



## What's new?

### Depreciation for small businesses

The Bill proposing to extend the \$20,000 threshold for the small business instant asset write-off (**IAWO**) until 30 June 2025 is currently before the Senate. To be eligible for the **IAWO**, the business must have an aggregated annual turnover of less than \$10 million, the asset must cost less than \$20,000 (excluding any entitlements to GST credits) and the asset must be first used or installed ready for use for a taxable purpose by 30 June 2025.

### Increase in the value of a penalty unit

Many Commonwealth laws (including tax laws) impose penalties based on a multiple of a penalty unit. For example, if convicted of failing to lodge your tax return on time, the maximum penalty is 20 penalty units. This increases to 40 penalty units if it is your second conviction and even more for a third or subsequent conviction.

The value of a penalty unit has increased from \$313 to \$330 with effect from 7 November 2024.

# What has the ATO been saying?

## Are you a small or medium business?

Small and medium businesses qualify for a range of tax concessions. For most tax purposes, a business qualifies as a small business if its aggregated annual turnover is less than \$10 million. For the purposes of the small business CGT concessions, however, the turnover threshold is only \$2 million.

A business qualifies as a medium business if its aggregated annual turnover is at least \$10 million but less than \$50 million.

Aggregated turnover is worked out by adding together the annual turnovers of the business, any 'affiliates' of the business and any entities 'connected with' the business. An entity is "connected with" another entity if either one controls the other or if both are controlled by the same third entity.

In certain circumstances, the ATO has a discretion to determine that one entity does not control another entity if the control percentage is at least 40% but less than 50%.

**Tip!** If you have any concerns whether your business qualifies as a small or medium business for tax purposes, talk to your tax adviser.

## Business income and expenses

If you are running a business, most income received by the business is assessable for income tax purposes. The total amount is referred to as 'assessable income'.

You need to report assessable income in your business' tax return. It includes:

- cash income and income from online transactions;
- commissions and investment earnings;
- recovered bad debts for which your business previously claimed a tax deduction;
- most government payments;
- net capital gains;
- increases in the value of trading stock;
- stock taken for personal use; and
- payments from an insurance claim related to your business.

Make sure to also check what income you can exclude – for example, some COVID-19 government payments are not assessable if you meet the eligibility criteria.

Remember you can reduce your business' taxable income by claiming business tax deductions, as long as:

- the expense is necessarily incurred in earning your business' assessable income;
- you claim only the business portion if the expense is for a mix of business and private use, or apply the fringe benefits tax (**FBT**) provisions; and
- you have records to substantiate your claims.

Expenses may include:

- motor vehicle and travel expenses;
- items related to protecting staff from COVID-19;
- employee superannuation contributions; and
- payments you make to workers (including their wages) as long as you have complied with the pay as you go (**PAYG**) withholding and reporting obligations for each payment.

**Tip!** Your tax adviser can help you with your tax obligations.

## Hiring new employees for the festive season?

As the festive season approaches, you may be thinking of hiring new employees to help with your business.

Here are some key things to remember when it comes to your tax and superannuation obligations.

### *Withhold the right amount of tax*

As an employer, you will need to make sure you are withholding the right amount of tax from payments you make to your employees and other payees.

This helps them to meet their end-of-year tax liabilities.

Your accounting or payroll software will help you do this.

### *Don't forget to pay superannuation guarantee (SG)*

You must pay SG to all eligible employees' super funds in full and on time to avoid paying the SG charge. The minimum level of support for the 2024–25 tax year is 11.5% of 'ordinary time earnings.'

### *Report through Single Touch Payroll (STP)*

If you are still not reporting through STP and do not have an approved exemption, deferral or concession in place, you should start reporting now.

If you have just started a business or recently employed staff, you will need to report through STP from your first payday.

Remember, if you report through STP, you do not need to send your employee's completed TFN declaration to the ATO. It will have already received this information through your STP reporting. You'll still need to keep this information for your own records.

**Tip!** If you have any concerns about your tax obligations as an employer, talk to your tax adviser.



## Entertaining your employees?

With the festive season approaching, you may be planning a party or similar event (e.g. a bowls day) for your employees. If so, make sure you consider the FBT implications of the party or other event.

