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TaxWise® Business News

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Year end tax tips

Are you ready for year end?

We are getting near the end of the tax year (30 June). So you might want to consider ways to ensure your business and tax affairs are in order in readiness for year end.

Ways to optimise your tax position include reducing your assessable income or increasing your allowable deductions for the 2022–23 income year. Either way, the business' taxable income is reduced which reduces the amount of tax payable.

One way to reduce assessable income for the current income year, if your business reports income on a cash basis, is to delay sending an invoice to a customer until after 30 June. Of course, cash flow issues might mean you want to be paid sooner.

If you are in the process of selling property and the profit will be taxable as a capital gain, you could delay the sale until the next income year – but remember that the liability to pay CGT arises in the income year in which you exchange contracts and not on settlement.

You can increase deductible expenditure by bringing it forward from the next income year to the current income year. This particularly useful where an immediate deduction is available – for example, for depreciating assets under the temporary full expensing rules, start-up costs and certain prepaid expenses.

Remember that the temporary full expensing rules for depreciating assets end on 30 June this year. Although the instant asset write-off will be available again for small businesses (less than $10 million aggregated turnover) for 12 months from 1 July this year, the threshold will be $20,000 per asset (as reported in the May Budget edition of TaxWise® News), whereas there is no threshold under temporary full expensing.

Charitable donations are another good way to increase your deductions. If you are not sure if a donation will be deductible, you can check the deductibility status of charities at https://www.abn.business.gov.au/Tools/DgrListing. Don't forget to ask for a receipt.

What are the benefits?

If you are a sole trader or a partner in a partnership, the benefits of reducing your taxable income could include:

- reducing your marginal tax rate from, for example, 45% to 37% or 37% to 32.5%; and
- avoiding liability for the Medicare levy surcharge (at least 1%) if you don't have appropriate private health insurance.

Tip! As the end of the tax year approaches, talk to your tax adviser about ways to ensure your business is ready for year end.

Trustee resolutions

If you operate your business through a trust and you wish to make beneficiaries presently entitled to trust income for the 2022–23 income year, you should ensure your trustee resolutions are effective. This includes where you may want to stream franked dividends and capital gains that are included in trust income to particular beneficiaries.

It's important that the trustee:

- checks the trust deed to ensure that the intended beneficiaries are within the class of persons who can be appointed trust income (or trust capital, if they intend to stream a capital gain that is not characterised as trust income under the deed) and are not excluded from being beneficiaries;
- complies with any requirements in the trust deed that concern the valid appointment or distribution of trust income to beneficiaries;
- recognises that, for tax law purposes, beneficiaries need to be made presently entitled to 2022–23 trust income by 30 June this year;

  is aware that if they fail to do what is required in a trust deed, or fail to validly appoint income to beneficiaries by 30 June, this may cause outcomes to arise that differ to what they intended. This could include other beneficiaries, or the trustee, being assessed on the relevant share of the trust's net (taxable) income. Where a trustee is assessed, this will be at the top marginal rate of tax plus the Medicare levy (47%); and
- ensures that resolutions are unambiguous.

