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# The Bottom Line

## - Business -



## A new government – tax changes?

In case you are wondering what the incoming Labor Government said about tax during the election campaign, the brief answer is very little. Unlike at the 2019 election, Labor has not proposed any significant tax policies – unless you are a multinational. Labor has proposed to ‘close tax loopholes exploited by multinational companies’.

Labor has proposed a number of other measures to help small businesses, including:

- Ensuring that small businesses are paid on time to sustain growth across the economy with a mechanism to ensure payment within 30 days (the current average contract payment time sits at 37 days);
- Making unfair contract terms illegal so small businesses can negotiate fairer agreements with large partners;
- Driving a genuine collaboration with small businesses and government to reduce the time small businesses spend doing taxes, cut paperwork and target support; and
- Reducing small business transaction costs at the point of payment with a clear timeline for implementing least cost routing or similar (small businesses are disproportionately impacted by higher transaction fees that eat into profits – around \$804 million a year).



## Parliament - what happened when the election was called?

When the Federal election was called, a number of tax measures contained in bills that were before the House of Representatives lapsed. From a business perspective, these measures included:

- the proposal to allow small businesses to apply to the Administrative Appeals Tribunal for an order staying ATO decisions being reviewed by the AAT – eg an objection to a tax assessment;
- the proposal to allow taxpayers to self-assess the effective life of certain intangible depreciating assets;
- the proposed patent box regime that will tax certain income arising from exploiting a medical or biotechnology patent at 17%;
- the proposal for foreign resident workers participating in the Australian Agriculture Worker Program to be classified as employees from 1 July 2022 – a consequence would be that fringe benefits provided to such workers from that date may be subject to FBT.

Any bills that were before the Senate when the election was called lapse on 1 July 2022.

Whether the Labor Government reintroduces all the lapsed measures remains to be seen, but they have not previously expressed any opposition to them.

## Year-end tax tips

The end of the current income year (2021–22) is approaching. There are a few things you can do before 30 June to reduce your tax bill.

### Key threshold amounts for tax offsets

If you are an individual taxpayer, including a sole trader or a partner in a partnership, or your business is carried on through a trust and you are a beneficiary or through a company and you are a shareholder, you may be entitled to the Low Income tax offset (**LITO**) or the Low and Middle Income tax offset (**LMITO**), depending on your taxable income. The key income thresholds are set out below.

- \$37,001 – LMITO (\$675) increases by 0.5 cents for every dollar above \$37,000
- \$37,501 – LITO (maximum \$700) phases out by 0.5 cents for every dollar above \$37,500
- \$45,001 – 19% tax rate increases to 32.5%
- \$48,001 – maximum LMITO (\$1,500) payable
- \$66,668 – LITO ceases to be payable
- \$90,001 – maximum LMITO (\$1,500) phases out by 0.3 cents for every dollar above \$90,000
- \$120,001 – 32.5% tax rate increases to 37%
- \$126,000 – LMITO ceases to be payable
- \$180,001 – 37% tax rate increases to 45%.

\$90,001 (singles) and \$180,001 (families) are relevant thresholds for qualifying for the private health insurance tax offset (or insurance premium reduction) or liability for the Medicare levy surcharge – but add \$1,500 for each dependent child after the first one.

LMITO is due to end this income year and will therefore not be available from the 2022–23 income year. You do not need to do anything to claim the LITO or the LMITO. The ATO will automatically apply the relevant offset if you are eligible on assessment when you lodge your 2022 income tax return.

### Defer assessable income

If your taxable income for the income year is approaching any of the above key thresholds, you may want to consider deferring assessable income so your taxable income for the year remains below the relevant threshold.

For example, if you account for your income on a cash basis, you could delay issuing an invoice so you won't be paid until after 30 June – that way, the income is taxed next income year. However, that may not work if you account for your income on an accruals basis. Of course, cash flow issues might mean you would prefer to be paid more promptly.

If you are in the process of selling property and the profit will be taxable as a capital gain, you could defer the sale until the next income year – but remember that the liability to pay CGT arises when you exchange contracts and not on settlement.

## Increase deductions

Another way to keep taxable income below a relevant threshold is to increase deductions. For example, you could bring forward the purchase of one or more depreciating assets (new assets are deductible outright under temporary full expensing). An immediate deduction is also available for start-up costs and certain prepaid expenses.

Charitable donations are a good way to increase your deductions. If you are unsure whether a donation will be deductible, you can check the deductibility status of charities at <https://www.abn.business.gov.au/Tools/DgrListing>. In certain circumstances, you can claim a deduction if you donate trading stock. Don't forget to ask for a receipt.

