# TaxWise® Business News

SEPTEMBER 2024

# What's new?

## Tax changes from 1 July 2024

A number of income tax measures relevant to businesses apply from 1 July 2024, including:

- extension of the $20,000 instant asset write-off threshold for small businesses for a further 12 months to 30 June 2024;
- increase in the minimum level of employer support under the superannuation guarantee scheme from 11% to 11.5%;
- extension of the third party reporting system to the operators of electronic distribution platforms (**EDPs**) that facilitate supplies from one entity to another entity (other than short-term accommodation transactions and taxi and ride-sourcing services – the system already applies to those services);
- introduction of minimum training expenditure requirements to qualify for the location tax offset in relation to films;
- extension of the producer tax offset to certain drama series;
- in Victoria, increase in the payroll tax threshold to $900,000, while employers and groups with total annual taxable Australian wages between $3 million and $5 million are eligible for a reduced deduction;
- in Victoria, changes to transfer duty in relation to commercial or industrial land and reduction in the rate of duty on certain insurance policies.

*Tip!*

If you think any of these measures may affect your business, talk to your tax adviser.

## Income tax rates

As we have previously mentioned in TaxWise, tax cuts for every taxpayer came into effect on 1 July 2024. To remind you, the new personal income tax rates are set out in the table below.

| Taxable income | Tax payable |
| --- | --- |
| $0 - $18,200 | Nil |
| $18,201 - $45,000 | Nil + 16% of excess over $18,200 |
| $45,001 - $135,000 | $4,288 + 30% of excess over $45,000 |
| $135,001 - $190,000 | $31,288 + 37% of excess over $135,000 |
| $190,001+ | $51,638 + 45% of excess over $190,000 |

## Income tax thresholds/amounts

Various income tax thresholds and amounts changed on 1 July 2024. Some of the more common business-related ones are listed below.

| Item | Threshold/amount for 2024–25 |
| --- | --- |
| | |
| | |
| GDP adjustment factor | 6% |
| Car limit (depreciation) | $69,674 |
| Car expenses – cents per kilometre method | 88 cents per km |
| Reasonable meal expenses – employee truck driver | Breakfast – $30.35<br>Lunch – $34.65<br>Dinner – $59.75 |
| Reasonable meal expenses – other employees | See Taxation Determination TD 2024/3 |
| Overtime meal allowance – reasonable amount | $37.65 |
| Superannuation guarantee charge percentage | 11.5% |
| Superannuation guarantee maximum contribution base | $65,070 per quarter |
| Division 7A benchmark interest rate | 8.77% |
| CGT improvement threshold | $182,665 |

## Changes to fuel tax credit rates

## IT'S TAX TIME AGAIN!

Your business' income tax return for the 2023–24 income year must be lodged by 31 October 2024, unless you have a substituted accounting period. If your business' tax return is lodged through a registered tax agent, the due date for lodgment is likely to be later than 31 October 2024, possibly even as late as May 2025.

### Lodging a tax return

*Are you a sole trader?*

- Even if your income is below the tax-free threshold ($18,200), you still need to lodge a tax return.
- Do you pay PAYG instalments? Lodge your activity statements and pay all your PAYG instalments before you lodge your tax return so your income tax assessment takes into account the instalments you've paid throughout the year.

*Are you a partnership?*

If you operate your business in a partnership, the partnership lodges the partnership tax return, reporting the partnership's net income or loss (assessable income less allowable deductions).

As an individual partner, you report on your individual tax return:

- your share of any partnership net income or loss; and
- any other assessable income, such as salary and wages, dividends and rental income.

The partnership doesn't pay income tax on the income it earns. Instead, you and each of the partners pay tax on the share of net partnership income (if any) you receive.

*Are you a trust?*

- If you operate your business through a trust, the trust reports its net income or loss (this is the trust's assessable income less allowable deductions).
- The trustee is required to lodge a trust tax return.
- As a trust beneficiary, you report on your individual tax return any income you receive from the trust.

*Are you a company?*

- If you operate your business through a company, you need to lodge a company tax return.
- The company reports its taxable income, tax offsets and credits, PAYG instalments and the amount of tax it is liable to pay on that income or the amount that is refundable.

The company's income is separate from your personal income.

***Tip!***

Registered tax and BAS agents can help you with your tax.

**Tax losses**

A tax loss is when the total deductions you can claim, excluding gifts, donations and personal superannuation contributions, are greater than your total income for the income year.

