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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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CGT when spouses have different main residences

It can sometimes be the case that spouses can have different main residences at the same time. When this occurs, special CGT rules apply to in effect provide only one CGT main residence exemption over this period. However, important decisions and choices may need to be made to optimise the tax outcome in this case (or avoid an adverse outcome).

While in most cases spouses will have a single main residence in which they live together, there may be times when they are separated, for example due to work commitments, where they have two different main residences over the same period.

Where this is the case, the spouses have a choice of two options:

1. choose one of the dwellings as the main residence for both spouses for that period, or
2. nominate the different homes as each individual spouse's main residence for that period.

continued overleaf ⇨

CGT when spouses have different main residences *cont*

HOW OPTION 2 WORKS

Where option 2 is chosen, the application of the main residence exemption is determined as follows:

- where a spouse's interest in the nominated dwelling is 50% or less, the nominating spouse will be entitled to an exemption on that interest for the whole period where the spouses have different homes
- where the relevant interest is greater than 50%, the nominating spouse will only be entitled to an exemption in respect of that interest for half the period where the spouses have different homes.

Put simply, the spouse will either get half an exemption for the full period or a full exemption for half the period.

The same rules apply to their spouse. Namely, if they own 50% or less of the home they have nominated, they qualify for an exemption for their share. However where their spouse owns more than 50% of the home, their share is exempt but for only half the period where the spouses have different homes.

As a result, the upshot will be that the partial exemption CGT rules will apply to reflect the period that each spouse's interest in the respective homes did, or did not, qualify as their "CGT main residence" over their period of ownership of their interest in the homes.

See "How the rules can play out" below.

OTHER THINGS TO NOTE

Other things to note about the application of the rule for spouses with different main residences at the same time include the following:

- a spouse need not have an interest in a dwelling nominated by both spouses as their main residence
- where spouses own a pre-CGT main residence, there is nothing to prevent them from nominating a post-CGT main residence as their main residence to preserve the exemption on both main residences
- a nomination can be made in respect of a residence which is treated as a main residence by way of the "absence concession" being applied to it, and
- the choice made by the spouses is evidenced by the way the spouses complete their relevant tax returns (ie a nomination does not need to be lodged with the ATO).

Finally, and crucially for these purposes, a "spouse" includes another person of any sex who an individual was either married to or where they lived with on a "genuine domestic basis" in a relationship as a couple, even if they are not legally married — so the rule applies to de-facto relationships also.

However this raises the often difficult issue of determining if, in fact, a "de-facto relationship" exists between the parties — and furthermore when such a relationship began (or ended) for the purposes of the application of this rule. ■



HOW THE RULES CAN PLAY OUT

Karl and Kerry jointly own a house in Brisbane that they purchased in 2005. They lived in the house together as their main residence up until November 2016. At this time, they purchase a $700,000 townhouse in Melbourne where Karl was transferred to for three years by his employer in order to set up a new branch of the business. Karl has an 80% ownership interest in the townhouse and Kerry a 20% interest.

At the end of the three-year period in November 2019, Karl moves back to Brisbane and the Melbourne townhouse is sold for $740,000.

For the three-year period when they lived apart, Karl nominates the townhouse as his main residence while Kerry nominates the home in Brisbane.

According to the tax rules, because he owned more than 50% of the townhouse, Karl will treat his interest in the townhouse as his main residence for half the period that they lived apart (one and a half years of the three-year period).

For Kerry, because her interest in the Brisbane property was 50% or less, she will treat her interest in the Brisbane property as her main residence for the three-year period that they lived apart.

The result will be that the partial exemption rules will apply to reflect the period that Karl's and Kerry's interest in the homes did not qualify as their "CGT main residence" over their period of ownership of these interests.



The SMSF sector is growing by $23,200 every minute

The latest statistical report from APRA has been released (here's a link to download it — https://bit.ly/2ooF3EJ), which of course mainly focuses on the APRA-regulated superannuation funds in the retail and industry sectors.

Photo by Samuel Zeller on Unsplash

But the APRA statistics also make passing mention of ATO-regulated funds, the SMSF sector, which from June 2018 to June 2019 grew in total assets from $735.4 billion to $747.6 billion — an increase of $12.2 billion. For a bit of fun, you can think of that equalling roughly $33.4 million each day, $1.4 million each hour, or $23,200 every minute.

The number of SMSFs over that period grew from 581,853 to 599,678 — a jump of 17,825 funds (an establishment rate of just shy of 50 new funds every day).

The overall total of superannuation assets to the end of June 2019 was $2.87 trillion, an increase of 6.1% over the year.

Of APRA-regulated funds, the statistics show that industry funds grew in assets by 13.8% over the year to June 2019, with the retail sector recording an increase of 0.51%. That trend was shown by the prudential regulator to be particularly emphasised over the last three months of the income year, with the industry fund share of assets increasing 6% compared to a retail funds growth of 0.36%.