These will depend on:

- the amount spent on each employee;
- when and where the event is held;
- the value and type of gifts provided; and
- who attends – is it just employees, or are partners, clients or suppliers also invited?

Don't forget to keep all records relating to the entertainment-related fringe benefits provided by your business, including how the taxable value of benefits is worked out.

**Tip!** Talk to your tax adviser to discuss any FBT implications.

## Market valuation

More than 200 provisions in the tax law require a taxpayer to determine the value of an asset or liability. Examples include:

- market value substitution rules used for CGT and income tax purposes;
- asset threshold tests such as those in relation to the small business CGT concessions;
- indirect tax rules such as the GST margin scheme rules;
- businesses consolidating for income tax purposes; and
- transfer pricing rules affecting non-arm's length international dealings.

Valuing assets (or liabilities) for tax purposes can therefore be a crucial part of business operations.

### *Getting a market valuation*

A valuation must be objective and supported with appropriate evidence.

Valuations undertaken by professional valuers are more credible than those provided by someone who is not a professional valuer.

When you engage a valuer, you must provide them with clear instructions and accurate information. You need to demonstrate that you have:

- set out the scope and purpose of the valuation;
- acknowledged the valuer's independence to draw conclusions and write their report;
- recognised that the valuer can refuse to provide an opinion or report if you do not provide the information and explanations they need;
- granted the necessary access to your premises and records;
- provided all necessary help to complete the report; and
- stated that any fee is not dependent on the report's outcome.

Instructions to valuers are usually documented in a written request or letter of engagement. Generally, if you engage and properly instruct a professional valuer, you will not be liable for penalties if the ATO finds the professional valuation is deficient.

### *Valuation reports*

At a minimum, valuation reports should contain the following:

- the purpose of the valuation;
- the scope of the valuation;
- details of the asset being valued;
- the date it was conducted;
- if it is a retrospective valuation assessment;
- the date of inspection (if applicable);
- records to explain the basis of the market value; and
- the value.

Depending on what is being valued and when it is valued, you may need additional information in your report.

**Tip!** Valuing assets and liabilities for tax purposes is complex, particularly in the context of the requirements of the tax system. Talk to your tax adviser if your business needs to obtain a valuation.

### **Using a motor vehicle for business?**

Here are four things to keep in mind when claiming motor vehicle expenses – such as fuel, oil, servicing and registration – for your business:

- If you operate your business as a sole trader or partnership (where at least one of the partners is an individual), the method you must use to calculate your deduction depends on the type of vehicle.

- For cars, you must use either the cents per kilometre method or the logbook method. The cents per kilometre rate for the current income year (2024–25) is 88 cents per kilometre (up to a maximum of 5,000 kilometres).
- For all other vehicles, you must use the actual costs method, where you claim the actual costs of expenses you incurred based on receipts.
- If you use the logbook or actual costs method, remember you can only claim the business portion of your motor vehicle expenses.
- If you operate your business through a company or trust, you must use the actual costs method to work out the deductions you are entitled to, regardless of the type of motor vehicle you use. Any non-business use of the vehicle by an employee of the business is dealt with by the FBT provisions.
- If you use the logbook or actual costs method, you can claim depreciation or decline in value only for the business portion of the motor vehicle. The maximum amount you can claim as a deduction for the depreciation of your car is \$69,674 for 2024–25 or the cost of the vehicle (whichever is less).

### Varying your PAYG instalments

If you are a pay as you go (**PAYG**) instalment amount payer, your instalments have been increased by the gross domestic product (**GDP**) adjustment factor. For the 2024–25 income year, the GDP adjustment factor is 6%.

You can vary your PAYG instalments if you think your current instalments will be more or less than your expected tax liability for the year. Your varied amount or rate will apply for the remainder of your income year or until you make another variation. You or your tax adviser can lodge your variation online.

Businesses are encouraged to review their tax position regularly, so that their PAYG instalments reflect their expected tax liability for the year.

### Allocation of profits within professional firms

Are you a professional who carries on business in partnerships with others? The ATO has reminded individual professional practitioners (**IPPs**) of its compliance approach where an IPP redirects income arising from their professional services to an associated entity and, as a result, they significantly reduce their tax liability.

