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P r a c t i c e U p d a t e

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Dual cab utes and FBT

The ATO wishes to dispel the 'common myth' that dual cab utes are automatically exempt from fringe benefits tax ('FBT'). If an employer provides dual cab utes to staff to complete their duties and the vehicle is available for personal use, then the benefit may be subject to FBT.

By understanding how their employees use their dual cab utes, employers can work out if FBT applies and meet their FBT obligations.

To qualify for an exemption, the dual cab ute must be an 'eligible vehicle'. That is, it must be designed to carry a load of one tonne or more, or more than eight passengers (including the driver), or a load under one tonne and not primarily designed for carrying passengers.

The dual cab ute must also only be used for limited private use (i.e., minor, infrequent and irregular), such as the occasional trip to the tip or helping a mate move house.

If an employee's personal use of the dual cab ute does not meet **both** of the above exemption conditions, then the employer will be liable for FBT.

ATO reminder: Business expenses that can (and cannot) be claimed

Taxpayers can claim a tax deduction for most business expenses, provided they meet the ATO's three 'golden rules':

- The expense must be for business use, not for private use.
- If the expense is for a mix of business and private use, they can only claim the portion that is used for business.
- They must have records to prove their claim.

The ATO also wants business taxpayers to remember that there are some expenses that they **cannot** claim, including entertainment expenses, traffic fines, and expenses that relate to earning non-assessable income.

ATO's focus on small business

The ATO is 'detecting and addressing' recurring errors in specific industries when businesses have a turnover between \$1 million and \$10 million.

These industries include **property and construction** (including builders, contractors and tradies), and **professional, scientific and technical services** (including engineering, design, IT and consulting professionals).

In these industries, the ATO continues to see recurring issues, including:

- ◆ omitted sales and income in BAS and tax returns, including income from related entities;
- ◆ overclaimed expenses and GST credits;
- ◆ private expenses incorrectly reported as business-related, or not properly apportioned between business and personal use;
- ◆ failure to register for GST when required;
- ◆ incorrect claims for the research and development (R&D) tax incentive offset, especially for activities that do not meet the eligibility criteria; and
- ◆ not seeking independent advice from a registered tax agent, particularly in head contractor/subcontractor arrangements.

By sharing the issues that it is seeing, the ATO hopes to help taxpayers running a small business in one of these (or other) industries to avoid common errors and get it right from the start.

New ATO Data-Matching Programs

The ATO acquires and uses data for pre-filling, detecting dishonest or fraudulent behaviour, and identifying areas where it can educate taxpayers to help them understand their tax obligations.

When data does not match, the ATO may contact tax agents and their clients to find out why.

Rental Income Data-Matching

Over the coming months, the ATO will be sending letters where its data indicates:

- ☐ tax returns including rental income may need to be lodged for specific years; or
- ☐ rental income should be included in previously lodged tax returns.

Editor: Please contact us if you receive such a letter.

Offshore Merchant Data-Matching Program

The ATO will acquire merchant data from the big four Australian banks (ANZ, Commonwealth Bank, National Australia Bank and Westpac) for the 2025 to 2027 income years.

The ATO estimates that records relating to approximately 9,000 offshore merchants will be obtained each financial year.

SMSF non-compliance with release authorities

Release authorities are documents issued by the ATO to super funds, authorising the release of money from a member's super account to pay specific liabilities, including in relation to excess concessional contributions, excess non-concessional contributions, and Division 293 tax assessments.

The ATO is seeing a rise in SMSFs that receive a release authority and are either:

- ◆ not responding within 10 business days as required; or
- ◆ responding incorrectly (i.e., either not releasing the requested amount, or failing to submit a release authority statement back to the ATO, or both).

Failure to meet these obligations may result in significant penalties for the fund. SMSF trustees should make sure they have effective processes in place to respond to release authorities promptly and accurately.

GST held to apply to sales of subdivided lots

The Administrative Review Tribunal ('ART') recently held that some sales of subdivided farmland were subject to GST as they were made by the taxpayer in the course of carrying on an enterprise.

The taxpayer owned farmland near Adelaide. He entered into an agreement with a developer, under which the developer sought rezoning and development approvals, carried out development works, and marketed the subdivided lots.

The taxpayer progressively gave the developer access to the property as required and signed documents where necessary, including contracts for the sale of the subdivided lots. The taxpayer received 20% of the proceeds of sale progressively as sales of the subdivided lots were completed, with the developer receiving the remaining 80%.

The taxpayer argued that his role was passive, and that such rights as he had, and actions he took under the agreement with the developer, were of an administrative nature not amounting to a series of activities in the form of a business.

The ART disagreed, finding that the sales of the subdivided land were subject to GST as they were made in the course of carrying on an enterprise.

The ART noted that the taxpayer's activities *"exhibited some of the well-known indicia of a business."*

Amongst other factors, the taxpayer's activities in facilitating the implementation of the development agreement *"had a degree of regularity and repetition"*, including allowing access to the land progressively as required, an ongoing obligation not to encumber or sell the land during the project, and the continuous signing of sales contracts and monitoring of sales returns.

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.