client alert | explanatory memorandum

August 2023

CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 28 July 2023.

ATO motor vehicle data matching program extended

The list of data matching programs the ATO is currently implementing is growing with the extension of the motor vehicles program to the 2022–2023 to 2024–2025 financial years. Information will be acquired from all eight of the state and territory motor registries regarding where a vehicle was transferred or newly registered during applicable financial years where the purchase price or market value is equal to or greater than $10,000. The ATO estimates that records relating to approximately 1.5 million individuals will be obtained each financial year.

The ATO has extended its motor vehicles data matching program once again to encompass the 2022–2023 to 2024–2025 financial years. This successful program has been running for 19 years in various iterations, and was developed as a way to assess the overall tax compliance of individuals and businesses involved in buying and selling motor vehicles.

For each financial year, the ATO will acquire information from all eight of the state and territory motor registries regarding where a vehicle has been transferred or newly registered during the applicable period, and where the purchase price or market value is equal to or greater than $10,000. It is estimated that records relating to approximately 1.5 million individuals will be obtained during each financial year.

The data obtained will consist of:

- identification details – names, addresses, phone numbers, dates of birth, Australian business numbers (ABNs) and Australian company numbers (ACNs); whether the seller is a licenced dealer, fleet manager, or leasing company (or representative); and the registering person for an unincorporated body; and
- transaction details – date of transaction, type of transaction, sale price of vehicle, market value of vehicle, vehicle garage address, type of intended vehicle use, vehicle make/model/body type/year of manufacture, engine capacity, tare weight, gross weight, VIN, registration number, transaction receipt number, stamp duty exemption and reason and dealer licence number (if applicable).

While the program is being used to obtain intelligence about taxpayers that buy and sell motor vehicles so the ATO can identify risks and trends of non-compliance with various tax and super obligations, the ATO will also be using the data obtained as an indicator of risk. For example, the motor vehicle data – along with other data holdings – will be used to identify taxpayers who have purchased vehicles with values that do not align with the income they have reported.

In addition, the data will be used to identify cases for investigation where interposed proxy ownership through other taxpayers such as sellers, licenced dealers, fleet managers, leasing companies or representatives of these taxpayers may be used to conceal the real accumulation of wealth. Other more mundane uses of the data will include the identification of taxpayers who may have not met their obligations in terms of GST, FBT, luxury car tax, fuel schemes and income tax.

The collection of data under the previous motor vehicles program of the 2016–2017 to 2018–2019 financial years was conducted between May 2018 and January 2020, and an exemption was granted by the Privacy Commissioner to retain that data for three years. The data to be obtained in the 2022–2023 to 2024–2025 financial years will be retained for five years from the receipt of the final instalment and used in multiple risk models, including models that establish retrospective profiles over multiple years.

According to the ATO, the data is used in conjunction with other data sources in its risk detection models and profiling tools to generate compliance actions for review. In cases where taxpayers identified from the data matching program fail to meet their obligations in terms of tax, super, FBT, GST and so on even after being prompted and reminded, referrals may be initiated to relevant areas for appropriate treatment and escalation for prosecution action.

Source: www.ato.gov.au/General/Gen/Motor-vehicle-registries---2016-17-to-2024-25-data-matching-program-protocol/ www.ato.gov.au/About-ATO/Commitments-and-reporting/In-detail/Privacy-and-information-gathering/How-we-use-data-matching/

Using the cents per kilometre method for claiming car expenses

Individuals, including sole traders, and partnerships (where at least one of the partners is an individual) can use the cents per kilometre method for car-related work or business expenses.

The cents per kilometre method is a simple way to work out how much you can deduct for car-related work or business expenses. Only individuals, including sole traders, or partnerships (where at least one partner is an individual) can use the cents per kilometre method. So if you operate your business through a company or trust, the business will have to use the actual costs method to claim car and vehicle running expenses.

The cents per kilometre rate takes into account all your car running expenses (including registration, fuel, servicing and insurance) and depreciation.

How does the method work?

To work out how much you can claim as a deduction, you simply multiply the total work/business kilometres you travelled by the appropriate rate. The rate for the 2022–2023 tax year is 78 c/km. The rate for the 2023–2024 tax year is 85 c/km. The rates are usually updated each year.

Importantly, you cannot claim more than 5,000 work/business kilometres per car, per year. So if you use your car for more than 5,000 kilometres a year for work or business purposes, you will need to use the logbook method to calculate your deductible car expenses.

