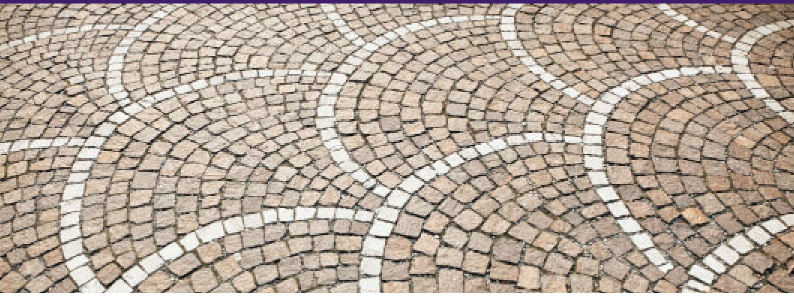
Nexia Australia

Tax Guide

2020-2021

Tax Guide 2020



What's New?

- All 2019-20 and all available 2020-21 rates: personal, company, trust, superannuation
- New and expanded instant asset write-off thresholds and dates
- New personal tax offset thresholds
- FBT, CGT, GST rates
- 2020-21 tax calendar
- A summary of key Coronavirus measures, including JobKeeper payment, Cash flow boost, and depreciation measures

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Tax Guide 2020

Introduction

An understanding of the fundamentals of the taxation system is essential before entering into any transaction. *Tax Guide 2020* is designed to inform and assist you when organising your financial affairs in light of the number of tax changes that have occurred.

By being better informed, you will be able to take advantage of the opportunities which may arise and avoid tax traps.

See us first:

- before making any financial decision;
- to assist you in meeting the necessary record-keeping requirements;
- if you consider that any of the issues contained in this booklet may affect you.

Further information or assistance can be obtained from us.

How to use

This booklet is a ready reference, easily-accessible overview of the Australian taxation system. The booklet is current as at 1 June 2020 and incorporates legislated and proposed changes (whether or not included in a Bill as at the time of publication). As a result, some issues covered in this guide may be subject to change. Where you are uncertain of any taxation issue please contact our office.

When to use

Tax Guide 2020 should be a constant companion. The information is a summary of the relevant tax laws and should only be used as an initial reference. Please note that changes in the information provided may occur after the date of publication.

IMPORTANT: We suggest that our clients do not act only on the basis of material contained in this booklet because the items herein are in the nature of general comments only and may be liable to misinterpretation in a particular circumstance. Also, changes in legislation sometimes occur quickly. We therefore recommend that our advice should be sought before acting in any of these areas.

This booklet is issued as a helpful guide to our clients and for their private information; it should therefore be regarded as confidential and not be made available to any person without our prior approval.

Contents

MOTOR VEHICLE MINI LOG BOOK: The motor vehicle mini log book can be found in the middle pages of the *Tax Guide 2020*.

In a normal year, the first item in the Tax Guide would be a summary of measures announced in the Federal Budget. But this is not a normal year because of the Coronavirus (COVID-19) crisis and the Budget has been postponed to October. Instead, we start the Guide with various measures introduced in response to the crisis.

Key Coronavirus (COVID-19) measures

JobKeeper payment

The principal Coronavirus (COVID-19) response payment to assist businesses is the JobKeeper payment. This is available to employers, sole traders and other business entities that suffer a substantial fall in turnover. Various entities, including the major banks, government agencies, local governments and businesses owned by a foreign government, are not eligible for the JobKeeper Payment.

The JobKeeper scheme operates on a fortnightly basis (finishing with the fortnight ending on 27 September 2020). Eligibility to participate in the scheme is determined on a fortnightly basis.

Entitlement to JobKeeper payments also depends on keeping various records. Integrity rules prevent an entity restructuring their business or changing arrangements so as to qualify for JobKeeper payments or increase the amount of JobKeeper payments they receive.

Fall in turnover test

Employers, sole traders and other business entities may be eligible for the JobKeeper payment if projected GST turnover for the turnover test period in 2020 (a month or a quarter) is at least 30% (annual turnover $1bn or less) or 50% (annual turnover more than $1bn) lower than the GST turnover for the relevant comparison period in 2019. There are various modifications to the GST turnover test. For example, if the business entity is part of a GST group, GST turnover is calculated as if it wasn't part of the group. Other modifications apply only to specific entities, such as ACNC-registered charities and universities. The ATO expects entities to use the GST accounting method (cash or accruals) they usually use in working out turnover.

The business entity can choose a month or quarter in 2020 as the turnover test period (regardless of whether the entity reports monthly or quarterly). To qualify from the start of the scheme, an entity choosing a monthly turnover test period had to choose either March 2020 or April 2020. To qualify at a later time, the turnover month can be May, June, July, August or September 2020. If a turnover quarter is used, it can be the April-June 2020 or July-September 2020 quarter.

The relevant comparison period is the period in 2019 that corresponds to the 2020 turnover test period. For example, a quarterly reporter can compare its projected GST turnover for the April-June 2020 quarter with its current GST turnover for the April-June 2019 quarter and a monthly reporter can compare its projected GST turnover for June 2020 to its current GST turnover for June 2019.

There is an alternative test for determining the fall in GST turnover where it is not appropriate to compare a relevant period for this year with an equivalent period for last year. For example, the alternative test will apply if the entity was not in existence last year or the turnover for the relevant period last year was unusually low or there has been a significant increase in turnover in the three-, six- or twelve-month period before the test period (eg by 25% or more if looking at the six-month period immediately before the test period).

Most registered charities may qualify for the JobKeeper payment if the anticipated reduction in GST turnover is at least 15%. However, universities and non-government schools that are registered charities, and not-for-profit organisations (NPOs) that are not registered charities, must generally apply the relevant 30% or 50% test (depending on GST turnover).

Employers who qualify

Employers are eligible for the JobKeeper payment if they satisfy the fall in turnover test and:

- on 1 March 2020, the entity carried on a business in Australia, or was either an NPO that pursued its objectives principally in Australia or a deductible gift recipient endorsed under the Overseas Aid Gift Deductibility Scheme or for developed country relief;
- on 1 March 2020, the entity employed at least 1 eligible employee; and
- the entity's eligible employees are employed for each fortnight for which the employer claims the JobKeeper payment (including those who are stood down or re-hired).

An employee is eligible if they agree to be nominated by the employer and on 1 March 2020 they were:

- a full-time, part-time or fixed term employee, or a long-term casual (one employed on a regular and systematic basis for at least the previous 12 months) who is not a permanent employee of any other employer;
- 18 or older (the eligibility requirements for those aged 16 or 17 on 1 March 2020 are different – for example, a full-time student under 18 is not eligible unless they are independent); and
- an Australian citizen or the holder of a specified class of visa (international students and working holiday makers are generally not eligible employees).

Persons receiving parental leave pay or dad and partner pay from Services Australia, and totally incapacitated persons receiving workers compensation, are not eligible employees.

If an employer decides to participate in the JobKeeper scheme, it should nominate all eligible employees who have chosen to participate.

If a person has more than one job, only one of their employers can claim the JobKeeper payment for that person.

The rules governing the JobKeeper scheme provide for continuity of employment where a business changes, or has changed, hands.

Other business participants who qualify

An individual who is actively engaged in operating a business may be entitled to the JobKeeper payment. This covers sole traders, partners in a partnership, adult beneficiaries of a trust or shareholders in or directors of a company. The individual:

- cannot be an employee of the business entity;
- must be 16 or older at 1 March 2020 (18 or older if a beneficiary of a trust); and
- must be an Australian citizen or the holder of a specified class of visa (the same rule as applies to eligible employees).

Individuals receiving parental leave pay or dad and partner pay from Services Australia, and totally incapacitated persons receiving workers compensation, are not eligible.

To qualify, the business entity must:

- both at 1 March 2020 and for the fortnight for which the JobKeeper payment is claimed, have carried on a business in Australia;
- satisfy the fall in turnover test (see above);
- have had an ABN on 12 March 2020; and
- have lodged by 12 March 2020 a 2018-19 tax return showing assessable income in relation to the business or an activity statement (eg BAS) or GST return for any tax period starting after 1 July 2018 and ending before 12 March 2020 showing it had made a taxable, GST-free or input-taxed sale. (The ATO can extend the 12 March 2020 time limits in limited circumstances.)

Only one payment per entity can be claimed. For example, if there are two partners, only one partner can claim the JobKeeper payment.

Payment

The amount of a JobKeeper payment for a fortnight is $1,500. If the claimant is an employer, it must pay the employee at least $1,500 per fortnight before tax (the wage condition). This means that if the employee's pay is less than $1,500 per fortnight before tax, the employer must increase it to $1,500 a fortnight. Pay, for these purposes, includes bonuses, allowances and salary sacrificed superannuation contributions (but not superannuation guarantee obligations).

If the regular payment period is longer than a fortnight, wages must be allocated to each fortnight on a reasonable basis. A reasonable basis for monthly wages payments would be to multiply the monthly amount by 12 and then divide the total by 26.

The ATO must pay the appropriate amount no later than 14 days after the end of the calendar month in which the relevant fortnight ends.

Administration

An entity has to apply to the ATO to participate in the JobKeeper scheme (for employers, the process differs depending on whether the employer reports through Single Touch Payroll). An entity had to enrol by 31 May

2020 if claiming for payments in April and May 2020. An entity must provide a monthly declaration to the ATO containing relevant information, including about the entity's turnover and, if an employer, about each eligible employee.

If JobKeeper payments are paid to an employer, it must notify all eligible employees that they are receiving the JobKeeper payment.

Tax and other consequences

A JobKeeper payment will be assessable income (as a subsidy). However, an employer is entitled to a deduction for wages paid to employees, including wages subsidised by the JobKeeper payment.

Employers are not obliged to make superannuation guarantee contributions in relation to salary or wages to the extent they do not relate to the performance of work and are only paid to an employee to satisfy the wage condition for getting a JobKeeper payment.

Cash flow boost

The other main Coronavirus stimulus measure to help businesses is the cash flow boost. This is available to entities that have withheld certain amounts under the PAYG withholding system. The cash flow boost is a credit rather than a payment. It is available in two stages up to a maximum of $100,000. The minimum amount is $20,000.

Eligible businesses

A sole trader, company, partnership or trust is eligible to receive the cash flow boost if they:

- held an ABN on 12 March 2020 and continue to be active;
- have an aggregated annual turnover under $50m; and
- made eligible payments – eg salary and wages and director fees – from which they are required to withhold an amount under the PAYG withholding system (even if that amount is zero). A payment to a contractor from which an amount is withheld under a voluntary agreement to withhold is also an eligible payment.

In addition, the entity must also have either:

- derived assessable income from carrying on a business in the 2018-19 income year and lodged its 2019 tax return on or before 12 March 2020; or
- made GST taxable, GST-free or input-taxed sales in a previous tax period (since 1 July 2018) and reported it in an activity statement (eg a BAS) by 12 March 2020.

Not-for-profit organisations and registered charities are also eligible for the cash flow boost although the eligibility requirements differ.

Initial cash flow boost

The initial cash flow boost is delivered as a credit in the activity statement system from 28 April 2020.

If an entity lodges quarterly activity statements, it is eligible to receive the credit for the March and June 2020 quarters.

If an entity lodges monthly activity statements, it is eligible to receive the credit for the March, April, May and June 2020 lodgment periods.

The initial cash flow boost is based on the amount of the entity's PAYG withholding.

Eligible entities will receive a credit equal to 100% of the amount withheld, up to a maximum of $50,000. The minimum credit will be $10,000, even if the amount required to be withheld is zero. However, an entity will not be eligible to receive any more cash flow boosts until its PAYG withholding exceeds $10,000 over the relevant periods.

Monthly lodgers will receive a credit that is calculated at 3 times the rate (300%) in the March 2020 activity statement, to align with quarterly lodgers.

The total of all initial cash flow boosts across all the relevant periods cannot exceed the maximum limit of $50,000.

Additional cash flow boosts

If an entity receives an initial cash flow boost, it will receive additional cash flow boosts for June to September 2020 periods. The amount of additional cash flow boosts is based on the value of initial cash flow boosts received by an entity:

- if the entity lodges quarterly activity statements, it will receive 50% of its total initial cash flow boosts for each activity statement;
- if the entity lodges monthly activity statements, it will receive 25% of the total initial cash flow boosts for each activity statement.

Delivery of cash flow boost

An entity need not apply for the cash flow boost. It will be applied automatically if they are eligible.

Upon lodging an activity statement (eg a BAS), a cash flow boost will be applied to reduce liabilities arising from the same activity statement. This will result in eligible entities being required to pay less to the ATO. Where a credit exceeds an entity's other tax liabilities, the excess amount will generally be refunded (usually within 14 days).

Tax consequences

Cash flow boosts are tax free and not subject to GST. The employer is still entitled to a deduction for PAYG withholding paid. There is no effect on tax paid by employees in respect of their salary and wages.

Depreciation measures

Instant asset write-off

The instant asset write-off threshold for small and medium business entities (aggregated annual turnover under $50m) has been extended to

$150,000 for assets first used (or installed ready for use) between 12 March and 30 June 2020.

In addition, entities with an aggregated annual turnover of $50m or more, but less than $500m, are eligible for the instant asset write-off for assets acquired after 2 April 2019 and first used (or installed ready for use) between 12 March and 30 June 2020.

These extended thresholds also apply in relation to expenditure that is included in the second element of the asset's cost (where incurred between 12 March and 30 June 2020).

Although an entity can claim the instant asset write-off for second-hand assets, it is not available where an entity disposes of an asset it had used (or installed ready for use) before 12 March 2020 and then re-acquires it on or after 12 March 2020.

Note: the cut-off date for the $150,000 instant asset write off threshold is to be extended from 30 June 2020 to 31 December 2020.

Accelerated depreciation

An accelerated rate of depreciation is available for entities with aggregated annual turnover that is less than $500m.

To be eligible for the accelerated depreciation, the depreciating asset must be new, first held on or after 12 March 2020 and be first used or first installed ready for use on or after 12 March 2020 and before 1 July 2021.

The accelerated rate is not available for assets allocated to a low-value or software development pool, certain primary production assets – eg water facilities, fodder storage assets and fences – assets that are split or merged, capital works and work-related assets that are exempt from FBT.

If the instant asset write-off is applied to a depreciating asset, it will not qualify for the accelerated rate.

The accelerated rate also does not apply where the entity was committed to acquiring or constructing the asset before 12 March 2020 (this does not include an option).

The accelerated rate is:

- for small business entities (aggregated turnover under $10m) using the simplified depreciation rules – 57.5% of the taxable purpose proportion of the cost (or adjustable value) of a qualifying asset added to the general small business pool;
- other entities – 50% of the cost (or adjustable value) of a qualifying asset plus the decline in value that would otherwise apply, but broadly after reducing the cost (or adjustable value) of the asset by 50%.

PAYG instalment variations

A quarterly payer affected by the Coronavirus crisis may be able to vary to zero their PAYG instalments on their activity statement for the March 2020 quarter and also claim a refund for any instalments made for the September 2019 and December 2019 quarters. Similar concessions are available to monthly payers that have a base assessment instalment income of $500m or less.

Note: the GDP adjustment factor for 2020-21 (for businesses using the PAYG Quarterly Instalment Amount method) is to be nil.

Superannuation

An individual affected by the Coronavirus crisis may apply for the early release of superannuation. An individual is entitled to two withdrawals (one for 2019-20 and one for 2020-21) up to maximum of $10,000 per withdrawal.

The minimum annual pension drawdown has been halved for 2019-20 and 2020-21.

Other measures

Economic support payments to individuals in response to the Coronavirus crisis are exempt from tax.

The ATO will allow individuals working from home because of the Coronavirus crisis to deduct additional "running expenses" (eg electricity, internet, computer consumables) at a set rate of 80 cents per hour.

The ATO will allow taxpayers affected by the Coronavirus crisis additional time to lodge returns and activity statements and pay tax liabilities.

The ATO will consider remitting penalties and interest applied to tax liabilities incurred after 23 January 2020 where the taxpayer is affected by the Coronavirus crisis.

Tax calendar 2020-21

This calendar specifies the standard due date for various payments and other obligations covered by the PAYG withholding and instalments systems. However, the ATO will allow taxpayers affected by the Coronavirus (COVID-19) crisis or the 2019-20 bushfires additional time to lodge activity statements and returns, in which case, the due dates in the calendar may not be relevant. The calendar also does not include details for entities that have a substituted accounting period. Accordingly, the dates in the calendar are indicative only and may vary depending on particular circumstances. Please contact us before relying on this information to see if any exceptions apply to your situation.

An activity statement covers PAYG instalments, PAYG withholding, GST, FBT, luxury car tax and wine equalisation tax. The due date for lodging a statement and paying amounts reported in the statement is generally the same.

Entities whose base assessment instalment income (BAII) is less than $20m are mostly liable to pay PAYG instalments quarterly, although primary producers and special professionals may be eligible to pay only two instalments annually. Some entities may choose to be annual payers. Entities (including individuals) whose BAII is $20m or more pay PAYG instalments monthly.

Payment dates for large payer PAYG withholding entities have not been included in the calendar because they are required to make up to two weekly payments based on the days on which they deduct amounts. There are special rules for deciding when a personal services entity is required to pay an amount to the ATO in respect of alienated personal services payments.

The superannuation guarantee contribution should be paid by the 28th day of the month following the end of the quarter. The superannuation guarantee charge is payable by the 14th day of the 2nd month following the end of the quarter.

Administrative penalties may be imposed for late lodgment of a return or statement. The general interest charge (GIC) may be imposed if a withholding amount or an amount of tax (including an instalment) is not paid by the due date.

If a due date falls on a Saturday, Sunday or Public Holiday (in any State or Territory), the next business day becomes the due date. This applies to dates in the calendar marked with an asterisk.

2020	
21 June*	Activity statements for May 2020 by entities reporting monthly
14 July	Finalisation declaration by entities reporting withholding payments through Single Touch Payroll (STP) Payers of PAYG withholding payments that do not report through STP to provide payment summaries to recipients of the payments
21 July	Activity statements for June 2020 by entities reporting monthly
28 July	Payment of 4th PAYG instalment for 2019-20 by quarterly payers
	Payment of 2nd PAYG instalment for 2019-20 by quarterly payers eligible to make two instalments annually
	Activity statements for June 2020 quarter by entities reporting quarterly
14 August	Annual PAYG withholding report to be provided to ATO by entities that do not report through STP
21 August	Activity statements for July 2020 by entities reporting monthly
21 September	Activity statements for August 2020 by entities reporting monthly
6 October	2020-21 Federal Budget
21 October	Payment of annual PAYG instalment for 2019-20 income year
	Activity statements for September 2020 by entities reporting monthly
28 October	Payment of 1st PAYG instalment for 2020-21 by quarterly payers
	Activity statements for September 2020 quarter by entities reporting quarterly
31 October*	Due date for lodgment of 2019-20 returns by individuals, partnerships, trusts and full self-assessment taxpayers
	Entities subject to PAYG withholding to provide annual report to ATO in respect of certain withholding payments and benefits
21 November*	Activity statements for October 2020 by entities reporting monthly
1 December	Payment of 2019-20 tax by full self-assessment taxpayers

	Due date for lodgment of 2019-20 returns by agent for foreign resident insurer and foreign resident re-insurer, agent or representative in Australia of the owner or charterer of a ship (or master of the ship), or person in control of foreign resident's money
21 December	Activity statements for November 2020 by entities reporting monthly
2021	
21 January	Activity statements for December 2020 by entities reporting monthly
21 February*	Activity statements for January 2021 by entities reporting monthly
28 February*	Payment of 2nd PAYG instalment for 2020-21 by quarterly payers
	Activity statements for December 2020 quarter by entities reporting quarterly
21 March*	Activity statements for February 2021 by entities reporting monthly
21 April	Activity statements for March 2021 by entities reporting monthly
28 April	Payment of 3rd PAYG instalment for 2020-21 by quarterly payers
	Payment of 1st PAYG instalment for 2020-21 by quarterly payers eligible to make two instalments annually
	Activity statements for March 2021 quarter by entities reporting quarterly
21 May	Activity statements for April 2021 by entities reporting monthly
	Lodgment of 2020-21 FBT returns and payment of assessed tax
21 June	Activity statements for May 2021 by entities reporting monthly

Income tax

Resident taxpayers must include income received from all sources (including overseas), except exempt income and non-assessable non-exempt income, in their tax return.

Certain income, for example, from some overseas employment, may be exempt from tax in Australia but must be taken into account in calculating the appropriate rate of Australian tax on the non-exempt income. The result is that the exemption of foreign earnings does not reduce the rate of tax payable on other income.

Foreign residents are generally taxable in Australia only on income from Australian sources, including employment, investment and business income derived in Australia.

Self-assessment

Australia operates a self-assessment system. Although the ATO issues a notice of assessment specifying the taxpayer's taxable income and the tax payable on that income, in most cases the assessment is based on the information provided by the taxpayer in the tax return. This applies in particular to companies, superannuation funds and other corporate entities (eg corporate limited partnerships and public trading trusts). Those entities effectively determine their own tax liability and the tax return is itself taken to be the notice of assessment (ie the ATO does not issue a separate notice of assessment).

Generally, the ATO has the power to amend an assessment within two years of the date upon which the assessment became due and payable. This applies to both an increase and a decrease in the taxpayer's liability. The amendment period is four years for large business taxpayers, taxpayers with complex tax affairs and certain "high risk" taxpayers. The period for amendments relying on anti-avoidance measures is generally four years.

The ATO can apply to the Federal Court seeking an extension of both the two- and four-year periods, in certain circumstances.

The ATO has the right to amend an assessment at any time where there has been fraud or evasion, or where the law specifically provides for it.