Family trusts

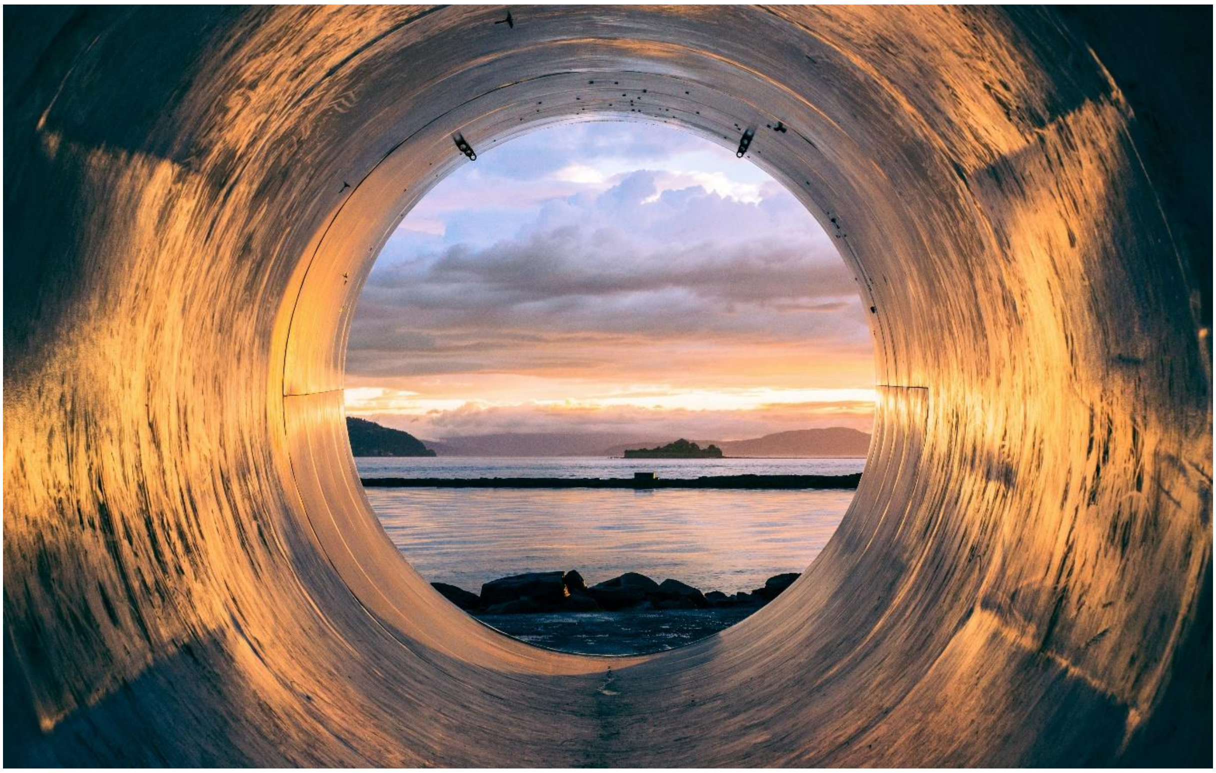
Family trust distribution tax (**FTDT**) happens when a trust that has made a family trust election (**FTE**), or an entity that has made an interposed entity election (**IEE**), makes a distribution outside the family group of the individual specified in the FTE. This includes when distributing to another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

So where an FTE or IEE has been made, it is important to identify who is in the family group.

For a non-fixed (discretionary) trust to be within the family group of the individual specified in the FTE, that trust would need to have made either:

- an FTE with the same specified individual in place; or
- an IEE so it is a member of the specified individual's family group.

Tip! Talk to your tax adviser – they can help you ensure that trustee resolutions are effective and that no liability to FTDT will arise.



What's in the Parliamentary pipeline?

From a business tax perspective, a number of measures are working their way through Parliament:

- the PAYG and GST instalment uplift factors (6%) for the next income year (2023–24) – these were announced in the recent Federal Budget 2023–24;
- alternative record-keeping arrangements for employers (to be determined by the ATO) for fringe benefits tax (**FBT**) purposes;
- a 20% bonus deduction for expenditure incurred by a small or medium business (aggregated turnover less than $50 million) on external training for employees (ends on 30 June 2024);
- a 20% bonus deduction for expenditure incurred by a small or medium business for the purpose of digitising operations (ends on 30 June 2023);
- a 30% refundable tax offset in relation to the development of digital games in Australia;
- businesses will be able to align their excise returns and customs returns with the return period for indirect taxes (i.e. the return period for business activity statements);
- confirmation that the rules governing the income tax treatment of foreign currency will not apply to digital currencies such as bitcoin (although digital currencies issued by, or under the authority of, a government agency will continue to be taxed as foreign currency); and
- certain distributions that are funded by capital raisings will not be frankable.