You don't need written evidence to show exactly how many kilometres you travelled (although the ATO may ask you to show how you worked out your work/business kilometres, for example with diary records).

What is considered a "car"?

The cents per kilometre method (and the logbook method) only applies to cars. For tax purposes, a car is a motor vehicle (including a four-wheel drive) designed to carry a load of less than one tonne and fewer than nine passengers.

This means utes are generally not cars for tax purposes and thus you cannot use the cents per kilometre (or logbook) method to calculate your deductible ute expenses. You will have to use the actual costs method instead.

Apportioning private use

If you use a motor vehicle for both work/business and private use, you must be able to correctly identify and justify the percentage that you are claiming as work/business use. You cannot claim a deduction for the percentage of use that is private. This is an area where the ATO often sees errors made.

You can use a logbook or diary to record private versus work/business travel.

Note that travelling between your home and your place of work/business is considered to be private use, unless your home is considered to be your place of work, or you operate a home-based business and your trip was for work/business purposes.

Source: www.ato.gov.au/individuals/income-deductions-offsets-and-records/deductions-you-can-claim/cars-transport-and-travel/motor-vehicle-and-car-expenses/expenses-for-a-car-you-own-or-lease/
www.ato.gov.au/Business/Income-and-deductions-for-business/Deductions/Deductions-for-motor-vehicle-expenses/Cents-per-kilometre-method/

Paying contractors? Get ready for your TPAR

Businesses that make payments to contractors may need to report these payments and lodge a taxable payments annual report (TPAR). You will need to lodge a TPAR if your business made payments in the last financial year (ending 30 June 2023) to contractors providing the following services:

- building and construction;
- cleaning;
- courier and road freight;
- information technology (IT); or
- security, investigation or surveillance.

Contractors can include subcontractors, consultants and independent contractors. They can operate as sole traders (individuals), companies, partnerships or trusts.

If reportable services are only part of the services your business provides, you need to work out what percentage of the payments you receive are for taxable payment reporting (TPR) services each financial year. You do this to determine if you need to lodge a TPAR.

This does not apply to building and construction services you provide.

If the total payments you receive for TPR services are:

- 10% or more of your business income – you must lodge a TPAR; or
- less than 10% of your business income – you do not need to lodge a TPAR.

What to report

You need to report the total payment amount if an invoice you receive from a contractor includes both labour and materials.

You do not need to report the following payments in your TPAR:

- payments for materials only;
- incidental labour – if invoices list both materials and labour, you can exclude labour that is incidental to the supply of materials;
- unpaid invoices after 30 June – you only report payments you made on or before 30 June each year;
- workers engaged under a labour hire or on-hire arrangement – this includes a labour hire firm that hires workers under a labour-hire arrangement to provide services;
- pay as you go (PAYG) withholding payments – for example, you don't report payments to employees; these payments are reported through the PAYG withholding annual report or Single Touch Payroll (STP);
- payments to foreign residents for work performed in Australia – these payments are generally subject to PAYG foreign resident withholding; if the payments are not subject to PAYG withholding, then you need to report them in a TPAR;
- foreign residents for work performed overseas;
- contractors who do not quote an Australian business number (ABN);
- payments in consolidated groups; and
- payments for private and domestic projects.

Preparation and lodgment

TPARs are due on 28 August each year. If you do not lodge on time, you may have to pay a penalty.

You can help prepare for your TPAR by keeping records of all contractor payments.

You can lodge the TPAR or NLA through the ATO's online services.

If you have previously lodged a TPAR but you don't need to lodge one this year, you can submit a *TPAR Non-lodgment advice* to let the ATO know. This will avoid unnecessary follow up by the ATO.

Source: www.ato.gov.au/Business/Small-business-newsroom/General/Get-ready-for-your-TPAR/
www.ato.gov.au/business/reports-and-returns/taxable-payments-annual-report/work-out-if-you-need-to-lodge-a-tpar/

Instant asset write-off: is your business eligible?

Remember temporary expensing, which allowed just about every business (unless annual turnover was at least $5 billion) to immediately write off the cost of an eligible depreciating asset? Well, that is no longer available. To use temporary full expensing, you had to acquire and use, or install ready for use, an eligible depreciating business asset by 30 June 2023.

The good news for small businesses is that the instant asset write-off is still available.

What is the instant asset write-off?

