client alert | explanatory memorandum

November 2024

CURRENCY:

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

Do you rent out your holiday home?

If you own a holiday home you might rent it out at times when you're not using it yourself. This article considers some of the tax issues you need to be aware of. Remember, you should seek professional advice if you have any concerns.

Income and expenses

If your holiday home is rented out, the rental income you receive is taxable.

You can claim expenses for the property to the extent they're incurred in earning that rental income.

Your expenses will have to be apportioned if:

- your property is genuinely available for rent for only part of the year;
- you used the property yourself for part of the year;
- only part of your property is used to earn rent; or
- you charge less than market rent to family or friends to use the property.

Expenses that relate solely to the renting of your property do not have to be apportioned as they are fully deductible. Such expenses include:

- real estate commissions;
- costs of advertising for tenants;
- the cost of phone calls you make to a tradesperson to fix damage caused by a tenant; and
- the cost of removing rubbish left by tenants.

On the other hand, no deduction can be claimed for expenses that relate solely to periods when the property isn't genuinely available for rent, is used for a private purpose or relates to the part of the property that isn't rented out. For example, the cost of cleaning your holiday home after you, your family or friends have used the property for a holiday or a repair for damage you caused while staying there wouldn't be deductible expenses because they relate to your private use.

Expenses may be deductible for periods when the property is not rented out, but only if the property is genuinely available for rent.

Is the property genuinely available for rent?

Factors that may indicate a property isn't genuinely available for rent include:

- it's advertised in ways that limit its exposure to potential tenants – for example, the property is only advertised at your workplace, by word of mouth or on restricted social media groups;
- the location, condition of the property, or accessibility of the property mean that it's unlikely tenants will seek to rent it; or
- you place unreasonable or stringent conditions that restrict the likelihood of renting out the property, such as setting the rent above the going rate for comparable properties in the area.

Source: www.ato.gov.au/individuals-and-families/investments-and-assets/residential-rental-properties/owning-and-renting-a-property-or-holiday-home
www.ato.gov.au/individuals-and-families/investments-and-assets/holiday-homes

Is your business BAS-ready?

Now is a great time to make sure your business is ready to meet upcoming business activity statement (BAS) due dates. The BAS applies if you run a business that's registered for GST. You'll need to report and pay using a monthly or quarterly BAS, and may report and pay GST annually, depending on your business turnover and other circumstances.

When you register for an Australian business number (ABN) and GST, the ATO will automatically send you a BAS when it's time to lodge. This will help you report and pay your business's:

- GST;
- pay as you go (PAYG) instalments;
- PAYG withholding tax; and
- other taxes and credits, such as FBT instalments, luxury car tax (LCT), wine equalisation tax (WET) and fuel tax credits.

Monthly BAS reports for September are generally due for lodgment by 21 October; quarter 1 reports, covering July, August and September, are generally due for lodgment by 28 October; and annual GST reports are generally due by 31 October.

You can lodge your own BAS online using ATO Online Services (which may make your business eligible for extra time to lodge), or directly from your business and accounting software if it includes Standard Business Reporting (SBR) capabilities. You can also choose to complete and mail a paper BAS. Payment is generally due by the same date as lodgment; options include paying by electronic transfer, direct debit, credit card or mailed cheque.

Alternatively, you can have your registered tax agent or BAS agent lodge and handle payments on your behalf, which can also mean you get extra time to lodge. When you use an agent, you can still access your own BAS through Online Services for Business or myGov, but the agent also has access to the BAS and your reminder messages via their online service.

To make lodging your BAS as straightforward and stress-free as possible, it's important that you:

- keep records of all sales, fees, expenses, wages and other business costs;
- keep appropriate records, such as stocktake records and logbooks to substantiate motor vehicle claims;
- reconcile sales with bank statements;
- use the correct GST accounting method; and
- keep all your tax invoices and other GST records for five years.

Finally, remember that you (or your agent) always need to lodge a BAS by its due date, even if your business has nothing to report for the period. When your business has nothing to report, you can lodge a "nil" BAS online or by phoning the ATO's automated reporting service.

Source: www.ato.gov.au/businesses-and-organisations/preparing-lodging-and-paying/business-activity-statements-bas

ATO data-matching: "lifestyle" assets and your business

The ATO has announced or extended a number of data-matching programs recently, including the lifestyle asset data-matching program. Data will be acquired from insurance providers for 2023–2024 to 2025–2026 for specified classes of asset where the asset value is equal to or exceeds nominated thresholds.

The assets and thresholds covered are:

- caravans/motorhomes: $65,000;
- motor vehicles including cars, trucks and motorcycles: $65,000;
- thoroughbred horses: $65,000;
- fine art: $100,000 per item;
- marine vessels: $100,000; and
- aircraft: $150,000.

The ATO's objectives for the program include:

- identifying compliance issues with income tax, capital gains tax (CGT), fringe benefits tax (FBT), goods and services tax (GST) and super obligations;

- identifying and educating businesses that might be failing to meet registration or lodgment obligations and help them comply;
- ensure businesses are meeting their tax and super reporting obligations.

