GBS PARTNERS

Client Information Newsletter
– Tax & Super

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Claiming self-education expenses

The value of a good education is widely accepted, and it is a common experience over one's working lifetime to find that further learning is required along the path of one's chosen career.

About this newsletter

Welcome to GBS Partners client information newsletter. This monthly tax and superannuation update is aimed at keeping you informed about news, current issues and changes in relation to income tax and superannuation matters. Should you require further information on any of the topics contained herewith, please contact this office on:

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Changing technology and evolving workplaces means that at some stage in every taxpayer's life, an educational re-boot could become necessary — as the adage says, "you're never too old to learn". Therefore supplementary education mid-career is a valuable, and hopefully income-boosting, pursuit.

Funding for that education however is another consideration, although this is generally also seen to be worthwhile pursuing — to use another quote, "if you think education is expensive, try ignorance". Fortunately, Australia's tax system is set up to provide some breaks to help the motivated among us get ahead.

Claiming self-education expenses *continued*

To be able to claim certain expenses relating to self education is a tax concession that is not to be overlooked, but to be eligible your present employment and the course you undertake must have sufficient connection for the self-education expenses to qualify as a work-related tax deduction.

In other words, if the course of study is deemed to be too general in nature, and can be viewed as having little relevance to your income-earning activities, the connection between them (and eligibility for a tax deduction) may not be seen to be viable by the ATO. Deductions are also not generally available if the subject of self-education is designed to obtain new employment, or to open up a new income-earning activity.

By way of examples of relevant connections, the ATO gives the following scenarios:

- the taxpayer is upgrading their qualifications for their current employment – for example, upgrading from a Bachelor qualification to a Masters
- they are improving specific skills or knowledge used in their current employment – for example, a course that will allow them to operate more or different machinery at their current job
- they are employed as a trainee and are undertaking a course that forms part of that traineeship – for example, an overseas trained person employed as an intern while completing a local bridging course, and
- they can show that at the time they were working and studying, their course led, or was likely to lead, to an increase in employment income – for example, a teacher who will automatically get a pay increase as a result of completing the course.

SELF-EDUCATION EXPENSES SPECIFICALLY DENIED

Note that the legislation specifically disallows the following expenses related to self-education:

- expenditure on meals while attending an educational institution, work-related conference or seminar where the taxpayer is not required to sleep away from home
- expenditure on accommodation and meals where a taxpayer who has travelled to another location for self-education purposes has established a new home (as mentioned above), and
- repayments made (whether compulsory or voluntary) on debts a taxpayer may have under the following loan schemes:
  - HECS-HELP
  - FEE-HELP
  - OS-HELP
  - VET FEE-HELP
  - SA-HELP
  - SFSS
  - Trade Support Loans program (TSL)
  - Student Start-up Loan (SSL)
  - ABSTUDY Student Start-up Loan (ABSTUDY SSL).

TRAVEL, ACCOMMODATION AND MEALS

The expenses relating to travel between your home and an educational institution and return, and between your place of work and the educational institution and return, are allowable, as being part of the incidental costs of the course of study.

If however you travel from home to an educational institution and then to your place of work and return home by the same route, only the costs of the first leg of each journey are allowable, as being incidental costs of the study.

The costs of the second leg of the outward journey are costs incurred in order to get to work. And the costs of the second leg of the return journey are costs incurred in order to return home, the essential character of which is considered by the ATO as being of a private nature.

Expenditure on accommodation and meals ordinarily has the character of a private or domestic expense. Expenditure on meals and accommodation while attending an educational institution, work-related conference or seminar where you are not required to sleep away from home (for example, you live in the Sydney suburb of Homebush and attend an educational institution in the central city) is not allowable as a deduction as the outgoing is private in nature.

However, the "occasion" of the outgoing may operate to give the expenditure the essential character of an income-producing expense. An example is where the expenditure is incurred while away from home overnight on a work-related activity.

Where you are away from home overnight in connection with a self-education activity, accommodation and meal expenses incurred are generally deductible.

