

Increased scrutiny of home office claims

Last year, 6.7 million taxpayers claimed a record \$7.9 billion in deductions for 'other work-related expenses', which includes home office expenses.

Reportedly, due to a high number of mistakes, errors and questionable claims for home office expenses, the ATO has recently advised that it will be increasing attention, scrutiny and education on these claims this tax time.

In particular, the ATO has flagged their concerns relating to taxpayers who are claiming:

- expenses they never paid for;
- expenses that their employer has reimbursed them for;
- private expenses; and
- expenses with no supporting records.

Whilst additional costs incurred as a direct result of working from home can be claimed, care must be taken not to claim private expenses as well.

The ATO has indicated that one of the biggest issues they face is people claiming the **entire** amount of expenses (e.g., their internet or mobile phone), rather than just the extra portion relating to work.

Provided the taxpayer is able to demonstrate that they have incurred **additional** costs of running expenses (e.g., electricity for heating, cooling and lighting), then these are generally deductible.

In contrast, employees are generally not able to claim any portion of occupancy-related expenses (e.g., rent, mortgage repayments, property insurance, land taxes and rates).

Taxpayers are warned that the ATO may contact their employers to verify expenses claimed for working from home.

In addition, the ATO expects to disallow a lot of claims where the taxpayer has not kept adequate records to prove that they have legitimately incurred the relevant expense and that the expense was related to their work.

As with the claiming of deductions in general, supporting records must be kept when claiming work-from-home expenses, which may include receipts, diary entries and itemised phone bills.

Importantly, only the additional work-related portion of the relevant expense is deductible.

Advancement in technology has allowed the ATO to deploy sophisticated systems and analytics to spot claims that do not 'add up' and claims that are out of the ordinary compared to others in similar occupations, earning similar income.

Finally, the ATO has reminded taxpayers of the '**three golden rules**' to follow when claiming work-from-home deductions, being:

- the taxpayer must have spent the money themselves and have not been reimbursed;
- it must be directly related to earning the taxpayer's income, not a personal expense; and
- the taxpayer must have a record to prove the expense.

Fast-tracking tax cuts for small and medium businesses

The Government has fast-tracked the already legislated tax cuts to small and medium businesses by bringing them forward **five years**.

Companies with an aggregated turnover of less than \$50 million will have a tax rate of **25%** in the **2022 income year** (instead of the 2027 income year based on the previously legislated timeline).

Similarly, the increase in the tax discount to **16%** for unincorporated entities will apply from the **2022 income year**, rather than the 2027 income year.

Editor: Small and medium businesses will appreciate the earlier access to the already legislated tax cuts.

Proposed expansion of STP to smaller employers

Single Touch Payroll ('STP') commenced on 1 July 2018 for approximately 73,000 employers who have 20 or more employees.

There is currently legislation before Parliament to expand STP to **all** employers from 1 July 2019 and it is estimated that there will be more than 700,000 employers who will enter STP as a result.

Even though the proposed expansion is not yet law, the ATO recommends that smaller employers consider voluntarily opting-in to STP early.

The ATO acknowledges there is a large number of very small employers who have less than five employees ('micro-employers') who do not currently use a payroll product and has indicated that they are **not** looking to force them to take up a product to do STP.

Efforts are being made to work with industry to look at some alternate reporting mechanisms.

It is being reported that software developers, and even some of the larger banks, have shown an interest in developing some kind of product that would enable micro-employers to provide the necessary data to comply with STP at a low cost.

Employers who are in an area that has internet issues or challenges are reminded that there are potential exemptions available under STP.

The ATO is currently consulting with focus groups to look at flexible options to transition micro-employers to STP over the next couple of years.

Assuming the relevant legislation passes, the ATO does not realistically expect that everyone will start STP from 1 July 2019 and has indicated that it will be flexible with the commencement date, including the provision of deferrals to help stagger the uptake.

Editor: This is a very positive message from the ATO, particularly for micro-employers. Hopefully, together with the relevant software developers, they are able to come up with a low-cost and simple alternative for those who do not currently use payroll software to comply with their STP obligations.