You must assess if your arrangement has a sound commercial rationale. An arrangement that shows a lack of commercial rationale can:

- seem more complex than necessary to achieve the relevant commercial objective;
- appear to serve no real purpose other than to gain a tax advantage;
- have a tax result that appears to be at odds with its commercial or economic result;
- result in little or no risk in circumstances where significant risks would normally be expected;
- operate on non-commercial terms or in a non-arm's length manner; or
- present a gap between the substance of what is being achieved and the legal form it takes.

### *No high-risk features gateway*

You must also assess that your arrangement does not have high-risk features.

Arrangements with high-risk features can:

- have financing arrangements relating to non-arm's length transactions;
- exploit the difference between accounting standards and tax law;
- involve multiple classes of shares and units, including creating discretionary entitlements such as dividend access shares;
- involve multiple assignments or disposals of an equity interest;
- misuse the superannuation system, including assignments or disposals of an interest to associated self-managed superannuation funds (**SMSFs**);
- distribute income to entities, other than the IPP, with losses.

If the ATO identifies arrangements that lack apparent commercial rationale or have high-risk features, they may consider applying anti-avoidance provisions or other integrity rules.

**Tip!** Talk to your tax adviser before redirecting income to an associated entity.

### **Assigning a partnership interest**

When a partner assigns their partnership interest to an individual or other entity (the assignee), the individual or other entity is usually related to the partner (the assignor). These assignments are commonly known as *Everett assignments*, after the 1980 High Court case *Federal Commissioner of Taxation v Everett*.

In the case of an Everett assignment, the assignor holds the assigned partnership interest on trust for the assignee. The assignment does not make the assignee a partner in the partnership or give the assignee any entitlement to the assets, management or administration of the partnership or the right to inspect books and accounts.

### *ATO's risk assessment approach*

The ATO's compliance guidelines clarify how the ATP assesses the risk and its compliance approach in relation to Everett assignments.

An arrangement may be high risk where:

- it purports to admit an individual who is not an owner or equity holder in the partnership as a partner of the partnership;
- a partner's relationship with the partnership has characteristics indicating that the relationship is akin to a contractor or employee of the partnership.

The ATO also considers a partner undertaking an Everett assignment as high-risk if they:

- do not have rights to full participation in management and the benefits of partnership;
- receive a fixed drawdown or salary when they have limited or no exposure to the risks and benefits associated with the performance of the partnership to that drawdown or salary;
- are indemnified by partners for any professional liability in respect of actions against the partnership.

If an Everett assignment has high-risk features, the ATO is likely to give closer attention to the individual facts and circumstances of the arrangement. This includes a deeper consideration of whether any anti-avoidance provisions apply.

### *Small business CGT concessions*

The small business CGT concessions are available only for capital gains arising from CGT events that relate to rights or interests that entitle an entity to income or capital of a partnership by making that entity a partner of the partnership.

**Tip!** If contemplating an Everett assignment, talk to your tax adviser. They can advise you on the tax consequences.

### **How's your record keeping?**

The ATO has reminded businesses about the importance of keeping the correct records. For one thing, good record-keeping makes things easier at tax time.

When it comes to record keeping, there are five rules. You need to:

- keep all records related to starting, running, changing, and selling or closing your business that are relevant to your tax and superannuation affairs;
- store records safely to prevent damage and protect information from being changed (you must not change relevant information in records);
- keep most records for five years (for example, you need to keep records of tax losses for up to five years after you have fully claimed the loss);
- be able to show the ATO your records if they ask for them; and
- ensure your records are in English or easily converted to English.

**Tip!** Talk to your tax adviser about what records to keep and how to keep them.

### **Update your ABN details**

When was the last time you checked your business' Australian business number (**ABN**) details on the Australian Business Register (**ABR**)? If you are not sure, it's time to check the details are up to date.

Emergency services and government agencies use ABN details to identify businesses in areas affected by emergencies, so it's important to check your business' physical business address and postal address are listed.

Other ABN details include authorised contacts, contact details and business activities.

If the details are out of date, your business risks missing out on important assistance, information or opportunities such as financial grants.

