

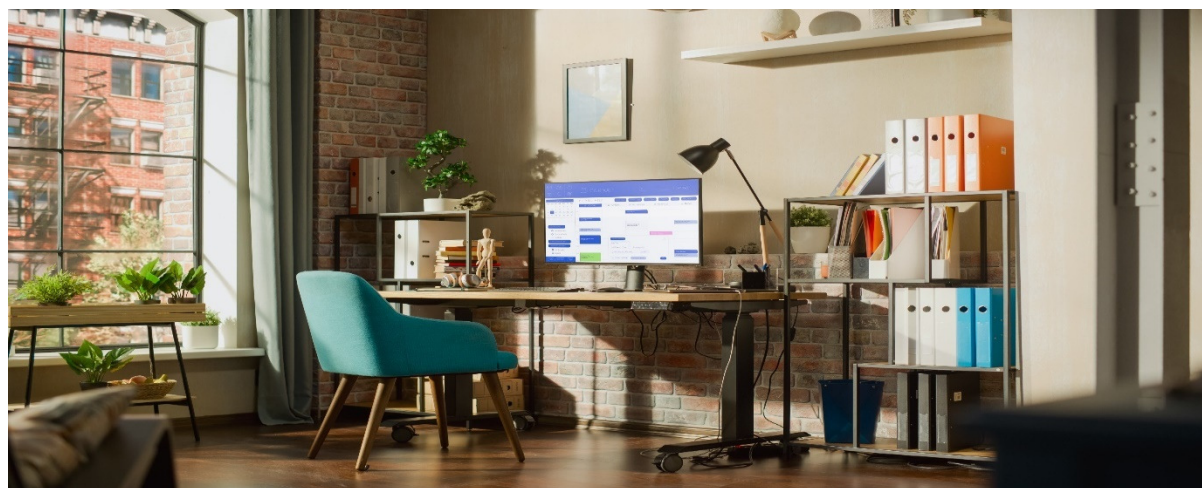
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ACN 121 288 373  
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Business Advisers and Consultants*

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# The Bottom Line

## Individual -



## Stage 3 personal income tax cuts redesigned

The changes to the Stage 3 personal income tax cuts — to take effect on 1 July 2024 — announced by the Government earlier this year are now law. Broadly the changes amend the previously legislated tax cuts to:

- reduce the 19% marginal tax rate for taxable incomes up to \$45,000 to 16%;
- reduce the 32.5% marginal tax rate for taxable incomes from more than \$45,000 to less than \$135,000 to 30%;
- increase the threshold above which the 37% tax rate applies from \$120,000 to \$135,000 (this rate was previously legislated to be abolished);
- increase the threshold above which the 45% tax rate applies from \$180,000 to \$190,000 (previously legislated to be \$200,000).

The tax-free threshold of \$18,200 is unchanged.

The table below sets out the tax rates that will now apply from 1 July 2024.

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 \$190,00

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## From the ATO

### Is your business eligible for concessions?

As a small business owner, you may be eligible for concessions on the amount of tax you pay. This depends on your business structure, your industry and your annual turnover.

If you have an aggregated turnover of less than:

- \$2 million, you may be able to access the small business CGT concessions;
- \$5 million, you may be able to access the small business income tax offset;
- \$10 million, you may be able to access the small business restructure roll-over.

You will generally need to keep records for five years to prove any claims you make. You can choose how you keep these records, but you may find electronic record keeping easier and more convenient.

### Check your PAYG instalments

If you are a sole trader, now is a good time to check that your PAYG instalments still reflect your expected end-of-year tax liability.

If your business' circumstances have changed and you think you will pay too much (or too little) in instalments for the year, the instalments can be varied on the next activity statement (due on 28 April 2024). Instalments can be varied multiple times throughout the year. The varied amount or rate will apply for the remaining instalments for the income year or until another variation is made.

If your varied instalments are less than 85% of your total tax payable, you may have to pay a general interest charge on the difference, in addition to paying the shortfall. Depending on the circumstances there may also be penalties.

