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BUSINESS, TAXATION & INDUSTRY NEWS

Answers to COVID-19 work-from-home expense questions and CGT concerns

There are many questions being asked lately about claiming expenses when forced to work from home over the COVID-19 period - plus a lot of concern about any consequent capital gains issues when later selling a property from which people have been coerced to work from during this time.

Capital gains

First of all, the CGT issue is fairly straight forward. The ATO says that in most cases, if you are working from home as an employee, regardless of whether or not you have a separate work area, there will be no CGT implications on any later sale or disposal of the home. This is the case even if you claim home office expenses, using the new "COVID-19 shortcut method" (below).

However, CGT may apply if you are running a *business* from home and, as a result you can claim occupancy expenses (like mortgage interest repayments or rates). In this case, you will generally only be entitled to a partial CGT exemption because of using part of your home as a place of a business.

Claiming COVID work-at-home deductions

The ATO says that to claim a deduction for working from home, all of the following must apply:

- you must have spent the money
- the expense must be directly related to earning income
- there must be a record of this that can be provided if asked.

But remember, you cannot claim a deduction for items provided by your employer, or if you have been reimbursed by the employer for expenses. If there has not been a reimbursement but you have instead received an allowance to cover expenses when working from home, you:

- need to include this allowance as income in your tax return, and
- claim a relevant deduction in respect of it (as outlined below).

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Expenses that can be claimed

If you work from home, you will be able to claim a deduction for additional running expenses incurred, which may include:

- electricity expenses associated with heating, cooling and lighting the area from which you are working, and running assets used for work (such as a computer and printer)
- associated cleaning costs for a dedicated work area
- phone and internet expenses
- computer consumables (for example, printer paper and ink) and stationery
- home office equipment, including computers, printers, phones, furniture and furnishings. Of these, you can claim either the:
  - full cost of items up to $300
  - a decline in value for items over $300.

The ATO has stated that it accepts that tracking all of these expenses can be challenging for ordinary taxpayers, so has undertaken to accept a temporary simplified method (or "shortcut" method) of calculating additional running expenses for the period starting 1 March 2020 until at least 30 June 2020. More details are below. It says it may extend this method depending on when general work patterns may return to what has until now been accepted as "normal".

Expenses not within the COVID-19 ambit

If you are only working from home because of the COVID-19 situation, you generally:

- cannot claim the cost of coffee, tea, milk and other general household items an employer may otherwise have provided while you were at the usual work place
- cannot claim occupancy expenses such as mortgage interest, rent and rates.

Calculating running expenses

There are at present three ways you can choose to calculate additional running expenses:

- fixed rate method ─ claiming all of these:
  - a rate of 52 cents per work hour for heating, cooling, lighting, cleaning and the decline in value of office furniture,
  - the work-related portion of actual costs of phone and internet expenses, computer consumables, stationery, and
  - the work-related portion of the decline in value of a computer, laptop or similar device.
- actual cost method ─ claiming the actual work-related portion of all running expenses, which you need to calculate on a reasonable basis.
- the new shortcut method (details below).

Shortcut method

Under the short cut method, you can claim a deduction of 80 cents for each hour as long as you are:

- working from home to fulfil employment duties and not just carrying out minimal tasks such as occasionally checking emails or taking calls,
- incurring additional deductible running expenses as a result of working from home.

Note that in this case, you do not have to have a separate or dedicated area of your home set aside for working, such as a private study.

The shortcut method rate is intended to cover deductible running expenses, including:

- electricity for lighting, cooling or heating and running electronic items used for work (for example a computer), and gas heating expenses
- the decline in value and repair of capital items, such as home office furnishings
- cleaning expenses
- phone costs (which includes decline in value of the handset)
- internet costs

- computer consumables, such as printer ink
- stationery
- the decline in value of a computer, laptop or similar device.

It should be pointed out that you do not *have* to incur all of these expenses, but you are likely to have incurred additional expenses in some of those categories as a result of working from home due to COVID-19.

Importantly, if you opt to use the shortcut method to claim a deduction for additional running expenses, you cannot claim a further deduction for any of the expenses listed above. Also, if you use the 80 cents an hour shortcut method to claim a deduction, when we lodge your 2019-20 tax return we will need to include a note in your return stating "COVID-hourly rate".