It's your responsibility to keep your business' details up to date, but your tax adviser can update them on your behalf.

If your business is no longer using its ABN, you need to cancel it. The ATO actively reviews ABN entitlement and may cancel your business' ABN if there are no signs of business activity.





### Small business litigation funding

The ATO is committed to supporting small business to manage their disputes with the ATO in the Administrative Review Tribunal (**ART**). (The Administrative Review Tribunal replaced the Administrative Appeals Tribunal last month.)

If you are a small business in dispute with the ATO in the ART, you may be eligible for litigation funding of your reasonable legal expenses under the Small Business Litigation Funding program if the criteria and expectations set out below are met.

#### *Criteria*

You must meet the following three criteria to apply for funding:

- You are a small business (sole trader, partnership, company or trust). This means for the year in dispute, you operated a business for all or part of the income year and had an aggregated annual turnover of less than \$10 million.
- The ART confirms the dispute is in the Taxation and Business jurisdictional area and is in relation to a 'small business taxation decision' and you are not, and have not been, legally represented in the ART in the dispute.
- The ATO has engaged external legal representation in the ART dispute. The date the ATO decides to engage external legal representation is the date your eligibility for funding starts.

#### *Expectations*

Once the criteria have been met, the ATO will consider your application for funding.

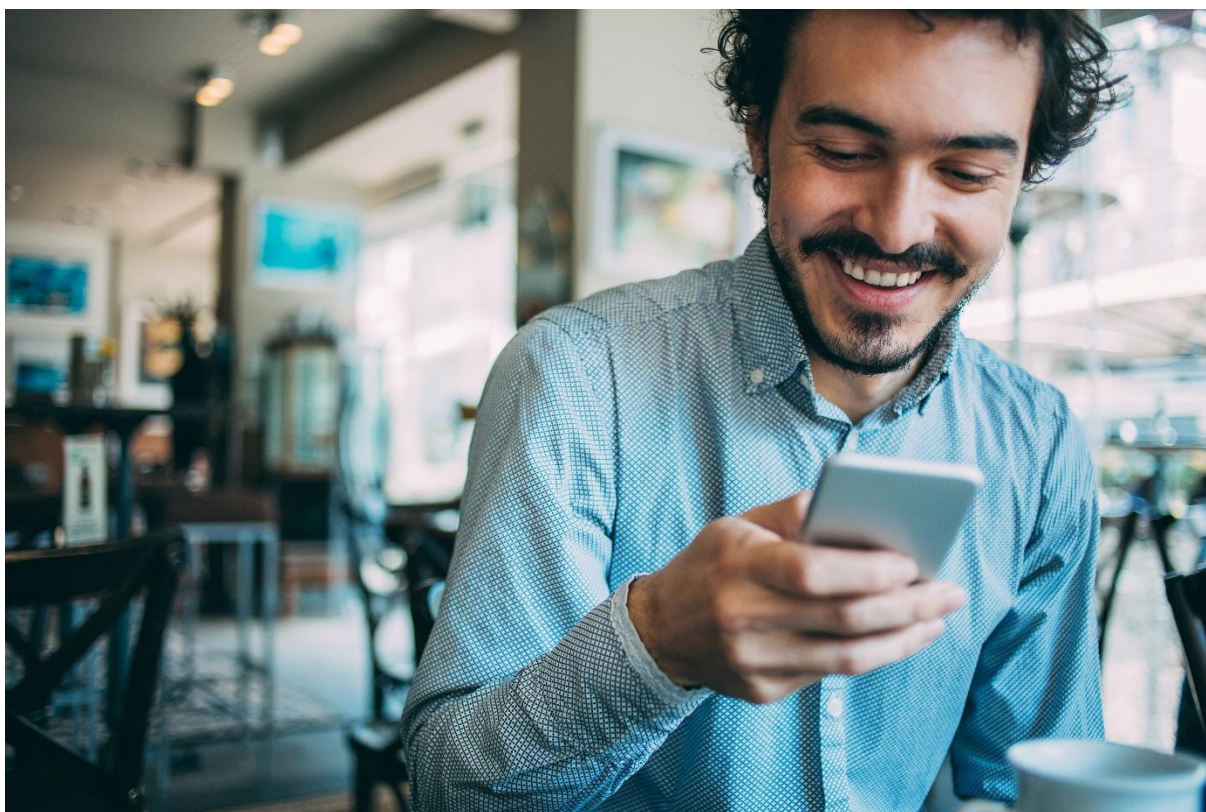
The ATO will need to be satisfied of the following:

