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Investment properties: tax return errors that trigger ATO follow-up

Owning an investment property can be tax-effective, but it's also one of the ATO's most closely monitored areas. Here are five errors that most often trigger ATO follow-up, and the related issues to keep in mind.

Over-claiming repairs that should be capital works

Repairs and maintenance can be claimed for work that remedies or prevents defects, damage or deterioration arising from using the property to earn income. These expenses are generally deductible in the year they are incurred. By contrast, capital works are structural improvements, alterations or extensions that go beyond merely fixing wear and tear. If the work improves the function or value of the property, it's likely to be capital in nature. Capital works are usually claimed at 2.5% over 40 years (subject to specific exceptions).

Claiming incorrect interest deductions

If a loan's used for both private purposes and rental property expenses, the interest must be apportioned. You can only claim the portion that relates to the rental property. This applies whether the mixed use occurs when the loan is first taken out, or arises later through refinancing or redraws. Apportioning of interest must continue over the life of the loan, and interest on amounts used for private purposes is never deductible.

Claiming deductions during private use periods

You can't claim deductions for interest or other expenses for periods when a holiday home or mixed-use property is used privately, even if the private use is brief. To legitimately claim deductions, the property must be rented or genuinely available for rent. A property may not be considered genuinely available if it's advertised only through limited channels, offered only during periods of very low demand, or subject to unreasonable conditions such as above-market rent or overly restrictive tenant requirements.

Repeatedly refusing suitable tenants without valid reasons can also indicate the property is being held for personal use rather than income producing purposes.

Poor record keeping and lack of substantiation

You must keep records of your rental income and expenses for at least five years from the date you lodge your tax return. If a dispute with the ATO arises during that period, you must retain relevant records until the dispute is resolved.

Not reporting all rental-related income

Rental-related income includes more than just rent. It can also include bond money retained for unpaid rent or damage, letting or booking fees from cancelled reservations, and insurance payouts, whether for property damage or loss of rent. Disaster relief payments received in relation to a rental property may also be assessable. The ATO now cross-checks data from banks, state land registries, insurers, rental bond authorities and digital platforms, making errors easier to detect than ever.

Is your business misreporting FBT on work vehicles?

If your business provides work vehicles to your employees, the ATO wants to ensure you're meeting your fringe benefits tax obligations. The ATO has identified that many businesses are failing to meet their FBT obligations when providing work vehicles for private use.

This isn't just about paperwork. Failing to report, or incorrectly reporting, fringe benefits undermines fairness for employers and can create compliance issues for employees. Getting it right ensures a level playing field and helps your employees meet their tax obligations.

The ATO has identified several practices that can lead to audits, penalties and interest charges:

- failing to lodge an FBT return when required;

- assuming private use of a dual cab ute is automatically exempt;
- incorrectly claiming vehicle exemptions;
- avoiding apportioning private and business use; and
- not keeping adequate records, such as valid logbooks.

These mistakes can also damage your business reputation, making it crucial to stay on top of your obligations.

If you make a vehicle available to your employees, or their family members or associates, for private use, it may be subject to FBT. This means you may need to lodge an FBT return and pay FBT.

The key is understanding when a work vehicle becomes a fringe benefit. Simply providing a vehicle for work purposes doesn't automatically trigger FBT, but allowing private use generally does.

The ATO uses sophisticated data and analytics to identify businesses that aren't meeting their obligations. Their compliance teams are actively contacting employers who fail to comply or deliberately avoid FBT.

Time's running out for small business super clearing house users

If you're one of the thousands of small businesses using the Small Business Superannuation Clearing House (SBSCH), you need to act now. The service will permanently close on 1 July 2026. From that date, the SBSCH will no longer process payments or allow access to historical records. The closure is part of the government's payday super reforms, which aim to modernise how employers pay superannuation.

The ATO recommends making the January to March 2026 quarter your last quarter using the SBSCH, giving you a buffer to establish your new process.

Your immediate priorities should be:

- **Choosing your alternative payment method:** Check if your existing payroll software already includes super payment functions. Many modern payroll systems offer integrated superannuation payments that meet SuperStream requirements. Alternatively, you can use commercial clearing houses or online payment services offered by some large super funds.
- **Downloading your records before 1 July 2026:** This is crucial, because once the service closes, your transaction history and employee details will be permanently inaccessible. You'll need these records for future audits and employee queries.

- **Switching early to avoid problems:** By transitioning before the deadline, you'll have an established process in place and reduce the risk of late payments for the April to June 2026 quarter.

