

Admin Longmire

To: Glenn Longmire
Subject: Business Tax Update - November 2024



**Tax & Management Tools
For Small Business**

Australianbiz Pty Ltd
ABN 74 099 345 874

PO Box 521
Narrabeen NSW 2101

Web: www.australianbiz.com.au
Email: enquiry@australianbiz.com.au

Business tax updates is an exclusive service provided to the members of Australianbiz. These monthly updates are also available to members on our website.

Tax News and Updates November 2024

No.	Article	Link
1.	<p>Denying deductions for General Interest Charge (GIC) and Shortfall Interest Charge (SIC)</p> <p>The Government has introduced legislation to stop clients from claiming GIC and SIC as a tax deduction. The new rules will apply from 1 July 2025.</p> <p>GIC and SIC payable to the ATO is ordinarily deductible when the interest arises and not when paid (see, "incurred" and TD 2012/2W). As mentioned, the new rules propose to stop the deduction altogether. Clients will still be able to apply to the ATO to have the interest remitted, and generally, if you can show the failure to pay the ATO on time was due to circumstances outside the client's control, the ATO is more likely to respond favourably to a request for remission.</p> <p>Noting that clients will no longer be able to claim the GIC or the SIC as a tax deduction, you may see an increase in clients wishing to obtain external funding to pay outstanding ATO debts or to apply to the ATO for remission.</p> <p>Interest payable to financiers (such as banks, private funders, etc) is not affected by the new rules.</p>	<p>ATO website</p>
2.	<p>Increase in the Commonwealth penalty unit</p>	<p>Crimes and Other Legislation Amendment</p>

	<p>The Government has introduced legislation to increase the Commonwealth penalty unit from \$313 to \$330. The change will be effective 14 days after the Bill received royal assent.</p> <p>Penalty units apply to a range of offences under the tax and superannuation laws. For example, the increase in the amount of the penalty unit will increase the maximum failure to lodge on time penalty for SMEs with turnover up to \$20 million for each offence from \$3,130 to \$3,300.</p> <p>The <i>Crimes Act 1914</i> (Cth) provides for the automatic Consumer Price Index adjustment of penalty units every three years. The next indexation increase will occur around 1 July 2026.</p>	<p>(Omnibus No. 1) Bill 2024 – Parliament of Australia</p>
3.	<p>Taxpayers lose \$16 million tax appeal in the Federal Court over unexplained bank deposits</p> <p>Two brothers, Messrs George and Danny Youssef, have lost their tax appeal against the ATO in the Federal Court over millions of dollars of unexplained deposits made to their bank accounts. The brothers argued that the deposits should not have been taxed as income on the basis that they were gambling winnings or loan repayments. The brothers had also argued before the Administrative Appeals Tribunal that, in so far as they had any income, the income consisted of business income from a concrete pumping business, rent and interest.</p> <p>The Federal Court did not accept those arguments and found that the Tribunal had not made any error, and now the brothers face a tax bill exceeding \$15.7 million (inclusive of penalties and interest).</p> <p>This case is a salutary lesson to clients and accountants that contemporaneous records are essential to reducing tax risks. Poor or no record-keeping will always make it harder against the ATO.</p>	<p>Youssef v Commissioner of Taxation (Appeal) [2024] FCA 1154 (4 October 2024)</p>
4.	<p>Plumbing business wins superannuation appeal in the Administrative Appeals Tribunal (AAT)</p> <p>The AAT has overturned a decision by the ATO that a contractor (Mr Hargreaves) was an employee of a business (Peter Hatfield Plumbing) for superannuation purposes.</p> <p>The main factors taken into account by the AAT included:</p> <ul style="list-style-type: none"> • Mr Hargreaves was paid to produce a result, including that he was responsible for rectifying any of his own faulty work, • Mr Hargreaves had his own clients and was free to work for other businesses, • Mr Hargreaves could reject work that the offered, and • the parties negotiated the rates payable. <p>Ultimately, the AAT decided that Mr Hargreaves was not an employee of Peter Hatfield Plumbing for superannuation purposes.</p>	<p>Trustee for Peter Hatfield Trust v FC of T [2024] AATA 3428</p>