Personal income tax rates

While the tables below provide a convenient and quick reference and method of calculation in the majority of situations and for most taxpayers, if certain unusual characteristics are possessed by or combinations of income are derived by particular taxpayers, then it may not be possible to simply apply each table in isolation and arrive at the correct overall result. Please contact us before relying on this information to see if any exceptions apply to your situation.

Income tax rates – Australian residents

Taxable income	Tax payable – 2019-20 and 2021-21[1,2]
0 - $18,200	Nil
$18,201 - $37,000	Nil + 19% of excess over $18,200
$37,001 - $90,000	$3,572 + 32.5% of excess over $37,000
$90,001 - $180,000	$20,797 + 37% of excess over $90,000
$180,001 +	$54,097 + 45% of excess over $180,000

1. Does not include Medicare levy.
2. Tax payable reduced by offsets (if any).

Note: special rules apply if the taxpayer is a primary producer, a special professional or a minor with unearned income, or if taxable income includes an ETP.

Income tax rates – foreign residents

Taxable income	Tax payable – 2019-20 and 2020-21
0 - $90,000	32.5%
$90,001 - $180,000	$29,250 + 37% of excess over $90,000
$180,001 +	$62,550 + 45% of excess over $180,000

Note: foreign residents are not liable to pay the Medicare levy.

Income tax rates – working holiday makers

Taxable income			Tax payable – 2019-20 and 2020-21[1,2]
0	-	$37,000	15%
$37,001	-	$90,000	$5,550 + 32.5% of excess over $37,000
$90,001	-	$180,000	$22,775 + 37% of excess over $90,000
$180,001	+		$56,075 + 45% of excess over $180,000

1. Rates apply to working holiday makers who hold a Subclass 417 or Subclass 462 visa, or a bridging visa permitting the individual to work in Australia that was granted in relation to an application for a Subclass 417 or Subclass 462 visa. Rates apply whether the person is a resident or foreign resident.
2. Working holiday maker liable for Medicare levy only if a resident.

Pro-rated threshold

The tax-free threshold for Australian resident individuals is prorated for people becoming either a resident or a foreign resident during the income year (except those in receipt of a taxable social security or veterans' entitlement pension or benefit, other than JobSeeker, sickness allowance, youth allowance or special benefits).

For both 2019-20 and 2020-21, the first $13,464 of the $18,200 threshold is available to part-year residents and the remaining $4,736 is apportioned (ie $394.66 for each full or part month during the income year that the individual was a resident). For example, if an individual is a resident for 6 months of the year, their tax-free threshold will be:

$13,464 + ($4,736 x 6/12) = $15,832

Children (residents)

With certain exceptions, the unearned income of minors (ie under 18 years of age) is taxed at the following rates:

Taxable income			Tax payable[1]
0	-	$416	Nil
$417	-	$1,307	66% of excess over $416
$1,308+	+		45% of entire amount

1. Note that the beneficiary tax offset (if available), but not the low or low and middle income tax offsets, can be used to reduce the tax payable on unearned income.

The more common types of income taxed at these penal rates are dividends, interest, rent and royalties (unless the income is derived from investing amounts that are not themselves subject to the penal rates). Income that is taxed at ordinary rates (and not at the penal rates) includes employment income, income from investing employment income, compensation payments or property from a deceased estate and certain trust income (eg a trust resulting from a will).

Payment of tertiary fees

The Higher Education Loan Programme (HELP) applies to study in award courses undertaken in Australian higher education institutions. It is a fee of a pre-determined amount that varies only with inflation and the duration of the course undertaken.

Course type	2020 maximum contribution
Law, dentistry, medicine, veterinary science, accounting, administration, economics, commerce	$11,155
Mathematics, statistics, science, computing, built environment, other health, allied health, engineering, surveying, agriculture	$9,527
Humanities, behavioural science, social studies, education[1], clinical psychology, foreign languages, visual and performing arts, nursing[1]	$6,684

1. Maximum annual student contribution amount for education and nursing students who began their course before 1 January 2010 is $5,348.

Repayment of accumulated HELP and other debts (through the tax system)

For accumulated HELP debts, no actual payment is required until a taxpayer's HELP repayment income (the sum of taxable income plus reportable fringe benefits, exempt foreign income, net financial investment losses and reportable superannuation contributions) exceeds the minimum threshold for the year. Note that the HELP debt repayment thresholds and rates also apply to VSL, SFSS, SSL, Abstudy SSL and TSL debts.

The repayment rates thresholds and rates for the 2019-20 income year are:

HELP repayment income $	Repayment rate %
Below 45,881	Nil
45,881 - 52,973	1.0
52,974 - 56,151	2.0
56,152 - 59,521	2.5
59,522 - 63,877	3.0
63,093 - 66,877	3.5
66,878 - 70,890	4.0
70,891 - 75,144	4.5
75,145 - 79,652	5.0
79,653 - 84,432	5.5
84,433 - 89,498	6.0
89,499 - 94,868	6.5
94,869 - 100,560	7.0
100,561 - 106,593	7.5
106,594 - 112,989	8.0

112,990 - 119,769	8.5
119,770 - 126,955	9.0
126,956 - 134,572	9.5
134,573+	10

The repayment rates thresholds and rates for the 2020-21 income year are:

HELP repayment income $	Repayment rate %
Below 46,620	Nil
46,620 - 53,826	1.0
53,827 - 57,055	2.0
57,056 - 60,479	2.5
60,480 - 64,108	3.0
64,109 - 67,954	3.5
67,955 - 72,031	4.0
72,032 - 76,354	4.5
76,355 - 80,935	5.0
80,936 - 85,792	5.5
85,793 - 90,939	6.0
90,940 - 96,396	6.5
96,397 - 102,179	7.0
102,180 - 108,309	7.5
108,310 - 114,707	8.0
114,708 - 121,698	8.5
121,699 - 128,999	9.0
129,000 - 136,739	9.5
136,740+	10

The repayment continues as a levy on taxable income plus reportable fringe benefits until such time as the debt has been discharged.

HELP debts (including VSL, SFSS, SSL, Abstudy SSL and TSL debts) are recoverable through the pay-as-you-go (PAYG) system. Employees who have an accumulated HELP debt should complete a Tax File Number Declaration form advising their employer of their debt. Failure by an employee to complete the form may result in tax being deducted at the top rate (45%).

HELP debts

Australians residing overseas who have a HELP debt are required to make repayments. If a HELP debtor is going overseas for more than six months, they are required to register with the ATO. Only those whose HELP repayment income is above the minimum HELP repayment threshold are required to make repayments.

It is recommended that taxpayers with accumulated HELP debts provide their tax agent with their outstanding HELP balance prior to completion of their annual tax return.

Offsets

A tax offset (or rebate) reduces the tax payable. In some cases, once an offset reduces the tax payable to nil, any remaining offset is lost. However, the following offsets are refundable (ie if the offset exceeds the tax payable, the excess is refundable to the taxpayer): the private health insurance offset, special disability trust offset, R&D offset for small R&D entities, film offsets, national rental affordability scheme offset, former urban water offset, no-TFN contributions offset, greenfields mineral exploration offset, seafarer offset and (if the taxpayer is an individual, an exempt entity or a life insurance company) franking offsets and venture capital franking offsets. Franking offsets and venture capital franking offsets are not refundable in certain situations where a franked distribution flows indirectly to the trustee. The low income, foreign income tax and excess concessional contributions offsets are not refundable.

Dependant tax offsets: individuals

Type of offset	2019-20	
	Maximum offset	Maximum ATI
IICTO[1,2,3]	2,766	11,346
Sole parent (notional only)[4]	1,607	N/A
Student under 25 (notional only)[5]	376	1,786
Child under 21 (non-student)[5]		
• First child (notional only)	376	1,786
• Each additional child (notional only)	282	1,410

1. IICTO (the invalid and carer tax offset) is the same irrespective of whether the taxpayer has dependent children or students. Taxpayers eligible for the zone offset, overseas forces offset or overseas civilian offset are eligible for IICTO. The offset is indexed.
2. IICTO is generally not available for any part of the income year during which the taxpayer is a member of a Family Tax Benefit Part B family without shared care. In addition, the offset is reduced if the taxpayer (or their partner) and another person are both eligible for Family Tax Benefit Part B for a child for the same period.
3. Reduced by $1 for every $4 by which adjusted taxable income (ATI) of dependant exceeds $282 (this does not apply to the sole parent offset). Maximum ATI is the amount of the dependant's ATI at which the offset cuts out altogether.
4. The sole parent offset (not indexed) is notionally retained for the purposes of calculating the zone and overseas forces offsets and for Medicare levy purposes.
5. The child and student offsets (not indexed) are notionally retained for the purposes of calculating the zone, overseas forces and overseas civilian offsets.

The dependant tax offsets (individuals) for 2020-21 are set out in the table below.

Type of offset	2020-21	
	Maximum offset	Maximum ATI
IICTO[1,2,3]	2,816	11,546
Sole parent (notional only)[4]	1,607	N/A

Student under 25 (notional only)[5]	376	1,786
Child under 21 (non-student)[5]		
• First child (notional only)	376	1,786
• Each additional child (notional only)	282	1,410

1. IICTO (the invalid and carer tax offset) is the same irrespective of whether the taxpayer has dependent children or students. Taxpayers eligible for the zone offset, overseas forces offset or overseas civilian offset are eligible for IICTO. The offset is indexed. The amounts for 2020-21 have been calculated by Thomson Reuters and are not official.
2. IICTO is generally not available for any part of the income year during which the taxpayer is a member of a Family Tax Benefit Part B family without shared care. In addition, the offset is reduced if the taxpayer (or their partner) and another person are both eligible for Family Tax Benefit Part B for a child for the same period.
3. Reduced by $1 for every $4 by which adjusted taxable income (ATI) of dependant exceeds $282 (this does not apply to the sole parent offset). Maximum ATI is the amount of the dependant's ATI at which the offset cuts out altogether.
4. The sole parent offset (not indexed) is notionally retained for the purposes of calculating the zone and overseas forces offsets and for Medicare levy purposes.
5. The child and student offsets (not indexed) are notionally retained for the purposes of calculating the zone, overseas forces and overseas civilian offsets.

Zone offset

The zone offset is generally available to an individual who lives in a remote area of Australia for more than one-half of the income year. Remote areas are divided into Zones A and B. Zone A is generally more isolated and uncongenial than Zone B. The ATO website lists places which are in either zone. Particularly isolated areas within the two zones are known as "special areas".

"Fly-in fly-out" and "drive-in drive-out" workers who spend more than 183 days in a particular zone, but whose usual place of residence is not in that zone, will not qualify for the zone offset in relation to the first mentioned zone. For example, if a worker spends 220 days in the special area in Zone A but their usual place of residence is in Zone B, they will not qualify for the Zone A special area offset (they may qualify for the Zone B offset if all relevant conditions are satisfied).

Resident of	2019-20 and 2020-21 offset
Zone A	$338 + 50% of the relevant rebate amount
Zone B	$57 + 20% of the relevant rebate amount
A "special area" in Zone A or Zone B	$1,173 + 50% of the relevant rebate amount

The "*relevant rebate amount*" is the sum of the invalid and invalid carer offset and notional offsets (ie the notional child, student and sole parent offsets) to which the individual is entitled (see the table on page 18 and 19).

Tax offset for low and middle income earners

Certain low and middle income taxpayers are entitled to one or two offsets: the low income tax offset (LITO) and the low and middle income tax offset (LMITO). The LMITO is in addition to the LITO, so that a resident taxpayer may receive both tax offsets.

LITO and LMITO are available to resident individuals only (companies and foreign residents do not qualify). Both LITO and LMITO are non-refundable and cannot be carried forward to a later income year or transferred. LITO and LMITO will be merged into a more generous new low income tax offset from the 2022-23 income year.

Low income tax offset (LITO)

For 2019-20 and 2020-21, the maximum offset is $445 and phases out at the rate of 1.5 cents in the dollar for every dollar of taxable income over $37,000, phasing out completely at $66,667 – as per the following table.

Taxable income (TI) $	**Low income tax offset (until 2021-22) $**
0 – 37,000	445
37,001 – 66,667	445 – ([TI – 37,000] × 1.5%)
66,668+	Nil

A resident eligible minor is not able to access the low income offset to reduce the tax payable on "unearned income" under Div 6AA of the ITAA 1936. Broadly, Div 6AA applies to "prescribed persons" (s 102AC of the ITAA 1936), eg a person less than 18 years of age on the last day of the year of income. However, Div 6AA does not apply to "excepted persons" (eg minors in full-time employment or with certain disabilities) or in respect of "excepted assessable income" (s 102AE), eg income from a deceased estate or a superannuation income streams death benefit.

A new LITO up to $700 will apply from the 2022-23 income year, replacing the existing LITO and the low and middle income tax offset: see *Treasury Laws Amendment (Personal Income Tax Plan) Act 2018*. The amount of the offset will depend on the taxable income of the individual as set out in the table below. The new LITO will serve the same function as the existing LITO but will be more generous following the removal of the low and middle income tax offset from that time, and the increase in the threshold from $37,000 to $41,000 for the second marginal tax rate from 2022-23. Note that the new LITO will not affect the entitlement to the senior Australians and pensioner tax offset (SAPTO). The maximum SAPTO amount ($2,230 for singles) and shade-out income threshold ($32,279 for singles) will remain the same.

Taxable income (TI) $	**Low income tax offset 2022-23+ $**
0 – 37,000	700
37,001 – 45,000	700 – ([TI – 37,000] × 5%)
45,001 – 66,667	325 – ([TI – 45,000] × 1.5%)
66,668 +	Nil

Low and middle income tax offset (LMITO)

The low and middle income tax offset (LMITO) is available where taxable income is less than $126,000.

The amount of the LMITO is $255 for taxpayers with a taxable income not exceeding $37,000. Between $37,000 and $48,000, the value of the offset increases at a rate of 7.5 cents per dollar to the maximum benefit of $1,080. Taxpayers with taxable incomes from $48,000 to $90,000 are eligible for the maximum benefit of $1,080. From $90,001 to $125,999, the offset phases out at a rate of 3 cents per dollar – as set out in the table below. These rates apply for the 2019-20, 2020-21 and 2021-22 income years.

Taxable income (TI) $	Offset $
0 – 37,000	255
37,001 – 48,000	255 + ([TI – 37,000] × 7.5%)
48,001 – 90,000	1,080
90,001 – 126,000	1,080 – ([TI – 90,000] × 3%)
126,001 +	Nil

Tax offset for senior Australians and pensioners

The senior Australians and pensioner offset (SAPTO) is available to individuals who:

- are at or above pension age (for men and women, the pension age depends upon their date of birth) or in receipt of a rebatable pension (this includes a parenting payment that is a pension PP (single), widow B pension, mature age allowance (if first received before 1 July 1996) or mature age partner allowance, disability support pension (taxpayers of age pension age), wife pension (taxpayers of age pension age) and carer payments (provided the pension itself is assessable);
- have been resident in Australia for at least 10 years; and
- whose rebate income is below the offset cut-out threshold in the table below.

Status	Maximum offset	Shade-out threshold[1]	Cuts out at
2019-20 and 2020-21[6,7]			
Single	$2,230	$32,279	$50,119
Couple (each)[2, 3]	$1,602	$28,974	$41,790
Couple – separated due to illness (each)[2, 4, 5]	$2,040	$31,279	$47,599

1. Offset reduces by 12.5¢ for each dollar of rebate income in excess of the lower threshold.
2. For partnered persons the maximum offset is available to each partner. In addition, any unused portion of the offset is transferable to the partner.
3. The couple's combined rebate income must not exceed twice the upper threshold.
4. Only applies when unable to live together due to illness or infirmity.
5. The couple's combined rebate income must not exceed twice the upper threshold.
6. These are the latest amounts published on the ATO website as at 1 June 2020. The amounts may change for 2020-21.
7. Note that the new low income tax offset available from the 2022-23 income year will not affect the entitlement to SAPTO.

Social security and beneficiary offset

The beneficiary offset is available to certain low-income earners who receive one or more of various social security payments, benefits and allowances (eg Jobseeker Payment (previously Newstart Allowance), Youth Allowance, Sickness Allowance, Widow Allowance, Partner Allowance, Special Benefit, Austudy) or a Commonwealth education or training payment (eg ABSTUDY and payments under the Assistance for Isolated Children Scheme).

Taxpayer's benefit amount[1] $	Offset 2019-20 and 2020-21 $
0 - $37,000	[Taxpayer's benefit amount1 – 6,000] x 15%
$37,001 and above	[Taxpayer's benefit amount1 – 6,000] x 15% + [Taxpayer's benefit amount1 – 37,000] x 15%

1. Rebatable benefit received by the taxpayer during the income year rounded down to the nearest whole dollar. Note that the offset amount calculated as above is rounded up to the nearest dollar.

If a person is entitled to both a beneficiary offset and SAPTO, they are entitled to the higher offset.

Private health insurance tax offset

A private health insurance incentive is available to certain taxpayers. The incentive can be claimed either as a tax offset or by way of a reduction in premiums. The incentive is greater if the insurance covers at least one person aged 65 or older.

The tax offset is "means tested", using three "Private Health Insurance Incentive Tiers". The table below shows the relevant rates and thresholds for 2019-20 and 2020-21.

Tier	Income ($)[1]		Offset[3]		
	Singles	Couples/families[2]	Under 65 years old	65 – 69 years old	70 years or over
	0 - 90,000	0 - 180,000	25.059%	29.236%	33.413%
1	90,001 - 105,000	180,001 - 210,000	16.706%	20.883%	25.059%
2	105,001 - 140,000	210,001 - 280,000	8.352%	12.529%	16.706%
3	140,001+	280,001+	0%	0%	0%

1. The income thresholds have been frozen until 2020-21.
2. For families with more than one dependent child, the relevant threshold is increased by $1,500 for each child after the first.
3. The percentages apply for the periods 1 April 2019 to 31 March 2021 (ie for the whole of 2019-20 and the first 9 months of 2020-21).

Newborn payments

A person is eligible for the Newborn Upfront Payment and Newborn Supplement following the birth of a child if:

- the person is eligible for Family Tax Benefit (FTB) Part A at a rate greater than nil; and
- the birth has been registered, or an application to have the birth registered has been lodged (unless the child was born overseas).

The Newborn payments are also available if a child comes into a person's care (eg through foster care) if:

- the person is eligible for FTB Part A at a rate greater than nil;

- the person will continue to be eligible for the benefit for at least 13 continuous weeks from the date they first become eligible for Newborn Supplement; and
- the child is less than 1 year old.

The Newborn payments are also available for an adopted child of any age if:

- the child is adopted as part of an authorised adoption process; and
- the person becomes eligible for FTB Part A within 12 months of the child coming into the care of that person or their partner.

The Newborn Upfront Payment is a lump sum of $560 (as at 1 June 2020). It is not taxable.

The payment rate for the Newborn Supplement depends on the family's income and how many children they have. A person may be paid for up to 13 weeks starting from the first day they meet the eligibility requirements. They will not be paid for any days where they do not meet all the eligibility requirements. If a person is eligible for the whole 13 weeks, the maximum payment for the 13 weeks (as at 1 June 2020) is $1,679.86 for the first child and $560.56 for other children. The payments are not taxable.

Note that the Newborn payments are not available where one parent has received Paid Parental Leave for the child. However, if a person receives Dad and Partner Pay, they may still be eligible for the Newborn payments.

Paid Parental Leave Scheme

The Paid Parental Leave Scheme provides eligible Australian resident working parents with government-funded pay (Parental Leave Pay) at the national minimum wage ($740.60 per week before tax as at 1 June 2020) following the birth or adoption of a baby. Parental Leave Pay is paid by the claimant's employer or Services Australia. It is a taxable payment.

To be eligible for Parental Leave Pay, a claimant needs to:

- be the birth mother of a newborn child or the adoptive parent of a child (although in certain exceptional circumstances another person may be eligible for Parental Leave Pay);
- have met the Paid Parental Leave work test;
- meet residence requirements from the date the child enters the claimant's care until the end of the Paid Parental Leave period;
- have an individual adjusted taxable income of $150,000 or less in the financial year either before the date of birth or adoption, or the date of the claim, whichever is earlier; and
- be on leave or not working, from when the claimant becomes the child's primary carer until the end of the Paid Parental Leave period (if the claimant and the employer agree, the claimant can access up to 10 "keeping in touch" days).

To meet the Paid Parental Leave work test, the claimant must have worked (whether full-time, part-time, casually, seasonally or as a contractor) for at least:

- 10 of the 13 months before the birth or adoption of the child; and
- 330 hours in that 10-month period, which is just over one day a week, with no more than a twelve-week gap between two consecutive

working days (an eight-week gap applied if the birth or adoption occurred before 1 January 2020).

There are exceptions to the work test if it cannot be met because of pregnancy related illness or complications, a premature birth or (if the birth occurred on or after 1 January 2020) a workplace hazard that was a risk to the claimant.

Parental Leave Pay is paid for a maximum period of 18 weeks for each birth or adoption and is taxable. Claims may be lodged up to three months before the expected date of birth or adoption. In order to receive the full 18 weeks of Paid Parental Leave, a claim must be lodged within 34 weeks of the birth or adoption.

Another payment – Dad and Partner Pay – is payable for two weeks (at the same rate as Paid Parental Leave) to eligible dads or partners caring for a child, including an adopted child. If a person is eligible for both Parental Leave Pay and Dad and Partner Pay for the same child, the total from both payments cannot exceed 18 weeks pay.

