

Practice Update

October 2019

\$30,000 instant asset write-off

The ATO is reminding businesses that are looking to expand or improve their business and thinking of buying new or second hand assets, that medium sized businesses with a turnover up to \$50 million (but at least \$10 million) are eligible for the instant asset write-off.

This now applies to assets that cost up to \$30,000 and which were purchased and first used or installed ready for use from 7:30pm (AEDT) on 2 April 2019 to 30 June 2020.

Medium sized businesses may purchase and claim a deduction for each asset that costs less than the \$30,000 threshold.

For assets over \$30,000 the general depreciation rules apply (which may depend on the entity).

Federal Court provides clarification on the PSI rules

The Federal Court recently handed down two decisions relating to the personal services income ('PSI') rules.

Income is classified as PSI when more than 50% of the income received under a contract is for a taxpayer's labour, skills or expertise.

The PSI rules are integrity provisions which ensure individuals cannot reduce or defer their income tax by (for example) diverting income for their personal services through companies, partnerships or trusts. If the rules apply, the individual is taxed on the income directly.

The rules do not apply if at least 75% of the individual's PSI is for producing a result, where the individual supplies all the required 'tools of trade' and is liable for rectifying defects in the work (this is known as the 'results test').

In the first case, the Federal Court confirmed that the taxpayer did not meet the 'results test'.

The taxpayer argued that the 'results test' is still satisfied even if they do not get paid for achieving a result, provided they can show this is the custom or practice of independent contractors in their industry.

The Federal Court rejected this, agreeing with the ATO's earlier determination to apply the PSI laws to tax the individual's contract income as his own income, rather than income split through a partnership with his spouse (which also meant certain deductions were not allowable).

The Federal Court also affirmed the imposition of penalties for recklessness.

However, in the second case, the Federal Court allowed the taxpayer's appeal from an earlier AAT decision, that he has failed the 'unrelated clients test' despite advertising his services on LinkedIn.

The Federal Court found the ATO and AAT had applied an exception for services provided through intermediaries (e.g., recruitment agencies) too broadly, and instead the Court preferred a narrow interpretation of the exception.

This matter has now been referred back to the AAT to be reconsidered, and the ATO has said it will consider this decision and whether an appeal is appropriate.

Deductions for a company or trust home-based business

The ATO has reminded taxpayers that, if they run their home-based business as a company or trust, their business should have a **genuine, market-rate rental contract** (or similar agreement) with the owner of the property.

The agreement will determine which expenses the business pays for and can claim as a deduction.

If there isn't a genuine rental contract, there may be tax implications for the homeowner and the business for providing benefits to any individuals.

October 2019 - Practice Update

If an individual earns PSI, they may not be able to deduct some occupancy expenses.

If the business pays for or reimburses an employee of the business for some of the expenses of running the business from home, the employee can't claim a deduction for those expenses in their individual income tax return.

Also, the business may have to pay FBT if it pays or reimburses the individual for certain expenses as an employee (although exemptions and concessions may apply to reduce the FBT liability), and may need to keep additional records for FBT purposes.

ATO impersonation scam update

Editor: Despite recent warnings, scammers are still successfully extracting tens of thousands of dollars from victims, as a recent ATO scam report shows.

According to the July 2019 ATO impersonation scam report:

- ◆ 6,179 online scam reports were received in the first month of their new online reporting form going live;
 - ◆ 6,645 phone scam reports were officially recorded, and 465 phishing scam emails were reported to reportemailfraud@ato.gov.au;
 - ◆ 520 taxpayers provided scammers with their personal identifying information including date of birth, tax file number, driver's licence number and notice of assessment details; and
 - ◆ \$197,057 was reported as being paid to scammers, mostly by iTunes and Google Play.
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Deductions using the cents per kilometre method

The 'cents per kilometre' method broadly allows an individual taxpayer to claim up to a maximum of 5,000 business kilometres per car, per year without the need to keep any written evidence (e.g., receipts) of car expenses.

Importantly, taxpayers making a 'cents per kilometre' claim are required to demonstrate that they worked out the number of business kilometres they claimed on a **reasonable basis**.

Taxpayers claiming under this method will generally fall into one of two categories, being either those who undertake a regular *or* irregular pattern of work-related travel.

If a taxpayer has a **regular pattern of work-related travel** (e.g., a 60 kilometre round trip to the warehouse to pick up supplies twice a week, 40 weeks in the year), then this type of explanation would generally be sufficient to justify the claim.

However, if the taxpayer has an **irregular pattern of work-related travel**, then they would need to make a note (e.g., in a diary) of each trip.

Also, remember that, for the 2019 income year, the rate that is applied (up to the 5,000 business kilometre maximum) is 68 cents (up from 66 cents in 2018) per business kilometre travelled.

Measuring the integrity of the ABR

From September, the Australian Business Register ('ABR') will contact a random sample of ABN holders across all entity types to:

- confirm their business information;
- discuss how they use the ABN, and check their understanding of how ABNs are used;
- find out about their registration experience and ask for suggestions for how they can improve it; and
- if applicable, confirm their entitlement to the ABN (although the ABR will not cancel ABNs unless requested).

The ABR is trying to understand and improve the experience for clients applying for, maintaining and cancelling an ABN, and will use the information to measure ABR data quality.

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.
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