

## *GST credit claims: The details your business client may need to know*



Most small business owners stay on top of their GST refunds, mainly because of the cash flow concerns that very much seem to dog many small businesses.

However you may now and then have a business client that lets these things slip, and what they may not know is that they have four years to claim any GST credit they're entitled to (or indirect tax refund).

The ATO has deemed that an entitlement to a GST credit ends four years from the due date of the earliest activity statement in which a taxpayer could have claimed it (setting aside any requirement to hold a tax invoice). They can claim the credit in any activity statement lodged in this period.

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Generally, if a client has a refund resulting from a GST error, they can:

- revise the activity statement the error was made in
- request an amendment in writing
- correct the error in a later BAS.

GST errors can include, for example, a simple clerical error (maybe they paid \$5,600 instead of \$5,060, or doubled up on an amount in a BAS) or, with the new rules on imports, miscalculate an amount related to an importation.

Your client has four years and one day from when they lodged the activity statement to do this. This time limit is known as the period of review. However for tax periods starting before 1 July 2012, the ATO can still be persuaded to consider outstanding amounts if it can be proven that notification has previously been made about the amount.

An outstanding GST credit is any GST credit for a purchase that they're entitled to, but have yet to claim – including not claiming because they don't hold a valid tax invoice.

If a taxpayer has an outstanding GST credit for a purchase, it's generally not necessary to revise an earlier activity statement. Instead, providing they hold a valid tax invoice, they can claim the GST credit in the next activity statement lodged providing this is done within the four-year time limit.



### **When the four-year time limit begins: Cash basis**

If your client accounts for GST on a cash basis, the earliest tax period in which they can claim a GST credit for a purchase is the tax period in which they make the payment.

Example: Time limit for GST credit (cash accounting): Peter the plumber reports GST quarterly and accounts for GST on a cash basis. In May 2017, Peter pays in full for some tools.



The earliest tax period in which he can claim the GST credit for his purchase (setting aside any requirement to hold a tax invoice) is the quarterly period ending 30 June 2017. The due date of Peter's activity statement for this period is 28 July 2017. The four-year time limit for claiming the GST credit ends four years from this date (28 July 2021).

Peter needs to obtain a valid tax invoice (if he doesn't already have one) and claim the GST credit in an activity statement that he lodges by 28 July 2021. If he doesn't claim the credit by this time Peter will cease to be entitled to the credit.

Example: Payment over multiple tax periods (cash accounting): If you make the payment over multiple tax periods, the time limit applies separately to each part of the payment.

Ruberto & Co reports GST monthly and accounts for GST on a cash basis. The business buys a printer, paying for half of it on 14 April 2017 (when the order is placed) and the other half on 5 May 2017 (when the printer is delivered).

The earliest tax period in which Ruberto & Co can account for the first half of its GST credit is the April 2017 period and the earliest tax period in which it can account for the second half is the May 2017 period. The four-year time limit for the first half of the credit ends four years from the due date of Ruberto & Co's activity statement for the April 2017 tax period (that is, 21 May 2021). The four-year time limit for the second half of the credit ends four years from the due date of Ruberto & Co's activity statement for the May 2017 tax period (that is, 21 June 2021).

### **When the four-year time limit begins: Accruals basis**

If your client accounts for GST on a non-cash (accruals) basis, the earliest tax period in which they can claim a GST credit for a purchase is the first tax period in which either:



## *Gig economy danger: Hiring a “contractor” who is really an employee*



If your business client is looking to put on more staff, then by all means congratulate them. But they may also benefit from a follow-up warning.

In these days of the “gig economy”, the engagement status of workers has become an even more important distinction – whether they are employees or independent contractors – and has consequences that can get many employers into unforeseen hot water.

Sometimes contracting is necessary, for example when you require specialist skills that are not easily covered by placing a job ad. Some workers only want to be put on as a contractor, particularly where they service multiple clients. Contracting can also prove more cost efficient than employment.

However, there are dangers in engaging an individual as a “contractor” without having a proper understanding of the law. You may find that the individual is considered to be an “employee” regarding several and different legislative requirements, and this brings with it a range of legal obligations – and liabilities if you get it wrong. The ATO even encourages taxpayers to do better in a business incorrectly treating employees as contractors.

The ATO says businesses that incorrectly treat employees as contractors face penalties and charges, including:

- PAYG withholding penalty for not meeting their PAYG withholding obligations
- super guarantee charge (for not meeting their super obligations), made up of:
  - + super guarantee shortfall amounts (amount of super contributions that should have been paid into a complying fund)
  - + interest
  - + an administration fee.

There are several areas of both tax and employment legislation that can trip up employers regarding the contractor/employee divide.

### **PAYG withholding**

Naturally the ATO expects that PAYG withholding is withheld from payments to employees, and it has an online employee/contractor decision tool to determine the status of workers (there’s also a similar tool on the [business.gov.au](https://business.gov.au) site).

If you enter into an arrangement that is through a partnership, trust or company, that operates under a bona fide contracting arrangement and provides an ABN, this may mean that no PAYG amounts are required to be withheld. But this is the sticking point for many ATO decisions — whether arrangements are genuine or sham.



## Superannuation

The Superannuation Guarantee (SG) law requires that contributions are made on behalf of “employees”, which is a term that is even defined in the relevant ruling. “If a person works under a contract that is wholly or principally for the labour of the person, the person is an employee of the other party to the contract.”

This extended definition of employee means that, if you engage an individual as a contractor, you may need to pay superannuation contributions for their benefit, even if your written contract with them does not provide for this, and even if they use an ABN.

## Payroll tax

Most states and territories have provisions written into their payroll tax laws to cover the use of contractors (scroll down). These generally deem payments made to contractors to be “taxable wages” and thus subject to payroll tax — although there may be concessions and exemptions depending on the jurisdiction, so it’s best to check. This Payroll Tax Australia page has links to each state and territory legislation.

## Workers compensation

Be aware that in some jurisdictions in Australia, workers compensation legislation may require such insurance cover for workers taken on as contractors. In Queensland for example, this is required for any “worker”, the definition of which includes a contractor put on for “labour only or substantially for labour only” (this WorkCover Queensland site explains this).