A claimant's employer will provide Parental Leave Pay in the claimant's usual pay cycle if the claimant:

- has worked for them for 12 months or more before the expected date of birth or adoption;
- will be their employee until at least the end of the Paid Parental Leave period;
- is an Australian-based employee; and
- expects to receive at least eight weeks of Parental Leave Pay.

The employer withholds an amount under the PAYG withholding system at the normal rate.

If the claimant does not meet these criteria, the employer is not required to provide the Parental Leave Pay but both parties may agree for that to happen. The employer will need to register with Services Australia and opt-in to provide Parental Leave Pay before the claim is lodged.

Services Australia will provide Parental Leave Pay (in fortnightly instalments) if the employer does not have to do so, if the claimant does not have an employer or if the claimant is self-employed. Services Australia withholds 15% under the PAYG withholding system (the claimant can request a different withholding rate).

The scheme is designed as a "top-up" and therefore a person can claim both Parental Leave Pay and any parental leave entitlements offered by their employer.

Family Tax Benefit

Family Tax Benefit (FTB) consists of Part A and Part B benefits. A person entitled to FTB Part A is not necessarily eligible for FTB Part B. To be eligible for FTB, the claimant must be an Australian resident (or the holder of a specified visa) and must provide care (for at least 35% of the time) for a dependent child aged 0-15 or a dependent secondary student aged 16-19 (in full-time education) not receiving a pension, payment or benefit such as Youth Allowance. The dependent child or student must be an Australian resident or live with the claimant. Payments stop when the child reaches a certain age and study level (eg payment stops when a child aged 16-19 completes Year 12 or an equivalent qualification).

FTB is administered by Services Australia. Readers should check Services Australia's website for the FTB payment rates (the amounts stated here are current at 1 June 2020). The maximum FTB Part A is payable where the family's adjusted taxable income (ATI) is $54,677 or less (this amount should be indexed each year, but indexation has been frozen - see below). Once the ATI of a family with dependent children exceeds this threshold, their FTB Part A reduces from the maximum rate at a rate of 20¢ for every dollar of income over $54,677, until the base rate of payment is reached ($59.78 per fortnight). The base rate is paid once the income limit is reached:

- 1 child aged 0-12 - $71,157;
- 1 child aged 13-15 or 16-19 in secondary study - $78,457;
- 2 children aged 0-12 - $87,637;
- 1 child aged 0-12 and 1 child aged 13-15 or 16-19 in secondary study - $94,937.

If there are 3 or more children, payments are not automatically reduced to the base rate - in most circumstances, FTB Part A will be more than the base rate.

If ATI is over $98,988, the base rate of FTB Part A is reduced by 30¢ for each dollar of ATI over $98,988.

Note that the maximum rate of FTB Part A will not be paid unless the child meets immunisation requirements.

The FTB Part A supplement (maximum $766.50 for each eligible child) may also be payable after the end of the financial year.

There are three payment choices for FTB Part A:

- fortnightly payments of all FTB to a bank or credit union account;
- fortnightly payments of the base rate of FTB to a bank or credit union account – any additional FTB Part A to which the claimant is entitled will be paid after the end of the financial year;
- a lump sum payment after the end of the financial year.

FTB Part B is designed to give extra help to families with one main earner, including sole parent families. You can be eligible for both FTB Part A and FTB Part B. FTB Part B is only available where the annual adjusted taxable income of the carer or, if there are two parents or carers in the family, the primary earner does not exceed $100,000. If the primary earner's income is less than $100,000, the secondary earner can earn a maximum of $5,694 each year before it affects the rate of FTB Part B. Payments are reduced by 20¢ for each dollar of income earned over $5,694.

FTB Part B is not payable to a member of a couple whose youngest child is 13 or older, although it may still be payable to a single parent, grandparent or great grandparent carer.

The maximum rate of FTB Part B per family each fortnight is:

- $158.34 when the youngest child is 0 to 5 years of age;
- $110.60 when the youngest child is 5 to 18 years of age.

The FTB Part B supplement (maximum $372.30 per family) may also be payable after the end of the financial year.

There are two payment choices for FTB Part B:

- fortnightly payments to a bank or credit union account; or
- a lump sum payment after the end of the financial year.

FTB is generally paid to the primary carer, although that person and their partner may agree that the partner should receive the payments.

Note that the FTB payment rates and income thresholds specified above are expected to remain the same until 1 July 2021 as indexation has been paused.

Medicare levy

The rate of Medicare levy is 2% of a taxpayer's taxable income. Companies and foreign residents are not required to pay the levy.

Low income earners pay no levy, or pay the levy at a reduced rate. The 2019-20 thresholds and rates are set out in the tables following.

Individual taxpayers	Taxable income $	Levy payable $
Not entitled to SAPTO[1,2]	0 – 22,801	Nil
	22,802 – 28,501	10% of excess over 22,802
	28,502 +	2% of entire amount
Entitled to SAPTO[1]	0 – 36,056	Nil
	36,057 – 45,069	10% of excess over 36,057
	45,070 +	2% of entire amount

1. These thresholds apply for 2019-20.
2. Senior Australians and Pensioner Tax Offset.

	Families entitled to SAPTO		Other families	
No of dependent children or students[1]	No levy payable if family income does not exceed $	Full levy payable if family income is equal to or exceeds $	No levy payable if family income does not exceed $	Full levy payable if family income is equal to or exceeds $
0	50,191	62,740	38,474	48,093
1	53,724	67,156	42,007	52,509
2	57,257	71,572	45,540	56,925
3	60,790	75,988	49,073	61,341
4	64,323	80,404	52,606	65,757
5	67,856	84,820	56,139	70,173
Each extra child	+3,533	+4,416	+3,533	+4,416

1. These thresholds apply for 2019-20.
2. Dependent students and children in respect of whom a notional offset is available: see page 18.

Shading-in

If the family income is in the shading-in range (ie in the range between no levy payable and the full levy payable), the levy otherwise payable by a taxpayer is reduced by the amount calculated in accordance with the following formula:

$$A - (0.08 \times (B - C))$$

where:

A = 2% of the relevant family income threshold

B = family income

C = the relevant family income threshold.

Exemptions

Exemption from the levy is available for certain "prescribed persons" such as war veterans, pensioners and members of the defence forces. Persons who are prescribed persons for only part of an income year are entitled to a pro rata reduction in the levy.

Medicare levy surcharge

The 1% Medicare levy surcharge applies to individuals and families who have "income for surcharge purposes" in excess of the relevant thresholds (see the table below) if they do not take out private patient hospital cover.

2019-20 and 2020-21[1]				
	$	**Tier 1 $**	**Tier 2 $**	**Tier 3 $**
Singles	0 - 90,000	90,001 - 105,000	105,001 - 140,000	140,001+
Families[2]	0 - 180,000	180,001 - 210,000	210,001 - 280,000	280,001+
Medicare levy surcharge				
Rates	0.00%	1.00%	1.25%	1.50%

1. These Medicare levy surcharge thresholds also applied for 2016-17 to 2018-19.
2. For families with more than one dependent child, the surcharge thresholds increase by $1,500 for each additional child after the first.

Company tax

The standard company tax rate is 30%. However, a reduced rate applies for companies whose aggregated turnover is below the relevant threshold (called "base rate entities"). The table below summarises the current legislated rates for base rate entities. See page 83 for the meaning of "aggregated turnover".

Financial year	Aggregated turnover less than	Base rate entity tax rate
2018-19 to 2019-20	$50m	27.5%
2020-21	$50m	26%
2021-22+	$50m	25%

For non-profit companies the applicable rate (30% or the base rate entity rate) is phased in and is not payable until taxable income is $916 (if the 30% rate applies) or $833 (for 2019-20) if the company is a base rate entity (reducing to $788 for 2020-21 and to $762 from 2021-22).

Shareholder loans and benefits

A private company (including a closely held corporate limited partnership) may be taken to pay an unfranked dividend to a shareholder (or a shareholder's associate) if the company makes a loan, forgives a debt or makes a payment (including crediting an amount or transferring property) to the shareholder: see Div 7A of the ITAA 1936. These rules can also apply where a foreign resident private company makes a payment etc, to a resident shareholder (or their associate). The amount of the deemed dividend is limited to the company's distributable surplus.

The concept of "payment" covers the provision of an asset, whether under a lease, licence or other right (subject to certain exclusions, including for otherwise deductible payments and rights to use certain residences – these are likely to be particularly significant for farmers).

Pre-4 December 1997 loans

Generally, loans in existence before 4 December 1997 will not be affected by Div 7A of the ITAA 1936 if quarantined from any new loans and will be subject to the rules contained in former s 108 of the ITAA 1936. However, if a loan made before 4 December 1997 is altered or varied to extend the term of the loan or increase the amount of the loan, the loan will be treated as if it were a new loan entered into on the day it varied.

Exemptions

A shareholder loan is exempt if it is made under a written loan agreement, provided:

- a benchmark interest rate applies (5.37% for 2019-20 and 4.52% for 2020-21);
- a maximum loan term applies; and
- minimum principal and interest repayments are made based on a statutory formula.

The maximum term is seven years for an unsecured loan and 25 years for a secured loan. Security requires a mortgage over real property having a market value of at least 110% of the amount of the loan.

If the minimum yearly repayments under a loan fall short of the required amount by the due date, a deemed dividend will only arise in respect of the shortfall amount. If a loan meets the requirements of an excluded loan, it will be exempt from FBT. If a deemed dividend arises because of a loan made by a company, the loan will not be subject to FBT.

There are also exemptions for:

- payments of genuine debts;
- payments to other companies;
- loans in the ordinary course of business on commercial terms;

- short-term loans by a liquidator; and
- loans under certain employee share schemes.

A payment may be converted into an exempt loan (satisfying the minimum interest rate and maximum term criteria listed above) before the due date for lodging the company's tax return for the year (or before the actual lodgment date if earlier), while certain loans may be refinanced without triggering the deemed dividend provisions. In addition, the ATO has the discretion to disregard deemed dividends (or allow them to be franked) if they have been triggered by honest mistakes or omissions by the taxpayer. The ATO may also disregard a deemed dividend when the minimum yearly repayments have not been made on a loan because of circumstances beyond the control of the taxpayer.

If a company acts as a guarantor for a loan taken out by the shareholder or their associate, and the latter defaults on the loan, a loan agreement can be entered into to avoid a deemed dividend from arising. If the loan or payment is made by an interposed entity between a company and its shareholder or their associate, a commercial loan agreement may be made between the interposed entity and the shareholder to alleviate the operation of Div 7A.

Trusts and Div 7A

If a private company beneficiary of a trust has an unpaid present entitlement to an amount of the net income of the trust and the trustee subsequently makes a loan or payment, or forgives a debt to a (non-corporate) shareholder or associate of the private company, Div 7A may apply.

A deemed dividend arises if, had the actual transaction been done by the private company and the shareholder or associate had been a shareholder in the company at the time, there would have been a deemed dividend under Div 7A. Whether the company's unpaid present entitlement arises before or after the transaction is immaterial.

The amount of the deemed dividend is the lesser of:

- the amount involved in the actual transaction; and
- the unpaid present entitlement less any amounts previously treated as deemed dividends.

The ATO generally considers that Div 7A applies in most situations where a private company beneficiary has an unpaid present entitlement (see Taxation Ruling TR 2010/3, Practice Statement PS LA 2010/4 and Practical Compliance Guideline PCG 2017/13).

If an entity is interposed either between a trust making a payment or loan to a shareholder of a private company (or their associate) or between a trust and the private company that holds an unpaid present entitlement to an amount from the net income of the trust, the interposed entities cannot be used to circumvent the operation of Div 7A.

Other matters

The following measures also apply:

- the franking of a deemed dividend is permitted if it arises from a family law obligation or the exercise of the ATO's discretion in relation to a mistake or omission; and

- later dividends distributed by a private company may be offset against a deemed dividend taken to be previously paid by the company to a borrower who is an associate of the shareholder.

Employer obligations

PAYG withholding

Employers must withhold tax from salaries or wages paid to employees, from return to work payments and from certain employment termination payments. Under the PAYG withholding system (see page 32), this withholding is made at a prescribed rate and is applied against tax assessed to the individual at the end of each financial year.

An employer's obligations are as follows:

- register with the ATO as a PAYG withholder;
- withhold tax from salaries or wages; and
- remit amounts of deducted tax to the ATO.

An employer that reports through Single Touch Payroll (STP) is required to make finalisation declarations for employees. For 2019-20, the due date is 14 July 2020 if the employer has 20 or more employees and 31 July 2020 if the employer has 19 or less employees.

Employers that do not report through STP must:

- provide a payment summary (and a copy) to all employees/payees (from whose wages etc tax has been withheld) by no later than 14 July each year – the payment summary must also cover any reportable fringe benefits provided to the employee and any reportable superannuation contributions made by the employer; and
- provide the ATO with an annual report detailing all withholding payments and amounts withheld by 14 August each year.

Lump sum payments on termination

The following table summarises the taxation treatment of lump sum payments for unused annual leave and unused long service leave on termination of employment. The treatment depends on whether the amounts accrued up to 17 August 1993, or afterwards.

Lump sum payment	**Period of accrual**	**% to be included in a taxpayer's assessable income**	**Rate of tax applied**
Long service leave	Prior to 16 August 1978	5%	Marginal rate
	16 August 1978 to 17 August 1993	100%	Maximum 30% plus Medicare levy
	Post-17 August 1993*	100%	Marginal rate

Annual leave	Accrued to 17 August 1993	100%	Maximum 30% plus Medicare levy
	Post-17 August 1993*	100%	Marginal rate
* Where annual or long service leave lump sum payments after 17 August 1993 arise due to bona fide redundancy, an early retirement scheme or invalidity, the 30% rate continues to apply.			

The "tax free amount" of a genuine redundancy or early retirement scheme payment for 2019-20 is $10,638, plus $5,320 for each year of service to which the payment relates (the equivalent amounts for 2020-21 are $10,989 and $5,496).

Subject to the "whole of income" cap, payments in excess of the limits are taxed in the same manner as an ordinary ETP.

The part of a taxable component of an ETP that, when added last to an individual's other taxable income, is equal to or below a "whole of income cap" of $180,000 will continue to be eligible for the ETP tax offset. Any amount of a taxable component of an ETP that takes a person's total taxable income over $180,000 will be taxed at marginal rates. Note that the $180,000 whole of income cap is not indexed.

The existing indexed ETP cap ($210,000 for 2019-20 and $215,000 for 2020-21) works in conjunction with the whole of income cap so that, regardless of other taxable income, the offset is only available for ETP amounts up to a maximum of the ETP cap amount.

The "whole of income cap" does not apply to those who:

- receive a genuine redundancy payment (or who would have but for existing age or retirement restrictions on genuine redundancy payments);
- lose their job due to invalidity (regardless of how close to retirement);
- receive compensation due to a genuine employment related dispute relating to personal injury, harassment, discrimination or unfair dismissal (where the payment is considered an ETP); or
- receive a non-superannuation death benefit ETP.

The taxation of ETPs is also addressed on page 58.

Pay-As-You-Go (PAYG)

PAYG arrangements incorporate the following two systems:

- a PAYG **withholding system**; and
- a PAYG **instalment system**.

PAYG withholding system

As explained earlier, employers must withhold tax from payments of salaries or wages (and certain payments under contracts for labour).

Certain other payments are also subject to PAYG including:

- payments for work or services under a labour hire arrangement;
- payments for work or services where there is a voluntary agreement to withhold;
- remuneration paid to a company director; and

- payments for a supply by an *enterprise* where an invoice does not quote the recipient's ABN. This does not apply where the payer is an individual and the payment is of a private or domestic nature.

Where non-cash benefits (other than FBT items) are provided, PAYG must be withheld as if cash payments had been made, based on the market value of the benefit. The PAYG withholding system also applies to personal services income channelled through a company, trust or partnership that is included in an individual's assessable income (called alienated personal services income).

PAYG remittances

Remittance obligations will depend on whether the payer is classified as a large, medium or small withholder:

- **Small remitters** (total annual PAYG remittances not exceeding $25,000) have the option to remit these payments to the ATO on a quarterly basis.
- **Medium remitters** (total annual PAYG remittances of $25,000 to $1m) are required to remit monthly.
- **Large remitters** (total annual PAYG remittances of over $1m) are required to remit electronically (by EFT) within an average of seven days.

A deduction for a payment or a non-cash benefit may be denied where the payer (or provider of the benefit) does not comply with their PAYG withholding obligations.

Single Touch Payroll

Single Touch Payroll (STP) reporting allows employers to use Standard Business Reporting-enabled software to report automatically to the ATO information about PAYG withholding amounts and associated payments, salary and wages, ordinary time earnings and superannuation contributions. STP applies to all employers from 1 July 2019, although small employers (those with fewer than 20 employees) had until the end of September 2019 to start using STP (the ATO could grant additional time).

Micro employers (1 to 4 employees) who rely on a tax agent or a BAS agent can report quarterly until 30 June 2021.

There are a number of exemptions from STP reporting. For example, small employers may be exempt if they have no or low digital capability, no or unreliable internet service or are winding up a business in the current financial year, or if there are other special circumstances.

Employees can use STP to make a valid choice of super fund and an effective TFN declaration.

PAYG instalment system

Businesses (partnerships, trusts, companies, superannuation funds and certain trading trusts) and individuals with gross annual business income or investment income of $4,000 or more are liable for PAYG instalments on a monthly, quarterly or annual basis.

The objective of the PAYG instalment system is for the ATO to collect the taxpayers' estimated tax liability progressively throughout the year.

Calculation of instalments

A taxpayer is only liable to pay instalments if the ATO has issued a written notice of their **instalment rate**.

Broadly, the **instalment rate** is calculated by comparing notional tax on PAYG **instalment income** for a base year, as a percentage of the base year income. **Base year income** is typically ordinary assessable income (excluding capital gains and imputation amounts) less deductions and certain carry-forward losses.

A quarterly taxpayer can nominate and use their own instalment rate to calculate their instalment for the current and any remaining quarters of any year. If the nominated rate is less than 85% of the instalment rate that ultimately should be used, an interest penalty may arise.

Unless a taxpayer elects to pay quarterly on the basis of **GDP adjusted notional tax** the PAYG instalment for a quarter is calculated as follows:

Applicable instalment rate x instalment income for the quarter

Instalment income for the quarter includes ordinary assessable income derived during the period (deductions are not taken into account, except a deductible farm management deposit). Statutory income is generally not included in instalment income, but there are a few exceptions (eg net gains from certain financial arrangements and an assessable withdrawal of a farm management deposit). Exempt income and non-assessable non-exempt income do not qualify as instalment income.

Certain quarterly payers are eligible to pay their PAYG instalments using the **GDP-adjusted notional tax** method, unless they choose to use the income instalment method. This means that the ATO will notify them of the required instalment each quarter. A payer may vary the amount of an instalment by estimating the tax payable for the income year and notifying the ATO, in the approved form, before the due date for payment of the relevant quarter's instalment. Note that a quarterly instalment may be reduced in accordance with regulations. Those eligible to use this method are:

- individuals;
- companies and superannuation funds with an instalment income of $2m or less in the previous income year; and
- companies and superannuation funds with instalment income greater than $10m for the previous income year, that are not registered for GST and with notional tax of less than $8,000.

Trust beneficiaries are liable for PAYG instalments in a similar manner. So, if a trust has beneficiaries which are quarterly PAYG instalment payers, the trust will be required to calculate instalment income on a quarterly basis and notify beneficiaries accordingly.

Note that PAYG variation concessions were available to quarterly payers as part of the Coronavirus economic stimulus measures (see page 10).

Entities must pay PAYG instalments quarterly unless they choose to pay annual instalments. This choice may be made if the entity has a most recent notional tax of less than $8,000, is not registered for GST, and is not a partner in a partnership which is registered, or required to be. If it is a company, there is a further requirement that it must not be subject to grouping for PAYG or GST.

Primary producers and special professionals (eg authors, performing artists and sportspersons) are liable to pay only two instalments a year (in effect the April and July instalments: see following).

When quarterly instalments are due

Quarterly instalments (by entities required to report and pay GST or another BAS obligation quarterly) are due (for 30 June balancers) as follows:

For the quarter ending on:	Pay the instalment on or before:
30 September	28 October
31 December	28 February
31 March	28 April
30 June	28 July

The due dates for a taxpayer with a substituted accounting period (SAP) are 21 days after the end of each quarter. Note that the ATO will allow taxpayers impacted by the Coronavirus (COVID-19) crisis or the 2019-20 bushfires additional time to pay quarterly instalments.

When annual instalments are due

Annual instalments are due by 21 October (or by the 21st day of the 4th month after year end if the taxpayer has a SAP).

Monthly instalments

A monthly instalment system applies to all entities (including individuals) with a BAII of $20m or more.

Corporate tax entities with a BAII of less than $100m are not required to make monthly PAYG instalments if they are (or their GST representative is) a quarterly or annual GST reporter, and they are not a head company of a consolidated group or a provisional head company of a MEC group.

Broadly, the BAII of an entity is so much of the entity's assessable income for a year (base year), as worked out for the purposes of the assessment for the base year, as the ATO determines is instalment income. Instalment income is the amount of ordinary income less exempt and non-assessable non-exempt income. TOFA entities (entities that have financial arrangements to which the TOFA rules apply) may be required to use an adjusted BAII calculation.

The amount of a monthly instalment is the applicable instalment rate multiplied by the instalment income of the monthly payer for that instalment month. However, the ATO has published a Determination allowing monthly payers to work out the monthly instalment for the first two months of an instalment quarter on the basis of a reasonable estimate of the taxpayer's instalment income for the instalment month.

Note that PAYG variation concessions were available to monthly payers that have a BAII of $500m or less as part of the Coronavirus economic stimulus measures (see page 10).

