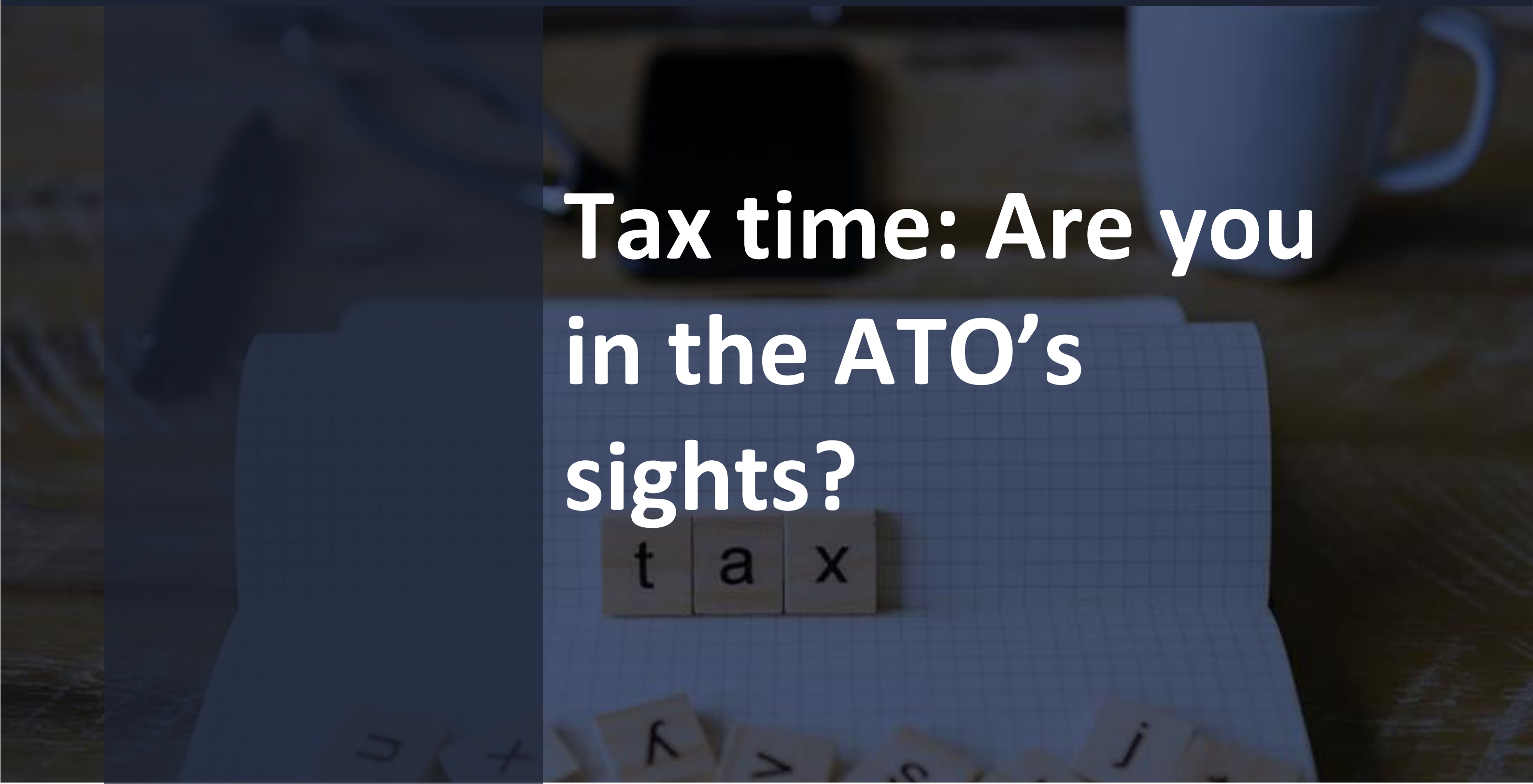
Your Knowledge June 2019



Tax time: Are you in the ATO's sights?

Inside

A consistent theme this tax time is overclaiming and under reporting. With the Australian Taxation Office (ATO) getting more and more sophisticated in its data matching approaches, taxpayers can expect greater scrutiny where their claims are more than what is expected. We take a look at the key issues.

