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Client Information Newsletter - Tax & Super August 2015

Work-related expenses in the firing line

With *Tax Time 2015* in full swing, the Tax Office has flagged that it will pay particular attention to work-related expenses. It says it's an area that adds up to about $19.5 billion in tax deductions each year.



In previous years, the Tax Office has tended to focus on work-related claims made by particular professions, such as real estate agents or airline pilots for example. But this year the emphasis seems to be on certain expense claims that it deems to be "high risk" as opposed to targeting certain professions.

The Tax Office's intentions are spelled out in its recently released *Building Confidence* webpage, which replaces the previous annual *Compliance in focus* publication. The new webpage is an improvement in that it broadcasts the Tax Office's compliance concerns on a more regular basis.

The Tax Office indicates that this season it will be paying particular attention to the following work-related expenses:

- overnight travel
- expenses for transporting bulky tools and equipment between home and work, and
- the work-related proportion of use for computers, phones and other electronic devices.

Overnight travel

The Tax Office is concerned about excessive claims made for overnight travel costs such as transport, accommodation and meals. As a general rule, employees can claim a deduction for travel expenses they pay where:

- their employer requires them to perform their work

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In this month's issue:

Work-related expenses in the firing line

How to give your SMSF a boost in retirement

Not 100% ready to retire? 'Try before you buy' with a TTR strategy

Selling your business, and the "going concern" GST exemption

Why you need to disclose a business industry code for your tax return

What is a Tax Office public ruling and how can it help?

away from their usual workplace for a short period, and

- it would be unreasonable to expect them to return home each day, which means they must stay away from home while they are doing that work.

Note that as a rule of thumb, the Tax Office considers that an individual is "travelling" for work purposes (compared to "living-away-from-home") when the period away does not exceed 21 days. In some cases, the employer may provide a travel allowance to help cover the costs of such overnight travel (more on this below).

Overnight travel expenses can include costs such as meals and accommodation, parking, tolls and transport costs. Note that for car expenses, this excludes operation costs such as fuel, as well as depreciation, but these can be claimed through a different tax rule.

Importantly, all travel expenses must be actually incurred (i.e. paid) before a claim can be made and appropriately apportioned between business and private expenses.

Substantiation exception

Generally, all travel expenses must be substantiated otherwise the claim will be denied in the event of a review or audit. There is however a "substantiation exception" available under tax law for particular travel claims.

Under this exception, individuals can claim a deduction for the full amount of their overnight travel expenses without keeping all records if:

- they receive a "bona fide" travel allowance that could reasonably be expected to cover their accommodation, meals or expenses incidental to travel, and
- the overnight travel expenses are equal to or less than the reasonable allowance amount that the Tax Office sets (ask this office about how much these are).

However, there are certain rules that operate under the substantiation exception, which are set out in the table below.

Where the substantiation exception does not apply, written evidence (such as an invoice or receipt) and/or a travel diary must be maintained for work-related travel. This can include invoices, receipts or other documents showing the travel expense and travel allowance details, and receipts or other documents (such as travel diary entries) for transport costs.

A travel diary is a document that shows the dates, places, times and duration of the individual's activities and travel. Each diary entry must show the date the expense was incurred, the name of the supplier and the amount and type of expense.

A travel diary is required for tax purposes when the travel is for six nights or more in a row.

Transporting bulky tools and equipment

As a general rule, expenses incurred by an employee for travelling from their home to their workplace and back are not deductible as this is considered to be a private expense, although there are some exceptions. One of these is where an individual transports bulky tools and equipment required for their work, provided that certain requirements are met.

This would apply to individuals whose work is typically carried out off-site – for example, trade and sales people whose roles require them to travel. The Tax Office's concern is whether such expenses have been correctly claimed within established requirements.

It has set out some guidelines for such travel, including:

- a deduction is not allowable if a secure area for the storage of equipment is provided at the workplace
- if the equipment is transported to and from work by the employee as a matter of convenience or personal choice, it is considered that the transport costs are private and no deduction is allowable
- a deduction may be allowable if the transport costs can be attributed to the transportation of bulky equipment rather than merely private travel between home and work – that is, it is expected by the employer for such equipment to be transported
- the extreme bulk of the equipment is also a decisive factor in determining deductibility, or
- the requirement to incur transport expenses to carry bulky equipment is a reflection of the practical

Situation	Outcome
Where the deduction claimed is more than the reasonable amount.	The **whole claim must be substantiated** with written evidence, not just the excess over the reasonable amount.
Where the allowance received: • is not shown on the employee's payment summary • is not greater than the reasonable amount, and • it is fully expended on deductible expenses.	The allowance received is not required to be shown as assessable income in the employee's tax return. A deduction for the expense cannot be claimed in the tax return if it is not shown.
Where the allowance paid by the employer is greater than the reasonable amount.	The taxpayer may still use the substantiation exception if the claim is not greater than the reasonable amount. But the allowance must be shown as assessable income. Written evidence is not required to support the claim.
Where the deductible expense is less than the allowance received.	The taxpayer must show the allowance as assessable income in the tax return, and claim only the amount of the deductible expenses incurred.

necessity for the employee's tools of trade to be readily available at each work site.

