



WHAT'S NEW IN PARLIAMENT?

Small business instant asset write-off

For more than 20 years, small business entities have been able to immediately write-off the full cost of depreciating assets so long as the cost of the asset is less than the relevant threshold. The threshold has changed a lot over the years, from a low of \$1,000 (up to the 2011–12 income year) to no threshold under the temporary full expensing rules that ended on 30 June 2023. Since 2012, the threshold has been \$6,500, \$20,000, \$25,000, \$30,000 and \$150,000.

Following the ending of temporary full expensing on 30 June this year, from 1 July, small business entities are once again reliant on what is called the 'instant asset write-off' to immediately deduct the cost of eligible depreciating assets. Without government intervention, the threshold would have reverted to \$1,000 from 1 July 2023. However, as previously reported in TaxWise, the Government announced in the Federal Budget 2023–24 that the instant asset write-off threshold for the 2023–24 income year would be temporarily increased (from what would have been \$1,000) to \$20,000.

Enabling legislation to give effect to this measure is currently before the Parliament. To remind readers, small business entities (those with an aggregated annual turnover of less than \$10 million) can immediately deduct the full cost of eligible depreciating assets costing less than \$20,000 that are first used, or installed ready for use, between 1 July 2023 and 30 June 2024. The \$20,000 threshold also applies

to eligible amounts included in the second element of the cost of a depreciating asset.

A consequence of the temporarily increased threshold is that the full balance of a general small business pool is required to be written off at the end of the 2023–24 income year) if it is less than \$20,000.

Note that these rules apply only to small business entities that have chosen to use the simplified depreciation rules.

Lock-out rule

The 'lock-out' rule means that a small business entity that uses the simplified depreciation system, but then opts out, is locked out of the system for five income years. The rule, however, has effectively been suspended since May 2015, although it was due to apply again from 1 July this year.

That will not happen. The legislation giving effect to the \$20,000 instant asset write-off threshold will extend the suspension of the lock-out rule to 30 June 2024.

Bonus deduction for improving energy efficiency

Also announced as part of the Federal Budget 2023–24 is a bonus deduction for improving energy efficiency. This is not only available to small businesses (those with an aggregated annual turnover of less than \$10 million), but also to medium businesses (those with an aggregated annual turnover of at least \$10 million but less than \$50 million).

This measure is also currently being considered by Parliament.

The bonus deduction will be equal to 20% of the expenditure on eligible assets, or improvements to existing assets, that support electrification or more efficient energy use.

To qualify for the bonus deduction:

- the expenditure must be eligible for a deduction under another provision of the tax law; and
- the asset must be first used or installed ready for use, or the improvement cost incurred, between 1 July 2023 and 30 June 2024.

The maximum bonus deduction is \$20,000 (based on \$100,000 of expenditure).

Eligible assets and improvements

A depreciating asset is eligible for the bonus deduction if it:

- uses electricity and there is a new reasonably comparable asset that uses a fossil fuel available in the market;
- uses electricity and is more energy efficient than the asset it is replacing or, if it is not a replacement, a new reasonably comparable asset available in the market; or
- is an energy storage, demand management or efficiency-improving asset.

An improvement to a depreciating asset is eligible if it:

- enables the asset to use electricity instead of fossil fuels;
- enables the asset to be more energy efficient; or
- facilitates energy storage, demand management or monitoring.

Some types of assets and expenditures are ineligible for the bonus deduction even where they would otherwise meet the requirements. These are:

- assets, and expenditure on assets, that can use a fossil fuel;
- assets which have the sole or predominant purpose of generating electricity (such as solar panels);
- capital works;
- motor vehicles (including hybrid and electric vehicles) and expenditure on motor vehicles;
- where expenditure is allocated to a software development pool; and
- financing costs, such as interest.



FROM THE ATO

Are you a small or medium business?

Small and medium businesses qualify for a number of tax concessions. For most tax purposes, a business qualifies as a small business entity if its aggregated annual turnover is less than \$10 million. For the purposes of the small business CGT concessions, however, the threshold is \$2 million, not \$10 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 up by adding together the annual turnovers of the business entity, any 'affiliates' of that entity and any entities 'connected with' that entity. An entity is 'connected with' another entity if one entity controls the other or if both entities are controlled by a third entity. Control is based on a control percentage (i.e. an interest) in the other entity of at least 40%.

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%. The ATO has recently published guidelines on particular issues that have emerged from the administration of this discretion.

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

Small business bonus deductions – interaction with R&D

In the September Business edition of TaxWise, we told you about additional 20% tax deductions for businesses with an aggregated annual turnover of less than \$50 million. These are for:

- expenditure on external training courses delivered to employees by registered training providers – the expenditure must be incurred between 29 March 2022 and 30 June 2024; and
- expenditure on digital operations and to digitise operations – the expenditure must be incurred between 29 March 2022 and 30 June 2023. The boost is capped at \$100,000 of expenditure per income year (so the maximum bonus deduction is \$20,000 per income year).

