

MAY

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Member of  Nexia

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# The Bottom Line

## - Individual -

### What's new

#### Small business instant asset write-off

The impasse over the small business instant asset write-off (**IAWO**) was resolved before the 2025 Federal election was called.

As previously advised in TaxWise, following the enactment of enabling legislation to temporarily increase the IAWO threshold for 2023–24 to \$20,000, the Government proposed extending the \$20,000 threshold for 12 months to 30 June 2025. After some delays in Parliament, the enabling legislation to give effect to this was enacted just before the election.

This means the IAWO threshold for 2024–25 is \$20,000 and allows small businesses (aggregated annual turnover of less than \$10 million) to immediately write off the full cost of an eligible depreciating asset that costs less than \$20,000 and is acquired and first used, or installed ready for use by 30 June 2025.

The Government has proposed that the \$20,000 IAWO will again be extended for a further 12 months to 30 June 2026. Without this legislative change, the IAWO threshold will revert to \$1,000 for 2025–26.

#### Personal income tax cuts

The income tax cuts announced as part of the Federal Budget 2025–26 are now law.

From 1 July 2026, the 16% rate (for taxable income between \$18,200 and \$45,000) will be reduced to 15%. The rate will then be reduced to 14% from 1 July 2027.

The effect of the tax cuts in 2026–27 and 2027–28 (compared to the 2024–25 settings) is that every Australian taxpayer earning:

- between \$18,200 and \$45,000 will receive a tax cut of up to \$268 in each of 2026–27 and 28 (up to just over \$5 per week); and
- more than \$45,000 — around 80% of taxpayers — will receive a tax cut of \$268 in each of 2026–27 and 28 (just over \$5 per week).

#### Working from home

If you work from home, you are likely to incur deductible work-related expenses. You can claim the actual expenses provided you keep adequate records from the start of the income year to demonstrate:

- you incurred the expenses you are claiming directly as a result of working from home;
- how you calculated the income-producing portion of the expenses.

Alternatively, you can use the ATO's fixed rate method for calculating the work-related additional running expenses incurred as a result of working from home. The ATO has recently updated its guidelines (in Practical Compliance Guideline PCG 2023/1) relating to the fixed rate method.

The fixed rate method enables you to claim a deduction for additional expenses incurred as a result of working from home by using a fixed rate for each hour you worked from home during the income year:

- energy expenses (electricity and gas) for lighting, heating, cooling and electronic items used while working from home;
- internet expenses;
- mobile and home phone usage expenses; and
- stationery and computer consumables.

The fixed rate from 1 July 2024 is 70 cents per hour. It was 67 cents per hour for the 2022–23 and 2023–24 income years.

You must keep:

- records showing the total number of actual hours you worked from home during the income year; and
- one document, such as an invoice, bill or credit card statement, for each of the additional running expenses that you have incurred during the income year.

## Election proposals

Given the outcome of the Federal election on Saturday, 3 May 2025, below is a brief summary of the key tax measures announced by the Government during the election campaign (further information can be found on the ALP's website).

### *20% reduction on all student loans*

The Government will reduce all student loans (that exist on 1 June 2025) by 20% by 1 June 2025. This includes ELP, VET Student Loans, Australian Apprenticeship Support Loans and other income-contingent student support loan accounts.

### *Standard tax deduction*

From 1 July 2026, individuals will be able to claim an instant tax deduction for work-related expenses totalling less than \$1,000 without the need for receipts. To be eligible for the instant tax deduction, individuals will have to earn labour income (not only business or investment income).

## From the ATO

### Tips for sole traders

As a sole trader, you may wear many hats. You might be the business strategist, social media manager, human resources, IT support as well as the bookkeeper.

If you're doing your own bookkeeping and managing your business, it is worth being organised from the start as it will help you stay on top of your tax obligations and make financial decisions based on your business's circumstances.

The ATO has some tips that can make your tax life easier:

- Keep an eye on upcoming expenses, and regularly update your books and reconcile your accounts.
- Set aside the GST you collect. For example, you could transfer it into another bank account within the business to keep it separate from your cash flow. This way, the money will be there when it is time to lodge and pay.
- If you have employees, you can also set your pay as you go (**PAYG**) withholding and superannuation aside, so you'll have the funds available when payments are due.
- Avoid the last-minute rush and schedule time in your calendar to prepare your business activity statement (**BAS**).
- Lodge and pay your BAS on time. This isn't just about compliance, it is a chance to understand your business's financial position.