Computers, phones and similar devices

Another issue of concern is whether individuals have correctly calculated the extent of work usage for their computer, tablet, mobile phone or other electronic device when claiming deductions.

Employees may be able to claim their expenses incurred in relation to operating their land line telephone, mobile phone, computer and tablet to the extent that its use relates directly to their employment. The same applies to individuals who are business proprietors. The cost of the device itself however is on capital account and is generally not deductible; however depreciation deductions may be available (if eligible).

For mobile phones, the cost under a standard 12 or 24 month "lock-in" contract typically contains the monthly cost of calls and data (plus any monthly phone repayments). The monthly call and data costs will need to be apportioned on a reasonable basis for work/private use. Under a typical monthly phone repayment plan, the phone is owned by the individual with interest-free monthly instalments paid for the duration of the contract. In this regard, the monthly repayments should not be immediately deductible, however the total value of repayments owed under the repayment plan should reflect the cost of the device for depreciation under the capital allowance provisions (see below).

As a general rule, the cost of phone expenses are deductible for employees who can demonstrate they are either "on call" or are required to contact their employer on a regular basis while they are away from the workplace.

According to the Tax Office, the work-related portion of telephone calls can be identified from an itemised account, or can be estimated by maintaining diary entries made over a four week period and claiming the relevant percentage of costs.

Home internet expenses are also apportioned for work/private use. Receipts or other documentary evidence of the total cost must be maintained.

The cost of connecting or installing a telephone, mobile telephone or other telecommunications equipment and expenses incurred for the early cancellation of a mobile telephone contract are not allowable deductions as they are not incurred in gaining assessable income and are of a capital nature.

Cost of the device

As noted, the cost of a computer, laptop, tablet or mobile device is not generally deductible. A deduction can be claimed over its effective life (as prescribed by the Tax Office).

However, an immediate deduction can be claimed under the following circumstances:

- a small business may be eligible to claim an immediate deduction for a computer or a device which costs less than $20,000 under the new (and temporary) immediate asset write-off rules, and
- individuals who are not conducting a business (salary and wage earners) can claim a deduction for the full cost of the device if it does not exceed $300 provided that the device is used predominantly for work purposes.

Claims should be based on a reasonable estimate of the individual's business or work-related usage. The Tax Office will accept an estimate based on a diary record of both private and work-related usage that is maintained. Receipts or other documentary expenses must be maintained to support claims.

How to give your SMSF a boost in retirement

While providing income for retirement is the obvious purpose of a pension paid from a self-managed superannuation fund (SMSF), there are some issues to consider before drawing a pension from your SMSF.

Tax rates in accumulation phase vs pension phase

The first issue to consider when starting a pension is that returns from your investments will move to a zero tax status from the concessional tax rate that super funds pay during their accumulation phase.

While in this accumulation phase, the fund's investment earnings such as interest, dividends or rental income from investment properties are taxed at 15%, and any realised capital gains will most likely be taxed at 10%. (Note that



for superannuation funds, capital gains on investments held for at least 12 months are entitled to a one-third discount, which reduces the effective tax to 10%.)

It is commonly the case that income derived by an SMSF may be used to pay a pension to one member in pension phase whilst the other members of the fund are still in accumulation phase.

In such cases, as long as the investments generating the pension stream are clearly identified and segregated from those that are still allocated to members in accumulation phase, then the super rules should allow these investments to be exempt from income tax. That is, there is neither 15% levied on investment returns, nor 10% on net capital gains.

The value of imputation credits

Most pension-paying SMSFs have shareholdings that are fully entitled to dividend imputation credits. In these circumstances, imputation credits from franked dividends and in some cases from trust distributions can be valuable for an SMSF.

In the SMSF's hands, these tax credits are used to reduce the amount of income tax payable, and if the credits exceed the total tax payable, the amount will be refunded by the Tax Office once the tax return is lodged.