## What concerns the ATO?

### eInvoicing

The ATO is encouraging businesses to use eInvoicing. This is the new, standardised way to send and receive electronic invoices directly through your accounting software – eInvoices are sent directly between buyers' and suppliers' software through a secure network.

Once the sender creates the invoice in their software, this information is sent directly and securely to the receiver's software, ready to be approved and paid.

The ATO states that eInvoicing saves time, money and gives you better control of your invoicing by:

- reducing repetitive manual entry of invoices, as eInvoices automatically appear in your software;
- removing the need to chase lost or incorrectly addressed invoices, as eInvoices are delivered using your trading partner's ABN, with key invoice details validated before they are sent
- eliminating costly and time-consuming errors in invoices that often happen with manual entry;
- providing greater visibility of the delivery status of your invoices, with real-time information available directly in your accounting software;
- reducing the risk of fake, unsolicited or compromised invoices and other false billing scams, including business impersonation scams; and
- allowing you to trade seamlessly with eInvoicing-enabled businesses in Australia and around the world.

## Is cash flow an ongoing issue?

The ATO's Cash Flow Coaching Kit is a resource to help you better manage your cash flow. It offers practical, step-by-step information and short activities, including case studies.

You'll learn effective cash flow management practices and find the right information to improve your business and financial knowledge, make critical decisions and plan ahead to stay viable. These skills help you meet your financial commitments, including tax and super obligations. The kit is useful for all business types at any stage of the business lifecycle. It helps you assess your cash flow health by addressing four key questions:

- Am I trading profitably?
- Have I put enough aside to meet my regular financial commitments?
- Does my business have enough to spend on myself and pay others?
- Is my business getting ahead or falling behind?

The ATO states that advisers tell them the kit helps their clients identify practical actions they can take to better manage their cash flow and meet their business goals.

## If you don't pay your tax

The ATO understands that taxpayers, in particular small business operators and sole traders, sometimes have cash flow issues meaning they can't pay their whole tax bill on time. If you are having a problem, the ATO encourages you to engage with them early so they can help you deal with your debt while it's still manageable.

If you don't pay the amounts you owe the ATO on time, they will charge interest on your unpaid amounts and use any future refunds or credits to repay the amounts you owe.

The ATO may take stronger action if you are unwilling to work with them to address your debt or repeatedly default on agreed payment plans.

## Debts on hold

An aged debt is an uneconomical non-pursued debt that the ATO has placed on hold (it does not show as an outstanding balance on your ATO account) and has not undertaken any recent action to collect.

If you have an aged debt, you may receive a letter from the ATO reminding you of the debt.

From June 2022, the ATO will recommence offsetting any tax refunds or credits to pay off any debts on hold. In some cases, the ATO may use credits from other government agencies to pay off the aged debt.

## Director penalties

The ATO has published on its website detailed information about the responsibilities of a company director for ensuring that the company's tax and superannuation guarantee (SG) obligations are reported and paid on time.

If you are a current or former company director, the ATO can recover from your unpaid amounts of:

- Pay as you go withholding (**PAYGW**);
- GST; and
- SG charge.

If these obligations are not met, you become personally liable for the unpaid amounts, unless you take steps to ensure the company meets its obligations, appoints an administrator or goes into liquidation (only within certain time limits).

Any amounts that you are personally liable for are called director penalties. The ATO can recover the penalty amounts from you after issuing a director penalty notice (**DPN**).

### *Becoming a new company director*

Before you become a company director, check if the company has any unpaid or unreported PAYGW, GST and SG charge liabilities. Once you are appointed as a company director, you are responsible for ensuring the company meets its PAYGW, net GST and SG charge obligations in full by the due date.

### *You are no longer a director*

If you resign as a director of the company, you remain liable for director penalties for liabilities of the company that were due before the date of your resignation. In certain circumstances, you may also be liable for liabilities that fall due after your resignation.

### *Director penalty notices*

Before recovering your company's unpaid amounts, the ATO must give you a DPN. The notice outlines the unpaid amounts and remission options available to you.

The ATO can recover the amounts of the director penalty by:

- issuing garnishee notices;
- offsetting any of your tax credits against the director penalty;
- initiating legal recovery proceedings against you to recover the director penalty.

