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Client Information Newsletter - Tax & Super March 2020



Photo by Oliver Sjöström on Unsplash

ATO dusts off the "lifestyle asset" microscope

If you own a marine vessel, perhaps a thoroughbred horse or two, have a piece of fine art hanging on a wall, high value motor vehicles in the garage or an aircraft in the shed, it could be time to make sure your tax affairs are in order.

The ATO announced in the latter part of last year that it will be requesting a further five years' worth of policy information from more than 30 insurance companies (see which ones below) about taxpayers who own what it dubs "lifestyle assets" such as mentioned above.

Insurers have been asked to provide the ATO with policy details over certain asset value thresholds as part of the revenue agency's efforts to ensure taxpayers are fulfilling their tax and super reporting obligations.

This could be the case where the value of assets is equal to or exceeds the thresholds shown on the following page.

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Contact Us

Welcome to Collison Accounting's client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us.

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ATO dusts off the "lifestyle asset" microscope ***cont***

The ATO expects to receive information about assets owned by around 350,000 taxpayers covering information from 2015-16 to 2019-20 as part of its "Lifestyle assets data-matching program". It says information provided by insurers will be used as part of compliance profiling activities.

As the ATO stated when announcing the program: "If a taxpayer is reporting a taxable income of $70,000 to us but we know they own a three million dollar yacht, then this is likely to raise some red flags."

It emphasised that the data will not be used to initiate automated compliance activity, and will follow strict protocols that are in place. "Taxpayers selected for compliance activities are identified through other methodologies. The data is made available to our compliance teams to support their risk profiling of the selected taxpayers," the ATO said. "Existence of an insurance policy may or may not prompt the compliance officer to pursue a particular line of inquiry".

Aside from helping identify taxpayers who may be under-stating their income, the data from insurers may be used by the ATO to identify taxpayers who have made capital gains on the disposal of certain assets but who have not declared this to the ATO.

The data will also be used by the ATO as part of its risk profiling activity to identify incorrect goods and services tax (GST) input tax credits where taxpayers are purchasing the assets for purely personal reasons and claiming GST credits as if the item were a business asset.

SMSFs that the ATO suspects may be acquiring lifestyle assets purely for personal enjoyment of the fund's trustee or beneficiaries are also likely to be looked at by the ATO.

Data will be obtained from the following insurers: AAMI, AIG, Allianz, Apia, Bingle, CGU Insurance, Chubb Insurance, Club Marine, Coles Insurance, CommInsure, GIO, Insuremyride, Just Car Insurance, Lumley, Nautilus Marine, NRMA, QBE, RAA Insurance, RACQ, RACV, RAC Insurance, Resilium, SGIC, SGIO, Shannons, Suncorp, Swann Insurance, Vero, WFI, Youi, Zurich Australian Insurance.■

Asset value threshold triggers



Marine vessels:
$100,000



Fine art (per item):
$100,000



Thoroughbred horses:
$65,000



Aircraft:
$150,000



Motor vehicles:
$65,000

Limited options to access your super early



There are very limited circumstances when you can access your superannuation savings earlier than when you meet what the ATO calls a "condition of release" — which for most people generally means achieving a certain age and retiring.

The other limited circumstances mainly relate to specific medical conditions, severe financial hardship or on compassionate grounds. Also you need to be aware that the ATO is very concerned about "promoters" operating that claim to offer early access to your super in order to, say, pay off a credit card debt, buy a house or car, or go on the holiday-of-a-lifetime. Such schemes are illegal and can attract heavy penalties if you participate.

If however you find yourself in circumstances that reflect what is spelt out below, it could be possible to get access to your super savings. Note that very strict rules apply, and the outcome is generally never assured.

ACCESS DUE TO SEVERE FINANCIAL HARDSHIP

You may be able to withdraw some of your super if you have received eligible government income support payments continuously for 26 weeks and are unable to meet reasonable and immediate family living expenses.

The minimum amount that can be paid is $1,000 (unless your super balance is less than $1,000) and the maximum amount is $10,000. You can only make one withdrawal from your super fund because of severe financial hardship in any 12-month period.

A super withdrawal due to severe financial hardship is paid and taxed as a super lump sum. There are no cashing restrictions under severe financial hardship if you have reached your preservation age plus 39 weeks and you were not gainfully employed on a full-time or part-time basis at the time of application.

ACCESS ON COMPASSIONATE GROUNDS

You may be allowed to withdraw some of your super on compassionate grounds for unpaid expenses. Examples of these types of expenses include:

- paying for medical treatment for you or a dependant
- making a payment on a loan to prevent you from losing your house
- modifying your home or vehicle for the special needs of you or a dependant because of a severe disability
- paying for expenses associated with a death, funeral or burial of a dependant.