Scammers impersonating tax agents

The ATO has received increasing reports of a new take on the 'fake tax debt' scam, whereby scammers are now impersonating registered tax agents to lend legitimacy to their phone call.

The fraudsters do this by coercing the victim into revealing their agent's name and then initiating a three-way phone conversation between the scammer, the victim, and another scammer impersonating the victim's registered tax agent or someone from the agent's practice.

As the phone conversations with the scammers appeared legitimate and the victims trusted the advice of the scammer 'tax agent', victims have been falling for this new approach.

In a recent example, a victim withdrew thousands of dollars in cash and deposited it into a Bitcoin ATM, fearing that police had a warrant out for their arrest.

The ATO is reminding taxpayers that they will never:

- demand immediate payments;
- threaten them with arrest; or
- request payment by unusual means, such as iTunes vouchers, store gift cards or Bitcoin cryptocurrency.

Taxpayers are advised that if they are suspicious about a phone call from someone claiming to be the ATO, then they should disconnect and call the ATO or their tax agent to confirm the status of their tax affairs and verify the call.

Company loans to shareholders under review

The Government has released a consultation paper outlining proposed reforms to 'simplify' the loan agreements that are generally required when a shareholder (or their associate) borrows funds (or receives a payment) from a related company.

*Editor: Broadly, where a private company makes a payment or loans funds to a shareholder and/or their associate, the amount will be treated as a taxable **unfranked dividend** paid to the recipient.*

To avoid this, many shareholders enter into complying 'Division 7A loan agreements' (basically agreeing to repay the relevant amount within 7 years, or 25 years if the loan is secured).

With this in mind, Treasury is currently looking at (amongst other things):

- simplifying the Division 7A loan rules by converting to a new 10-year model; and
- clarifying that distributions from a trust to a 'bucket' company that remain 'unpaid present entitlements' come within the scope of Division 7A.

Editor: The proposed amendments are intended to apply from 1 July 2019 and will arguably be the most significant tax reforms impacting business and investment clients over the next two years.

At this stage of the consultation process, the Government is currently considering submissions made with respect to these proposals and it is expected that draft legislation, and further clarity, will be available early in the 2019 calendar year.

ATO contact regarding business cars and Fringe Benefits Tax ('FBT')

The ATO has recently advised that it will be contacting taxpayers (and tax agents on behalf of their clients) that have been identified as having cars registered in their business name who have **not** lodged an FBT return.

The ATO has reminded businesses that:

- a car fringe benefit will occur when a business owns or leases a car and makes it available for an employee's private travel or use (including garaging the car at or near an employee's home and making it available for private use); and that
- business directors are also 'employees' for FBT purposes.

ATO guidance regarding 'downsizer contributions'

The ability to make 'downsizer contributions' effectively commenced on 1 July 2018, prompting the ATO to release further guidance with respect to this new superannuation contribution classification.

Editor: This new measure will be of most assistance for individuals approaching retirement, where they dispose of their family home in an effort to 'downsize' and they want to contribute part or all of the proceeds to superannuation.

Basically, these measures allow older Australians to make a downsizer contribution where:

- they are aged at least 65;
- there was consideration received for the disposal of an eligible Australian dwelling;
- the contract of sale for the property was entered into on or after 1 July 2018;
- a superannuation contribution is generally made within 90 days of settlement;
- the contribution does not exceed the lesser of \$300,000 and the proceeds received from the sale of the dwelling;
- an ownership interest in the dwelling had been held for at least 10 years (usually by the individual making the contribution or their spouse);
- either a full or partial CGT main residence exemption applies to the disposal of the dwelling;
- a choice to treat the contribution as a downsizer contribution is made in the approved form; and
- broadly speaking, it is the first downsizer contribution the taxpayer has made.

Christmas Parties & Gifts 2018

Please read this update
and contact this office
if you have any queries

December 2018

Year-end (and other) staff parties

Editor: With the well earned December/January holiday season on the way, many employers will be planning to reward staff with a celebratory party or event. However, there are important issues to consider, including the possible FBT and income tax implications of providing 'entertainment' (including Christmas parties) to staff and clients.

FBT and 'entertainment'

Under the FBT Act, employers must choose how they calculate their FBT meal entertainment liability, and most use either the 'actual method' or the '50/50 method'.

