

Practice Update

APRIL 2021

JobKeeper comes to an end

The ATO has advised that the final JobKeeper payment will be processed in April 2021.

Enrolled businesses do not have to do anything when the program closes, although they will need to complete their final March monthly business declaration by 14 April 2021.

Also, once a business is no longer claiming JobKeeper Payments, it may start to be eligible to receive the JobMaker Hiring Credit for any additional employees that started employment on or after 7 October 2020.

ATO loses case on JobKeeper and backdated ABNs

On 24 March 2021, the Full Federal Court handed down its decision in a case concerned with the requirement that an entity claiming JobKeeper must have had an ABN on 12 March 2020, or a later time allowed by the ATO.

The Registrar of the Australian Business Register had reactivated the relevant entity's previously cancelled ABN after 12 March 2020, but with a backdated effective date on or before 12 March 2020.

The Court held that backdating an ABN to have an effective date on or before 12 March 2020 did **not** satisfy the requirement for the entity to have had an ABN on 12 March 2020.

However, the Court also held that the ATO's decision not to allow the entity a "later time" to have an ABN was a "reviewable decision", and that the Commissioner's discretion **should** be exercised in these circumstances (i.e., the Court held that the entity should be entitled to JobKeeper).

The Court's decision does not change the need to satisfy all of the other eligibility requirements.

Editor: Where the ATO has postponed finalising a decision regarding a taxpayer's eligibility for JobKeeper (and/or the cash flow boost) pending the Court's decision, the ATO will contact the affected taxpayer shortly to provide them with an update.

First criminal conviction for JobKeeper fraud

A person claiming to be a sole trader was convicted of three counts of making a false and misleading statement to the Commissioner of Taxation, in order to receive \$6,000 in JobKeeper payments to which he was not entitled, as he was not operating a genuine business and he had already agreed to be nominated by his full-time employer for the allowance.

The ATO has a dedicated integrity strategy that supports the administration of the Government's stimulus packages, with robust and efficient compliance systems that make it very easy to identify fraudulent behaviour and stop it.

ATO Deputy Commissioner Will Day said "Since the first payments were made in April, the ATO has monitored every payment, every day, every month, and will continue to do so until the last payment is made."

ATO's taxable payments reporting system update

The ATO has confirmed that more than 60,000 businesses have not yet complied with lodgement requirements under the taxable payments reporting system ('TPRS') for 2019/20.

The TPRS is a black economy measure designed to assist the ATO to identify contractors who don't report or under-report their income.

The ATO estimates that around 280,000 businesses need to lodge a *Taxable payments annual report* ('TPAR') for the 2020 financial year.

Importantly, 2020 was the first year that businesses that pay contractors to provide **road freight, information technology, security, investigation, or surveillance services** may need to lodge a TPAR with the ATO (in addition to those businesses providing **building and construction, cleaning, or courier services**).

Businesses who have not yet lodged need to lodge as soon as possible to avoid penalties.

ATO Assistant Commissioner Peter Holt added that some businesses **may not realise** they need to lodge a TPAR, but may be required to, depending on the percentage of payments received for deliveries or courier services.

"Many restaurants, cafés, grocery stores, pharmacies and retailers have started paying contractors to deliver their goods to their customers. These businesses may not have previously needed to lodge a TPAR. However, if the total payments received for these deliveries or courier services are 10% or more of the total annual business income, you'll need to lodge," Mr Holt said.

FBT rates and thresholds for the 2021/22 FBT year

The ATO has updated its webpage containing the fringe benefits tax ('FBT') rates and thresholds for the 2017/18 to 2021/22 FBT years.

Two amounts that were not previously announced for the 2021/22 FBT year are:

- ❑ the FBT record keeping exemption is \$8,923 (up from \$8,853 for the 2020/21 FBT year); and
- ❑ the statutory or benchmark interest rate is 4.52% (down from 4.80% for the 2020/21 FBT year).

The ATO also separately released two taxation determinations setting out further rates and thresholds for the FBT year commencing on 1 April 2021, being:

- Motor vehicle (other than a car) — cents per kilometre rate; and
- Reasonable food and drink amounts for employees living away from home.

Editor: Please contact our office if you need more information about these rates or FBT in general.

Warning regarding new illegal retirement planning scheme

The ATO has recently identified a new scheme where SMSF trustees were informed that they could set up a new SMSF to roll-over the fund balance from the old SMSF and then liquidate their old SMSF, in an attempt to avoid paying potential tax liabilities.

The ATO warns that taking part in this arrangement and others like it can result in civil and criminal actions and could ultimately put the members' retirement savings at risk.

If a trustee of an SMSF believes they have been approached by a promoter of a retirement planning scheme, the ATO recommends they seek a second opinion from a registered tax agent or appropriately qualified financial adviser, and also report the promoter to the ATO.

New succession planning guide for family businesses

The Australian Small Business and Family Enterprise Ombudsman, in conjunction with Family Business Australia, has released a new online guide to succession planning — the *"Introductory Guide to Family Business Succession Planning"* — which provides a step-by-step guide to passing the family business on to the next generation.

A recent report revealing that 54% of family businesses have no documented succession plan in place and no retirement plan for the current CEO.

The easy-to-read guide offers tips on how to handle tense conversations that can arise between family members throughout the transition phase.

The guide is free and available on both the Family Business Australia and the ASBFEO's websites.

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.