### Common CGT mistakes

The ATO's engagement with Next 5,000 privately owned and wealthy groups reveals a range of common capital gains tax (**CGT**) mistakes. These mistakes usually the result of the mischaracterisation of information and poor record keeping and include:

- cost base errors;
- reporting of transactions in the wrong income year, or not at all;
- incorrect characterisation of ordinary income as a capital gain;
- beneficiaries that fail to gross up the discounted share of capital gain distributed by trusts;
- unsubstantiated carried forward capital losses;
- inability to substantiate assets sold to related parties.

To avoid these types of issues, you should note that certain capital losses, disposals and claims for the small business CGT concessions will attract the ATO's attention.

## *Capital losses*

Situations that attract the ATO's attention include:

- losses that appear to be excessive, incorrect or misclassified;
- capital losses from non-arm's length transactions, where the market value substitution rules are not considered or applied;
- capital losses artificially generated to offset capital gains, including non-arm's length transactions used to manipulate cost base and capital losses realised solely to offset capital gains through wash sales;
- entities that incorrectly apply capital losses;
- entities that reclassify capital losses as revenue losses to offset taxable income;
- mismatches between the tax return and the CGT schedule.

## *CGT – disposal*

Situations that attract the ATO's attention include:

- when a reported capital gain is less than what it should be, based on the ATO's estimates using external data sources;
- entities that fail to meet their CGT schedule lodgment obligations;
- beneficiaries that fail to gross up the discounted share of a capital gain distributed by a trust;
- entities that disposed of high-value assets, but returned small capital gains or claimed unsubstantiated capital losses;
- entities that incorrectly apply the CGT rollover provisions.

## *Small business CGT concessions*

The ATO wants to ensure entities genuinely meet the eligibility criteria when claiming small business CGT concessions.

Situations that attract the ATO's attention include:

- entities that fail the small business entity test (for example, fail to carry on a business or have an aggregated turnover above the \$2 million threshold – not \$10 million, which is the threshold for the general small business concessions);
- entities that fail the maximum net asset value test – net assets of the entity, connected entities and affiliates exceed \$6 million;
- where the asset disposed of is not an 'active asset';
- entities that do not meet the additional conditions where the CGT asset is a share or an interest in a trust;
- entities that restructure for the primary purpose of enabling access to the small business CGT concessions, which might not otherwise be available;
- entities that claim the small business rollover, but do not report a capital gain from CGT event J5 at the end of the replacement asset period when they fail to acquire a replacement active asset;
- entities that do not meet the additional conditions applicable to the type of small business CGT concession claimed, such as exceeding the small business CGT retirement exemption lifetime limit of \$500,000;
- entities that fail to correctly report or apply the 15-year exemption.

## Small business financial benchmarks

The ATO has released a new set of updated financial benchmarks to help small business owners take the pulse of their business.

According to the ATO, the benchmarks 'act as a health check, allowing small business owners to compare their performance including average expenses against other businesses in the same industry.' The benchmarks are updated annually.

The benchmarks cover 100 industries and more than 2 million small businesses around the country. The industries include:

- accommodation and food;
- building and construction trade services;
- education, training, recreation and support services;
- health care and personal services;
- manufacturing;
- other services;
- professional, scientific and technical services;
- retail trade;
- transport, postal and warehousing.

The benchmarks are accessible on the ATO website or via the ATO app business performance check tool. Small business owners who need help understanding how to improve their business performance should consult a business adviser or registered tax professional.

### *Example*

This example shows a small business using the ATO benchmarks to compare its performance to similar businesses in the same industry.

Anna operates a pizza shop as a sole trader. Anna wants to know how her business compares to her competitors and how she can improve her business.

Anna searches online for 'pizza shop benchmarks' and finds the ATO small business benchmarks. She follows the instructions to download the ATO app. Then, she goes to the business performance check tool.

Anna enters her details into the business performance check tool. She learns the key ratio of cost of sales to turnover for her shop is 44%.

While this is within the range for businesses in her industry with a turnover of \$550,300, Anna sees that the range for cost of sales starts at 37%. She realises some of her competitors have lower cost of sales.

Anna looked at other suppliers in the market and got a better deal to reduce her business's expenses and improve profits.

These are areas where the ATO is concerned that some small businesses are getting it wrong, being opportunistic or deliberate on an ongoing basis.

## Non-commercial business losses

The ATO is seeing individuals incorrectly claim and offset losses from non-commercial business activities against other income sources. A non-commercial business loss (**NCL**) is a loss you make from a business activity, as either a sole trader or an individual in a partnership, where that activity is not related to your primary source of income.