For this shortcut method, the ATO will require some form of record of the number of hours you have worked from home as a result of COVID-19. Examples are timesheets, diary notes or rosters. If using the other methods, a record of the number of hours worked from home is also required along with records of expenses.

Your business and the JobKeeper scheme

The ATO has been charged with running the JobKeeper Payment scheme, which is intended to support businesses that are financially affected by COVID-19 to help keep their staff employed.

Employers will be required to pay their eligible employees a minimum of $1,500 a fortnight, before tax, to claim the JobKeeper payment. This is then paid in arrears back to the employer each month by the ATO.

Note that if a staff member had been earning more than this amount before tax, the business will need to make up the rest as the employer will still only get the $1,500. If they earned less, the employer will still be required to pay them $1,500. There is no "keep the difference" option in these cases, and not paying the full $1,500 cancels a business's eligibility.

Payments are made each fortnight, with the first fortnight period (30 March to 12 April) already having passed. The run of fortnights is intended (at present) to end at 27 September. There is no need to adjust any payroll periods already adopted, but the JobKeeper reimbursements will follow this fortnightly schedule.

Entitlement to JobKeeper reimbursements will usually pivot on a business's payroll, but the ATO says the first two fortnights can be deemed as already compliant as long as staff had been paid the required amounts by the end of April.

All JobKeeper payments are assessable income of a business, and the normal rules on deductibility apply on their payment to eligible employees.

The payments are not subject to GST. Super guarantee obligations apply to previous income levels, but there is no SG on additional payments resulting from the scheme.

Eligibility

The central measure on gaining access to the JobKeeper payments is a fall in turnover. A business with an aggregated turnover of $1 billion or less will qualify if facing a 30% fall in turnover (the trigger is 50% for greater aggregated turnover businesses and 15% for registered charities).

If an employer wants to be involved with JobKeeper payments for the months of April and May 2020 (just by way of example), the fall in turnover is found by comparing either:
- GST turnover for April 2020 with GST turnover for April 2019
- projected GST turnover for May 2020 with GST turnover for May 2019
- projected GST turnover for the quarter starting May 2020 with GST turnover for the quarter starting May 2019.

Reporting BAS monthly or quarterly does not necessarily influence the outcome, and once the decline in turnover is established there is no need to keep testing each month. Also the Commissioner has discretion to use an "alternative" measure if the above is inappropriate (if for example the business has been operating for less than a year). The ATO has released a set of alternative tests for turnover, and we can explain these if appropriate to your circumstances.

Eligibility also generally depends on you having been carrying on a business on 1 March and employing at least one eligible employee. Sole traders, partners in partnerships, beneficiaries in trusts, shareholders of companies and directors of companies who are not employed in the business can participate in the JobKeeper scheme – but only one per entity and only if they are actively engaged in the business. This rule applies whether or not the business has other employees, but a further qualifying factor is that the entity must have held an ABN at 12 March.

Government bodies or companies in liquidation are unable to enrol for JobKeeper. Individuals that are bankrupt also cannot enrol.

As far as employees go, they can be permanent full or part time, or casual if employed on a regular or systematic basis for at least 12 months at 1 March. They must also be Australian residents (as defined) aged 16 or over, not receiving parental leave or dad and partner pay, nor workers compensation. Note that they cannot receive payments from more than one employer.

Steps to enrol

A central part of receiving the benefits of the JobKeeper package is of course for you to put your hand up and let the government know it is required. Your employees will also have to a form to fill out and return.

Before you enrol for JobKeeper, you need to complete the *JobKeeper employee nomination notice* to:

- notify eligible employees that you intend to participate in the scheme
- ask them if they agree to be nominated and receive payments from you as part of the scheme.

We can supply you with the necessary forms, and can help guide you in filling them out.

Finally, note that the JobKeeper rules are something of a moving feast at the moment and therefore it is vital to get professional assistance in relation to eligibility for the support.

https://www.ato.gov.au/Individuals/Dealing-with-disasters/In-detail/Specific-disasters/COVID-19/

https://treasury.gov.au/

https://www.treasury.qld.gov.au/

https://www.qld.gov.au/

Alternative turnover test for JobKeeper released

An alternative decline in turnover test for the JobKeeper payment scheme has now been registered by the ATO. The ATO says the alternative tests will only kick in if an entity cannot satisfy the basic decline in turnover test.