The amount of super you can withdraw is limited to what you reasonably need. If you have already paid the expense using a loan, a credit card or money borrowed from family or friends, you do not meet the eligibility requirements. Generally you will need to show that you can't afford to pay the expenses without accessing your super (eg you can't get a loan or use savings).

The amount is paid and taxed as a normal super lump sum. The tax rates depend upon various factors including age and the components of the super lump sum. Your super provider will automatically deduct the tax from your super account.

ACCESS DUE TO TEMPORARY INCAPACITY

You may be able to access your super if you are temporarily unable to work or need to work less hours

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Limited options to access your super early ***cont***

because of a physical or mental medical condition. This option is generally used to release insurance benefits from a super fund.

Any such payout from a super fund is made in regular payments (income stream) over the time you are unable to work. A super withdrawal due to temporary incapacity is taxed as a normal super income stream.

ACCESS DUE TO PERMANENT INCAPACITY

You may be able to access your super if you are permanently incapacitated. This type of super withdrawal is sometimes called a "disability super benefit". Your fund must be satisfied that you have a permanent physical or mental medical condition that is likely to stop you from ever working again in a job you were qualified to do by education, training or experience.

At least two medical practitioners must certify this for you to receive concessional tax treatment.

You can receive the super as either a lump sum or as regular payments (income stream). A super withdrawal due to permanent incapacity is subject to different tax components.

ACCESS DUE TO TERMINAL MEDICAL CONDITION

You may be able to access your super if you have a terminal medical condition. This will generally be accepted as existing if:

- two registered medical practitioners have certified, jointly or separately, that you suffer from an illness, or have an injury, that is likely to result in death within a period (certification period) that ends no more than 24 months after the date of the certification
- at least one of the registered medical practitioners is a specialist practising in an area related to your illness or injury
- the certification period for each of the certificates has not ended.

Super funds are required to make these payments as a lump sum, which is tax-free if you withdraw it within 24 months of certification.

If your fund does not allow access due to a terminal medical condition, you may be able to move your super to a different fund.

If you are suffering from a terminal medical condition and you have a super credit balance held by the ATO, you can either ask your fund to claim this on your behalf, or you can claim it directly from the ATO yourself.

SUPER LESS THAN $200

You may be able to access your super if your employment is terminated and the balance of your super account is less than $200, or if you have formerly lost super held by a super fund or by the ATO that is less than $200. No tax is payable when accessing super accounts with a balance less than $200.■

SMSF statistics: some highlights

598,582 **Number of SMSFs**

Total SMSF estimated assets **$746 billion**

Number of SMSF members **1,124,699**

The top asset types held by SMSFs (by value) are

- listed shares (31% of total estimated SMSF assets)
- cash and term deposits (21%)

From: ATO's SMSF Statistical Report, Sept 2019

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.

Damage or destruction of a rental property

What happens if your property is damaged from the results of a natural disaster, or by tenants? Such a situation can affect the types of expenses you claim and the income you need to declare for your rental property.

Declaring income

If you receive a payout for damage to your rental property as a result of a disaster, you may need to include this amount as income on your tax return. This includes:

- insurance payout for loss of rental income
- insurance payout for repairs
- insurance payout for replacements (even if they are capital assets)
- money received from a relief fund.

Note however that money provided for immediate or urgent repairs may be exempt – the ATO has a free helpline to check (1800 806 218). If you receive a one-off payment as assistance from a charity or community group or even from a government arm, these are generally tax-free, as well as gifts from friends and/or family.

If your rental property is damaged or destroyed by a natural disaster, you may still be able to claim deductions for holding costs of the vacant land.

Where you rented it out, or it was available for rent prior to the natural disaster, taxpayers can generally claim a deduction under the "exceptional circumstances" exemption. If the exemption applies to your circumstances, you can continue to claim deductions for three years from when the disaster occurred. This period can be extended if required by applying to the ATO.

Claiming deductions for repairs

Generally repairs must relate directly to wear and tear or other damage that occurred as a result of you renting out the property. Examples of repairs include but are not limited to:

- replacing broken windows
- replacing part of a fence damaged by a bushfire
- replacing the plasterboard in a wall damaged by flood inundation
- repairing electrical appliances or machinery.

