

2020 Tax Planning - Individuals

Important End of Financial Year Actions

2019/20 has been an unusual year. This year, more than ever, we want to ensure that we help you reduce your tax exposure and minimize the risk of an audit by regulators. This end of year update outlines actions to take to do that.

We want to help you achieve the best result possible for 2019/20. If there is any additional information we can provide, or if we can assist you with your individual situation, please do not hesitate to contact us.

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What's New

2020/21 Federal Budget Delayed until October 2020

The release of the 2020/21 Federal Budget has been postponed from its traditional date in May until 6 October 2020. We expect there will be a number of reforms and measures to tighten spending, recover revenue, and a range of productivity measures. We will keep you advised of significant changes that might impact on you.

Working from Home? What You Can Claim

From 1 March 2020 until at least 30 June 2020, special arrangements are in place to make it easier for individuals to claim expenses they have incurred while working from home during the Covid-19 pandemic.

If you have incurred work-related expenses and you have not been reimbursed by your employer, you can claim these expenses at a rate of 80 cents for each hour you work. To use this method, you will need a record of the hours you have worked, such as a diary or timesheet.

The claim covers all of your additional running expenses such as:

- Electricity and gas.
- Decline in value and repair of capital items such as office furniture.
- Cleaning expenses.
- Phone and internet expenses.
- Stationery.
- Decline in value of computers and devices.

For example, if you worked from home for 7 hours a day on the weekdays between 1 March 2020 and 30 June 2020, that's 84 working days (in NSW) or 588 hours. Using the 80 cents Covid-hourly rate, you could claim \$470.40. The rate covers all of your expenses and you cannot claim individual items separately, such as office furniture or a computer.

Note on example calculation – replace with relevant rate:

*NSW, QLD – 84 days, 588 hours = \$470.40
SA, NT & VIC – 83 days, 581 hours = \$464.80
ACT, TAS, WA – 82 days, 574 hours = \$459.20*

The Covid-hourly rate can be claimed per individual (it is not limited by household). That is, if you have multiple people working from home in your household, each person can claim the 80 cents per hour rate for the hours they have worked from home.

Using the Covid-hourly rate is optional and aimed at people who do not normally work from home. For some, their expenses will be higher, such as those with a dedicated home office or for those that normally operate their business from home. In these circumstances the normal rules will apply.

The ATO appears to be taking the view that occupancy costs such as mortgage interest payments and rent cannot generally be claimed by those who are temporarily working from home as a result of Covid-19.

Home-Based Businesses

In general, if your business is a home-based business, you should be able to claim both occupancy and running expenses. However, if you operate through a company or trust, the ATO's preference is that there should be a rental agreement in place between the entity and the property owner.

If there is a genuine rental contract, then the property owner should recognise the rental income and should then seek to claim a reasonable portion of their expenses against the rental income. The business entity should generally be able to claim a deduction for the rent that is being paid to the owner of the property.

Without a genuine rental contract, it is difficult for the business to claim a deduction for any of the expenses relating to the portion of the property that it uses in the business.

Cents per km Change for Work-Related Car Expenses

The rate at which work-related car expenses can be claimed using the cents per kilometre method will increase from 1 July 2020 from 68 cents to 72 cents per kilometre.

Using this method, a maximum of 5,000 business kilometres can be claimed per year per car.

Study Loan Repayment Threshold

If you have study and training loans (HELP, VSL, SFSS, SSL, ABSTUDY SSL or TSL), the 2020/21 compulsory repayment threshold is \$46,620.

The repayment threshold is made up of your taxable income plus any total net investment loss (including rental income losses), fringe benefits, superannuation contributions and exempt foreign employment income.

Do You Receive Foreign Income?

