

## Managing the Debt Drain – the critical issues for small business

February and March are traditionally the worst cashflow months for small business – the Christmas rush is over, the Business Activity Statement is due, and payments slow down with a dip in consumer spending. You might be ok but your customers could be under pressure and often whoever wields the most influence gets paid first.

No one likes a late payer and two Government measures tackle the small business debt issue from different ends of the spectrum. We take a look at the issues and their impact on business, and what you can do about managing obstinate debtors.

### **ATO Adding Tax debt to your credit record**

From 1 July 2017, the Australian Taxation Office (ATO) will inform credit rating agencies of businesses that have outstanding tax debts. Given 65.2% (\$12.5 billion worth) of these late payers are small businesses, the move will put significant

pressure on business operators to prioritise tax debt above other creditors.

Announced in the Mid-Year Economic and Fiscal Outlook (MYEFO), the plan will see the ATO disclose the tax debt information of businesses that have "...not effectively engaged with the ATO to manage these debts" to credit agencies. This means that if your business has a tax debt and you have not taken steps to work with the ATO, they will ensure that you cannot access new finance or potentially maintain existing finance levels without first addressing the debt to the ATO. There are two problems with this approach. The first is that once your credit rating is downgraded, it's very difficult to repair. The second is the legitimacy of the ATO's tax debt claim – what if they it is wrong?

The measure will initially only apply to businesses with Australian Business Numbers and tax debt of more than \$10,000 that is at least 90 days overdue. We have little doubt however that this measure will eventually extend to all tax debtors.

The important thing is that anyone with an outstanding tax debt engage with the ATO. This will prevent the credit agency threat being triggered. If you are in this scenario, we can help by engaging the ATO on your behalf.

### **Why Big Businesses don't pay small business on time**

At the other end of the spectrum is the Payment Times and Practices Inquiry by the Australian Small Business and Family Enterprise Ombudsman (ASBFEO). The inquiry's issue paper reveals that collectively, Australian small businesses are owed around \$26 billion in unpaid debts at any one time. In the last financial year, late payments have increased for six out of ten SMEs with one in four businesses experiencing an average payment delay of 31 to 60 days past agreed terms.

Debt plays a significant factor in a business's cashflow and survival. If larger businesses don't pay smaller suppliers within the terms of trade, the small business often has to resort to external

funding to manage the cashflow requirements of the business.

The inquiry is looking at options to improve the payment times of large business. Some of these solutions are already in play in some States such as a requirement for large projects to use supply chain finance where project bank accounts hold funds in trust to ensure supply chain participants are paid. Other solutions are in the 'naming and shaming category' where large businesses would be obliged to report their current payment times or for smaller businesses to report late payments.

The inquiry is expected to deliver its final report to Government in March 2017.

### What to do about debt

Dealing with delinquent debtors is painful, particularly when you can't afford to lose the customer. The most obvious tactic is to stay on top of debtors: Ensure that your contracts and invoices have clear payment terms, and you have a procedure to follow through once a customer breaks these terms. Importantly, ensure you keep a record of actions you take to recover debt. This record will come into play if you have to use a more formal resolution mechanism.

Ultimately, some customers will not pay you even if your terms are clear and you have done everything in your power to recover the debt. Often small businesses just give up and don't deal with the customer in question again. Some of the other options available to you are:

- Final letters of demand with the relevant court documents attached. Legal document provider LawCentral has a clever product for this that takes you through the Letter of Demand to the appropriate court documentation. Sometimes the letter will be enough to trigger action from the debtor to pay but you must have the intent of following through. These kits are available for NSW, QLD, VIC and WA.
- Engage a debt recovery agency. Commission rates for debt collection services vary between 5% and 30% of the value of the debt.
- Sell the debt for a small percentage of the owing value.

## What employers need to know about FBT 2017

We know that no one likes to pay tax and certainly no more tax than they should. But very few people want to be on the wrong side of an Australian Taxation Office (ATO) audit where fees and penalties are paid for neglecting your obligations.

The Fringe Benefits Tax (FBT) year ends on 31 March which means the ATO will be looking closely at whether or not every employer who should be paying FBT is, and whether they are paying the right amount.

### Housekeeping

If your business has cars and you need to record odometer readings at the first and last days of the FBT year (31 March and 1 April), have your team take a photo on their phone and email it through to a central contact person – it will save running around to every car.

### Should I be registered for FBT

If you have employees (including Directors of a company) then it's possible your business needs to register for FBT. Generally, your business needs to register for FBT if you are providing benefits to employees that are not exempt from FBT. So, if you provide cars, car spaces, reimburse private (not business) expenses, provide entertainment (food and drink), employee discounts etc., then you are likely to be providing a fringe benefit.

There are exemptions to FBT, such as portable electronic devices like laptops and iPads (although there are rules around how many), protective clothing, tools of trade etc.. If your business only provides these exempt items, or items that are infrequent and valued under \$300, then you are unlikely to have to worry about FBT.

### The FBT rate is changing

The FBT rate will decrease on 1 April 2017. The rate change is because of the 2% Debt Tax (Temporary Budget Repair Levy) on high income earners which imposes a 2% levy on every dollar of a taxpayer's annual taxable income over \$180,000 from 1 July 2014 until 30 June 2017. The FBT rate was brought into line with the Debt Tax to discourage high income earners from using the FBT system to lower their taxable income. Assuming the Debt Tax does end on 30 June 2017 as anticipated and not extended, the FBT and gross

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up rates will decrease to previous levels from 1 April 2017.

