Tax is collected by the government. Some taxes are collected by state governments, most are collected by the federal government through the Australian Taxation Office (ATO). This book is mainly concerned with taxes paid to the ATO.

¶1-020 Tax system basics

There are two types of tax:

- **Tax paid on what we earn.** The main tax of this type is **income tax**. This is the tax that is deducted from our wages or salary and that we pay on our other income, like bank interest, dividends on shares or profits from a business.

  Taxes on income are described as "progressive". The higher your earnings, the higher the rate you pay. This is based on the theory that the wealthy should contribute a higher proportion of their income in tax than the less well off.

- **Tax on what we spend.** The main tax of this type is **goods and services tax** (GST). Most goods and services that we buy have GST built into the price. For instance, if you buy an item from the shop for $11, typically $1 of that will be GST payable to the government and $10 will be the actual price of the item.

  GST is described as a "flat tax". If it is imposed, it is always imposed at a rate of 10%. That means that whether you are well off or not, you will pay the same amount of tax when you buy a particular good or pay for a service.

  GST is levied on consumers of most goods and services. Some items — like fresh food and medical supplies — are exempt from GST on the basis that it wouldn't be fair to levy tax on items essential to survival.

The financial year

Your taxes are calculated over the financial year. This starts on 1 July this year and ends on 30 June next year.

At the end of every financial year, you need to report your income to the ATO in a tax return so they can establish how much tax you need to pay.

If you're in employment, much of your tax will be estimated during the year, deducted automatically by your employer and paid to the ATO. When you lodge your tax return, your final liability will be calculated. If your employer has deducted too much, you'll get a refund. If they've deducted too little, or you had other sources of income, you may have to make a top-up payment.

What is income tax?

Income tax is paid on all forms of income, including wages from your job, profits from your business and returns from your investments such as bank interest and dividends. It can also be payable if you sell or give away a valuable asset like a house or some shares.

You are allowed to have income of up to $18,200 each year without paying income tax. This is called the tax-free threshold. If your income is more than $18,200, you will probably have to pay tax.

We have what is called a progressive tax system. That means that the higher your income, the higher the rate of tax you have to pay. Our lowest tax rate is 19% and this is applied to the first dollar you earn over the tax-free threshold. Our highest tax rate is 45% but this is only charged on income over $180,000. Most people pay at a rate somewhere in-between.

Set out below are the income tax rates that apply to Australian residents (for 2016/17 and 2017/18).

Individual income tax rates for residents		
Taxable income	Tax rate	Tax payable on this income
$0 – $18,200	0%	Nil tax payable
$18,201 – $37,000	19%	19c for each $1 over $18,200
$37,001 – $87,000	32.5%	$3,572 plus 32.5c for each $1 over $37,000
$87,001 – $180,000	37%	$19,822 plus 37c for each $1 over $87,000
$180,001 and above	45%*	$54,232 plus 47c for each $1 over $180,000
* For 2016/17 an additional 2% temporary budget repair levy applied on income over $180,001 (giving a top tax rate of 47%). This expired on 30 June 2017.		

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Note: These rates do not include the 2% Medicare levy (see ¶5-010), which is usually added onto the above percentages. For example, including the Medicare levy, the top rate of tax for 2016/17 was 49%, and for 2017/18 is 47%. Certain low income earners may be exempt or pay at a reduced rate (see Chapter 5 at ¶5-010 for details).

How do I pay income tax?

If you work for an employer, income tax will be automatically deducted from your wage or salary. The amount you receive in your bank account every payday is the amount after tax. Your employer pays the tax they have deducted straight to the ATO.

With other forms of income, such as business profits or bank interest, you have to account for income tax yourself.

Every year, most taxpayers need to complete an income tax return. This records all your income and works out your tax liability. Sometimes, your employer will already have paid enough tax on your behalf during the year, so you won't owe any tax to the taxman. Often, in fact, you'll have overpaid tax and you'll be due a refund. If you earn other income outside your job, or if none of your income is from a paid job, the chances are that you'll have to pay tax based on the liability you calculate in your tax return.

Do I need to lodge a tax return?

Most taxpayers need to lodge a tax return. Taxpayers who are obliged by law to lodge a tax return include:

- most resident individuals whose total assessable income exceeds the $18,200 tax-free threshold for the income year
- anyone who carried on a business regardless of income or loss

- a resident taxpayer earning less than $18,200 who has had tax withheld from that income, if they want a refund
- a taxpayer who has been asked to submit a return by the Commissioner of Taxation. A full tax return is required even if there is no assessable income to report, and
- a resident minor (under 18 on 30 June) who received income not from salary or wages.

