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# BUSINESS MATTERS

Strategies for managing your business



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Tax agent  
71458007

## Treating employees as contractors

*The structure of the workforce is transforming, and many business owners are struggling to make sense of the rapid changes.*

The problem is that regulation, especially from the tax office, will always be a few steps behind changes that are happening in the real world. Sadly, this often means that compliance requirements are not befitting to current business practices. An area where this is glaringly apparent is the tax treatment of independent contractors vs employees.

The option to hire independent contractors increases flexibility, expertise and access to equipment, making it attractive to small business owners. Furthermore, many Australian workers are increasingly opting to work freelance instead of seeking permanent employment.

Unfortunately, business owners are often surprised to find out that there can be some severe penalties for incorrectly treating an employee as an independent contractor for tax purposes. The ATO's definitions of an employee and an independent contractor are fairly strict, and tend to come down on the side of classifying people as employees.

Businesses that incorrectly treat employees as contractors can face a set of heavy financial penalties including missed PAYG payments and super guarantee charges for missed superannuation payments. The super guarantee charges will include the actual super guarantee amounts (currently 9.5% of

the employee's gross pay) and penalties.

The ATO uses a combination of compliance and education to help employers ensure that they are correct in their tax treatment of workers.

Generally, an independent contractor will have a high degree of flexibility over their work, provide their own equipment, and will accept risk and liability for poor work. Independent contractors are required to pay their own taxes and make decisions in regards to how much income to contribute to their superannuation accounts.

Employees who perform work under the direct supervision of their employer, should not take on risk for their own work and have their superannuation paid by their employer. Employees have their taxes paid through the PAYG system.

Employers should note that even if a person has been treated as an independent contractor, they may still be eligible to file for unfair dismissal claims.

In the event that you are unsure as to whether or not your tax treatment of employees and independent contractors is compliant, seek advice from our office.

While there are many financial advantages to having independent contractors in place of employees, for example avoiding the super guarantee and payroll tax, you will likely suffer in the long run if you continue to be non-compliant.



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## JOVIC ACCOUNTING

**GEELOG OFFICE – HEAD OFFICE**  
80 PAKINGTON ST  
GEELOG WEST VIC 3218

**MELBOURNE OFFICE**  
SUITE 615,  
1 QUEENS RD  
MELBOURNE VIC 3001

**ALL MAIL TO**  
PO BOX 8152  
NEWTOWN VIC 3220

**ALL PHONE CONTACT**  
TEL (03) 5222 6962  
FAX (03) 5222 1477

**EMAIL**  
admin@jovicaccounting.com.au

**WEBSITE**  
www.jovicaccounting.com.au

**PRINCIPAL**  
Renée Jovic  
**PRACTICE MANAGER**  
Bruce Byrne  
**ACCOUNTANT**  
Sarah Trevena

Taxation Services  
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## Director penalty regime update

*Following a number of recent cases involving directors claiming that penalties under the director penalty regime should not apply to them, the ATO has released an update to counteract any misunderstandings.*

Directors have a legal responsibility of ensuring that their company meet PAYG withholding and SGC obligations, which is why the overarching objective of the regime is it to ensure that directors comply with certain taxation and superannuation responsibilities.

In an attempt to help directors (and those who are about to become directors) gain a better understanding of the regime, the ATO has issued a fact sheet that outlines

obligations in regards to unpaid and unreported PAYG and Superannuation Guarantee Charge amounts.

These obligations include, but are not limited to:

- Directors being personally liable for unpaid PAYG withholding or SGC amounts.
- Penalties still applying even if an individual is no longer a director of a company, or is a newly-appointed director.
- A director penalty notice will be issued to collect company debts where the company hasn't engaged to resolve outstanding obligations.
- Payment being the only option to remit the penalty if the associated company liability was not reported within three months of the due date.



## Using the superannuation clearing house

*The Superannuation Clearing House is a free service offered by the ATO to help small businesses in meeting their superannuation obligations.*

It is available to businesses with fewer than twenty employees.

From July 1 2014, all businesses with more than nineteen employees have been required to use a suitable superannuation clearing house. Most superannuation funds offer a clearing house, and are able to help you in

setting up this service. There are also private superannuation clearing houses that can help businesses with more than 19 employees in meeting their super obligations.