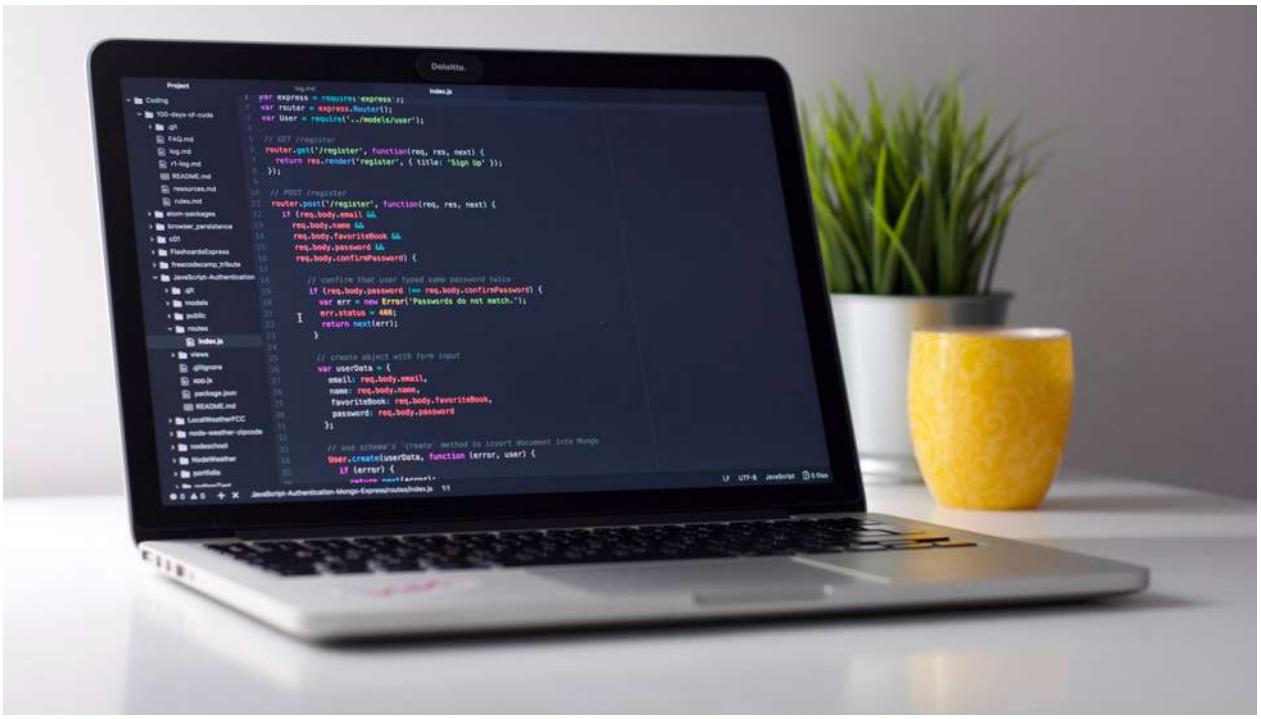
Substantial changes, including improvement, modernisation, making additions or the replacement of an entire structure is not considered to be a repair.

Deduction for unoccupied property repairs

The ATO has used an example before of a rental property that was tenanted when it was severely damaged by a cyclone. Due to the damage, the tenants had to move out. The owner carried out repairs and then advertised the property for rent. Even though the property was not available for rent while being repaired, the owner was able to claim his repairs.

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Security online:
More important than ever

Communication over an online channel has certainly become the default these days, and dealing with the ATO is no exception. In fact the transition to online has plainly been developing over some years.

More and more transactions and interactions are taking place, for example, over the government's initiative myGov — not just the ATO, but Medicare, Centrelink, JobSearch, Veterans' Affairs and many more. Even the way tax and super professionals deal with the various regulatory bodies is changing — using a more secure channel called myGovID.

However most of us realise that hand-in-hand with the ease and benefits of online transactions comes the very real danger of scammers and criminals. And although the ATO and the government has very efficient security measures and software to ensure the privacy of your personal information, data and transactions, a huge part of your ongoing protection relies on the end user.

As a taxpayer, you play a big part in the ongoing protection of your personal information, and making sure it's safe when you interact with anyone online. With emails, text messages or social media posts for example, always be cautious if downloading attachments or clicking a link — even if these appear to be from a legitimate source.

Online services and tools provided by the ATO, for example, should always be accessed via the official website ato.gov.au or through my.gov.au, and not via a link hosted on another site. If there's any question about the legitimacy of an ATO notification, it may be a better option to go directly to the myGov homepage and sign in to check your own inbox for messages.

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Damage or destruction of a rental property ***cont***

Capital expenditure which may be claimable over time

Capital allowances: For each asset where you may claim a deduction for decline in value (depreciation) you can choose to use either the effective life the ATO has determined for such assets or your own reasonable estimate of its effective life (although where you estimate an asset's effective life, you must keep records to show how you worked it out).

Depreciating assets: Depreciable assets are those items that can be described as "plant", which do not form part of the premises. They are usually not part of the main structure, and not likely to be permanent and expected to be replaced within a relatively short period.

Examples of depreciable assets include carpets, curtains, appliances (such as a dishwasher or fridge), and furniture. If you replace a depreciating asset costing up to $300 you can generally claim an immediate deduction. Note that a deduction is only available for new assets, and not for second-hand assets.

Capital works: Capital works is used to describe certain kinds of construction expenditure used to produce income. Examples include but are not limited to:

- building construction costs
- cost of altering a building
- major renovations to a room
- adding a fence.