This is an extra benefit for an SMSF, and results from its low (15%) or zero tax rate (depending if it is in accumulation or pension phase).

When a fund receives a fully franked dividend, the imputation credit will not only offset tax payable on the dividend itself, it may offset tax payable on the SMSF's other income (including concessional contributions) or be refunded.

One thing to remember in this scenario however is that the SMSF must have held the dividend-paying shares for at least 45 days at the time the dividend is paid in order to be eligible to claim the imputation credit, and that the fund's investment strategy document should record that it will invest in dividend paying equities.

Transition to retirement pension

If the fund member was born before July 1960, they will be able to start a pension from age 55, combined with transition to retirement (TTR) rules (see accompanying article below). This means that the member can receive a TTR income stream, which will give them the potential to enhance their pre-retirement earnings through greater tax effective investment returns.

Extra earnings may be able to be put back into super by way of concessional contributions. This can be especially valuable as an added boost for anyone who has lower amounts put away in retirement savings.

Not 100% ready to retire? 'Try before you buy' with a TTR strategy



Under the superannuation rules, there is scope to access some of your retirement savings in your super fund under an arrangement called "transition to retirement" (TTR). Under this arrangement, a super fund member can ease into retirement by reducing their working hours without reducing their income.

If you are aged between your relevant "preservation age" (see below) but are still younger than age 65, you are generally permitted to withdraw some of your super money each financial year and place it in an account that gives you regular payments, called an "income stream", to supplement your other income (such as from part-time work).

Preservation age depends on when you were born, and ranges from age 55 if you were born before July 1960, increasing by a year until reaching age 60 if you were born after July 1964.

A TTR income stream allows you access to some superannuation benefits without having to retire or leave your job completely. This of course depends on your personal circumstances. Under this arrangement you are still be able to "draw down" regular payments from your super fund, however these payments are "non-commutable", which means it cannot be withdrawn as a lump sum.

A self-managed superannuation fund (SMSF) can pay a TTR income stream provided its trust deed allows it. Also, once such an income stream is commenced, the proportion of fund assets that support the income stream attracts no tax.

The super law provides that for an SMSF, TTR income streams must satisfy the following requirements:

- it must be an "account-based" income stream, which means an account balance must be attributable to the recipient of the income stream
- the payment of a minimum annual amount must be at least 4% of the account balance
- total payments made in a financial year must be no more than 10% of the account balance at the start of each year; this is the maximum amount of income stream benefits that can be drawn down each year
- the income stream is non-commutable
- the income stream can be transferred only on the death of the member to one of their dependants, or cashed as a lump sum to a dependant or the member's estate, and

- the capital value of the income stream and the income from it cannot be used as security for borrowing.

Note also that TTR plans are not available to members of defined benefit super funds.

Other considerations

Other issues for consideration under a TTR plan include:

Work and pension — If you are receiving a TTR income stream and are continuing to work, your fund (SMSFs included) may also be receiving contributions such as superannuation guarantee payments on your behalf. There must be two accounts to make this arrangement work – one for paying the TTR and the other for receiving contributions.

Allowing a lump sum — While no lump sum payments are allowed while receiving a TTR income stream (as it is non-commutable), once a member decides to retire or turns age 65, the income stream converts to a normal account-based pension and the member can then take out a lump sum as required.

Pension changes tax take — Once a TTR has been started, the income from that portion of the super fund's balance generally attracts no tax. With an SMSF, for example, if there are two or more members of the SMSF and only one has taken a pension (that is, the other members are still in accumulation phase), then only the portion of the fund's assets that is attributable to the pension-drawing member escapes paying tax.

Check your insurance cover — If you have arranged to have life insurance cover through your superannuation fund, check with the fund to make sure your life cover does not reduce or even cease.

Please contact us for help regarding any of the above matters.

Selling your business and the GST "going concern" exemption



The concept of the "going concern" exemption for GST purposes can still cause confusion when businesses are sold, despite the fact this exemption has been in place for many years. A "going concern" refers to an enterprise's ability to continue trading, with the sale of that business generally eligible to be GST-free if the enterprise is deemed as such.

Broadly speaking, the GST law states that a "supply of a going concern" occurs when:

- a business is sold, and that sale includes **all** of the **things** that are **necessary** for the business to continue operating, and
- the business is carried on, "up until the day of sale".

The GST exemption has its advantages — a purchaser of a business does not have to find extra funds to cover an additional amount to cover GST, which would be added to the agreed purchase price. Further, if they are registered for GST they would typically be entitled to claim an input tax credit, which in some cases cannot happen until some time after the completion of the transaction.

