

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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TREASURY LAWS AMENDMENT BILL: SELF-AMENDMENTS BY SMALL  
AND MEDIUM BUSINESSES

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EXPOSURE DRAFT EXPLANATORY MATERIALS

## **Consultation preamble**

Treasury seeks feedback on the effectiveness of this exposure draft explanatory material in explaining the policy context and operation of the proposed new law, including, but not limited to:

- how the new law is intended to operate;
- whether the background and policy context is sufficiently comprehensive to support understanding of the policy intent and outcomes of the new law;
- the use of relevant examples, illustrations or diagrams as explanatory aids; and
- any other matters affecting the readability or presentation of the explanatory material.

Feedback on these matters will assist to ensure the Explanatory Memoranda for the Bill aids the Parliament's consideration of the proposed new law and the needs of other users.

Treasury and the ATO work closely to identify aspects of new tax laws which may benefit from ATO public advice and guidance (PAG). Feedback is also sought on any aspects of the new law where ATO PAG should be considered, to support stakeholders' understanding and application of the new law. Stakeholder feedback on this question will be shared with the ATO.

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# ***Glossary***

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This Explanatory Memorandum uses the following abbreviations and acronyms.

<b><i>Abbreviation</i></b>	<b><i>Definition</i></b>
ATO	Australian Taxation Office
Commissioner	Commissioner of Taxation
ITAA 1936	<i>Income Tax Assessment Act 1936</i>

# **Chapter 1: Allowing small and medium businesses four years to self-amend**

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## Outline of chapter

- 1.1 This amendment of the ITAA 1936 allows small and medium business entities up to four years after the Commissioner has given notice of an assessment to apply to have the assessment amended. An application must be made in the approved form.

## Context of amendments

- 1.2 The standard limitation period in which the Commissioner could amend an assessment of a small and medium business entity (either on application by the entity or under the Commissioner's own initiative) prior to this amendment was two years. After expiry of the limitation period, the Commissioner is generally not able to amend the assessment under the amendment process.
- 1.3 This relatively short statutory limitation period was intended to provide swift certainty for such taxpayers about their income tax liabilities. However, this timeframe has led to an increased number of these taxpayers' lodging objections and pursuing appeals of objection decisions by the Commissioner, resulting in increased administrative burden for such taxpayers.
- 1.4 This amendment seeks to alleviate some of this administrative and financial burden for both taxpayers and the Commissioner.

## Summary of new law

- 1.5 This amendment allows the Commissioner to amend an assessment of a small or medium business entity, if:
- the small or medium business entity requests the amendment in the approved form; and
  - the request is given to the Commissioner within four years after the day on which the Commissioner gives notice of the assessment to the taxpayer.
- 1.6 While this amendment allows the Commissioner to amend such assessments on application by the taxpayer, the provisions do not mandate the Commissioner to do so.
- 1.7 The Commissioner may only amend such assessments to give effect to the decision on the taxpayer's application. The provisions do not permit the Commissioner to amend the assessment about other particulars that are not included in the taxpayer's application. This ensures that sufficient certainty is still afforded to these taxpayers, as the four-year statutory limitation period only applies in respect of those particulars mentioned in the taxpayer's application.
- 1.8 The amendment must be made within four years of the Commissioner issuing the notice of assessment to the taxpayer.

## Comparison of key features of new law and current law

**Table 1.1 Comparison of new law and current law**

<b><i>New law</i></b>	<b><i>Current law</i></b>
The Commissioner may, on application, amend the assessment of an individual, company or person (in the capacity as a trustee of a trust estate) that is a small or medium business entity within four years after the day on which the notice of the assessment is given to the taxpayer, provided the application is made in the approved form before the expiry of that four-year period. The Commissioner may amend the assessment to give effect to the decision on the application.	The Commissioner may amend an assessment of an individual, company or person (in the capacity as a trustee of a trust estate) that is a small or medium business entity within two years after the day on which the notice of the assessment is given to the taxpayer.

## Detailed explanation of new law

- 1.9 This amendment extends the statutory amendment period for small and medium business entities in certain circumstances from two years to four years. Specifically, the amendment allows the Commissioner, on application by the taxpayer, to amend an assessment of an individual, a company or a person in their capacity as trustee of a trust estate, where the taxpayer is a small or medium business entity, within four years after the day on which the Commissioner gives notice of the assessment to the taxpayer. The taxpayer's application for an amendment must be in the approved form and given to the Commissioner before the expiry of the four-year period. The Commissioner may amend the assessment within the four-year period to give effect to the decision on the taxpayer's application.  
***[Schedule 1, item 1, table item 3A in subsection 170(1) of the ITAA 1936]***
- 1.10 The statutory amendment periods are set out in section 170 of the ITAA 1936. Generally, the standard statutory amendment period for small and medium business entities is two years. This amendment allows that period to be extended where the taxpayer applies to the Commissioner to amend their assessment, in the approved form, within four years. On deciding that the taxpayer's requested amendment should be made, the Commissioner may amend the taxpayer's assessment within the four-year period.
- 1.11 While the Commissioner is permitted to amend the assessment within the extended period, the provision does not require the Commissioner to make the requested amendment. The Commissioner is also restricted to only amend the assessment to give effect to the decision on the taxpayer's application. Allowing, but not mandating the Commissioner to make such amendments, together with restricting such amendments to only those which give effect to the decision on the taxpayer's application, operates as an integrity measure. This ensures the taxpayer is not able to utilise the extended amendment period to gain an inappropriate tax benefit. The Commissioner may, for example, decline to make such amendment where the taxpayer's application will not allow their tax position to be corrected across assessments for all relevant income years, which would, if the requested amendment were made, result in the taxpayer gaining an unfair tax advantage.  
***[Schedule 1, item 1, table item 3A in subsection 170(1) of the ITAA 1936]***
- 1.12 Any amendments made by the Commissioner to give effect to the decision on the taxpayer's application may only be made by the Commissioner within four years after the day on which the Commissioner gives notice of the assessment to the taxpayer.

## Commencement and application

- 1.13 Schedule 1 to the Bill commences at the beginning of the first quarter after Royal Assent.
- 1.14 The amendments apply in relation to assessments issued after commencement of this Schedule for income years starting on or after 1 July 2024.  
*[Schedule 1, item 2, Application of amendments]*