The rate of deduction for these expenses is 2.5% per year for 40 years following the completion of the construction.

Capital gains tax implications

If an insurance payout is made on a home used for income-producing purposes, it may need to be taken into account for capital gains tax purposes.

If you rebuild or replace your rental property, you may be entitled to roll over any capital gain you make. For the rollover to apply you must have incurred some of the expenditure to acquire another property within one year after the end of the income year the property was destroyed.

However where your rental property is destroyed and you do not rebuild, you will need to calculate your capital gain or loss. Any insurance payout received will be counted as capital proceeds when calculating your gain or loss. Where you don't receive any payouts the market value substitution rule does not apply and generally you can claim a capital loss.

Otherwise a capital gain will arise if the insurance payout is more that the asset's cost base. A capital loss will arise if the insurance payout is less that the asset's reduced cost base.

Note that calculating the cost base of a destroyed building on land can be complex. ■

Security online: More important than ever ***cont***

Of course you should never share your tax file number (TFN), passwords, bank account details or other sensitive information — even to prospective employers. Some other recommended security steps you can consider include:

- Use multi-factor authentication where possible (using SMS codes as your sign-in option for myGov is a quick and secure way to access ATO online services)
- Only engage with verified ATO pages on social media, and never share information on these platforms
- Back-up your data on an external hard drive or use cloud-based back-up (and don't just leave back-up devices continuously connected to the main unit)
- Disable remote access software until it's needed
- Keep software up-to-date, including security updates and running regular anti-virus scans.

THE PROCESSES THE ATO USES

For its part, the ATO has steps in place to make sure taxpayer data is kept safe. Part of its process in doing this is to:

- Confirm your details when you contact the ATO
- Logging access to your personal information so that it can identify any unusual behaviour.

The ATO will not:

- ask you for your TFN or bank details via return email, SMS, or on social media
- provide your personal information to anyone without your consent, unless the law permits it to do so
- communicate with you on behalf of another government agency or ask another government agency to represent the ATO.■

Selling taxable Australian property
Need a clearance certificate from the ATO?



Photo by Tierra Mallorca on Unsplash

If an Australian resident is considering selling property, they should apply for an ATO clearance certificate. If a property vendor does not apply for a clearance certificate and present it to the purchaser, the purchaser is required to withhold 12.5% of the purchase price for CGT purposes on properties that have a market value of $750,000 or more.

The legislation, which applies from 1 July 2017, aims to make sure foreign resident property vendors meet any capital gains tax obligations. So to a large degree the certificate documents that the vendor is not a relevant foreign resident.

The withholding obligation is in regard to "taxable Australian real property", or an indirect Australian real property interest that provides company title interests, with a market value of $750,000 and above, unless the seller provides a clearance certificate from the ATO.

A clearance certificate is valid for 12 months from the date issued, so the vendor may be able to use it for multiple disposals of real property or indirect Australian real property company title interests that occur within that period. The vendor does not have to reapply for a clearance certificate each time they dispose of a property, as long as the clearance certificate is valid.

Market value

In many if not most cases, the ATO accepts that the market value of a property will be the purchase price. Where the purchase price has been negotiated between the vendor and purchaser, acting at arm's length, the ATO will accept the purchase price as a proxy for market value.

There could however be circumstances where the market value is different to the stated purchase price (for example, where the vendor and purchaser are related parties and did not deal with each other at arm's length). In such cases, the ATO may not accept the purchase price as a proxy for market value and the purchaser will need to seek a separate expert evaluation.

Note that if the purchase price is used as a proxy for market value, the market value is the purchase price before adjustment for any disbursements at settlement (eg, council rates, water and sewer charges and strata levies). Therefore, the $750,000 threshold test is applied to the purchase price before adjustment for disbursements.

The paper trail

Taxpayers selling property should complete and lodge the form with the ATO as early as possible — in a lot of instances it can take 28 days to process. The certificate should be provided to the purchaser on or before the day of settlement to ensure no withholding takes place.

Note that each vendor should lodge their own application, as there is no provision to allow for the lodgement of joint applications. All parties on the certificate of title will require a clearance certificate. For example, joint tenants or tenants in common will need to fill out a form each. It is the vendor's responsibility to provide the purchaser with the clearance certificate and ensure it's valid.

Once a certificate is lodged, the ATO says it cannot speed up the process time as it generally processes requests based on the time they are received. After processing an application, the ATO will notify you of the outcome and contact you for more information if required. Note that the ATO has the discretion to withdraw a clearance certificate at any time if it obtains further information to indicate that the seller is indeed a foreign resident. No withholding, and therefore no clearance certificate, is required for property acquired from a deceased estate.

If you have an upcoming settlement, lodge your application today or ask for our help.■