client alert | explanatory memorandum

October 2024

CURRENCY:

This issue of **Client Alert** takes into account developments up to and including 23 September 2024.

Tax consequences of sharing your home

Homeowners can share their homes in a range of ways – you might have an agreement to rent out a room, offer short stays through a platform like Airbnb, accept money from a friend who sometimes needs a temporary bed, or receive board from family members such as university-age children. Some of these situations will affect your assessable income for tax and what expenses you can claim at tax time, so it's important to keep records and know what you need to declare. This article focuses on immediate tax concerns only – impacts on future capital gains tax and any Centrelink benefits should also be considered.

Rental income and expenses

Whether you rent out your whole home or just a room or granny flat, when it comes to lodging your tax return you'll need to declare the rent you receive as income. Rent and associated amounts that you receive (such as bond money or booking cancellation fees) are assessable income no matter the arrangement length, from a single-night Airbnb booking to an ongoing rental agreement.

You can claim immediate deductions for some expenses related to rental income, including costs for advertising to potential tenants, carrying out repairs and maintenance, and purchasing assets worth up to a certain value for the rental property. Other deductions (eg for depreciating assets) need to be claimed over time. It's important to note that rental expenses can only be claimed for periods when your home is rented out or genuinely available for rent. If you only rent out part of your home, only expenses related to that part are deductible.

Domestic arrangements

Where family members or friends who stay in your home pay you board and lodging to cover the costs of their food and accommodation, this is generally considered a "domestic arrangement" rather than a rental arrangement, so the payments don't need to be declared as assessable income on your tax return. Because of this, you also can't claim tax deductions for expenses related to having the friend or family member staying in your home.

Take care, though: if you enter into a home-sharing arrangement with friends or family where you intend to make a profit, or one that's otherwise generally consistent with an ordinary commercial tenancy agreement, simply calling the payments "board and lodging" isn't enough to avoid the tax implications of receiving rental income. It's best to seek professional advice if you're not sure how the ATO might view your particular situation.

Source: https://community.ato.gov.au/s/article/a07RF00000JHbe8YAD/renting-out-all-or-part-of-your-home-what-you-need-to-know-for-your-tax-return

Unlocking value: subdividing your family home's land

Many retirees find themselves cash-poor but asset-rich. For those living on larger properties, subdividing and selling unused land can be a potential retirement strategy to generate funds for income-producing assets. While this approach may suit some circumstances, it's crucial to understand the capital gains tax (CGT) implications and downsizer contribution limitations.

Understanding subdivision and CGT

When you subdivide a block of land, each new block receives a separate title and is treated as a distinct asset for tax purposes. Selling a subdivided block triggers CGT. To calculate the capital gain or loss:

- The acquisition date of the subdivided blocks is the same as the original parcel of land.
- The cost base of the original land is divided between the subdivided blocks on a reasonable basis.

The main residence exemption

Typically, selling a main residence is entirely exempt from CGT if it hasn't been used for income-producing purposes. However, this exemption may not apply to subdivided blocks.

The CGT main residence exemption requires that the capital gain relates to your "dwelling", which includes your home and up to two hectares of adjacent land used primarily for private or domestic purposes. This two-hectare limit includes the land beneath your home. Consequently, if you subdivide and sell a block of vacant land on a new title, it's no longer considered part of your dwelling and doesn't qualify for the CGT main residence exemption.

Case study: Anusha and Previn

Anusha and Previn purchased their home on two hectares of land 20 years ago for $100,000. They subdivide the land into two lots and sell the vacant lot on a separate title for $500,000, while remaining in their original home. The original cost of $100,000 is divided on a reasonable basis, resulting in a capital gain of $450,000.

For adjacent land, the main residence exemption only applies if the same CGT event happens to both the land and the dwelling that is the owner's main residence. As a result, Anusha and Previn's capital gain on the vacant land when it is sold won't qualify for the main residence exemption (although other less comprehensive exemptions may apply), making them liable for tax on any capital gain.