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Changing a will after death?

A deed of family arrangement can make it possible!

There are times when the terms of a deceased's will are not suitable and the beneficiaries involved seek to have the will varied. There are various situations where this may be the case, such as changing circumstances over a long period of time from when the will was first drafted, or an estrangement between family members is healed (or vice versa).

This is where a deed of family arrangement can be utilised, however it is an option that requires all interested parties to agree on the outcome.

This can however result in settlement outside of litigation, which can otherwise tie up an estate for months or even years.

Deeds of family arrangement can be used in a number of circumstances, such as:

- where there are doubts about the meaning of a will
- where beneficiaries wish to rearrange the distribution of the estate between them
- to compromise a claim against the estate where there is a challenge to the will
- to create an estate proceeds trust under taxation legislation.

Where the will is varied through a deed of arrangement which meets certain requirements, generally the parties may disregard the resulting capital gains or losses. Care needs to be taken however as there can be some variation on the rules from state to state, such as stamp duty.

Note also that a deed of family arrangement that would act to reduce the benefits accruing to a minor or a disabled person may require court approval.

Care needs to be taken with any deed of arrangement, and the advice of a professional is highly recommended. ■

Claiming self-education expenses *continued*

Examples include an overseas study tour or sabbatical, a work-related conference or seminar or attending an educational institution. These expenses are part of the unavoidable cost of undertaking the tour or attending the conference or seminar or going to the educational institution. The ATO does not deem this expenditure as being of a private nature because its "occasion", as it puts it, is the travelling away from home to pursue activities to enhance income-producing abilities.

In regard to the general rule outlined above however, the ATO has in the past referred to a court case outcome that supports its view that there may be exceptions to deny travel deductions, for example where a taxpayer establishes a new home while incurring educational expenses.

HOME STUDY EXPENSES

If you have a room set aside for self-education purposes, you may be able to claim decline in value of (and repairs to) the home office furniture and fittings, as well as a portion of the heating, cooling, lighting and cleaning representing the period the room is used for self-education activities.

Alternatively, there is available a fixed rate of 45c per hour of usage instead of keeping individual costs for heating, cooling, lighting, cleaning and decline in value of furniture for that room. Occupancy expenses however are disallowed. ■

How to deal with SMSF trustee disputes

Everyone goes through the odd rough patch in their relationships with one another and SMSF trustees are no different. However the ramifications of a dispute between trustees are likely to have more wide ranging affects than the average quarrel between friends because SMSF trustees have vested interests, established duties and legal responsibilities towards the fund, where if breached, can result in severe penalties that could affect members' retirement benefits.

HOW CAN DISAGREEMENTS BETWEEN TRUSTEES COME ABOUT?

SMSF trustees are required to sign a trust deed that requires them to adhere to certain responsibilities, some of which require them to:

- act honestly in all matters concerning the fund,
- exercise skill and diligence in managing the fund,
- act in the best interests of all members,
- keep the money and assets of the SMSF separate from personal money and assets,
- retain control over the fund,
- develop and implement an investment strategy as well as make investment decisions,
- not enter into contracts or behave in a way that hinders them or other trustees from performing or exercising function or powers,
- allow access to information for all members, and,
- not allow early access to the retirement savings of the fund.

Together with all the superannuation laws – and the corporate trustee constitution in the case of corporate trusteeships – a trust deed forms an SMSF's governing rules, which will include such things as the duties and obligations of trustees, the payment of member benefits and fund administration.

Personal interpretation of how best to adhere to these duties can lead to disputes. For instance, an overriding requirement of every SMSF is that it fulfils the "sole purpose test" – the sole purpose being that the fund is established to provide benefits to each member at retirement age or to a member's dependants upon the member's death. There are, however, various ways to achieve a common goal and disagreements about how best to do that are not uncommon.

Various issues can give rise to disputes. What to invest in and how much to invest can be a hotbed of discussion, because notwithstanding the fund's written investment strategy, trustees can have different opinions on how best to satisfy strategies on diversification and asset allocation.

