
Practice Update

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JULY 2003

ATO Audit Program

The Tax Office has announced that it is moving from education into audit mode.

The new audit activity will include:

Work-related expenses

- mobile phones and computers and whether they have been apportioned for private use; and
- motor vehicle expenses being properly substantiated.

Rental properties

The ATO will focus on taxpayers:

- ◆ making large claims for repairs which may be capital improvements to bathrooms, kitchens, decks and pergolas;
- ◆ depreciating items (such as kitchen cupboards) that are not separate assets;
- ◆ including the value of land as part of a property's construction cost;
- ◆ failure to apportion between business and private use;
- ◆ deducting initial capital improvements such as renovating a property before it is rented out;
- ◆ claiming expenses when the property is not available for rent; and
- ◆ renting a property to family or friends for less than market value but claiming full deductions.

Meaning of "ordinary time earnings" for casual workers

The Treasurer has issued a statement to employers to the effect that, following the Court's decision in the *Quest Personnel Temping* case*, the Superannuation Guarantee (SG) will apply to *all hours* worked by casual employees.

He said that this also applies to full-time and part-time workers engaged on the same basis.

Facts of the case(*)

The *Quest* temping agency contracted to provide data entry operators to the Victoria Police.

Under their employment agreement, they had to work a minimum of 5 standard shifts per fortnight.

Additional shifts were voluntary and paid at standard hourly rates, although the agency treated the additional shifts as overtime.

There was, in fact, a constant need for additional shifts to be worked to fulfil the contract.

It was held that:

- Their employment contract specified minimum hours of work – in contrast with industrial awards or agreements which set out the maximum hours to be worked.
 - For SG purposes, ordinary hours of work mean the normal, regular, customary or usual hours worked by an employee. As overtime was regularly worked by staff, those extra hours were taken to be ordinary hours of work for superannuation guarantee purposes.
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The Court said that any other conclusion would allow employers to use a low specified minimum hours of work and avoid the superannuation obligations in respect of greater hours habitually worked.

Editor: This decision is seen as having wider implications for employers and employees, not only casuals but also full-time and part-time, who habitually work more than specified hours.

Capital protected products

Editor: In the Firth case, the taxpayer was charged an additional amount of "interest" on a loan taken out to buy shares so that, in the event the shares dropped in value, they could be returned to the lender. The Court held that this "interest" amount was an allowable deduction.

Following that decision, the Government has now announced that it would amend the Income Tax Assessment Act, effective 16 April 2003, to deny deductions to that part of such an expense which is attributable to the capital protection component.

Interim measures to apportion the expense on a capital protected product between the interest on the loan component and the cost of the capital protection component have been introduced.

Deductible protective items

The ATO has issued a draft ruling following on from a Court decision that allowed deductions for sun protection products used by outdoor workers.

The Draft ruling sets out the ATO's views on the deductibility of expenses incurred in protecting a taxpayer from the risk of illness or injury in the course of carrying out their income earning activities.

Protective items that are deductible

- overalls to protect a person from grease and dirt;
- protective boots, hard hats and overalls worn solely for work purposes;
- white coats for doctors;
- heavy duty wet weather gear;
- sunglasses for outdoor workers and truck drivers – including prescription sunglasses for outdoor workers but they must be apportioned for private use; and

- boiler suits for boilermakers.

Some non-deductible items

- heavy duty conventional clothing such as jeans, drill shirts and shorts, trousers and socks worn by construction workers on site;
 - sunglasses, a raincoat and umbrella used by workers walking between offices; and
 - prescription glasses used to protect against risk if the risk is due to a personal, physical or other condition.
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STS: Deduction for PAYG(W) amounts

The ATO has issued a draft tax determination which states that an STS taxpayer can claim a deduction for an amount withheld under the PAYG withholding rules for the income year in which the amount was withheld as the payer has discharged their liability to the employee (and the amount is effectively treated as paid).

Example

John is an STS taxpayer. His salary expense for the month of June 2003 is \$3,000.

This is made up of \$2,354 paid to his one employee, Antonia, on 20 June 2003 and the \$646 he withheld from the payment under the PAYG withholding rules.

John will not pay the \$646 he withheld to the Commissioner until 21 July 2003, but he can still deduct the full salary expense of \$3,000 for the 2002/03 income year.

CGT improvement threshold

The CGT improvement threshold for the 2003/04 year is \$104,377 (up from \$101,239).

This threshold is relevant in determining:

- ◆ when a capital improvement to a pre-CGT asset is a separate asset; and
 - ◆ capital improvements to CGT assets for which a roll-over may be available.
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FBT car parking threshold

The car parking threshold for the FBT year beginning 1 April 2003 is \$6.16 (up from \$5.96).

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.