If you are not sure, it is best to not vary your instalments. Any overpaid instalments will be refunded to you after you lodge your tax return.

If your business is affected by COVID-19 or a natural disaster, the ATO has said it will not apply penalties or charge interest to varied instalments if you have made your best attempt to estimate your end of year tax liability.

## Claiming working from home expenses

If you have been working from home this income year, you will probably have some work-related expenses you can claim.

There are two ways to calculate a working from home deduction — the fixed rate method and the actual cost method.

If you use the *fixed rate method*, you can claim a rate of 67 cents per hour worked at home.

This amount covers additional running expenses, including electricity and gas, phone and internet usage, stationery and computer consumables. A deduction for these costs cannot be claimed elsewhere in your tax return.

You can, however, separately claim the decline in value for any depreciating assets, like office furniture or technology.

You must have the right records.

For the *fixed rate method*, this includes a record of:

- the total number of hours worked from home (for the entire income year);
- the additional running expenses covered by the rate per hour that you incurred (for example, phone bill, electricity bill);
- any depreciating assets (and how much of your use of that asset was work-related).

For the *actual cost method*, you will need a record of:

- your hours worked from home (whether that be the total hours, or a continuous four-week period representing the usual pattern of work, if your hours are consistent throughout the income year);
- your additional running expenses (for example, phone bills, electricity bills);
- how the deduction was calculated.

## EV home charging rates

Do you use an electric vehicle (**EV**) for work? If you do, you may be able to use the ATO's cents-per-kilometre rate for calculating electricity costs when you charge the EV at home. You can use this method instead of determining the actual cost of the electricity.

This cents-per-kilometre method can also be used for fringe benefits tax (**FBT**) purposes if you provide an EV to an employee who charges it at home.

The choice is per vehicle and applies for the whole income or FBT year. However, it can change from year to year.

Particular points to note are:

- The 'EV home charging rate' is 4.2 cents per km. This rate is multiplied by the total number of work-related kilometres travelled by the EV in the income year or FBT year in question.
- Employers can use this rate from 1 April 2022 for FBT reporting purposes.
- Sole traders and employees can use this rate from 1 July 2022 for income tax purposes, when using the logbook method.
- If you use the EV home charging rate, you cannot include commercial charging station costs unless you can accurately determine the percentage of the vehicle's total charge based on the type of charging location.

- This cents-per-kilometre method applies to zero emission electric cars only. Plug-in hybrid vehicles, electric motorcycles or electric scooters are excluded.

## *Record keeping and transitional approach for 2022–23 and 2023–24*

If you choose to apply the EV home charging rate for FBT purposes, a valid logbook must be maintained if the operating cost method is used.

To satisfy the record keeping requirements for income tax purposes, you need to have:

- a valid logbook to use the logbook method of calculating work-related car expenses. For other vehicles, the ATO recommends a logbook to demonstrate work-related use of the vehicle; and
- one electricity bill for the residential premises in the income year (to show that electricity costs have been incurred).

However, if you have not maintained odometer records as at the start of the 2022–23 or 2023–24 FBT or income year, the ATO will allow a reasonable estimate to be used based on service records, logbooks or other available information.

## **Fringe benefits tax alternative record keeping**

If you have employees and provide fringe benefits, from 1 April 2024, for certain benefits you can choose to:

- rely on alternative records (as determined by the ATO by legislative instrument);
- keep and retain the records in the current approved form – a travel diary or some employee declarations for FBT record keeping purposes; or
- use a combination of both methods for each employee for each benefit.

Where you choose to use the alternative records option, you must have the minimum information required at the time of lodging your FBT return for the FBT year (or by 21 May following the end of the FBT year if you do not have to lodge a return). The ATO will accept these records as a substitute for a travel diary or certain employee declarations.

There is no limit on the number of records that may, together, meet the information requirements.

The option to use alternative records is available on a benefit-by-benefit basis.

An employer may choose to use alternative records for some benefits of one type, even if they choose to rely on records in the approved form for other benefits of that same type.