If your business makes a tax loss, you may be able to:

- offset the loss in the same income year against other assessable income; or
- carry forward the loss and claim it as a business deduction in a later income year.

If your business has made more than one tax loss in a year, you will need to consider each tax loss separately.

If you're a sole trader or in a partnership and want to offset a tax loss, first check if the business activity meets at least one of the 'commerciality' tests under the non-commercial loss rules. (These rules do not apply to losses made by primary producers and professional artists whose income from other sources is less than $40,000.)

If you meet at least one of the 'commerciality' tests, then you can offset the loss against other assessable income (such as salary or investment income) in the same income year.

If you don't meet any of the 'commerciality' tests, you may be able to carry the loss forward to future income years. For example, you can offset it when you next make a profit.

Non-commercial losses made by an individual with an adjusted taxable income exceeding $250,000 are quarantined.

The rules for record keeping still apply in relation to business losses. You need to keep records for 5 years for most transactions. However, if you fully deduct a tax loss in a single income year, you only need to keep records for 4 years from that income year.

***Tip!***

Talk to your tax adviser about the best way to utilise tax losses.

### Personal services income

If you operate your business through a company or a trust, income earned by the company or trust from the provision of your personal services (**personal services income or PSI**) will be attributed to you unless:

- the company or trust is carrying on a personal services business (**PSB**); or
- the PSI was promptly paid to you as salary or wages.

The company or trust will be carrying on a PSB if at least one of the following tests is satisfied:

- *the results test* (the most important test) — this is based on common law criteria for characterising an independent contractor (in contrast to an employee/employer relationship);
- *the unrelated clients test* — this requires the PSI to be earned from at least two unconnected clients who contract your services as a direct result of advertising or making other public offers of your services;
- *the employment test* — this requires at least 20% (by market value) of your work to be performed by employees;

- *the business premises test* — this requires you to use business premises that meet certain conditions (e.g. you have exclusive use of the premises, and the premises must be physically separate from any premises you use for private purposes).

If 80% or more of your PSI (with certain exceptions) is income from one client (or the client and their associate(s)) and the results test is not met, the company or trust will need to obtain a PSB determination from the ATO.

The company or trust cannot deduct amounts that relate to gaining or producing your PSI, unless you could have deducted the amount as an individual or the company or trust received the PSI in the course of carrying on a PSB.

Even if you don't use a company or trust to derive your PSI, there are limitations on the deductions that you may claim against your PSI. For example, you may not be able to deduct certain home office expenses, such occupancy expenses including mortgage interest or rent.

***Tip!***

The PSI rules are complicated so talk to your tax adviser if you provide your services through a company or trust.

**Home office**

If you operate your business from a home office, you can deduct the expenses of running that office. A home office is a room in your home that is used exclusively (or almost exclusively) for business activities.

Expenses you can claim a deduction for include:

- *occupancy expenses* — these include rent, mortgage interest, water rates, land taxes and house insurance premiums. Occupancy expenses are usually calculated by apportioning the expenses between the home office and the rest of the property on a floor area basis;
- *running expenses* — these are the increased costs from using your home for your business, including electricity or gas charges for heating, cooling and lighting, cleaning costs, and depreciation and the cost of repairs of deprecating assets such as furniture, furnishings and equipment; and
- *work related phone and internet expenses*, including depreciation of the handset – an apportionment will be required if the phone or computer is not used exclusively for work.

*Running expenses*

If you work from home but don't have a home office as such, you can still claim deductions for additional expenses incurred while working from home, called 'running expenses'. To simplify matters, for 2023–24, the ATO allows a rate of 67 cents for each hour worked from home.

Running expenses for these purposes are energy expenses, internet expenses, mobile and home phone expenses and stationery and computer consumables expenses (separate deductions can be claimed for any other running expenses and depreciation of office equipment and furniture).

You must keep a record of the actual hours spent working from home. Records also need to be retained to demonstrate you incurred the relevant expenditure.

Of course, you can still make a claim based on your actual running expenses if it produces a larger deduction. But remember that those expenses will need to be apportioned between work and private use.

***Tip!***

If you have a home office or work from home, talk to your tax adviser about how to calculate your deduction and the records you must keep.

**Company tax rate**

The standard company tax rate is 30%.

The tax rate for the 2023–24 income year for companies whose aggregated annual turnover is less than $50 million (called 'base rate entities') is 25%. This rate is unchanged for the 2024–25 and later income years.