You cannot offset an NCL against assessable income you earn from other activities in the year the loss is made. You must:

- defer it to a later income year; and
- treat it as a deduction you incur (in relation to that business activity) in the next income year in which you carry on that business activity.

## *How to get it right*

If you're an individual who has or is planning to offset or defer an NCL loss, you should be aware of the following:

- the income requirement;
- the four eligibility tests for offsetting NCL (the assessable income, profits, real property and other assets tests);
- how to defer your loss; and
- how to offset your loss.

## *Common errors*

The most common NCL errors the ATO sees are caused by:

- offsetting losses from hobby or other non-business-like activities;
- problems applying the rules for offsetting losses when your taxable income for non-commercial loss purposes (excluding your business losses) is more than \$250,000;
- issues with the rules for offsetting losses when failing to pass any of the four eligibility tests;
- failing to apply to the ATO to exercise its discretion to allow the claim or not applying ATO guidelines in good faith.

## *Example: Susan the IT consultant*

Susan works for an IT company. She also earns income from her own IT consulting business and investments in shares and managed funds.

In the 2020–21 income year, Susan also started her own IT consulting business. Despite hiring staff and her business doing well, it has not yet made a profit for income tax purposes in any of the last three income years.

In the 2023–24 income year, the deductions from Susan's IT consulting business exceeded the income from that business by \$46,000. Susan's taxable income for NCL purposes in 2024 (excluding the tax loss from her business) was \$251,000.

Susan doesn't use a registered tax agent and lodges her own tax return. She incorrectly reports on her 2024 return that the business activity losses of \$46,000 can be offset against her other assessable income, claiming non-commercial loss code 1 (indicating the business met the income requirement).

However, as Susan incorrectly calculated her taxable income for NCL purposes, she was required to defer the loss of \$46,000 until her business made a profit or the ATO exercises the discretion in her favour. On review, the error was identified, and her 2024 assessment was amended to reflect that she was required to defer this loss. Susan was required to repay the tax shortfall and may be subject to penalties and interest.

## Using business money and assets for personal use or benefit

Division 7A of Part III of the *Income Tax Assessment Act 1936* contains a series of integrity rules. These may apply when a private company attempts to provide money or other benefits to its shareholders or their associates in an income tax-free manner. Division 7A is one of the top areas where the ATO sees small businesses making errors.

### How to get it right

The most common errors the ATO sees are caused by:

- shareholders (owners and associates) not understanding that a company is a separate legal entity and the company's money and assets are not the owners', such as using private company assets for private purposes and using a single bank account (or credit card) for private and company expenses;
- poor or no business records;
- not meeting Division 7A requirements when making, repaying and managing loans made to shareholders or their associates.

### Errors that arise from loans

The ATO sees Division 7A errors arise when private companies make loans to their shareholders or their associates. This includes:

- not entering a written complying loan agreement before the company's lodgment day;
- loan agreements being made between the wrong entities;
- private companies charging interest on loans below the benchmark interest rate;
- private companies not declaring interest earned on Division 7A loans in their assessable income;
- private companies using journal entries to record repayments that have not been made;
- shareholders or their associates not meeting their minimum yearly repayment (**MYR**) obligations due to not making their repayments by the 30 June deadline;
- incorrectly calculating their MYRs resulting in them paying less than the required repayment amount to the private company, for example, by applying an interest rate less than the benchmark interest rate;
- borrowing money from a private company to make a MYR.

## Division 7A and unpaid present entitlements

For more than 15 years, the ATO has had a published view about the tax consequences of unpaid present entitlements (**UPEs**) owing by a trust to a related corporate beneficiary. In essence, the ATO regards a UPE as a 'loan' by the beneficiary to the trust. The 'loan' would be treated as an unfranked dividend unless the parties entered into a written complying loan agreement and manage the loan on Division 7A terms.

A recent decision of the Full Federal Court (*Commissioner of Taxation v Bendel* [2025] FCAFC 15) (**Bendel**) has cast serious doubt on the ATO's treatment of UPEs. The Court said that for a loan to exist for Division 7A purposes, there must be an obligation to repay and not merely an obligation to pay. The UPE in the Bendel case did not carry such an obligation and was therefore not a 'loan'. In reaching this conclusion, the Full Federal Court upheld the tribunal's decision in favour of the taxpayers.

The *Bendel* case is the first time that the ATO's longstanding view has been considered by the courts.



