



QUARTER UPDATE

experience

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PRACTICE UPDATE - DECEMBER 2019

THIS EDITION

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\$30,000 INSTANT ASSET WRITE-OFF

The ATO is reminding businesses that are looking to expand or improve their business and thinking of buying new or second hand assets, that medium sized businesses with a turnover up to \$50 million (but at least \$10 million) are eligible for the instant asset write-off.

This now applies to assets that cost up to \$30,000 and which were purchased and first used or installed

ready for use from 7:30pm (AEDT) on 2 April 2019 to 30 June 2020.

Medium sized businesses may purchase and claim a deduction for each asset that costs less than the \$30,000 threshold.

For assets over \$30,000 the general depreciation rules apply (which may depend on the entity).

FEDERAL COURT PROVIDES CLARIFICATION ON THE PSI RULES

The Federal Court recently handed down two decisions relating to the personal services income ('PSI') rules.

Income is classified as PSI when more than 50% of the income received under a contract is for a taxpayer's labour, skills or expertise.

The PSI rules are integrity provisions which ensure individuals cannot reduce or defer their income tax by (for example) diverting income for their personal services through companies, partnerships or trusts. If the rules apply, the individual is taxed on the income directly.

The rules do not apply if at least 75% of the individual's PSI is for producing a result, where the individual supplies all the required 'tools of trade' and is liable for rectifying defects in the work (this is known as the 'results test').

In the first case, the Federal Court confirmed that the taxpayer did not meet the 'results test'.

The taxpayer argued that the 'results test' is still satisfied even if they do not get paid for achieving a result, provided they can show this is the custom or practice of independent contractors in their industry.

The Federal Court rejected this, agreeing with the ATO's earlier determination to apply the PSI laws to tax the individual's contract income as his own income, rather than income split through a partnership with his spouse (which also meant certain deductions were not allowable).

The Federal Court also affirmed the imposition of penalties for recklessness.

However, in the second case, the Federal Court allowed the taxpayer's appeal from an earlier AAT decision, that he has failed the 'unrelated clients test' despite advertising his services on LinkedIn.

The Federal Court found the ATO and AAT had applied an exception for services provided through intermediaries (e.g., recruitment agencies) too broadly, and instead the Court preferred a narrow interpretation of the exception.

This matter has now been referred back to the AAT to be reconsidered, and the ATO has said it will consider this decision and whether an appeal is appropriate.

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.

REPLACING AUSKEY

If you currently access the ATO Business Portal using an AUSKey login or device, the myGovID and RAM will replace AUSKey and Manage ABN Connections at the **end of March 2020**. Together, these services provide secure, simple and flexible access to government online services.

It is the Australian Government's aim to transform the way Australians interact with Government agencies. It's similar to the 100 point ID check but on your smart device. This will make it faster and easier to prove who you are when accessing government online services.

You can download the myGovID app from the App Store or Google Play. The app is compatible with most smart devices using:

- iOS 10 or later on Apple devices
- Android 7.0 (Nougat) or later.

You can then use your myGovID to unlock selected government online services, such as the Business

Portal. Future enhancements to myGovID will mean that people will be able to apply for a tax file number (TFN) entirely online.

Your myGovID is unique to you and can be used for both your personal and business matters. myGovID puts you in control of your personal information.

Using the security features in your smart device, such as fingerprint, face or password, myGovID helps protect your identity and stop fraud.

Also available is a new authorisation service, called Relationship Authorisation Manager (RAM). You can link your Australian business number (ABN) to your myGovID using RAM and manage relationships and authorisations across government online services. This means that RAM lets you manage who can act on behalf of your business online.

More information can be found on <https://www.ato.gov.au/General/Online-services/Accessing-online-services-with-myGovID-and-RAM/>

YEAR-END (AND OTHER) STAFF PARTIES

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', rather than the '12-week method'.

Using the actual method

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

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

Rather than apportion meal entertainment expenditure on the basis of actual attendance by employees, 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 associates (e.g., family) 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 a gift) are **not** added together when applying this \$300 threshold.

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

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

CHRISTMAS GIFTS

Gifts that are *not* considered to be entertainment

These generally include a Christmas hamper, a bottle of whisky or wine, gift vouchers, a bottle of perfume, flowers or 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

What if a Christmas party is held at a restaurant at a cost of less than \$300 for each person attending, and employees 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 **no FBT** is payable, because the cost of each separate benefit (being the expenditure on the Christmas party and the gift respectively) 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**.

STP AND SUPERANNUATION GUARANTEE

In a presentation at the Australian Institute of Superannuation Trustees Chairs Forum, the ATO's Deputy Commissioner confirmed that as a result of STP, the ATO now has an *"unprecedented level of visibility"* of super information.

In particular, the ATO's examination of Super Guarantee ('SG') contributions of some 75 million payment transactions for the first three quarters of 2019 (for approximately 400,000 employers) has shown that 90 - 92% of contribution transactions by

volume and 85 - 90% of transactions by dollar value were paid on time.

The ATO is now starting to actively use this data to warn employers who appear not to be paying the required SG on time (or at all).

As a result, it has notified 2,500 employers that they have paid their SG contributions late during 2019. Due-date reminders were also sent to a further 4,000 employers.

Ref: ATO Presentation, ATO insights and actions across superannuation, 14 October 2019



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.

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