If more than 80% of a company's assessable income is 'base rate entity passive income' (e.g. dividends, rent, interest, royalties and net capital gains), the company will be taxed at the standard 30% rate.

**Small business tax offset**

If you are a sole trader, an individual who is a partner in a business partnership or an individual who is a beneficiary of a trust that carries on a business, you may qualify for the small business tax offset if the business' aggregated turnover is less than $5 million (not the general $10 million small business turnover threshold that applies to many other small business measures). The offset is not available to an individual acting as a trustee.

The offset for the 2023–24 income year (and 2024–25) is equal to 16% of the income tax payable on the sole trader's or other individual's taxable income that qualifies as their net small business income. The offset is capped at $1,000.

# From the ATO

### Does your business pay contractors to provide certain services?

If your business provides any of the following services and you pay contractors to provide them on your behalf, you may need to lodge a Taxable payment annual report (**TPAR**):

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

TPARs for 2023–24 were due by 28 August 2024.

On your TPAR, you need to record the:

- contractor's name, address and ABN; and
- the total amount you paid them for the previous financial year – including any GST and cash payments.

You can find these details on your contractors' invoices. It's the same information you use to claim income tax deductions through your tax return, and GST credits through your BAS.

You can lodge the TPAR is through SBR-enabled software or Online services for business. Your tax adviser can also lodge on your behalf.

Penalties may apply if you did not lodge your TPAR by 28 August 2024.

***Tip!***

If you think you should have lodged a TPAR for 2023–24 but have not done so, talk to your tax adviser as soon as possible.

## Superannuation guarantee charge

If your business does not make the required super guarantee (**SG**) contributions for its employees your business is liable to pay the SG charge (**SGC**). The SGC equals the total of the individual SG shortfalls for the quarter, plus a nominal interest component (10%) and an administration component ($20 per employee, per quarter).

Your business has to self-assess its liability for the SGC each quarter and lodge an SG statement with the ATO. The due dates for each quarter are set out in the table below.

| Quarter ending | Employer SG contributions due date | SG statement/SGC payment due date |
|---|---|---|
| 30 September | 28 October | 28 November |
| 31 December | 28 January | 28 February |
| 31 March | 28 April | 28 May |
| 30 June | 28 July | 28 August |

***Tip!***

Talk to your tax adviser if you think your business has underpaid employee SG contributions for a quarter or paid them after the due date. Even being one day late can result in substantial penalties including non-deductibility of the contributions.

## Private company benefits – be wary

Do you operate your business through a private company? Well, arrangements that extract wealth from private companies, while avoiding the appropriate amount of tax, are on the ATO's radar.

Transactions that attract its attention include those that:

- are conducted through one or more interposed entities; and/or
- involve excessive or non-arm's length payments.

To target areas of concern, the ATO continues to improve data matching processes across a range of sources to identify entities that received income or other benefits but haven't reported it and may have a tax liability.

These areas of focus may include:

- director loans;
- dividend access share schemes;
- deemed dividends;
- unpaid present entitlements.

The anti-avoidance rules may also apply to such arrangements.

### *Director loans*

The ATO focuses on:

- directors who are shareholders of private companies and who report low levels of salary and wages with minimal other sources of income;
- whether shareholders and their associates are maintaining a lifestyle that cannot be supported by the level of income reported to the ATO.

### *Dividend access share schemes*

Situations that attract the ATO's attention include:

- using dividend access shares as part of a scheme to enable dividend stripping;
- arrangements that involve the use of 'dividend access shares' to distribute accumulated profits of a company in a tax-free (or lower tax) form to an associate of the ordinary shareholders of the company.

The ATO encourages taxpayers to review their affairs if they have entered into such arrangements.

### *Deemed dividends*

A deemed dividend (under Division 7A) may arise where a payment or other benefit is provided by a private company to a shareholder or their associate.

The payment or benefit provided can be treated as a dividend for income tax purposes even if the participants treat it as some other form of transaction, such as a loan, advance, gift or writing off a debt. The deemed dividend is included in the assessable income of the shareholder or their associate.

The ATO's attention is attracted when:

- amounts are taken from a company and not repaid;
- a complying loan agreement has not been put in place;
- minimum yearly repayments on a loan are not paid;
- income from interest on a loan is not declared;
- company funds or assets are used for private purposes;
- transactions occur through interposed entities which appear to be an arrangement involving a payment or loan from the company to a shareholder or their associate;
- money has been borrowed directly or indirectly, from a company to repay an existing loan, or make minimum yearly repayments on a complying loan, from the same company;

- payments are made on an existing loan (either the full amount or minimum yearly repayments) and when the payments were made, the shareholder or their associate intended to, directly or indirectly, reborrow a similar or larger amount from that company;
- arrangements appear to be designed to avoid the application of Division 7A or otherwise achieve an inappropriate tax advantage.