What's new

Live reporting through Single touch payroll

Single touch payroll (STP) reporting has changed the way businesses report salary and wages, PAYG withholding and superannuation contribution information to the ATO. For the 2018-19 financial year, only businesses with 20 or more employees were required to use STP. From 1 July 2019, all businesses will need to use STP although there is some leniency for micro businesses struggling with implementation.

STP means that employers will no longer issue Payment Summaries, instead a finalisation declaration

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will generally need to be made by 14 July (the deadline is 31 July 2019 for businesses using single touch payroll for the first time in 2018-19).

If your employer has used STP in 2018-19, you can access your Income Statement from myGov. Through your myGov account, you will be able to see your year to date tax and superannuation information within a few days of your employer paying you.

For you

Work related deductions

Last financial year, over 8.8 million taxpayers claimed $21.98 billion in deductions for work related expenses. It's an area under intense review by the ATO. If you claim work-related deductions, it's important to ensure that you are able to substantiate any claim you make.

To claim a deduction, you need to have incurred the expense yourself and not been reimbursed by your employer or business, in most cases you need a record proving you incurred the expense, and the expense has to be directly related to how you earn your income – that is, the expense is directly (not sort of) related to your work. This also means ensuring that you only claim the work-related portion of items you use personally, such as mobile phones or internet services.

When you don't have to keep records

If your claim for work related deductions is below $300 you do not have to keep a record of the expense, such as a receipt. Work related clothing has a $150 record keeping limit. However, the ATO is concerned that taxpayers are 'automatically' claiming these deductions without incurring any expenses because of a belief that you don't have to support the claim. If you have claimed an amount up to the record keeping threshold, you may find that the ATO will ask you to explain how you came to that amount. If you don't have diary entries or a good explanation, your claim might be denied.

Working from home

If you don't have a dedicated work area but you do some work on the couch or at the dining room table, you can claim some of your expenses like the work-related portion of your phone and internet expenses and the decline in value of your computer. If you have a dedicated work area, there are a few more expenses you can claim including some of the running costs of your home such as a portion of your electricity expenses and the decline in value of office equipment.

If your home is your principal place of business, you might be able to claim a range of expenses related to the portion of your home set aside for your business. What the ATO is looking for is an identifiable area of the home used for business.

Ensure any claims are in proportion to the work related use. You can't, for example, claim all of your internet expenses because you do a bit of work from home in the evenings and need the internet.

Work related clothing

In general, you cannot claim the cost of your work clothes or dry cleaning expenses unless the clothes are occupation specific, such as chefs whites or a uniform with a logo, or protective gear because your workplace has hazards (jeans don't count as protective wear).

Just because you have to wear a suit to work does not make it deductible.

Cryptocurrency

The ATO has a special taskforce dealing specifically with cryptocurrency. Cryptocurrency is considered an asset for tax purposes, rather than a form of currency. This means that gains or losses made on disposal or exchange of cryptocurrency will often be captured under the tax system – regardless of whether you're switching between currencies or 'cashing out' your asset into AUD.

You will need to keep records of all of your trades in order to work out whether you've made a taxable gain or loss each time you dispose of an asset.

Capital gains tax can be complex and this is an area that the ATO is looking very closely at, particularly where taxpayers are claiming large losses. Also, some disposals can be taxed as ordinary income which means the CGT discount cannot apply and capital losses cannot be applied against the gains that have been made.

Rental property deductions

In the 2017-18 financial year, more than 2.2 million Australians claimed over $47 billon in deductions and the ATO believes that is too much - one in ten is estimated to contain errors.

What you can claim for your rental property has been significantly curbed. For example, you can no longer claim deductions for the cost of travelling to inspect the property. And, you can no longer claim depreciation deductions for second hand plant and equipment. Previously, you could for example, buy a rental property from someone else and then claim depreciation on the assets already in the property such as the kitchen appliances and carpet. From 1 July 2017, you can only claim deductions for new assets you purchase and install in the property.

4,500 audits of rental property deductions will be undertaken this year with the focus on over-claimed interest, capital works claimed as repairs, incorrect apportionment of expenses for holiday homes let out to others, and omitted income from accommodation sharing. Deliberate cases of over-claiming are treated harshly with penalties of up to 75% of the claim.

