

Deductions for a company or trust home-based business

The ATO has reminded taxpayers that, if they run their home-based business as a company or trust, their business should have a **genuine, market-rate rental contract** (or similar agreement) with the owner of the property.

The agreement will determine which expenses the business pays for and can claim as a deduction.

If there isn't a genuine rental contract, there may be tax implications for the homeowner and the business for providing benefits to any individuals.

If an individual earns PSI, they may not be able to deduct some occupancy expenses.

If the business pays for or reimburses an employee of the business for some of the expenses of running the business from home, the employee can't claim a deduction for those expenses in their individual income tax return.

Also, the business may have to pay FBT if it pays or reimburses the individual for certain expenses as an employee (although exemptions and concessions may apply to reduce the FBT liability), and may need to keep additional records for FBT purposes.

Using the cents per kilometre method

The 'cents per kilometre' method broadly allows an individual taxpayer to claim up to a maximum of 5,000 business kilometres per car, per year without the need to keep any written evidence (e.g., receipts) of car expenses.

Importantly, taxpayers making a 'cents per kilometre' claim are required to demonstrate that they worked out the number of business kilometres they claimed on a **reasonable basis**.

Taxpayers claiming under this method will generally fall into one of two categories, being either those who undertake a regular or irregular pattern of work-related travel.

If a taxpayer has a **regular pattern of work-related travel** (e.g., a 60 kilometre round trip to the warehouse to pick up supplies twice a week, 40 weeks in the year), then this type of explanation would generally be sufficient to justify the claim.

However, if the taxpayer has an **irregular pattern of work-related travel**, then they would need to make a note (e.g., in a diary) of each trip.

Also, remember that, for the 2019 income year, the rate that is applied (up to the 5,000 business kilometre maximum) is 68 cents (up from 66 cents in 2018) per business kilometre travelled.

Super guarantee opt-out for high income earners now law

From 1 January 2020, eligible individuals with **multiple employers** can apply to opt out of receiving super guarantee ('SG') from some of their employers, to help them avoid unintentionally going over the concessional contributions cap.

If appropriate for them, they should submit the relevant ATO form to apply for an *SG employer shortfall exemption certificate*, which releases one or more of their employers from their SG obligations for up to four quarters in one financial year.

Editor: We can assist with the lodgement of this form.

Note that this measure may not benefit everyone who is eligible, so before lodging the form, it is important to consider the individual's employment arrangements, such as how their pay and other entitlements may change (if at all), and the effect of any relevant award or workplace agreement applicable to them.

The measure only became law on 2 October 2019, so to give eligible employees time to make an application, the ATO will accept applications for the 2019/20 financial year as follows:

- third quarter commencing 1 January 2020 — lodge on or before 18 November 2019; and
- fourth quarter commencing 1 April 2020 — lodge on or before 31 January 2020.

A separate application is required for each financial year.

Reporting asset disposals for CGT

As the ATO's data-matching capabilities increase, they are paying close attention to capital gains made on **shares, property and cryptocurrency**.

Editor: Therefore, it's important to let us know about any asset disposals (which can include an asset's sale, loss or destruction) and to keep records relating to CGT events, including asset disposals, for at least five years after the year in which the event occurred (and maybe longer if you make a capital loss). Good records will also help to work out a capital gain or loss correctly.

Government passes other superannuation legislation

The Government has recently passed legislation requiring insurance in superannuation for new members under 25, and members with low balance accounts, to only be offered on an **opt-in basis** from 1 April 2020.

Importantly, low balance account holders and young members will still be able to opt in if they want to take out insurance.

Super Lookup 'status' will change if SMSF annual returns are late

The ATO considers the lodgement of an SMSF's annual return on time to be a fundamental part of an SMSF trustee's obligations.

Consequently, from 1 October 2019, if an SMSF is more than two weeks overdue on **any** annual return lodgement due date and hasn't requested a lodgement deferral, the ATO will change their status on Super Fund Lookup ('SFLU') to '*Regulation details removed*' until any overdue lodgements have been brought up to date.

Editor: We can request a lodgement deferral on your behalf to ensure the SMSF's status remains 'complying' (unless the fund does not meet the agreed date of referral).

Having a status of '*Regulation details removed*' means APRA funds won't roll over any member benefits to the SMSF and employers won't make any super guarantee ('SG') contribution payments for members to the SMSF.

The ATO says it is taking this approach because "*non-lodgement combined with disengagement indicates that retirement savings may be at risk*".

PAYG and deductions for payments to workers

The ATO has reminded business taxpayers they can no longer claim deductions for certain payments to workers if they have not met their PAYG withholding obligations from 1 July 2019.

If the PAYG withholding rules require an amount to be withheld, to claim a deduction for most payments to a worker, a business taxpayer must:

- withhold the amount from the payment before they pay their worker; and
- report that amount to the ATO.

Importantly, where a taxpayer simply makes a mistake and withholds or reports an incorrect amount, they will **not** lose their deduction, although any such errors should be corrected as soon as possible so as to minimise penalties.

Additionally, a deduction is still available if they voluntarily disclose to the ATO prior to the commencement of an audit or other ATO compliance activity involving their PAYG withholding obligations or deduction claims.

Ref: ATO website, 18 November 2019

SMSs for SMSFs!

In the interests of protecting SMSF members and their retirement savings from fraud and misconduct, the ATO has announced it will send out an email and/or a text message via an SMS when changes (including updates to the SMSF financial details or member information) are made.

Accordingly, the ATO has urged all SMSF members to ensure they update their contact details.

The ATO has urged SMSF members who are concerned about notified changes to first speak with the other trustees of the SMSF or the authorised agent of their SMSF, before contacting the ATO.

Editor: As the ATO moves over to the digital world at a rapidly increasing pace, it has also reminded SMSF members that any ATO sanctioned emails and text messages would never ask for the recipient to reply by text or email, or to provide otherwise personal information.

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.