	<p>The outcome of these "employee / contractor" cases still largely relies on the specific facts and circumstances of each case. It is difficult to know the outcome precisely and the arrangements usually carry some risk.</p> <p>Finally, if a client is under a superannuation audit, then we remind clients and accountants to provide the ATO with a complete understanding of the arrangement, in conjunction with the ATO's usual request for a reply to its "superannuation questionnaires".</p>	
5.	<p>New ATO guidance on Part IVA and personal services businesses</p> <p>Further to last month's article on Practical Compliance Guideline PCG 2024/D2 (PCG) about the personal services income rules and Part IVA, we remind clients and accountants that the PCG is not law and just because a client's circumstances fit into a "higher risk" or "lower risk" category does not automatically mean Part IVA will or will not apply, or the client has done anything unlawful. Nonetheless, it is important to consider the PCG because it expresses how the ATO sees risk and could apply its resources.</p> <p>The PCG indicates that arrangements can still attract the ATO's attention, and the potential application of Part IVA, where:</p> <ul style="list-style-type: none"> • income is retained in a PSE (referred to as 'retention of profits' arrangements); and/or • income is diverted to associates of the individual who performs the services (referred to as 'income splitting' arrangements), <p>such that the income received in connection with the individual's services is taxed at an overall lower rate or another benefit is otherwise obtained, such as a timing benefit.</p> <p>It is crucial that clients and accountants obtain detailed advice on whether their arrangements are inconsistent with the law in this area (as opposed to the PCG, bearing in mind the PCG is not law, as mentioned).</p> <p>At present, the difficulty with the ATO's PCG is that it may cover circumstances that may not otherwise be subject to Part IVA. For instance, the PCG contains an example of an arrangement which the ATO says was for "clearly commercial purposes", but then goes on to conclude is nonetheless "high risk" (see, example 7 involving Kelly).</p>	<p>PCG 2024/D2 Legal database</p>
6.	<p>Administrative Review Tribunal starts</p> <p>On 14 October 2024, the Government's new Administrative Review Tribunal (ART) replaced the Administrative Appeals Tribunal (AAT).</p> <p>The ART is the forum where tax and superannuation appeals are heard against the ATO, usually after an objection decision is issued. For instance, clients and accountants may seek review in the ART of</p>	<p>ART website</p>

decisions made by the ATO in audits, private rulings, ABN cancellation cases, etc.

The ART will deliver an accessible, sustainable, and trusted federal administrative review system that serves the Australian community.

The ART's objective is to provide administrative review that:

- is fair and just,
- resolves applications in a timely manner, with as little formality and expense as possible,
- is accessible and responsive to each party's diverse needs,
- improves the transparency and quality of government decision-making, and
- promotes public trust and confidence in the Tribunal.

Any existing proceedings in the AAT were automatically moved to the ART from 14 October.

We remind clients and accountants that the ATO continues to operate a "small business litigation funding" and "test case funding" program, whereby the ATO pays for the cost of a client engaging their own lawyers. The programs are subject to specific selection criteria.

Aussies have had enough: ATO receives 250,000 tip-offs

Data reveals that Australians have reported bosses about tax avoidance and other dishonest behaviours more than 250,000 times since 2019.

ATO Assistant Commissioner Tony Goding said the number of reports received by the ATO reveals that Australians are fed up with dodgy behaviours in the community. Particularly in relation to taxpayers not declaring income, demanding cash from customers, paying workers in cash to avoid paying tax and super, not reporting sales, and where someone's lifestyle doesn't appear to match their income.

7. The ATO estimates there is around \$16 billion in stolen taxes because of businesses doing things like cash jobs each year. Building and construction, cafes and restaurants and hairdressing and beauty services topped the list of industries the ATO was tipped off about in 2023–24.

Approximately 90% of tip-offs analysed by the ATO in 2023–24 were deemed suitable for further investigation. This investigation is then carried out by specialised teams and taskforces within the ATO, including the cross-agency Shadow Economy Taskforce.

Businesses who have been operating in the shadow economy are being urged to speak to their registered tax professional or the ATO to work towards getting it right.

[Aussies have had enough: ATO receives 250,000 tip-offs | Australian Taxation Office](#)

[Click here to access the Australianbiz website](#)

Disclaimer

Tax updates are provided solely for general information purposes and are not intended as professional advice. Readers should not act on the information contained therein without proper advice from a suitably qualified professional.

Australianbiz, its representatives and the author(s) expressly disclaim all liability for any loss or damage to any person or organisation, whether a user of this site or not, for the consequences of anything done or omitted to be done by any such person relying on the contents of this information

Message protected by MailGuard: e-mail anti-virus, anti-spam and content filtering.
<https://www.mailguard.com.au/mg>