The instrument applies to provide alternative bases for a class of entities (more below) to satisfy the decline in turnover test for the purposes of seeking to be a qualifying employer for JobKeeper payments, when the Commissioner is satisfied that there is not an appropriate relevant comparison.

The explanatory statement says these alternative tests will only apply to certain circumstances, of which there are seven dealt with in the instrument. The legislative instrument applies to classes of entities to which the following circumstances apply:

1. An entity commenced business after the relevant comparison period in 2019 with the event or circumstance outside the usual business setting being that the business did not exist in the relevant comparison period and as a result there was no relevant comparison period in 2019. This applies to entities that were not operating any business, it does not apply to an entity that was operating one or more businesses and commenced a new additional business.
2. An entity acquired or disposed of part of their business after the relevant comparison period in 2019 including more than one acquisition or disposal and the acquisition or disposal, or acquisitions or disposals, changed their turnover. The event or circumstance outside the usual business setting being that the business was not the same business and as a result is not comparable after the acquisition(s) or disposal(s) to as it was in relevant comparison period in 2019.
3. An entity has restructured part or all of their business after the relevant comparison period in 2019, including more than one restructure, and that restructure, or restructures, has changed the entity's turnover. The event or circumstance outside the usual business setting being that the business was not the same business and as a result is not comparable after the restructure(s) to as it was in relevant comparison period in 2019.
4. An entity has had an increase in turnover by 50% or more in the 12 months immediately before the applicable turnover test period, or 25% or more in the 6 months immediately before the applicable turnover test period, or 12.5% or more in the 3 months immediately before the applicable turnover test period. The event or circumstance outside the usual business setting being that as a result of undergoing such rapid growth the business of the entity is not comparable after the growth to the business as it was in the relevant comparison period in 2019.
5. An entity has been affected by a drought or other natural disaster in the relevant comparison period in 2019. The event or circumstance outside the usual business setting being the drought or other natural disaster which adversely affected the business and as a result the relevant comparison period in 2019 is not appropriate.
6. An entity has an irregular turnover that is not cyclical, such as can occur in the building and construction sector. The event or circumstance outside the usual business setting is the non-cyclical irregular turnover and as a result the relevant comparison period in 2019 is not appropriate. An entity with a cyclical turnover such as an entity that operates a seasonal business which generates most of its turnover at a particular time of year has an appropriate relevant comparison period – a cyclical turnover is within the usual business setting.
7. An entity is a sole trader or a small partnership and the sole trader or one of the partners did not work for all or part of the relevant comparison period because they were sick, injured or on leave during the relevant comparison period and those circumstances affects the turnover of the sole trader or partnership. The usual business setting is the sole trader or partner working in the business generating turnover and so their absence from work is an event or circumstance outside the usual business setting resulting in the relevant comparison period in 2019 not being appropriate.

Outside of these, the ATO says it may not be able to determine an alternative decline in turnover test in all circumstances. "For example, an entity being subject to a severe drought from 2018 until September 2019 that reduced the amount of the crop that it could grow."

COVID-19 instant asset write off and accelerated depreciation

While many of the COVID-19 stimulus changes such as the JobKeeper payment are grabbing headlines, it is easy to overlook the significance of the $150,000 instant asset write off provisions.

The key changes for the instant asset write off include the following.

- Certain business entities can access an immediate deduction for the full cost of depreciating assets costing up to $150,000 (GST exclusive).
- The asset must be first used, or installed ready for use, for a "taxable purpose" during the period 12 March 2020 to 30 June 2020.
- The write-off will be available to businesses with an "aggregated turnover" of less than $500 million.

Note that for a car that costs above the luxury car cost limit, only the cost limit of the car can be claimed as an immediate tax deduction in the period to 30 June 2020. This is because the relevant provisions refer to the "adjustable value" of the asset and the first element of the cost of a car is reduced to the car limit if the cost exceeds that limit.

The instant asset write-off threshold will also be increased to $150,000 for amounts included in the second element of an asset's cost (typically, subsequent capital expenditure) provided:

- the cost of the related asset was subject to the instant asset write-off in an earlier year; and
- the amount is included in the second element of the asset's cost during the period from 12 March 2020 to 30 June 2020.

