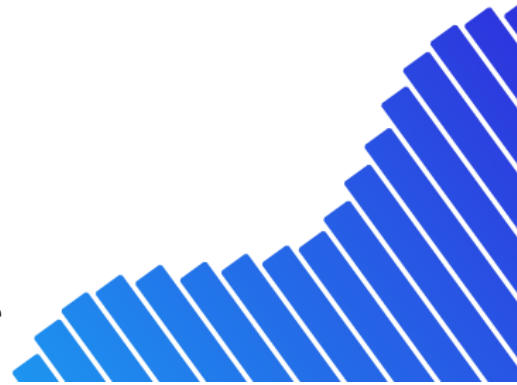


# The small business instant asset write-off: an update

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Current as of 30 May 2024



## Overview

### Choosing to apply the simplified depreciation rules

The small business instant asset write-off (**IAWO**) is contained in [section 328-180](#) of the *Income Tax Assessment Act 1997* (**ITAA 1997**<sup>1</sup>). The IAWO is part of the simplified depreciation regime for small business entities (**SBEs**) in Subdivision 328-D (**simplified depreciation rules**).

The SBE rules commenced their life in a different form – the repealed Simplified Tax System which applied from 1 July 2001 to 30 June 2007. Section 328-180 today remains fundamentally unchanged from its originally enacted form in 2001.

The simplified depreciation rules allow SBEs to choose to deduct the decline in value of their depreciating assets, worked out using:

- the pooling rules in sections 328-185 to 328-210 – for assets that cost \$1,000 or more (after subtracting any entitlement to a GST credit); and
- the immediate deduction rule in section 328-180 – for assets that cost less than \$1,000.

If an SBE chooses to apply the simplified depreciation rules, they must apply all the rules in Subdivision 328-D and cannot cherry-pick the provisions they want and disregard the others. Accordingly, they must pool assets that cost \$1,000 or more and they must claim an immediate deduction for assets that cost less than \$1,000.

An SBE is defined in [section 328-110](#) to mean, broadly, an entity that carries on a business in an income year and has an aggregated turnover of less than \$10 million. The detailed rules regarding the calculation of an entity's aggregated turnover are beyond the scope of this article.

This article also does not consider the general capital allowance provisions in Division 40 or other aspects of the simplified depreciation rules such as the pooling rules except to the extent they are relevant to the IAWO.

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<sup>1</sup> All legislative references are to the ITAA 1997 unless otherwise indicated.

## Previous modifications of the IAWO threshold

Aside from a temporary modification by the then Labor government that increased the IAWO threshold to \$6,500 from the start of the 2012–13<sup>2</sup> income year until it reverted to \$1,000 from 1 January 2014<sup>3</sup> because of amendments made by the incoming Coalition government, the threshold was \$1,000 from 1 July 2001 to 12 May 2015.

### Temporary increase in threshold to \$20,000 to 30 June 2017

As part of the Federal Budget 2015–16, the Coalition government announced it would temporarily increase the IAWO threshold to \$20,000 for assets:

- first acquired at or after 7:30pm on 12 May 2015; and
- first used or installed ready for use for a taxable purpose at or after 7:30pm on 12 May 2015 and on or before 30 June 2017.

Importantly, the enabling Bill<sup>4</sup> modified the standard IAWO threshold in section 328-180 by inserting new [section 328-180](#) into the *Income Tax (Transitional Provisions) Act 1997 (IT(TP)A)*. The transitional provision had the effect of temporarily replacing the lower threshold of \$1,000 in section 328-180 with a higher threshold of \$20,000 (thereby suspending the \$1,000 threshold until after 30 June 2017).

From 1 July 2017, the threshold was to revert to its standard amount of \$1,000.

### Extension and expansion of temporary increase in the IAWO threshold

In a series of announcements that were subsequently legislated, the former government further increased the amount of the IAWO threshold and extended the application period of the temporarily increased threshold.