The alternative record option is available in relation to:

- travel diaries;
- otherwise deductible benefits;
- the private use of vehicles other than cars;
- car travel to certain work-related activities;
- car travel to an employment interview or selection test;
- living-away-from-home — maintaining an Australian home;
- fly-in fly-out/drive-in drive-out employees;
- overseas employment holiday transport;
- remote area holiday transport;
- relocation transport; and
- temporary accommodation relating to relocation.

## Understanding Division 7A – avoid common errors

There are multiple ways in which owners may access private company money, such as through salary and wages, dividends or complying Division 7A loans. Division 7A is an area where the ATO sees many errors, across both the basics and more complex aspects.

Broadly, under Division 7A, certain loans and payments by private companies to shareholders (and associates of those shareholders) are taken to be unfranked dividends. An unpaid present entitlement may also be taken to be an unfranked dividend. A loan will not be taken to be an unfranked dividend if it meets certain minimum rate and maximum term criteria.

The ATO has reminded taxpayers that they need to:

- keep adequate records;
- properly account for and report payments and use of company assets by shareholders and associates; and
- comply with rules around Division 7A loans.

It's essential that you understand Division 7A to:

- make informed decisions when receiving private company money and using private company assets;
- avoid unexpected and undesirable tax consequences.

## Franking offset holding rule — LIFO method

Do you own shares? If you do, then you may be entitled to a franking offset in relation to franked dividends you receive. The effect that dividends are not taxed twice (in the hands of the company and the shareholder) is known as imputation.

To be entitled to a franking offset, a shareholder must satisfy certain integrity rules. One of these is the holding period requirement. Basically, this requires the shareholder to hold the relevant shares for at least 45 days.

Where a person buys substantially identical shares in a company over time, it can get complicated. So, the last-in first-out (LIFO) method is used to determine which shares (or interests in shares) are subject to testing for the purposes of the holding period requirement.

The LIFO method groups together the primary securities and related securities you hold in a company. The holding period requirement applies to this group. Once the group is established, any shares in the group that you sell are taken to be sold on a last-in first-out basis.

If (after applying the LIFO method) the shares or interest in shares were not held at risk for a continuous period of at least 45 days during the relevant qualification period, the taxpayer will not be entitled to the relevant franking credits.

The effect of the LIFO method is to prevent taxpayers from manipulating the period in which they hold shares in a company at risk.

The ATO has provided a simple example showing how the LIFO method works.

## *Example: buying and selling multiple parcels of shares*

Jenny purchased and sold shares in a company. On:

- 3 October 2023, she purchased parcel 1 of 10,000 shares;
- 13 October 2023, she purchased parcel 2 of 10,000 shares;
- 16 January 2024, she made her first sale of shares (2,000 shares);
- 5 March 2024, she purchased parcel 3 of 10,000 shares;
- 15 March 2024, she purchased parcel 4 of 10,000 shares;
- 26 March 2024, she made her second sale of shares (6,000 shares);
- 4 April 2024, it was the ex-dividend date for the company's ordinary dividend;
- 8 April 2024, she purchased parcel 5 of 25,000 shares;
- 12 April 2024, she made her third sale of shares (25,000 shares).

To use the LIFO method, Jenny goes through the following steps.

*Step 1:* Jenny determines the group of shares on hand as of the ex-dividend date. The pre-ex-dividend date sales are grouped and matched on a last-in, first-out basis. She matches the:

- first sale with parcel 2, leaving her with 8,000 parcel 2 shares on hand (10,000 minus 2,000);
- second sale with parcel 4, leaving her with 4,000 parcel 4 shares on hand (10,000 minus 6,000).

The group on hand as at the ex-dividend date is 32,000 shares. This is made up of:

- 4,000 shares on hand from parcel 4;
- 10,000 shares from parcel 3;
- 8,000 shares on hand from parcel 2;
- 10,000 shares from parcel 1.

*Step 2:* Jenny applies the LIFO method to the third sale of shares (sold after the ex-dividend date).

Jenny meets the holding period requirement in relation to the ordinary dividend paid on the parcel 2 shares as Jenny held this parcel of shares for more than 45 days.

