

## Fact Sheet: Information for Small Businesses

### What is a small business for income tax purposes?

A small business is a business whose aggregated annual turnover is less than \$10 million. Aggregated turnover is a defined term and can include the turnover of businesses who are connected to you or who are your affiliates. If you would like more information, please follow this link <https://www.ato.gov.au/business/small-business-entity-concessions/eligibility/aggregation/>.

The small business definition for special capital gains tax (CGT) concessions is business with aggregated annual turnover of less than \$2 million or if you have net assets of less than \$6 million (excluding personal use assets such as your home).

### What is a sole trader?

A sole trader is a person running a business, who is the only owner and can control and manage the business. A sole trader is legally responsible for all aspects of the business, and any debts and losses cannot be shared with other people. All income and expenses of the business are reported through that person's income tax return.

### Am I really conducting a business or is it a hobby?

There is no single factor that determines whether your activities constitute running a business or merely engaging in a hobby. Some of the factors to consider include whether you intend to make a profit and whether the activities are repeated and regular in nature. For more information please visit the Australian Taxation Office (ATO) website

<https://www.ato.gov.au/business/starting-your-own-business/before-you-get-started/are-you-in-business/> or contact us.

### Do I need to register to start a business?

If you want to start a company, you will need to register with the Australian Securities and Investments Commission (ASIC). It is important that you also review what the director's duties are for a company and you understand the role a director plays. Please see <https://asic.gov.au/for-business/small-business/starting-a-company/small-business-company-directors/> for more information

If you want to use a trading name or business name, you will need to register that business name with ASIC. Please see their website for more information – [www.asic.gov.au](http://www.asic.gov.au)

If you want to start a business, you will need an Australian Business Number (ABN). Please click on the following link for more details – <https://www.abr.gov.au/business-super-funds-charities/applying-abn>.

### What happens if I don't have an ABN?

If you don't have an ABN and you issue invoices, then your customer will be required to withhold tax from that payment of 47%.

### I'm an employee but my employer told me to get an ABN and told me I will be a contractor/small business – should I get an ABN?

You may need to consider whether you are entitled to an ABN – even though your employer calls you a contractor, it doesn't necessarily mean you are a contractor under the tax rules. Please see <https://www.abr.gov.au/business-super-funds-charities/applying-abn/abn-entitlement> and <https://www.ato.gov.au/business/employee-or-contractor/> for more information.

### Do I need to register for GST?

You must register for Goods and Services Tax (GST) if your business has a GST turnover of \$75,000 or more or is expected to reach that threshold in your first year of operation. Otherwise, registering for GST is optional.

### Are there additional requirements once you are registered for GST?

Yes, refer to our Fact Sheet "Business Activity Statements".

## How can we help

UNSW Tax Clinic provides free, independent and confidential tax advice and support. We have outreach locations across Sydney and also offer phone appointments depending on your circumstances and location. Our tax advice and representation services are often in high demand, so we give priority to people who need our help the most.

### Are there special rules for small businesses?

If you satisfy the ATO's eligibility criteria for a 'small business entity', you may access certain concessions. These include:

- Accelerated depreciation and special depreciation pools
- Deductibility of certain prepayments
- Restructuring concessions
- Lower income tax rates for companies or small business rebate for individuals
- Different amendment periods
- CGT concessions and
- Fringe Benefits Tax concessions.

For more information, refer to:

<https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/Concessions-at-a-glance/>

### Are there expenses that my business can claim?

Yes, if you spent money or incurred an expense which was related to earning your business income, then you can claim most of these expenses. If you incur an expense that was for both business and private purposes, you can only claim the proportion of the expense that was used for business purposes.

Follow this link for more information –

<https://www.ato.gov.au/Business/Income-and-deductions-for-business/Deductions/>

### Are there standard deductions I can claim?

No, there are no standard claims for businesses. You must be able to support your claims with receipts and show that the expense was incurred in earning the business income.

### What expenses can't I claim?

Generally, you can't claim expenses that were for private purposes or relating to income earned from a hobby. Entertainment expenses and fines such as traffic fines also can't be claimed. For more information, refer to:

<https://www.ato.gov.au/Business/Income-and-deductions-for-business/Deductions/>

### If I sell an asset such as plant and equipment or a car, do I need to include this in my tax return?

Yes, any gains or losses from the sale of an asset such as plant and equipment or a car should be included in your tax return as either assessable income or a deduction. If you also used these assets for private purposes, you may be required to pay CGT.

### What records do I need to keep? How long do I need to keep them for?

Please see our Fact Sheet "Record Keeping".

### What are PAYG Instalments?

PAYG Instalments are a prepayment of the business' income tax for the financial year. The ATO will calculate the PAYG instalment amount a business (or individual if you are a sole trader or partner in a partnership) needs to pay or an instalment rate you have to pay.

The instalment amount or instalment rate is based on the last tax return you lodged.

PAYG Instalments are usually due on:

- |                     |             |
|---------------------|-------------|
| • September quarter | 28 October  |
| • December quarter  | 28 February |
| • March quarter     | 28 April    |
| • June quarter      | 28 July     |

You will receive a credit for the instalments paid when you lodge your tax return. You will receive a refund if the instalments paid are more than the tax payable for that year.

You will receive the credit in your tax return based on the year the quarter falls in. For example, if you pay an instalment on 28 October 2020, and you haven't lodged your 2020 tax return by this time, you will receive a credit on your 2021 tax return and not the 2020 tax return as the instalment is for the September 2020 quarter which falls into the 2021 financial year.

Similarly, if you pay the instalment on 28 July 2021, this instalment is also for the 2021 tax return as it relates to the June 2021 quarter.

