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International

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# The Bottom Line

## - Business -



## Year end tax tips

### How to reduce your tax bill

We are getting near the end of the tax year (30 June), so you might want to consider ways to reduce your business' tax bill.

The two simplest ways to do this are to reduce assessable income or increase deductible expenditure. Either way, the business' taxable income (and thus the amount of tax payable) is reduced.

One way to reduce assessable income for the current tax year if your business reports income on a cash basis is to delay sending an invoice to a customer until after 30 June. Of course, cash flow requirements may dictate otherwise.

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 tax year – but remember that the liability to pay CGT arises when you exchange contracts and not on settlement.

You can increase deductible expenditure by bringing it forward from the next tax year to the current tax year. This is particularly useful where an immediate deduction is available – for example, for depreciating assets if you are a small business, start-up costs and certain prepaid expenses.

Charitable donations are a good way to increase your deductions. If you are not sure if a donation will be deductible, you can check the deductibility status of charities [here](#). In certain circumstances, a deduction is available where trading stock is donated. Don't forget to ask for a receipt.

## Trustee resolutions

If you operate your business through a trust and you wish to make beneficiaries presently entitled to trust income for the 2023–24 income year, you should ensure your trustee resolutions are effective. This includes where you may want to make beneficiaries specifically entitled to franked dividends and capital gains that are included in trust income.

Note that you do not have to prepare the trust accounts by 30 June to make beneficiaries presently entitled to trust income.

It is important that the trustee:

- ensures decisions are consistent with the terms of the trust deed. Check that the trust hasn't vested, as this may impact distribution decisions;
- considers who the intended beneficiaries are and their entitlements to income and capital under the trust deed. If the trustee has made a family trust election (**FTE**) or an interposed entity election (**IEE**), this may have a tax impact on distribution decisions;
- notifies beneficiaries of their entitlements to allow beneficiaries to correctly report distributions in their tax returns, preventing trust income from being omitted;
- follows any requirements in the trust deed governing the making of trustee resolutions, including the need to have the resolution in writing and the timing of when it is required to be made (there is no standard ATO format). Resolutions making one or more beneficiaries presently entitled to the trust income need to be made by the end of the income year;
- ensures that resolutions are unambiguous; and
- if the trust has capital gains or franked distributions the trustee would like to stream to beneficiaries — confirms the trust deed does not prevent this and that the trustee has complied with the legislative requirements relating to streaming these amounts.

Note that, if a resolution is validly made by 30 June, the ATO will accept records created after 30 June as evidence of the making of a resolution by that date.

## Trustee checklist

To help trustees, the ATO has published a useful checklist in the form of a series of questions.

- Do you have a complete copy of the trust deed?
- Who can you appoint income or capital to?
- Has the trust vested?
- Is there a family trust election in force for the trust?
- When do you have to make resolutions?
  
- Does a resolution have to be in writing?
- Is the wording of your resolution clear and unambiguous?
- Is the entitlement vested?
- Can the entitlement be taken away?
- How should you calculate and report the income of the trust?
- Are you 'streaming' capital gains or franked distributions?
- Are you seeking to 'stream' other types of income?
- Have all entitled beneficiaries quoted their tax file number (**TFN**) to you?

## Family trusts

Family trust distribution tax (**FTDT**) is payable when a trust that has made an FTE, or an entity that has made an IEE, makes a distribution (including to another entity) outside the 'family group' of the individual specified in the election. The rate of FTDT is 47%.

So, where an FTE or IEE is in force, it is important to identify who is in the 'family group' of the individual specified in that election.

For non-fixed (discretionary) trusts to be within the 'family group' of the individual specified in an FTE made by another trust, they would need to have either:

- made an FTE with the same specified individual; or
- made an IEE to be included as a member of the specified individual's 'family group'.



## What's in the legislative pipeline?

### Small business instant asset write-off

As has been previously reported in TaxWise, the Government proposes to increase the small business instant asset write-off (**IAWO**) threshold for businesses with an aggregated annual turnover of less than \$10 million to \$20,000 for the 2023–24 income year. This will allow an eligible small business to immediately deduct the full cost of an eligible depreciating asset costing less than \$20,000.

Legislation to give effect to the proposed increased threshold is currently before Parliament. The Senate recently amended the enabling Bill to further increase the IAWO threshold to \$30,000 and extend the concession to medium-sized businesses with an aggregated annual turnover of less than \$50 million. However, the House of Representatives has twice disagreed to the Senate's amendments, which the Senate is insisting on. The Parliament next sits from 24–27 June then from 1–4 July. Once the issue is resolved, TaxWise will provide an update.