Business Activity Statement (BAS)

The Business Activity Statement (BAS) is a single form that allows taxpayers to report and pay PAYG instalments and PAYG withholding amounts, in addition to other tax obligations and entitlements, namely GST, FBT instalments, luxury car tax, wine equalisation tax and fuel tax credits.

Businesses not required to be registered for GST and individual non-business taxpayers with investment income will report on an Instalment Activity Statement (IAS).

For quarterly BAS and IAS lodgers, the due dates for lodgement and tax payment are 28 October, 28 February, 28 April and 28 July.

BAS considerations

When preparing a BAS, it is important to consider the following issues:

- the method (accounts method or the calculation worksheet method) used by an entity to calculate its GST liability. If the entity uses the accounts method, it can choose to exclude GST from all amounts reported. If the entity uses the calculation worksheet method, all amounts reported must include GST;
- the entity's accounting records and expected GST turnover. If the entity does not record capital and non-capital purchases separately in its accounting record and the entity's GST turnover is expected to be less than $1m, capital and non-capital items costing $1,000 or less can be recorded at label G11 (only capital items costing more than $1,000 need be recorded at G10);
- the cost of an item. If the cost is greater than $75 (GST-exclusive), a tax invoice is required before input tax credits can be claimed; and
- the industry that an entity is operating in. Consideration should be given to whether the industry has a peculiar way of reporting its GST obligations, for example, second-hand goods dealers and small food retailers.

Quarterly for GST, monthly for PAYG?

If an entity is a medium withholder under PAYG (total annual withholding remittances of $25,000 to $1m) it is still required to complete a monthly BAS, even though it may be registered to report GST quarterly.

In this case, the entity will only complete W1, W2, W3, W4 and W5 of the BAS (for the month) and ignore the GST component of the form (which will be completed at the end of the quarter).

At the end of a quarter the entity will complete the PAYG instalment, GST, FBT, luxury car tax, wine equalisation tax (WET) and fuel tax credit sections of the BAS (as appropriate), using information from all three months of that quarter. The information required may be less onerous if the BAS simplification measures apply.

Conversely, in completing the PAYG withholding section of the quarterly BAS, the entity need only provide information for the final month of the quarter.

PAYG considerations

Withholding when ABN is not quoted

Anyone carrying on an enterprise (usually a business) should quote their ABN whenever they supply goods or services to another enterprise.

If a business fails to do this, the general rule is that the payer (recipient of the supply) must withhold 47% from the payment to the supplier and send the withheld amount to the ATO.

The payer need not withhold from a payment to a supplier who fails to quote an ABN in various situations including:

- the total payment to the supplier is $75 or less, excluding GST;
- the supplier is an individual under 18 and the payments do not exceed $350 per week;
- the supply is wholly input taxed under GST (for example, financial supplies or residential rent);
- the goods or services are supplied through an agent who has quoted their ABN on an invoice or other document relating to the supply;
- the payment is made otherwise than in the course or furtherance of an enterprise carried on in Australia by the payer;
- the payment is exempt income, or non-assessable non-exempt income, of the supplier (for example, the supplier is a non-profit body);
- the payment is to a foreign resident who is not carrying on a business in Australia themselves or through an agent;
- the supplier is not entitled to an ABN as they are not carrying on an enterprise in Australia; or
- the supplier is an individual and the supply is wholly of a private or domestic nature or the supply is made as part of a hobby or a private recreational pursuit, and the supplier gives the payer a signed statement to that effect (and the payer has no reasonable grounds to believe otherwise).

If the payer does not withhold from a payment, they must have records to show the reason for not withholding. If the payer is unsure, they should ask the supplier to provide a written statement that states withholding is not required for one of the reasons listed above. The supplier may use the "Statement by a supplier (reason for not quoting an ABN to an enterprise)" form.

The payer should withhold if they doubt the authenticity of the ABN quoted. If the payer is unsure, they can check the validity of a supplier's ABN by using the Australian Business Register (call 13 92 26 or visit the ABR website [http://abr.gov.au]).

Upon payment of the net amount, the payer must issue a "Payment Summary – Withholding where ABN not Quoted" form to the supplier. There is a standard form available for this purpose.

Special rules for calculating the amount to withhold apply to payments to workers in certain industries and occupations, including:

- household employees;
- shearers;
- horticultural industry workers;
- religious practitioners; and
- creators of Indigenous artwork.

Franked dividends

Under the imputation system, if a company pays a franked dividend, the shareholder who receives the dividend "grosses up" the dividend so that both the dividend and the attached franking credits are included in the shareholder's assessable income. However, the shareholder is entitled to a tax offset (the franking tax offset) equal to the franking credit attached to the dividend.

Generally, beneficiaries of a trust who are presently entitled to a part of the trust income that is attributable to franked dividend income and partners of a partnership that has received franked dividend income, are entitled to the franking offset. The offset is the portion of the franking credit equivalent to the beneficiary's share of the net trust income or the partner's interest in the partnership, as appropriate, that is attributable to the franked dividend. For partners, the offset is available even where the partnership has sustained a loss.

The franking tax offset is refundable for some taxpayers, so that if the offset exceeds the tax payable, the excess is refundable. This applies to individuals, complying superannuation funds, life insurance companies and certain tax-exempt entities (eg charities and prescribed private funds). Thus companies are not entitled to a refund.

45-day holding rule

Franking credits in relation to shares acquired after 1 July 1997 will be denied unless shares are held at risk for at least 45 days ex dividend (90 days for certain preference shares). Where the total franking credit entitlement is below $5,000, this holding rule does not apply.

To determine whether shares are held at risk, arrangements to reduce the risk of loss on share ownership, such as options, futures or other derivatives, will be taken into account.

If a taxpayer has materially diminished risks for a period (based on a delta formula), that period of ownership will be disregarded which may result in failure of the 45-day holding rule.

Taxpayers will also be denied franking benefits where there is no interest in a dividend due to an obligation to make a related payment to another entity, effectively passing on the dividend.

In addition, beneficiaries will be denied access to franking benefits on shares acquired by a discretionary trust after 31 December 1997 unless the trust is a family trust (under trust loss rules).

Dividend washing

A specific integrity rule is designed to prevent certain dividend washing transactions. The transactions of concern involve the sale of shares ex dividend and the purchase of the same company's shares cum dividend, thereby obtaining a double entitlement to franking credits. The rules will be activated during the period between the dividend date and the record date of a membership interest, where a membership interest is disposed of on an ex dividend basis and a substantially identical membership interest is acquired cum dividend. The rules will deny franking benefits in respect of the newly acquired shares. The ATO has said that the general anti-avoidance rules (Pt IVA) may apply to such arrangements, at least where the arrangements were in place before 1 July 2013.

Debt forgiveness rules

Tax adjustments can arise under debt forgiveness rules where a commercial debt is forgiven. A "debt" is a commercial debt if any interest charged is tax deductible (or would be deductible if interest were payable). Tax related liabilities are not subject to the debt forgiveness rules. The "forgiveness" concept is broadly defined and there are also a number of specific forgiveness events included in the legislation.

The amount of the debt forgiven (reduced by any consideration for the forgiveness) will typically be offset against the following tax balances of the debtor in the order shown:

- tax losses;
- capital losses;
- certain undeducted expenditure (including, for example, depreciation and building write off balances and undeducted borrowing expenses); and
- cost bases for capital gains tax assets.

Deductions

In calculating the tax payable or refund due, expenses incurred in gaining assessable income or carrying on a business are taken into account. In order for a deduction to be allowable, the taxpayer must establish a direct connection between the earning of income and the expenditure for which a deduction is claimed.

Company losses

Deduction of tax losses by companies

The company loss provisions provide companies with a mechanism to avoid the "wastage" of tax losses that could arise in the post-consolidation environment from their inability to obtain a refund from excess franking offsets.

One of the features of this mechanism is a company's capacity to choose the amount of prior year losses it wishes to deduct in a later income year (subject to certain limitations). As it can choose a nil amount, a company can ignore its tax losses and pay tax to generate franking offsets for its distributions. At the same time, further flexibility is provided by allowing companies to convert excess franking offsets into a current year loss available to be carried forward for deduction in a later year.

Recoupment tests

A company can typically carry forward its tax losses indefinitely and claim a deduction in a later income year if it can satisfy either:

- a continuity of ownership test; or
- a business continuity test (the same business and similar business tests).

The same tests must be satisfied before a company can claim deductions for its bad debts.

Continuity of ownership test

To satisfy the continuity of ownership test, a company must show that shares holding more than 50% of rights to voting power, dividends and capital have been owned by the same persons from the start of the loss year through to the end of the income year. When this test is applied, each shareholder's lowest percentage ownership for the period is counted. Where shares are owned by another company, ownership tracing rules apply.

The ownership test is supplemented by a change of control test, which may apply if there is a change in the control of the voting power in the company, if made for the purpose of obtaining a tax benefit (ie a loss deduction).

Where the majority of shares are owned by a discretionary trust, the loss company may be unable to satisfy the continuity of ownership test, unless the trustee has made a family trust election.

Special tracing rules – trusts as shareholders

If any of the relevant interests in a company are held by an elected family trust (ie where the trustee has made a family trust election), the trustee of that trust will, for the purposes of the continuity of beneficial ownership test, be assumed to own those interests beneficially as an individual. Where 50% or more of the relevant interests in a company are held by a trustee of a discretionary trust that is not an elected family trust, losses can be deducted by the company if certain onerous tests under trust loss provisions can be satisfied.

Business continuity test

The business continuity test consists of the same business test and the similar business test.

To satisfy the *same business test*, a company must show it carried on the same business before and after the change in ownership and did not derive income from transactions of a new kind. Anti-avoidance rules also apply to stop a company entering into new transactions before a change in ownership (in an attempt to preserve losses).

The *similar business test* is more flexible than the same business test.

The similar business test looks at all the commercial operations and activities of the former business and compares them with all the commercial operations and activities of the current business to work out if the businesses are "similar". Four factors must be considered in determining whether the businesses are similar:

- *same assets* – this looks at the extent to which the assets (including goodwill) used in the current business to generate assessable income were also used in the former business to generate assessable income;
- *assessable income from same activities* – this looks at the extent to which the activities and operations from which the current business generates assessable income were also the activities and operations from which the former business generated assessable income;
- *identity of the business* – this requires a comparison between the identities of the former and current businesses;
- *development of former business* – this looks at the extent to which any changes to the former business result from the development or commercialisation of assets, products, processes, services or marketing or organisational methods of the former business.

There are parallel same business test and similar business test rules for listed widely held trusts.

Current year losses

Under current year loss rules, if there is a majority change in ownership within a particular year, and the company does not satisfy the business continuity test for that year, the company will be required to split its income year into two periods and attribute income and expenses to the periods pre and post the ownership change. A net loss in one of these periods may not be deductible to the company against income derived in the other.

Capital losses v revenue losses

Losses or outgoings of capital or of a capital nature are not deductible.

Capital losses (under CGT rules) can only be offset against capital gains. Similar tests to those discussed previously also apply (see **Capital losses** on page 57).

Note that a company may be denied *unrealised* revenue or capital losses existing at the time of the ownership change, unless the business continuity test is satisfied.

Trust losses

Special rules apply to deny trusts a deduction for prior year tax losses and bad debt deductions unless certain strict tests are passed under **trust loss rules**.

The applicable tests depend on how a trust is categorised, for example, as fixed or non-fixed. A trust will be a fixed trust where beneficiaries have fixed entitlements to all of the income and capital of the trust. A beneficiary must have a vested and indefeasible interest in a share of income or capital under the trust instrument for it to qualify as a fixed entitlement. Otherwise it will be a non-fixed or discretionary trust.

Both fixed and non-fixed trusts must pass an income injection test. Broadly, this applies to disallow deductions in certain cases where income or other assets are injected into a trust to take advantage of its losses.

A fixed trust must also satisfy a 50% stake test (similar to a continuity of ownership test for companies). If discretionary trusts have at least a 50% interest in income or capital of the fixed trust, an alternate non-fixed trust stake test applies. It would require the discretionary trusts to satisfy the trust loss rules (for a non-fixed trust) as if they had incurred the loss (rather than the fixed trust).

Non-fixed trusts must satisfy the 50% stake test (not applicable if there are no fixed interests), a pattern of distributions test and a control test.

The pattern of distributions test requires that more than 50% of trust distributions were made to the same individual beneficiaries (directly or indirectly) over a test period.

Only the smallest distribution percentage made to each beneficiary in the test period is taken into account.

The control test is concerned with whether a group begins to control the trust, its income and capital or its trustee during the test period.

If a trust is an excepted trust, it will only have to satisfy the income injection test on a more concessional basis. Excepted trusts include family trusts, deceased estates and complying superannuation funds.

Family trusts are those which pass a family control test (trust controlled by one family) and have made a family trust election (which is revocable in limited circumstances). Distributions by a family trust outside a defined family group are subject to tax at the top marginal tax rate plus Medicare levy.

Other tests apply to widely and very widely held trusts, both being categories of fixed trusts.

Non-commercial losses

Individuals are prevented from offsetting losses from non-commercial business activities against other assessable income, unless the activity satisfies one of the "commerciality" tests. A prime example is an employee who seeks to offset non-primary production business losses against salary or investment income.

When determining whether an activity is a business activity (as opposed to a hobby), the usual tests to determine whether a business is being carried on apply. The non-commercial losses rules do not apply to losses from a business activity in any year in which the activity satisfies at least one of the following commerciality tests:

- the business results in at least $20,000 of assessable income in the relevant year;
- the business produced a tax profit in at least 3 out of the past 5 income years, including the current year;
- real property or interests in real property worth at least $500,000 is continually used in carrying on the business over the relevant year. The value of private dwellings, adjacent land and tenant fixtures is not included; or
- other assets (except cars, motorcycles and similar vehicles) worth at least $100,000 are used on a continuing basis in carrying on the business during the relevant year.

When applying the tests, similar business activities may be grouped, but distinct activities (eg farming and furniture making) must be treated separately.

Primary producers and professional artists are excluded from the tests if their assessable income (excluding net capital gains) from other sources is less than $40,000.

If all tests are failed, losses from the relevant activity are non-deductible in that year, but may be carried forward and applied against a profit from the same activity in a later year. The deferred loss can only be offset against income from other sources in a later year if a business activity passes one of the four tests.

Taxpayers with an adjusted taxable income of $250,000 or more are prevented from offsetting excess deductions from non-commercial business activities against other assessable income. Adjusted taxable income is the sum of taxable income, reportable fringe benefits total, reportable superannuation contributions and total net investment losses for the income year. The excess deductions are quarantined to the business activity.

Losses may also be deductible if the ATO exercises a discretion to allow the deduction. This can apply if the activity is of a kind where start-up losses are anticipated, but long-term profitability may reasonably be expected. It may also be exercised if the activity would have passed at least one commerciality test except for special circumstances outside the taxpayer's control, eg natural disaster such as drought, flood or bushfire, a powerplant shutdown, an oil spill, government restrictions on land use or illness of key personnel, but generally not ordinary economic or market fluctuations.

Common deductions

Prepayments

For individuals incurring non-business expenditure (eg employees) and "small business entities" (see page 83), if the service period is 12 months or less and ends in the expenditure year or the income year immediately following, the expenditure is deductible outright. Otherwise, the expenditure is apportioned on a daily basis over the service period.

For all other taxpayers, prepayments are deductible over the service period, ie the prepayment is apportioned over the years during which the services are provided.

The prepayment rules do not apply to certain expenditure, including:

- payments less than $1,000 (GST-exclusive amount if the taxpayer is entitled to an input tax credit in respect of the expenditure);
- expenditure required to be made by Commonwealth, State or Territory law or by a Court order (ie statutory fees and charges such as car registration fees);
- salary and wages;
- payments of a capital, private or domestic nature;
- certain amounts incurred by a general insurance company; and
- (for taxpayers that are not small business entities or non-business individuals) expenditure arising from an agreement made before 21 September 1999, which the taxpayer cannot unilaterally escape (called a "pre-RBT obligation").

Investors in a forestry managed investment scheme are generally entitled to an immediate deduction for their investment, provided at least 70% of the expenditure is "direct forestry expenditure" (ie expenditure attributable to establishing, tending, felling and harvesting trees and notional expenditure reflecting the market value of land, goods and services used for establishing, tending, felling and harvesting trees, but excluding financing costs, stamp duty, GST (where applicable) and payments for processing forestry produce). A 12-month prepayment rule similar to that applying to small business entities and non-business individuals applies where the immediate deduction is not available.

Deductions for prepayments made under tax shelter arrangements by any taxpayer, must be apportioned over the period to which the prepayments relate. This does not apply to certain expenditure including:

- some insurance and interest related to rental properties;
- interest from investments in publicly listed companies and loans to acquire real property;
- certain infrastructure bonds;
- expenditure arising from a pre-RBT obligation; and
- expenditure related to certain ATO product rulings made before 11 November 1999, or which were applied for before that date.

Motor vehicle expenses

All or a portion of the various costs associated with a taxpayer's motor vehicle may qualify for income tax deductions. These may include interest, lease payments, running costs (petrol, oil, repairs, servicing, registration, insurance) and holding costs (depreciation). For 2019-20, the maximum cost upon which depreciation is deductible (also called the "car limit") is $57,851 (also for the previous three income years). For 2020-21, the car limit is $59,136.

The deductibility of motor vehicle expenses depends upon the relationship between the use of the vehicle and the production of income. As such, the nature of the taxpayer's work and the use of the vehicle is critical.

Employees and self-employed taxpayers are required to **substantiate** any claims for motor vehicle expenses by the production of receipts and invoices and, in some circumstances, log books for an initial 12-week period (see page 47).

Travel expenses

In certain circumstances, overseas and domestic travel costs may qualify as an income tax deduction. The broad principles are:

- the expenditure needs to be for business/employment purposes (not private); and
- the expenditure must generally be for ongoing business or employment and not for the establishment or expansion of a business or profession (the latter being expenditure of a capital nature).

Recording details of the itinerary and the allocation of time between business and any private component is critical to the success of any claim.

Substantiation provisions apply to employees and self-employed taxpayers for extended overseas and domestic travel expenses (see 45).

Deductions are generally not allowed for travelling expenses of a spouse accompanying an employee or self-employed person on a business trip unless FBT is payable.

Travel deductions in connection with a residential rental property are restricted. A taxpayer is denied a deduction for travel expenses in gaining or producing assessable income from a residential rental property. This can include motor vehicle expenses, taxi or hire car costs, airfares and the cost of any meals or accommodation related to the travel. It does not apply if the expenditure is necessarily incurred in carrying on a business for income-producing purposes, or if it is incurred by a corporate tax entity, a superannuation fund (that is not a SMSF), a public unit trust or a MIT.

Clothing deductions

If the necessity to wear certain clothing can be specifically related to a taxpayer's occupation and can be easily distinguished from day-to-day clothing, a deduction may be allowed in limited circumstances. Otherwise, the purchase of clothing will be regarded as expenditure of a private nature.

In certain occupations, protective clothing, accessories and safety eyewear and footwear are needed to protect the employee from damaging their

Motor vehicle mini log book

Each motor vehicle should have a separate log book.

Motor vehicle details

PART 1

To be completed on 1 July or date of acquisition

ORGANISATION/COMPANY NAME: ________________

MAKE OF CAR: ________________

MODEL: ________________

DATE ACQUIRED: ________________

COST: ________________

REGISTRATION NO.: ________________

ODOMETER READING: ________________
at beginning of year or date of acquisition if acquired during the year.

Date .... / .... / .... Name ________________

Signature ________________

PART 2

To be completed on 30 June or date of disposal

ODOMETER READING: ________________
at end of year or date of disposal if disposed of during the year.

Date .... / .... / .... Name ________________

Signature ________________

TOTAL KM TRAVELLED DURING THE YEAR: ________________

PART 3

Details of the log book period

START DATE: ________________

END DATE: ________________

ODOMETER AT START: ________________

ODOMETER AT END: ________________

TOTAL KM: ________________

BUSINESS KM: ________________

Motor vehicle log

DATE TRIP BEGAN	DATE TRIP ENDED	ODOMETER READING		KM DRIVEN ON BUSINESS
		START	FINISH	

Motor vehicle running expenses

(Receipts supplied)

DATE INCURRED	WORK DONE OR ITEM PURCHASED	CARRIED OUT BY OR PURCHASED FROM (BUSINESS NAME)

Expense items under $10

(No receipt supplied)

DATE PAID	WORK DONE OR ITEM PURCHASED	CARRIED OUT BY OR PURCHASED FROM (BUSINESS NAME)

PURPOSE OF TRIP

PETROL/OIL $	COST		RECEIPT REF.
	MAINTENANCE $	OTHERS $	

AMOUNT	DRIVER'S NAME

How to use this mini log book

- Part 1 should be completed on or as soon as practicable after 1 July, or the date the motor vehicle is acquired.
- Part 2 should be completed on or as soon as practicable after 30 June, or the date the motor vehicle is disposed of.
- Part 3 should be completed at the start and end of the 12-week log book period.
- A separate line of the Motor Vehicle Log must be fully completed for each business trip. In addition the Purpose of Trip must be completed for each business trip. However, where there are successive business trips on the same day, only one entry need be made for the successive trips.
- Travel to and from work is not usually a business trip.
- Details should be completed for all running expenses (petrol, oil, maintenance etc) where a receipt is supplied.
- Details should also be completed for running expenses which are under $10 where no receipt is received.
- Receipts should be retained.
- If you have any questions, do not hesitate to contact our office.

