Tax deductibility of ‘non-compliant’ payments about to get the chop

From 1 July 2019, businesses will only be able to claim deductions for payments that are made to workers (employees or contractors) when the employer has complied with the pay-as-you-go (PAYG) withholding and other tax reporting obligations for that payment.

If the PAYG withholding rules require a business to withhold an amount from a payment that the business makes to a worker, the business must:

- withhold the amount from the payment before it is paid, and
- report the amount to the ATO.

Any payments that are made where the business hasn’t withheld or reported the PAYG tax are dubbed by the ATO to be “non-compliant payments”, and for these an employer will not be able to claim a deduction.

Note however that if the employer makes a mistake and withholds or reports an incorrect amount, they will generally not lose their deduction — as long as the ATO is notified and a correction is made.

Payments that must comply
An employer can only claim a deduction for the following payments if they comply with the PAYG withholding rules. This includes payments:

- of salary, wages, commissions, bonuses or allowances to an employee
- of directors' fees
- under a labour hire arrangement, and
- for a supply of services (except from supplies of goods and real property) where the contractor has not provided their ABN.

Non-cash benefits
A non-cash benefit is something that is provided instead of paying cash — for example goods or services. In this case, a business still needs to report to the ATO in order for this to be classified as a compliant payment and therefore allow the employer to claim a deduction.