The advantage of the Superannuation Clearing House is that it allows business owners to meet their super guarantee obligations with a single electronic transfer.

By registering to use the Superannuation Clearing House, you are freed from

further super guarantee responsibilities provided that you pay the correct amount by the required due date and the payment is accepted by both the Clearing House and the superannuation fund.

Employers who are currently transferring superannuation to multiple accounts are likely to find the Clearing House particularly useful, as it minimises the likelihood of mistakes and reduces the labour involved with superannuation.

## Meeting your super obligations

*For many employers, it can be easy to forget the responsibility of managing your superannuation obligations amidst the busy lifestyle of managing a business or company.*

However, those who fail to meet these obligations are guaranteed to face some serious and even damaging liabilities.

Recently, the Australian Taxation Office (ATO) has identified industries where employers are facing a higher risk of not meeting their super obligations. These industries include child care services, building and industrial cleaning, pubs, bars and taverns.

The most common superannuation mistakes employers in these industries may make include:

- Not paying enough super for employees
- Missing due dates
- Not keeping accurate records
- Not passing on the employees TFN to their super fund
- Not understanding when super should be paid for contractors, and;
- Error recovery: if a date or amount is missed than a Superannuation Guarantee Charge Statement should be lodged and often it isn't

In an attempt to assist employers in counteracting these kinds of errors, the ATO is currently running an education campaign for business owners to help them better understand their super obligations.

If you think you might fall under the category of employers who do not understand their superannuation obligations, visit the ATO website for more information and details on the campaign. As of July 2015, the ATO will commence undertaking audits of employers who continue to not meet super obligations for their employees.

## Winding down your business

*There are many reasons that business owners may decide to exit their business, but in every case there are tax and superannuation considerations that should be taken into account.*

It pays to be aware of the regulations that surround moving on from a business so that you can plan accordingly and take steps to improve your final financial position. Another advantage is that you can leave your business feeling confident that you have met all of your compliance responsibilities and completed all of the necessary administrative tasks.

Here are a few of the important tasks that need to be completed when you exit a business:

**Lodging your final BAS:** Completing your final BAS can be a difficult task. Where a business has been sold, as opposed to wound up, the final sale price may be subject to GST.

**De-registering your roles:** You should only de-register your rolls with the ATO once the business has been sold, final payments have been made to employees, contractors and suppliers, and your final BAS has been

lodged and paid. For most businesses, de-registering your roles will involve cancelling GST registration, PAYG and the ABN. It is important to note that if you pay any expenses post de-registering then you will be unable to claim the relevant GST.

**Insurance:** Ensure that any insurance policies that you have remain active until your final day of operation. Cancelling your insurance too soon is extremely risky.

**Paying out staff entitlements:** Upon the closure of your business, you will need to pay out any annual leave that your employees have accrued. Businesses may also need to pay out eligible employees for long service entitlements. Furthermore, you will have to pay your superannuation guarantees for the final quarter that you have been in operation.

**Superannuation:** Business owners who are selling because they are planning on retiring, or who are nearing retirement age, have a number of generous capital gains tax (CGT) concessions available to them. These concessions may rely upon the proceeds going directly to an eligible superannuation fund. As such, it is advisable to seek advice from your accountant in regards to strategic timing



and maximising your concessional and/or non-concessional superannuations caps.

**Lodging your final tax return:** No matter what time of year you choose to close your business, you will still need to lodge a tax return come June 30.

Closing a business can be an emotionally taxing time, without the added stress of paperwork and answering to the ATO. Our team is here to help you handle this stressful period, and are more than happy to discuss your options with you.

## Getting your GST right

*The ATO has announced that one of its compliance focuses for the upcoming year will be GST compliance.*

The program will involve a combination of compliance and education to help business owners understand what is



involved in meeting their obligations.

Key areas of GST compliance focus will be registration, accuracy in BAS reporting, and GST fraud. The ATO will have improved data matching capacities to help in the course of investigation. External sources that the ATO will be seeking records from include banks, industry suppliers and other government agencies. This data will be electronically cross-matched with tax returns and business activity statements.