*Unpaid present entitlements*

An unpaid present entitlement (**UPE**) is where a private company is a beneficiary of a trust and is presently entitled to an amount of trust income but does not actually receive payment of that distribution.

Situations that attract the ATO's attention include:

- private companies, including assessable trust distributions, not receiving payment of the distribution from the trust before the earlier of the due date for lodgment and the date of lodgment of the trust's tax return for the year in which the present entitlement arose;
- a failure to put funds retained by the trustee in a sub-trust for the sole benefit of the private company beneficiary;
- a failure to pay the UPE at the conclusion of the term specified in an investment agreement;
- arrangements releasing the trustee from having to pay the UPE to the private company beneficiary.

***Tip!***

Talk to your tax adviser before extracting wealth from your company.

**Employee benefit arrangements of concern**

The ATO is concerned about certain employee benefit arrangements designed to avoid tax.

Employee benefit arrangements may also be referred to in various ways, including:

- employee bonus arrangements;
- employee share trusts;
- employee investment trust/plans;
- employee incentive trust/plans;
- employee savings plans;
- employee entitlement funds;
- employee reward schemes.

They do not include complying employee share schemes and approved worker entitlement funds.

*Employee benefit trust arrangements*

A typical employee benefits trust arrangement has the following features:

- An employer entity sets up an employee benefit trust.
- The employee may enter into an agreement to direct salary to be paid to the trust.
- The entity contributes to the trust for employees or other people nominated by the employees. Often this contribution is financed through a loan or overdraft.

- The trust invests these contributions on behalf of the employees or their nominees, often by loaning an amount equal to the contributions back to the employer entity or an associate of the employer entity or purchasing shares in the employer or associated entities.
- A selected employee or person may be invited to acquire an interest (for example, by taking up ordinary units) in the trust. This is generally financed by money borrowed from the trust.
- The holders of ordinary units are generally entitled to distributions of income in proportion to their holding.

These arrangements are designed to defer or avoid tax on the employer company's profits. They are structured to purportedly provide a large tax deduction to the employer and avoid a fringe benefits tax (**FBT**) liability.

*Employee share or incentive plans*

An employee share or incentive plan scheme has the following characteristics:

- The employer entity establishes a special purpose company.
- Shares or membership interests are allocated to selected employees for a nominal amount in the special purpose company.
- The employer contributes a sum of money to the special purpose company, increasing the value of the employees' shares or membership interests.
- The special purpose company invests the contribution amounts on behalf of the employees, often lending the contribution back to the employer entity or their associate.
- Employee share or incentive arrangements are designed to provide the employer with an effective incentive plan for employees. However, the only employees who generally participate in such plans are the controllers of the employer's business.

These arrangements are designed to defer or avoid tax on the employer company's profits. They are structured to purportedly provide a large tax deduction to the employer and avoid an FBT liability.

*Employee remuneration trusts*

An employee remuneration trust (**ERT**) is an arrangement that has the following essential elements:

- it is established by an employer or an adviser of the employer for the purpose of providing remuneration or incentives to Australian resident employees;
- it involves the establishment of a trust by or at the instruction of the employer;
- the trustee of the trust receives money or assets from the employer (or the employer's associate); and
- it provides benefits to the employees (or their associates).

If you are an employer, contributions you make to the trustee of an ERT are generally deductible if you have a genuine purpose for it being applied within a relatively short period towards remunerating employees (to the extent that the contribution is not capital or of a capital nature).

As an employer, if you made a contribution to an ERT at the direction of, or on behalf of, your employee and that contribution is remuneration, you are required to withhold an amount from the contribution as a Pay as you go (**PAYG**) withholding amount.

FBT can apply to contributions made by an employer to the trustee of an ERT, to benefits provided by the trustee of the ERT and to loans provided by the trustee of the ERT to employees.

Ongoing maintenance and management fees for running an ERT may be deductible.

If you are an employee and you receive a benefit from the ERT, the benefit will be assessable to you if it is your remuneration and is not a fringe benefit. In some cases, a contribution may be made on your behalf to the trustee of an ERT as part of your remuneration (and not as a fringe benefit) — in these cases, that contribution will be assessable to you.