- The legal representative chosen by the small business must not be a related party to that small business to avoid conflict-of-interest issues. Examples of related parties are a legal representative who is a director or shareholder of the small business or a family member of a director or shareholder of the small business.
- The matter must not involve a tax avoidance scheme, a scheme to avoid superannuation regulatory provisions, fraud or evasion where a formal finding has been made by the ATO or cash economy issues.
- The matter must not appear to be an attempt to gain a windfall or an outcome contrary to the original intent of the legislation or public policy.
- You must not have a history of failing to lodge returns, or not lodging returns on time, or failing to respond to informal or formal requests made by the ATO for information.

In addition, the small business and their legal representatives must demonstrate their willingness to progress the dispute in a timely and efficient manner to avoid delays. Any indication of a lack of such willingness (based on past or current behaviour) may result in the cessation of funding unless a different legal practitioner is engaged.

If you are eligible for small business litigation funding and accept the ATO's offer, you will be given a funding deed containing the terms for funding. You and an ATO representative will need to sign the deed before small business litigation funding can start.

Funding under the program may cover some or all of your reasonable legal costs related to progressing a funded tribunal matter. It does not cover tax agent or accountant fees and is paid at the discretion of the ATO.



## Indirect tax matters

### Fixing GST errors

If your business made an error when reporting GST claims on a past business activity statement (**BAS**), you may be able to correct it on the next BAS.

Errors are mistakes made when completing a BAS that would result in your business paying too much tax (credit error) or paying too little tax (debit error).

#### *Credit errors*

Credit errors can include:

- reporting a GST sale twice;
- overstating the GST on sales;
- omitting or understating a decreasing GST adjustment or overstating an increasing GST adjustment.

You can correct a credit error on a later BAS that is lodged within the period of review for the earlier reporting period.

The period of review starts on the day you lodge your BAS and ends four years and one day later.

If a credit error relates to GST credits, there is an additional time limit. You cannot correct an error to claim additional GST credits where the four-year credit time limit for claiming those GST credits has expired.

### Debit errors

Debit errors can include:

- failing to include GST on a taxable sale;
- understating the GST on sales (e.g. reporting a lesser amount for GST on sales, rather than the correct amount);
- overstating GST credits (e.g. claiming GST credits for a purchase twice).

Current GST turnover	Debit error time limit
Less than \$20 million	The debit error must be corrected on a BAS that is lodged <i>within 18 months</i> of the due date of the BAS in which the error was made.
\$20 million or more	The debit error must be corrected on a BAS that is lodged <i>within 12 months</i> of the due date of the BAS in which the error was made.

Time limits apply for the correction of a debit error from the time the debit error *occurred* (not when it was discovered).

You can correct a debit error on a later BAS only if it is lodged within the debit error time limit that corresponds with your current GST turnover as shown in the table below.

If the debit error time limit has expired, you need to revise the period that contains the error if the period of review has not yet expired.

There is a debit error value limit. This means that you can correct a debit error only to the extent that the net sum of the debit errors is within the debit error value limit that corresponds with your current GST turnover.

So, for example, if your current GST turnover is less than \$20 million, the debit error value limit is \$12,500; if your current GST turnover is at least \$20 million but less than \$100 million, the debit error value limit is \$25,000.

**Tip!** Your tax adviser can help you prepare and lodge BASs and assist with correcting errors.

### Don't miss out on fuel tax credits

If you are registered for GST and fuel tax credits, you can claim credits for the excise duty paid on fuel used in eligible business activities. The credits are claimed in your BAS.

This includes fuel used in:

- machinery, plant and equipment;
- light vehicles travelling on private roads or off public roads (you cannot claim for fuel used on public roads);
- heavy vehicles.