Some of the tax risks that the ATO is keen to address that are relevant to businesses are the:

- omission or incorrect reporting of income and/or capital gain – taxpayers disposing of assets and not declaring or incorrectly declaring income and/or capital receipts on disposal;
- incorrect claiming of GST credits – taxpayers purchasing personal use assets through their business and claiming GST credits they are not entitled to;
- omitted or incorrect reporting of FBT – taxpayers purchasing assets through their business and allowing associates or employees to use for personal enjoyment giving rise to an FBT liability;
- use of assets by self-managed super funds (SMSFs) in breach of the law – SMSFs acquiring assets and applying them for the present-day benefit of the fund's members or related parties.

The ATO estimates that between 650,000 and 800,000 policy records will be obtained each year, with 250,000 to 350,000 matched records relating to individuals.

So what does this mean for your business?

While the focus is on the above assets and thresholds for the data-matching program, the ATO has also noted that additional types of assets and activities also attract their scrutiny (eg holiday homes, sporting clubs and activities, grape growing and farming pursuits). The ATO has found that some businesses make a number of common mistakes when accounting for the mixed business and private use of an asset, such as:

- claiming deductions for business assets that are then solely used for private purposes;
- incorrectly apportioning deductions between the business use and private use of an asset purchased by the business;
- creating an FBT liability for both the business and employee by using a business asset for personal enjoyment purposes.

Whether your business assets are above or below the thresholds in the data-matching program, you can avoid making these mistakes if you:

- *Review:* Regularly review the way you treat your business's assets and understand the mix between business and private usage where applicable. Remember, you can only claim deductions against business income for expenses associated with business use of your assets so you will need to be able to apportion the private use of an asset and exclude that from your calculations. Also remember that an FBT liability can arise for the business and your employee if you have assets that are used by an employee or an associate for personal purposes, and that needs to be accounted for.
- *Record:* Keep detailed records from your business that cover all transactions, including payments to and receipts from employees, shareholders and associates.
- *Advise:* If you use a tax professional in the management of your tax affairs, keep them up to date on how you're using your business assets so they can correctly apportion relevant income and deductions, and stay on top of your tax obligations.

Source: www.ato.gov.au/about-ato/commitments-and-reporting/in-detail/privacy-and-information-gathering/how-we-use-data-matching/lifestyle-assets-data-matching-program-protocol

Superannuation on paid parental leave from 1 July 2025

In March 2024, the government announced its intention to commence paying superannuation on government paid parental leave (PPL) payments from 1 July 2025. Announced as part of the launch of *Working for Women: A Strategy for Gender Equality* and included in the 2024–2025 Budget, the payment of superannuation on PPL aims to reduce the impact that career breaks to care for young children have on superannuation balances, and to improve equity in the superannuation system.

The legislation has now been passed.

New parents eligible for the PPL scheme with children born or adopted on or after 1 July 2025 will receive the paid parental leave superannuation contribution (PPLSC).

The PPLSC has two components:

- *core component:* this is calculated by multiplying the total amount of the PPL paid for the person in an income year by the superannuation guarantee rate for that income year (from 1 July 2025 the superannuation guarantee is 12%); and
- *interest component:* an additional interest component will be added to address foregone returns resulting from the PPLSC being an annual payment.

The PPLSC (both the core component and the interest component) will be paid to parents as a lump sum superannuation payment following the end of each financial year in which they received PPL. Recipients of PPL won't be required to make a claim to access the PPLSC. Instead, the ATO will calculate the PPLSC based on information received from Services Australia about the recipient's payments, and the contribution will be automatically deposited into the nominated superannuation fund of eligible parents.

The PPL scheme has been legislated to expand over time from 20 weeks to 26 weeks. From 1 July 2024, eligible individuals and families receive two additional weeks of leave, amounting to 22 weeks in total. This increases to 24 weeks from 1 July 2025, and to 26 weeks from 1 July 2026. This amounts to a total of six additional weeks of PPL for new parents. By 2026, a total of four weeks will be reserved for each parent on a "use it or lose it" basis, to encourage the sharing of care responsibilities. In addition, the number of PPL weeks a family can utilise at the same time increases to four weeks from 1 July 2025, up from the current two weeks.

These changes to the PPL scheme will factor into payment of the PPLSC. Once the PPL available reaches 26 weeks in July 2026, the maximum amount a family would receive in superannuation contributions for each birth or adoption would be more than $3,000.

Eligibility rules for the PPL scheme can be found on the Services Australia website.

Source: www.ato.gov.au/about-ato/new-legislation/in-detail/superannuation/superannuation-on-paid-parental-leave
www.servicesaustralia.gov.au/parental-leave-pay
www.servicesaustralia.gov.au/paid-parental-leave-scheme-for-employers

Salary sacrifice and your super

Salary sacrificing to make additional contributions to your super fund can help grow your super balance for a better financial position at retirement. Before making an arrangement, you should explore the potential benefits and your financial goals to ensure it's the right fit for your circumstances.