Listed public companies will be affected by a measure aligning the tax treatment of off-market share buy-backs with the tax treatment of on-market share buy-backs.

Various amendments to the Corporations Act, although not tax measures, are relevant to companies. The amendments will:

- enable documents under the Act to be signed electronically and for certain documents to be sent in either hard copy or electronic form; and
- provide that companies are not required to send documents to a member where contact details are known to be incorrect.

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

Are you a primary producer?

There are a number of changes in the pipeline designed to encourage primary producers to undertake additional carbon abatement activities. Briefly, these measures will:

- allow primary producers to treat the net proceeds from the sale of Australian carbon credit units (**ACCUs**) they first held on or after 1 July 2022 as primary production income for the purposes of the farm management deposit (**FMD**) scheme and income tax averaging; and
- allow primary producers to treat income derived from farm abatement activities with carbon service providers supporting ACCUs first held on or after 1 July 2022 as primary production income for the purposes of the FMD scheme and income tax averaging.

These concessions will not be available to companies and trusts.

Another measure will change the taxing point for ACCUs held by primary producers to the point of sale (but not if held by a trust). This measure means primary producers will not be taxed based on changes in the value of their ACCUs each year (unless the units are held by a trust).

These measures will commence on the first day of the first quarter after the enabling legislation receives Royal Assent. For example, if the enabling legislation is enacted in October this year, the measures will commence on 1 January 2024.

Tip! If you are a primary producer, talk to your tax adviser to find out how you can benefit from these measures.

What has the ATO been saying?

Do you have late lodgements?

The small business failure to lodge (**FTL**) penalty amnesty program was announced on 9 May 2023 as part of the Federal Budget 2023–24. The amnesty allows your business to bring any outstanding tax returns, business activity statements (**BAS**) and FBT returns up-to-date.

To be eligible for the amnesty, your business must:

- have had an aggregated turnover of less than $10 million at the time the original lodgement was due;
- have outstanding tax returns, BAS or FBT returns that were due between 1 December 2019 and 28 February 2022; and
- lodge the outstanding statement between 1 June 2023 and 31 December 2023.

If your business is eligible for the amnesty, any FTL penalty that applies to the late lodgement of an outstanding statement will be automatically remitted. You don't need to do anything. However, the general interest charge (GIC) will continue to apply.

If your business has late lodgements, it is important to get back on track. Keeping lodgements up to date helps you understand your business' net tax position, even if you're having difficulty paying on time. In most cases, your business can set up its own payment plan online – the ATO's self-serve payment plan option is available for debts up to $100,000.

If your business is no longer operating, it is important to lodge any outstanding obligations, and then cancel the ABN and any tax registrations such as GST.

Tip! If you have late lodgements, your tax adviser can help you get back on track, including talking with the ATO to find the best solution.

Getting STP Phase 2 reporting right

Most employers have now moved over to Single Touch Payroll (**STP**) Phase 2 reporting. In fact, by mid-May this year, more than 730,000 employers are now reporting STP Phase 2 information for over 10.8 million individuals!

The ATO, however, has noticed some common mistakes in relation to STP Phase 2 reporting. These include:

Pay codes: make sure your business has set up its pay codes correctly and that payments, including allowances, paid leave and overtime, are itemised separately.

*Continuity of year-to-date (**YTD**) reporting*: if your business transitioned to STP Phase 2 reporting part-way through the financial year, check that the YTD amounts that have already been reported through STP Phase 1 are maintained. This includes salary and wages paid to employees, employment termination payments and pay as you go (**PAYG**) withholding amounts. This applies unless you used an alternative method for transitioning to STP Phase 2.

Employee details: information such as an employee's name, tax file number and date of birth helps the ATO match your business' STP records with your employees. As the end of the financial year approaches, now is a good time to make sure these details are accurate and complete.