The exposure is therefore on the vendor not the purchaser. Some vendors seek to mitigate risk related to the business by including a clause in the sale contract. This requires the purchaser to indemnify the vendor for any GST that may be payable in the event that the Tax Office does not view the transaction to be a supply of a going concern for GST purposes.

What are the requirements for the exemption?

Business owners may be aware of the existence of a GST exemption for the sale of a going concern but not completely understand the way it operates.

The GST legislation states that the sale of a going concern will be GST-free if:

- the sale is "for consideration"
- the purchaser "is registered, or required to be registered" for GST, and
- "the supplier and the recipient have agreed, in writing, that the supply is of a going concern".

The sale of business contract will usually specify that the business being sold (that is, the "supply") is a going concern when the contracts are exchanged. This is critical, because it shows that all parties to the sale acknowledge that the transfer is a supply of a going concern.

As noted, the vendor is required to supply "all of the things that are necessary" for the continued operation of the enterprise. This does not mean everything that is owned by the business. It does, however, mean those things are neceessary for the enterprise to function in the hands of the new owner. Generally, this includes the necessary assets such as premises, plant and equipment, and customer contracts. It may also include arrangements such as ongoing advertising. Working out whether this condition is satisfied can be complex – speak to this office for assistance.

The legislation requires the vendor to carry on the business "up until the day of sale", with the business deemed to be transferred on the date on which "effective control and possession" of the business is handed over to the buyer. While this date generally refers to the settlement date, it is also possible for the "day of sale" to occur before or after the settlement date.

Why you need to disclose a business industry code for your tax return



The Tax Office has re-released its business industry code (BIC) tool to help small businesses speed up their tax return lodgement.

The BIC is a five-digit number required for tax returns and schedules. Using the correct code helps businesses avoid delays by ensuring their return is lodged in the correct category. It is derived from the Australian and New Zealand Standard Industrial Classification (ANZSIC) codes.

The BIC provides information, advice, and a comparison framework against specific small business benchmarks. "Being inside the benchmarks means you're less likely to be contacted by us," the Tax Office says on its website.

Individuals with more than one business can indicate on their tax return they are operating multiple entities, but the code will apply to the activity from which the businesses derived the "highest gross income or incurred the smallest loss".

Businesses looking for their BIC can search by business description. According to the Tax Office, it works as follows: *You can try typing in an exact description of your main business activity. For example, if you type 'Poultry meat packing' into the search box and select 'search', you will get the BIC '11120'.*

If you don't know the exact description of your main business activity or you are presented with an error message, try typing in a single key word that best describes your primary business activity.

For example, if the business is abalone fishing, search under the keyword 'abalone' to find BIC '04191'.

Businesses can also search by inputting full or partial ANZSIC or BIC codes. The business codes shown in the tax return can be used by the Tax Office to undertake sophisticated benchmarking and data matching.

For example, if you run a cafe, the Tax Office will be able to collate financial information, such as profit and loss and balance sheet information from your tax return, and assess this against other businesses in this industry.

Please discuss with us the impact benchmarking may have with your business.

What is a Tax Office public ruling and how can it help?



The Tax Office can issue public rulings that provide guidance on the interpretation of various tax laws.

Public rulings generally deal with priority issues that have been found to require clarification, so if you have a concern about a particular area of tax law, you may find that many of your concerns are shared by others and may have already been addressed.

Public rulings provide taxpayers with certainty and protection if they follow the ruling as it applies to them. However, taxpayers who ignore public rulings may face severe penalties and interest.

Note that public rulings are binding on the Commissioner of Taxation (the Commissioner). They may offer some protection against having to pay a tax shortfall in the event that the ruling is found to be incorrect if the taxpayer relies on it.

The Commissioner may exercise his discretion about imposing a penalty on top of a tax shortfall where the taxpayer has drawn upon and relied on incorrect information contained in other publications. However, where these booklets and pamphlets are not classed as a "binding ruling", a tax shortfall resulting from a taxpayer relying on it when it may be incorrect would still need to be paid.

Type of public rulings

Public rulings can sometimes include:

- tax determinations and tax rulings
- tax return instructions
- information booklets
- Tax Office media releases, and
- speeches or statements by senior officers of the Tax Office, which must state that it or selected parts of it constitute a public ruling.