Downsizer contribution limitations

Since the vacant land has lost its association with Anusha and Previn's main residence, they're also ineligible to contribute any of the sale proceeds to superannuation as a "downsizer contribution". Eligibility requires the contribution to be equal to part or all of sale proceeds from the sale of a dwelling.

Exploring alternatives

Anusha and Previn could ask their accountant to investigate other variations of subdivision and sale that would be more tax effective, other CGT concessions that may be available and alternative methods to contribute the proceeds to superannuation.

The importance of professional advice

Tax advice is essential when developing retirement strategies. A qualified professional can help with:

- alternative subdivision strategies that may qualify for at least a partial main residence exemption;
- exploring options to contribute proceeds to superannuation as a downsizer contribution; and
- identifying other tax-effective strategies to maximise retirement income.

Before proceeding with any subdivision plans, it's crucial to seek expert advice to ensure you're making informed decisions that align with your retirement goals and comply with current tax regulations.

Source: www.ato.gov.au/forms-and-instructions/capital-gains-tax-guide-2023/part-a-about-capital-gains-tax/real-estate-and-main-residence

Employee overpayments: what to do

Once the end of financial year workload abates and payroll staff have time to have a closer look at what occurred in the previous income year, it's not unusual for unintended overpayments to employees to come to light. If this happens for your business, it's important to follow ATO guidance and consider all parties' rights and obligations when deciding what to do next.

Critically, the first step is to confirm whether the business will seek to recover the overpayment. This should be decided by business management in consultation with human resources, not by payroll staff. If no recovery will be sought then the original payment processing remains as is. Keep a clear record of the decision not to recover the overpaid amount.

If the business will seek recovery, you need to consider whether the overpayment relates to a previous income year, the current income year or both.

Remember to communicate clearly with the employee about any adjustments made to their Single Touch Payroll (STP) record – and therefore to their income statement – as part of recovering overpayments.

Previous income year

For an income year that's been finalised, the business will need to seek repayment of the gross overpaid amount directly from the employee. The STP record must be amended to reduce the gross by the amount of the overpayment. No tax adjustment should be made.

When the employee later lodges their tax return, the overpayment will no longer be taxable because it's no longer shown in STP, so they should get back any tax previously withheld on it.

Current income year

Where an overpayment affects a current income year, the process is to reduce the gross and the tax in STP by the original overpayment. The business then only needs to recover the net amount from the employee.

Superannuation

If the business paid superannuation on the original overpayment, the overpaid super can be used to offset future obligations for the same employee for up to 12 months.

Common questions

Should we only make adjustments once the employee has repaid?

No. The STP adjustments should occur when the decision is made to seek recovery. The decision means the amount becomes a loan to the employee and not taxable wages.

What happens if the amount isn't repaid by income year end?

Once the original overpayment is reversed in STP, internal records should show the amount as a loan, not taxable employee wages, so it doesn't matter for payroll purposes if the employee hasn't repaid the business by income year end.

Can we just reduce the employee's salary by the overpaid amount?

No. This would be viewed as a salary sacrifice, meaning it would come under FBT law as a debt waiver fringe benefit subject to full FBT.

Can the employee repay through the payroll system?

Yes. For the employee to repay through the payroll system, you need a written agreement indicating why the overpayment occurred, the total due and the amount to be repaid each cycle. Repayments should be post-tax deductions from the employee's pay. Alternatively, they could pay back external to the payroll system.

Source: www.ato.gov.au/businesses-and-organisations/hiring-and-paying-your-workers/payg-withholding/in-detail/repayment-of-overpaid-amounts

Payday super: policy design released

As part of the *Securing Australians' Superannuation* package announced in the 2023–2024 Federal Budget, the government proposed a "payday super" reform. Instead of the current requirement to pay quarterly, under the proposal employers will be required to pay their employees' superannuation guarantee (SG) contributions at the same time as their salary or wages (on "payday") from 1 July 2026.

