



## It's tax time again!

### Lodging a tax return

#### Are you a sole trader?

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

#### Are you a partnership?

If you operate your business in a partnership:

- the partnership lodges the partnership tax return, reporting the partnership's net income or loss (assessable income less allowable deductions).

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

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

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

### Are you a trust?

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

### Are you a company?

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

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

## Tax losses

This has been a difficult year, and your business may have made a tax loss.

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

If you make a tax loss, you may be able to:

- offset the loss in the same income year against other assessable income; or
- carry forward the loss and claim it as a business deduction in a later income year (note that only companies can carry a loss back to offset against profits of an earlier income year – sole traders, trusts and partnerships cannot do that).

### Meeting the 'non-commercial loss' tests

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

### What are the 'non-commercial loss' tests?

Broadly, the four non-commercial loss tests are:

- the **Assessable income test** – this is satisfied if the business activity generates at least \$20,000 of assessable income a year (or would reasonably be estimated to generate at least \$20,000 of assessable income if the activity were carried on for the whole year);
- the **Profits test** – this is satisfied if the business activity has made a profit in at least 3 of the last 5 tax years, including the current year (in the case of a partnership, the test looks at the individual partner's share of partnership income and deductions);

- the **Real property test** – this is satisfied if the total value of real property used on a continuing basis in carrying on the business activity is at least \$500,000;
- the **Other assets test** – this is satisfied if the total value of other assets (eg depreciating assets, trading stock and intellectual property) used on a continuing basis in carrying on the business activity is at least \$100,000.

If you meet one of the ‘non-commercial loss’ tests, then you can offset the loss against other assessable income (such as salary or investment income) in the same income year.

If you don’t meet any of the ‘non-commercial loss’ tests, you can defer the loss or carry it forward to future years. For example, you can offset it when you next make a profit.

Non-commercial losses made by an individual whose adjusted taxable income exceeds \$250,000 are quarantined.

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

The non-commercial loss rules are complicated. Talk to your tax adviser if you have any doubts about whether a business activity satisfies any of the non-commercial loss tests.

## Personal services income

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

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

The company or trust will be carrying on a PSB if at least one of a number of tests are satisfied. These are the:

- **Results test** (this is the primary test) – this is based on common law criteria for characterising an independent contractor (in contrast to an employee/employer relationship);
- **Unrelated clients test** – this requires the PSI to be earned from at least two unrelated clients who contract your services as a direct result of making offers or invitations (for example, by advertising) to the public to provide your services;
- **Employment test** – this requires at least 20% (by market value) of your work to be performed by employees;
- **Business premises test** – this requires you to use business premises that meet certain conditions (eg you have exclusive use of the premises and the premises must be physically separate from any premises you use for private purposes).

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

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

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

PSI rules are complicated. Talk to us if you provide your services through a company or trust.

## Small business income tax offset

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

The tax offset for 2020–21 is equal to 13% of the income tax payable on the sole trader's or other individual's taxable income that qualifies as their net small business income (the offset rate is 16% for 2021–22).

The offset is capped at \$1,000.

## Rent relief

If a sole trader receives rent relief, its deduction for rent will be reduced. If the sole trader is registered for GST, its entitlement to GST credits is reduced in proportion to the rent reduction.

## Land tax relief

Land tax relief will result in a smaller allowable deduction. GST is not payable on the relief, but the GST payable on rent received by the landowner is reduced in proportion to the rent reduction given to the tenant.



## What's new for individuals?

### Income tax thresholds

The various threshold amounts and rates for the 2021–22 income year are set out below.

Item	Threshold/rate from 1 July 2021
CGT improvement threshold	\$156,784
Division 7A benchmark interest rate	4.52%*
Car limit (depreciation)	\$60,733
Car expenses – cents per km method	72 cents*
Employee truck driver – reasonable meal expenses	Breakfast: \$26.15 Lunch: \$29.85 Dinner: \$51.50
Overtime meal allowance – reasonable amount	\$32.50
Invalid and invalid carer offset ( <b>IICTO</b> )	\$2,833**
Maximum adjusted taxable income where IICTO cuts out	\$11,614**

\* The Division 7A benchmark interest rate and cents per km rate are the same as for 2020–21.

\*\* Not official ATO figures.

## Medicare levy surcharge and private health insurance

The income thresholds for the Medicare levy surcharge and private health insurance tax offset purposes have been frozen for another 2 years (until 30 June 2023). The thresholds are:

	No surcharge & maximum offset	Tier 1	Tier 2	Tier 3
Singles	\$90,000 or less	\$90,001–\$105,000	\$105,001–\$140,000	\$140,001 or more
Families*	\$180,000 or less	\$180,001–\$210,000	\$210,001–\$280,000	\$280,001 or more

\* The family income threshold is increased by \$1,500 for each dependent child after the first child.