Public rulings can cover a number of taxes, which may include any of the following:

- income tax
- Medicare levy
- fringe benefits tax (FBT)
- withholding taxes
- petroleum resource rent tax
- indirect taxes – including goods and services tax (GST), wine tax and luxury car tax
- excise duty
- the administration or collection of the above taxes, levies and duties
- a net fuel amount, or the administration, collection or payment of a net fuel amount
- a net amount or the administration, collection or payment of a net amount; and
- a wine tax credit, or the administration or payment of a wine tax credit.

Rulings are treated as binding public rulings when they are made available to the public and they explicitly state that they are public rulings.

Date of effect of a public ruling

Public rulings state the Tax Office's interpretation of tax laws and is taken to have always applied unless:

- the ruling states that it applies only after a particular date, or
- the Tax Office feels it is unfair to disturb arrangements existing before that ruling.

What happens if you disregard a public ruling?

There is no compulsion on a taxpayer to follow a public ruling. However, if a taxpayer is subject to a tax shortfall penalty, a public ruling is a relevant authority in determining whether the taxpayer has a reasonably arguable position and if reasonable care was exercised. If there is a tax

shortfall because a ruling was not followed, penalties can be imposed unless the taxpayer can demonstrate reasonable care was taken and they had a reasonably arguable position.

If in doubt, it would be prudent to follow the public ruling and then lodge an objection against the assessment or seek a private ruling (see below). By using either of these two approaches, the taxpayer protects their rights and avoids the possibilities of tax shortfall penalties.

What happens when a ruling is withdrawn?

In the case of withdrawal of part of a public ruling, the portion which was not withdrawn continues to hold effect for both past and future arrangements. For any arrangement that started before the withdrawal, the former ruling will apply – provided it is favourable to the taxpayer.

For example, a public ruling dealing with expenditure incurred by an employer-sponsored super fund says deductions are allowed if the expenses are incurred on behalf of the fund by trustees of the super fund or the sponsoring employee. A further public ruling is issued, withdrawing the previous ruling as it affects trustees. In that case, the earlier ruling continues to apply to expenditure incurred by sponsoring employers.

What is the difference between a tax ruling and a tax determination?

A tax determination (TD) is a type of ruling regarding a very specific point of law and has the same status as a public binding ruling.

The difference between a TD and a public ruling is that a TD deals with single issues whereas a public ruling looks at all of the tax implications that might be involved in an arrangement or transaction. Many times a TD is a result of a specific decision in case law. For example, a TD might deal with the assessability of a particular receipt to advise whether it is income under ordinary concepts. A public ruling, on the other hand, may discuss the assessability of the receipt in a much broader context.

Do online brochures and information booklets from the Tax Office constitute a public ruling?

As a general rule, a published booklet or other information issued (particularly online) does not become binding on the Commissioner unless the document or information specifically states that it is a public ruling.

What if my tax position is still unclear? Can a private binding ruling from the ATO help?

If there are no public rulings available which specifically deal with or provide guidance on your situation, it may be worth applying to the Commissioner for a private binding ruling.

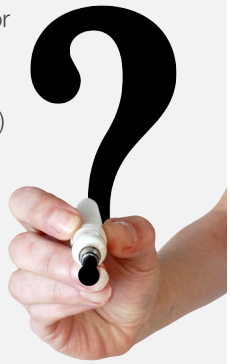
A private ruling is a written ruling from the Commissioner which considers how the tax law applies or would apply to the taxpayer in relation to a particular arrangement. For example, a taxpayer may seek the Commissioner's position on whether the sale of real estate is on capital or revenue account.

The Commissioner is legally bound to adhere to a private ruling if the taxpayer relies on it – the taxpayer however is not legally obliged to act in accordance with the ruling and can take another position available under tax law. In this regard, a private binding ruling would give the taxpayer certainty as to the position that the ATO would take.

For this and any other questions regarding rulings issued by the Tax Office, please contact us.

Did you know...

Is interest on compensation and damages payments taxable?



According to the Tax Office, pre-judgement interest received as part of a lump sum payment for personal injury is generally not assessable because it is a capital receipt. Post-judgement interest however can be assessable.

Pre-judgement interest is calculated from the date the cause of action (for example the accident) occurred until the date the judgement is made.

A judgement is taken to be finalised when the final judgement takes effect. The final judgement takes effect after any appeals (or after the appeal period expires if there are no appeals) or when any appeal is settled or discontinued.

In non-personal injury cases, pre-judgement interest is assessable provided there is an identifiable amount on which the interest is paid. If the amount paid is an undissected amount (which comprises both capital and income components) then any interest is treated as amounts of capital and not as interest of an income nature.

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