Other issues that regularly crop up are typically regarding the allocation and payment of death benefits, the end of business partnerships, treatment of business real property and disagreements between spouses.

Another area where disputes commonly occur is if the SMSF considers admitting new members into the fund. One trustee may be eager to bring in a family member or a new spouse that other trustees may have no wish to be financially involved with. This last potential area for disputes may become more of an issue should floated plans eventuate to increase the minimum membership of SMSFs from four to six.

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How to deal with SMSF trustee disputes *continued*

WHAT ARE THE BEST WAYS TO PREVENT A DISPUTE?

Disputes are unpleasant but they are unavoidable in many circumstances. They commonly arise when there are two or four trustees – a situation that serves as a breeding ground for deadlocks. Where there are three members, two can outvote one and where there is a single member (such as in a corporate trusteeship), no disagreements will arise – making a single-member SMSF the safest fund of choice if the main point is to have no disagreements.

Each trustee must act in the best interest of all fund members irrespective of any differences that emerge between trustees. For instance, a trustee cannot exclude another trustee from making decisions concerning the SMSF, cannot unlawfully withdraw money from the SMSF and must address each trustee's requests – that is, when it comes to requests to redeem assets and transfer super savings into another superannuation fund.

Trustees can establish certain "deadlock-breaker" provisions – provided there is more than one trustee in the fund – to minimise the likelihood of disputes. These can include:

- carry out a trustee decision only if a simple majority of trustees agree to it, or if a unanimous vote by all trustees is made,
- make a notice of a trustee meeting in writing with a minimum notice period,
- allow voting by proxy, telephone or email, or to be more strict, stipulate that if a trustee cannot attend a meeting, they do not get a vote on decisions dealt with at that meeting, and
- conversely, only allow decisions to be made if all trustees are physically present at a meeting.

The trust deed is typically the first port of call in a dispute. Trustees of SMSFs should consider inserting dispute resolution measures or advance guidance on how disputes can be approached into their trust deed. A handy way to prevent the mismanagement of assets in the case of a dispute is to use safeguards such as joint bank account signatures.

WHAT ARE THE BEST WAYS TO RESOLVE A DISPUTE?

If a dispute is well and truly underway, there are mechanisms in place to ensure the matter is dealt with. Disagreements can either be settled through alternative dispute resolution techniques – such as mediation, conciliation and arbitration – or via a court hearing for more serious cases.

The ATO is not involved in resolving disputes between trustees unless the dispute is over a breach of SMSF law, and even then any intervention will most likely be to iron out regulatory issues. The ATO can provide general advice about your options in resolving disputes.

Those SMSFs that use a corporate trustee structure may have mechanisms to deal with dispute resolution through the Corporations Act and regulations or may be able to obtain guidance from the corporate trustee's constitution.

The Superannuation Complaints Tribunal is a last resort if no settlement of the argument is found through other channels, although for SMSFs the help available is limited (see www.scr.gov.au). Note that the tribunal has no scope to adjudicate disputes between trustees, nor determine payments of benefits. The Supreme Court has jurisdiction over trust law.

Throughout the dispute resolution process, trustees must ensure their fund remains compliant with superannuation law. One important step that should not be overlooked is the updating of legal documents in the aftermath of a dispute where a trustee has left the fund.

RAMIFICATIONS

If a fund does not comply with superannuation law during a dispute, the ATO can deem the fund non-compliant – which is more than a slap on the wrist as this will remove the concessional tax treatments that SMSFs enjoy and could leave the fund open to be taxed at the highest marginal rate.

Measures can be carried out to mitigate disputes, but the fact remains that SMSFs with more than one trustee will never be completely immune from disagreements. That aside, a well-drafted trust deed, a rational outlook as well as prudent planning can assist with or better still prevent such disputes from arising. ■

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.

Your claim for a business tax loss can be denied

Business owners are naturally keen to be able to absorb a business loss as a tax deduction, but it also pays to not stray too far from the generally accepted rules regarding tax losses — there are circumstances where the ATO is legitimately able to deny such claims.

