

Practice Update

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MAY 2023

Last chance to claim deductions under temporary full expensing

Deductions under 'temporary full expensing' are only available in the 2021, 2022 and 2023 income years, and are expected to come to an end on 30 June 2023.

Editor: Under temporary full expensing, businesses with an aggregated turnover of less than \$5 billion can generally claim a deduction for the full cost of eligible new assets first held, used or installed ready for use between 6 October 2020 and 30 June 2023, as well as (in some circumstances) costs of improvements to those assets and also the cost of eligible second-hand assets.

Taxpayers can choose to opt out of temporary full expensing for an income year for some or all of their assets, and claim a deduction using other depreciation rules, by notifying the ATO in their tax return that they have chosen not to apply temporary full expensing to those assets.

Editor: Please contact our office if you require any assistance in relation to temporary full expensing.

Residential investment property loan data-matching program

The ATO has advised that it will acquire residential investment property loan data from authorised financial institutions for the 2021/22 through to 2025/26 financial years, including:

- client identification details (names, addresses, phone numbers, dates of birth, etc);
- account details (account numbers, BSBs, balances, commencement and end dates, etc);
- transaction details (transaction date, transaction amount, etc); and
- property details (addresses, etc).

The ATO estimates that records relating to approximately 1.7 million individuals will be obtained each financial year.

The principal uses of the data include "education and online services" and "data analytics and insights", as well as to help the ATO "identify relevant cases for administrative action, including compliance activities".

The ATO has a dedicated webpage dealing with its data-matching protocols (currently 24 in total). It states on this webpage that: "Matching external data with our own helps us to ensure that people and businesses comply with their tax and super obligations. It also helps us to detect fraud against the Commonwealth."

Electric vehicle home charging rates: cents per km

The ATO recently released draft guidelines setting out a methodology for calculating the cost of electricity when an electric vehicle ('EV') is charged at an employee's or individual's home.

The draft guidelines may be relied on by employers and individuals who satisfy the required criteria for FBT and income tax purposes respectively, as set out in the draft guidelines.

The employer or individual can choose if they want to use the methodology outlined in the draft guidelines, or if they would like to determine the cost of the electricity by determining its actual cost.

The choice is per vehicle and applies for the whole income or FBT year. However, it can be changed by the employer or individual from year to year.

Cents-per-kilometre rate

The rate for the FBT tax year or income year commencing on or after 1 April 2022 is 4.2 cents per km (the "EV home charging rate"), which is multiplied by the total number of relevant kilometres travelled by the electric vehicle in the relevant income year or FBT year.

However, if electric vehicle charging costs are incurred at a commercial charging station, a choice has to be made:

- ❑ The EV home charging rate can be used, but only if the commercial charging station cost is disregarded.
- ❑ If the commercial charging station cost is used, the EV home charging methodology cannot be applied.

Further, all necessary records (such as receipts) must be kept to substantiate the claim, as per normal record-keeping rules.

Record keeping

If a taxpayer wishes to rely on the EV home charging rate to calculate their electricity charging expenses, they will need to keep a record of the distance travelled by the car (i.e., generally odometer records) in either the applicable FBT year to 31 March or the income year to 30 June.

Also, if an **employer** chooses to apply the draft guidelines and the EV home charging rate for **FBT purposes**, a valid logbook must be maintained if the operating cost method is used.

If an **individual** chooses to apply the draft guidelines and the EV home charging rate for **income tax purposes**, to satisfy the record-keeping requirements, they must have:

- ❑ a valid logbook to use the logbook method of calculating work-related car expenses (and it is recommended that a logbook is maintained to demonstrate work-related use of vehicles, regardless); and
- ❑ one electricity bill for the residential premises in the applicable income year to show that electricity costs have been incurred.

Application

It should be noted that the draft guidelines can only be relied on in relation to zero emissions vehicles.

The draft guidelines cannot be relied on, and the EV home charging rate cannot be used, if, for example, the vehicle is a plug-in hybrid which has an internal combustion engine.

Once finalised, the draft guidelines will apply from:

- ❑ 1 April 2022 for FBT purposes; or
- ❑ 1 July 2022 for income tax purposes.

Taxpayers not carrying on an agistment business

The Administrative Appeals Tribunal ('AAT') has held that two taxpayers were not carrying on a business of providing services to a company (which they owned) and consequently were not entitled to various deductions.

The taxpayers had claimed those deductions on the basis that they were carrying on a business of providing agistment and full care animal husbandry and veterinary services to their company.

The AAT concluded that, on balance, the agistment arrangements did not constitute a 'business'.

The AAT noted in this regard that there was a degree of systematic, business-like behaviour. However, the AAT was of the view that the absence of a profit-making purpose, the uncommercial nature of the transactions and similar considerations nevertheless led to the conclusion that a business was not being carried on.

Know the rules for accessing superannuation

The ATO has reminded SMSF trustees that their SMSF must be operated for the sole purpose of providing retirement benefits for its members. This means SMSF trustees can't use funds from their SMSF to pay for personal or business expenses. This is known as 'illegal early access' of superannuation, and severe penalties apply.

The ATO also reminds SMSF trustees that there are rules regarding what they can invest in when dealing with a related party.

The ATO has recently released a factsheet to help SMSF trustees understand the rules on accessing their superannuation, and make sure they (and their business, if any) comply with the rules surrounding SMSFs.

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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