Employment basis: your business needs to report accurate information about employees' employment basis (such as full time, part time, or casual) each time the payroll is run.

Joined the bustle of a side hustle?

With new and emerging ways to make money, the ATO is reminding taxpayers to consider if they are "in business" and to declare all income when lodging their tax return this year.

Record numbers of taxpayers are now working multiple jobs or supplementing their income with "side hustles" or "gig" economy activities, and it's important everyone pays the right amount of tax. If you earn money through continuous and repeated activities for the purpose of making a profit, then it's likely you are carrying on a business.

Businesses have a range of obligations depending on their structure and turnover, including registering for an ABN, keeping the right records and lodging the right type of tax return. They may also have to register for GST.

The ATO is reminding taxpayers about their obligations if their side hustle is generating income. This could be anything from animal breeding to earning income through digital platforms, such as ride share or food delivery, or even online content creation, like social media influencers.

If your home has become more like a warehouse and is stocked to the hilt with goods to sell, then you are likely to be running a business.

If you are running bootcamp sessions, in addition to your 9-to-5 job, that is a side hustle and you need to declare this income to the ATO.

The ATO doesn't generally consider activities as "in business" when they are a one-off transaction (unless it is the first step in carrying on a business or intended to be repeated) or an activity from which you don't seek to make a profit.

The ATO has two case studies that illustrate how a "side hustle" can be a business.

Case study: Hayley heads off-track for fun, but on-the right-track for business

Hayley works in hospitality at night and spends most days fishing or four-wheel driving. She decides to start developing "how-to" YouTube videos when fishing and four-wheel driving. Hayley's online following is rapidly increasing, and she's now earning money from her videos.

With the growing online interest, Hayley cuts back her hospitality work and starts to invest more effort into her videos. Hayley sets up a production schedule that sets out the type of content she will produce on a weekly basis, buys equipment to improve her production quality, completes an online video editing course to improve her editing skills and records all expenses from her content creation activity.

Hayley looks at all her activities together and determines she is carrying on a business because she:

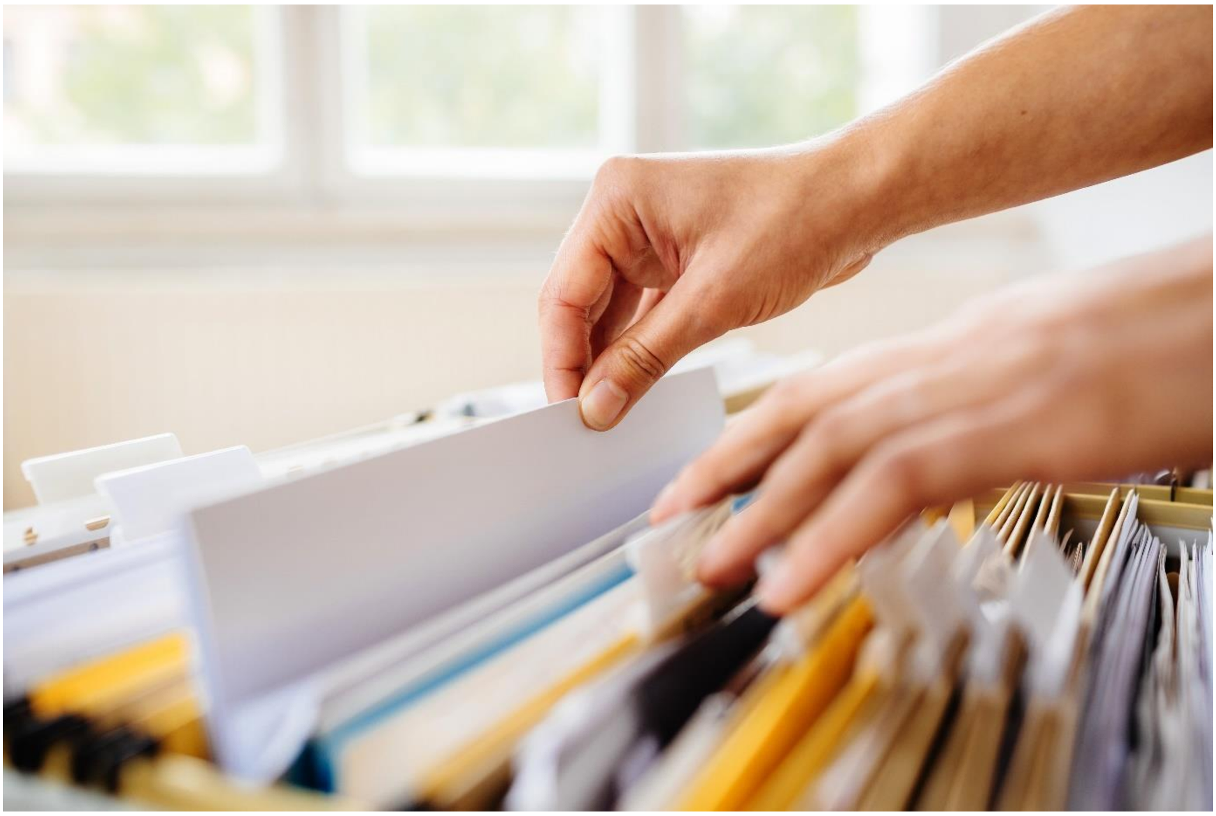
- intends to make a profit to supplement her salary and wage income;
- set up a regular schedule for these activities; and
- operates in a business-like way (she has a plan and system for making a profit).