The ATO has the discretion to disallow the deduction of a tax loss if, during the relevant income year, the business attempting to make such a claim earned assessable income (or realised a capital gain) that *would not have been derived* had the loss been unavailable as a deduction (our emphasis).

The tax law has measures in place to ensure such deductions are limited to those businesses that are legitimately eligible — such as the continuity of ownership and the same business tests — but there is also the measure above, which the ATO calls an "integrity" safeguard, that may result in a denial of a claim for losses that business owners should keep in mind.

There is some balance to the rules in that the Commissioner of Taxation is "prevented" from disallowing the deduction should "continuing shareholders" stand to benefit from the relevant income. However there is still a fair amount of discretion left to the Commissioner in how the business loss rules are applied.

Remember also that different business structures have different rules around loss claims.

Individuals can generally carry forward a tax loss indefinitely, but must claim a tax loss at the first opportunity. You cannot choose to hold on to losses to offset them against future income if they can be offset against the current year's income.

If you are a sole trader you may also be able to offset the business losses carried forward against other income under the "non-commercial business loss" rules (ask this office if you think this might apply).

If a partnership makes a tax loss, each partner has a proportionate share of the loss and treats it like a loss from any business activity (including applying the non-commercial loss rules).

If you operate your business as a trust and you incur a tax loss, you cannot distribute the loss to the trust's beneficiaries.

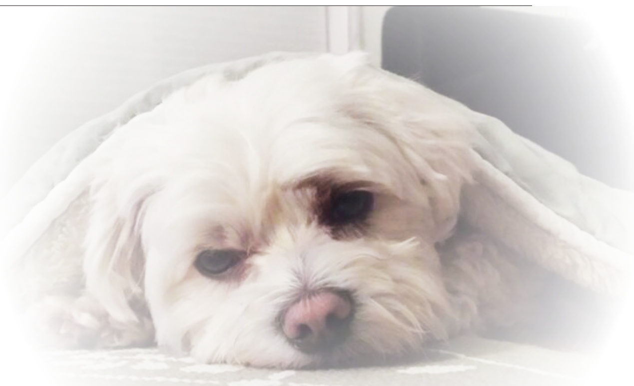
Losses must be quarantined in a trust to be carried forward by the trust indefinitely until offset against future net income. It is possible to use those losses as deductions against income in the trust in future income years if the trust satisfies certain tests relating to ownership or control of the trust.

Companies can carry forward a tax loss indefinitely, and use it when they choose, provided they satisfy the above mentioned continuity and same-business tests.

As far as the ATO exercising the discretion to disallow, and of course circumstances of the business or businesses involved will have an influence, a business can mitigate the risk that the ATO will exercise this discretion to disallow a tax loss deduction by making sure that either (or preferably both) of the following contentions are supported:

- that the business would have derived the income or realised the capital gain regardless of the tax loss being available
- that continuing shareholders will benefit from the above in a fair and reasonable manner with regard to their rights and interests. ■

Let a GST credit slip through the cracks? *All is not lost!*



Most small business owners stay on top of their GST refunds, mainly because of cash flow concerns, but it's not all that uncommon to now and then lose track of a credit. What quite a few small business owners may not know is that you have four years to claim any GST credit you're entitled to.

The ATO deems that an entitlement to a GST credit ends four years from the due date of the earliest activity statement in which a taxpayer could have claimed it (setting aside any requirement to hold a tax invoice). You can claim the credit in any activity statement lodged in this period.

Generally, if you have a refund resulting from a GST error, you can:

- revise the activity statement the error was made in
- request an amendment in writing
- correct the error in a later BAS.

GST errors can include, for example, a simple clerical error (maybe you paid $5,600 instead of $5,060, or doubled up on a business activity statement amount) or miscalculated an amount related to an importation.