A year ago, APRA's statistics had industry and retail funds much closer in terms of their control over the proportion of total retirement saving assets, with industry funds holding 23.4% and retail 23%. The 2018-19 results show those figures now standing at 25% and 21.8%.

Investments of APRA-regulated funds over the year showed 50.9% invested in shares (24.4% in international listed equities, 22.4% Australian equities, and 4% in unlisted). Fixed income accounted for 21.6% of investment, with cash at 9.8%. ■

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Photo by Heather Gill on Unsplash

Fictions (and facts) about work expense deductions

There can be varied sources for some of the myths about tax deductions —pub-talk, BBQ-banter, hairdresser-homilies, what-your-taxi-driver-just-heard and many others. We sort out fact from fiction.

This year's tax time saw media reports about various outlandish tax claims — for example the ATO being faced with claims for dental expenses, gambling losses, Lego sets, sunscreen (and an umbrella) for cigarette breaks, and even the cost of a wedding reception (all rejected, by the way).

How certain myths are started about what can or can't be claimed on tax is anyone's guess, but it is these snippets of misinformation about allowable tax deductions that can lead unaware taxpayers to make incorrect claims — and get the taxman's attention. Here are some of the most common.

Fiction: Everyone can automatically claim $150 for clothing and laundry, 5,000km under the cents per kilometre method for car expenses, or $300 for work-related expenses, even if they didn't spend the money.

Fact: There is no such thing as an "automatic" or "standard deduction". Substantiation exceptions provide relief from the need to keep receipts in certain circumstances. While you don't need receipts for claims under $300 for work-related expenses, $150 for laundry expenses (note: this is for laundry expenses only and does not include clothing expenses) or if you are claiming 5,000km or less for car expenses under the cents per kilometre method, you still must have spent the money, it must be related to earning your income, and you must be able to explain how you calculated your claim.

Fiction: I don't need a receipt, I can just use my bank or credit card statement.

Fact: To claim a tax deduction you need to be able to show that you spent the money, what you spent it on, who the supplier was, and when you paid. Bank or credit card statements alone don't have this information. The only time you don't need these details is if substantiation exceptions apply.

Fiction: I can claim makeup that contains sunscreen if I work outside.

Fact: We all like to look good, but cosmetics are usually a private expense and the addition of sun protection does not make it deductible. It may however be deductible if the primary purpose of the product is protection from sun damage (that is, it has a high SPF rating), and that the cosmetic component is incidental, and you need to work outdoors in the sun.

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An FBT reporting exclusion for personal security concerns

The ATO has plans in place that it can put into operation to relieve certain employers from reporting all the fringe benefits they provide to staff. The measure however is only triggered where it can be shown that employees' personal safety is at risk or under threat.

Note that the term "security concerns" in relation to the personal security of an employee also takes in associates of that employee (for example, a relative). Such concerns may arise from (but are not restricted to) threats of death, assault, kidnapping or serious bodily harm.

Providing benefits in the form of personal security measures to protect an employee and their family at their home is considered to be a taxable fringe benefit. Relevant measures can include, but may not be limited to:

- residential burglar alarms
- personal protective equipment
- protective modifications to a car
- drive-by security patrols
- body guards.

It is generally the case that if the total taxable value of certain fringe benefits provided to an individual employee in an FBT year (1 April to 31 March) exceeds $2,000, an employer must record the grossed-up taxable value of those benefits in their employee's income statement (payment summary) for the relevant income year.

However, subject to certain conditions, a fringe benefit provided to address security concerns relating to the personal safety of an employee (or associate) may be an excluded fringe benefit. This means the employer:

- ***is not required*** by the ATO to report these fringe benefits on income statements, but
- ***is required*** to pay FBT on the taxable value of the benefits provided.

For the reporting exclusion to apply, the ATO requires that:

- the benefit must address a security concern that relates to the personal safety of an employee (but not their property)

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An FBT reporting exclusion for personal security concerns *cont*



- it is in respect of their employment
- the benefit provided is consistent with a threat assessment made by a person recognised as competent to make such assessments (more below).

Security concerns may also arise even though there are no demonstrated threats by identified individuals. The ATO accepts, for example, that concerns may arise due to the nature of an employee's responsibilities and operational duties, or the contacts an employee makes in the course of these duties.

Threat assessments must be provided by a person who is recognised as being competent to do so by a relevant accrediting industry group or government body. But note that in the absence of a relevant industry or government body, the Commissioner of Taxation has the discretion to recognise a person as capable of carrying out threat assessments.

Employers seeking to have the ATO exercise this discretion must make the request in writing and should include the full name, qualifications and experience of the person seeking to make the threat assessment. ■

Fictions (and facts) about work expense deductions *cont*

Fiction: I can claim my gym membership because I need to be fit for work.