The threshold will also be increased to $150,000 for the balance of an entity's general small business pool that can be claimed as a deduction at the end of an income year for income years that end on or after 12 March 2020, but before 1 July 2020.

Note: From 1 July 2020, the instant asset write-off threshold will revert to its original level of $1,000 (unless legislative changes are made in the meantime) and will only be applicable for businesses with an aggregated turnover of less than $10 million.

Accelerated depreciation

Businesses with an aggregated turnover of less than $500 million in an income year can deduct capital allowances for a qualifying depreciating asset at a rate of 50% of its cost. This is in addition to the normal depreciation that is claimed on the cost of the asset after deducting the 50% amount.

A qualifying depreciating asset must satisfy several conditions, including:

- it must be new and not have been previously held by another entity (other than as trading stock or for testing purposes),
- it is an asset for which an entity has not claimed depreciation deductions, including under the instant asset write-off rules, and
- it is first held, and first used or installed ready for use, for a taxable purpose between 12 March 2020 and 30 June 2021.

It should also be noted that a small business entity (that is, an entity with turnover below $10 million using the simplified depreciation rules) can deduct depreciation at the rate of 57.5% for the "taxable purpose" proportion of the cost (or the adjustable value) of a "qualifying depreciating asset" where it is added to the general small business pool and it is held and used, or installed ready for use, between 12 March 2020 and 30 June 2021 (inclusive).

Early release from super a relief, but comes with risks

The government is allowing the early release of superannuation and a temporary reduction in minimum pension drawdown rates to help individuals deal with the adverse economic effects of COVID-19.

Retirees watching their savings go down amid volatile markets will no doubt welcome the temporary reduction in minimum pension drawdown rates to help them better manage the financial outcomes of COVID-19.

However, perhaps some caution should be exercised for those considering accessing their super early. By early April 2020, more than 600,000 Australians had applied through their myGov account to get an early release of their superannuation. The government is anticipating up to 1.6 million requests will be made and estimates a total of about $27 billion tax-free will be drawn down under this scheme.

While withdrawing super early will bring a relief and be the right option for some, there are risks. Individuals who fully withdraw their super or have their balances drop below $6,000, could lose income protection and life and total permanent disability insurance cover.

Many economic commentators say taking money out before retirement should be done only as a last resort. As a result, individuals should weigh up the pros and cons and seek independent advice.

Fund members should also watch out for scammers offering to “help” them withdraw their superannuation. The Australian Competition and Consumer Commission confirmed that scammers are cold-calling people and attempting to charge a fee to facilitate early access, while also obtaining personal information that will help them fraudulently access the victim’s superannuation funds. Remember, only the ATO is coordinating the early release of super through myGov.

Temporary early release of superannuation

Eligible individuals affected by the coronavirus can access up to $10,000 of their super in 2019-20 and a further $10,000 in 2020-21. Individuals will not need to pay tax on amounts released and withdrawals will not affect Centrelink or Veterans’ Affairs payments.

From mid-April 2020, eligible individuals can apply online through myGov to access up to $10,000 of their superannuation before 1 July 2020. They can also access up to a further $10,000 from 1 July 2020 for approximately three months.

To be eligible, you must satisfy any one or more of the following:

- You are unemployed.
- You are eligible to receive a JobSeeker payment, youth allowance for jobseekers, parenting payment (which includes the single and partnered payments), special benefit or farm household allowance.
- On or after 1 January 2020, either
  - you were made redundant
  - your working hours were reduced by 20% or more
  - if you are a sole trader, your business was suspended or there was a reduction in your turnover of 20% or more.

Temporarily reducing minimum drawdown rates

It should be also noted that the government is temporarily reducing superannuation minimum drawdown requirements for account-based pensions and similar products by 50% for 2019-20 and 2020-21. The government is also reducing both the upper and lower social security deeming rates by a further 0.25 percentage points in addition to the 0.5 percentage point reduction to both rates announced on 12 March 2020.

Here’s what attracts the ATO’s attention about luxury car tax

The ATO has announced that it has identified some common errors regarding luxury car tax (LCT) claims, but also says there are issues it has identified with LCT that are more associated with actively trying to pay less tax than required.