If your business is entitled to the skills and training boost or the technology investment boost, and is also entitled to a research and development (**R&D**) notional deduction under the R&D tax incentive program, your business can claim both the bonus deduction and the R&D notional deduction.

The bonus deduction will not affect the amount of the R&D notional deduction. The R&D notional deduction amount is the actual expenditure amount, not the expenditure amount and the bonus deduction amount.

Your business is entitled only to the notional R&D deduction (and not a deduction under other taxation law). However, any bonus deduction is still claimed based on what that other deduction would have been.

Market valuation

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

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

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

The ATO has updated its valuation guidelines – *Market valuation for tax purposes*. The guidelines state that the onus for providing 'a replicable and defensible valuation'

remains with your business even when a professional is engaged to provide the valuation. Your business is responsible for ensuring that the valuer:

- is suitably knowledgeable and experienced;
- receives appropriate engagement instructions;
- remains objective;
- is not presented with obstacles or limitations that inhibit their work; and
- provides a reasonable market value that is supported by credible evidence using an appropriate recognised valuation methodology.

A 'replicable and defensible valuation report' is best evidenced in a substantive context by:

- referring to and retaining all relevant records;
- thoroughly documenting all aspects of the valuation process; and
- choosing the most appropriate inputs and methodology.

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 partner 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. 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-use 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.

If you use the logbook or actual costs method, you can only claim depreciation or the decline in value for the business-use portion of the motor vehicle. The maximum you can claim as a deduction for the depreciation of your car is \$68,108 for the current income year (2023–24) or the cost of the vehicle (whichever is less).

Tip! Talk to your tax adviser about the best way to calculate the deductions and the record-keeping requirements.

Luxury car tax

If your business is registered, or required to be registered, for GST and it sells or imports a luxury car that is no more than two years old, it may be liable to pay luxury car tax (**LCT**). LCT may also be payable if your business provides a luxury car to an employee (either as a bonus or as part of a salary package) or associate.

Subject to certain exceptions, a luxury car is a car whose LCT value exceeds the LCT threshold. The thresholds for the 2023–24 financial year are:

- fuel-efficient vehicles – \$89,332;
- other vehicles – \$76,950.

For LCT purposes, a car is a motor vehicle (but not a motorcycle) designed to carry a load of less than 2 tonnes and fewer than 9 passengers. A car is not a luxury car for LCT purposes if it is:

- a commercial vehicle; and
- not designed for the principal purpose of carrying passengers.

A limousine is classified as a car, regardless of the number of passengers it is designed to carry.

The ATO has published guidelines on how to determine the principal purpose of a vehicle for LCT purposes. In particular, the guidelines list the factors to consider in determining the principal purpose of all vehicles, including utility vehicles. The guidelines also consider whether design modifications may alter a vehicle's purpose.

The ATO states that whether a car is a commercial vehicle is determined objectively, based on the vehicle's design, rather than how it is intended to be used in practice.

ATO's compliance approach – utility vehicles

If a commercial vehicle with one of the following body types is supplied for an amount exceeding the LCT threshold, the ATO will treat the arrangement as high risk if LCT is not paid:

- station wagon;
- off-road passenger wagon;
- passenger sedan;
- people mover; or
- sports utility vehicle.

The supply of a truck, cargo or delivery van without LCT being paid is treated as a low-risk arrangement.

Tip! Talk to your tax adviser if you think your business might be liable to pay LCT.

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;
- capital gains and losses;
- 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 directly relates to earning your business' assessable income;
- you claim only the business-use portion if the expense is for a mix of business and private use; 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've 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.

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 5 years (for example, you need to keep records of losses for up to 5 years after you've 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.



Making money from content creation?

You'll need to register for GST if you make \$75,000 or more in a 12-month period. This includes receiving payments (whether cash, services, goods or a percentage of advertising revenue) for:

- reviewing and promoting products and services;
- content being sponsored, endorsed, or having advertising placed in it;

- creating and posting content;

- others licensing your content;

- acquiring followers, viewers and subscribers; and

- collaborating with other content creators.

When working out your GST turnover to determine if you need to register, include:

- both taxable and GST-free sales; and

- the value of non-monetary payments (such as products or services, gifts, clothing or makeup).

Payments you receive from recipients:

- outside Australia may be GST-free;
- within Australia will be taxable sales – which means GST applies to them.

Once you're registered, you'll need to collect GST on your taxable supplies and pay it to the ATO by lodging a business activity statement (**BAS**).

You may also be able to claim GST credits when you lodge your BAS.

Has your business received a support payment?

If your business received a government support grant or payment to help your business recover from COVID-19 or a natural disaster, it's important to check if you need to include the payment in your business' assessable income.