Who is required to use a log book

Substantiation method	Substantiation required
Where business kilometres travelled do not exceed 5,000	
Log book method	Requirements for log book, odometer records and documentary evidence of expenses are the same as where business kilometres travelled exceed 5,000 – see below.
Set rate per kilometre method	Log book not required. Number of business kilometres based on a reasonable estimate.
Where business kilometres travelled exceed 5,000	
Log book method	Log book required to be kept for a minimum continuous 12-week period in the first year. The 12-week log book period may overlap 30 June. A new log book must be kept at least every 5 years. Odometer records are required. Documentary evidence of expenses (receipts etc) is required. Fuel and oil expenses may be substantiated by documentary evidence or by a reasonable estimate based on odometer records, average fuel costs and fuel consumption statistics (published by the Australian Bureau of Statistics).
Cents per kilometre method	As above, but claim is limited to a maximum of 5,000 business kilometres at the set rate.

Documentary evidence is not required for expenses that do not exceed $10 where the total amount of these claimed expenses does not exceed $200.

clothes or harming themselves – in such circumstances the cost of the items will also be deductible. For example, overalls for garage attendants and mechanics, jackets for medical practitioners, goggles for welders etc.

Current provisions effectively restrict the tax deductibility of occupational clothing expenses incurred by employees where the wearing of the uniform or corporate wardrobe is not compulsory.

Home office/working from home deductions

Deductions are available where a specific part of the taxpayer's home has been set aside as a home office or other place of business (eg a separate surgery set up in a doctor's home). Deductible home office expenses include electricity charges for heating/cooling and lighting, rent, interest on a mortgage, cleaning costs and depreciation (eg for desks and chairs). The deduction for rent or mortgage interest and council rates is usually calculated on the basis of the proportion of the floor area of the premises occupied by the taxpayer as a home office.

Taxpayers working from home who do not have a home office can claim a deduction for "running expenses", such as electricity charges, internet and phone expenses, cleaning costs and the cost of computer consumables (eg, printer paper and ink).

"Running expenses" incurred before 1 March 2020 can be deducted at the rate of 52 cents per hour.

"Running expenses" incurred between 1 March 2020 and 30 June 2020 can be deducted at the rate of 80 cents per work hour – the taxpayer will only need to keep a record of the number of hours worked from home.

Alternatively, in all cases, a taxpayer can deduct the actual cost of "running expenses" (apportioned on a reasonable basis), subject to certain record keeping requirements.

Expense substantiation

- If claims for employment-related expenses by employees (excluding car expenses, travel and meal allowances) exceed $300 in aggregate, all claims must be supported with documentary evidence.
- While expenses totalling $300 or less do not need to be supported by documentary evidence, they **must** still be capable of justification as deductions.
- Up to $150 may be claimed for laundry expenses (eg washing, drying or ironing of eligible work clothes) including dry cleaning and laundromat costs without the need for substantiation, provided that such an expense has actually been incurred and total work expenses do not exceed $300. The ATO will allow a claim of $1 a load if only work clothes are washed and 50 cents a load if non-work clothes are included in the wash.
- Where expenditure is incurred on items costing $10 or less (eg a newspaper or a small "bucket donation" to a DGR), and the total of these particular expenses is not more than $200, taxpayers can maintain their own records of expenditure in a diary or similar document and not necessarily provide written evidence from a supplier.

- Taxpayers can also maintain their own records in a diary or similar document if the ATO considers it unreasonable to obtain documentary evidence for an expense.
- A standard record retention period of five years applies to all substantiation documents.
- Where substantiation provisions are not complied with, deductions may be disallowed.
- The ATO has the discretion to waive compliance with the substantiation provisions in certain circumstances (see Taxation Ruling TR 97/24).

Where documentary evidence is required, it must be in English (unless the expense was incurred overseas) and contain the following minimum information:

- the name or business name of the supplier;
- the amount of the expense and the currency;
- the nature of the goods and services;
- the day the expense was incurred; and
- the day on which the document was issued.

If a document does not describe the nature of the property, goods or services, the taxpayer may add the appropriate information to the document. In addition, if the document does not contain a date, the taxpayer can use other supporting evidence such as bank statements, credit card slips or similar independent evidence.

Car expenses

Taxpayers have the choice of two methods for claiming car expenses (fuel, repairs, tyres, registration and insurance, lease charges, interest on a car loan, depreciation etc). These are the cents per kilometre and log book methods. The "12% of cost" and "one-third of actual expenses" methods ceased to apply as from 2015-16.

1. Cents per kilometre method

Car size	Rotary engine size	Conventional engines (non-rotary)	Rate per kilometre[1] 2019-20
Small	0 - 800cc	Up to 1,600cc	68.0¢
Medium	801 - 1,300cc	1,601 - 2,600cc	68.0¢
Large	1,301cc +	2,601cc +	68.0¢

1. The rate applies, regardless of engine size. From 1 July 2020, the rate is 72.0¢ per kilometre.

The cents per kilometre method can be adopted any time. This method can only be used for the first 5,000 business kilometres travelled. If more than 5,000 business kilometres are travelled, the method may still be used, but the excess is ignored for the purposes of the claim. Substantiation is not required but claims must be based on a reasonable estimate.

2. Log book method

Under this method, a log book is kept for a minimum continuous 12-week period. Business and total kilometres during the period are determined. The taxpayer is then required to make a reasonable estimate of the number of business kilometres travelled by the car during the year.

When making this estimate, taxpayers will need to take into account any log books, odometer records and changes in the pattern of business use of the car.

The business kilometre estimate is then divided by the total kilometres travelled by the car during the income year to arrive at the relevant business use percentage.

The business use percentage is multiplied by allowable car expenses incurred to calculate the taxpayer's deduction. Other than petrol and oil which can be supported by odometer records, all expenses must be substantiated.

Log book requirements

Log books must be kept for a continuous period of 12 weeks in the first year expenses are claimed under this method. In addition, it is a requirement for a new log book to be completed every five years. The entries must be in English.

The details must cover:

- when the log book period commenced and ended;
- odometer readings at the beginning and end of the period;
- the number of total kilometres travelled during the period;
- the date each trip began and ended;
- odometer readings at the beginning and end of each journey;
- the number of kilometres travelled on each trip;
- the purpose of the journey; and
- the percentage of business use over the log book period.

A sample motor vehicle log book can be found on the middle pages of *Tax Guide 2020.*

Car parking deductions

Generally, an employee can claim a deduction for parking fees incurred while travelling, where the travel expenses are deductible. However, an employee cannot claim a deduction for expenditure incurred for car parking where, basically, the car is parked at or in the vicinity of the employee's primary place of employment for more than four daylight hours (during 7 am to 7 pm) and the car was used for travel from home to work.

Travel expenses

Business individuals are required to obtain written evidence of expenses incurred on interstate and overseas travel which keeps them away from home for at least one night. The rules for employees and business individuals (who do not receive a travel allowance) are summarised in the following table.

Type of travel	Duration	Record keeping requirements
Interstate and overseas travel	Less than 6 nights	Written evidence of expenses
Interstate and overseas travel	Six nights or more	Written evidence of expenses and a travel diary

Claims against travel allowances

If the taxpayer is paid a travel allowance to cover the costs of accommodation, meals and other incidental expenses associated with travel within Australia, there is no requirement for the taxpayer to obtain receipts, provided the expenses claimed are reasonable (and do not exceed the amount of the allowance). Each year the ATO publishes a Taxation Determination setting out the daily travel allowance expense amounts (both domestic and overseas) which are considered to be reasonable (the rates are based on Australian Public Service rates). The 2019-20 reasonable amounts are set out in Determination TD 2019/11 (the 2020-21 reasonable amounts were not known when *Tax Guide 2020* was finalised).

Likewise, with one exception, receipts for expenses need not be obtained if the taxpayer travels overseas and is paid a travel allowance, provided the expenses claimed do not exceed the daily rates published in the Taxation Determination. The exception is that receipts need to be maintained for overseas accommodation expenses. A travel diary must also be kept where the travel exceeds six nights.

Note that:

- if the travel allowance does not exceed the reasonable amount, is fully expended on deductible expenses and is not shown on the employee's payment summary, the allowance need not be shown in the tax return but there is no corresponding deduction for the expenditure;
- if the allowance is greater than the reasonable amount, it must be shown as assessable income in the return but an unsubstantiated deduction may be claimed for an amount not greater than the reasonable amount;
- if the deduction claimed is less than the allowance received, the taxpayer must show the allowance as assessable income in the return and claim only the amount of the deductible expenses; and
- if the deduction claimed is more than the reasonable amount, the whole amount must be substantiated.

Part day travel allowances

Part day travel allowances (ie where the employee does not sleep away from home) are not treated as a "travel allowance" for substantiation and PAYG purposes. Employers are therefore required to withhold tax instalment deductions from part day travel allowances, which will need to be included on payment summaries.

Any deductible travel expenses claimed against a part day travel allowance will need to be supported by appropriate written evidence. Part day travel allowances will also need to be included separately as assessable income in the employee's tax return.

Capital allowances (depreciation)

Under the Uniform Capital Allowance (UCA) system, a taxpayer is entitled to a depreciation deduction for the annual decline in value of a depreciating asset (effectively plant and equipment, plus certain intangible assets) which the taxpayer holds. Small business entities may choose to use simplified depreciation rules instead of the UCA system (see page 83).

Under the UCA system, the decline in value is based on the effective life of the asset, using the prime cost or diminishing value method (although see below for assets that can be written off immediately). A taxpayer can self-assess the effective life of a depreciating asset or use the ATO's published effective life (if there is one). The effective life of certain assets is specified in the legislation, while certain other assets have a capped effective life.

Where the diminishing value method is used, a 200% depreciation rate applies (although a 150% rate applies to assets which the taxpayer acquired under a contract entered into, or started to construct, before 10 May 2006). If the asset is used partly for a non-income producing purpose, the depreciation deduction is apportioned.

A depreciating asset starts to decline in value when the holder of the asset first uses it, or has it installed ready for use, for any purpose (ie it does not matter that the asset is used for a non-income producing purpose). Accordingly, in the first year of use, or in the first year the asset is installed ready for use, the depreciation deduction is calculated on a pro rata basis.

As part of the Coronavirus economic stimulus measures, an accelerated rate of depreciation is available for entities with aggregated annual turnover that is less than $500m, where a new depreciating asset is first held on or after 12 March 2020 and is first used or first installed ready for use on or after 12 March 2020 and before 1 July 2021 (see page 10). This does not apply to certain depreciating assets, such as those allocated to a software development pool and certain assets used in primary production. Accelerated depreciation is also not available if, before 12 March 2020, the taxpayer was legally committed to acquiring the asset.

Low-cost assets (ie assets costing less than $1,000) and low-value assets (ie assets with a written-down value of less than $1,000 depreciated using the diminishing value method) may be allocated to a low-value pool. The decline in value of the pool is calculated using the diminishing value method, assuming the assets allocated to the pool have an effective life of four years. The depreciation rates are 18.75% for assets added to the pool during the year and 37.5% for assets in the pool at the start of the year.

Depreciating assets are excluded from CGT (except to the extent the plant and equipment is used for a non-income producing purpose). However, any gain made on disposal (a balancing adjustment) may be included in assessable income.

In addition, any loss made on disposal may be an allowable deduction.

Instant asset write off

An outright deduction is available for certain assets first held after 2 April 2019 and first used or installed for ready for use by 30 June 2020 (this is called the instant asset write off) – the 30 June cut-off date is to be extended to 31 December 2020. The table below summarises eligibility for the instant asset write off (note that the cost of the asset must be less than the amount specified in the third column).

Eligible businesses – aggregated turnover	Date range for when asset first used or installed ready for use	Threshold
Less than $500m	12 March 2020 to 30 June 2020[1]	$150,000
Less than $50m	7.30pm (AEDT) on 2 April 2019 to 11 March 2020	$30,000

1. 30 June 2020 cut-off date is to be extended to 31 December 2020.

The rules that apply to working out if an entity qualifies as a small business entity (see page 83) also apply to working out an entity's aggregated turnover for the purposes of the instant asset write-off. In other words, the same rules apply except that references to $10m (the small business entity threshold) are to be read as $50m (or $500m where appropriate).

The instant asset write off is also available to small businesses that use the simplified depreciation rules: see page 84.

Software

For income tax purposes, there are two categories of computer software – "in-house software" and all other software. "In-house software" is software acquired, commissioned or developed principally for the taxpayer to use to perform the functions for which it was acquired or developed. It is a depreciating asset and is dealt with under the UCA system. If software is not in-house software, it is only deductible under the general rules if it is an item of intellectual property (and so a depreciating asset for the purposes of Div 40).

Expenditure on developing or commissioning in-house software may be allocated to a software development pool, in which case it is depreciable over 2½ years on a prime cost basis. If the software is not allocated to a pool, it is depreciable under the UCA system with a four or five year effective life (five years if the software is first used or installed ready for use on or after 1 July 2015). Expenditure on acquiring in-house software cannot be allocated to a software development pool and is depreciable under the UCA system (using the prime cost method).

Capital gains tax

Capital gains tax (CGT) is not a separate tax like fringe benefits tax. Net capital gains are included in a taxpayer's assessable income (see **Net capital gains** on page 57).

The main features of CGT are that:

- it generally applies only to CGT assets acquired (or deemed to be acquired) after 19 September 1985;
- it applies where a "CGT event" happens to a CGT asset;
- it is imposed at personal or company rates of tax (whichever is applicable); and
- if the asset has been held for more than 12 months, an individual resident taxpayer or trustee (but not a company) is entitled to a 50% discount on the assessable gain (see page 57).

Exemptions include:

- a main residence and "adjacent land" (up to two hectares) used for private or domestic purposes;
- marriage and de facto relationship breakdown settlements (including same-sex de facto relationships);
- most motor vehicles;
- gains on "collectables" acquired for $500 or less;
- gains on "personal use" assets acquired for $10,000 or less;
- proceeds of superannuation and life assurance policies;
- gains on trading stock; and
- gains on depreciating assets, unless used partly for a non-taxable purpose.

There are various other exemptions and concessions, in particular the small business concessions (see page 54).

Main residence exemption

As a general rule, any capital gain (or capital loss) arising from a relevant CGT event happening to a taxpayer's main residence (and up to two hectares of adjacent land) is exempt from CGT. There is a partial exemption where the residence has not qualified as the taxpayer's main residence throughout the entire period of ownership and/or has been used to produce assessable income (see below).

The exemption is only available to individuals, and not to companies or trusts (including individual trustees – except in the case of a "Special Disability Trust" that holds a main residence for occupation by a "principal" beneficiary).

The exemption is not available where an individual, at the time the CGT event happens, has been a foreign resident for more than 6 continuous years. Other foreign residents can only access the exemption if they satisfy the "life events test" (eg, their spouse or child (if under 18) has died during the period of foreign residency or the relevant CGT event occurs because of a distribution of assets on divorce or separation).

Generally, a taxpayer can only have one main residence. However, an exception exists if the taxpayer acquires a new dwelling that is to become their main residence before disposing of an existing main residence. Both dwellings will be treated as the taxpayer's main residence during that period between the acquisition of the new dwelling and the disposal of the old dwelling, or the six-month period immediately before the disposal of the old dwelling, whichever is the shorter.

The main residence exemption is also available despite absences from the residence – but to the extent that the concession is used, no other dwelling can qualify as the taxpayer's main residence during the period of absence. The exemption will be maintained for an unlimited absence if the dwelling is not used to produce income, and up to six years if the dwelling is used to produce income. If after these six years, the taxpayer continues to be absent and derives income from the dwelling, a partial exemption will apply for the period exceeding six years.

Note also that a full or partial exemption is available for the disposal of a dwelling acquired from a deceased estate. This will depend on such matters as when the dwelling was acquired by the deceased, whether it was (or was deemed to be) their main residence at the date of death and whether it is disposed of within two years of the deceased's death or after occupation by a surviving spouse or beneficiary etc.

Income-producing residences

If a dwelling is used for income-producing purposes during the whole or part of the period in which it was a taxpayer's main residence, only a partial CGT main residence exemption will apply.

It is likely that where a dwelling is used to operate a business such as a doctor's surgery or similar home based business, and the business related area is clearly identifiable as such, then an appropriate part (based on the percentage of floor area used for income-producing purposes and the period for which it is so used) of any capital gain would be subject to CGT.

However, where a dwelling is first used to produce income after 20 August 1996, then any partial capital gain or loss will be calculated by reference to its market value cost base at that time and the sale proceeds (with an apportionment for partial income use, if relevant).

Note that the ATO does not treat the maintenance of a home office as precluding the application of the main residence exemption.

New buildings or structures

Where a building or structure is constructed after 19 September 1985 on land acquired before 20 September 1985, the building or structure is treated as a separate post-CGT asset.

Likewise, if a building or structure is constructed after 19 September 1985 on land acquired after that date, and the building or structure is entitled to capital allowance deductions, then the building or structure and the land will also be treated as separate assets.

Note that the consequence of an asset being treated as a separate asset is that any capital gain or loss on it is calculated separately.

Capital improvements

If an improvement is carried out after 19 September 1985 to an asset acquired before 20 September 1985, it will be treated as a separate asset provided the cost base of the improvement exceeds both:

- $153,093 in 2019-20 (and $155,849 in 2020-21); and
- 5% of the disposal price of the whole asset.

Note that, for the purposes of this threshold test, "related" improvements will be treated as a single improvement (eg where the improvements are undertaken as part of the same project, albeit over different income years).

CGT roll-over provisions

Taxpayers can defer CGT by rolling over assets in some situations such as on the breakdown of a marriage or business reorganisation, and preserve the original CGT status of the asset being transferred. Business reorganisation roll-overs include:

- transferring assets to a wholly owned company by an individual, partnership or trust;
- interposing a wholly owned company; and
- restructuring a small business (annual aggregated turnover of less than $10m: see page 83), eg where a sole trader sets up a company or a discretionary trust to run the business.

Marriage or relationship breakdown roll-over relief covers assets transferred to a spouse (including a de facto spouse) by:

- a binding financial agreement under the *Family Law Act 1975* or a similar agreement under a corresponding foreign law;
- an arbitral award under the *Family Law Act 1975* or a corresponding award made under a corresponding state law, territory law or foreign law;
- a written agreement under State law, Territory law or foreign law relating to de facto marriage breakdowns where the agreement is similar to a binding financial agreement; and
- other similar enforceable arrangements (made pre- or post- the marriage or relationship) as set out in s 126-5(1) of the ITAA 1997.

Note that the roll-over also applies to certain rights created in the other spouse (eg options in a family company) or where an asset is transferred from a company or trust to the spouse. But in the case of a transferred dwelling that was or becomes a main "residence", special rules apply. Note also that a "spouse" includes a de facto same-sex spouse.

Other key roll-overs include:

- the roll-over on the loss, destruction or compulsory acquisition of a CGT asset;
- scrip-for-scrip roll-over and demerger relief that may apply in company or trust take-overs or restructuring; and
- roll-overs that apply to small superannuation funds.

The CGT roll-overs can be a difficult area of CGT on which advice should be sought.

Small business CGT concessions and exemptions

There are four principal CGT concessions for assets of a small business. These are:

- the 15-year exemption – under which the taxpayer is entitled to a total exemption on a capital gain if the asset has been held for at least 15 years, the taxpayer is at least 55 years of age and the CGT event happens in connection with the taxpayer's retirement, or they are permanently incapacitated at that time. If the taxpayer is a company or trust, there must generally be a person (or persons) who qualifies as a significant individual over the 15-year period and the exempt gain must be distributed to such a person or their spouse who holds an interest in the company or trust;
- the 50% active asset reduction – which can be combined with the 50% CGT discount to result in a 75% reduction in the capital gain (which can then be further reduced at the taxpayer's option by the application of the retirement concession and/or the small business roll-over);
- the retirement concession – under which the taxpayer can choose to disregard all or part of a capital gain up to a lifetime maximum of $500,000. If the taxpayer is a company or trust, a payment must be made to at least one CGT concession stakeholder; and
- small business roll-over relief – provided a replacement active asset is acquired or relevant capital expenditure is incurred on another asset within the replacement asset period (ie within the period of one year before to two years after the CGT event that gave rise to the gain, or such further time as the ATO allows).

The rules determining qualification for the small business concessions can be complex. Two basic conditions must be met:

- the taxpayer who owns the CGT asset must be a "small business entity", or a partner in a partnership that is a small business entity. For these purposes, an entity is a small business entity if its annual aggregated turnover is less than $2m (and *not* $10m which is the threshold for the purposes of most small business concessions: see page 83). Alternatively, the taxpayer must satisfy the "maximum net asset value" test, which requires that the net value of all the CGT assets of the taxpayer, affiliates and connected entities of the taxpayer do not exceed $6m (except certain excluded assets such as the taxpayer's home); and
- the CGT asset that gives rise to the gain must be an "active asset", ie an asset used or held ready for use in the course of carrying on a business by the taxpayer or a related entity. This can include shares or trust interests held by an individual or interposed entity in the "object" company or trust, subject to satisfying certain conditions (see below).

If the CGT asset is a share or trust interest, or if the taxpayer is an interposed company or trust, then (a) at least 80% (by market value) of the assets of the "object" company or trust that carries on the business (and of the assets of any entity in which the company or trust has a small business participation percentage (SBPP), multiplied by that percentage) must be "active assets" and/or financial instruments and cash that are inherently connected with the business (and must have been held for the lesser of 7.5 years and half the period of ownership of the share or trust interest); and (b) the "object company or trust" must satisfy the "CGT concession stakeholder test", ie they must have a "significant individual". A shareholder or trust interest holder will be a "significant individual" if the total of their direct and indirect SBPP in the company or trust is at least 20%. A spouse of a significant individual will also qualify if they have a small business participation percentage in the company or trust that is greater than zero.