What do the proposed changes mean for you? A newly released government fact sheet sets out some key elements of the policy.

Employers will need to pay SG alongside wages

From 1 July 2026, SG contributions will need to be made on "payday". This is the date an employer makes an ordinary time earnings (OTE) payment to an employee. When OTE is paid, there will be a new seven-calendar-day "due date" for the payment to arrive into an employee's superannuation fund. Some limited exceptions will apply: small or irregular payments outside the usual pay cycle won't be considered a payday until the next OTE payday occurs; and contributions for new employees won't be due until after the first two weeks of employment.

Updated super guarantee charge

The SG charge framework will be updated for the payday super environment, reflecting the seriousness of underpayment or late payment of the SG. The revised framework will:

- ensure that employees are fully compensated for any delays in receiving their super;
- incentivise employers to quickly disclose and correct any unpaid super amounts; and

- include larger penalties for employers who repeatedly do the wrong thing.

Assessments of the SG charge will be made by the ATO and can be triggered by voluntary disclosure by an employer, an employee notification, or where there is a non-payment detected by the ATO. If the SG charge is not paid by the due date, additional interest and penalties will apply. In-depth information about the changes to the SG charge can be found in the fact sheet.

Late contributions

Contributions will automatically count towards the earliest possibly payday not yet assessed for SG charge and which still has an outstanding shortfall so employers no longer need to make an election or choose the period for which each late contribution should count.

Other proposed supporting changes

Changes to support the transition to payday super, and to protect employees during onboarding, include the following:

- The deadline for super funds to allocate or return contributions will reduce from 20 business days to three days.
- Employer reporting in Single Touch Payroll (STP) will include employees' OTE and total super liability, ensuring correct identification of the SG.
- The ATO's Small Business Superannuation Clearing House will be retired on 1 July 2026. The ATO will support small businesses in transitioning to suitable payroll software solutions.
- Revised choice of fund rules will apply to make it easier for employees to nominate their super fund when starting a new job.
- Advertising of super products during onboarding will be limited to MySuper products passing the most recent performance test, to protect employees from poor outcomes.

What's next?

Legislative design is planned for the second half of 2024, and the ATO will engage with industry to inform the administrative aspects. It's important to remember that some of these details may be refined as a result of consultation, so keep an eye out for emerging news.

Source: https://treasury.gov.au/publication/p2024-581438
www.ato.gov.au/about-ato/new-legislation/in-detail/superannuation/payday-superannuation

"Super saver" scheme now more flexible for first home buyers

In welcome news for first home buyers, the government has made changes to the operation of the First Home Super Saver Scheme (FHSSS) to improve its flexibility for users.

The FHSSS allows you to withdraw certain voluntary superannuation contributions from your fund (plus associated earnings) to assist with purchasing or constructing your first home. There are detailed rules governing the amounts you can withdraw, but essentially the scheme enables you to withdraw up to $50,000 of eligible voluntary contributions (plus an earnings amount). Eligible voluntary contributions are those made since 1 July 2017, up to $15,000 per year and capped at $50,000. Saving for a home via the FHSSS can have tax benefits, either as part of a salary-sacrifice arrangement or by using personal deductible contributions.

When you want to access these savings to put towards your first home, you must follow a certain process. This firstly involves requesting a determination from the ATO, which will advise you of your maximum FHSSS release amount. Once you receive your determination, you can then request a release of the funds (which is also handled by the ATO), receive the funds, and then notify the ATO when you've signed a contract to purchase or construct your home (which must generally occur within 12 months of requesting a release of funds). You can request a release of the funds either before you sign the contract or within a 14-day timeframe after signing the contract. If you don't comply with the prescribed timeframes, you may be liable for FHSSS tax on the released funds.

However, legislative changes which take effect from 15 September 2024 will improve this process for scheme participants. The changes are designed to address "pain points" that were experienced by first home buyers in the early days of the scheme.