Case study: Byron's bolstering biceps becomes a business

Byron works an office job Monday to Friday and runs a bootcamp on the weekend. It started as a free weekly fitness session that Byron organised because he loves exercise. Byron invited friends and members of his local community to meet each Saturday morning and do weights and cardio together. No payment was expected, but there was an optional donation into a kitty. Byron would generally buy equipment for the group with the money from the kitty. Byron isn't a qualified personal trainer (**PT**), but due to the growing interest in his sessions, he has decided to start studying PT. At this stage, Byron's activities are considered a hobby because he:

- doesn't complete the activities with the intention to make a profit;
- isn't qualified; and
- isn't carrying on the activities in a business-like manner.

However, once Byron becomes a licensed PT, he starts running more sessions and charging customers a set rate for the sessions. He also buys an insurance policy and arranges marketing activities to promote his sessions. Byron has now changed the intention of his activities and he is now considered to be carrying on a business.



The recipe for business success

With tax time around the corner, it's a great time to start thinking about your tax return. It's also a good time to put good business practices in place ready for the new financial year.

Successful businesses that meet their obligations practise good cash flow management and good record keeping. They also have the right digital tools to help them perform daily business activities easily and securely, making it easier to work with the ATO when it's convenient.

Remember, it's important to lodge your business' tax return on time, even if you can't pay. This will show the ATO you are aware of your business' obligations and doing your best to meet them.

If you're worried your business won't be able to pay on time, the ATO may be able to set up a payment plan for you.

Record-keeping

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

The ATO's top 4 tips for record-keeping are:

- Always keep detailed records of payments to contractors providing Taxable payment reporting system (**TPRS**) services, so it's easier to prepare and lodge the Taxable payments annual report (**TPAR**), by 28 August.
- Make sure vehicle logbook records are no more than 5 years old. If a logbook will be older than this when you plan to lodge your tax return, or your pattern of use of your car has changed, you need to start a new logbook.

- Check if government grants or payments you receive are taxable and need to be reported as business income when you lodge your return. This includes payments from the National Disability Insurance Scheme (NDIS) or Childcare Subsidy payments.
- Record the amounts withheld from any payments you receive and keep written evidence from the payer, including their details and ABN. Payments may be withheld because you didn't quote an ABN, you've done subcontracting work through a labour hire firm or you have a voluntary agreement with the payer to withhold tax amounts.

