

# client alert

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## Super guarantee loopholes closed

The concept of a superannuation guarantee – the legal requirement for your employer to contribute 9.5% of your salary into a nominated super account – should be familiar to everyone, as it makes up the bulk of most people's future retirement income. You may also salary-sacrifice amounts of your salary to put extra into your super.

Until recently, loopholes in the law meant that your employer could count your salary-sacrificed amounts towards their super guarantee contribution amounts – essentially working against your intention to boost your super. Employers could also calculate their super guarantee obligations based on your post-sacrifice earnings rather than on your full pre-sacrifice earnings.

Depending on your employment agreement, these loopholes meant that if you salary-sacrificed an amount equal to or more than your employer's super guarantee amount, your employer could choose to not contribute any amount and the legal requirements of the super guarantee would still be met.

**TIP:** It's important to note that this wasn't the original intention of the law, and not all employers would choose to exploit these loopholes. However, where they did, employees who salary-sacrificed could be short-changed and end up with lower super contributions as well as a lower salary overall.

The good news is that the law has now been changed. From 1 January 2020, amounts that you salary-sacrifice to super can't be used to reduce your employer's super guarantee obligations, and employers must calculate their super guarantee obligations based on all of your ordinary time earnings (OTE), *including* any amounts you sacrifice into superannuation that would have otherwise been OTE.

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## ATO tackling international tax evasion

Australian tax residents are taxed in Australia on their worldwide income. While most do the right thing and declare all their income, some people and businesses try to avoid paying tax by exploiting secrecy provisions and information-sharing gaps between countries.

A recent coordinated effort by the Joint Chiefs of Global Tax Enforcement (J5) has yielded evidence of tax evasion by Australians. The J5 consists of the tax and revenue agencies of Australia, the United Kingdom, the United States, Canada and the Netherlands and was initially formed in 2018 to fight global tax evasion. The countries share intelligence on international tax crime as well as money laundering.

According to the ATO, several hundred Australians are suspected of participating in arrangements with an international financial institution in Central America whose products and services are believed to be facilitating worldwide money laundering and tax evasion. Multiple investigations are currently under way, and anyone with information about the scheme or other similar arrangements is encouraged to contact the ATO.

The ATO has a network of international tax treaties and information exchange agreements with over 100 jurisdictions. In recent years over 2,500 exchanges of information have occurred, enabling the ATO to identify unpaid tax amounts totalling \$1 billion.

**TIP:** The message from the ATO is that anyone with offshore income or assets is better off declaring their interests voluntarily. Those who do so may be eligible for reductions in related administrative penalties and interest charges.

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## New measures to combat illegal phoenixing

New laws are now in place to target illegal phoenixing of companies in Australia.

Phoenix activity is when a new company is created – “rising from the ashes” of another company that was in debt and has been deliberately liquidated – to continue the business of the old company while avoiding having to pay its debts. Recent estimates are that illegal phoenix activity directly costs Australian businesses, employees and governments between \$2.85 billion and \$5.13 billion each year.

To combat this type of debt and tax evasion, the new laws target a range of behaviours, including preventing property transfers to defeat creditors, improving the accountability requirements for resigning company directors, allowing the ATO to collect estimates of anticipated GST liabilities and authorising the ATO to retain tax refunds where lodgements are outstanding.

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## Insurance payouts: are they taxable?

In recent months, parts of Australia have been battered by a combination of fire and floods. As people try to piece their lives together in the aftermath, insurance payouts can go a long way in helping rebuild homes and replace lost items.

However, if you receive an insurance payout in relation to your business, home business or rental property you need to be aware there may be associated tax consequences. For example, if you keep a home office or run a business from home, or make money from renting out your home on a short-stay website, you may be subject to capital gains tax (CGT) when receiving an insurance payout on the home.

Businesses that receive an insurance payment may be subject to varying tax consequences depending on what the payment is designed to replace.

**TIP:** If you've recently received an insurance payment or you're expecting one, contact us to find out more about how your tax obligations could be affected.

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## Australia's independent tax complaints investigator

Do you know who to turn to when you have a complaint about the ATO? Whether you're an individual or business, the Inspector-General of Taxation and Taxation Ombudsman (IGTO) should be your first port of call.

As the Taxation Ombudsman, the IGTO provides all taxpayers with an independent complaints investigation service. As the Inspector-General of Taxation, it also conducts reviews and provides independent advice and recommendations to government, ATO and other departments.

**Important:** Clients should not act solely on the basis of the material contained in Client Alert. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. Client Alert is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.

The IGTO can investigate and assist with issues including extensions of time to pay; the ATO's debt recovery actions; delays with processing tax returns; delays in ATO communication and responses; information the ATO has considered regarding taxpayers' matters; understanding the ATO's actions and decisions; and identifying available options and other relevant agencies that can help.

Complaints can be made online and via phone or post, and services are offered in languages other than English as well as for people who are hearing, sight or speech impaired.

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## ATO scrutiny on car parking fringe benefits

The ATO has started contacting certain employers that provide car parking fringe benefits to their employees to ensure that all fringe benefits tax (FBT) obligations are being met. Generally, car parking fringe benefits arise where the car is parked on the business premises of the entity, used by the employee to travel between home and their primary place of employment and is parked for more than four hours between 7 am and 7 pm, and where a commercial parking station located within 1 km of the premises charges more than the car parking threshold amount.

Employers have a choice of three methods to calculate the taxable value of the benefits: the commercial parking station method, the average cost method and the market value method. The method currently under ATO scrutiny is the market value method, which states that the taxable value of a car parking benefit is the amount that the recipient could reasonably be expected to have to pay if the provider and the recipient were dealing with each other under arm's length conditions.

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## Foreign residents and the main residence exemption

Laws limiting foreign residents' ability to claim the CGT main residence exemption are now in place. This means that if you're a foreign resident for tax purposes at the time you sign a contract to sell a property that was your main residence, you may be liable for tens of thousands of dollars in CGT. Some limited exemptions apply for “life events”, as well as property purchased before 9 May 2017 and disposed of before 30 June 2020.

According to the ATO, a person's residency status in earlier income years will not be relevant and there will be no partial CGT main residence exemption. Therefore, not only are current foreign residents affected, but current Australian residents who are thinking of spending extended periods overseas for work or other purposes may also need to factor in this change to any plans related to selling a main residence while overseas.