The Medicare levy surcharge is 1% for Tier 1 taxpayers, 1.25% for Tier 2 taxpayers and 1.5% for Tier 3 taxpayers.

The private health insurance tax offset percentage is highest for Tier 1 taxpayers and lowest for Tier 3 taxpayers. The percentage also varies depending on the ages of the persons covered by the relevant health insurance policy. There are 3 age brackets – under 65, 65 to 69 and 70 or above.

## HELP debt

Here are the 2021–22 repayment rates and thresholds if you have a study or training loan such as a Higher Education Loan Program (HELP), VET Student Loan (VSL) or Trade Support Loan (TSL) debt.

Repayment income	Repayment rate
Below \$47,014	Nil
\$47,014 – \$54,282	1.0%
\$54,283 – \$57,538	2.0%
\$57,539 – \$60,991	2.5%
\$60,992 – \$64,651	3.0%
\$64,652 – \$68,529	3.5%

\$68,530 – \$72,641	4.0%
\$72,642 – \$77,001	4.5%
\$77,002 – \$81,620	5.0%
\$81,621 – \$86,518	5.5%
\$86,519 – \$91,709	6.0%
\$91,710 – \$97,212	6.5%
\$97,213 – \$103,045	7.0%
\$103,046 – \$109,227	7.5%
\$109,228 – \$115,781	8.0%
\$115,782 – \$122,728	8.5%
\$122,729 – \$130,092	9.0%
\$130,093 – \$137,897	9.5%
\$137,898 and above	10%

## Granny flat arrangements

From 1 July 2021, capital gains tax (**CGT**) does not apply when a granny flat arrangement is created, varied or terminated.

A granny flat arrangement is a written agreement that gives an eligible person the right to occupy a dwelling for life. The owner or owners of the dwelling must be individuals. They must enter into a non-commercial granny flat arrangement with the eligible person.

An individual is an eligible person if they:

- have reached pension age; or
- require assistance for day-to-day activities because of a disability or are likely to continue needing assistance because of their disability for at least 12 months. An individual who is

eligible for the disability support pension would qualify as an eligible person, but an individual who does not qualify for the disability support pension can still be an eligible person.

Talk to us if contemplating entering into a granny flat arrangement with an elderly or disabled person.

## **No GDP adjustment for 2021–22**

The GST and PAYG instalment amounts are usually adjusted every year using a formula known as the gross domestic product (GDP) adjustment.

However, the ATO has announced that the GDP adjustment to work out quarterly GST and PAYG instalment amounts for the 2021–22 income year is nil. It was also nil for 2020–21.





## Superannuation for individuals

### Superannuation and ETP thresholds

The superannuation and ETP (employment termination payment) thresholds for the 2021–22 financial year are listed below:

	2021-22
Concessional contributions cap for individuals aged under 75*	\$27,500**
Concessional contributions cap for individuals aged 75+	Only mandated employer contributions†
Non-concessional contributions cap*	\$110,000
CGT cap amount	\$1,615,000
Low rate cap amount/ETP cap amount	\$225,000
Untaxed plan cap amount	\$1,615,000
ETP life benefit cap amount	\$225,000
ETP life benefit whole of income cap amount	\$180,000
ETP death benefit cap amount	\$225,000
Base limit — tax-free part of a bona fide redundancy payment	\$11,341
For each completed year of service	\$5,672
Co-contribution lower income threshold	\$41,112
Co-contribution upper income threshold	\$56,112

\* Work test needs to be satisfied if aged 67–74. The Government has announced that the work test will be repealed for salary sacrificed contributions and non-concessional contributions from 1 July 2022.

## COVID-19 early release of superannuation

If you accessed your superannuation early in response to the COVID-19 pandemic, you can choose to re-contribute those amounts between 1 July 2021 and 30 June 2030 without them being counted towards your non-concessional contributions cap. The choice must be made in the approved form and given to your super fund before you make the re-contribution.

Superannuation that is accessed early is tax-free (non-assessable non-exempt (**NANE**) income).

## Pensions and annuities – minimum drawdown amounts

The 50% reduction in the minimum drawdown amounts has been extended to the 2021–22 financial year. These are the minimum annual payments required for account-based pensions and annuities, allocated pensions and annuities and market-linked pensions and annuities.

If you receive more than the minimum drawdown amount, you can re-contribute these amounts if you are eligible to make superannuation contributions (subject to other rules or limits such as contributions caps).

## SMSFs

The maximum number of members for a self-managed superannuation fund (**SMSF**) increased from 4 to 6 from 1 July 2021.



## Are you a landlord?

In 2019–20, over 1.8 million Australians owned rental properties and claimed \$38 billion in deductions.

