

Client Newsletter

Legislation to combat illegal phoenix activity

The Government has announced a package of reforms to tackle illegal phoenix behaviour.

By way of background, phoenixing occurs when the controllers of a company strip the company's assets and transfer them to another company, to avoid paying the original company's debts.

The proposed measures will deter and disrupt the core behaviours of phoenix operators by:

- creating new criminal and civil offences, attaching the highest penalties available under the law, to target those who engage in and facilitate illegal phoenix transactions;
- preventing directors from backdating their resignations to avoid personal liability;
- preventing sole directors from resigning and leaving a company as an empty corporate shell with no directors;
- restricting the voting rights of related creditors of the phoenix company at meetings regarding the appointment or removal and replacement of a liquidator;
- making directors personally liable for GST liabilities, as part of extended director penalty provisions; and
- extending the ATO's existing power to retain refunds where there are outstanding tax lodgements.

A new Phoenix Hotline is also being established, which will make it easier to report suspected phoenix behaviour.

Editor: According to the Government, the proposed measures are tightly targeted at those who misuse the corporate form, while minimising any unintended impacts on legitimate business restructuring. Whether they will be able to achieve this goal or not is yet to be seen...



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“Tomorrow is only found in the calendar of fools.” - Og Mandino

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More help for drought-affected farmers

As part of the next phase of its **drought assistance policy** (which includes various other measures), the Government announced that farmers will be able to **immediately deduct** the cost of **fodder storage assets**.

Previously, these types of assets (such as silos and hay sheds used to store grain and other animal feed storage) were required to be depreciated over three years.

This measure is designed to make it easier for farmers to invest in more infrastructure to stockpile fodder during the drought.

This measure is available for fodder storage assets first used, or installed ready for use, **from 19 August 2018** (being the date of the announcement), and complements the \$20,000 instant write-off already available to small business entities.

Editor: The relevant legislation giving effect to this announcement was fast-tracked through Parliament to provide certainty for these drought-stricken farmers, passing both Houses on 20 September 2018.



Increase in Private Health Insurance excesses

Legislation has been passed by Parliament to implement the Private Health Insurance ('PHI') reforms announced by the Government in October 2017.

The measures are designed to simplify PHI and make it more affordable for consumers by improving the value of PHI either in the form of lower premiums and/or improved cover for certain benefits.

Of particular interest from a tax perspective is the **increase in the maximum voluntary excess** levels for products providing individuals with an exemption from the Medicare levy surcharge.

The increased levels of voluntary excesses that insurers can apply are:

- * \$750 (up from \$500) in any 12-month period for singles; or
- * \$1,500 (up from \$1,000) in any 12-month period for couples/families.

These increases will apply from the 2019 income year, with private health insurers permitted to offer products with the new higher excesses from 1 April 2019.

Editor: This is a positive change, as the excess levels have not changed since 2000. Whilst there is no requirement for consumers to move to products with higher excesses, it is expected that more affordable PHI will encourage more people to take out cover.

Profit Focus Partners

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Increased scrutiny of home office claims

Last year, 6.7 million taxpayers claimed a record \$7.9 billion in deductions for 'other work-related expenses', which includes home office expenses.

Reportedly, due to a high number of mistakes, errors and questionable claims for home office expenses, the ATO has recently advised that it will be increasing attention, scrutiny and education on these claims this tax time.

In particular, the ATO has flagged their concerns relating to taxpayers who are claiming:

- ◆ expenses they never paid for;
- ◆ expenses that their employer has reimbursed them for;
- ◆ private expenses; and
- ◆ expenses with no supporting records.

Whilst additional costs incurred as a direct result of working from home can be claimed, care must be taken not to claim private expenses as well.

The ATO has indicated that one of the biggest issues they face is people claiming the **entire** amount of expenses (e.g., their internet or mobile phone), rather than just the extra portion relating to work.

Provided the taxpayer is able to demonstrate that they have incurred **additional** costs of running expenses (e.g., electricity for heating, cooling and lighting), then these are generally deductible.

In contrast, employees are generally not able to claim any portion of occupancy-related expenses (e.g., rent, mortgage repayments, property insurance, land taxes and rates).

Taxpayers are warned that the ATO may contact their employers to verify expenses claimed for working from home.

In addition, the ATO expects to disallow a lot of claims where the taxpayer has not kept adequate records to prove that they have legitimately incurred the relevant expense and that the expense was related to their work.

As with the claiming of deductions in general, supporting records must be kept when claiming work-from-home expenses, which may include receipts, diary entries and itemised phone bills.

Importantly, only the additional work-related portion of the relevant expense is deductible.

Advancement in technology has allowed the ATO to deploy sophisticated systems and analytics to spot claims that do not 'add up' and claims that are out of the ordinary compared to others in similar occupations, earning similar income.

Finally, the ATO has reminded taxpayers of the '**three golden rules**' to follow when claiming work-from-home deductions, being:

- ◆ the taxpayer must have spent the money themselves and have not been reimbursed;
- ◆ it must be directly related to earning the taxpayer's income, not a personal expense; and
- ◆ the taxpayer must have a record to prove the expense.