She matches the third sale against (in order):

- parcel 4 (4,000 shares);
- parcel 3 (10,000 shares);
- parcel 2 (8,000 shares).

Jenny acquired parcel 5 after the ex-dividend date and is not entitled to the dividend or franking credits on these shares. So, the parcel 5 shares are not part of the group of shares against which the sale 3 shares need to be matched for the purposes of the LIFO requirement.

The result is that Jenny does not meet the holding period requirement in relation to the franked dividend and therefore a franking credit entitlement is not available for parcel 4 shares (4,000 shares) and parcel 3 shares (10,000 shares). Jenny meets the holding period requirement for parcel 1 and the balance of parcel 2 as these parcels were held for more than 45 days, applying the LIFO method.

## *Result*

Unless other integrity rules apply, Jenny can claim the franking credits attached to the ordinary dividend paid on 18,000 shares (10,000 shares from parcel 1 and 8,000 from parcel 2). As Jenny does not meet the holding period requirement for the other 14,000 shares (10,000 shares from parcel 3 and 4,000 shares from parcel 4), she is not a qualified person in relation to the franked, ordinary dividend paid on these shares.

## **Financial crime**

Financial crime is not victimless and has a serious economic impact on the community. It also has significant direct impacts on individuals and businesses. Examples can include:

- cyber criminals who steal people's life savings or identities;
- companies that are deliberately liquidated, wound up or abandoned (referred to as illegal phoenix activity) before they can pay creditors such as the ATO, honest businesses or subcontractors; and
- organised criminals who orchestrate illicit tobacco growing operations, robbing the community of millions in revenue and taking business from legitimate retailers.

It is estimated that financial crime costs Australia up to \$60 billion each year. Examples of financial crime include:

- tax evasion (blameworthy act or omission by the taxpayer);
- tax fraud (taxpayer making a false statement to the ATO about their tax or being recklessly careless about whether what they state is true or false);
- other offences like money laundering or identity theft.

Like any crime, financial crimes are diverse in nature, scale and the amount of harm they cause. They are often structured in ways that combine legal and illegal transactions and payments, trying to make it difficult to unravel the full extent of the illegal activities.

Whether financial crime threats originate in Australia or offshore, they are usually enabled by facilitators and technology. For example, rapidly evolving technology and platforms help cyber criminals access information and sensitive data, making it easier for them to commit crimes against individuals, businesses and the government.

## *Indications of financial crime*

When people commit financial crimes, they typically misrepresent or conceal the true nature of their transactions, assets or ownership of entities. Some of the indicators the ATO looks for include:

- use of nominees or straw directors;
- unexplained wealth or wealth that is at odds with their reported income;
- giving false or misleading statements to the ATO;
- mischaracterising the true nature of transactions;
- understating income;
- inflating or claiming deductions to which they are not entitled;
- keeping two sets of books or financial statements;
- failing to keep records or intentionally destroying financial records;
- concealing money or the source of money;
- making payments in cash;
- using fictitious names or names of unauthorised third parties;
- failing to lodge income tax returns or business activity statements (BAS);

- failing to pay tax debts when they are due;
- withholding information from a tax professional or the ATO; and
- ignoring legal advice or guidance from the ATO.

## *Tax evasion or fraud*

Tax evasion involves some blameworthy act or omission by the taxpayer.

Tax fraud is more serious and involves the taxpayer making a false statement to the ATO about their tax or being recklessly careless about whether what they state is true or false.

Examples of fraud or evasion include:

- recklessly claiming deductions to which the taxpayer was not entitled;
- withholding information from the ATO or failing to keep records;
- submitting false, backdated or altered documents;
- paying wages in cash and not reporting the wages paid to the ATO;
- not remitting GST, PAYG withholding or superannuation guarantee charges to the ATO;
- making false statements; and
- disguising expenses intended for personal benefit as business expenses.

Where there is enough evidence to suggest a person has acted knowingly or recklessly to dishonestly get a payment or refund from the ATO, the ATO consider referring the person for criminal investigation and prosecution.