The ATO has sought special leave to appeal the *Bendel* decision to the High Court because the decision is of wide interest and will impact many taxpayers.

In the meantime, the ATO is standing by its historic views and does not intend to revise those views until the appeal process is exhausted (and, if the High Court grants special leave to the Commissioner, a decision is made in favour of the taxpayers).

There are also complex rules dealing specifically with UPEs to counter arrangements that shelter trust earnings in companies, while the benefit of the funds is enjoyed tax-free by higher income earning shareholders or their associates. The application of these rules does not depend on the final outcome of the *Bendel* case.

## Contractors omitting income

As part of the taxable payments reporting system (**TPRS**), businesses must lodge a taxable payments annual report (**TPAR**) to report payments made to contractors for providing the following services:

- building and construction;
- courier;
- cleaning;
- information technology (**IT**);
- road freight;
- security, investigation or surveillance.

If you work as a contractor and provide any of these services, the business you contract to will report those payments to the ATO on their TPAR. You need to include this income on your tax return.

Through data matching, the ATO is seeing some contractors incorrectly reporting or omitting contractor income. You need to report all your income, including payments made by businesses for your contracting work. If the ATO suspects you may have omitted TPRS income on your tax return, it may:

- contact you or your tax adviser via email to request that you amend your tax return;
- contact you or your tax adviser via phone call to better understand your circumstances and potentially request that you amend your tax return.

If you don't take action, the ATO may conduct a review and audit of your business. Penalties and interest may apply.

## How to get it right

If you are a contractor providing TPRS services, remember to include all your income on your tax return. To help you get it right, the ATO includes information reported to it about contractor payments to you, in its:

- pre-filling service – this allows you to easily include these payments in your tax return if you are a sole trader;
- reported transactions service in the ATO's online services – these records give you transparency about the data that has been provided to the ATO about your business transactions.

## Example: Mike the carpenter

Mike is a carpenter who operates his business as a sole trader. Mike sub-contracts to multiple builders and completes his tax return himself.



As he provides building and construction services, the builders must report the payments they made to him during the 2023–24 income year. They must do this by lodging a taxable payment annual report (**TPAR**) with the ATO by 28 August 2024.

Mike does not use the pre-filled TPAR amounts for his tax return. This results in Mike not including all his contractor payments in his reported income. On review, the error was identified, and his 2024 assessment was amended to include the missing income. Mike was required to repay the tax shortfall and may be subject to penalties and interest.

Next year, when Mike is completing his tax return, he can review and accept the pre-filled TPAR amounts. These will auto-fill into his tax return, making it easy to ensure he has included all contractor payments in his income.

### Moving from quarterly to monthly reporting

From March 2025, small businesses that have a history of failing to comply will start to receive communication from the ATO notifying them of their new monthly reporting cycle effective from 1 April 2025. These businesses have not responded to previous communications from the ATO and demonstrate a poor compliance history, for example:

- paying late or not paying the amount due;
- not lodging or lodging late;
- reporting their tax obligations incorrectly.

Small businesses that disagree with the ATO's decision and do not consider they have a history of failing to comply can lodge an objection for this reviewable GST decision within the time limit.

After 12 months, a small business can ask the ATO to change its reporting cycle back to quarterly. The ATO will do this only if satisfied that the business is complying with its obligations.

### *Example: ATO's determination monthly reporting*

Jack has been running a small business for more than five years, and his turnover ranges from \$350,000 to \$550,000 per year. He uses a digital accounting software package for BAS preparation. His tax agent has set it up for quarterly GST reporting.

With the demands of running a busy business, he has developed a pattern of lodging and paying late. Over the past 18 months, Jack has fallen behind and stopped engaging with the ATO. He has not lodged the past two BAS, the prior four BAS were lodged late, his last business income tax return has not been lodged and he has an overdue tax debt. He has set up payment plans to pay the overdue tax debt, but has defaulted on these plans by not paying the amount due by the due date.

Jack receives a letter from the ATO advising him that he will now have to report and pay GST monthly. He understands from the email that this decision is based on his history of failing to comply with his tax obligations.

Jack decides to bring his lodgments up to date and enters into a payment plan for the outstanding debt.

This marks a turning point in his business. Jack finds it easier to stay on track with accurate, up-to-date record-keeping, which helps him make better business decisions. After the 12-month period, Jack saw the benefits of monthly reporting and decided to keep his reporting cycle as monthly.

## *Voluntarily moving to monthly GST reporting*

Many small businesses have already moved to monthly GST reporting voluntarily. This has helped them improve their cash flow and keep their record-keeping up to date.