Individuals can elect to pay instalments annually if the instalment is below certain thresholds. The ATO will let you know if you can pay annually.





### **I'm a sole trader/partner in a partnership – can I be an employee of my business?**

No, as a sole trader or partner in a partnership, you are unable to employ yourself.

### **What if my business wants to employ someone? What do I need to do?**

Some steps include:

- Register for PAYG Withholding
- Set up a default super fund for the business
- Set up STP reporting in your accounting or payroll software
- Ask your employee for their super details. If they do not have one, register them under the business' default super fund.
- Ask your employee to fill out a TFN declaration form. If they do not provide a TFN, you must withhold tax from their pay at the highest rate.
- Apply for workers compensation insurance
- Provide your employee with the Fair Work Information Statement (visit [fairwork.gov.au](https://www.fairwork.gov.au))

You need to do all the above even if you are a director of the company and you are the only employee.

### **What is PAYG withholding?**

PAYG withholding are amounts you need to withhold on your employee's wages. These payments are usually made to the ATO each quarter (or monthly, depending on the amount you withhold).

The PAYG withheld is reported on an activity statement and are due:

- |                     |             |
|---------------------|-------------|
| • September quarter | 28 October  |
| • December quarter  | 28 February |
| • March quarter     | 28 April    |
| • June quarter      | 28 July     |

Monthly payments are due on the 21<sup>st</sup> of each month.

If you lodge a BAS or pay PAYG instalments, the PAYG withheld amounts will all be reported on the same form.

### **What is super guarantee? Do I have to pay it?**

If you have employees and they earn more than \$450 per month (before tax), then you need to pay super for these employees at a minimum rate of 9.5%.

You may also need to pay super for people you don't usually think of as employees, such as contractors.

Super is due each quarter on:

- |                     |            |
|---------------------|------------|
| • September quarter | 28 October |
| • December quarter  | 28 January |
| • March quarter     | 28 April   |
| • June quarter      | 28 July    |

If you are usually a clearing house to pay your super, it is recommended you pay your super 10 days before the due date as you can only claim super as a deduction if your employee's super fund receives the contribution by the due date

Further, if you do not pay super on time, you will need to pay super guarantee charge and administrative penalties.

For more information about super and who you need to pay super for, please go to the following website

<https://www.ato.gov.au/Business/Super-for-employers/>

### **I'm a sole trader – can I claim super deductions?**

You can claim a deduction for super contributions made to your super fund. These concessional contributions are claimed in your personal tax return. You will need to submit a Notice of Intent to Claim a Deduction for Personal Super Contributions form to your super fund and your Fund must provide an acknowledgement letter before you can claim the deduction. Please speak to your super fund about the form.

There is concessional (i.e. all contributions that you or any other employer makes on your behalf that you, or your employer, claims as tax deduction) contribution limit of \$25,000 per year. If you go over this limit, the additional contributions will be taxed at your marginal tax rate.

## **What is personal services income and what is a personal services business?**

Personal services income (PSI) is income that is produced mainly from your personal skills or efforts. Examples include IT consultants, engineers, doctors and construction workers.

If your business passes the various PSI tests, then that business is a personal services business (PSB).

If you have personal services income, all the income must be paid out to you and taxed in personal return. It cannot be left in a company or trust.

There also deductions you cannot claim if you have personal services income (such as payments to associates). Please visit the ATO website for more information about PSI and PSI tests –

<https://www.ato.gov.au/Business/Personal-services-income/>

## **I've passed the PSI tests, and I conduct a PSB. Can I leave the income in my company/trust?**

There are still anti-avoidance provisions which may apply to you even though you pass the PSI rules. For example, if you created a company and you don't have any employees except for yourself, even if you have 10 clients (i.e. you pass the unrelated client test), the anti-avoidance rules can still apply and you may need to pay the profits out to yourself. Please seek further legal or tax advice in relation to the PSI rules.

## **I'm an employee of a company which employs other consultants. We all work on our own contracts separately. Do the PSI rules apply to me?**

The PSI may apply to you as each individual needs to pass the PSI test separately. Please seek further legal or tax advice in relation to the PSI rules.

## **I conducted my business out of my home, what happens when I sell my home?**

If you are a sole trader or partnership (of individuals) and have a separate area in your home that you use exclusively for conducting your business, the main residence exemption does not apply to the portion of your house that you used for business purposes and you are required to pay CGT. This is regardless of whether you have claimed a tax deduction for home

occupancy expenses such as mortgage interest, council rates, water rates or house insurance.

If your company or trust is paying you rent for the use of a separate area in your home which was set aside for the exclusive use by the company or trust, the main residence exemption does not apply to the portion of your house that was rented and you are required to pay CGT.

If you do not have a separate area in your house in which you use to conduct your business, then you do not have to pay CGT if you sell your house (however, you cannot claim occupancy expenses such as council rates, water rates and mortgage interest in relation to your home).

## **What happens when I want to sell my business?**

If you sell your business, there are a number of small business CGT concessions available. The concessions include:

- 15-year exemption
- 50% active asset reduction
- Retirement exemption
- Rollover concessions

It is highly recommended to seek advice from a registered tax agent or lawyer to ensure you have satisfied all the tax and legal requirements associated with selling your business.

## **What if I get bigger, can I move my business to a company?**

There are CGT rollover concessions available, but it is recommended to seek advice from a registered tax agent to discuss the tax and legal implications of moving your business to a company.

**For more information, contact the UNSW Tax Clinic**

**Email:** [taxclinic@unsw.edu.au](mailto:taxclinic@unsw.edu.au)

**Phone:** 02 9385 8041

The information on this Fact Sheet is general advice only, please speak to a tax advisor if you require specific advice