If the CGT event involves a right or interest in a partnership, the CGT small business concessions are only available if the right or interest would be sufficient to make the entity holding the right or interest a partner.

All of the concessions also have specific additional conditions that must be met.

The 15-year exemption takes precedence over the other concessions. If a taxpayer does not qualify for this exemption, the taxpayer may apply the 50% active asset reduction, which is optional. The retirement concession and/or roll-over relief will be applied after the 50% reduction. There is no requirement that the taxpayer apply the retirement concession or roll-over relief in any specific order. In addition, the taxpayer is able to access both the retirement concession and roll-over relief.

These are important, but complicated, provisions and great care should be taken in applying the concessions.

Note also that roll-over relief is also available where a small business entity restructures – to qualify for this concession, an entity's annual aggregated turnover threshold must be less than $10m (see page 83).

Capital gain or loss

To determine if a capital gain has arisen, the capital proceeds from a CGT event are compared with the cost base of the relevant CGT asset. To determine if a capital loss has arisen, the reduced cost base is used instead of the cost base (and with no indexation adjustment for inflation, if relevant).

The cost base of a CGT asset consists of the following five elements:

1. acquisition costs (eg the purchase price);
2. incidental costs (eg professional fees, stamp duty, advertising and marketing costs);
3. costs of owning the asset (eg cost of repairs, maintenance and insurance and interest), provided the costs are not deductible;
4. capital expenditure to increase or preserve the value of the asset, or that relates to installing or moving the asset; and
5. capital expenditure to establish or defend title to or a right over the asset.

The reduced cost base consists of elements 1, 2, 4 and 5 above, with the addition of assessable balancing adjustments (so the non-deductible costs of owning the asset are excluded from the reduced cost base).

Certain types of expenditure are specifically excluded from the cost base and the reduced cost base.

If there are no capital proceeds, some of the capital proceeds cannot be valued or the parties to the transaction are not dealing at arm's length, market value may be substituted. An apportionment of the capital proceeds may be needed if the capital proceeds relate to more than one CGT event or to a CGT event and something else.

There are a number of other special rules about capital proceeds (eg dealing with the non-receipt or repayment of the capital proceeds).

CGT discount

If a resident taxpayer disposes of a CGT asset that has been held for at least 12 months, the CGT discount method may apply to reduce the capital gain derived. The amount of the CGT discount to be applied will depend on the type of entity. Note that the CGT discount is not available to companies.

Entity	**CGT discount (%)**
Individuals	50
Trusts (if entitled to the CGT discount)	50
Complying superannuation funds	33.3
Company	0

The CGT discount is 60% if the CGT asset is a dwelling that was used for affordable housing on at least 1,095 days on or after 1 January 2018 (the days need not be consecutive).

Foreign residents do not qualify for the CGT discount on capital gains arising from "taxable Australian property" that accrued after 7:30 pm (AEST) on 8 May 2012.

If the asset was acquired before 21 September 1999, the taxpayer has the option to use either the indexation method (if eligible) or the CGT discount method to calculate the capital gain (although companies must use the indexation method). Under the indexation method, the cost base of the asset is indexed using the Consumer Price Index (CPI), but the CPI indexation factor is frozen at the quarter ending 30 September 1999.

The following table represents all CPI figures released from the introduction of the CGT legislation to the quarter ending 30 September 1999.

Quarterly indexation factors								
	85	**86**	**87**	**88**	**89**	**90**	**91**	**92**
Mar	–	41.4	45.3	48.4	51.7	56.2	58.9	59.9
Jun	–	42.1	46.0	49.3	53.0	57.1	59.0	59.7
Sep	39.7	43.2	46.8	50.2	54.2	57.5	59.3	59.8
Dec	40.5	44.4	47.6	51.2	55.2	59.0	59.9	60.1
	93	**94**	**95**	**96**	**97**	**98**	**99**	
Mar	60.6	61.5	63.8	66.2	67.1	67.0	67.8	
Jun	60.8	61.9	64.7	66.7	66.9	67.4	68.1	
Sep	61.1	62.3	65.5	66.9	66.6	67.5	68.7	
	93	**94**	**95**	**96**	**97**	**98**	**99**	
Dec	61.2	62.8	66.0	67.0	66.8	67.8	*	

* For CGT purposes, indexation is frozen as at 30 September 1999. As a result of the index numbers for each index series being reset to 100.0 for the 2011-12 financial year, the index numbers, including from the September 1985 quarter, were recalculated (the above figures are the recalculated ones).

Net capital gains

The assessable income in respect of an income year includes any net capital gains. The calculation of the net capital gains takes into account any capital losses that have arisen in the income year or from prior income years. The calculation for net capital gains can be summarised as follows:

Net capital gains	=	Current year capital gains	–	Current year capital losses	–	Previous year's net capital losses

If either the current year capital losses exceed the current year capital gains or previous' years capital losses exceed the excess of current year gains over the current year capital losses, there will be no net capital gain.

Note that capital gains derived by a trust can be distributed or "streamed" to a beneficiary and retain their character as a capital gain if certain conditions are satisfied, including that the trust deed allows capital gains to be treated as income, and the specific requirements of the "streaming" rules are met. Note also that beneficiaries can apply any personal capital losses against such gains, but subject to "grossing up" the gain for any concessions that the trust may have applied to the capital gain (eg the 50% discount or small business concessions) and then re-applying the concession in the beneficiary's hands.

Again, this can be a very complex and confusing area of CGT and advice should be sought before applying the rules.

Capital losses

Capital losses realised in an income year must be offset against capital gains realised in the same year. Otherwise they are carried forward as a net capital loss to be offset against capital gains realised in subsequent years. Note that they can be carried forward indefinitely but lapse on death (and cannot be used by the trustee of the deceased estate).

Importantly, capital losses can only be offset against capital gains. However, ordinary deductible losses may be offset against net assessable capital gains.

Capital losses must be applied before the CGT discount and/or the small business concessions, except in the case where the 15-year exemption is applied to eliminate the capital gain.

Employment termination payments (ETPs)

The tax treatment of an ETP will depend on whether it is a life benefit ETP or death benefit ETP.

A life benefit ETP is only taxed on two components, the tax-free component and the taxable component. The tax-free component compromises the "pre-July 1983 segment" and the "invalidity segment".

Age of recipient[1]	Life benefit ETP 2019-20	
	Tax-free component	**Taxable component[2, 3]**
57+	Tax free	15%: \$0 – \$210,000
–	–	45%: \$210,001+
0 – 56	Tax free	30%: \$0 – \$210,000
–	–	45%: \$210,001+

1. Age is determined on the last day of the income year in which the person receives the payment. Preservation age is 58 (up from 57) for those born after 30 June 1962 (and before 1 July 1963), gradually increasing to age 60 (for those born after 30 June 1964).
2. A life benefit termination payment is also subject to a "whole of income cap" of \$180,000. That is, any amount of a taxable component of an ETP that, when added last to an individual's other taxable income takes the individual's total taxable income over \$180,000, is effectively taxed at 45%.
   The ETP cap amount is indexed annually but only in \$5,000 increments.
3. The Medicare levy (see page 10) may also be payable where a tax rate greater than 0% applies.

Age of recipient[1]	Life benefit ETP 2020-21	
	Tax-free component	**Taxable component[2, 3, 4]**
58+	Tax free	15%: \$0 – \$215,000
–	–	45%: \$215,001+
0 – 57	Tax free	30%: \$0 – \$215,000
–	–	45%: \$215,001+

1. Age is determined on the last day of the income year in which the person receives the payment. Preservation age is 58 (up from 57) for those born after 30 June 1962 (and before 1 July 1963), gradually increasing to age 60 (for those born after 30 June 1964).
2. A life benefit termination payment is also subject to a "whole of income cap" of \$180,000. That is, any amount of a taxable component of an ETP that, when added last to an individual's other taxable income takes the individual's total taxable income over \$180,000, is effectively taxed at 45%.
3. The ETP cap amount is indexed annually but only in \$5,000 increments.
4. The Medicare levy (see page 10) may also be payable where a tax rate greater than 0% applies.

The tax treatment of a death benefit ETP (ie the payment is made from the deceased's employer rather than via a superannuation fund) will depend on whether the payment is made to a dependant or non-dependant.

	Death benefit ETP 2019-20	
	Tax-free component	**Taxable component[1]**
Dependant	Tax free	0%: \$0 - \$210,000
–	–	45%: \$210,001+
Non-dependant	Tax free	30%: \$0 - \$210,000
–	–	45%: \$210,001+

1. The Medicare levy (see page 26) may also be payable where a tax rate greater than 0% applies.

	Death benefit ETP 2020-21	
	Tax-free component	**Taxable component[2]**
Dependant	Tax free	0%: $0 - $215,000
–	–	45%: $215,001+
Non-dependant	Tax free	30%: $0 - $215,000
–	–	45%: $215,001+

1. The Medicare levy (see page 26) may also be payable where a tax rate greater than 0% applies.

Fringe benefits tax

The fringe benefits tax (FBT) legislation taxes employers on certain fringe benefits provided to employees (or their associates). The FBT year runs from 1 April to the following 31 March. The FBT rate for the year starting on 1 April 2020 (ie 2020-21) is 47% (the same rate as for 2019-20).

What is a fringe benefit?

A fringe benefit is a "benefit" provided to an employee (or an associate of an employee) by their employer or an associate of the employer, or by a third party under an arrangement with the employer, in respect of the employee's employment. A benefit that is provided both in respect of a person's employment and their status as a shareholder of the employer company may not be a fringe benefit, depending on the circumstances.

Exempt fringe benefits

Benefits exempt from FBT include:

- salary and wages;
- superannuation contributions for employees to complying funds;
- certain employee recruitment and relocation expenses;
- pre-employment medical checks;
- compensation for work-related injuries;
- certain minor benefits, ie infrequent benefits of less than $300 per employee;
- recreational and child-minding facilities provided on the employer's premises;
- assistance provided in times of emergency;
- occupational health and counselling;
- long service leave and safety awards;
- certain benefits provided by religious organisations;
- all benefits provided by public benevolent institutions (including public hospitals), subject to the FBT concession cap discussed on page 61;
- work-related portable electronic devices (eg notebook computers, mobile phones, electronic diaries and personal digital assistants) and computer software that are primarily for use in the employee's employment. The exemption is limited to one item of each type (ie where items have substantially identical functions, such as two laptop

computers or two mobile phones) unless the subsequent item is a replacement item (for example, a second laptop will only be exempt from FBT if it is a replacement for another laptop). This restriction does not apply to small business entities (aggregated turnover under $10m: see page 83). So a small business entity can provide more than one work-related portable electronic device to an employee and claim the FBT exemption for each device, even if the devices have substantially identical functions and are not replacement items;

- tools of trade, protective clothing and briefcases that are primarily for use in the employee's employment. The exemption is also limited to one item of each type unless the subsequent item is a replacement item;
- employer-provided taxi travel between home and work;
- car parking provided on business premises by a small business entity (ie where aggregated turnover in the previous income year was less than $10m) or by a business whose assessable income for the last income year before the relevant FBT year was less than $10m and the entity is not a public company or a subsidiary of a public company;
- car parking provided to disabled employees;
- the first $1,000 of "in-house" expense payment, property and residual fringe benefits provided to each employee on an annual basis, unless the benefit is provided under a salary packaging arrangement;
- employee share scheme interests;
- newspapers and periodicals used for employment purposes; and
- compassionate travel.

Taxable value of fringe benefit

The taxable value of a fringe benefit is determined by a two-step process: the taxable value of a fringe benefit is multiplied by the relevant gross-up factor, and the FBT rate is then applied to the grossed-up taxable value. The relevant gross-up factor depends on whether GST credits are claimable in relation to the benefit.

Gross-up factor

Where the provider of a fringe benefit is entitled to a GST input tax credit for goods or services used in providing a benefit, a gross-up factor of 2.0802 for the 2020-21 FBT year must be applied to the taxable value of the benefit. This gross-up rate will apply even where the provider does not actually claim the input tax credit or is entitled only to a partial credit.

Where the provider of the benefit does not incur GST, or is not entitled to an input tax credit on the acquisition of the benefit, the gross-up factor is 1.8868 for the 2020-21 FBT year.

GST will only apply on the supply of a benefit where the employee pays an amount to the employer in consideration for the supply (as a recipient's contribution).

FBT paid is deductible to employers.

FBT concession cap

The FBT exemption applying to fringe benefits provided by public hospitals and not-for-profit hospitals, respectively, is subject to a ceiling of $17,000 of (grossed-up) fringe benefits per employee per annum (for the 2020-21 FBT year). When this ceiling is exceeded, full FBT is payable.

Public benevolent institutions, health promotion charities and FBT rebateable employers are subject to a ceiling of $30,000 per employee per annum (for the 2020-21 FBT year). FBT rebateable employers include religious institutions, non-profit, non-government schools and pre-schools, trade unions, registered employer associations and various non-profit institutions, societies, associations and clubs.

Note that there is a $5,000 cap (grossed up) on salary sacrificed meal entertainment benefits provided to employees of public benevolent institutions, health promotion charities, public and not-for-profit hospitals and public ambulance services.

Valuation of fringe benefits

The FBT legislation provides a basis for determining the taxable value of particular benefits.

In some cases, the taxable value may be reduced where the employee in receipt of the benefit would have been entitled to an income tax deduction had the employee paid for the benefit (the "otherwise deductible" rule). The employee may be required to provide the employer with documentary evidence and/or a declaration to this effect.

The taxable value may also be reduced where the employee makes a contribution towards the provision of the benefit.

Cars

There are two methods of valuing car fringe benefits – the statutory formula method and the operating costs method. The statutory formula method applies unless the employer chooses to use the operating costs method.

The *statutory formula* method applies a statutory percentage (20%) to the base value of the car (generally its cost price). An apportionment is required to exclude any non-private use days. The base value is reduced by one-third after four years.

The taxable value under the *operating costs method* is effectively the business use percentage of the costs of operating the car during the FBT year. Amounts for deemed depreciation and deemed interest payments are included. The deemed depreciation rate is 25% for cars acquired on or after 10 May 2006 (18.75% for cars acquired between 1 July 2002 and 9 May 2006).

The deemed interest rate for the 2020-21 FBT year is 4.80% (5.37% for 2019-20).

Note that deemed depreciation and deemed interest are reduced proportionately where the car is not owned for the full FBT year.

In all cases, whichever method is used, the taxable value of a car fringe benefit is reduced by the amount of any contribution by the employee (or other person receiving the benefit).

Car parking

Car parking provided to employees or their associates are fringe benefits (subject to certain exceptions) if:

- the car is parked for more than 4 hours between 7am and 7pm on the business premises of the entity providing the benefit or on other premises owned, leased or controlled by that entity;
- the car is used to travel between the employee's home and their primary workplace and it is parked at or near that workplace; and
- a commercial car parking station is located within one kilometre of the premises where the car is parked and the lowest fee charged by the car parking station for all day parking is more than $9.15 for the 2020-21 FBT year.

The number of parking benefits provided can be calculated by keeping actual records, using the statutory formula method or using the 12-week register method.

The taxable value of car parking benefits is calculated using either the commercial parking station, the market value or the average cost method.

Loans – statutory benchmark interest rates

The taxable value of a loan fringe benefit for a given year is the amount by which notional interest accruing at the statutory benchmark interest rate for that year exceeds the actual interest accrued during that year. The statutory benchmark interest rate for the 2020-21 FBT year is 4.80% (5.37% for 2020-21).

Payment of FBT

Employers self-assess their FBT liability which is generally paid by quarterly instalments

The due dates for the payment of FBT for a taxpayer that does not report GST and any other BAS obligations quarterly are:

Due date	Instalment
21 July	First instalment
21 October	Second instalment
21 January	Third instalment
21 April	Fourth instalment
21 May	Balance on return lodgment

However, if the taxpayer reports GST and any other BAS obligations quarterly, the due dates for payment are:

Due date	Instalment
28 July	First instalment
28 October	Second instalment
28 February	Third instalment
28 April	Fourth instalment
21 May	Balance on return lodgment

FBT instalments are paid via an entity's Business Activity Statement (BAS) or Instalment Activity Statement (IAS). The annual FBT return is typically due for lodgment on 21 May (subject to ATO lodgment concessions, eg if lodged through a tax agent). Returns that are lodged late will attract penalties under the general interest charge (GIC) scheme.

The threshold for the payment by instalments is an FBT liability of $3,000. Payers with an annual FBT liability below this threshold will pay FBT on an annual basis (normally 21 May). Instalments are generally based on the previous year's FBT liability.

FBT reporting

Employers are required to include the grossed-up taxable value of most (but not all) fringe benefits provided to an employee (using the 1.8868 gross-up factor) on payment summaries if the taxable value of those benefits exceeds $2,000 (called reportable fringe benefits).

Superannuation

Despite Government measures to claw back the generosity of some superannuation tax concessions, it continues to be a tax effective investment for a number of reasons.

- Personal contributions to a superannuation fund may be tax deductible (see page 69).
- Concessional contributions (eg employer contributions and deductible personal contributions) up to the concessional cap are subject to a flat 15% tax (paid by the receiving super fund). Note that the effective contributions tax is 30% for concessional contributions made by individuals with high incomes.
- Non-concessional contributions from post-tax income are exempt from contributions tax (subject to the non-concessional contributions cap).
- No tax is paid on superannuation benefits received from a taxed source if the recipient is age 60 or older (whether received as a lump sum or as a pension), although tax is payable on benefits paid to someone aged less than 60.
- Superannuation fund earnings are taxed concessionally at 15% (while earnings on pension assets are tax-free, subject to the $1.6m transfer cap).

- Superannuation benefits remaining after death can be paid tax-free to a "death benefits dependant" (otherwise the taxable component is taxed at 15% plus Medicare levy).

Superannuation is complex and advice should be sought before relying on information in this publication.

Concessional and non-concessional contributions

There are two types of contributions – concessional contributions and non-concessional contributions.

Concessional contributions are essentially contributions which are included in the assessable income of the receiving superannuation fund, eg employer contributions for superannuation guarantee purposes, salary sacrifice contributions and deductible personal contributions covered by a valid s 290-170 notice.

Non-concessional contributions include contributions which are not included in the assessable income of the receiving superannuation fund, eg non-deductible personal contributions made from the member's after-tax income (formerly known as undeducted contributions).

Where a member's TFN has not been quoted to a superannuation fund by 30 June each year, this "no-TFN contributions income" is taxed in the hands of the receiving fund at 47%. A superannuation fund must return non-concessional contributions within 30 days where the member has not quoted a TFN.

Concessional contributions cap

The annual ***concessional contributions cap*** is set out in the tables below.

Age	Annual concessional contribution cap[1,2] – per person ($) 2019-20
Under 65	25,000
65-74 (provided work test satisfied: see page 65)	25,000
75+	Only mandated employer contributions[3]

1. The annual concessional contributions cap applies per annum per person, irrespective of the number of employers contributing on behalf of the person.
2. Excess concessional contributions (ie contributions in excess of the cap) are included in an individual's assessable income. Individuals are able to elect to release up to 85% of their excess concessional contributions from their superannuation fund to the ATO as a "credit" to cover the additional tax liability.
3. Mandated employer contributions for a person aged 75+ include contributions made in satisfaction of an employer's obligations under the superannuation guarantee scheme (see page 73), an industrial Award or agreement certified by an industrial authority.

Age	Annual concessional contribution cap[1,2] – per person ($) 2020-21
Under 67	25,000
67-74 (provided work test satisfied: see page 65)	25,000
75+	Only mandated employer contributions[3]

1. The annual concessional contributions cap applies per annum per person, irrespective of the number of employers contributing on behalf of the person.
2. Excess concessional contributions (ie contributions in excess of the cap) are included in an individual's assessable income. Individuals are able to elect to release up to 85% of their excess concessional contributions from their superannuation fund to the ATO as a "credit" to cover the additional tax liability.
3. Mandated employer contributions for a person aged 75+ include contributions made in satisfaction of an employer's obligations under the superannuation guarantee scheme (see page 73), an industrial Award or agreement certified by an industrial authority.

Individuals with a "total super balance" (see page 67) less than $500,000 on 30 June of the previous financial year are able to make additional catch-up concessional contributions for unused cap amounts from the previous five years. 2019-20 is effectively the first year in which an individual is able to make additional concessional contributions by applying unused cap amounts.

Individuals with incomes over the "high income threshold" of $250,000 may pay an additional 15% tax on their concessional contributions ("Div 293 tax").

Work test for members aged 65-74

For 2019-20, a superannuation fund may only accept contributions in respect of a member aged 65-74 years if the member is gainfully employed for at least 40 hours in a 30-day period in the financial year the contributions are made (the work test). From 2020-21, the work test does not apply to those aged 65 or 66.

An exemption from the work test allows recent retirees aged (for 2019-20) 65-74 or (from 1 July 2020) aged 67-74 with total superannuation balances below $300,000 to make voluntary contributions to super for 12 months from the end of the financial year in which they last met the work test. Other amendments ensure contributions made relying on the work test exemption are excluded when assessing eligibility for the bring forward arrangements for non-concessional contributions.

In effect, from 1 July 2020, there is no work test if aged 65 or 66 and those aged 67-74 can access the work test exemption for 12 months for balances under $300,000.

Division 293 contributions tax for higher incomes

Individuals above a high income threshold of $250,000 are subject to an additional 15% Division 293 tax on their "low tax contributions" (essentially concessional contributions, as modified by special rules) that exceed the threshold. That is, the effective contributions tax rate is doubled from 15% to 30% for concessional contributions.

