



Practice Update

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

DEC/JAN/FEB 2024

Notice of officeholder data-matching program

The ATO will acquire officeholder data from ASIC, the Office of the Registrar of Indigenous Corporations and the Australian Charities and Not-for-profits Commission for the 2024 and 2025 income years, including details such as:

- their name, address and date of birth;
- email address and contact phone number;
- organisation class, type and status, and state of incorporation; and
- officeholder type, role type, and officeholder role start and end dates.

The ATO estimates that records relating to approximately 11 million individuals will be obtained.

This program aims to (among other things) enable the Australian Business Registry Services to increase uptake of the director ID, and better utilise registry data to combat unlawful activity.

ATO warning regarding prohibited SMSF loans

Loans to members continue to be the highest reported contravention of the superannuation laws that the ATO sees in auditor contravention reports.

SMSF trustees should remember that they cannot loan money or provide other forms of financial assistance to a member or relative, and if they do, they can incur a penalty of up to \$18,780. They may also be disqualified as a trustee.

SMSF trustees also cannot loan money to a related party, such as a business, where the value of the loan exceeds 5% of the value of the fund's total assets, as this is a prohibited 'in-house asset' investment.

If the SMSF's in-house assets exceed 5% of the total value of its assets at the end of the financial

year, the trustee must prepare a plan to reduce their in-house assets to less than 5%, which must be implemented by the end of the following financial year.

If a trustee has made a prohibited loan from their SMSF, the loan must be repaid as soon as possible.

Don't forget the two further 'boosts'!

Although the 'Technology Investment Boost' has come to an end (it provided a bonus deduction for eligible expenditure incurred until 30 June 2023), it is important to remember that there are two further 'boosts' providing **bonus deductions** for small businesses, and both apply to eligible expenditure incurred up until **30 June 2024**.

The **Skills and Training Boost** provides small or medium businesses with a **bonus 20% deduction** for eligible expenditure incurred on external training for employees, to support such businesses to train and upskill their employees.

This boost applies to eligible expenditure incurred from 29 March 2022 until 30 June 2024.

The **Small Business Energy Incentive (Boost)** is designed to support small business electrification and more efficient energy use, and will apply to eligible expenditure incurred between 1 July 2023 and 30 June 2024 (once the relevant legislation is passed).

This boost provides small or medium businesses with a **bonus 20% deduction** for the cost of:

- eligible depreciating assets; and/or
- eligible improvements incurred in relation to existing depreciating assets,

that support electrification or energy efficiency.

To be eligible for either of the above 'boosts', a business taxpayer must satisfy a number of conditions.

Editor: Please contact our office if you need any further information regarding the above 'boosts'.

Claiming deductions in relation to a holiday home

Taxpayers should remember that they can only claim deductions for holiday home expenses to the extent they are incurred for the purpose of gaining or producing rental income.

They need to consider the following in determining whether the deductions they wish to claim are valid rental deductions:

- ◆ **How many days during the income year did they use or block out the property for their own use?** Taxpayers cannot claim deductions for the periods the property was used or blocked out by them.
- ◆ **How and where did they advertise the property for rent, and is the rent in line with market values?** If they only used obscure means of advertising, or put unreasonable restrictions or conditions in the advertisement, they may not be entitled to claim deductions.
- ◆ **Will any restrictions, or the general condition of the property, reduce interest from potential holiday makers?** If their property is not in a tenable condition, they may not be entitled to claim deductions.
- ◆ **Has the taxpayer or their family or friends used the property?** Taxpayers cannot claim for periods of private use or when the property is kept vacant for personal reasons.
- ◆ **Is any part of the property off limits to tenants?** When taxpayers claim deductions, they should ensure they calculate and apportion deductions in relation to the part of the property that is available for rent.

Government announces changes to proposed 'Stage 3' tax cuts

Despite previous assurances, and after much speculation, the Government has announced tweaks to the 'Stage 3' tax cuts that will apply from 1 July 2024.

More particularly, the Government proposes to:

- reduce the 19% tax rate to 16%;

- reduce the 32.5% tax rate to 30% for incomes between \$45,000 and a new \$135,000 threshold;
- increase the threshold at which the 37% tax rate applies from \$120,000 to \$135,000; and
- increase the threshold at which the 45% tax rate applies from \$180,000 to \$190,000.

The Medicare levy low-income thresholds for the 2024 income year will also be increased.

Deductions denied for work-related expenses

The Administrative Appeals Tribunal ('AAT') recently held that a taxpayer should not be allowed deductions for various work-related expenses, largely because the substantiation requirements had not been satisfied.

The taxpayer, a real estate salesperson, claimed tax deductions for the 2018 to 2020 income years, during which time he derived income from his employment with a real estate company.

However, the ATO disallowed the taxpayer's claims for various work-related expenses, including car expenses, and gifts and donations.

The AAT agreed with the ATO, and held that the expenses claimed were not deductible and that the taxpayer had failed to substantiate his claims.

The taxpayer had claimed deductions for car expenses using the logbook method, but the AAT noted that the car was owned by a company and was not leased to the taxpayer. Therefore, the car was not 'held' by the taxpayer, as required by the logbook method. The taxpayer's logbook also lacked "sufficient specificity" for this method.

While the taxpayer produced credit card statements and telephone tax invoices (in relation to credit card interest and telephone expenses), it was not clear from these documents whether the costs claimed related to work expenses.

The taxpayer sought to rely on bank transaction statements in relation to other expenses, but they were considered to be insufficient, as it was unclear from these statements what the relevant expense was, how the expense was incurred in earning the taxpayer's assessable income, and any apportionment between business and personal use.

There were also no receipts or tax invoices for any of the claimed donations.

New ATO guidance on "who is an employee?"

The ATO recently issued a ruling which explains when an individual is an 'employee' of an entity for pay as you go ('PAYG') withholding purposes.

A useful approach for establishing whether or not a worker is an employee of an engaging entity is to consider whether the worker is working in the business of the engaging entity, based on the construction of the terms of the relevant contract. Importantly, the fact that a worker may be conducting their own business, including having an ABN, is not determinative.

Editor: If you need help with this important issue, please contact our office.

Should you have any questions (or require any assistance) about any of the issues raised in this update, please feel free to contact our office.

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.