When you own a share in a property

For tax purposes, rental income and expenses need to be recognised in line with the legal ownership of the property, except in very limited circumstances where it can be shown that the equitable interest in the property is different from the legal title. The ATO will assume that where the taxpayers are related, the equitable right is the same as the legal title (unless there is evidence to suggest otherwise such as a deed of trust etc.,).

This means that if you hold a 25% legal interest in a property then you should recognise 25% of the rental income and rental expenses in your tax returns even if you pay most or all of the rental property expenses (the ATO would treat this as a private arrangement between the owners).

The main exception is that if the parties have separately borrowed money to acquire their interest in the property then they would claim their own interest deductions.

Earning money from the sharing economy

Income earned from the sharing economy, AirBNB, Uber, AirTasker etc., must be declared in your tax return. But you may also be able to claim proportional expenses associated to providing the service. Ensure that any deductions you claim are related to providing the service itself (not just switching on the app or making yourself available).

If you are a driver with Uber or another platform, you will need to be registered for GST regardless of how often you drive.

Your superannuation

Not making your full superannuation contribution? Now you can catch up

This year is the first year of new measures that enable people who have been out of the work force, like new Mums, to top up their superannuation.

If you have:

- A total superannuation balance below $500,000 as at 30 June; and
- Not utilised your entire concessional contributions cap ($25,000) for the year

then you can 'carry forward' the unused amount on a rolling 5 year basis.

For example, if your total concessional contributions in the 2018-19 financial year were $10,000 and you meet the eligibility criteria, then you can carry forward the unused $15,000 over the next 5 years. You may then be able to make a higher deductible personal contribution in a later financial year. If you are selling an asset and likely to make a taxable capital gain, a higher deductible personal contribution may assist in reducing your tax liability in the year of sale.

Remember:

- Your total superannuation balance must be below $500,000 as at 30 June of the prior year before you utilise any carried forward amount (within the 5 year term); and
- In some cases, an additional 15% tax can apply (30% total) to concessional contributions made to super where income and concessional contributions exceeds certain thresholds ($250,000 in 2018-19). Your income could be higher than usual in the year when you sell an asset for a capital gain.

Your business

There are around 3.8 million small businesses, including 1.6 million sole traders in Australia. They employ around 5.5 million people and contribute $380bn to the economy. Small business is also in debt to the ATO to the tune of $15bn.

This tax time, the ATO has stated they are looking closely at taxpayers:

- setting up or changing to a company structure
- claiming motor vehicle expenses
- who may not be correctly apportioning between personal and business use

There are a multitude of data-matching programs and benchmarks to catch out those attempting to rort the system.

For wealthy groups and medium businesses, the focus is on structuring to avoid tax:

- international risk - international profit shifting and corporate restructuring
- inappropriate arrangements that seek to extract profits or capital without the right amount of tax being paid
- high risk trust arrangements attempting to gain advantage beyond ordinary trust arrangements or tax planning associated with genuine business or family dealings.

If the ATO suspect there is a problem, you may be contacted to justify why decisions were made to structure your affairs or the affairs of your company in a particular way.

No tax deductions if you don't meet your tax obligations

From 1 July 2019, if taxpayers do not meet their PAYG withholding and reporting obligations, they will not be able to claim a tax deduction for payments:

- of salary, wages, commissions, bonuses or allowances to an employee;
- of directors' fees;
- to a religious practitioner;
- under a labour hire arrangement; or
- made for services where the supplier does not provide their ABN.

The main exception is where you realise there is a mistake and voluntarily correct it before the ATO begins a review or audit. In these circumstances, a deduction may still be available if you voluntarily correct the problem but penalties may still apply for the failure to withhold the correct amount of tax. There is also an exception for situations where you make payments to a contractor but then later realise that they should have been paid as an employee, as long as the worker has provided an ABN.

The Government has also proposed that from 1 July 2021, the ABNs of those required to lodge a tax return but have not done so will be cancelled, and from 1 July 2022, ABN holders will be required to confirm the accuracy of their Australian Business Register details each year.

Recording payments to contractors

The taxable payments reporting system requires businesses in certain industries to record and report payments made to contractors to the ATO.

