details are correct, including:

- authorised contacts;
- the physical location of the business;
- the postal address and the email address; and
- the phone number.

It is advisable to list your own contact details and not your tax adviser's details.

The fastest way to update your details is through the Australian Business Register (ABR) [online services](#).

Log in using myGovID and Relationship Authorisation Manager (RAM).

Are you changing your business structure?

If you are changing your business structure, for example from a sole trader to a company, you will need a new ABN. Other situations where you need to cancel your ABN and apply for a new ABN include where changing from:

- individual/sole trader to partnership or trust;
- individual/sole trader to company or trust
- partnership to company or trust.

You must ensure that your ABN details are updated on your tax invoices. This is essential as your ABN is used to:

- identify your business identity to others when ordering and invoicing; and
- claim GST credits.

Other businesses and entities must withhold payment at the top marginal tax rate if the ABN quoted on the invoice is incorrect or the details do not match up.

Remember to ensure that you update your GST registration details whenever you get a new ABN.

Tip! Contact your tax adviser if you are considering changing your business structure. There are likely to be tax issues.

Working out if you have to pay superannuation for your workers

It is not always easy to work out when you have to make contributions under the superannuation guarantee (SG) scheme.

Generally, if you pay an employee \$450 or more (before tax) in a calendar month, you have to make SG contributions on top of their wages. This includes a family member working in your business.

If your employee is under 18, they must work for more than 30 hours per week to qualify.

You are required to make SG contributions regardless of whether the employee:

- is full-time, part-time or casual – working holiday-makers are also included;
- receives a superannuation pension or annuity while still working; or
- is a company director.

Although you generally don't need to make SG contributions for independent contractors, you may be required to make contributions for a contractor where the contract engaging them is wholly or principally for their labour.

Tip! It is not always easy to decide if a person working for you is an employee or an independent contractor. If you are at all uncertain, talk to your tax adviser.



Key tax dates

Date	Obligation
8 Nov 2020*	Wage condition deadline for JobKeeper fortnight 16
14 Nov 2020*	October JobKeeper monthly business declaration due
21 Nov 2020*	October monthly BAS due
22 Nov 2020*	Wage condition deadline for JobKeeper fortnight 17
28 Nov 2020*	Lodge and pay September quarterly SGC (if required)
1 Dec 2020	Full self assessment companies – pay 2019–20 income tax Non-full self assessment companies – lodge 2019-20 return
6 Dec 2020*	Wage condition deadline for JobKeeper fortnight 18
14 Dec 2020	November JobKeeper monthly business declaration due
19 Dec 2020*	Wage condition deadline for JobKeeper fortnight 19
21 Dec 2020	Lodge and pay November monthly BAS
3 Jan 2021*	Wage condition deadline for JobKeeper fortnight 20
14 Jan 2021	December JobKeeper monthly business declaration due
21 Jan 2021	Lodge and pay December monthly BAS
31 Jan 2021*	Closely held trust – lodge December quarterly TFN report
14 Feb 2021*	January JobKeeper monthly business declaration due
21 Feb 2020*	Lodge and pay January monthly BAS
28 Feb 2021*	Lodge and pay December quarterly BAS Lodge and pay December quarterly instalment notice Lodge annual GST return (if no tax return due) Lodge and pay December quarterly SGC (if required) Lodge and pay SMSF annual return for new SMSFs (unless otherwise advised)

*Next business day

Note! Talk to your tax agent to confirm the correct due dates for your own tax obligations. For example, you may have more time to lodge and pay if impacted by the COVID-19 pandemic.

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