Tip! Your tax adviser can help your business meet its tax obligations.

Do you have a pre-2010 employment agreement?

The ATO has reminded employers about changes to some registered employment agreements.

Some employers and their employees are still covered by pre-2010 agreements (also known as "zombie agreements"). These agreements will terminate automatically in December this year.

If you are an employer with this type of agreement, you must tell your employees in writing about the coming changes. You must do this before 7 June 2023.

The Fair Work Commission has published resources on its website to help you meet this obligation. Click here for more information.

GST and motor vehicles

The ATO has published information to help businesses find out if GST applies to motor vehicle purchases and sales.

Definition of motor vehicles for GST purposes

The term "motor vehicle" (for GST purposes) means a motor-powered road vehicle.

For GST purposes, a "car" is a motor vehicle designed to carry a load of less than one tonne and less than 9 passengers. The term "car" does not include a motorcycle or similar vehicle.

For GST purposes, a "motor vehicle" does not include a road vehicle where both of the following apply:

- the main function of the vehicle is not related to public road use; and
- the vehicle's ability to travel on a public road is secondary to its main function.

Examples of such vehicles include road rollers, graders, tractors and earthmoving equipment.

GST when purchasing a motor vehicle

If a motor vehicle is used solely in carrying on your business and your business is registered for GST, the business is generally entitled to claim a credit for the GST included in the price of the vehicle, provided you have a tax invoice.

Certain rules apply to luxury car purchases, leased vehicles and purchasing second-hand vehicles.

GST when disposing of a motor vehicle

You need to account for GST when your business disposes of a motor vehicle if the disposal is a taxable supply.

A "decreasing adjustment" (reduced GST payment) may be available for the business use element if the vehicle was used for both business and private purposes, and for vehicles used for making financial supplies.

An "increasing adjustment" may have to be made if you continue to hold a motor vehicle after your business' GST registration is cancelled. The increasing adjustment takes into account the market value and percentage of business use of the vehicle at the time your GST registration is cancelled.

There are certain rules for luxury cars, trade-ins, disposals to an associate and disposals by a charity.

Tip! Talk to your tax adviser if you are uncertain about the GST consequences of buying and selling a vehicle which is used in your business.

Working out the LCT on a sale

Cars with a luxury car tax (**LCT**) value over the LCT threshold attract an LCT rate of 33%.

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

(LCT value − LCT threshold) × 10 ÷ 11 × 33%.

The LCT thresholds are:

Financial year	Fuel efficient vehicles	Other vehicles
2022–23	$84,916	$71,849
2023–24	$89,332	$76,950

Like other business taxes, you report and pay LCT on your activity statement.

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

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

The LCT value does not include:

- LCT included in the sale;
- other Australian taxes, fees or charges such as stamp duty, transfer fees and registration;

- compulsory third-party insurance (CTPI);
- extended warranties;
- costs associated with financing the purchase of the car; and
- service plans.

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

FBT issues

New rates and thresholds

A new FBT year (2023–24) started on 1 April 2023. Relevant amounts and thresholds for the new FBT year include:

- *record-keeping exemption threshold* — $9,786 ($9,181 for 2022–23);
- *statutory or benchmark interest rate* — 7.7% (4.52% for 2022–23);
- *car parking threshold* — $10.40 ($9.72 for 2022–23).