Separately, the Government announced as part of the recent Federal Budget 2024–25 that it proposes to extend the increased IAWO threshold of \$20,000 for a further 12 months, to the end of the 2024–25 income year. The enabling legislation has been introduced into Parliament.

### Mining, quarrying and prospecting rights

Enabling legislation has been introduced into Parliament to provide that mining, quarrying and prospecting rights cannot be depreciated for income tax purposes until they are used (and not merely held).

This measure will apply in respect of rights a taxpayer starts to hold after 9 May 2023.

## Penalties

Enabling legislation to increase the amount of a penalty unit (which applies when there is non-compliance with Federal laws) from \$313 to \$330 is currently before the Parliament. The increase is proposed to apply from 1 July 2024.

## Multinationals

Measures affecting large businesses, in particular multinationals — including reforms to the thin capitalisation rules and measures requiring Australian public companies (listed and unlisted) to disclose information on their subsidiaries — have recently been passed by the Parliament. Details of these complex changes are beyond the scope of TaxWise, but if you are interested, you should talk to your tax adviser.

## Foreign investors

Legislation to increase the maximum fee that can be imposed for the purpose of the foreign investment framework has been passed. The new maximum fee will be \$7 million (up from \$1,119,100).

Other changes include:

- tripling the foreign investment fees for the purchase of established homes; and
- doubling vacancy fees for all foreign-owned dwellings purchased since 9 May 2017 (which together means a six-fold increase in vacancy fees for future purchases of established dwellings).

However, application fees for foreign investment in Build-to-Rent projects will be reduced.



## From the ATO

### Small business – helpful practices

With the new tax year around the corner, having a recipe for success is a good idea, including putting good business practices in place. The ATO recommends you focus on good cash flow management, good record keeping and having the right digital tools to help your business.

It's also a good idea to set up a separate bank account for Pay as you go (**PAYG**) withholding, employee superannuation and GST. This will help you ensure you're on track to pay in full and on time.



Knowing what records you need to keep is important. You need to keep most records for 5 years, so you should store them in a safe place. They should also be written in English – or easily converted to English. A good record system makes it easier for you to lodge and pay on time.

Having the right digital tools will help you to perform daily business activities easily and securely, making it easier to meet your tax obligations at times it is convenient for you.

Remember, it's important to lodge, and pay in full and on time.

## Support available to businesses experiencing difficulties

Paying your business' tax bill in full and on time will help you avoid paying the general interest charge (**GIC**), which is currently 11.34% and accrues daily for any overdue debts. If your business is dealing with some financial difficulties, support is available.

### *Payment plan*

You may be eligible to set up a payment plan. If your business owes \$200,000 or less, you may be able to do this yourself using online services. If you can't, or you owe more than \$200,000, you should contact the ATO to discuss your options. It's important that you pay any overdue tax debts as soon as possible.

### *GIC remission*

You can ask the ATO to remit your GIC. In deciding whether to remit GIC, the ATO considers factors such as:

- the circumstances that caused the delayed payment resulting in GIC;
- how these circumstances prevented your business from paying by the due date; and
- what steps your business took to reduce the delay.

The ATO looks at whether your business was responsible for the delay in payment or if it was outside its control, for example, whether it was due to a natural disaster, industrial action, the unforeseen collapse of a major debtor or the sudden ill health of key staff.

If your business was responsible for the delay, the ATO will consider whether it is fair and reasonable to remit the GIC. The ATO may also ask you to provide documents to support your request.

## Lodgment deferrals

A lodgment deferral gives your business extra time to lodge a document without incurring a failure to lodge on time (**FTL**) penalty.

Lodgment deferrals can help if your business experiences exceptional or unforeseen circumstances that impact your ability to lodge on time.

A deferral request should be consistent with PS LA 2011/15 *Lodgment obligations, due dates and deferrals*.

The ATO may decline your deferral request if:

- your business has a record of late lodgments, including poor compliance with deferred due dates;
- they have started lodgment compliance action; or
- you haven't provided sufficient supporting information for the ATO to assess your request.

## Decoding Division 7A – minimum yearly repayments

Borrowing money from a private company might appear straightforward but it's crucial to consider the Division 7A rules.

Division 7A is an integrity rule that prevents private company profits from being provided to shareholders or their associates tax-free. It does not apply to payments of salary and wages, director fees, fringe benefits or ordinary dividends, but has broad application to all other payments and benefits. When Division 7A applies, the private company is deemed to have paid an unfranked dividend to the recipient of the loan, payment or other benefit that must be included in their assessable income.