If a contribution is made by an employer to a trustee of an ERT, and that trustee is already a shareholder of the employer, the contribution may in some circumstances be deemed to be a dividend.

***Tip!***

Talk to your tax adviser if your business is considering arrangements to provide benefits to employees.

**Payments to non-residents**

If your business pays interest, dividends or royalties to a non-resident, you may need to meet certain withholding tax requirements. These include:

- lodgment of a PAYG annual report (PAYG withholding from interest, dividend and royalty payments paid to non-residents – annual report) or annual investment income report;
- payment of withholding tax.

You may still have a withholding tax obligation even if the interest amount has not been actually paid.

*When to withhold tax*

You should withhold tax from interest, dividends and royalties you pay to a foreign resident when any of the following occurs:

- you make the payment;
- you credit the payment to the foreign resident's account;
- you deal with the payment on behalf of, or at the direction of, the foreign resident.

If you are an Australian agent of a foreign resident, you should withhold tax when you:

- receive the payment on behalf of the foreign resident;
- have the amount credited to your account;
- have the payments dealt with at the direction of yourself or the foreign resident payee.

*Interest exemptions*

You do not have to withhold amounts from interest if the payee is not liable to pay withholding tax on those amounts, for example, if a payee is entitled to the foreign income exemption for temporary residents.

Other exemptions may include interest relating to certain:

- exempt non-resident entities involved in charitable, educational or scientific pursuits, community service, aviation and tourism promotion or sports, culture and recreation;
- non-resident hospitals;
- non-resident sports, cultural and recreational entities.

Some payments exempt from income tax in the payee's country of residence include payments relating to:

- certain exempt non-resident charitable institutions;
- certain publicly offered company debentures or debt interests;
- certain publicly offered unit trust debentures or debt interests;
- certain offshore borrowings by offshore banking units;
- certain tax avoidance schemes where income is diverted;
- certain non-resident superannuation funds for foreign residents;
- certified infrastructure borrowings;
- trustees, assessed to trustees under particular trust provisions;
- a nostro account derived by a non-resident foreign bank;
- a non-resident carrying on a business in Australia through a permanent establishment the non-resident has in Australia (excluding certain limited partnership arrangements);
- amounts subject to family trust distribution tax;
- trustee income under certain closely held trust provisions.

*Royalty and dividend exemptions*

You do not have to withhold amounts from royalty or dividend payments you make to a foreign resident of a treaty country if the:

- foreign resident payee carries on a business in Australia through a permanent establishment
- the payment you make is effectively connected with the payee's business.

This means that the payee will need to include the royalty or dividend payments in the assessable income of the payee's business in Australia.

However, if you are a foreign resident payer carrying on a business through a permanent establishment in Australia and you make royalty or dividend payments to another foreign resident that does not carry on a business in Australia, withholding tax will apply.

*Checklist*

If withholding tax obligations apply, ensure you:

- lodge a PAYG annual report or an annual investment income report;
- withhold and pay the correct amount having regard to the impact of any applicable tax treaties and withholding tax exemptions;
- withhold and pay on a timely basis having regard to whether you are a small, medium or large withholder;
- where you are required to withhold, only claim a deduction where you have met your withholding tax obligations;
- classify and report deductions for payments subject to withholding to a non-resident at the correct label in the income tax return and international dealings schedule;
- satisfy the eligibility criteria to claim, and can substantiate an exemption;
- satisfy the eligibility criteria to claim and can substantiate tax treaty relief;
- consider whether you have entered into an arrangement intended to defer or avoid withholding tax.

# Key tax dates

| Date | Obligation |
| --- | --- |
| **23 Sept 2024*** | August monthly BAS due |
| **3 Oct 2024** | Finalisation due date by payers of PAYG withholding payments reporting through STP for closely held payees |
| **23 Oct 2024** | September monthly BAS due<br>Payment of annual PAYG instalment for 2023–24 |
| **30 Oct 2024** | September quarter BAS due<br>Payment of first PAYG instalment for 2024–25 by quarterly payers |
| **31 Oct 2024** | 2023–24 income tax return due (unless lodging through a tax agent) |
| | PAYG withholding annual reports due (no ABN withholding; interest, dividend and royalty payments paid to foreign residents; and payments to foreign residents) |
| **21 Nov 2024** | October monthly BAS due |
| **28 Nov 2024** | September quarter SG statement and SGC payment due |

*This is the next business day as the due date (21 September) falls on a Saturday.

***Tip!***

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.


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