You have four years and one day from when you lodged the activity statement to make an adjustment. This time limit is known as the period of review. However for tax periods starting before 1 July 2012, the ATO can still be persuaded to consider outstanding amounts if it can be proven that notification has previously been made about the amount.

An "outstanding GST credit" is any GST credit for a purchase that you're entitled to but have yet to claim – including not claiming it because you didn't hold a valid tax invoice.

If you have an outstanding GST credit for a purchase, it's generally not necessary to revise an earlier activity statement. Instead, providing you hold a valid tax invoice, you can claim the GST credit in the next activity statement lodged providing this is done within the four-year time limit.

When the four-year time limit begins: Cash basis

If you account for GST on a cash basis, the earliest tax period in which you can claim a GST credit for a purchase is the tax period in which you make the payment.

Example: Time limit for GST credit (cash accounting)

Peter the plumber reports GST quarterly and accounts for GST on a cash basis. In May 2018, Peter pays in full for some tools. The earliest tax period in which he can claim the GST credit for his purchase (setting aside any requirement to hold a tax invoice) is the quarterly period ending 30 June 2018. The due date of Peter's activity statement for this period is 28 July 2018. The four-year time limit for claiming the GST credit ends four years from this date (28 July 2022).

Peter needs to obtain a valid tax invoice (if he doesn't already have one) and claim the GST credit in an activity statement that he lodges by 28 July 2021. If he doesn't claim the credit by this time Peter will cease to be entitled to the credit.

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Let a GST credit slip through the cracks? *continued*

Example: Payment over multiple tax periods (cash accounting): If you make the payment over multiple tax periods, the time limit applies separately to each part of the payment

Ruberto & Co reports GST monthly and accounts for GST on a cash basis. The business buys a printer, paying for half of it on 14 April 2018 (when the order is placed) and the other half on 5 May 2018 (when the printer is delivered).

The earliest tax period in which Ruberto & Co can account for the first half of its GST credit is the April 2018 period and the earliest tax period in which it can account for the second half is the May 2018 period. The four-year time limit for the first half of the credit ends four years from the due date of Ruberto & Co's activity statement for the April 2018 tax period (that is, 21 May 2022). The four-year time limit for the second half of the credit ends four years from the due date of Ruberto & Co's activity statement for the May 2018 tax period (that is, 21 June 2022).

When the four-year time limit begins: Accruals basis

If you account for GST on a non-cash (accruals) basis, the earliest tax period in which you can claim a GST credit for a purchase is the first tax period in which either:

- an invoice for the purchase is issued
- you provide part or all of the payment for the purchase.

The four-year time limit begins on the due date of the activity statement for this tax period. ■

A tax boost for low and middle income earners

If you or anyone you know are earning income at lower or middle income levels, there's a new tax offset that has been available since July 1 that was originally announced in the 2018 federal budget last May. But no-one will see any benefit from the new Low and Middle Income Tax Offset (LMITO) until about a year from now, when a lump sum credit will be recorded in next income year's tax assessment, courtesy of the ATO.

LMITO, like all tax offsets, reduces the amount of income tax payable on your taxable income. It is intended to be an adjustment made in arrears — that is, applied each year with the annual income tax assessment.

LMITO is aimed to complement the existing Low Income Tax Offset for those taxpayers a rung or so up the pay ladder. But the non-refundable offset is not to be a permanent fixture in the tax landscape, as it is scheduled to expire at the end of the 2021-22 financial year.

Taxpayers with taxable income of $37,000 a year or less will enjoy benefits of a value up to $200, while those with assessable income of between $37,000 and $48,000 have access to an increasing rate of three cents in the dollar up to a maximum benefit of $530.

But the offset doesn't stop at income of $48,000. Although the maximum amount of offset is fixed at $530, it is available up to an assessable income level of $90,000. Thereafter (up to $125,333) it phases out at a rate of 1.5 cents per dollar.

LMITO is planned to dissolve after 30 June 2022 as its affect will be built in to adjusted tax rates at that time (assuming successive governments do not change the intended passage of these arrangements). ■