To avoid an unfranked dividend under Division 7A arising, loans from a private company to its shareholders or their associates must be either repaid in full or put under a Division 7A complying loan agreement before the company's lodgment day.

Under complying loan agreements, minimum yearly repayments (**MYRs**) comprising interest and principal must be made each year, starting from the income year following that in which the loan is made.

It's important to be prepared. You must ensure you can meet the required MYRs on complying loans. Missing the MYR or not paying enough in an income year will result in a shortfall in the MYR, which could be assessed to the borrower as an unfranked dividend.

Borrowing additional amounts from the same company, directly or indirectly, to make repayments on complying loans may result in the repayment not being taken into account in working out if the MYR has been made. This can also result in a shortfall in the MYR and an unfranked dividend that will be assessed to the borrower.

When making MYRs, borrowers need to:

- start repayments in the income year following that in which the complying loan was made;
- use the correct benchmark interest rate to calculate the MYR for the current year;
- make the required repayments on the loan by the due date – that is, the end of each income year (usually 30 June).

Remember, the benchmark interest rate used to calculate the MYR changes annually. The rate for the current income year ending 30 June 2024 is 8.27%.

Some of the common issues the ATO sees are:

- incorrect accounting for the use of company assets by shareholders and their associates;
- loans made without being placed under complying loan agreements;
- reborrowing from the private company to make repayments on Division 7A loans;
- an incorrect benchmark interest rate applied on a Division 7A loan.

## Superannuation guarantee payments

A clearing house distributes superannuation contributions to employees' funds on your business' behalf. Importantly, an employee's superannuation contribution is considered 'paid' only on the date it is received by the superannuation fund and not on the date it is paid by your business or when it is received by the clearing house. The ATO's Small Business Superannuation Cleaning House (**SBSCH**) is the exception, in which case your business is taken to have met its Superannuation Guarantee (**SG**) obligations once the payment is received by the SBSCH.

It is therefore important to check the processing times required for your clearing house prior to your SG payment due dates to ensure timely payments. Processing times vary, and some clearing houses may take up to 10 days to process payments.

If the superannuation fund receives your payment after the due date, you'll need to lodge an SG statement and pay the SG charge along with any penalties that may apply.

The quarterly due dates are set out in the table below.

Quarter	Period	Payment due date
1	1 July – 30 September 2024	28 October 2024
2	1 October – 31 December 2024	28 January 2025
3	1 January – 31 March 2025	28 April 2025
4	1 April – 30 June 2025	28 July 2025

Some superannuation funds, awards and contracts require you to pay superannuation more regularly than quarterly. If so, meeting the SG contribution quarterly payment dates does not ensure compliance with the requirements of other superannuation funds, awards and contracts.

You should therefore check the contractual obligations you have to ensure superannuation contributions are paid on time.

## R&D tax incentive

The R&D tax incentive (provided in the form of a tax offset) aims to boost competitiveness and improve productivity across the Australian economy by:

- encouraging industry to conduct R&D that may not otherwise have been conducted;
- improving the incentive for smaller firms to undertake R&D.

Your business' R&D activities must be registered with the Department of Industry, Science and Resources (**DISR**) before claiming the incentive. The ATO is responsible for ensuring that your business' claim for the incentive is correct.

### *Who is eligible?*

Broadly, your business is eligible to claim the R&D incentive (i.e. the R&D tax offset) if it is a company and incurred notional deductions of at least \$20,000 on eligible R&D activities.

A company incorporated overseas is also eligible if it is an Australian resident for income tax purposes or carries on business in Australia through a permanent establishment (and a relevant double tax agreement is in force).

Special rules need to be considered if your business is a member of a consolidated group or a multiple entry consolidated (**MEC**) group.

### *R&D partnerships*

Special rules apply if your business is a partner in an R&D partnership. An R&D partnership is one where each partner meets the definition of an R&D entity.

The partnership itself is not eligible to claim the R&D offset, but the partners may be able to claim for R&D activities the partnership has undertaken.

### *Who R&D activities are conducted for*

In most cases, your business can claim an R&D offset only for expenditure on R&D activities conducted for the business rather than for another entity. However, there are certain exceptions. Working out for whom the R&D activities are conducted involves determining who receives the major benefit from carrying out the activities (for example, who owns the results of the activities).

## *Eligible R&D activities*

Generally, only R&D activities conducted in Australia qualify for the R&D offset. However, R&D activities conducted overseas also qualify if AusIndustry makes a finding that the activities meet certain conditions.

R&D activities must also meet certain criteria. They must be classified as either Core R&D activities or Supporting R&D activities.