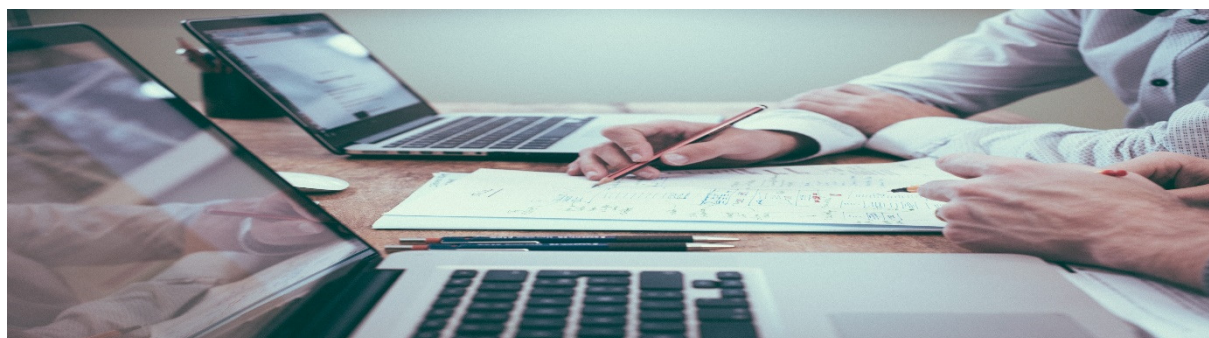
### *Director penalties are a parallel liability*

Once DPNs have been issued, the ATO may commence or recommence recovery action from each director personally, because these penalties are a parallel liability.

To recover the debt, the Commissioner can pursue either the company or the directors.

This means that any payment or credit applied to the company's account, or to a director's account, to reduce the penalty will reduce the director penalty amount for the other directors and the company's corresponding liability for the same reporting period.





## FBT issues

### Lodge and pay

The ATO has reminded employers that have provided their employees with fringe benefits to consider their fringe benefits tax (FBT) obligations – including registering, reporting, lodging and paying FBT. The ATO expects many employers to have an FBT obligation for the first time due to benefits provided during COVID-19.

A fringe benefit is a 'payment' to an employee, but in a different form to salary or wages. Typical fringe benefits include allowing an employee to use a work car for private purposes, paying an employee's gym memberships or providing tickets to concerts or events.

ATO Assistant Commissioner, Michelle Allen, said: 'We have seen more employers providing fringe benefits to their employees because of COVID-19. This includes, paying for items that allow their employees to work from home and providing non-cash benefits as an incentive or reward for employees to get their COVID-19 vaccination. We've even heard of an employer providing their employees with pets to keep them company while they work at home!'

FBT returns for the 2021–22 FBT year were due by 21 May 2022 – that is also the payment date. However, if your business uses a registered tax agent to prepare and lodge its FBT return, the business may have additional time to lodge and pay.

### FBT rates and thresholds

A new FBT year (2022–23) started on 1 April 2022. Relevant amounts and thresholds for the 2022–23 FBT year include:

- *record-keeping exemption threshold* – \$9,181 (\$8,923 for 2021–22);
- *statutory or benchmark interest rate* – 4.52% (same as for 2021–22);
- *car parking threshold* – \$9.72 (\$9.25 for 2021–22).

The *cents per kilometre rates* (for motor vehicles other than cars) for the 2022–23 FBT year are:

0–2500cc	Over 2500cc	Motor cycles
58 cents	69 cents	17 cents

For 2021–22, the 0–2500cc and over 2500cc rates were 56 cents and 67 cents per kilometre respectively; the motor cycle rate was 17 cents per kilometre.

## Living away from home – in Australia

The *weekly food and drink expenses* for the 2022–23 FBT year that the ATO accepts as reasonable for a living-away-from-home allowance (LAFHA) paid to employees living away from home within Australia are:

1 adult <sup>1</sup>	\$289
2 adults	\$434
3 adults	\$579
1 adult and 1 child	\$362
2 adults and 1 child	\$507
2 adults and 2 children	\$580
2 adults and 3 children	\$653
3 adults and 1 child	\$652
3 adults and 2 children	\$725
4 adults	\$724
Each additional adult <sup>3</sup>	\$145
Each additional child	\$73

<sup>1</sup> A person is considered to be an adult for LAFHA purposes if they were 12 years or older before the beginning of the FBT year.

## Living away from home – outside Australia

The *weekly food and drink expenses* for the 2022–23 FBT year that the ATO accepts as reasonable for a LAFHA paid to employees living away from home outside of Australia can be found in Taxation Determination TD 2022/2. Some of those reasonable amounts (for one adult) are set out below.