The changes include:

- *Expanding the timeframe for requesting a release:* Under the old rules, participants who signed a contract first had 14 days to request a release after signing the contract. From 15 September 2024, this will be expanded to 90 days. (However, you still must have obtained a determination from the ATO before you can make any release request.)
- *Expanding eligibility for requesting a determination:* Under the old rules, you needed to apply for an initial ATO determination before signing a contract. The amendments now specify that you only need to apply for a determination by completion (ie settlement) of the contract.
- *More flexibility to amend applications:* The new rules allow more scope to make changes to your participation in the scheme or to correct errors. You'll also be able to withdraw your application (eg if you change your mind) as long as the ATO has not already begun processing the amount released by your superannuation fund. Withdrawing your release request will not prevent you from making a new request in future.

The changes also provide an opportunity for prior applicants who were unsuccessful to take advantage of the recent amendments by reapplying, even if they now own their home. If you applied to access the FHSSS between 1 July 2018 and 14 September 2024 and were unsuccessful, the ATO will assess your eligibility and, if you're eligible, contact you to confirm whether you want to request a release.

Source: www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/super/withdrawing-and-using-your-super/early-access-to-super/first-home-super-saver-scheme

Accessing super from age 60 to 65

From 1 July 2024, the rules for accessing superannuation became somewhat simplified: the preservation age when you can begin to access your benefits is now effectively age 60. However, until you reach age 65, there are still potential restrictions on how you can access your super. You'll need to "retire" before you can make lump sum withdrawals from your super account or move it into the favourable "retirement phase" when investment earnings within the fund become tax-free. If you're aged between 60 and 65 and wish to access some of your super, now is a good time to re-examine the rules.

The new threshold is 60

For anyone born after 30 June 1964, preservation age is simply age 60.

You may recall that some members could previously begin to access their superannuation at various stages between 55 and 59 years. Those lower preservation ages applied for older Australians who are now all aged over 60 and have already attained their preservation age. Therefore, those rules regarding ages 55 to 59 are no longer an active consideration.

How much super can I access?

If you are between 60 and 65 years old but haven't yet retired, you can commence a transition to retirement income stream (TRIS). This allows you to receive a regular income of between 4% and 10% of your pension account balance each year. If you want to access more of your super, or withdraw it as a lump sum, you'll need to satisfy a further condition of release. This includes reaching age 65, or "retirement".

Meeting these conditions also becomes relevant for tax purposes. While TRIS payments to a person aged 60 or over are generally tax-free – regardless of whether they are retired or not – the TRIS itself does not move into the "retirement phase" until a further condition such as retirement (or reaching age 65) is met. This means that while you may start a TRIS, the TRIS will not qualify for the tax exemption on the investment earnings from fund assets that support the TRIS until you meet one of those further conditions.

What does "retirement" mean?

To satisfy the "retirement" condition, the first key requirement is that an arrangement under which you were gainfully employed must have come to an end. If you had already reached age 60 when that position of gainful employment ended, there are no further requirements, and your future work intentions are not relevant.

However, if you had not yet reached aged 60 when that position ended, the trustee of your fund must be reasonably satisfied that you intend never to again become gainfully employed, either on a full-time or a part-time basis. For these purposes, "part-time" means working for at least 10 hours per week. This means you could intend to work for less than 10 hours per week and still meet the "retirement" condition.

Planning is key

Any withdrawal strategy should be carefully planned beforehand to ensure you understand the implications of accessing your super. There are many factors to consider, such as:

- the ongoing requirement to withdraw minimum pension amounts each year if you start a pension;
- implications for your transfer balance account; and
- interaction with the Age Pension.

Source: www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/super/withdrawing-and-using-your-super/super-withdrawal-options

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Thomson Reuters (Professional) Australia Limited ABN 64 058 914 668
PO Box 3502, Rozelle NSW 2039

Tel: 1800 074 333

Email: SupportANZ@thomsonreuters.com

Website: www.thomsonreuters.com.au