The high income threshold includes the individual's "income for surcharge purposes" *plus* the individual's low tax contributions. If an individual's income for surcharge purposes is less than the high income threshold, but the inclusion of their low tax contributions pushes them over the threshold, the 15% Division 293 tax only applies to the part of the low tax contributions that are in excess of the income threshold. Importantly, the extra 15% Division 293 tax does not apply to concessional contributions which exceed an individual's concessional contributions cap. Such excess concessional contributions are effectively taxed at the individual's marginal tax rate in any event.

Excess concessional contributions

Concessional contributions exceeding an individual's annual concessional cap are automatically included in an individual's assessable income and taxed at the individual's marginal tax rate (plus an interest charge). An individual is also entitled to a 15% tax offset for the contributions tax paid by the fund.

Individuals can elect to release up to 85% of their excess concessional contributions from their superannuation fund to the ATO as a "credit" to cover the additional personal tax liability. If an individual elects to release an amount of their excess concessional contributions, the amount of their excess concessional contributions is reduced by 100/85 for the purpose of determining their non-concessional contributions.

A taxpayer can also apply to the ATO to exercise the discretion to disregard or re-allocate any excess contributions where the taxpayer can demonstrate "special circumstances" – an extremely narrow legal concept.

Non-concessional contributions cap

The annual cap for *non-concessional contributions* is $100,000 for 2019-20 and 2020-21. An individual cannot make any non-concessional contributions if their "total super balance" is $1.6m or more (see page 67).

Under the *bring forward rule*, the non-concessional contributions cap is $300,000 over three years for those under age 65. An individual's total super balance must be below $1.6m on 30 June of the previous year. The bring forward rule is triggered automatically when contributions in excess of the annual non-concessional cap are made in a financial year by a person who is under age 65 at any time in the year. From 1 July 2020, individuals aged 65 and 66 will be exempted from the work test and the non-concessional contributions bring forward rules will be extended to them.

The non-concessional cap and bring forward period also depend on the first year cap space (the difference between the $1.6m general transfer balance cap and the total super balance on 30 June of the previous year). If the total super balance is less than $1.4m, the bring forward amount is $300,000 (ie 3 x $100k) with a three-year bring forward period.

Transitional rules apply if the bring forward was activated, but the cap space not fully used, before 1 July 2017.

Contributions arising from the disposal of small business assets that qualify for the CGT small business 15-year exemption or retirement exemption are excluded from the non-concessional contributions cap up to a lifetime indexed CGT cap amount ($1.515m for 2019-20 and $1.565m for 2020-21).

Excess non-concessional contributions

Non-concessional contributions in excess of a person's cap are taxed at up to 47%. Individuals have the option to withdraw any excess non-concessional contributions plus 85% of the associated earnings. If an individual chooses this option, no excess contributions tax is payable but the full amount of the "associated earnings" are included in the individual's assessable income (and subject to a 15% tax offset). Importantly, an amount should only be released from a superannuation fund in accordance with a release authority issued by the ATO.

Total superannuation balance

An individual with a "total super balance" of $1.6m or more as at 30 June for the previous year will have a non-concessional cap of "nil". This means that if the individual's total balance at the start of the financial year is $1.6m or more, the individual will not be able to make any further non-concessional contributions in that year.

An individual's "total super balance" is broadly the sum of:

- the accumulation phase market value of each superannuation interest that is not in the retirement phase;
- an adjusted balance for the individual's pension "transfer balance account" to reflect the current value of account-based superannuation interests in the retirement phase; and
- roll-over superannuation benefits "in transit" (ie paid at or before 30 June and received after that time);

less

- the amount of any personal injury or structured settlement contributions.

Government co-contribution

Taxpayers who earn 10% or more of their total income (before allowable deductions) from eligible employment and self-employed persons may qualify for the Government superannuation co-contribution payment (up to $500 per annum) equal to 50% of the eligible personal superannuation contributions they make during the income year, provided that their assessable income, reportable fringe benefits and reportable employer superannuation contributions are within the relevant thresholds.

In addition to the income test, a person must satisfy the following conditions:

- have made a personal superannuation contribution during the income year to a complying superannuation fund or RSA;
- have lodged an income tax return for the income year;
- have 10% or more of total income deriving from eligible employment, carrying on a business or both;
- be aged less than 71 years old on 30 June of the year in which the contributions were made; and
- not have held an eligible temporary resident visa during the year.

A person is only eligible for a co-contribution if their non-concessional contributions for the corresponding income year do not exceed their non-concessional contributions cap (see page 66). In addition, on 30 June before the start of that financial year, the individual's total superannuation balance must be less than $1.6m (see 67).

There is no requirement to apply for the co-contribution. The ATO uses account details provided by superannuation funds and the individuals' income tax returns to assess and pay any entitlement directly to the person's fund.

Government co-contribution payments

2019-20		**2020-21**	
Total income (TI)[1] ($)	**Maximum government co-contribution[2, 3] ($)**	**Total income (TI)[1] ($)**	**Maximum government co-contribution[2, 3] ($)**
0 - 38,564	500	0 - 39,837	500
38,565 – 53,563	500 – ([TI – 38,564] × 0.03333)	39,838 - 54,836	500 – [(TI – 39,837) x 0.03333]
53,564+	Nil	54,837+	Nil

1. Total income (TI) includes assessable income, reportable fringe benefits and reportable employer superannuation contributions.
2. If the co-contribution amount payable to a person is less than $20, the minimum payment is $20.
3. The co-contribution matching rate of 50% applies for a government contribution up to $500 (maximum). That is, a government co-contribution up to a maximum of $500 pa is payable for a $1,000 eligible personal superannuation contribution.

Spouse superannuation tax offset

Taxpayers making eligible superannuation contributions to a complying superannuation fund or an RSA on behalf of low income or non-working spouses may be entitled to a tax offset of up to $540. The offset reduces to nil where a spouse's assessable income, reportable fringe benefits and reportable employer superannuation contributions for the income year (STI) is more than $40,000.

The age limit for making spouse contributions will increase from 69 to 74 from 1 July 2020.

Spouse assessable income (STI)	**Maximum rebatable contributions (MRC)**	**Maximum tax**
0 - $37,000	3,000	$540
$37,001 - $39,999	3,000 – [STI – $37,000]	MRC x 18%
$40,000	Nil	Nil

Splitting contributions between spouses

A member of an accumulation fund (or whose benefits include an accumulation interest in a defined benefit fund) is able to split with their spouse superannuation contributions. However, it is not possible to split personal contributions (ie untaxed splittable contributions). The maximum splittable amount is 85% of taxed splittable contributions (eg employer contributions, including superannuation guarantee and salary sacrifice contributions).

Deductibility of contributions

A deduction is available for personal contributions to complying superannuation funds until the age of 75 (subject to various conditions), where the taxpayer is self-employed. However, individuals aged 65-74 (for 2019-20) or 67-74 (from 1 July 2020) still need to satisfy the work test in the SIS Regs to make voluntary contributions: see page 65.

To deduct a personal superannuation contribution made on or after 1 July 2017, it is no longer necessary for the individual to earn less than 10% of their income from employment activities.

Notice requirements

Before an individual can claim a tax deduction for personal superannuation contributions, the person seeking the deduction must have notified the superannuation fund that a tax deduction is to be claimed. The fund is also required to acknowledge in writing that it has been notified of this fact and this notice must be obtained by the lodgment time for tax returns.

Failure to follow these steps will make claims for the deduction ineligible.

Deductibility of employer contributions

An employer can deduct a contribution made for the benefit of an employee (within the expanded meaning of that term for superannuation guarantee purposes). For employees turning age 75, the contribution must be made by the employer within 28 days after the end of the month in which the employee turns 75. However, the age limit does not apply in respect of an amount that reduces the superannuation guarantee charge percentage (see page 73) in respect of an employee aged 75 or over.

Superannuation lump sums

Superannuation lump sums paid from a taxed source to those aged 60 and over are tax-free (ie non-assessable non-exempt income).

Tax is still payable on superannuation lump sums paid to someone aged less than 60. The superannuation lump sum is split into the tax-free component and taxable component. The tax-free component comprises the "crystallised segment" and the "contributions segment". The taxable component is determined by subtracting the tax-free component from the total value of the superannuation interest. The taxable component may consist of an element taxed in the fund or an element untaxed in the fund (ie component of the benefit that has not been subject to contributions tax and earnings tax).

The following tables contain the thresholds for 2019-20 and 2020-21.

Age of recipient[1]	Superannuation lump sum 2019-20		
	Tax-free component	Taxable component[2]	
		Element taxed in fund	Element untaxed in fund
60+	Tax free	Tax free	15%: \$0 - \$1,515,000 45%: \$1,515,001+
57 - 59	Tax free	0%: \$0 - \$210,000[3] 15%: \$210,001+[3]	15%: \$0 - \$210,000[3] 30%: \$210,001 - \$1,515,000[4] 45%: \$1,515,001+
0 - 56	Tax free	20% of entire taxable component	30%: \$0 - \$1,515,000[4] 45%: \$1,515,001+

1. Age is determined at the time the person receives the payment.
2. The tax rates specified in the table are maximum rates of tax. The entire payment amount is included in the recipient's assessable income and a tax offset applies to effectively cap the maximum rate. Medicare levy is also payable on any superannuation benefits if a tax rate greater than 0% applies.
3. The low rate cap amount is indexed annually but only in \$5,000 increments.
4. The untaxed plan cap amount is indexed annually but only in \$5,000 increments.

Age of recipient[1]	Superannuation lump sum 2020-21		
	Tax-free component	Taxable component[2]	
		Element taxed in fund	Element untaxed in fund
60+	Tax free	Tax free	15%: \$0 - \$1,565,000 45%: \$1,565,001+
58 - 59	Tax free	0%: \$0 - \$215,000[3] 15%: \$215,001+[3]	15%: \$0 - \$215,000[3] 30%: \$215,001 - \$1,565,000[4] 45%: \$1,565,001+
0 - 57	Tax free	20% of entire taxable component	30%: \$0 - \$1,565,000[4] 45%: \$1,565,001+

1. Age is determined at the time the person receives the payment.
2. The tax rates specified in the table are maximum rates of tax. The entire payment amount is included in the recipient's assessable income and a tax offset applies to effectively cap the maximum rate. Medicare levy is also payable on any superannuation benefits if a tax rate greater than 0% applies.
3. The low rate cap amount is indexed annually but only in \$5,000 increments.
4. The untaxed plan cap amount is indexed annually but only in \$5,000 increments.

End benefits tax may still apply for certain untaxed superannuation funds (eg some public sector schemes) in respect of an element untaxed in a fund.

Superannuation income streams

Age of recipient[1]	Superannuation income streams 2019-20		
	Tax-free component	Taxable component[2]	
		Element taxed in fund	Element untaxed in fund[4]
60+	Tax free	Tax free	Marginal rates (10% tax offset)
57 - 59	Tax free	Marginal rates (15% tax offset)	Marginal rates (no tax offset)
0 - 56	Tax free	Marginal rates (no tax offset)[3]	Marginal rates (no tax offset)

1. Age is determined at the time the person receives the payment. Preservation age phasing to age 60 (for those born after 1 July 1960).
2. The tax rates specified in the table are maximum rates of tax. The entire payment amount is included in the recipient's assessable income and a tax offset applies to effectively cap the maximum rate. Medicare levy is also payable on any superannuation benefits if a tax rate greater than 0% applies.
3. A disability superannuation income stream receives a 15% tax offset.
4. 10% tax offset limited to the first $100,000 pa for untaxed defined benefit income streams. In a taxed fund, 50% of any excess capped defined benefit income stream payments is included in the recipient's assessable income and taxed at marginal rates to the extent the payments exceed the defined benefit income cap of $100,000 pa.

Age of recipient[1]	Superannuation income streams 2020-21		
	Tax-free component	Taxable component[2]	
		Element taxed in fund	Element untaxed in fund[4]
60+	Tax free	Tax free	Marginal rates (10% tax offset)
58 - 59	Tax free	Marginal rates (15% tax offset)	Marginal rates (no tax offset)
0 - 57	Tax free	Marginal rates (no tax offset)[3]	Marginal rates (no tax offset)

1. Age is determined at the time the person receives the payment. Preservation age phasing to age 60 (for those born after 1 July 1960).
2. The tax rates specified in the table are maximum rates of tax. The entire payment amount is included in the recipient's assessable income and a tax offset applies to effectively cap the maximum rate. Medicare levy is also payable on any superannuation benefits if a tax rate greater than 0% applies.
3. A disability superannuation income stream receives a 15% tax offset.
4. 10% tax offset limited to the first $100,000 pa for untaxed defined benefit income streams. In a taxed fund, 50% of any excess capped defined benefit income stream payments is included in the recipient's assessable income and taxed at marginal rates to the extent the payments exceed the defined benefit income cap of $100,000 pa.

The pension transfer balance cap of $1.6m (see page 72) effectively restricts the amount of capital that can be converted into a superannuation income stream benefit in retirement phase.

Account-based annuities and pensions must meet the minimum annual payment rules in the SIS Regulations to qualify as a "superannuation income stream". The minimum drawdown amounts are calculated according to the standard percentage factors (see the table below) based on the age of the beneficiary on 1 July in the financial year in which the payment is made (or on the commencement day if the pension or annuity commenced in that year). However, for the 2019-20 and 2020-21 financial years, the minimum annual payment amounts have been reduced by 50% in response to the Coronavirus (COVID-19) crisis.

Minimum annual pension payments		
Age of beneficiary (years)	**Standard percentage factors**	**Minimum drawdown for 2019-20 and 2020-21 (after 50% reduction)**
0 - 64	4	2
65 - 74	5	2.5
75 - 79	6	3
80 - 84	7	3.5
85 - 89	9	4.5
90 - 94	11	5.5
95+	14	7

Pensioners who have not yet made any pension payments for 2019-20 (or drawn down less than 50%) must draw down at least 50% of the minimum pension payments for 2019-20 before 30 June 2020. If a pensioner had already withdrawn in excess of their reduced drawdowns for 2019-20 prior to the announced reduction, the pensioner cannot put the excess amount back into their superannuation account.

Taxation of fund income

A concessional tax rate of 15% applies to all taxable contributions made to complying superannuation funds. Non-complying funds are taxed at the rate of 45%.

The net investment income of complying funds is also taxed at 15% (except any "non-arm's length income" such as distributions from non-arm's length transactions which may be taxed at 45%). Superannuation fund earnings (including realised net capital gains) on assets supporting income streams are currently tax-free, ie exempt current pension income (ECPI).

Importantly, there is a *$1.6m transfer balance cap* for amounts an individual can transfer into a tax-free retirement account. Pension balances over $1.6m at the proceeding 1 July need to be "rolled back" to accumulation phase.

Note also that there is no tax exemption on earnings for pension assets supporting transition to retirement income streams.

CGT is the primary code for calculating gains and losses made by superannuation funds, approved deposit funds and pooled superannuation trusts, with certain exceptions. The principal exceptions are gains or losses on certain securities (eg loans, debentures, bills of exchange and promissory notes) and certain assets (eg trading stock, cars and collectables) and gains and losses attributable to currency exchange rate fluctuations.

Assets acquired before 1 July 1988 (including pre-CGT assets) are treated as if acquired on 30 June 1988. The cost base is the cost or the market value of those assets at 30 June 1988, whichever yields the lower gain or loss.

The CGT discount applies to gains on assets acquired on or after 30 September 1999 and held for at least one year. The discount is 33.33% not 50%, giving an effective rate of 10% rather than 15%. If an asset was acquired before 30 September 1999, the fund can choose to have the whole gain taxed, but using indexation to 30 September 1999 to work out the gain

Look-through income tax treatment applies for certain instalment warrants and instalment receipts (including limited recourse borrowing arrangements). The underlying instalment trust asset is deemed to be held directly by the superannuation (so that the instalment trust is ignored for income tax purposes).

A category of "no-TFN contributions income" applies to superannuation entities where a member's TFN has not been quoted in respect of a contribution. No-TFN contributions income is taxed at 47%.

Superannuation guarantee (SG) scheme

Under the SG scheme, employers are required to contribute a prescribed level of superannuation support. The superannuation support can be provided through any complying superannuation fund. If an employer fails to contribute the prescribed level of superannuation support for a quarter, they become liable for the superannuation guarantee charge (SGC). The contributions are required to vest immediately and must be fully preserved.

The level of support that must be provided to avoid the SGC (the "charge percentage") is 9.5% of ordinary time earnings. The 9.5% rate will increase to 10% from 1 July 2021, and by 0.5% per year from 1 July 2022 until it reaches 12% from 1 July 2025.

Year starting	Superannuation guarantee charge percentage %
1 July 2002 until 30 June 2013	9
1 July 2013	9.25
1 July 2014 to 30 June 2021	9.5
1 July 2021	10
1 July 2022	10.5
1 July 2023	11
1 July 2024	11.5
1 July 2025 and thereafter	12

The prescribed level of employer superannuation support is measured quarterly on an employee-by-employee basis.

The level of support is generally based on the lesser of the employee's ordinary time earnings or a set maximum contributions base for each quarter ($55,270 for 2019-20 and $57,090 for 2020-21). Ordinary time earnings include earnings for ordinary hours worked and earnings consisting of over award payments, casual loadings or commissions, directors' fees and sick pay.

Ordinary time earnings generally do not include:

- regular overtime payments (subject to certain exceptions);
- fringe benefits; or
- lump sum termination payments for accrued annual leave, sick leave or long service leave.

Paid parental leave and top-up employer payments for jury service and Defence Force Reserves are excluded from salary or wages and ordinary time earnings.

Exemptions

Employers are not required to provide superannuation support for the following employees and payments:

- employees earning less than $450 in each month throughout the relevant income year;
- employees under 18 years of age not working full-time (ie not more than 30 hours per week);
- persons paid to do work wholly or principally of a domestic or private nature for less than 30 hours per week;
- payments for paid parental leave;
- any member of the Defence Force Reserves (except those in continuous full-time service) receiving tax-exempt pay and allowances;
- payments by the usual employer while the employee is absent with the Defence Force Reserves or is engaging in eligible community service activity (eg jury service);
- payments of green army allowance;
- foreign resident employees, employed by resident or foreign resident employers, who are paid for the work done outside Australia;
- resident employees who are employed by foreign resident employers and are paid for the work undertaken outside Australia; and
- certain senior executives who are in Australia temporarily and who hold a prescribed visa.

High-income employees with multiple employers, and income exceeding $263,157, can opt out of the SG scheme by applying to the ATO for an "employer shortfall exemption certificate".

Quarterly regime

Employers are required to make superannuation guarantee contributions on behalf of their eligible employees at least once each quarter. The employers are also required to:

- keep a record of all contributions made; and
- keep a record of information reported to employees.

Small businesses with fewer than 20 employees can meet their SG obligations by paying superannuation contributions for the benefit of their employees to an "approved clearing house", eg the Small Business Superannuation Clearing House (SBSCH).

The Single Touch Payroll (STP) system allows relevant SG information to be reported to the ATO automatically: see page 32. Micro employers (1 to 4 employees) who rely on a tax agent or a BAS agent can report quarterly until 30 June 2021.

Dates for quarterly superannuation guarantee

Quarter	**Employer contribution due date**	**Due date for lodgment of SG statement and payment of the SGC if contributions are not made on time**
1 July – 30 September	28 October	28 November
1 October – 31 December	28 January	28 February
1 January – 31 March	28 April	28 May
1 April – 30 June	28 July	28 August

In addition, employers are required to report to their employees the amount and destination of contributions made to an accumulation fund or RSA for that quarter. Employers may elect to use late contributions to offset the portion of any shortfall for the quarter that relates to the relevant employee. The late contribution must be made before the end of the 28th day of the second month after the end of the quarter.

Amnesty – a one-off amnesty allows employers to self-correct historical underpayments of SG amounts without incurring additional penalties that would normally apply. The amnesty runs from 24 May 2018 and ends on 7 September 2020 at 11:59pm. It applies to SG shortfalls back to 1 July 1992 and up until the quarter starting on 1 January 2018 (inclusive).

Late contributions used to offset a resulting SGC are not tax deductible to the employer in the same way that SGC payments are not deductible to the employer (unless made during the superannuation guarantee amnesty period and the SGC relates to a shortfall for which the employer qualifies for the amnesty).

Choice of superannuation fund – employers are obliged to provide most employees with the right to choose the superannuation fund into which their compulsory employer superannuation guarantee contributions are to be paid. A valid choice can be made through STP. Employers are required to make superannuation guarantee contributions (for employees that do not have a chosen fund) to a default superannuation fund that offers a MySuper product.

Superannuation fund investment rules

Various rules apply to limit the investment powers of trustees of superannuation funds. Any investments must be for the "sole purpose" of providing benefits to a member upon retirement. A trustee can borrow or lend funds only in very limited circumstances (eg limited recourse borrowing arrangements – but not all such arrangements will be acceptable or effective). The ATO accepts that the non-arm's length income provisions (45% tax rate) will not apply to a related-party LRBA that complies with the "safe habour" rules in Practical Compliance Guideline PCG 2016/5. Restrictions also apply to acquisitions or asset leasing involving members, and investments in related parties ("in-house assets"). There are strict rules concerning SMSF investments in collectables and personal use assets.

Self-managed superannuation fund (SMSF) measures to note include:

- *SMSF trustee penalties* – a trustee/director of an SMSF may be liable to an administrative penalty for specified contraventions. The ATO also has the power to issue "rectification directions" and "education directions".
- *SMSF trustee duties* – operating standards require trustees to review regularly the fund's investment strategy, consider whether to provide insurance for members and keep the SMSF's money and assets separate from a trustee personally.
- *Approved SMSF auditors* – must be registered with ASIC.
- *Illegal early release schemes* – civil and criminal penalties apply for the promotion of schemes involving the unlawful early release of benefits.
- *SuperStream* – mandatory requirements apply for the electronic payment and reporting of payments between superannuation funds. SMSFs must also be able to receive electronic contributions and messages from small employers (ie 19 employees or less). SMSF trustees must give employers details about the SMSF, including bank account details and an electronic service address (alias).

