

General Insurance – Small Business Exemption – Small Business Declaration

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Purpose

This Commissioner's Practice Note provides guidance on the way a small business declaration can be made for the purposes of obtaining an exemption from duty for certain types of insurance. It also provides guidance on accepted practice for intermediaries to receive and retain the small business declaration.

Background

The NSW Government announced in the 2017-18 Budget that from **1 January 2018** small businesses will be entitled to an exemption for the following types of insurance:

- **commercial vehicle insurance:** being motor vehicle insurance for a motor vehicle¹ that is used primarily for business purposes
- **commercial aviation insurance:** being aviation insurance for an aircraft that is used primarily for business purposes
- **occupational indemnity insurance:** being insurance covering liability arising out of the provision by a person of professional services or other services (other than insurance providing medical indemnity cover within the meaning of the [Medical Indemnity Act 2002](#) of the Commonwealth)²
- **product and public liability insurance:** being insurance covering liability for personal

injury or property damage occurring in connection with a business or arising out of the products or services of a business.

To claim the exemption, a small business must provide an insurer with a small business declaration, being a declaration provided in a manner approved by the Chief Commissioner to the effect that the person is a small business at the time the contract of insurance is effected or renewed.

Definitions

- **Small Business³:**
 - a CGT small business entity (within the meaning of section 152-10 (1AA) of the Income Tax Assessment Act 1997 of the Commonwealth) for the income year in which the insurance is effected or renewed, or
 - in any other circumstances prescribed by the regulations.
- **CGT small business entity:** an individual, partnership, company or trust that:
 - is carrying on a business, and
 - has an aggregated turnover of less than \$2 million.

Aggregated turnover is your annual turnover plus the annual turnovers of any business entities that are your affiliates or are connected with you. Refer to the Australian Taxation Office for more information on CGT small business entities.
- **Motor Vehicle Insurance⁴:** Insurance covering any one or more of the following:
 - the loss (including the loss by theft) of a motor vehicle,
 - damage to a motor vehicle,
 - loss of or damage to property by a motor vehicle
- **Aviation Insurance⁵:** Insurance covering any one or more of the following:
 - the loss (including the loss by theft) of an aircraft,
 - damage to aircraft,
 - the death of or injury to a person by an aircraft or a thing falling from an aircraft,
 - the loss of or damage to property by an aircraft or thing falling from an aircraft

Commissioner's Practice Note

Small Business Declaration

To claim the exemption, a small business must provide an insurer with a small business declaration, in a manner approved by the Chief Commissioner to the effect that the person is a small business at the time the contract of insurance is effected or renewed.

For this purpose, the Chief Commissioner will accept declarations obtained by or on behalf of an insurer in any one of the following manners:

- a written declaration, whether in hard copy or contained in an email; or
- an oral declaration, as evidenced by a voice recording made using systems of or on behalf of an insurer; or
- an electronic declaration, as evidenced by any election to claim the declaration, including a check box against a statement, made using electronic systems of or on behalf of an insurer (or that interface with those systems) in respect of any new policy application or renewal notice issued by or on behalf of an insurer.

Any declaration made by a small business to an insurer is effective for the whole of the income year (within the meaning of the *Income Tax Assessment Act 1997* of the Commonwealth) of that small business. However, where a small business effects policies with various insurers, a small business declaration will need to be provided to each insurer to claim the exemption.

Insurance Intermediaries

The Chief Commissioner recognises the role that an insurance intermediary plays in the insurance process, especially for businesses.

It is accepted that an insurer may either:

- enter into arrangements with an insurance intermediary for the insurance intermediary to retain the small business declaration on behalf of the insurer. While this approach is acceptable, it is expected that the insurer will have suitable procedures in place to obtain a copy of the small business declaration when requested by the Chief Commissioner⁶; or
- receive confirmation of the declaration from an intermediary acting on behalf of a small business where the intermediary agrees with the insurer to provide a copy of the small business declaration when requested by the Chief Commissioner.

A small business declaration that is provided to an insurance intermediary is effective for the whole of the income year of that small business for all policies effected across all insurers.

Insurers are reminded that where a small business declaration has not been provided at the time the policy is effected or renewed, the policy will be liable to duty. Should a small business declaration be received after the policy is effected or renewed, an insurer will need to approach the Chief Commissioner for a refund through the normal processes.

Alternatively, the Chief Commissioner may be prepared to approve a special tax arrangement under [section 37](#) of the [Taxation Administration Act 1996](#) for any insurer who would like to be able to offset refunds on these policies against any subsequent return period.

Requests can be made by contacting [Revenue NSW](#).

Footnotes

1. [^] Being a motor vehicle within the meaning of the [Motor Accidents Compensation Act 1999](#)
2. [^] See [Practice Note Duties 002](#) for more information on medical indemnity insurance
3. [^] [Section 259A](#) of the [Duties Act 1997](#)
4. [^] [Section 233\(2A\)\(a\)](#) of the [Duties Act 1997](#)
5. [^] [Section 233\(2A\)\(b\)](#) of the [Duties Act 1997](#)
6. [^] See [Part 8](#) of the [Taxation Administration Act 1996](#) for record keeping requirements