Grants are generally treated as assessable income, but you may be able to claim deductions if you use these payments to:

- purchase replacement trading stock or new assets;
- repair your business premises and fit out; or
- pay for other business expenses.

However, some grants are not assessable. This means you don't need to include them in your business' tax return if eligibility requirements are met.

Non-assessable grants include:

- COVID-19 business support payments;
- natural disaster grants;
- water infrastructure payments.

Your business can claim deductions for expenses associated with non-assessable grants only if they relate directly to earning assessable income. Assessable income includes things like wages, dividends, interest and rent. Your business cannot claim expenses related to obtaining the grant, such as accountant's fees.

Tip! Talk to your tax adviser if you need help dealing with government support grants and payments.



Entertaining your employees?

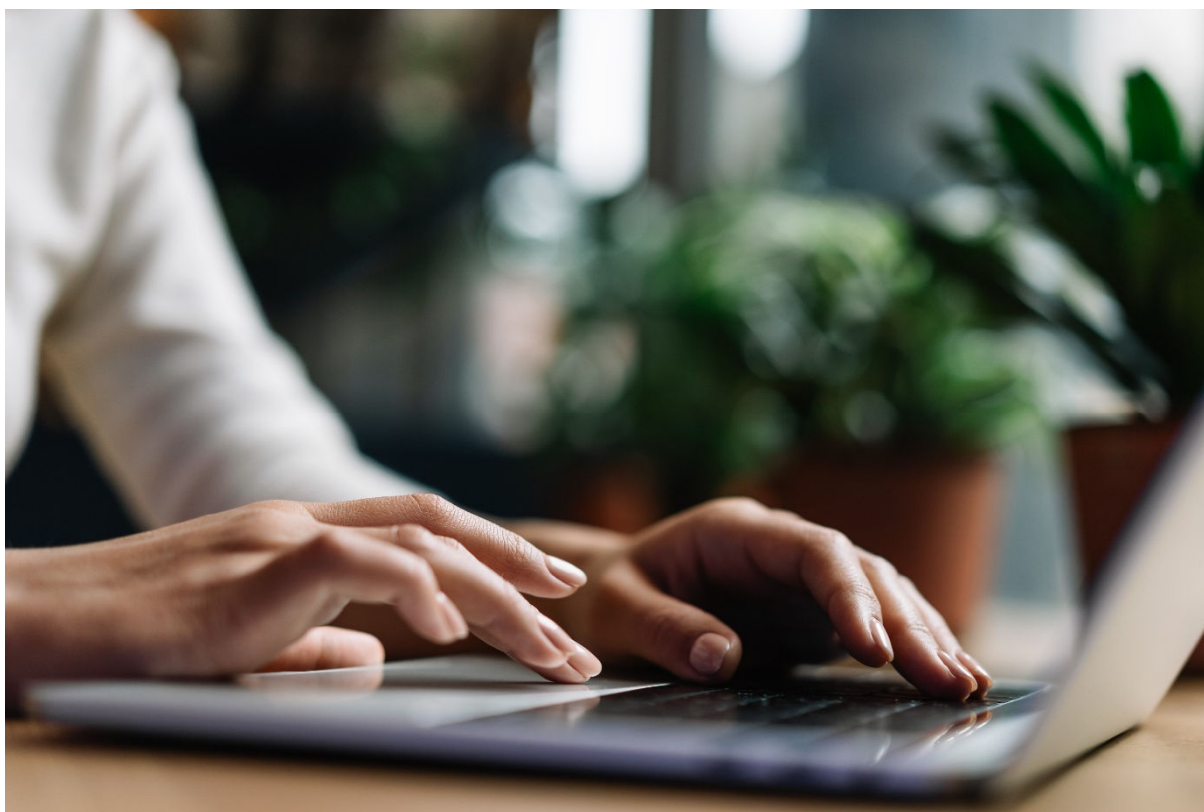
With summer and Christmas just around the corner, you may be planning a party or similar event (e.g. a bowls day) for your employees. If so, make sure you consider the fringe benefits tax (**FBT**) implications of the party or other event.

The FBT outcome 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 your business provides, including how the taxable value of benefits is worked out.

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



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're 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.

Fixing GST or fuel tax errors

If your business made an error when reporting GST or fuel tax 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 can include:

- reporting a GST supply twice;
- overstating the GST on supplies;
- overstating an increasing fuel tax adjustment.

Debit errors can include:

- understating the GST on supplies;
- claiming GST credits for an acquisition twice;
- overstating fuel tax credit claims, for example, double-counting fuel tax credits or incorrectly claiming for ineligible fuel;
- overstating a decreasing fuel tax adjustment.