## *How the ATO tackles financial crime*

The ATO is a key participant in many taskforces and coordination groups. The shared goal is to identify and dismantle financial crime in Australia. Some of the ATO's key partnerships include:

- Criminal Assets Confiscation Taskforce (CACT);
- National Anti-Gangs Squad (NAGS); and
- ATO-led joint agency Serious Financial Crime Taskforce (SFCT).

Internationally, the ATO works through alliances such as the Joint Chiefs of Global Tax Enforcement (J5), to crack criminal enterprises wide open.

The ATO's partnerships allow it to share intelligence and information, bringing the most serious offenders of financial crime to account.





## Superannuation/SMSFs

### Have you been keeping good records?

If you have a self-managed superannuation fund (**SMSF**), it is important to maintain good records.

There are many benefits to applying good record keeping habits for your SMSF. It is also a legal requirement.

The benefits of good record keeping include:

- making it easier for you to provide information to your SMSF professionals for independent audit and annual return preparation;
- helping reduce audit and administration costs; and
- avoiding the risk of receiving administrative penalties that are personally payable by each individual trustee or the corporate trustee of the fund.

Remember, even if you use a superannuation or tax professional to administer your SMSF, each trustee is still responsible for good record keeping.

### Prepare to lodge your SAR by 15 May

Your SMSF annual return (**SAR**) for 2022–23 is due by 15 May 2024. Accordingly, you need to have appointed an auditor by now (an auditor must be appointed no later than 45 days before lodgment of the SAR, i.e. no later than 1 April 2024 to meet the May 25 2024 deadline).

In preparation for your lodgment, you also need to:

- complete a market valuation of all your assets;
- prepare your fund's financial statements; and
- provide signed copies of documents to your auditor — so they can determine your financial position and your fund's compliance with superannuation laws.

Remember, if your SAR is more than two weeks overdue, and you have not contacted the ATO, the status of the SMSF will be changed on Super Fund Lookup to 'Regulation details removed'. This status will remain until any overdue lodgments are brought up to date.

If you have a status of 'Regulation details removed', APRA funds will not be able to roll over member benefits and employers will not be able to make any superannuation guarantee payments to the fund's members.

## Quarterly TBAR lodgment reminder

If you had transfer balance account events in the last quarter, you must lodge a TBAR by 28 April 2024.

SMSFs must report certain events that affect a member's transfer balance account (**TBA**) quarterly using a transfer balance account report (**TBAR**). These events must be reported even if the member's total superannuation balance is less than \$1 million.

You must report and lodge within 28 days after the end of the quarter in which the event occurs. You are not required to lodge a TBAR if no TBA event occurred during the quarter.

You should always refer to event-based reporting for SMSFs and the TBAR instructions when preparing your TBAR.

You can lodge your TBAR through Online services for business or your tax agent can do it for you through their online services.

If your SMSF does not lodge a TBAR by the required date, the member's transfer balance account may be adversely affected. The member may need to commute any amounts more than their cap and pay excess transfer balance tax.

## Self-managed superannuation fund statistics

Have you ever wondered how many SMSFs there are in Australia? Well, as of 30 June 2023, there were 610,000 and SMSF assets totalled \$876 billion, which is about 25% of all superannuation assets.

The ATO has published the latest statistical overview for SMSFs and it makes for interesting reading. Here are some of the highlights (the data relates to 2021–22 unless otherwise stated).