The ATO has flagged foreign income as an area of interest. Because your tax residency can be different to your general residency status, it is important to seek clarification if you are uncertain. For tax purposes:

Australian resident	Taxed on worldwide income, including money earned overseas (such as employment income, directors' fees, consulting fees, income from investments, rental income, and gains from the sale of assets).
Foreign resident	Taxed on Australian sourced income and some capital gains. Unlike Australian resident taxpayers, non-resident taxpayers pay tax on every dollar of taxable income earned in Australia starting at 32.5% although lower rates can apply to some investment income like interest and dividends. There is no tax-free threshold. Australian sourced income might include Australian rental income and income for work performed in Australia.
Temporary resident	Generally, those who have come to work in Australia on a temporary visa and whose spouse is not a permanent resident or citizen of Australia. Temporary residents are taxed on Australian sourced income, but most forms of foreign sourced income are not taxed in Australia. In addition, gains from non-Australian property are excluded from capital gains tax.

Just because you work outside of Australia for a period of time does not mean you are not a resident for tax purposes during that period. And for those with international investments it is important to understand the tax status of earnings from those assets. Just because the asset might be located overseas does not mean it is excluded from Australian tax law, even if the cash stays outside Australia. Do not assume that just because your foreign income has already been taxed overseas or qualifies for an exemption overseas that it is not taxable in Australia.

30 June Deadline for Foreign Residential Property Owners

Legislative changes made earlier this year prevent foreign residents from accessing a capital gains tax (CGT) exemption on their Australian family home (the main residence exemption).

A transitional rule enables foreign residents who have held their property continuously from 9 May 2017 to access the exemption if they sell by 30 June 2020 (or sign a sale contract).

After 30 June 2020, if you are a non-resident for tax purposes at the time you sell your main residence, you will no longer be able to access the main residence exemption and you will need to pay CGT on any gain you make. These new rules apply regardless of whether you were an Australian resident for part of the time you

owned the property and no apportionment applies - the exemption simply does or does not apply depending on your residency status for tax purposes at the time the CGT event is triggered. The CGT event is generally triggered when the contract of sale is signed.

However, if you are a resident of Australia at the time of the CGT event, then you may be able to access the main residence exemption even if you have been a non-resident for some or most of the ownership period. For example, an expat who maintains their main residence in Australia could return to Australia, become a resident for tax purposes again, then sell the property and, if applicable, access the main residence exemption (the rules contain provisions that will deny the exemption where someone attempts to avoid the new rules by deliberately structuring their affairs to access the exemption – e.g. transferring the property to a related party).

An exclusion also applies where the individual has been a foreign resident for six years or less and a “life event” occurs such as death or a terminal illness.

Rental Properties, Covid-19 and Beyond

Rental properties are always high on the ATO’s agenda, and this year will be no different.

If Covid-19 has impacted commercial or residential premises you own and rent out, from a tax perspective there is very little that has changed:

- If tenants remain in the property or the property remains genuinely available for rent, you can continue to claim expenses as usual, even if the rental rate has been reduced on a temporary basis or tenants have been unable to pay rent for a period of time.
- If you negotiated with your bank to defer mortgage repayments, you can continue to claim interest as the deferred interest is capitalised.
- If you received an insurance payment for rent defaults, or your tenant made a back payment of rent they owe, this income is taxable and will need to be declared in your tax return.

Outside of Covid-19 related issues, the ATO continues to find errors in rental property claims made with up to 90% of tax returns containing an error, particularly for “other: deductions and interest. Common issues include:

- Claiming deductions for properties that are not genuinely available for rent.
- Claiming deductions for an entire property when only part of the property was available for rent.
- Claiming deductions for loan interest expenses when a portion of the loan was used for private purposes.
- Incorrect categorisation of expenditure incurred in order to repair or improve the property.
- Not having records to substantiate income received and deductions claimed. If you are claiming a rental property expense it is important to substantiate the claim. In the event of an ATO audit, if you cannot produce a tax invoice or other evidence for an expense, it is likely the deduction will be denied.
- Incorrectly apportioned claims for interest deductions.

Deliberate cases of over-claiming are treated harshly, with penalties of up to 75% of the claim.

If your rental property is outside of Australia, and you are an Australian resident for tax purposes, you must recognise the rental income you received in your tax return (excluding any tax you have paid overseas) unless you are classified as a temporary resident for tax purposes. You can claim expenses related to the property, although there are some special rules that need to be considered when it comes to interest deductions. For example, if you have borrowed money from an overseas lender you might be subject to withholding tax obligations.