The ATO's SuperStream Product register lists certified payroll software and service providers that can handle your super payments. Many offer additional features like automated calculations, compliance reporting and integration with your existing accounting systems. Large super funds also often provide online payment portals, and commercial clearing houses offer similar services to the SBSCH but with enhanced features and ongoing support.

Choosing the right super payment solution depends on your business size, payroll complexity and existing systems. The transition also presents an opportunity to review your entire payroll and super compliance processes.

Superannuation changes proposed for high balances and low-income earners

The government has introduced legislation that proposes significant changes to Australia's superannuation system that could reshape retirement savings for millions of Australians. It targets both ends of the income spectrum, applying higher tax for those with very large super balances while boosting support for low-income earners.

The Bill proposes a tiered Division 296 tax system for superannuation earnings on balances exceeding \$3 million, commencing 1 July 2026:

- the current 15% tax rate would remain for earnings on balances up to \$3 million;
- earnings on the super portion between \$3 million and \$10 million would be taxed at an effective 30% rate; and
- earnings on amounts above \$10 million would face a 40% effective tax rate.

These thresholds will be indexed to keep pace with inflation. The new tax would apply only to future realised earnings, not unrealised capital gains on unsold assets.

This change would affect fewer than 0.5% of current superannuation members – approximately 80,000 Australians with extremely large super balances. For the vast majority, superannuation tax arrangements would remain unchanged.

The low income superannuation tax offset (LISTO) is proposed to receive a significant boost from 1 July 2027: the eligibility threshold would increase from \$37,000 to \$45,000; the maximum payment would rise from \$500 to \$810; and automatic indexation would tie future adjustments to tax thresholds and superannuation guarantee rates.

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The government says these changes will benefit over 1.3 million Australians, with around 60% being women. Treasury estimates eligible workers could see an average retirement benefit equivalent to an extra \$15,000.

If you have a large superannuation balance, the changes could significantly impact your retirement planning strategy. The proposed tax increases represent a substantial shift in how high-balance superannuation is treated.

For low-income earners, the enhanced LISTO could provide meaningful support. The higher threshold would mean more workers qualify for the offset, while the increased payment amount means better tax outcomes on superannuation contributions.

Remember, this is proposed legislation that must pass Parliament before becoming law. The Bill may be amended during the parliamentary process, and implementation details are still being finalised.

Choosing the right trustee structure for your SMSF

Setting up a self-managed super fund (SMSF) is an exciting step towards taking control of your retirement savings, but one of the most important decisions you'll make is choosing your trustee structure. This choice will affect how your fund operates and your ongoing compliance obligations.

You have two main trustee structure options for your SMSF:

- individual trustees – where each member of the fund acts as a trustee; or
- corporate trustee – where a company acts as the trustee of the fund.

With individual trustees, each member of your SMSF must be a trustee. This means if you have a two-member fund, both members must be trustees.

The main advantages of individual trustees include:

- lower setup costs as you don't need to establish a company;
- simpler initial structure; and
- no annual fees to pay to the Australian Securities and Investments Commission (ASIC) for maintaining a company.

However, there are some drawbacks:

- all trustees must sign fund documents, which can be cumbersome;
- any penalties for legal or regulatory breaches are imposed on each individual trustee (costing more in fines);

- if a trustee dies, assets may need to be transferred; and
- changes to membership require updating legal documents.

A corporate trustee structure uses a company as the trustee of your SMSF. The members of the fund become directors of the company, giving them control over fund decisions.

The benefits of a corporate trustee include:

- continuity – the company continues even if directors change;
- easier administration when members join or leave;
- assets are held in the company name, reducing paperwork when membership changes;
- any penalties for legal or regulatory breaches constitute a single fine (where directors share the cost); and
- only one signature may be required for fund documents (depending on the company's constitution).

The main disadvantages are:

- higher setup costs to establish the company;
- annual ASIC fees; and
- additional compliance obligations for the company.

The right choice depends on your circumstances.

Consider factors such as:

- the number of members in your fund;
- whether you expect membership to change over time;
- your tolerance for ongoing costs versus convenience;
- the value of assets you plan to hold in the SMSF; and
- your long-term plans for the fund.

For funds with multiple members or those planning to hold significant property investments, a corporate trustee often provides greater flexibility and easier administration over time. Single-member funds may find individual trustees simpler initially, though the benefits of corporate trustees often outweigh the costs as the fund grows.

Remember that changing trustee structures later can be complex and costly. You may need to transfer assets and update legal documents. Choosing your SMSF trustee structure is a crucial decision that will impact your fund's operation for years to come. The choice between individual and corporate trustees involves weighing up costs, convenience and your long-term plans.

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