Fact: While you might like to keep fit, there are only a very small number of people who can claim gym memberships, such as special operations personnel in the Australian Defence Force. To be eligible, your job would have to depend on you maintaining a very high level of fitness, for which you are regularly tested.

Fiction: I can claim all my travel expenses if I add a conference or a few days' work to my holiday.

Fact: If you decide to add a conference or some work to your holiday, or a holiday to your work trip, you must apportion the travel expenses between the private and work-related components, and only claim the work-related component.

Fiction: I can claim my work clothes because my boss told me to wear a certain colour.

Fact: Unless your clothing is a uniform that is unique and distinct to your employer, or protective or occupation-specific clothing you are required to wear to earn your income, you won't be able to claim it. Plain clothes, like black pants, are not deductible even if your employer told you to wear them.

Fiction: I can claim my pay television subscription because I need to keep up-to-date for work.

Fact: A subscription to pay television is not ordinarily deductible. Keeping up-to-date on news, current affairs and other general matters usually will not have a sufficiently close connection with your employment activities to provide a basis for deducting these subscriptions. They are essentially private expenses.

Fiction: I can claim home to work travel because I need to get to work to earn my income.

Fact: For most of us, home to work travel is a private expense.

Fiction: I've got a capped phone and internet plan, so I can claim both business and private phone calls and internet usage.

Fact: Unless you only use your phone and internet for work, you have to apportion the cost between work-related and private usage and only claim the work-related portion of your expenses. ■



SMSF event-based reporting: What needs to be reported, what doesn't

Photo by Blake Wisz on Unsplash

Since event-based reporting started for SMSFs from 1 July 2018, the ATO says that for the larger part, SMSF trustees have mostly adjusted to the new requirements.

Now that an entire income year under the transfer balance account report (TBAR) regime is complete, some teething problems have emerged. A big one for the ATO has been the high number of commutation authorities that have been unnecessarily issued. The ATO says more than 50% of these were revoked due to it consequently receiving amended reporting.

EVENTS THAT NEED TO BE REPORTED

Every SMSF must now report certain events in the ATO's event-based reporting framework by the due dates (see table on the following page).

An SMSF must report events that affect a member's transfer balance, including:

- details of pre-existing income streams (including value and type) being received on 30 June 2017 that
  - continued to be paid to them on or after 1 July 2017
  - were in retirement phase on or after 1 July 2017
- details of new retirement phase and death benefit income streams including value and type (when a death benefit income stream is reversionary, the start date will be the date on which the member died)
- details of LRBA payments (including the value and date of each relevant payment) if the LRBA was entered into on or after 1 July 2017 (or a pre-existing LRBA was re-financed on or after 1 July 2017) and the payment results in an increase in the value of the member's interest that supports their retirement phase income stream
- compliance with a commutation authority issued by ATO
- details (including value) of personal injury (structured settlement) contributions
- details (including value) of commutations of retirement phase income streams that occur on or after 1 July 2017.

If no event occurs, there is nothing to report.

SOME EXCLUSIONS FROM REPORTING

Events that an SMSF does not need to report include:

- any pension payments made on or after 1 July 2017
- investment earnings and losses that occurred on or after 1 July 2017
- when an income stream ceases because the interest has been exhausted
- the death of a member

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- information that individuals report to the ATO directly using a Transfer balance event notification form (ask us if you need this). Typically, this is when the following events occur
  - family law payment split
  - debit event from fraud, dishonesty, or bankruptcy
  - structured settlement contributions made before 1 July 2007
- information other funds will report to the ATO, such as a member's interest in an APRA fund.

The ATO has provided guidance in the form of a webinar recording which can be found on its website tv.ato.gov.au. The webinar recording is titled "Transfer balance cap: online TBAR lodgments for agents" and it is also available to view at this link — https://bit.ly/2ZpW1DS.

Once the reporting framework is set, SMSF trustees will not be expected to move between annual and quarterly reporting due dates, regardless of fluctuations in any of its members' balances or members leaving or joining the SMSF. See table below. ■

DUE DATES FOR REPORTING TBA EVENTS

Transfer balance account (TBA) event	Amount of SMSF members' total superannuation balance (TSB)	TBAR due date
A voluntary member commutes an income stream in response to an excess transfer balance determination	Not applicable, as member has exceeded their transfer balance cap	Within 10 business days after the end of the month in which the commutation occurs
A response to a commutation authority	Not applicable, as the reporting obligation is set by legislation	Within 60 days of the date the commutation was issued
Any other TBA event	When the first member started a retirement phase income stream during a year, and all members of the SMSF had a TSB of less than $1 million as at 30 June immediately before they started their income stream	No later than the due date for lodging the SMSF's annual return for the financial year in which the event occurs
Any other TBA event	When the first member started a retirement phase income stream during a year and the SMSF had any member with a TSB of $1 million or more as at 30 June immediately before they started their income stream	28 days after the end of the quarter in which the event occurred. For 2018-19 TBA events, this will be 28 October 2019