

AAT News

Welcome to the July 2018 edition of the AAT Australia's eNews and Views. In this edition you'll find out all about:

- 5 common errors related to STP
- GST on property settlement of new residential premises
- NSW Supreme Court has ruled an Employsure contract is not enforceable
- Phoenixing is a big problem for small business; what can be done about it?

5 Common errors related to STP

1. STP records are being 'finalised' when they are not required to be.
2. Payroll items are reported to the ATO in their relevant payroll field each STP pay event. The ATO has advised that they have identified pay code set-up errors and have advised that employers need to check with their payroll software provider to ensure they are using the correct fields in the set-up.
3. Pay events are being received with only 1 employee where there are known to be multiple employees. It is important to check with the lodgement report in the ATO portals to check that the information is correct and the set-up within the software is working.
4. Some STP reporting events are not physically being reported at the same time that the employees are paid, as is the requirement.
5. Gateway errors affecting STP data making it through to the ATO. For example, Employers/intermediaries need to report a value in SG or OTE; they can't both be blank.

The ATO has put together a guide for employers that you can access [here](#).

It has been a busier-than-usual EOFY for many

This has been a busier-than-usual end of financial year process for bookkeepers with many preparing the last run of Payment Summaries for their 'large employer' clients who are entering the Single Touch Payroll (STP) reporting regime as of 1 July.

The roll out of STP is going relatively well, with some smaller employers, not yet caught by the STP legislative net, voluntarily opting in. There are some pain points for tax professionals that the ATO is currently working with industry groups to alleviate these irritants as far as possible as STP progresses, including their requirements around how and when authorisations for STP lodgements are mandated. We expect to hear further from the ATO in the near future, to clarify their requirements and accommodate a practical solution that adheres to the law.

There is great opportunity for bookkeepers to assist small business in the transition to STP over the next 12-18 months. For those wanting to add greater depth to their payroll skills, the Diploma of Payroll Services launched earlier this year is a great place to start and is approved by the Tax Practitioners Board as relevant Continuing Professional Education.

For more information about the Diploma of Payroll Services and the 5% discount for AAT members please click [here](#).

GST on property settlement of new residential premises

From 1 July 2018, purchasers of new residential premises or potential residential land may be required to withhold an amount for GST from the purchase price and remit this to the ATO.

The legislation received Royal assent on 29 March 2018 and intends to prevent property developers from undertaking illegal "Phoenixing" activity and avoid paying their GST obligations.

The building company selling the residential property or "supplier" is required to provide purchasers with information to assist with compliance around this obligation. This notification from the supplier must include:

- Their ABN
- The amount to be paid to the ATO
- The date that the withholding is due to be paid to the ATO
- The GST inclusive market value of the property

When the purchaser acquires a property they must complete the online “GST property settlement withholding” (form one) and the “GST property settlement date confirmation” (form two).

[Form one](#) can be lodged any time after a contract has been entered into and prior to the date the withholding obligation would fall due, (usually settlement date). If the contract is an instalment contract, the withholding payment is due on the date of the first instalment payment (separate to the deposit). Upon lodgement of form one, the ATO will send an email to the purchaser confirming the unique payment reference number (PRN) and the lodgement reference number (LRN) to be included in form two.

[Form two](#) must be lodged once the withholding obligation is due and confirms the settlement date and requires the PRN and LRN supplied with the confirmation email sent upon lodgement of form one.

With a standard contract, the payment of the withheld amount is due to be paid to the ATO on the date of settlement. Under instalment contracts, the payment of the withholding amount is due to the ATO on the date of the first instalment.

Source: <https://www.ato.gov.au/Business/GST/In-detail/Your-industry/Property/GST-at-settlement---a-guide-for-purchasers-and-their-representatives/>

NSW Supreme Court has ruled an Employsure contract is not enforceable

If you have clients who are unhappily locked into an Employsure contract, you may want to share this news article with them.