GST

A GST of 10% applies to the value of taxable supplies. A taxable supply is a supply which is:

- made for consideration;
- made in the course or furtherance of an enterprise carried on by the supplier;
- connected with Australia;
- provided by a registered supplier (or required to be a registered supplier); and
- not a GST-free or input taxed supply.

A registered entity will be entitled to claim an input tax credit for any GST that it pays on goods and services used in carrying on its business. However, input tax credits are not available to the extent that the good or service acquired is used to make input taxed supplies (see below) or is private or domestic in nature. Special rules also apply to acquisitions to make financial supplies and to provide fringe benefits to employees.

Enterprise includes, broadly, an activity or series of activities carried out as a business, trade, lease or licence of property and the activities of most government, charitable and religious organisations. It does not include (among other things) activities of employees or hobbies.

Entities carrying on an enterprise having a turnover of at least $75,000 per year excluding GST ($150,000 excluding GST for non-profit bodies) must register for GST, although those with a lower turnover may elect to register. Taxi operators (including Uber and other ride-source drivers) must register regardless of turnover.

GST-free supplies include, for example, certain health services, education, basic food items, child care, exports, religious services, certain activities by charities, suppliers of water and sewerage, businesses sold as a going concern, certain international transport, the first supply of precious metals, sub-divided farm land and cars used by the disabled. No GST is charged on GST-free supplies but the supplier is still entitled to an input tax credit for GST paid on creditable acquisitions used to make the GST-free supply.

Input taxed supplies include residential rents, sales of existing residential properties and financial supplies. No GST is payable on these supplies and suppliers are generally not entitled to claim input tax credits. However, in relation to financial supplies, input tax credits will still be available if the financial acquisitions threshold is not exceeded. If the threshold is exceeded, input tax credits may be available for certain financial supplies on a reduced (75%) basis.

GST liabilities will typically arise on an accrual basis, ie when any payment is received or an invoice is issued for goods or services supplied, whichever is earlier. Small business entities and charities may elect to account for GST on a cash basis.

Where the GST liability exceeds the input tax credits claimed, this amount is payable on the Business Activity Statement (BAS) in addition to other liabilities such as PAYG, FBT etc.

In situations where the input tax credits claimed exceed the GST liability, a refund will be available (or, where there are other tax liabilities, these will be reduced by the refund amount).

Registered entities with annual turnover exceeding $20m (excluding GST) will be required to lodge a BAS and pay GST monthly. Others may typically lodge and pay quarterly. Returns and payments are generally due within 28 days of the end of each quarterly tax period (21 days for monthly tax periods). However, each quarterly December BAS is given an additional month to lodge and pay. Entities with quarterly tax periods are able to pay GST by instalment amounts as notified by the ATO. The result is that certain qualifying entities (ie small business entities) may lodge an annual GST return.

Special rules apply to many types of supplies including those concerning imports, groups, joint ventures, branches, agents, second-hand goods, sale of freehold interests, insurance, lay-by sales, gambling, bad debts and going concerns.

Important GST issues

Tax invoices

1. Care should be taken to obtain compliant tax invoices, otherwise an input tax credit cannot be claimed. A document will qualify as a tax invoice if it is issued by the supplier (except for a category known as recipient-created tax invoices) and it is in the approved form. A document is in the approved form if it contains enough information to enable the following to be clearly ascertained:
   - the supplier's identity and ABN;
   - the recipient's identity or ABN (but this is only necessary if the total price of the supply is $1,000 or more);
   - what is supplied, the quantity (if applicable) and the price of what is supplied;
   - the extent to which each supply to which the document relates is a taxable supply;
   - the date the document was issued;
   - the amount of GST payable in relation to each supply to which the document relates; and
   - that the document is intended to be a tax invoice. This is most easily satisfied by putting the words "Tax invoice" on the document.
2. If an entity wants to use a recipient-created tax invoice (RCTI), an agreement must be made with the other GST-registered party or parties to the transaction.
3. A corporate credit card statement may be a tax invoice. The corporate credit card would need to be used essentially for commercial purposes and the statement must show all the information required in a normal tax invoice.
4. A tax invoice is not required where the value of the taxable supply does not exceed $75.

Reimbursements

If an employee acquires any good or service that has GST included in the price, the employer can only claim an input tax credit if a proper tax invoice is provided by the employee (for transactions over $75 GST-exclusive).

This also applies if an employee is reimbursed an amount that constitutes an expense payment benefit, ie the acquisition is not necessarily used for business purposes. FBT may also be payable where a fringe benefit is provided.

Margin scheme

The margin scheme may be used for many supplies of property and allows GST to be imposed on the "gross margin" as opposed to the entire consideration. The margin is GST-inclusive.

Under the margin scheme, the amount of GST on eligible supplies is reduced to the value added to the land since its acquisition (for post-1 July 2000 acquisitions) or from 1 July 2000 to disposal (for pre-1 July 2000 acquisitions).

If the property was held prior to 1 July 2000, valuations are necessary before the margin scheme can be applied. Valuations need to be obtained for when the property was first acquired and the value of the property as at 1 July 2000.

Where the property was acquired on or after 1 July 2000, the margin of supply will simply be the difference between the purchase price and the sale consideration.

Only the supplier can apply the margin scheme, although there are consequences to the recipient. The margin scheme only applies if both the supplier and the recipient agree to that effect in writing.

Imports

The importing of goods will create a GST liability that rests with the importer (recipient) and must be paid to Customs before the goods are released. Like any other GST payment this may create a cash flow problem.

A scheme to defer the GST on imports may be used; this will effectively alleviate any cash flow problems because the GST payable will not be due until the subsequent BAS is due (at which time any corresponding input tax credit may be claimed). An entity must apply to the ATO for permission to use the scheme.

Rules imposing GST on low-value goods (under $1,000) imported from overseas commenced on 1 July 2018. GST has been imposed on imports of intangible supplies from 1 July 2017 (the "Netflix tax" rules).

Adjustments

Occasionally, changes to transactions or business operations may make it necessary to adjust the amount of GST that has been charged, or the amount of the input tax credit that has been claimed. For example:

- a supply or acquisition is cancelled, becomes or stops being a taxable supply or a creditable acquisition, or the amount payable changes;
- there are changes in the intended use; or
- debts becoming bad or overdue.

Late lodgment penalties

Activity statements are the single forms by which taxpayers report to the ATO their obligations and entitlements relating to PAYG withholding payments, PAYG instalments, GST, FTB, wine equalisation tax, luxury car tax and fuel tax credits. There are two types of activity statement. Those registered for GST report on a Business Activity Statement (BAS). Those who do not register for GST, but have PAYG obligations, report on an Instalment Activity Statement (IAS). Of course, taxpayers are still required to lodge annual income tax and FBtT returns (where applicable).

BASs and IASs lodged late are subject to penalties. There are also penalties for failing to lodge electronically when required to do so.

Alienation of personal services income

The alienation of personal services income regime taxes an individual on personal services income (PS income) derived personally, or by an interposed entity, unless a personal services business (PS business) is conducted. In addition, there is an entitlement to only limited deductions.

Personal serivces income is income gained mainly as a reward for the personal efforts or skill of an individual. An individual will be assessable on PS income an interposed entity derives in relation to the individual's personal services unless:

- the other entity is conducting a PS business; or
- the income is promptly paid to the individual as salary or wages.

An individual or entity is carrying on a PS business if:

- the results test is met. An individual or entity satisfies the results test if, in the relevant year, at least 75% of the income of the individual or an entity is for producing a result and:
  - the individual or entity is required to supply their own plant, equipment or tools necessary to complete the work; and
  - the individual or entity is liable for the cost of rectifying any defective work; or
- they receive less than 80% of PS income from each client (and associates of the client) and they are able to satisfy one of three PS business tests; or
- they receive 80% or more of PS income from one client and obtain a determination from the ATO that they conduct a PS business.

The PS business tests are:

- **unrelated clients test** – the individual or entity derives income from providing services to two or more clients not associated with each other or with the individual or entity and the work results from the relevant person offering to provide services to the public;
- **employment test** – one or more entities are engaged to perform at least 20% (by market value) of the principal work (work essential to the generation of the PS income), or the individual or entity has an apprentice for at least half of the relevant year; and
- **business premises test** – business premises must be maintained at all times during the relevant year and used to conduct activities from which PS income is derived; the relevant individual or entity must have exclusive use of those premises; and the premises must be physically separate from the private premises of the relevant individual (or associate) and from premises of any entity to which personal services are provided.

If there is no PS business, an individual or entity can only claim the deductions that an individual performing similar work as an employee would have been able to claim.

Exceptions to this rule include entity maintenance deductions, certain car expenses, various insurance expenses, and superannuation and salary to the individual.

Expenses incurred in earning PS income that are not deductible to an individual or a related entity in any circumstances include rent, mortgage interest, rates, land tax and payments concerning associates such as salary and superannuation, unless they relate to the performance of the principal work (as opposed to ancillary support services).

All taxpayers caught by the PS income rules are entitled to self-assess. Previously, where an entity derived 80% or more of its PS income from one source, it had to obtain a PS business determination from the ATO to avoid adverse implications under these rules.

Agents

An agent may be subject to a modified 80% threshold and unrelated clients test if they meet the conditions below for bearing the entrepreneurial risk:

- they are an agent of another entity (the principal) but not the principal's employee;
- they receive income from the principal for services provided to customers on the principal's behalf;
- they receive at least 75% of that income as commissions, or fees, based on performance in providing service to those customers;
- they actively seek other customers to provide services to on the principal's behalf; and
- they do not use the premises of the principal or an associate of the principal (including a leasehold interest) to provide services to the customers, unless the premises are provided under an arm's length arrangement.

If the above conditions are satisfied, the PS income of the agent is treated as income from the customer not the principal for the purposes of the 80% threshold test and the services are deemed to be provided to the customer not the principle for the unrelated clients test.

Small business entities

Under the small business entity regime, a taxpayer does not need to specifically elect to enter into the regime. Instead, it will be apparent from a small business entity's tax return whether it has used the tax concessions.

The main elements of the small business entity regime are:

- the simpler depreciation rules under which depreciating assets costing less than $30,000 or $150,000 (depending on when they are first used or installed ready for use) are written off immediately (the threshold was originally $1,000 but has been subject to a number of extensions: see 84). Most other depreciating assets are pooled and depreciated at an accelerated rate; and
- the simpler trading stock rules under which changes in opening and closing value will be ignored in limited circumstances.

Other concessions a small business entity may access (subject to any additional criteria set out in the particular concessions themselves) include:

- the CGT small business concessions (15-year exemption, 50% active asset reduction, retirement exemption and roll-over concession) (see page 54) – note the threshold amount for qualifying for these concessions is $2m, which is significantly less than the $10m threshold amount to qualify as a small business entity (see below);
- the GDP-adjusted notional tax method to work out PAYG instalments;
- a more generous FBT exemption for work-related portable electronic devices (eg mobile phones, laptops and tablets);
- the FBT car parking exemption (this also applies to employers with gross income of less than $10m); and
- choosing to account for GST on a cash basis, annual apportionment of GST input tax credits and choosing to pay GST by instalments.

In addition, CGT roll-over relief is available if a small business restructures.

Eligibility rules

An entity carrying on a business will qualify as a small business entity if it has:

- an aggregated turnover for the previous year of less than $10m; or
- an aggregated turnover for the current year that is likely to be less than $10m.

An entity may also qualify as a small business entity if it has an aggregated turnover, worked out at the end of the year, of less than $10m – but an entity that qualifies under this test will not be able to take advantage of the various GST concessions listed above or the GDP-adjusted notional tax method to work out PAYG instalments.

The aggregated turnover is the annual turnover of the entity's business plus the annual turnover of any businesses that are "connected entities" or "affiliates" of the entity. Three classes of ordinary income are excluded from aggregated turnover to avoid double-counting:

- amounts derived from dealings between the taxpayer entity and any connected entity or affiliate;

- amounts derived by a connected entity or an affiliate from their dealings with each other while connected with, or an affiliate of, the taxpayer entity; and
- amounts derived by a connected entity or an affiliate while they are not connected with, or an affiliate of, the taxpayer entity.

Importantly, the aggregated turnover threshold is $2m and not $10m in order to take advantage of the CGT small business concessions (see page 54).

Simplified depreciation rules

Small business entities can choose to apply simplified depreciation rules. Under these rules, an immediate deduction is available for "low cost assets" while other assets are allocated to the general small business pool.

There is no need to make a specific election to use the simplified depreciation rules – it will be obvious from the taxpayer's income return whether the rules have been used.

Note that the rules do not apply to some primary producers, buildings and other capital works covered by Div 43 ITAA 1997 and some leased assets.

If an entity chooses to stop using the simplified depreciation rules, they cannot again choose to use the rules until at least 5 years after the income year in which they chose to stop using the rules. However, this "lock-out" rule has been suspended for income years that end on or after 12 May 2015 and on or before 31 December 2020.

Low cost assets – instant asset write off

A small business that uses the simplified depreciation rules is entitled to an outright deduction (the instant asset write off) for the "taxable purpose proportion" of the "adjustable value" of a depreciating asset if:

- the asset is a "low cost asset"; and
- the taxpayer starts to hold the asset when the taxpayer is a small business entity. (Since an outright deduction is only available for assets acquired while the entity is a small business entity, assets already pooled in the general small business pool (see page 88) must remain in the pool after an entity becomes a small business entity.)

The instant asset write off is available in the income year in which the taxpayer starts to use the asset, or installs it ready for use, for a taxable purpose.

Larger businesses may also qualify for the instant asset write off: see page 49.

A depreciating asset is a *low cost asset* if its cost as at the end of the income year in which the taxpayer starts to use it, or installs it ready for use, for a taxable purpose is *less than* the relevant threshold (see the table on the following page).

For businesses claiming GST, the tax write-off cost excludes GST. For businesses not claiming GST, the tax write-off cost includes GST.

The low cost threshold for a depreciating asset first acquired by the taxpayer at or after 7.30 pm on 12 May 2015 AEST ("the 2015 Budget time") and first used, or installed ready for use, by the taxpayer for a taxable purpose at or after the 2015 Budget time was originally $20,000. However, this threshold has been subject to a number of changes, which have both increased the amount and extended the period in which an outright deduction can be claimed. The key date is the date when the asset is first used, or first installed ready for use, for a taxable purpose (eg to produce assessable income).

The thresholds for small business entities and the relevant periods (for assets first acquired on or after 12 May 2015) are set out in the table below (note the cost of the asset must be less than the figure in the second column).

Asset first used/installed	Asset threshold $
12 May 2015 to 28 January 2019	20,000
29 January 2019 to 2 April 2019 (7.30 pm AEST)	25,000
3 April 2019 to 11 March 2020	30,000
12 March 2020 to 30 June 2020	150,000
1. 30 June 2020 cut-off date is to be extended to 31 December 2020.	

In the normal case, the "adjustable value" of a low cost asset will be the cost of the asset. The "taxable purpose proportion" is (broadly) the proportion that relates to use of the asset "for a taxable purpose".

If there is additional expenditure on a low cost asset (ie an amount is included in the second element of cost) and the additional expenditure is less than the low cost asset threshold, the taxable purpose proportion of that expenditure is also deductible. However, in certain circumstances where additional expenditure is incurred, the asset is allocated to the general small business pool (see below), even if the expenditure is incurred during an income year for which the taxpayer is not a small business entity or has not chosen to use the simplified depreciation rules:

- the additional expenditure is equal to or greater than the relevant threshold; or
- the taxpayer has deducted (or can deduct) an amount previously included in the second element of the asset's cost.

Assets cannot be removed from a pool, even if a taxpayer exits the system.

Pooling depreciating assets

Assets eligible for the simplified depreciation rules that are not written off immediately using the instant asset write off are allocated to a pool called the general small business pool.

The taxable purpose proportion of pooled assets is used rather than the cost. Thus, if an asset is used partly for private purposes, only the business use proportion is taken into account.

The deduction for the pool for an income year is calculated using the following formula:

Opening pool balance × 30%

Depreciating assets acquired during the income year (ie which the taxpayer starts to use, or has installed ready for use, during the income year) are normally depreciated at half the standard rate (ie 15%). This applies regardless of when the asset was acquired during the year.

Any additions to the cost of a pooled asset (ie any amounts included in the second element of the cost of the asset incurred during the year are depreciable on the same half-rate basis as for assets acquired during the year).

An accelerated depreciation rate of 57.5% (instead of 15%) applies for new assets (subject to certain exceptions) that the taxpayer starts to hold, and are first used or installed ready for use, between 12 March 2020 and 30 June 2021: see page 10.

A taxpayer can write off the total balance of the pool when it falls below the low value threshold (a low value pool). The threshold for an income year ending after 11 March 2020 and before 1 January 2021 (eg 2019-20 for 30 June balancers) is $150,000.

Trading stock rules

Taxpayers do not have to value items of trading stock on hand at year end, or account for changes in value over the year where the difference between the opening value of stock and a reasonable estimate of the closing value of stock on hand, does not exceed $5,000. Such taxpayers can deduct expenses from income without undertaking a cost of goods sold calculation. However, taxpayers may nevertheless choose to account for changes in the value of trading stock if they wish.

Tax discount

Small business entities that are companies pay a reduced rate of tax – as per the table below.

Financial year	Aggregated turnover less than[1]	Corporate tax rate
2018-19 to 2019-20	$50m	27.5%
2020-21	$50m	26%
2021-22+	$50m	25%

1. See page 83 for the definition of "aggregated turnover".

Unincorporated small business entities (eg sole traders) with an aggregated annual turnover (see page 83) under $5m are entitled to a tax discount in the form of an offset. For 2019-20, the amount of the offset is equal to 8% of the income tax payable on the portion of an individual's taxable income that is net small business income, but subject to a $1,000 cap. The 8% rate will increase 13% for 2020-21 and 16% for 2021-22 and later years.

Glossary

ABN	Australian Business Number
BAS	Business Activity Statement
CGT	Capital Gains Tax
COT	continuity of ownership test
ETPs	employment termination payments
FBT	Fringe Benefits Tax
FTB	Family Tax Benefit
GIC	general interest charge
GST	Goods and Services Tax
HECS	Higher Education Contribution Scheme
HELP	Higher Education Loan Program
ITAA	Income Tax Assessment Act
PAYG	Pay-As-You-Go
PS	personal services
SAP	substituted accounting period
SAPTO	senior Australians and pensioners tax offset
SBT	same business test
SGC	Superannuation Guarantee Charge

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2020-21 Calendar

July

M	T	W	T	F	S	S
		1	2	3	**4**	**5**
6	7	8	9	10	**11**	**12**
13	14	15	16	17	**18**	**19**
20	21	22	23	24	**25**	**26**
27	28	29	30	31		

August

M	T	W	T	F	S	S
31					**1**	**2**
3	4	5	6	7	**8**	**9**
10	11	12	13	14	**15**	**16**
17	18	19	20	21	**22**	**23**
24	25	26	27	28	**29**	**30**

September

M	T	W	T	F	S	S
	1	2	3	4	**5**	**6**
7	8	9	10	11	**12**	**13**
14	15	16	17	18	**19**	**20**
21	22	23	24	25	**26**	**27**
28	29	30				

October

M	T	W	T	F	S	S
			1	2	**3**	**4**
5	6	7	8	9	**10**	**11**
12	13	14	15	16	**17**	**18**
19	20	21	22	23	**24**	**25**
26	27	28	29	30	**31**	

November

M	T	W	T	F	S	S
30						**1**
2	3	4	5	6	**7**	**8**
9	10	11	12	13	**14**	**15**
16	17	18	19	20	**21**	**22**
23	24	25	26	27	**28**	**29**

December

M	T	W	T	F	S	S
	1	2	3	4	**5**	**6**
7	8	9	10	11	**12**	**13**
14	15	16	17	18	**19**	**20**
21	22	23	24	25	**26**	**27**
28	29	30	31			

January

M	T	W	T	F	S	S
				1	**2**	**3**
4	5	6	7	8	**9**	**10**
11	12	13	14	15	**16**	**17**
18	19	20	21	22	**23**	**24**
25	26	27	28	29	**30**	**31**

February

M	T	W	T	F	S	S
1	2	3	4	5	**6**	**7**
8	9	10	11	12	**13**	**14**
15	16	17	18	19	**20**	**21**
22	23	24	25	26	**27**	**28**

March

M	T	W	T	F	S	S
1	2	3	4	5	**6**	**7**
8	9	10	11	12	**13**	**14**
15	16	17	18	19	**20**	**21**
22	23	24	25	26	**27**	**28**
29	30	31				

April

M	T	W	T	F	S	S
			1	2	**3**	**4**
5	6	7	8	9	**10**	**11**
12	13	14	15	16	**17**	**18**
19	20	21	22	23	**24**	**25**
26	27	28	29	30		

May

M	T	W	T	F	S	S
31					**1**	**2**
3	4	5	6	7	**8**	**9**
10	11	12	13	14	**15**	**16**
17	18	19	20	21	**22**	**23**
24	25	26	27	28	**29**	**30**

June

M	T	W	T	F	S	S
	1	2	3	4	**5**	**6**
7	8	9	10	11	**12**	**13**
14	15	16	17	18	**19**	**20**
21	22	23	24	25	**26**	**27**
28	29	30				

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