According to the ATO, the most common mistake rental property and holiday homeowners make is neglecting to declare all their income. This includes failing to declare any capital gains from selling an investment property.

The ATO is expanding the rental income data it receives directly from third-party sources such as sharing economy platforms, rental bond authorities and property managers. Deliberate attempts to avoid tax on rental income will see the ATO take action.

If you take out a loan to buy a rental property and rent it out at market rates, the interest on that loan is deductible. However, if you redraw money from that mortgage for personal use, such as buying a boat, or going on a holiday, you can't claim the interest on that part of the loan.

Note: An asset used mainly to derive rent does not qualify for the small business CGT concessions.

## Reduced rent during COVID-19 pandemic

If you negotiated a reduced or deferred rent, you only need to declare the rent you have received as income. Deferred payments are taxed in the income year in which you receive them.

While your rental income may be reduced, you can still claim normal expenses made on your property as long as the reduced rent is determined at arm's length and considers current market conditions.

Generally, if your plans to rent a property in 2020–21 were the same as in previous years, but were disrupted by COVID-19, you will still be able to claim the same proportion of expenses. This only applies where the property was not used privately. If you, your family or friends stayed at the property for free or at a reduced rate, at best you will only be able to claim a portion of the expenses.

## Travel to inspect properties

If you incur travel expenses in order to inspect a residential rental property you own, carry out repairs to the property, collect rent or attend an apartment building owner's corporation meeting, you cannot claim a deduction for those expenses.

### Restriction on deducting travel expenses: Who does it apply to?

Travel expenses include airfares, taxi charges, motor vehicle expenses and the cost of associated meals and accommodation.

These rules were introduced to address concerns that some taxpayers had been claiming travel deductions that were for private purposes (eg using an investment property just for a holiday).

The restriction on deducting travel expenses also applies to a tenant who subleases a residential property and to an SMSF that owns a residential property.

### Who doesn't it apply to?

The restriction does not apply to expenses incurred by a company.

The restriction also does not apply to travel expenditure incurred in carrying on a business, including a business of providing property management services.

Whether owning residential rental properties constitutes a business depends on the facts of each particular case. For example, an individual who derives income from renting out one or two residential properties would not normally be thought of as carrying on a business.

On the other hand, deriving rent from a number of properties or from a block of apartments may indicate the existence of a business. For example, the Administrative Appeals Tribunal recently decided that a man who rented out 7 units in one block and 2 houses was carrying on a rental property business. This was largely because he was heavily involved in managing the properties (particularly after he was made redundant from his day job as a banker) and the capital invested was sizable (net \$3.475 million).

## Do you hold vacant land?

Deductions are limited for expenses associated with holding vacant land. The ATO has issued a draft ruling ([TR 2021/D5](#)) setting out its views on how the rules operate.

Land is vacant if there is no substantial and permanent structure in use or available for use on the land.

If there is a structure on the land, it must have an independent purpose in the context of the land on which it is located. For example, fences and a garage on residential land do not have a purpose independent of the main residence. Accordingly, if there is no main residence on the land, it will be vacant even if there is fencing or a garage on it.

Residential premises that you construct or substantially renovate are not a substantial and permanent structure unless they can lawfully be occupied and are leased, hired or licensed (or available for lease, hire or licence).

Examples of expenses associated with holding land include any interest or borrowing costs to acquire the land, council rates, land tax and maintenance costs. However, the costs of constructing a substantial and permanent structure on the land, or any interest or borrowing costs (to the extent they are associated with the construction), are not regarded as expenses associated with holding the land.

The limitation on deducting expenses does not apply if the land is used in carrying on a business.

If you hold vacant land, talk to us about whether the holding costs are deductible.



## From the ATO

### Beware of scammers

The latest scam reported by the ATO is one where scammers try to trick people into making payments by pretending to be from the ATO and other agencies, such as the Australian Federal Police.

They might tell you that your TFN has been suspended or compromised due to money laundering or other illegal activity, or that you owe a debt. Suggested payment methods are:

- cardless cash ATM withdrawals;
- retail gift cards, such as JB Hi-Fi, Myer and Woolworths;
- courier services who collect the cash payments;
- cash delivery made in person at a pre-determined public location.

The ATO says it will never demand payment by these methods. You should always check legitimate ways to pay a tax debt on the ATO's website before making a payment.

If you have paid money to a scammer through one of the methods listed above or are concerned about your personal safety, report it to your local police straight away and specify all the details.

The ATO also strongly encourages you to contact your financial institution immediately. In some cases, they may be able to stop a transaction or close your account if the scammer has your account details. If you're ever unsure whether an ATO contact is genuine, hang up and phone them on **1800 008 540** to check. View the ACCC's Scamwatch website for help.

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