Country	Weekly amount – 1 adult
China	\$437
France	\$437
Germany	\$437
Hong Kong	\$437
India	\$273
Indonesia	\$273
Italy	\$437
Japan	\$437
Malaysia	\$273
New Zealand	\$346



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PNG	\$346
Singapore	\$537
South Korea	\$537
Taiwan	\$437
Thailand	\$346
UAE	\$537
UK	\$437
USA	\$437
Vanuatu	\$346
Vietnam	\$273

Where your employee is accompanied by other family members while overseas, the reasonable food and drink amount per week for the family is worked out by multiplying the amount shown above by a factor specified in Taxation Determination TD 2022/2. For example:

Family group	Factor
2 adults	1.5
1 adult and 1 child	1.25
2 adults and 1 child	1.75
2 adults and 2 children	2

## Scams and crimes

### ATO urges vigilance following new scams approach

The ATO is urging taxpayers to be vigilant following an increase in reports of fake websites offering to provide tax file numbers (TFN) and Australian business numbers (ABN) for a fee but failing to provide the service.

The fake TFN and ABN services are often advertised on social media platforms like Facebook, Twitter, and Instagram.

The advertisements offer to obtain a TFN or ABN for a fee. Instead of delivering this service, the scammer uses these fraudulent websites to steal both money and personal information.

In 2021, more than 50,000 people reported ATO impersonation scams with victims losing a total of more than \$800,000.

### Tips to protect yourself from scammers

The ATO proposes a number of tips to protect yourself from scammers.

**Know your tax affairs** – You will be notified about your tax debt before it is due. Check if you have a legitimate debt owed by logging into your myGov account via an independent search or by calling your tax agent if you have one (on a phone number sourced independently).

**Guard your personal and financial information** – Be careful when clicking on links, downloading files or opening attachments in emails and SMS text messages. Only give your personal information to people you trust and don't share it on social media.

**If you are unsure, don't engage** – If a call, SMS or email leaves you wondering if it is genuine, don't reply. Instead, you should phone the ATO's dedicated scam line **1800 008 540** to check if it is legitimate. You can also verify or report a scam online at [ato.gov.au/scams](https://ato.gov.au/scams). You can also visit [ScamWatch](https://ato.gov.au/scamwatch) to get information about scams (not just tax scams).

**Know legitimate ways to make payments** – Scammers may use threatening tactics to trick their victims into paying fake debts via unusual methods. For example, they might demand pre-paid gift cards or transfers to non-ATO bank accounts. To check that a payment method is legitimate, visit [ato.gov.au/howtopay](https://ato.gov.au/howtopay).

**Talk to your family and friends about scams** – If you or someone you know has fallen victim to a tax related scam, call the ATO as soon as you can.

### ATO warning against GST fraud

The ATO has identified, and is taking strong action, to respond to significant fraud involving participants inventing fake businesses to claim false refunds.

The ATO is warning the community not to engage with this fraud and for participants to come forward before they take tougher action.

Sophisticated risk models deployed by the ATO, coupled with intelligence received from banks including through the AUSTRAC-led Fintel Alliance and the Reserve Bank of Australia, identified a recent spike in suspicious refunds.

The ATO, through Operation Protego, is investigating around \$850 million in potentially fraudulent payments made to around 40,000 individuals, with the average amount fraudulently claimed being \$20,000. The ATO is working with financial institutions who have frozen suspected fraudulent amounts in bank accounts.

The fraud involves offenders inventing fake businesses and ABN applications, many in their own names, then submitting fictitious Business Activity Statements in an attempt to gain a false GST refund.

The ATO is working closely with law enforcement agencies to prioritise criminal action against those who have established and induced participation in fraudulent activity.

## Tax crime prosecution case studies

The ATO has published details of a few successful prosecutions for fraud.

### *False claims land swimming teacher in hot water*

A former swimming teacher has been sentenced to 3 years' jail for obtaining and attempting to obtain more than \$250,000 in fraudulent GST refunds.

Ms C lodged several original and amended business activity statements for her swim school business. In each case, she knowingly overstated the purchase amounts to obtain a financial advantage. In total, \$97,114 worth of fraudulent GST refunds were paid into her back account. She also tried to obtain an extra \$181,947 but the ATO stopped these refunds.

Ms C will be released from jail after 15 months, on entering into a \$1,000 recognisance on the requirement that she be of good behaviour for 2 years. She was also ordered to repay the full \$97,114.