This included a modified version of the COVID-19 temporary full expensing (TFE) measure that applied from 6 October 2020 to 30 June 2023. The TFE regime was contained in Subdivision 40-BB of the IT(TP)A and applied only to non-SBEs, as well as SBEs that chose not to apply the simplified depreciation rules (collectively referred to hereafter as **non-SBEs**).

Accompanying amendments were made to section 328-180 of the IT(TP)A so that it broadly mirrored the TFE regime for SBEs. This allowed SBEs that chose to apply the simplified depreciation rules to also access an immediate deduction for eligible assets, regardless of their cost, until 30 June 2023 (although SBEs could not apply the rules on an asset-by-asset basis).

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<sup>2</sup> Section 328-180 was amended by Schedule 2 to the [Tax Laws Amendment \(Stronger, Fairer, Simpler and Other Measures\) Act 2012](#) (Act No. 23 of 2012) to increase the threshold from \$1,000 to \$6,500.

<sup>3</sup> Section 328-180 was amended by Schedule 3 to the [Minerals Resource Rent Tax Repeal and Other Measures Act 2014](#) (Act No. 96 of 2014) to reduce the threshold from \$6,500 to \$1,000.

<sup>4</sup> Part 1 of Schedule 1 to the [Tax Laws Amendment \(Small Business Measures No. 2\) Act 2015](#) (Act No. 67 of 2015).

Throughout this period, the \$1,000 threshold remained law but it was superseded by further amendments to section 328-180 of the IT(TP)A. The lock-out rule in [subsection 328-175\(10\)](#) (that prevents SBEs from re-entering the simplified depreciation rules for five years if they opt out) was also suspended during the ‘increased access’ years by [subsection 328-180\(2\)](#) of the IT(TP)A.

The series of thresholds that applied from 12 May 2015 to 30 June 2023 are set out in **Table 1** below.

**Table 1: Instant asset write-off from 2015 to 2023**

Date on which the asset is acquired	Date on which the asset is first used or installed ready for use	Asset cost (IAWO threshold)	Legislative reference
Acquired before 12 May 2015	Before 7:30pm on 12 May 2015	Less than \$1,000	Section 328-180 of the ITAA 1997
Acquired from 7:30pm on 12 May 2015	From 7:30pm on 12 May 2015 to before 29 January 2019	Less than \$20,000	Section 328-180 of the IT(TP)A
	From 29 January 2019 to before 7:30pm on 2 April 2019	Less than \$25,000	Section 328-180 of the IT(TP)A
	From 7:30pm on 2 April 2019 to before 12 March 2020	Less than \$30,000	Section 328-180 of the IT(TP)A
	From 12 March 2020 to 30 June 2021	Less than \$150,000	Section 328-180 of the IT(TP)A
From 7:30pm on 6 October 2020 to 30 June 2023	From 7:30pm on 6 October 2020 to 30 June 2023	Unlimited	Section 328-180 of the IT(TP)A

## What are the proposed changes?

### Proposed threshold for 2023–24

The Government announced as part of the Federal Budget 2023–24 that it would temporarily increase the IAWO threshold to \$20,000 for the 2023–24 income year. Without this change, the threshold would revert to the standard legislated threshold of \$1,000 from 1 July 2023. The increased threshold is proposed to apply to eligible assets that are first used or installed ready for use for a taxable purpose from 1 July 2023 to 30 June 2024.

The \$20,000 threshold will apply on a per asset basis, so SBEs can immediately deduct the cost of multiple identical or similar assets.

Despite being 11 months into the 2023–24 income year, this proposed measure is [still not yet law](#). It is contained in Schedule 1 to the [Treasury Laws Amendment \(Support for Small Business and Charities and Other Measures\) Bill 2023 \(the Bill\)](#).

In March 2024, the Senate amended Schedule 1 to the Bill to increase the asset threshold from \$20,000 to \$30,000 and the aggregated turnover threshold from \$10 million to \$50 million for 2023–24 only, thereby broadening the measure to medium-sized businesses.

