



Your Knowledge

February 2022

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Cash injection for struggling businesses

Businesses struggling with the Omicron wave of the pandemic have been offered new grants and support in NSW.

New South Wales

The NSW Small Business Support package provides eligible employing businesses with a lump sum payment of 20% of weekly payroll, up to a maximum of \$5,000 per week for the month of February 2022. The minimum weekly payment for employers is \$750 per week.

Eligible non-employing businesses will receive \$500 per week (paid as a lump sum of \$2,000).

To access the package, businesses must:

- Have an aggregated annual turnover between \$75,000 and \$50 million (inclusive) for the year ended 30 June 2021; and
- Experienced a decline in turnover of at least 40% due to Public Health Orders or the impact of COVID-19 during the

month of January 2022

compared to January 2021 or January 2020; and

- Experienced a decline in turnover of 40% or more from 1 to 14 February 2022 compared to the same fortnight in either 2021 or 2020 (you must use the same comparison year utilised in the decline in turnover test for January); and
- Maintain their employee headcount from “the date of the announcement of the scheme” (30 January 2022).

The support package only covers the month of February 2022.

[Applications for support](#) are expected to open mid-February.

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Note: The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained.

PCR and RAT tests to be tax deductible, FBT free



The Treasurer has announced that PCR and rapid antigen tests (RAT) will be tax deductible for individuals and exempt from fringe benefits tax (FBT) for employers if purchased for work purposes.

There has been confusion over the tax treatment of RAT tests with the Prime Minister stating for some time that they are tax deductible, but in reality, the tests were probably only deductible in limited circumstances.

If you have had to purchase RAT tests to be able to work, you will be able to receive a tax deduction for the cost you have incurred from 1 July 2021 (you will need evidence of the expense). If the RAT test cost \$20, someone on a marginal tax rate of 32.5% would receive a tax benefit of \$6.50.

For business, it is expected that RAT, PCR and other coronavirus tests will be exempt from FBT from the 2021-22 FBT year.

Legislation enabling the change is expected before Parliament this week.

Pandemic Leave Disaster Payments rules change

The rules for the Pandemic Leave Disaster Payment, the payment accessible to those who have lost work because they have had to self-isolate with COVID-19, or are caring for someone who contracted it, changed on 18 January 2022.

The new rules change the definition of a close contact in line with the harmonised national definition. The payment is now accessible if you are a close contact because you either usually live with the person who has tested positive with COVID-19, or have stayed in the same household for more than 4 hours with the person who has tested positive with COVID-19 during their infectious period.

The payment provides:

- \$450 if you lost at least 8 hours or a full day's work, and less than 20 hours of work
- \$750 if you lost 20 hours or more of work.

To claim the payment, you will need to be an Australian citizen, permanent visa holder (or temporary visa holder with a right to work) or a New Zealand passport holder. The payment is also subject to means testing with a \$10,000 illiquid assets test.

Quote of the month

“Regard your good name as the richest jewel you can possibly be possessed of -- for credit is like fire; when once you have kindled it you may easily preserve it, but if you once extinguish it, you will find it an arduous task to rekindle it again. The way to a good reputation is to endeavor to be what you desire to appear.”

Socrates



Professional Services Firm Profits Guidance Finalised

The Australian Taxation Office's finalised position on the allocation of profits from professional firms starts on 1 July 2022

The ATO's guidance uses a series of factors to determine the level of risk associated with profits generated by a professional services firm and how they flow through to individual practitioners and their related parties. The ATO may look to apply the general anti-avoidance rules in Part IVA to practitioners who don't fall within the low-risk category.

With the new guidelines taking effect on 1 July 2022, professional firms will need to assess their structures now to understand their risk rating, and if necessary, either make changes to reduce their risks level or ensure appropriate documentation is in place to justify their position.

The problem

The finalised guidance has had a long gestation period. The ATO has been concerned for some time about how many professional services firms are structured – specifically, professional practices such as lawyers, accountants, architects, medical practices, engineers, architects etc., operating through trusts, companies and partnerships of discretionary trusts and how the profits from these practices are being taxed.

The ATO guidance takes a strong stance on structures designed to divert income in a way that results in principal practitioners receiving relatively small amounts of income personally for their work and reducing their taxable income. Where these structures appear to be in place to divert income to create a tax benefit for

to remove any tax benefit received by a taxpayer where they entered into an arrangement in a contrived manner in order to obtain a tax benefit. Significant penalties can also apply when Part IVA is triggered.

Determining the risk rating

The guidance sets out a series of tests which are used to calculate a risk score. This risk score is then used to classify the practitioner as falling within a Green, Amber or Red risk zone, which determines if the ATO should take a closer look at you and your firm. Those in the green zone are at low risk of the ATO directing its compliance efforts to you. Those in the red zone, however, can expect the ATO to conduct further analysis as a matter of priority which could lead to an ATO audit.

Before calculating the risk score it is necessary to consider two gateway tests:

- **Gateway 1** - considers whether there is commercial rationale for the business structure and the way in which profits are distributed, especially in the form of remuneration paid. Red flags would include arrangements that are more complex than necessary to achieve the relevant commercial objective, and where the tax result is at odds with the commercial venture, for example, where a tax loss is claimed for a profitable commercial venture.
- **Gateway 2** - requires an assessment of whether there are any high-risk features. The ATO sets out some examples of arrangements that would

be considered high-risk, including the use of financing arrangements relating to transactions between related parties.

If the gateway tests are passed, then you can self-assess your risk level against the ATO's risk assessment factors. There are three factors to be considered:

- The professional's share of profit from the firm (and service entities etc) compared with the share of firm profit derived by the professional and their related parties;
- The total effective tax rate for income received from the firm by the professional and their related parties; and
- The professional's remuneration as a percentage of the commercial benchmark for the services provided to the firm.

The resulting 'score' from these factors determines your risk zone. Some arrangements that were considered low risk in prior years under the ATO's previous guidance may now fall into a higher risk zone. In these cases, the ATO is allowing a transitional period for those practitioners to continue to apply the previous guidelines until 30 June 2024.

For professional services firms, it will be important to assess the risk level and this needs to be done for each principal practitioner separately. Those in the amber or red zone who want to be classified as low risk need to start thinking about what needs to change to move into the lower risk zone.

Where other compliance issues are present - such as failure to recognise capital gains, misuse of the superannuation systems, failure to lodge returns or late lodgement, etc., - a green zone risk assessment will not apply.

If you are concerned about your position or about any of the above matters, please contact us to discuss.

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