## *Core R&D activities are experimental activities:*

- whose outcome cannot be known or determined in advance on the basis of current knowledge, information or experience;
- which can be determined only by applying a systematic progression of work that is based on principles of established science and proceeds from hypothesis to experiment, observation and evaluation, and leads to logical conclusions;
- that are conducted for the purpose of generating new knowledge (including about creating new knowledge or improved materials, products, devices, processes or services).

Some types of activities are specifically excluded from being core R&D activities.

*Supporting R&D activities* are activities that are directly related to core R&D activities or, for certain activities, have been undertaken for the dominant purpose of supporting core R&D activities.

## *Notional deductions*

Total notional deductions for an income year must generally be at least \$20,000. If they are less than \$20,000, your business will be able to obtain the R&D offset only for:

- expenditure incurred to an independent Research Service Provider (**RSP**) for services within a research field for which the RSP is registered; or
- expenditure incurred as a monetary contribution under the Co-operative Research Centre (**CRC**) program.

## *Eligible expenditure*

Notional deductions can be claimed for:

- expenditure incurred on R&D activities, including expenditure on overseas activities covered by an Advance Finding from AusIndustry, amounts paid to associates and expenditure to an RSP;
- depreciation of assets used for conducting R&D activities (including R&D partnership assets);
- balancing adjustments for assets used only for conducting R&D activities (including R&D partnership assets);
- expenditure in relation to goods and materials transformed or processed during R&D activities to produce marketable products (feedstock expenditure); and
- monetary contributions under the CRC program.

Certain expenditure is ineligible, including interest expenditure, expenditure that is not at risk and core technology expenditure.

## *How much is the offset?*

If your business has an aggregated turnover of less than \$20 million per annum, it may be entitled to a refundable tax offset equal to its company tax rate plus an 18.5% premium.

If your business's aggregated is \$20 million per annum or greater, it may be entitled to a non-refundable tax offset equal to its company tax rate plus a premium of 8.5% for R&D expenditure up to 2% of total expenditure and 16.5% for R&D expenditure above 2% of total expenditure.



## Have you made payments to non-residents?

If your business makes interest, dividend or royalty payments to non-residents, it may have an obligation to:

- lodge a *Pay as you go (PAYG) withholding from interest, dividend and royalty payments to non-residents – annual report* by 31 October each year; and/or
- lodge an *Annual investment income report* by 31 October each year, if your business is an investment body making interest payments to non-resident investors (or lodge a nil return); and
- pay withholding tax to the ATO, unless a withholding exemption or tax treaty relief applies.

The ATO has said that it will be focusing on arrangements where:

- entities defer their interest to avoid or defer withholding tax, while continuing to claim income tax deductions on an accrual basis;
- offshore related entities are used to facilitate the avoidance of withholding tax in relation to interest expenses deducted against Australian-sourced income and paid to non-residents.

If your business has made an error, you should engage with the ATO by lodging a voluntary disclosure.

## Luxury car tax on a sale

A luxury car is subject to luxury car tax (**LCT**) if it is sold in the course of your business and your business is registered or required to be registered for GST. Like other business taxes, you report and pay LCT on your business' activity statement.

LCT applies in all of the following cases:

- A dealer sells a car to an individual or business and the car passes from the manufacturer (or importer) to the finance company, then to the dealership, then to the end customer – each stage is regarded as a separate sale.
- A dealer, wholesaler, manufacturer or importer provides a luxury car to an employee, associate or member of the same GST group or GST joint venture.
- A car is sold to a Commonwealth, state or territory department, agency or statutory authority (other than when used as an emergency vehicle).
- A car that is a capital asset of a business is sold or traded in.

### *Providing a car to an employee or other related party*

You must pay LCT if you provide a luxury car to an employee (either as a bonus or as part of a salary package) or associate.

If your business sells a luxury car to an employee, an associate or an employee of your associate for less than the market value, or gives it to them, the LCT value of the car is its GST-inclusive market value, excluding any LCT payable.

(‘Associates’ include people and entities closely associated with your business, such as relatives and closely connected companies or trusts. A partner in a partnership is an associate of the partnership.)

If your business is a member of a GST group and provides a luxury car to another member of the GST group, the LCT liability is payable by the GST representative member.

If your business is a participant in a GST joint venture and you provide a luxury car to another participant in the GST joint venture, the LCT liability is payable by the joint venture operator.

### *Working out LCT*

To work out the LCT amount that is payable if your business sells a car, use the following formula:

$$(\text{LCT value} - \text{LCT threshold}) \times 10 \div 11 \times 33\%.$$

The LCT threshold is:

- for fuel efficient vehicles – \$89,332 for 2023–24 and \$91,387 for 2024–25; and
- for other vehicles – \$76,950 for 2023–24 and \$80,567 for 2024–25.

