

Practice Update

Please read this update and contact this office if you have any queries

OCTOBER 2025

Employees incorrectly treated as independent contractors

The ATO is warning businesses that if they incorrectly treat an employee as an independent contractor, then they risk receiving penalties and charges, including:

- **PAYG withholding penalty** for failing to deduct tax from worker payments and send it to the ATO;
- **Super guarantee charge** ('SGC'), which is more than the super that would have been paid if the worker was classified correctly. SGC consists of a super guarantee shortfall amount, nominal interest, and an administration fee; and
- **Additional SG penalties**, including a penalty amount of up to 200% of the SGC.

'Sham contracting' may also contravene the *Fair Work Act 2009*. Courts can impose penalties against a business or person that incorrectly informs an employee that they are an independent contractor.

Reminder of September Quarter Superannuation Guarantee ('SG')

Employers are reminded that employee super contributions for the quarter ending 30 September 2025 must be received by the relevant super funds by Tuesday, 28 October 2025. If the correct amount of SG is not paid by an employer on time, they will be liable to pay the SG charge, which (as noted above) includes a penalty and interest component.

Correctly dealing with rental property repairs

Taxpayers who have had work done on their rental property should ensure the expense is categorised correctly to avoid errors when completing their tax return.

A deduction for 'repairs and maintenance' expenses can be claimed for work done to remedy, or prevent defects, damage or deterioration from using the property to earn income. These expenses can be claimed in the year they were incurred.

However, some 'capital' expenditure may not be immediately deductible, such as for 'initial repairs', 'capital works', 'improvements' and depreciating assets.

Initial repairs include fixing any pre-existing damage or deterioration that existed at the time of purchasing the property, even if the damage or deterioration was unknown to the taxpayer at the time of purchase.

Initial repairs are treated as part of the acquisition cost and included in the cost base of the property for CGT purposes, unless they are capital works or depreciating assets.

Capital works are structural improvements, alterations and extensions to the property, and can generally be claimed at 2.5% over 40 years.

Capital works deductions can only be claimed **after** the work has been completed, regardless of when the taxpayer pays the deposit and instalments.

Improvements or renovations that are structural are also capital works. Work that goes beyond remedying defects, damage or deterioration that improves the function of the property is regarded as an improvement.

Repairs to an 'entirety' are capital and cannot be claimed as repairs. Repairs to an entirety generally involve the replacement or reconstruction of something separately identifiable as a capital item.

Depreciating assets are treated as follows:

- ◆ Deductions for 'new' assets must generally be claimed over time according to their effective life.
- ◆ Second-hand depreciating assets generally cannot be deducted.

Tips to help sole trader clients

The ATO is seeing sole traders make mistakes in the following areas:

- ❑ not reporting all income — this includes income earned outside their business (like a 'side hustle'), cash jobs, or payments in-kind/barter deals;
- ❑ overclaiming expenses — this includes claiming the portion of an expense related to personal use, or overstating the cost of goods sold and other business expenses;
- ❑ calculating business losses;
- ❑ incorrectly claiming and offsetting losses from non-commercial business activities against other income sources;
- ❑ misreporting personal services income ('PSI') to gain tax benefits;
- ❑ not registering for GST if they are in the taxi or ride-sourcing industry, or when they reach the GST threshold; and
- ❑ not keeping accurate and complete records.

Editor: If you need assistance with any of the above, please contact our office.

ATO warning regarding private use of work vehicles and FBT

Employers that supply work vehicles to their employees need to check how the work vehicles are used and whether any exemptions apply to determine if they attract fringe benefits tax ('FBT').

FBT generally applies when a work vehicle is **made available** for private use, even if it is not **actually** used. Private use includes any travel not directly related to the employee's job.

Exemptions may apply depending on the vehicle's specifications and the nature of the private use.

The most common issues the ATO sees include the following:

- incorrectly treating private use as business use;
- assuming dual cab utes are exempt from FBT — exemptions only apply if the vehicle is eligible for the specific FBT exemption and private use is limited;
- incorrectly classifying vehicles;
- poor record keeping that does not support the claims or the FBT calculations made; and
- not reporting or paying on time.

ART dismisses argument that medical expenses were deductible

In a recent decision, the Administrative Review Tribunal ('ART') held that a taxpayer could not claim a tax deduction for medical expenses incurred by him in relation to his total and permanent disability pension.

The taxpayer had been terminated from his employment due to total and permanent disablement ('TPD'). For the 2024 income year, his only income was a TPD pension.

The taxpayer wanted to claim a deduction for medical expenses to be incurred, estimated to be approximately \$100,000 in the 2024 income year.

The ART agreed with the ATO that the medical expenses were not deductible. The ART noted in this regard that the medical expenses were "*incurred by (the taxpayer) to better live with his medical condition, not incurred 'in' gaining or producing the TPD pension.*" That is, "*the occasion of the Medical Expenses is to assist (the taxpayer) with his medical condition, not to gain or maintain his eligibility to the TPD pension.*"

The ART also did not accept the taxpayer's argument that the medical expenses were not private or domestic in nature, as they were essentially personal in character.

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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