Generally, small businesses that report their GST monthly find that:

- monthly reporting aligns better with other natural business processes;
- cash flow management improves, which helps them make more informed business decisions;
- making smaller, more manageable payments helps them meet their tax obligations.

## **Beware of SMSF scams**

The ATO has seen individuals be targeted by promoters to create a self-managed superannuation fund (**SMSF**) for inappropriate and illegal reasons. These promoters often promise high returns or early access to superannuation. These schemes can be illegal and result in severe penalties.

The ATO recommends that you:

- do your own research (check before investing);
- do not rush to make a quick decision;
- check ASIC's financial advisers register to make sure your adviser is licensed, know who you are dealing with and confirm their registration;
- request copies of all documents, including such things as investment plans and read all documents before signing.

You should consider how any arrangements may impact your SMSF and whether they contravene the tax and superannuation laws.

Remember, if something sounds too good to be true, it usually is.

If you have been approached by a promoter or suspect an unlawful tax or super scheme, you can report it by completing the tip-off form on the ATO's website or by contacting the ATO on **1800 060 062**.

The ATO works with ASIC to investigate scams and promoters involved in illegal activities in the superannuation environment.

## Operation Protego

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 Australian business number (**ABN**) application; and
- submitting fictitious BAS to attempt to gain a false GST refund.

In May 2022, the ATO warned the community to be on the lookout for fraud schemes being promoted through social media and other channels.

The most serious offenders of financial crime are referred to the ATO-led Serious Financial Crime Taskforce (**SFCT**), including individuals involved in Operation Protego. The SFCT brings together the knowledge, resources and experience of relevant law enforcement and regulatory agencies to identify and address the most serious and complex forms of financial crime.

The SFCT is taking firm action against individuals, facilitators and promoters suspected of defrauding the community by inventing fake businesses to claim false GST refunds.

## Convictions for GST fraud

The ATO has published on its website details of various individuals who have been convicted for GST fraud. Some of these are listed below.

- JM was sentenced to 2 years and 11 months in jail. He is to be released after serving 1 year and 8 months, upon entering into a recognisance release order of \$1,000, and to be of good behaviour for two years. He was charged with one count of obtaining a financial advantage by deception and one count of attempting to obtain a financial advantage. He also received reparation orders, leaving him with a debt of \$392,917.
- K A-J was sentenced to 4 years and 7 months in jail after he claimed just over \$2.4 million in GST refunds that he was not entitled to and attempted to claim a further \$323,694. He was charged with 24 counts of obtaining a financial advantage by deception and three counts of attempting to obtain a financial advantage by deception. He has a non-parole period of 2 years 7 months and has been ordered to repay the amount he claimed.
- JP was sentenced to 2 years in jail after being charged with two counts of obtaining a financial advantage by deception, and one count of attempting to obtain a financial advantage by deception. She is to be released immediately on a recognisance order of \$500, and to be of good behaviour for 2 years.
- AH was sentenced to 2 years and 3 months in jail for committing GST fraud. He is to be released after serving 8 months in custody, on a recognisance release order. He must be of good behaviour and be supervised by a probation officer for 19 months. Mr H was also ordered to repay \$108,451 to the ATO.
- TT recklessly dealt with \$296,212 that was the proceeds of an indictable crime. She spent the entire amount on holiday expenses, transfers to associates and luxury retail purchases. She was sentenced to 2 years and 8 months in jail, to be released on a recognisance release order after serving 10 months, upon entering recognisance of \$2,000 and to be of good behaviour for 2 years.
- TW was sentenced to 4 years in jail with a non-parole period of 2 years and 4 months. 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. She was ordered to repay \$599,349 by the court.

## Key tax dates

Date	Obligation
<b>21 May 2025</b>	April 2025 monthly BAS due 2024–25 FBT return due
<b>28 May 2025</b>	March 2025 SG statement due
<b>21 June 2025</b>	May 2025 monthly BAS due
<b>30 June 2025</b>	End of 2024–25 financial year
<b>1 July 2025</b>	Start of 2025–26 financial year
<b>21 July 2025</b>	June 2025 monthly BAS due
<b>28 July 2025</b>	June 2025 quarterly BAS due
	Pay June 2025 quarterly PAYG instalment
<b>14 Aug 2025</b>	PAYG withholding annual report due if not reporting through STP
<b>21 Aug 2025</b>	July monthly BAS due
<b>28 Aug 2025</b>	June quarter SG statement due Taxable payments annual report due

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