The Bill returned to the House of Representatives (**House**) for consideration of the Senate's amendments, but on 15 May 2024, the House disagreed to the Senate's amendments. Its reasoning was explained in these terms:

To prevent any delay in small businesses getting these promised tax benefits as part of Tax Time 2024, the House of Representatives does not agree to these amendments.

The Bill returned to the Senate for reconsideration of its amendments. On 16 May 2024, the Senate insisted on its amendments, so the Bill again returned to the House. On 29 May 2024, the House again insisted on disagreeing to the amendments insisted on by the Senate. So, back to the Senate it goes ...

This oscillation between the Senate and the House is greatly concerning as SBE taxpayers and medium-sized businesses have exactly one month until the end of the 2023–24 income year. There is only more joint sitting week before year end, from 24–28 June, then another from 1–4 July. If not passed by then, the Bill could still be enacted in the [Spring sittings](#) with an increased threshold for 2023–24 applying retrospectively but this does not provide any certainty to businesses this side of year end.

We will monitor the status of this Bill and provide our members with any relevant updates.

## **What if the enabling bill is not enacted by 30 June 2024?**

The ATO's administrative treatment of taxpayers affected by announced but unenacted legislative measures that apply retrospectively when enacted is set out in Practice Statement [PS LA 2007/11](#).

In paragraph 5, the Commissioner explains that:

Generally, for taxpayers who exercise reasonable care and follow the existing law, there will be no tax shortfall penalties and nil general interest charge (GIC) or shortfall interest charge (SIC) up to the date of enactment of the legislative change. In addition, taxpayers will be given a 'reasonable time' to get their affairs in order, post-enactment of the measure, without incurring any GIC or SIC. The reasonable time will need to be determined having regard to the measure and a taxpayer's circumstances.

The ATO's administrative treatment of unenacted measures is summarised in **Table 2** below.

**Table 2:** ATO administrative treatment of unenacted measures

Scenario	Action required and treatment of penalties and interest
<p><b>Scenario 1:</b> Taxpayer lodges on time in accordance with the existing law</p>	<p><b>Proposed amendment is enacted</b></p> <p>Later amendments are needed because of retrospective law changes.</p> <p><b>Penalties</b></p> <ul style="list-style-type: none"> <li>● No tax shortfall penalties apply.</li> </ul> <p><b>Interest</b></p> <ul style="list-style-type: none"> <li>● Any interest will be remitted to nil up to the date of enactment of the new law.</li> <li>● Interest that accrues after enactment will be remitted where the return is amended within a reasonable time after enactment.</li> <li>● If the taxpayer does not request an amendment within a reasonable time, full interest will apply from the date of enactment.</li> </ul> <p><b>Proposed amendment is not enacted</b></p> <p>No amendments to the return are required.</p>
<p><b>Scenario 2:</b> Taxpayer lodges on time and anticipates the announced change to the law</p>	<p><b>Proposed amendment is enacted</b></p> <p>No amendments to the return are required.</p> <p><b>Proposed amendment is not enacted</b></p> <p>Later amendments may be needed that increase their tax liability.</p> <p><b>Penalties</b></p> <ul style="list-style-type: none"> <li>● No tax shortfall penalties will apply on the basis that it is reasonable that the taxpayer has followed an announced government policy and that the existence of such an announcement represents special circumstances for remission.</li> </ul> <p><b>Interest</b></p> <ul style="list-style-type: none"> <li>● Any interest accrued in respect of the amendment will be remitted to the base interest rate up to the date of enactment of the new law.</li> <li>● Any interest, in excess of the base rate, that accrues after enactment will be remitted where the taxpayer actively seeks to amend their return within a reasonable time after enactment.</li> <li>● If the taxpayer does not request an amendment within a reasonable time, interest reverts to the full rate from enactment.</li> <li>● Taxpayers will have reasonable time to lodge amendments and make payment, after which time the interest applied reverts to the full statutory rate.</li> </ul>

## Proposed threshold for 2024–25

The proposed 2023–24 measure has now been overlaid with the Government’s announcement as part of the Federal Budget 2024–25 that the \$20,000 IAWO for SBEs will be extended by 12 months, for eligible depreciating assets first used or installed ready for use by 30 June 2025.