The *debit error* value limits have increased. If your business' annual GST turnover is less than \$20 million, you can correct single or multiple debit errors that are less than the value limit of \$12,500. You can correct the error in a later BAS, up to 18 months from the due date of the BAS for the tax period in which the error was made.

You cannot correct an error to claim additional GST credits where the four-year time limit for claiming those GST credits has expired.

Generally, it is easier to correct a GST error on a later BAS than to revise an earlier period. Revising an earlier period that contains an error can incur penalties or general interest charge (**GIC**).

Keep complete and accurate records to help you calculate and support your claims.

When claiming fuel tax credits, you need to apply the correct rates. Remember that rates change regularly.

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



Cyber security

Cybercrime can be costly for businesses. Throughout 2021–22, a cybercrime was reported every seven minutes to the Australian Cyber Security Centre (**ACSC**).

To avoid being a target for cyber criminals, the ATO recommends a monthly security check. Here are four simple steps:

- Don't compromise your device/s. Install updates for your devices and software. Regular updates ensure you have the latest security in place. You can turn on automatic updates so future updates are made as soon as they're available.
- Turn on multi-factor authentication (**MFA**) to protect your valuable information and accounts from criminals. MFA options include an authenticator app, physical token, email or SMS.
- Back up your files regularly. Hardware failure, theft, or a virus could result in the loss of critical business information. Recovering data can be expensive and sometimes impossible.
- Change your password to a passphrase as they are more secure. Passphrases use four or more random words and tend to be more unique, longer in length and less predictable than a password. You can even use a password manager to help you generate or store passphrases.

Summary prosecutions

The ATO can prosecute (under the *Taxation Administration Act 1953* (Cth) (**TAA**)) a range of summary offences, including:

- failing to lodge a tax return, BAS or FBT return;
- failing to comply with an information gathering notice;
- failing to comply with a Court Order under section 8G of the TAA;
- making false or misleading statements;
- incorrectly keeping records.

Annual results continue to increase as the ATO resumes normal operations post-COVID and environmental influences.

Here are the results for the last three years.

Year	Prosecutions	Convictions	Reparation orders (\$)	Fines (\$m)
2022–23	177	174	458,785	2.14
2021–22	91	91	129,824	0.908
2020–21	198	192	56,400	1.65

Tax crime prosecutions

The ATO investigate more serious tax-related fraud offences, sometimes in partnership with the Australian Federal Police. Where the evidence warrants it, cases are referred to the Commonwealth Director of Public Prosecutions (**CDPP**) to consider prosecution. The CDPP prosecutes (under the *Criminal Code Act 1995* (Cth)) a range of indictable offences, including:

- obtaining financial advantage by deception;
- dishonestly causing a loss to the Commonwealth;
- forgery offences; and
- money laundering.

Here are the results for the last three years.

Year	Cases	Convictions	Custodial sentences	Reparation orders (\$m)	Fines (\$)
2022–23	26	23	11	1.72	17,200
2021–22	21	15	12	14.64	2,000
2020–21	20	20	12	0.55	56,000

Recent prosecutions

A NSW solicitor was convicted and fined \$42,000 for failing to lodge 14 income tax returns across the 2007–08 to 2020–21 financial years. During sentencing, the magistrate remarked that, 'As a solicitor, there is no excuse to not lodge income tax returns'.

A Brisbane carpenter was convicted and fined for failing to lodge 5 income tax returns. He received a fine totalling \$5,370 and ordered to pay costs of \$161.05. The magistrate commented during sentencing that, 'Failure to lodge tax returns are not victimless crimes. Energy and resources are required to chase lodgment and that costs everybody money'.

A carpet cleaner was convicted in the Perth Magistrates Court for failing to lodge 21 income tax returns. He received a penalty of \$18,000 for failing to uphold his tax obligations. During sentencing, the magistrate noted that, 'The ATO would have taken multiple steps to elicit lodgment prior to initiating prosecution action. Twenty-one years of non-lodgment is sticking your head in the sand'.

KEY TAX DATES

Date	Obligation
21 Nov 2023	Lodge and pay October monthly BAS
28 Nov 2023	Lodge and pay September quarterly SGC (if required)
1 Dec 2023	Full self assessment companies – pay 2022–23 income tax Non-full self assessment companies – lodge 2022–23 return
21 Dec 2023	Lodge and pay November monthly BAS
22 Jan 2024*	Lodge and pay December monthly BAS
29 Jan 2024*	Superannuation guarantee payment due date for the December quarter
31 Jan 2024	Closely held trust – lodge December quarterly TFN report
21 Feb 2024	Lodge and pay January monthly BAS
28 Feb 2024	Lodge and pay December quarterly BAS Pay second quarterly PAYG instalment for 2023–24 Lodge annual GST return (if no tax return is due) Lodge and pay December quarterly SGC (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 date falls on 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 and pay if impacted by COVID-19 or a natural disaster.