The cents per km *rates* (for motor vehicles other than cars) for the 2023–24 FBT year are (the 2022–23 rates are in brackets):

0-2500cc	Over 2500cc	Motor cycles
62 cents (58 cents)	73 cents (69 cents)	18 cents (17 cents)

Living away from home – in Australia

The weekly food and drink expenses for the 2023–24 FBT year that the ATO accepts as reasonable for a living-away-from-home allowance (**LAFHA**) paid to employees living away from home within Australia are:

1 adult[1]	$316
2 adults	$474
3 adults	$632
1 adult and 1 child	$395
2 adults and 1 child	$553
2 adults and 2 children	$632
2 adults and 3 children	$711
3 adults and 1 child	$711
3 adults and 2 children	$790
4 adults	$790
Each additional adult[3]	$158
Each additional child	$79

1 A person is considered an adult for LAFHA purposes if they were aged 12 years or older before the beginning of the FBT year.

Living away from home – outside Australia

The weekly food and drink expenses for the 2023–24 FBT year that the ATO accepts as reasonable for a LAFHA paid to employees living away from home outside of Australia can be found in Taxation Determination TD 2022/2. Some of those reasonable amounts (for one adult) are set out below.

Country	Weekly amount – 1 adult
Argentina	$201
Austria	$437
Cambodia	$137
China	$437
Fiji	$273
France	$437
Germany	$437

Greece	$346
Hong Kong	$437
India	$273
Indonesia	$273
Ireland	$437
Italy	$437
Japan	$437
Malaysia	$273
Nepal	$273
New Zealand	$346
Norway	$537
PNG	$346
Philippines	$273
Qatar	$537
Saudi Arabia	$437
Singapore	$537
South Africa	$201
South Korea	$537
Spain	$437
Sri Lanka	$273
Taiwan	$437
Thailand	$346
UAE	$537
UK	$437
USA	$437
Vanuatu	$346
Vietnam	$273

Where your employee is accompanied by other family members while overseas, the reasonable food and drink amount per week for the family is worked out by multiplying the amount shown above by the relevant factor. For example:

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

From the courts

A Sydney man was sentenced to jail by the Supreme Court of NSW for his involvement in a syndicate that committed a $105 million tax fraud over a 3-year period.

Patrick Willmott, 36, was sentenced to 9 years' jail in May, with a non-parole period of 6 years. He was convicted on 2 charges:

- conspiracy to dishonestly cause a loss to the Commonwealth; and
- conspiracy to deal with money of a value of $1 million or more believing it to be the proceeds of crime.

The syndicate responsible for this large-scale and organised tax fraud conspiracy was dismantled as part of Operation Elbrus – an investigation led by the Australian Federal Police (**AFP**), with significant assistance from the ATO as part of the Serious Financial Crime Taskforce (**SFCT**).

Operation Elbrus exposed a large-scale and organised tax fraud and money laundering conspiracy, which used Plutus Payroll Australia Pty Ltd and other payroll service entities to divert amounts of money payable to the ATO as pay as you go (**PAYG**) withholding tax and goods and services tax (**GST**) for the conspirators' benefit.

Mr Willmott jointly exercised day-to-day control over second-tier companies and their bank accounts used by the syndicate to withhold money and underpay a portion of the PAYG withholding and GST owed to the ATO. His role included processing payments for the second tier companies, at the direction of other conspirators.

Key tax dates

Date	Obligation
21 June 2023	May monthly BAS due
30 June 2023	Superannuation guarantee contributions must be paid by this date to qualify for a tax deduction in 2022–23
14 July 2023	Issue PAYG payment summaries if not reporting through STP
21 July 2023	June monthly BAS due
28 July 2023	Lodge and pay June quarterly BAS Pay June quarterly PAYG instalment June quarter employee superannuation guarantee contributions due
31 July 2023	Finalisation declaration due if reporting through STP
1 Aug 2023	Fuel tax credit rates change
14 Aug 2023	PAYG withholding annual report due if not reporting through STP
21 Aug 2023	July monthly BAS due
28 Aug 2023	June quarter SG charge statement due Taxable payments annual report due
21 Sep 2023	August monthly BAS due
3 Oct 2023*	Lodge annual TFN withholding report (trustee of a closely held trust)

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