Under the **actual method**, entertainment costs are normally split up between employees (and their family) and non-employees (e.g., clients and suppliers).

Such expenditure on employees is deductible and liable to FBT. Expenditure on non-employees is **not** liable to FBT and **not** tax deductible.

Using the 50/50 method instead?

Rather than apportion meal entertainment expenditure on the basis of actual attendance by staff, etc., many employers choose to use the more simple 50/50 method.

Under this method (irrespective of where the party is held or who attends) – 50% of the total expenditure is subject to FBT and 50% is tax deductible.

However, the following traps must be considered:

- ◆ even if the function is held on the employer's premises – food and drink provided to employees is not exempt from FBT;

- ◆ the minor benefit exemption* cannot apply; and
- ◆ the general taxi travel exemption (for travel to or from the employer's premises) also cannot apply.

(* **Minor benefit exemption**)

The minor benefit exemption provides an exemption from FBT for most benefits of 'less than \$300' that are provided to employees (and their family/associates) on an infrequent and irregular basis.

The ATO accepts that different benefits provided at, or about, the same time (such as a Christmas party and gift) are **not** added together when applying this threshold.

However, entertainment expenditure that is FBT exempt is also not deductible.

*Editor: And 'less than' \$300 means **no more than \$299.99!** A \$300 gift to an employee will be caught for FBT, whereas a \$299 gift may be exempt.*

Example: Christmas Party

An employer holds a Christmas party for its employees and their spouses – 40 attendees in all.

The cost of food and drink per person is \$250 and no other benefits are provided.

If the actual method is used:

- ◆ For all 40 employees and their spouses – **no FBT** is payable (i.e., by applying the minor benefit exemption), however, the party expenditure is **not tax deductible**.

If the 50/50 method is used:

- ◆ The expenditure is \$10,000, so \$5,000 (i.e., 50%) **is liable to FBT** and **tax deductible**.

Christmas gifts

Editor: With the holiday season approaching, many employers and businesses want to reward their staff and loyal clients/customers/suppliers.

Again, it is important to understand how gifts to staff and clients, etc., are handled 'tax-wise'.

Gifts that are **not** considered to be entertainment

These generally include, for example, a Christmas hamper, a bottle of whisky or wine, gift vouchers, a bottle of perfume, flowers, a pen set, etc.

Briefly, the general FBT and income tax consequences for these gifts are as follows:

- gifts to employees and their family members – **are liable to FBT** (except where the 'less than \$300' minor benefit exemption applies) and **tax deductible**; and
- gifts to clients, suppliers, etc. – **no FBT**, and **tax deductible**.

Gifts that are considered to be entertainment

These generally include, for example, tickets to attend the theatre, a live play, sporting event, movie or the like, a holiday airline ticket, or an admission ticket to an amusement centre.

Briefly, the general FBT and income tax consequences for these gifts are as follows:

- gifts to employees and their family members – **are liable to FBT** (except where the 'less than \$300' minor benefit exemption applies) and **tax deductible** (unless they are exempt from FBT); and

- gifts to clients, suppliers, etc. – **no FBT** and **not tax deductible**.

Non-entertainment gifts at functions

Editor: What if a Christmas party is held at a restaurant at a cost of less than \$300 for each person attending, and employees with spouses are given a gift or a gift voucher (for their spouse) to the value of \$150?

Actual method used for meal entertainment

Under the actual method, for employees attending with their spouses, **no FBT** is payable, because the cost of each separate benefit (being the expenditure on both the Christmas party and the gift) is less than \$300 (i.e., the benefits are not aggregated).

No deduction is allowed for the food and drink expenditure, but the cost of each gift is **tax deductible**.

50/50 method used for meal entertainment

Where the 50/50 method is adopted:

- 50% of the total cost of food and drink **is liable to FBT** and **tax deductible**; and
- in relation to the gifts:
 - the total cost of all gifts **is not liable to FBT** because the individual cost of each gift is less than \$300; and
 - as the gifts are not entertainment, the cost is **tax deductible**.

Editor: We understand that this can all be somewhat bewildering, so if you would like a little help, just contact our office.