To ensure that your business doesn't accidentally fall afoul of the new program, we have compiled this brief overview of GST compliance requirements:

### GST registration

Businesses that have an annual turnover of more than \$75 000 are required to register for GST. However, if a business has an annual turnover of less than \$75 000 they may voluntarily register for GST. In the event that your annual turnover fluctuates, it is advisable to seek advice from your accountant in regards to whether or not

you should be registered for GST.

### Getting your BAS right

It is very common for businesses to make mistakes on their monthly/quarterly business activity statements. However, the ATO considers that a majority of these mistakes are inadvertent, and as such, are relatively lenient in allowing for corrections. It is generally easier to get your BAS right if you are lodging online, as there are various safeguards in place.

### Avoiding common mistakes

There are a number of simple mistakes that the ATO has identified as particularly common in BAS reporting, with the vast majority being easily avoidable. Particularly common errors include:

- Entering dollars and cents as opposed to whole dollar amounts
- Claiming GST on purchases that are not eligible
- Incorrect calculations, and;
- Using the wrong tax codes and entering information in the wrong sections.



## Guide to successful business borrowing

*In this current economic climate, many small businesses have seen a change in their ability to borrow funds from their bank.*

With banks conducting careful research to determine a business' risk factor it is more important than ever for businesses to maintain a good relationship with their bank in order to safeguard their future access to funds.

### Prepare a strong business plan

This is one of the first steps to ensure that the bank will identify it as a low risk business and therefore someone they are willing to give funds to.

A solid business plan highlights the viability of the business, information about the experience and success of the owners and managers, expenses which the loan will cover, as well as detailed sales expectations.

### Establishing a personal relationship

Over time, an owner establishes key

contacts within their bank that are familiar with their business and financial needs. Keeping these contacts informed of any changes to the business or cash flow projections before it comes as a surprise will build trust between the bank and the business.

### Knowing your business inside out

By keeping themselves updated of their own financial status by obtaining credit reports and public records, business owners will know what research the banks will obtain when deciding on the amount, if any, to loan to the business.

### Learn the banking language

Understanding banking terms such as credit ratings, cost of capital and other financial drivers will place business owners in a strong position when negotiating the terms of their loans.

### Keep the adviser informed

Financial advisers are there to advise and will have an intimate knowledge of bank



processes. Keeping them posted of any plans or changes will allow them to better advise the business on the best course of action, and ensure that the business will continue to prosper.

## Offering employees non-cash benefits

*Most small business owners would love to be able to offer their more valuable employees a pay raise.*

Increasing an employee's pay is likely to reduce staff turnover, increase job satisfaction and boost productivity by raising motivation and commitment. Unfortunately, most business owners are simply not in a position to offer their staff a larger pay packet.

However, there are a number of non-cash benefits that you may care to consider as an alternative course of action for recognising and rewarding

good work. These non-cash benefits may not have a dollar value. For example, allowing employees to work from home once a week or rearrange their working hours to better suit other commitments.

Non-cash benefits may also have an identifiable dollar value, and in this case employers need to be aware of fringe benefits tax (FBT) before they decide to offer a non-cash benefit. Non-cash benefits that attract FBT include, but are not limited to, personal use of a company car, cheap or interest free loans, the payment of school fees, and entertainment in the form of food and drinks.

Typically, where an employee is provided with a fringe benefit, the cost of the benefit is deducted from their gross (before tax) pay and the employer must pay FBT on this amount at 47%. Most employers will pass this tax cost onto the employee.

In most cases, FBT will not apply to benefits that are provided to independent contractors.

There are also some types of benefits that are not subject to FBT or receive an FBT concession, including some types of work related items, living away from home allowances, and benefits that are classified as 'minor benefits' (generally under \$300).



## Important tax dates

### MAY 15

2014 tax returns for all other entities that did not have to lodge earlier (including all remaining consolidated groups), and are not eligible for the 5 June 2015 concession.

### 21

April 2015 monthly activity statement is due for lodging and paying.

### 28

Fringe benefits tax annual return - due date for this payment.

### JUNE 5

Tax return lodgment, including companies and super funds where the tax return is not required earlier and both of the following criteria are met:

- non-taxable or a credit assessment as at latest year lodged
- non-taxable or receiving a credit assessment in the current year