Without this change, the threshold will revert to the standard legislated threshold of \$1,000 from 1 July 2024 (assuming the proposed 2023–24 measure is legislated). This will be the seventh time since 12 May 2015 that the IAWO threshold has been varied.

The proposed increases in the IAWO threshold for the 2023–24 and the 2024–25 income years are set out in **Table 3** below, which is a continuation of **Table 1** above. These proposed increases are not yet law.

**Table 3: Proposed increased IAWO for 2023–24 and 2024–25 income years**

Date on which the asset is acquired	Date on which the asset is first used or installed ready for use	Asset cost (IAWO threshold)	Legislative reference
Acquired from 7:30pm on 12 May 2015	From 1 July 2023 to 30 June 2024	Less than \$20,000 for SBEs  <b>Senate amendment:</b> Less than \$30,000 for businesses with an aggregated turnover of less than \$50 million	Section 328-180 of the IT(TP)A <sup>5</sup>
Acquired from 7:30pm on 12 May 2015	From 1 July 2024 to 30 June 2025	Less than \$20,000 for SBEs	Section 328-180 of the IT(TP)A <sup>6</sup>
N/A	On or after 1 July 2025	Less than \$1,000 <sup>7</sup> for SBEs	Section 328-180 of the ITAA 1997

In the absence of further policy announcements by the Government, the IAWO threshold would revert to \$1,000 for assets that are first used or installed ready for use on or after 1 July 2025.

<sup>5</sup> Schedule 1 to the [Treasury Laws Amendment \(Support for Small Business and Charities and Other Measures\) Bill 2023](#).

<sup>6</sup> The enabling bill has not yet been introduced into Parliament.

<sup>7</sup> Subject to any further policy announcements by the Government.

## Looking ahead

While the temporary increases in the IAWO threshold are welcome, we continue to advocate for a permanent increased IAWO for businesses with an aggregated turnover of less than \$50 million for assets costing less than \$30,000.

Temporarily increasing the threshold is clearly favoured by the Government and businesses, but we need to move away from annual policy announcements that extend the increased threshold by 12 months at a time. This is an inefficient way to design policy, and businesses deserve certainty and stability in the tax system so they can make decisions based on actual law, not pending announcements.

Notably, the Leader of the Opposition, the Hon Peter Dutton MP, announced as part of his recent [Budget Address in Reply](#) on 16 May 2024 that a Coalition government would permanently extend the value of assets eligible for the IAWO to \$30,000 for small businesses.

## Other points to note about the IAWO

### What happens when the asset is sold or disposed of?

#### Asset held by an SBE

A balancing adjustment event happens to a depreciating asset under [section 40-295](#) if the entity:

- stops holding the asset (**disposal or sale case**);
- stops using the asset, or having it installed ready for use, for any purpose and expects never to use it, or have it installed ready for use, again; or
- has not used the asset (and if it has been installed ready for use, the entity stops having it so installed) and decides it will never use it.

When a balancing adjustment event happens to an asset for which a full deduction was claimed under section 328-180, the entity must include, under [subsection 328-215\(4\)](#), the taxable purpose proportion (TPP) of the asset's termination value in its assessable income in the income year in which the balancing adjustment event happened.

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#### Example – 100% taxable purpose

An SBE acquired a depreciating asset during 2021–22 at a cost of \$90,000 (GST-exclusive). It was used 100% for a taxable purpose. The entity sold the asset during 2023–24 for \$25,000.

The entity would:

- claim a deduction for **\$90,000** in 2020–21 under section 328-180 (as modified by section 328-180 of the IT(TP)A); and
- include the taxable purpose proportion of the asset's termination value (**\$25,000**) in its assessable income for 2023–24 under subsection 328-215(4).