From 1 July 2019, security providers and investigation services, road freight transport, and computer system design and related services businesses will need to collect specific information in relation to payments made to contractors (individual payments and total for the year). These businesses will need to lodge an additional report to the ATO with this information. The first report will be due by 28 August 2020.

Businesses within the building and construction industry, cleaning, and courier services need to report payments to contractors in the year ending 30 June 2019 by 28 August 2019.

This reporting requirement is focussed on industries identified as active participants in the black economy, raising around $2.7bn per year in income and GST liabilities.

Your trust

Timing of resolutions

Trustees (or directors of a trustee company) need to consider and decide on the distributions they plan to make by 30 June 2019 at the latest (the trust deed may actually require this to be done earlier). Decisions made by the trustees should be documented in writing, preferably by 30 June 2019.

If valid resolutions are not in place by 30 June 2019, the risk is that the taxable income of the trust will be assessed in the hands of a default beneficiary (if the trust deed provides for this) or the trustee (in which case the highest marginal rate of tax would normally apply).

TFN reporting

Has your trust lodged TFN reports for all beneficiaries?

Trustees of closely held trusts have some additional reporting obligations outside the lodgement of the trust tax return each year. The ATO is currently reviewing trustees to ensure their compliance with these obligations, particularly the requirement to lodge TFN reports for beneficiaries.

Where beneficiaries have quoted their TFN to the trustee, trustees are required to lodge a TFN report for each beneficiary. The TFN report must be lodged by the end of the month following the end of the quarter in which a beneficiary quoted their TFN. For example, if the trustee receives a beneficiary's TFN in April, they must lodge a TFN report by the end of July.

Where a TFN has not been provided by a beneficiary, the trustee is required to withhold tax at a rate of 47% and pay this to the ATO. The trustee must also lodge an annual report of all amounts withheld.

Failure to comply with the TFN reporting and withholding requirements may incur penalties.

If you are concerned about any of the issues raised, please call us – we would be happy to help you.

Quote of the month

> "We contend that for a nation to try to tax itself into prosperity is like a man standing in a bucket and trying to lift himself up by the handle."

Winston S. Churchill

How to Prepare for a Tax Office Visit

The Tax Office is actively targeting geographic areas for special visits as part of a nationwide crackdown on the black economy.

The ATO plan on visiting over 10,000 businesses in the new financial year, hunting out those hiding sales, paying cash in hand, or underpaying workers. And, they have a plethora of case studies to support the effectiveness of these visits, like the $2m in undeclared income for a series of nail salons owned by the one taxpayer. The ATO's interest was initially piqued by anomalies between the owner's lifestyle and assets, and the income being declared from the salons. In another case a restaurant owner was only declaring eftpos payments and not cash payments received (the cash was kept in a shoe box). An audit revealed unreported income and overclaimed expenses of around $1.1m.

So, what is it about a region that makes it a target? The ATO says they exhibit some statistical anomalies, for example, a higher number of businesses not registered for PAYG or GST. Other indicators include businesses that:

- Operate and advertise as 'cash only' or mainly deal in cash
- ATO data matching suggest don't take electronic payments
- Are part of an industry where cash payments are common
- Indicate unrealistic income relative to the assets and lifestyle of the business and its owner
- Fail to register for GST, lodge activity statements or tax returns
- Under-report transactions and income according to third-party data
- Fail to meet super or employer obligations
- Operate outside the normal small business benchmarks, or
- Are reported to the ATO by a member of the community.

If ATO officers turn up at your business, they may ask you to show them how you record your sales and ask to see the records for the past day or so. If there appear to be anomalies in your reporting, further action might be taken.

They may also check payroll records to ensure that staff are 'on the books' and superannuation entitlements are being met. A classic problem area is cash payments or poor records for family working in the business. If a family member is employed, unless they are a Director of the business, you need to meet the same standards as if they were not related including minimum wage, PAYG withholding and superannuation guarantee payments.

What you can do to prepare for an ATO visit:

- Have great records, particularly if your business predominantly uses cash.
- Make sure your paperwork is up to date - invoicing for services provided, recognition of expenses (with receipts), salaries and cash taken out of the business by the owners.
- Ensure staff are recording sales and expenses correctly.
- Ensure your business has a separate bank account – it cannot be your personal bank account.