- Asset values:
  - 19% of SMSFs had total assets valued in the \$200,000–\$500,000 range;
  - 25% of SMSFs had total assets valued in the \$500,000–\$1 million range;
  - 22% of SMSFs had total assets valued in the \$1 million–\$2 million range;
  - 15% of SMSFs had total assets valued in the \$2 million–\$5 million range;
  - just under 5% of SMSFs had total assets valued at more than \$5 million; and
  - 6% of SMSFs had total assets valued at less than \$50,000.
- The top five assets held by SMSFs (making up 74% of all SMSF assets) were:
  - listed shares: 28%;
  - cash and term deposits: 18%;
  - unlisted trusts: 12%;
  - non-residential real property: 10%;
  - limited recourse borrowing arrangements: 7%.
- 64% of assets were held in retirement phase and 36% in accumulation phase.
- The estimated return on assets was 0.6%.
- Contributions to SMSFs totalled \$22 billion (13% of all superannuation contributions).
- SMSF benefit payments totalled \$36.5 billion (32% of SMSF members received a benefit).
- There were 1.1 million SMSFs members.
- The average male member balance was \$867,000 and the average female member balance was \$736,000.
- 32% of SMSF trustees were individuals and 68% were corporate trustees (as of 30 June 2023).
- The median age of all SMSF members was 62 years (as of 30 June 2023).



## From the Courts

### Final person sentenced over Operation Elbrus tax fraud

A Sutherland man was jailed in February for 4 years and 6 months, with a non-parole period of 2 years and 3 months, for his role in the Plutus Payroll fraud. He was the final person to be sentenced under Operation Elbrus.

Operation Elbrus was a joint Australian Federal Police (**AFP**) and Australian Taxation Office (**ATO**) investigation that became a key focus for the Serious Financial Crime Taskforce in 2017. The Sutherland man is the fifteenth person to have been sentenced.

The operation revealed that a group of people used payroll services companies to divert PAYG withholding and GST owed to the ATO. The total amount defrauded was \$105 million.

The Sutherland man, who was a long-term friend of one the main conspirators, operated a company that received funds from the conspiracy, and made and received payments that personally benefited his friend and himself.

He was found guilty of:

- one count of dealing with proceeds of crime — money or property worth \$1 million or more; and
- one count of dealing with proceeds of crime — money or property worth \$50,000 or more.

This follows the sentencing of a Menai man, 36, and a Vaucluse man, 53, in August, who both received 15 years' imprisonment.

### Developer jailed for tax fraud

A developer who conspired to lodge fraudulent BASs has been convicted and sentenced to 10 years in jail with a non-parole period of 6 years and 8 months.

The developer was involved with two companies that formed part of a group known as the 'Hightrade Group'. The Hightrade Group developed properties such as a hotel and golf course in the Hunter Valley, New South Wales.

The developer fraudulently obtained GST refunds by using three tiers of companies (developers, building companies and suppliers) to grossly inflate the construction costs of his developments. The companies he was involved with also claimed to have purchased goods when no such purchases had occurred. In total, the developer intended to cause a loss to the Commonwealth of more than \$15 million.

## Three and a half year sentence for attempting to defraud the ATO

A Wheelers Hill man was sentenced in December 2023 to 3 years and 6 months imprisonment for defrauding the ATO of nearly \$35,000 and attempting to defraud the ATO of a further \$458,000. The non-parole period is 2 years and 3 months.

The man pleaded guilty to two counts of attempting to obtain financial advantage by deception and one count of obtaining financial advantage by deception.

The joint AFP and ATO Serious Financial Crime Taskforce investigation began in June 2020, after the ATO linked the man to a number of suspicious claims, including 40 fraudulent applications for JobKeeper. The value of fraudulent claims totalled \$492,957.



## Key tax dates

Date	Obligation
29 Apr 2024*	March 2024 quarterly BAS due
	Pay March 2024 quarterly PAYG instalment
	Employee superannuation guarantee contributions due
27 May 2024*	2023–24 FBT return due
28 May 2024	March 2024 SG statement due (if required)
30 June 2024	End of 2023–24 financial year
1 July 2024	Start of 2024–25 financial year
	Stage 3 personal income tax cuts (as redesigned)
29 July 2024*	June 2024 quarterly BAS due
	Pay June 2024 quarterly PAYG instalment
14 Aug 2024	PAYG withholding annual report due if not reporting through Single Touch Payroll (STP)
28 Aug 2024	June quarter SG statement due
	Taxable payments annual report due

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

**Note!** Talk to your tax agent to confirm the correct due dates for your own tax obligations. For example, you may have more time to lodge and pay if impacted by COVID-19 or a natural disaster.

## Disclaimer

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