Common errors

Some common errors the ATO has identified when taxpayers report or claim LCT include:

- using an incorrect formula or the wrong LCT threshold
- dealers/resellers who deferred LCT, not reporting and paying LCT on their BAS immediately after they sell the car or were starting to use it for a non-quotable purpose
- primary producers or tourism operators claiming a refund via the BAS and not via the appropriate form
- claiming a GST credit for the GST and LCT, when the taxpayer cannot claim back the full GST or the LCT.

A taxpayer needs to report LCT on their BAS, using the same tax period as they do for GST reporting.

What attracts its attention

With taxpayers complying with what is expected for LCT obligations, the ATO says it has observed some small amounts of non-compliance, but it is keen to not see this develop into the realm of outright tax avoidance schemes or sham arrangements directed at avoiding LCT.

Its focus, rather than inadvertent errors, is therefore the issues and behaviours of those who actively try to avoid their LCT obligations. Some of the behaviours it is most concerned about include:

- resellers who undercut legitimate dealers on price by evading LCT and GST on luxury car sales – the ATO says these reseller entities manipulate buyers and sellers for their own financial gain to the detriment of the broader community
- individuals who attempt to pass off private luxury car purchases as a trading enterprise to fraudulently access LCT and GST benefits
- dealers or resellers falsely asserting that luxury cars are being held solely as trading stock when the cars are being used frequently for "extended" test drives, personal use or informally leased or sold
- organised criminal networks infiltrating the luxury car industry to launder money, hide assets and commit tax fraud, including LCT fraud – the ATO says these networks contribute to the black economy and deprive legitimate business from competing fairly in the market.

Employers get an amnesty for missed super payments

It has been a long time coming, but a planned government amnesty for employers who have missed paying the superannuation guarantee (SG) to their employees has now become law. The amnesty was passed on 6 March 2020, and lasts until 7 September 2020.

The amnesty allows employers to make deductible payments, without penalties, of outstanding superannuation guarantee charge (SGC) amounts if:

- they relate to the period 1 July 1992 until 31 March 2018; and
- they are paid during the amnesty period (24 May 2018 until 11.59pm, 7 September 2020).

However interest calculated at a rate of 10% a year on the SG shortfall will still apply to compensate employees for these late payments.

The amnesty comes at a time when the ATO's ability to identify unpaid or underpaid SG has greatly increased. This has come about through a number of developments, including better technology and information systems, more frequent reporting requirements for super funds and employers, and a greater supply and cross-referencing of data from institutions and agencies that feeds into the tax system's increasingly utilised pre-fill capabilities.

The incumbent super rules (that is, before the amnesty) impose a penalty on employers who do not pay the minimum amount of compulsory contributions in respect of their employees' ordinary times earnings (OTE) for each quarter.

If the required minimum payments are not made by 28 days after the quarter to which they relate, SGC comprised of the following amounts is payable:

1. SG shortfall – the total of these amounts in respect of each affected employee;
2. interest on those SG shortfalls – currently 10% a year on each individual shortfall from the beginning of the relevant quarter until the date the SG charge is payable; and
3. an administration fee – calculated at a rate of $20 per employee, per quarter.
4. a penalty — up to 200% of the SGC.

In addition, payments of the SGC will not be deductible.

Importantly, employers should note that the ATO has stated that it will continue to apply the above rules should employers that have unpaid SG obligations not come forward and take advantage of the amnesty.

Superannuation guarantee amnesty benefits

The amnesty provides employers with a number of concessions if they pay qualifying outstanding SGC. If an employer qualifies for the amnesty, they:

- will be able to claim a tax deduction for the SGC amounts paid to the ATO by 7 September 2020
- won't be required to pay the administration component ($20 per employee per quarter)
- won't have the penalty applied.

If an employer has already been assessed for a quarter, they can amend a previously disclosed SG shortfall. However only newly-disclosed, additional amounts will be considered for the benefits of the amnesty.

If an employer has previously disclosed unpaid SG to the ATO in anticipation of the SG amnesty, they don't need to lodge again or apply on the SG amnesty form (more below). The ATO will review all disclosures received between 24 May 2018 and 6 March 2020.