Eligible businesses can claim an immediate deduction for the business portion of the cost of a depreciating asset in the year the asset is first used or installed ready for use.

The instant asset write-off can be used for:

- multiple assets if the cost of each individual asset is less than the relevant threshold; and
- new and second-hand assets.

Any small business that uses the simplified depreciation rules can claim the instant asset write-off. A small business is a business with an aggregated annual turnover of less than $10 million. Aggregated annual turnover is calculated by adding up the annual turnovers of your business, connected entities and affiliates.

The tests for whether an entity is a connected entity or an affiliate are somewhat complicated, but in very general terms:

- a connected entity is an entity which is controlled by your business or controls your business, or an entity that controls both your business and another business; and
- an affiliate is an individual or company that acts in accordance with your business's directions or in concert with your business.

The instant asset write-off applies to eligible depreciating assets costing less than the specified threshold (these are called low-cost assets). The threshold amount was originally $1,000, but since May 2015 it has been at least $20,000 and as high as $150,000 (until superseded by temporary full expensing, which ended on 30 June this year).

For the 2023–2024 tax year, the low-cost asset threshold will be $20,000 (this was announced in the May Federal Budget, although it has not been legislated as yet). The $20,000 threshold will apply for 12 months. So to take advantage of the $20,000 threshold, you will need to acquire the asset and first use it, or install it ready for use, between 1 July 2023 and 30 June 2024.

The $20,000 threshold applies on a per-asset basis, so small businesses can instantly write off multiple assets.

In certain circumstances, the instant asset write-off also applies to additional expenditure incurred on a low-cost asset.

The instant asset write-off doesn't apply to certain depreciating assets, including assets leased out for more than 50% of the time on a depreciating asset lease; horticultural plants, including grapevines; software allocated to a software development pool; assets used in your research and development (R&D) activities; and capital works, including buildings and structural improvements.

Source: www.ato.gov.au/Business/Depreciation-and-capital-expenses-and-allowances/Simpler-depreciation-for-small-business/Instant-asset-write-off/
www.ato.gov.au/Business/Depreciation-and-capital-expenses-and-allowances/Temporary-full-expensing/About-temporary-full-expensing/

Developments in GST guidance for crypto assets

The ATO has been undertaking targeted consultation on updating website guidance for crypto assets. In its most recent instalment, the ATO has now issued new GST guidance specifically relevant to crypto assets.

The ATO guidance addresses the following questions:

- How do you determine if a crypto asset is digital currency for GST purposes?
- What should you do when you receive and use digital currency as payment for goods and services?
- How does GST apply to digital currency exchanges?
- What is the GST treatment when you buy or sell digital currency?

If a crypto asset is digital currency for GST purposes

For GST purposes, the ATO considers that digital currency is a crypto asset utilising cryptography and distributed ledger technology to make secure transactions. Several characteristics of digital currency are outlined in the ATO guidance, none of which are particularly controversial.

The ATO has excluded loyalty points, in-game tokens, non-fungible tokens (NFTs), stablecoins, and initial coin offerings (ICOs) (if they fall under securities or derivatives) from this definition. Unless GST-free (eg supplied to overseas customers), then the following treatment is made for key crypto assets:

- the supply of NFTs is taxable;
- stablecoins and ICOs are input-taxed financial supplies; and
- if the ICO gives a right or entitlement to goods and services, then the supply will not be a digital currency but will be taxable.

The ATO's stance on NFTs has raised concerns in the industry for many projects and marketplaces. With GST now clearly payable, NFT projects and platforms must register, report and pay GST when supplying to Australia or its residents. This burden is significant and may prompt some projects to consider offshore moves or limiting access to Australians.

Digital currency as payment for goods and services

When using digital currency for payments in a GST-registered enterprise, the ATO advises the following.

- If receiving digital currency as payment for a taxable supply, the GST amount must be reported in Australian dollars on the business activity statement. Don't forget: the tax invoice should include the GST payable in Australian dollars or provide sufficient information to calculate it accurately.
- When using digital currency for purchases and claiming GST credits, be sure to report the GST amount in Australian dollars on your business activity statement. Remember, your tax invoice is key and must providing the necessary information.

To work out the value of your digital currency for your business activity statement, you must use the exchange rate on the conversion day that applies to you. The rate can be obtained from a digital currency exchange or agreed upon between the parties. The conversion day is determined based on accounting methods (cash basis or non-cash basis). Additional guidance is available for non-resident entities regarding the determination of the conversion day.