Emloysure sued their client, Zintix, after they attempted to quit their contract with Employsure ceasing to pay their instalments required against the contract 8 months after signing. Employsure pursued legal action, demanding payment of \$18,463, stating that the contract clause (c) required that non-payment would “result in the total balance outstanding becoming payable immediately in full”. Whilst initially being successful with their claim in the NSW Local Court, however, when Zintix appealed this decision to the NSW Supreme Court, the result was quite different.

Under contract law, a key principle is that a penalty clause is “void” and therefore not enforceable. The NSW Supreme Court ruled that the clause (c) in question was indeed a penalty clause and was therefore unenforceable. The Court further ruled that Zintix would not have to pay the claimed money and Employsure would have to pay their customers legal

expenses.

Source: <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2018/924.html>

Phoenixing is a big problem for small business, but what can be done about it?

Illegal Phoenix activity is when a business does not pay its debts, and goes into liquidation to avoid paying these debts, but continues to trade under a different business name leaving the creditors and employees of the previous entity without payment. This sort of activity has a significant impact on individuals, other businesses and the community and the ATO are working via the Black Economy Taskforce to prevent this illegal activity from happening.

Some signs to look out for relating to Phoenixing include:

- Employee entitlements not being paid
- Wages being underpaid or paid late
- A high level of creditor payments overdue
- A change in business name whilst continuing to trade
- Quotes that are constantly well below that of competitors

If you notice any of these signs with your employers, as a tax professional you should carefully consider your next steps taking into consideration your requirement to maintain client confidentiality under the TPB Code of Conduct, please refer to [our previous article on this](#).

So, what can be done about it?

Minister for Financial Services, Kelly O'Dwyer has recently announced the launch of a Phoenix hotline for impacted creditors and employees to report suspect activity. The Australian Small Business and Family Enterprise Ombudsman, Kate Carnell, said that the Phoenix hotline will not protect small businesses falling victim to illegal Phoenix activity as they are most often unsecured creditors and at the bottom of the list in terms of being paid when insolvency action is taken.

“By the time action can be taken against companies and their directors, what little money is left will go directly to secured creditors, such as the ATO and the banks,” said Ms Carnell.

“And eligible employees will have their wages paid by Fair Entitlements

Guarantee – a legislative safety net scheme to pay employees who lose their jobs due to the liquidation or bankruptcy of their employer,

“One way of protecting some small businesses is to enact John Murray’s building and construction industry recommendations; particularly, a deemed statutory trust set up for projects over \$1 million.

“Money would be quarantined in a separate legislated account and would not be available for use by the company. It would be used to pay the people who did the work – the subcontractors.

“As we know, the construction industry has a track record of poor payment practices, insolvency and phoenixing, so statutory trusts will go some way to alleviate subcontractors and other small businesses not being paid as the result of phoenix activity.

“We also support a unique director identifier so crooked directors can’t be involved in multiple instances of phoenixing.

“Let’s level the playing field for small businesses suffering at the hands of Australia’s phoenixing and provide some real protection for them, because it’s costing the small business sector a lot of money too,” said Ms Carnell.

AAT wholeheartedly support Ms Carnell’s suggestions. We strongly suggest that you are vigilant in looking out for your contractors who are working with businesses who are showing some of the warning signs that Phoenix activity may be taking place.

Source(s): <http://www.asbfeo.gov.au/news/news-articles/phoenix-hotline-good-idea-will-not-protect-small-businesses>

<https://www.news.com.au/national/breaking-news/phoenix-hotline-to-catch-dodgy-operators/news-story/6f63e1db0e63441ffe26bd26a96c4544>

Join our Facebook Discussion Group

Feedback from members indicates that community is very important to accounting technicians. In response the AAT Team has established a Facebook group especially for AAT members to join in an online community and discuss your successes and your not-so-successes, ask questions, give support to your colleagues and enjoy networking with your peers. We will be posting articles, information pieces, event details plus more. Click through here to join in today:

[AAT Facebook Group](#)

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[July Tech Talk - MYOB Dashboard](#)
[AAT / IPA Networking Evening](#)

Feedback

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