Eligibility

To be eligible for the amnesty, and for qualifying SGC, an employer must meet and fulfil all the following criteria. They must:

- have not been informed the ATO is examining or intends to examine the SG obligation for the quarter(s) the disclosure relates to
- disclose an SG shortfall for an employee that hasn't already been disclosed to the ATO (or disclose additional amounts of SG shortfall for a quarter previously disclosed)
- disclose for quarter(s) starting from 1 July 1992 to 31 March 2018
- lodge the completed SG amnesty form with the ATO so it is received no later than 7 September 2020.

Note that we can provide you with the necessary form. Also note that you will need to pay the amount owing to the ATO or set up a payment plan after you lodge the SG amnesty form. You need to do this to avoid being disqualified and losing the benefits of the amnesty.

Should an employee ask, the ATO has further stated that should an individual's contribution caps be exceeded due to these catch-up SG payments, discretion will be exercised to disregard the contributions made under the amnesty.

Individual or corporate trustee for your SMSF?

When establishing a self managed superannuation fund (SMSF), one central decision to be made early on is if the trustee structure is to consist of individual trustees or a corporate trustee. Between these choices, you can have up to four individual trustees, or one company that acts as trustee (with that incorporated body having up to four directors).

There are differences between these two structures, which can matter depending on your circumstances and outlook on effective retirement savings. The decisions to be made when choosing between the two choices relate to member/trustee requirements, some costs, how assets are to be owned, possibly penalties, and ultimately any succession considerations.

Requirements

For individual trustees, a fund is required to have two to four members, with each member of the fund also a trustee and vise versa (for single-member funds, see below). A member cannot be an employee of another member — unless they are relatives.

With a corporate trustee, there needs to be one to four members, with each member of the fund a director of the corporate trustee and vise versa. Again, a member cannot be an employee of another member — unless they are relatives.

For single-member funds with individual trustees, there must be two trustees, one of which must be the fund member. If that member is an employee of the other trustee, they must be relatives.

For single-member funds with a corporate trustee, the trustee company can have one or two directors, but no more. The fund member must be the sole director or one of the two, and if there are two directors and the fund member is an employee of the other, the member and the other director must be relatives.

Costs

Individual trustees cost less because there are no fees to be paid to ASIC for incorporation, which includes establishment and administrative costs. Note that a trustee cannot be paid for their duties and services as a trustee.

Corporate trustees on the other hand are charged a fee to register with ASIC, and there is an annual review fee. This however is lower if the incorporated body acts solely as a super fund trustee, but is higher if the corporate also performs another function, such as running a business. A corporate trustee cannot be paid for its services, and its directors cannot be paid for their duties or services in relation to the fund.

Asset ownership

If an individual trustee is removed or another added, you must change the titles of the SMSF's assets. This can take time and can cost, as state government authorities may charge a fee for title changes and most financial institutions also charge a fee for title changes.

For corporate trustees, recording and registering assets can be simpler, particularly for changes in membership — the corporate trustee doesn't change, so the titles of the SMSF’s assets are unchanged. When a person starts or stops being a member of the SMSF, they become, or cease to be, a director of the corporate trustee. It is required however to notify the ATO and ASIC of any change in directors.

Separation of assets

An important aspect of SMSFs is that the fund's assets must be kept separate from any assets that members hold personally.

With individual trustees, the funds assets must be held in the fund’s name, and must not be combined with any member’s personal assets.

It is the same for corporate trustees, however as the company (the corporate trustee) will have limited liability, there is greater protection should the trustee be sued for damages.

Penalty differences

If superannuation laws are breached, administrative penalties are levied on each trustee. Remember however that while a fund can have up to four individual trustees, the alternative structure results in one corporate trustee.

Take for example a fund that fails to prepare financial accounts and statements — a breach of the rules that results in a liability of 10 penalty units (each unit is valued at $210). A corporate trustee would therefore be hit with a penalty of $2,100, but with four individual trustees, the fund is looking at a penalty of $8,400.

Succession

Where changes to individual trustees occur, if one trustee of a fund passes away for example, the fund will not be able to remain compliant and will not be able to operate as usual in most cases — unless an appropriate succession strategy has been prepared.

The corporate trustee on the other hand, not being a natural person, continues in the event of a member’s death. With this situation, or even the incapacity of a member, control of the SMSF and its assets by the corporate trustee is more certain.