The LCT value is the retail price of the car, including:

- GST and any customs duty;
- dealer delivery charges;
- standard and statutory warranties;
- additional items, such as accessories, modifications and treatments to the car before delivery or under an arrangement with the supplier or an associate of the supplier. These inclusions may be made at or before the time of delivery (unless made solely for the purpose of adapting it for driving by, or transporting, a person with a disability); and
- fleet rebates, run-out model support incentive payments and any other motor vehicle incentive payments that are third-party consideration.

The LCT value does not include:

- LCT included in the sale;
- other Australian taxes, fees or charges such as stamp duty, transfer fees and registration
- compulsory third-party insurance (**CTPI**);
- extended warranties;
- costs associated with financing the purchase of the car; and
- service plans.

The amount of LCT can be reduced by any LCT already paid.



## FBT issues

### New rates and thresholds

A new FBT year (2024–25) started on 1 April. The FBT tax rate is unchanged at 47%. The gross-up rates are also unchanged (2.0802 for Type 1 and 1.8868 for Type 2).

Other relevant amounts and thresholds for the 2024–25 FBT year include:

- *record-keeping exemption threshold* – \$10,334 (\$9,786 for 2023–24);
- *statutory or benchmark interest rate* – 8.77% (7.77% for 2023–24);
- *car parking threshold* – \$10.77 (\$10.40 for 2023–24).

The *cents per kilometre rates* (for motor vehicles other than cars) for the 2024–25 FBT year are (the 2023–24 rates are in brackets):

0–2500cc	Over 2500cc	Motor cycles
66c (62c)	77c (73c)	19c (18c)

### Living away from home – in Australia

The weekly food and drink expenses for the 2024–25 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>	\$331
2 adults	\$497
1 adult and 1 child	\$414
2 adults and 1 child	\$580
2 adults and 2 children	\$663
2 adults and 3 children	\$746
3 adults and 1 child	\$746
3 adults and 2 children	\$829

<sup>1</sup> A person is considered 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 2024–25 FBT year that the ATO accepts as reasonable for a living-away-from-home allowance (**LAFHA**) paid to employees living away from home outside of Australia can be found in Taxation Determination TD 2024/2. Some of those reasonable amounts (for one adult) are set out below.

Country	Weekly amount – 1 adult
Argentina	\$201
Austria	\$437
Cambodia	\$137
China	\$437
Fiji	\$273
France	\$437
Germany	\$437
Greece	\$346
Hong Kong	\$437
India	\$273
Indonesia	\$273
Ireland	\$437
Italy	\$437
Japan	\$437
Malaysia	\$273
Nepal	\$273
New Zealand	\$346
Norway	\$537
PNG	\$346
Philippines	\$273
Qatar	\$537
Saudi Arabia	\$437
Samoa	\$437
Singapore	\$537
South Africa	\$201
South Korea	\$537
Spain	\$437
Sri Lanka	\$273
Sweden	\$437
Switzerland	\$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 the relevant factor. For example:

Family group	Factor
2 adults	1.5
3 adults	2.0
1 adult and 1 child	1.25
2 adults and 1 child	1.75
2 adults and 2 children	2.0
2 adults and 3 children	2.25
3 adults and 1 child	2.25
3 adults and 2 children	2.5

## Key tax dates

Date	Obligation
<b>21 June 2024</b>	May monthly BAS due
<b>30 June 2024</b>	SG contributions must be paid (i.e. received by the superannuation fund) by this date to qualify for a tax deduction in 2023–24
<b>15 July 2024*</b>	Issue PAYG payment summaries if not reporting through STP
<b>22 July 2024*</b>	June monthly BAS due
<b>29 July 2024*</b>	Lodge and pay June quarterly BAS Pay June quarterly PAYG instalment Employee SG contributions for June quarter due
<b>31 July 2024</b>	Finalisation declaration due if reporting through STP
<b>1 Aug 2024</b>	Fuel tax credit rates change
<b>14 Aug 2024</b>	PAYG withholding annual report due if not reporting through STP
<b>21 Aug 2024</b>	July monthly BAS due
<b>28 Aug 2024</b>	June quarter SG statement due (where SG charge is payable) Taxable payments annual report due
<b>23 Sep 2024*</b>	August monthly BAS due
<b>30 Sep 2024</b>	Lodge annual TFN withholding report (trustee of a closely held trust)

**Note!** \*This is the next business day as the due day falls on a Saturday or Sunday.

## Disclaimer

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