

MARCH 2019

TECHNICAL UPDATE



RISK OF LOSING TAX DEDUCTIONS FOR PAYMENTS TO EMPLOYEES AND CONTRACTORS

New tax legislation¹ will deny a tax deduction to a business which fails in its obligations with respect to Pay-As-You-Go Withholding. In particular, a business will be denied a deduction for the underlying payment where it:

- ▶ Pays employees and fails to withhold tax from their wages; or
- ▶ Pays other suppliers who fail to quote an Australian Business Number (ABN) in relation to the supply, without withholding tax (other than in relation to supplies that are wholly of goods); or
- ▶ Actually withholds the tax as required, but either:
 - fails to report the withholding in the appropriate Business Activity Statement (BAS); or
 - fails to lodge the BAS on which the withholding is reported on time.

There are two points of which businesses should be particularly aware. The first is the requirement to obtain a valid ABN from their suppliers and to withhold at the top marginal rate of tax if they don't provide their ABN. While this requirement has been part of the law since 2000, many businesses have ceased to focus on it.

The second is that on-time lodgement of BASs is now even more important than ever, because a failure to lodge the BAS on time may result in a business permanently losing its tax deduction for wages paid.

An exemption is available for voluntary notification to the Australian Taxation Office (ATO) of mistakes in relation to compliance with withholding requirements. Therefore, provided the mistake is fixed before the ATO asks about it (e.g. lodge the BAS late, but before the ATO enquiry) a tax deduction will still be available. Businesses should not intend on relying on this exemption however, because the ATO's data collection systems are sophisticated at picking up non-compliance in real time and launching enquiries.

This change to the tax legislation is an additional sanction in addition to the ATO's existing powers to pursue directors of companies personally for unpaid Pay-As-You-Go Withholding.

¹Treasury Laws Amendment (Black Economy Taskforce Measures No. 2) Bill 2018, enacted on 29 November 2018, contains an amendment to Income Tax Assessment Act 1997 to deny a tax deduction to a business which fails in its obligations with respect to Pay-As-You-Go Withholding.

BDO COMMENT

As this legislation commences on 1 July 2019, businesses would be wise to conduct a review of their systems to ensure that they are working appropriately before that date. In particular, a renewed focus on obtaining a valid ABN from all suppliers is suggested.



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