Deductions no Longer Available for Vacant Land

From 1 July 2019 new rules prevent some taxpayers from claiming a deduction for interest and other holding costs for property that they own. Previously, if you bought vacant land with the intent to build a rental property on it you may have been able to claim tax deductions for expenses incurred in holding the land such as loan interest, council rates and other ongoing holding costs.

Mum and dad developers (individuals, closely held trusts, SMSFs and unit trusts or partnerships where any interests are held by individuals, discretionary trusts or SMSFs) are the focus of these changes. Since the new laws apply retrospectively to losses or outgoings incurred on or after 1 July 2019 regardless of whether the land was first held prior to this date, and with no grandfathering in place, the amendments not only impact those intending to develop vacant land, but those who have acquired land to develop.

The rules seek to ensure that deductions cannot be claimed during periods where a residential dwelling is being constructed or substantially renovated until the work has been completed, an occupancy certificate is issued and the property is either rented out or genuinely available for rent.

Where holding costs cannot be claimed as a deduction, then they will generally be added to the cost base of the property for CGT purposes. This means that they can potentially reduce a capital gain made when the property is disposed of in the future. However, holding costs cannot be added to the cost base of a property unless it was acquired after 20 August 1991, and these costs cannot increase or create a capital loss on sale of a property.

Superannuation

Early Access to Superannuation

Individuals in financial distress as a result of the coronavirus pandemic are able to self-certify and apply for early release of up to \$10,000 of their superannuation in 2019/20 and again in 2020/21 (up until 24 September 2020).

To be eligible for early release, you should ensure you meet the eligibility criteria:

- You are unemployed; or
- You are eligible for JobSeeker, parenting payment or special benefit or farm household allowance; or
- On or after 1 January 2020 you were made redundant; or
- Your working hours were reduced by 20% or more; or
- For sole traders your income reduced by 20% or more.

The early release of superannuation measure is available to Australian citizens, permanent residents and New Zealand citizens with Australian held superannuation. Eligible temporary visa holders can also apply for a single release of up to \$10,000 before 1 July 2020.

We have had a number of questions from clients asking if they can access \$10,000 of their superannuation in 2019/20 and 2020/21 and then re-contribute the amount before the end of the financial year to claim a tax deduction.

If you have withdrawn more than you need, you can re-contribute this amount under normal contribution rules. However, if you are withdrawing superannuation with the intent to re-contribute the amounts to maximise your tax deductions, we advise against this as it will attract the ATO's attention. If you have accessed your superannuation early and re-contribute some or all of the amount, ensure that you have documentation in place to prove that you met the eligibility criteria for early release and were in financial distress. Harsh penalties apply to those who make false declarations.

Funds cannot be released to members until the SMSF receives a release authority from the ATO enabling the withdrawal to be made.

In addition, you should ensure that there is documentation in place, such as a minute, noting the Commissioner's determination and the release amount, confirmation of the members eligibility, and confirming that the governing rules of the fund allow for the release on compassionate grounds.

Minimum Pension Amounts for Superannuation Income Streams

The minimum drawdown requirements for account-based pensions and similar products have been reduced by 50% in 2019/20 and 2020/21. If you have already drawn down more than the required minimum, any deposits into your fund will be treated as a contribution under normal contribution rules.

Age	Default Minimum Drawdown Rates	2019/20 and 2020/21 Reduced Rates
Under 65	4%	2%
65-74	5%	2.5%
75-79	6%	3%
80-84	7%	3.5%
85-89	9%	4.5%
90-94	11%	5.5%
95 or more	14%	7%

Carry Forward Unused Concessional Contributions

If you have unused concessional contributions, that is, you did not contribute the full \$25,000 in 2018/19 or 2019/20, then you may be able to carry forward these amounts for five years on a rolling basis. The unused amount (in a particular year) can be carried forward if you have a total superannuation balance of less than \$500,000 on 30 June of the previous financial year. The \$500,000 balance will also be relevant in the year you wish to utilise the carried forward unused amount.

The ability to carry forward concessional contributions applies from 1 July 2018, with the 2019/20 financial year the first year an individual can access their unused carry forward concessional amounts.

Concessional contributions include employer contributions (superannuation guarantee and salary sacrifice) and personal contributions that you have claimed a tax deduction for.