What is salary sacrificing?

Salary sacrificing is an agreement between you and your employer to receive less income before tax in return for benefits of a similar value paid for by your employer. Depending on the industry you work in, benefits could include car or mortgage payments; tools or protective clothing; or super contributions.

Most employers offer salary sacrifice to super for their employees, meaning you could choose to have part of your pre-tax income paid into your super fund in addition to your super guarantee (SG) entitlement (11.5% for 2024–2025).

For example, if your income is $80,000 before tax, you could choose to receive $70,000 as taxable income and salary sacrifice $10,000 into your super fund over the income year ($416 per fortnight). Super contributions made by salary sacrifice are concessional contributions, taxed at 15% instead of at your marginal income tax rate. The marginal tax rate on employment income exceeding $45,000 is 30%. So, by salary sacrificing to super in these particular circumstances you could save tax as well as boosting your super savings.

Potential benefits of salary sacrificing into super

- Your employer will set up and automatically send the contributions to your super fund.
- Regular additional payments, especially if you start early, will accelerate the growth of your super fund and make a big difference at retirement.
- Lower taxable income may help you pay less tax, stay in a lower tax bracket, reduce the Medicare Levy, or qualify you for certain concessions.
- Up to $50,000 of salary sacrifice contributions are eligible to be accessed through the First Home Super Saver Scheme.
- Salary sacrificing to super will not reduce the amount of SG contributions your employer provides.

Points to consider before opting to salary sacrifice

- Less take-home pay may be challenging if you have a tight budget or immediate financial needs like a mortgage.
- If you aren't using the funds to purchase your first home, you won't be able to access any of the money added to your super fund until you reach 65 or you retire after age 60, so you will need enough funds outside of super to cope with emergencies or other shorter-term financial issues.
- The amount of "concessional" contributions you can add to your super each year is capped ($30,000 for 2024–2025): if you go above the cap, contributions will be taxed at your marginal tax rate (less a 15% tax offset). Concessional contributions include both SG and salary sacrifice contributions, as well as contributions you claim a tax deduction for.
- You won't be able to claim a tax deduction on salary sacrificed super contributions, as you won't have paid income tax on them.
- If you earn under $45,000 a year, salary sacrificing into super might not be as beneficial due to your lower income tax rate.
- Consider getting financial advice or tax advice.

What next?

If you've decided salary sacrificing to super is the right choice, you should:

- calculate how much of your income you want to sacrifice;
- talk to your employer about starting a salary sacrifice arrangement; and
- check your payments, both salary sacrifice and SG contributions, are being made correctly.

Source: https://moneysmart.gov.au/grow-your-super/super-contributions
www.ato.gov.au/individuals-and-families/jobs-and-employment-types/working-as-an-employee/salary-sacrificing-for-employees

Exploring compassionate early release of super

Superannuation is designed to provide for your retirement, but there are limited circumstances where you can access your super early on compassionate grounds. These provisions are in place to help meet urgent expenses for you or your dependants when other options have been exhausted.

The ATO oversees applications for the compassionate release of superannuation; in 2023–2024 it approved the release of $1.04 billion of superannuation.

It's important to understand the specific situations that may qualify and the process involved.

Compassionate grounds cover a range of circumstances, including:

- preventing foreclosure or forced sale of your home;
- medical treatment for you or your dependants;
- medical transport for you or your dependants;
- modifying your home or vehicle to accommodate special needs arising from severe disability;
- palliative care for terminal illness; and
- death, funeral or burial expenses for your dependants.

Generally, applications need to be for unpaid expenses. This means you can't claim for costs you've already covered.

Let's focus on preventing foreclosure or forced sale of your home, as it's a common concern. You may be eligible if you've received a threat to repossess or sell your home from your mortgage lender due to arrears, your council due to outstanding rates, or an enforcement officer acting on a court order.

To qualify under this ground, you must meet four key conditions:

1. The property must be your principal place of residence.
2. You must be legally responsible for the mortgage repayments or council rates.
3. You must have received written advice about the impending foreclosure or forced sale.
4. You must have no other capacity to pay the amount needed to prevent the foreclosure or sale.

The amount released from your super must be a single lump sum, not exceeding what's reasonably required. For mortgage foreclosure prevention, the release is limited to three months of repayments plus 12 months of interest in any 12-month period.

Before applying to the ATO, it's crucial to contact your super fund. The fund can confirm if it'll release your super early on compassionate grounds, check if you have sufficient funds (including for tax withholding), advise on any fees and explain potential impacts on your insurance.

Remember, accessing your super early should be a last resort. It's your future financial security at stake. However, when faced with genuine hardship, it's reassuring to know that this option exists to help through difficult times.

Source: www.ato.gov.au/about-ato/research-and-statistics/in-detail/super-statistics/early-release/compassionate-release-of-super

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