Remember to check that you are claiming only for eligible fuels. For example, diesel exhaust fluids (such as Adblue or other additives) are not taxable fuels – they do not attract excise duty so you cannot claim credits for them.

The rate you use depends on:

- when you acquired the fuel (not when you use it);
- the type of fuel;
- the activities it is used for.

You need to apportion your fuel so you are claiming only the fuel tax credits you are entitled to. You need to keep complete records to support your claim and methodology – regardless of the method you use.

**Tip!** Rates changed on 1 July 2024 and 5 August 2024 so talk to your tax adviser to ensure you are applying the correct rates.

## GST fraud

Operation Protego is an ATO-led investigation into large-scale GST fraud that was promoted particularly on social media. The attempted fraud involves an individual:

- inventing a fake business;
- lodging a fraudulent ABN application; and
- submitting fictitious business activity statements (**BAS**) to attempt to gain a false GST refund.

So far, the ATO has taken action against more than 57,000 alleged offenders, and those involved in this fraud have already been handed in the order of \$300 million in penalties and interest. As of 30 September 2024, 104 people had been arrested and 59 people had convicted. The sentences have included jail terms of up to 7 years and 6 months.

### *Recent prosecutions*

#### *Financial advantage by deception*

Ms W has been sentenced to 4 years imprisonment, with a non-parole period of 2 years and 4 months, for obtaining almost \$600,000 in fraudulent GST refunds.

Between November 2021 and March 2022, Ms W lodged BASs for a residential cleaning business. However, ATO officers concluded that she was not carrying on a genuine business and had submitted multiple false claims for GST. She was charged with one count of obtaining a financial advantage by deception and one count of attempting to obtain a financial advantage by deception.

#### *Financial advantage by deception*

Ms A was sentenced to 6 months jail, released on a security of \$1,000 and good behaviour for one year. She was charged with one count of obtaining a financial

advantage by deception and one count of attempting to obtain a financial advantage by deception.

Between 20 October 2021 and 2 March 2022, Ms A conspired with an online associate to dishonestly lodge 7 BASs for a cleaning business that did not exist. These lodgments resulted in Ms A fraudulently obtaining \$85,759 in GST refunds she was not entitled to and attempting to obtain a further \$27,960.

Ms A's brother was charged and sentenced with similar offences in January 2024.

### *Dealing with proceeds of crime*

Mr S has been sentenced to 2 years in jail for dealing with the proceeds of crime through GST fraud.

Mr S provided his personal details to another person, wilfully blind that the person would use his details to make fraudulent GST claims with the ATO. That person subsequently lodged 7 original and 24 revised BASs, fraudulently claiming GST refunds.

Due to the false information provided in each BAS, \$377,820 in GST refunds was paid to a bank account in Mr S's name. He received and spent the fraudulently obtained GST refunds, which were the proceeds of crime. Some of that money was paid to the person who had lodged the fraudulent BASs which caused him to receive the payments.

## Key Tax Dates

Date	Obligation
<b>21 Nov 2024</b>	Lodge and pay October monthly BAS
<b>28 Nov 2024</b>	Lodge and pay September quarterly superannuation guarantee (SG) charge (if required)
<b>2 Dec 2024*</b>	Full self assessment companies — pay 2023–24 income tax Non-full self assessment companies — lodge 2023–24 return
<b>23 Dec 2024*</b>	Lodge and pay November monthly BAS
<b>21 Jan 2025</b>	Lodge and pay December monthly BAS
<b>28 Jan 2025</b>	SG payment due date for December quarter
<b>31 Jan 2025</b>	Closely held trust — lodge December quarterly TFN report
<b>21 Feb 2025</b>	Lodge and pay January monthly BAS
<b>28 Feb 2025</b>	Lodge and pay December quarterly BAS Pay second quarterly PAYG instalment for 2024–25 Lodge annual GST return (if no tax return due) Lodge and pay December quarterly SG charge (if required) Lodge and pay SMSF annual return for new SMSFs (unless otherwise advised)

\* The date specified is the next business day as the due day falls on a Saturday or a Sunday.

### Note!

Talk to your tax agent to confirm the correct due dates for your own tax obligations. For example, you may have more time to lodge or pay if impacted by a natural disaster.

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