FBT year	FBT Rate	Type 1 Gross Up rate	Type 2 Gross Up rate
1 April 2015 to 31 March 2017	49%	2.1463	1.9608
1 April 2017 onwards	47%	2.0802	1.8868

**Managing the Log Book just got easier**

Log books need to be kept by employers using the operating cost method for FBT purposes so that they can estimate and validate the business use percentage of a car. The more personal use the more tax paid. Anyone who has been through this process knows it is time consuming, particularly where there are multiple cars. The ATO has now made the process simpler where employers have 20 or more ‘tools of trade’ cars. A tool of trade car is a car required for the job – like for a sales representative required to travel extensively for business purposes.

There are a few conditions to access the simplified method:

- Valid log books need to be kept for at least 75% of the cars in the log book year;
- The employer (not the employee) chose the make and model of the car;
- Each car in the fleet has a value less than the luxury car limit when purchased;
- The cars are not provided as part of an employee’s remuneration package (e.g., under a salary packaging arrangement); and
- Employees cannot elect to receive additional remuneration in lieu of the use of the cars.

If these conditions are met, the employer can apply an average business use percentage to all ‘tool of trade’ cars held in the fleet in the log book year and the following four years. Employers who can access this simplified method can apply this approach for 5 years assuming the key details remain the same.

**Review salary packaging & the opportunity for high income earners**

Salary packaging has been less attractive over the last few years with the higher FBT rate and restrictions being placed on some of the popular FBT concessions. With the FBT rate changing again on 1 April 2017, it’s important to review all

existing arrangements and make sure that everyone understands - employers and employees - what the package looks like once the rate decreases. In general, salary packaging will become less expensive to provide once the FBT rate goes down again, so look for the opportunities to save.

For high income earners earning above \$180,000, you have a one-off opportunity to reduce your taxable income when the FBT rate is reduced from 1 April 2017 until the Debt Tax is removed on 30 June 2017 (see the FBT rate is changing). Just be certain that any arrangements put in place are executed correctly. The ATO will be looking closely at any packaging arrangements that drop an individual’s income below the Debt Levy threshold level.

Briefly, an effective salary sacrifice arrangement is one that:

- Forms part of the employee's remuneration, i.e. the benefits are replacing amounts that would have been payable as salary.
- Is documented in writing. The employee needs to agree in writing to forgo a certain amount of income before that income has been earned, in return for benefits of a similar value. If the ATO want to clarify this point there will need to be documentation and a trail - paperwork and transactions - backing it up.
- Is not reimbursed to the employee’s bank account. The salary sacrificed amount needs to come out of the salary or wages.

**What the ATO are targeting this FBT year – businesses that have bought cars and living away from home allowances**

Datamatching has become more sophisticated over the years to the point where there very few transactions you can make without the ATO knowing about it. While the team at the ATO don’t go through data line by line they do look at anomalies. These anomalies, or exception reports, narrow down who should come under scrutiny. If you or your business comes up on one of these lists the first thing that will happen is that the ATO will reach out and start asking for more information to validate your position. This is why having your documentation in place is so important. If you don’t have records validating your position the next step might be an audit.

One of those anomalies this FBT year is where a business has purchased vehicles but fringe benefits have not been reported to the ATO. While this

position might be legitimate, it's important to have the documentation backing up your position.

While the changes to the living away from home allowance (LAFHA) rules have been in place for a number of years, it's an area of continued consternation for the ATO. One of the key issues is whether the employee is actually living away from home, as opposed to simply travelling in the course of their work or relocating. If you provide these benefits to employees, you need to ensure you have sufficient evidence to support any exemption claimed and that the employee has met the relevant conditions. It's up to the employer to not only obtain the signed LAFHA declaration from the employee, but also to verify and maintain records to evidence that the employee or their spouse has retained an ownership interest (i.e. ownership of or a lease agreement over) in the home that they are living away from and that it remains available to them while they were required to work in another location by the employer.

## Penalty rates and the impact of change

The Fair Work Commission (FWC) has moved to cut Sunday and public holiday penalty rates.

### The changes to penalty rates are not yet in force – see **When will the changes take effect?**

Flagged back in 2014, the review into penalty rates was part of the FWC's four yearly review of all Modern Awards. Hearings, submissions and reviews have been ongoing since 2015. The outcome of that process (see [AM2014/305 Penalty rates case](#)) is to reduce Sunday and public holiday rates in the following Modern Awards:

- Hospitality Industry (General) Award 2010 [MA000009]
- Registered and Licensed Clubs Award 2010 [MA000058]
- Restaurant Industry Award 2010 [MA000119]
- Fast Food Industry Award 2010 [MA000003]
- General Retail Industry Award 2010 [MA000004]
- Hair and Beauty Industry Award 2010 [MA000005]
- Pharmacy Industry Award 2010 [MA000012]

### When will the changes take effect?

The public holiday penalty rate reduction will come into effect from 1 July 2017 with the exception of the Clubs Award, which remains unchanged.

For the reduction in Sunday penalty rates, transitional measures will be put in place from 1 July 2017. The FWC has flagged that the reduction may be via a series of annual instalments so the full impact of the reduction will be graduated. The decision on how penalty rates will be reduced and over what time period won't be known until May 2017.

Not everything is as simple as it seems with some penalty rate changes only impacting on employees at certain levels. For example, in the Fast Food Industry Award, Sunday penalty rates for Level 1 employees will decrease from 150% to 125% for full and part timers, and from 175% to 150% for casual employees. Level 2 and Level 3 employees are unaffected.

There are also some minor variations to the early/late night work loadings in the Restaurant and Fast Food Awards that will take effect in late March 2017. These variations don't change the loading but the spread of hours; changing it from midnight to 7am to midnight to 6am.

It will be important for all employers affected by the Award changes to not only understand what Award their employees are covered by but at what level. While nothing needs to be done now, keep an eye out for the finalised Awards and other changes from May.

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