How GST applies to digital currency exchanges

A digital currency exchange is an online platform that facilitates the trading of crypto assets (this excludes NFTs, which are addressed in separate ATO guidance) for fiat currency or other crypto assets. The tax treatment of a digital currency exchange depends on the nature of the services provided and the residency of the users.

Specifically:

- if your exchange services cater to Australian residents, it's a taxable supply – you must report and pay GST on these transactions; and
- when your services extend beyond Australia's borders to non-residents, then the transactions are GST-free, meaning no reporting or GST payment required.

Attention, overseas exchanges! If you provide exchange services to Australia and exceed the GST turnover threshold, you too must register, report, and pay GST in Australia. There are many steps to this process including determining if you meet Australia's definition of "carrying on an enterprise" and fulfill all GST provisions. Where your exchange is intending to service Australians, advice should be sought from a local expert.

GST treatment when buying or selling digital currency

Identifying the location of your trading partners can be difficult. Thankfully, the ATO accepts using the location of the digital currency exchange as a reliable indicator. Once the location is determined, the GST consequences of trading digital currency are as follows.

- When you trade with Australian residents, it falls under the category of input-taxed financial supply. You don't need to pay GST on these supplies.
- When your trades extend beyond Australian borders or involve foreign digital currency exchanges, GST takes a back seat. Trading with non-residents qualifies as a GST-free supply, freeing you from GST obligations.

Be warned! While GST-free supplies spare you from paying GST, there's a vital checkpoint to remember. If you supply digital currency, carry on an enterprise and exceed the GST annual turnover threshold (generally $75,000), you must register for GST.

Source: www.ato.gov.au/Business/GST/In-detail/Your-industry/GST-and-crypto-assets/

Beware SMSF schemes: residential property purchase

The ATO has warned taxpayers against entering into a scheme through their self managed superannuation fund (SMSF) which claims to allow individuals to purchase property using money from their super. In terms of this particular scheme, the ATO will apply a "look through" approach to consider any arrangements entered into as a whole, which means if an SMSF's fund money is used to help purchase a property for a member, whether it be indirectly through the SMSF's investment in other entities, it will be treated as an illegal early access of super benefits by the member.

This sort of scheme typically involves the rollover of a member's super benefits from an existing fund into a new or existing SMSF, which then invests in a property trust for a fixed period and rate of return, being a contributory fund with other investors. However, the money from the property trust is then on-lent to individuals from a third-party in the form of a loan to assist in the purchase of real property secured by mortgages over the property.

Depending on the type of scheme, the money on-lent to the individual may be used for all or part of the deposit, the balance of the purchase price, costs relating to the purchase, or even to help consolidate a member's personal debts to enable them to secure a home loan. The scheme promoter will usually charge a high fee to the fund and establish both the SMSF and the property investment, as well as organising the purchase of the property (in some cases house and land packages).

While the ATO notes that these arrangements are established and promoted under the guise of a genuine SMSF investment with the added benefit of helping individuals purchase a home, they are not in fact legitimate investments and often contravene one or more of the super laws by providing members with a current day benefit while also being set up in ways that don't comply with the sole purpose test.

As a quick recap, the "sole purpose test" means that the SMSF needs to be maintained for the sole purpose of providing retirement benefits to members, or to their dependants if a member dies before retirement. Failing to meet the sole purpose tests results in the fund losing its concessional tax treatment and trustees potentially facing civil and/or criminal penalties.

In terms of this particular sort of scheme, the ATO noted that a "look through" approach will be applied to consider any arrangements entered into as a whole. That means if an SMSF's fund money is used to help purchase a property for a member, whether it be indirectly through the SMSF's investment in other entities, it will be treated as an illegal early access of super benefits by the member. The amount of illegal early access (ie the amount used the help purchase a property) will be included in the member's assessable income and taxed at their marginal rate. Tax shortfall penalties may also apply to the amount released.

Individuals who may have been persuaded by slick marketing or promoters and inadvertently entered into these schemes are urged to contact the ATO to make a voluntary disclosure. The ATO notes that voluntary disclosures will be taken into account when determining any penalties which may apply and what actions will need to be taken.

Source: www.ato.gov.au/General/Tax-planning/Schemes-targeting-SMSFs/Residential-property-purchased-through-illegal-SMSF-schemes/

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