### *Doctor prescribed jail time for failure to comply*

A doctor from Western Australia has been sentenced to 7 months' jail following a long history of non-compliance.

In February 2020, Dr R was convicted and fined \$50,000 for failing to lodge 5 tax returns and 13 business activity statements (BASs). As part of his sentence, he was ordered to submit the outstanding lodgments within 2 months.

When they were not received, he was prosecuted again. This time, he was charged with 18 counts of failing to comply with court orders under the *Tax Administration Act 1953*.

In April 2022, while sentencing Dr R, the Magistrate stressed that tax obligations are not optional, and that non-compliance places a burden on the rest of the community.

Dr R will be released from jail after 2 months, upon entering into a \$10,000 recognisance to be of good behaviour for the remainder of his sentence. As part of the good behaviour bond, he will need to lodge each of the outstanding tax returns and BASs by 30 September 2022.

The ATO said that the decision to prosecute is not one they make lightly. Before initiating prosecution action, they make multiple attempts to contact taxpayers to provide and help support.

If you're falling behind on your obligations or have made an honest mistake, the ATO will work with you to find a solution. But in instances like this, where people have consistently evaded their obligations and refused to comply, the consequences will catch up with them.

## *Bank manager sentenced to 3 years' jail*

A former tax accountant and bank manager has been sentenced to 3 years' jail for attempting to obtain a financial advantage of more than \$390,000.

Mr S was the owner, director and authorised tax representative of a bank franchisee. Over a period of 2 years, he failed to lodge business activity statements (BASs). An audit resulted in him owing nearly \$200,000 in taxes and penalties.

When this debt wasn't paid, the ATO applied to have the company wound up. In the meantime, Mr S lodged 66 false BAS revisions where he deliberately reduced the PAYG withholding to nil. Not only did this eliminate the debt, but it also created a credit of \$144,538.

Mr S requested a refund of the credit amount. But the ATO's investigations found the revisions to be entirely fraudulent, so the refund was never released.

## *Fraudster tracked down*

A NSW man who obtained more than \$171,000 in fraudulent GST refunds has been sentenced to 2 years' and 8 months' jail.

Between December 2011 and April 2015, Mr C said he was providing handyman, carpentry and computer repair services. He reported that the business had made more than \$3.3 million in sales during this period, claiming corresponding acquisitions and input tax credits.

However, when the ATO commenced an audit, it became clear that the claims were false. He didn't hold a licence to perform carpentry or building work in NSW during the offending period. His bank statements didn't contain any activity that would suggest he was carrying on an enterprise.

Mr C was originally due to face court in 2019, but he failed to appear. He evaded authorities until December 2020 when he was located and arrested by police.

## *GST fraudster jailed*

A man who pretended to be running a business to get his hands on fraudulent GST refunds has been sentenced to 3 years' jail.

Between October 2014 and January 2018, Mr P lodged 14 quarterly business activity statements (BASs) in relation to his sole trader real estate business. He claimed the business had made more than \$300,000 in sales and claimed \$256,955 in GST credits. But according to bank records, he didn't receive any income from the business. There was also insufficient cash flow to support the purchases he reported.

Mr P later admitted the claims were false; he hadn't been carrying on a business. In total, he obtained \$189,270 in fraudulent GST refunds. He also attempted to obtain an additional \$39,778, but this was stopped by ATO officers.

When the matter was heard at the Perth District Court, Mr P pleaded guilty to 13 counts of obtaining a financial advantage by deception and one count of attempting to obtain a financial advantage by deception. In addition to his jail term, he was ordered to pay back \$187,486.



## Key tax dates

Date	Obligation
<b>21 June 2022</b>	May monthly BAS due
<b>30 June 2022</b>	Superannuation guarantee (SG) contributions must be paid by this date to qualify for a tax deduction in 2021–22
<b>14 July 2022</b>	Issue PAYG payment summaries if not reporting through STP
<b>21 July 2022</b>	June monthly BAS due
<b>28 July 2022</b>	Lodge and pay June quarterly BAS Pay June quarterly PAYG instalment Employee SG contributions due June quarter SG due
<b>31 July 2022*</b>	Finalisation declaration due if reporting through STP
<b>1 Aug 2022</b>	Fuel tax credit rates change
<b>14 Aug 2022*</b>	PAYG withholding annual report due if not reporting through STP
<b>21 Aug 2022*</b>	July monthly BAS due
<b>28 Aug 2022*</b>	June quarter SG charge statement due Taxable payments annual report due
<b>21 Sep 2022</b>	August monthly BAS due

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

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