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### Example – part non-taxable purpose

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An SBE acquired a depreciating asset during 2021–22 at a cost of \$90,000 (GST-exclusive). It was used 80% for a taxable purpose. The entity sold the asset during 2023–24 for \$25,000.

The entity would:

- claim a deduction for the taxable purpose proportion of the asset's cost ( $\$90,000 \times 80\% = \$72,000$ ) in 2020–21 under section 328-180 (as modified by section 328-180 of the IT(TP)A); and
- include the taxable purpose proportion of the asset's termination value ( $\$25,000 \times 80\% = \$20,000$ ) in its assessable income for 2023–24 under subsection 328-215(4).

## Asset held by a non-SBE

When a balancing adjustment event happens to an asset held by a non-SBE, the entity calculates its assessable or deductible balancing adjustment under [section 40-285](#).

Where a non-SBE claims an immediate deduction for the cost of an asset – under [section 40-82](#) or the former TFE regime in Subdivision 40-BB of the IT(TP)A – the adjustable value of the asset is reduced to nil under [subsection 40-85\(1\)](#).

The asset's termination value is equal to:

- the sale proceeds (sale case); or
- the market value<sup>8</sup> of the asset where it ceases to be used for any purpose.

Accordingly, where the entity has claimed an immediate deduction for the cost of the asset, it will have an assessable balancing adjustment. As the asset's termination value will exceed its adjustable value of nil, the asset's termination value is effectively included in the entity's assessable income under subsection 40-285(1).

The net effect of these provisions produces the same tax outcome as for an SBE: the taxable purpose proportion of the asset's termination value is assessable.

## What happens if there is a change in the taxable use?

Where an SBE claims the IAWO for an asset (based on the TPP of the cost of the asset) and the TPP of the asset subsequently changes, no adjustment is required to be made to the amount of the deduction claimed at the time of the change in taxable use. However, there are tax implications when a balancing adjustment event later happens to the asset.

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<sup>8</sup> In the case where the entity stops using the asset for any purpose, the termination value is the asset's market value: see item 1 of the table in subsection 40-300(2).



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### Example – IAWO and change in taxable use

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An SBE acquired a depreciating asset during 2021–22 at a cost of \$100,000 (GST-exclusive). It was intended to be used 75% for a taxable purpose.

The asset begins to be used wholly for a private purpose during 2022–23 and is sold during 2023–24 for \$40,000.

The entity would:

- claim a deduction for the taxable purpose proportion of the asset's cost ( $\$100,000 \times 75\% = \$75,000$ ) in 2020–21 under section 328-180 (as modified by section 328-180 of the IT(TP)A); and
- include the taxable purpose proportion of the asset's termination value ( $\$40,000 \times 75\% = \$30,000$ ) in its assessable income for 2023–24 under subsection 328-215(4).

Notably, the change in use to wholly non-taxable during 2022–23 does not:

- require an adjustment to be made under [section 328-225](#) (as this applies only where an asset has been allocated to a pool); or
- change the TPP for the purpose of working out the assessable amount under subsection 328-215(4) when the asset is sold. The TPP is determined under [section 328-205](#) at the time the asset is first used, or installed ready for use, for a taxable purpose.

This means that if an SBE claimed the IAWO and deducted 100% of the cost of an asset, then began to use the asset wholly for a non-taxable purpose, and then sold the asset, the entity would need to include 100% of the sale proceeds in its assessable income, even though the asset is not used for a taxable purpose at the time of the sale.

This scenario is most likely to occur where the SBE is a sole trader. Where the asset is owned by a company or a trust, the FBT or Division 7A provisions are likely to apply to any 'private use' of the asset.

## Further guidance and information

Further guidance and information on the small business IAWO are available from the [ATO website](#).

If you have any specific concerns that have not been outlined above, please email [taxpolicy@taxinstitute.com.au](mailto:taxpolicy@taxinstitute.com.au).

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