For example, if your total concessional contributions in the 2019/20 financial year were \$10,000 and you meet the eligibility criteria, then you can carry forward the unused \$15,000. 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 might assist in reducing your tax liability in the year of sale.

Remember:

- Your total superannuation balance must be below \$500,000 on 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 superannuation where income and concessional contributions exceed the threshold (\$250,000 in 2019/20). Your income could be higher than usual in the year when you sell an asset for a capital gain.

This is an excellent concession to help you top up your superannuation, especially where you are out of the workforce at some stage.

Greater Flexibility for those over 65

Reforms before Parliament will give greater flexibility to make voluntary superannuation contributions for those aged 65 and over.

For those under 67 years of age, the changes will enable you to:

- Make voluntary superannuation contributions (concessional and non-concessional) without meeting the Work Test. Currently, voluntary contributions can only be made if the individual has worked a minimum of 40 hours over a 30 day period (Work Test).

- Use the “bring forward rule” to make up to three years of non-concessional contributions. That is, you can make non-concessional contributions of up to \$300,000 from the 2020/21 financial year.

In addition, the cut-off age that you can make voluntary contributions for your spouse will increase from 70 to 75 years of age.

These reforms are not yet law and you should not act on them. We will keep you up to date on the status of this legislation.

Financial Housekeeping – Self-Managed Superannuation Funds

Warning on Non-Arm's length Income Expenditure

From 1 July 2018, the definition of non-arm's length income (NALI) expanded to manage a loophole that allowed superannuation savings to be artificially inflated by non-arm's length expenses that were provided free or at below market rates, e.g. where services were provided to the fund by a company related to a fund member at reduced rates. In this way funds could increase their superannuation savings while circumventing the contribution caps.

Where this situation arises, the rules tax this non-arm's length income at the top marginal tax rate.

The question of whether the non-arm's length income rules apply depends on the capacity in which the trustee undertakes those activities. Essentially, if you or a related entity are providing services to your superannuation fund in a capacity other than as trustee, and you (or the related entity) currently provide that service to the public, an arm's length fee should be charged for this service. Failure to do so could result in non-arm's length income applying to the applicable asset the expense relates to.

There has been a lot of confusion over the new rules, and the ATO has stated that they will not commit compliance resources to this issue until 1 July 2020. This gives trustees a limited opportunity to ensure that any non-arm's length services provided are at market rates. If you are uncertain, please contact us and we can work with you to ensure your fund is not at risk.

Valuing SMSF Assets

SMSFs are required to value their assets at market value. Depending on the situation, a market valuation may be undertaken by a:

- Registered valuer;
- Professional valuation service provider;
- Member of a recognised professional valuation body; or
- A person without formal valuation qualifications, but who has specific experience or knowledge in a particular area.

For real property, the valuation may be undertaken by anyone as long it is based on objective and supportable data. A valuation undertaken by a property valuation service provider, including online services or a real estate agent is acceptable.

However, where the value of the asset represents a significant proportion of the fund's value or where the nature of the asset indicates that the valuation is likely to be complex, you should consider the use of a qualified independent valuer.

In general, real estate does not necessarily need a formal valuation each year by a licenced valuer unless there is a significant event that occurs during the year which may affect the previous valuation. A significant event could be one that directly involves the property itself, the fund on a general level such as one of the fund's members going into pension mode, or if the asset represents a significant portion of the fund's value.

Contributions must be Received by 30 June 2020

To claim a tax deduction for superannuation contributions (as an employer or as an individual), the payment needs to be received by the fund no later than 30 June 2020. Merely incurring a liability is not enough.

If you are making a personal superannuation contribution that you want to claim as a tax deduction, you need to write to your fund in their approved form and advise them of the amount you intend to claim as a deduction. The superannuation fund then needs to acknowledge your notice of intent and agree to the amount you intend to claim as a deduction. This will normally be in the form of a notice or certificate from the fund to confirm the tax deductibility of the contribution.

Review and Rectify any Outstanding Compliance Issues

If your auditor has highlighted any breaches or issues in previous year fund audits, you should review and rectify these issues by 30 June. The penalty for illegal access to the SMSF's funds without meeting a condition of release is \$12,600 per trustee.

The ATO have a number of powers to address non-compliance:

- Education directions - require the trustee/director to complete an ATO approved education course within a specific timeframe. An administrative penalty of \$2,100 applies for non-compliance.
- Rectification directions - requiring the SMSF's trustee/director to take specific action to rectify the contravention within a specific timeframe.
- Administrative penalties - penalties from \$1,050 to \$12,600 apply to specific breaches. Each individual trustee is liable for the penalty and directors of a corporate trustee are jointly and severally liable. The penalties are payable by the trustee/ director and not refunded by the SMSF.
- Informal arrangements to rectify minor breaches.
- Enforceable undertakings.
- Disqualification of a trustee.
- Allowing the SMSF to wind up.
- Notice of non-compliance.
- Freezing an SMSF's assets.
- Civil and criminal penalties where the fund:
 - Breaches the sole purpose test.
 - Lends to members of the fund.
 - Breaches the borrowing rules.
 - Breaches the in-house asset rules.
 - Enters into prohibited avoidance schemes.
 - Fails to notify the regulator of significant adverse events.
 - Breaches the arm's length rules for an investment.
 - Promotes an illegal early release scheme.

These powers also enable the ATO to look back to any breaches from previous years that were unresolved at 30 June 2020.

Review the Fund's Investment Strategy

Trustees are required to "regularly review" the fund's investment strategy. We recommend that trustees review the strategy and document the review at least annually or when the circumstances of the fund change.

Where an SMSF has entered into a borrowing arrangement to acquire an asset, trustees should seek advice to structure insurance cover either inside or outside the SMSF to assist in meeting the ongoing obligations of the debt repayments. The fund's ability to meet the ongoing debt repayments can be severely jeopardised where one member of the fund dies, as the fund may have needed to utilise contributions that were being made for that member to meet the repayments. Such a scenario could result in the fund having to sell the property.

Contributions You didn't know You made

A contribution to a fund can be more than just a deposit of money into the bank account of a superannuation fund. It could include:

- Money.
- In-specie asset transfers.
- Paying fund expenses.
- Increasing the value of a fund asset.
- Forgiving a fund's debt.
- Meeting a fund liability.
- Rendering services to the fund at less than market value.
- Guarantor arrangements.
- Some discretionary trust distributions.

Trustees can often be surprised by what is considered to be a contribution, for example:

- **In-specie transfer** - if an asset is transferred or acquired from a related party for less than fair market value, the difference may be treated as a contribution.
- **Capital improvements** - capital improvements to existing fund assets for no consideration or less than arm's length consideration may be treated as a contribution.
- **Debt forgiveness** - a contribution is made if a loan, entered into by the fund, is forgiven by the lender (related party). The contribution is made when the deed of release is executed that then relieves the fund from the obligation of repaying the debt.
- **Guarantor arrangements** - a contribution occurs if a guarantor to a debt of the fund (trustees in their own right) satisfies a loan obligation of the fund and then forgoes the right of redemption against the fund (trustees) itself.

Minimising the Cost of End of Year Compliance

Having your paperwork organised always makes life much easier. Preparing your end of year documents and information prior to coming to see us will save you time and money. This is a general list of what to have ready when we next meet with you:

- Income statement.
- Interest income from banks and building societies.
- Dividend statements for dividends received.
- Tax statements of managed investment funds .
- Rental property statements from real estate agent and details of other expenditure incurred.
- Purchase and sale contract notes for share sales or purchases.
- Solicitor's correspondence for real estate sales or purchases.
- Any expenses related to your work you have not claimed from your employer.
- Self-education expenses.
- Travel expenses.
- Donations to charities.
- Payments for income protection or sickness and accident insurance.
- Health insurance and rebate entitlement.
- Family tax benefits received.
- Commonwealth assistance notices.
- Medical expenses (if they relate to disability aids, attendant care or aged care services).
- IAS statements or details of PAYG instalments paid.
- Details of any transactions involving cryptocurrency (e.g. Bitcoin).
- Details of any income derived from participating in the sharing economy (e.g. Uber driving, rent from AirBNB, jobs completed through Airtasker, etc.).