It's quite common for people on low incomes to assume that they don't need to lodge and that isn't always the case. Among the reasons why low income taxpayers may need to lodge are the following:

- They had pay as you go (PAYG) withheld from payments received during the year. Typically, these are taxpayers who were in work during the year but earned less than the tax-free threshold. Nevertheless, tax was deducted and the chances are, these taxpayers can get that tax back but only if they lodge a return.
- They are entitled to the private health insurance rebate but did not claim their correct entitlement as a premium reduction.
- They received a fringe benefit from their employer which was reported on their PAYG payment summary.
- Their employer made superannuation contributions on their behalf which were reported on their PAYG payment summary.
- They made a loss or can claim a loss made in a previous year, possibly because they were running a loss-making small business.
- They were an Australian resident for tax purposes with exempt foreign employment income plus other income of at least $1.
- They were a liable or recipient parent under a child support assessment unless they received one or more Australian government allowances, pensions or payments for the whole year and their income was less than $23,752.

If you do not lodge a return for a particular year, the ATO may send you a request to lodge. It is a good idea to notify them if you are not required to lodge a tax return. You can do this by filling out a non-lodgment advice form (which you can do through myGov (see below) or using the form "Non-lodgment advice 2017" (NAT 2586) (or the 2016 form as the case may be)).

If you weren't otherwise required to lodge a return (for instance, your income is less than $18,200) but are entitled to a refund of franking credits on dividends you have received, you can claim a refund by filling out the form "Refund of franking credit instructions and application for individuals 2017" (NAT 4105) (or the 2016 form as the case may be).

How do I lodge?

There are two main ways to lodge a tax return:

Use an accountant

About 74% of people who lodge a tax return choose to do so through an accountant or tax agent. Tax is a complex business and many people prefer to leave it to the experts to get the best possible outcome with the minimum stress. Accountants are good at making sure you are claiming all the deductions you are entitled to and that your return is completed accurately and fast. The fee your accountant charges you is itself tax deductible.

Make sure your accountant is registered with the Tax Practitioners Board (you can check at www.tpb.gov.au to see if your accountant is registered).

Lodge yourself

The other 26% of lodgers choose the "do-it-yourself" option using the ATO's own lodgment software, myTax.

Much of the information which people with simple tax affairs need to include in their tax return is obtained by the ATO from third parties and pre-filled into your tax return. This includes all your personal details from last year, wages and salary information from employers, interest income, dividends received and private health insurance details. In theory therefore, all you need to do is ensure that the pre-filled information is correct and complete, fill in the remaining details which aren't pre-filled, and then lodge.

You need to be careful however to ensure that the information is correct and complete. If it isn't, the responsibility for any omissions or errors lies with you, not the ATO. This can be particularly significant if you lodge early, since some information from third parties often reaches the ATO late, sometimes well into August.

To use myTax, you first of all need to register with the government's online portal, myGov. You can also lodge through myTax using your phone or tablet.

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myGov

If you don't already have a myGov account, you should get one. A secure myGov account lets you link and access a range of Australian government services with one username and password, all in one place including:

- Medicare
- ATO
- Centrelink, and
- child support.

A central inbox enables you to receive correspondence from all these agencies in one place. If you intend to lodge your return using the ATO's online service — myTax — you'll need a myGov account first.

Deadlines for lodging

If you're a self-lodger, you must lodge your return by 31 October following the end of the tax year.

If you use an agent, you can lodge later, possibly as late as 15 May in the following year. To take advantage of those extended deadlines, you need to be registered as a client of the agent by 31 October.

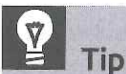
Once you've lodged your return, typically allow up to two weeks for the ATO to process and pay your refund (if applicable). The ATO doesn't send refund cheques anymore; you'll need to nominate a bank account when you lodge your return and you'll get your refund paid by electronic funds transfer (EFT) in due course.

Failure to lodge penalties can be as much as $210 ($180 before 1 July 2017) for every 28 days that the return is late, up to a maximum of $1,050 ($900 before 1 July 2017) for every year not lodged, plus the "general interest charge" (GIC) which the ATO imposes if you owe them money. This rate is approximately 9% pa.

Once you've lodged your return, the ATO will send you a "notice of assessment" showing how much tax you owe or how much tax you're due to be refunded. If you are registered with myGov, this will be sent electronically to your myGov inbox, rather than by post.

Self-assessment: what is it?

The legal obligation for getting your tax return right rests with you, the taxpayer. That means if there is a mistake in the return, you can't normally blame the ATO or your tax agent.



Tip

If you provided your tax agent with the right information but your agent didn't take reasonable care in using that information to prepare your return, and as a result you owe tax to the ATO, the ATO will waive any penalty which might otherwise have applied to you. If the mistake is your fault because you provided the agent with the wrong information in the first place, the penalties will be imposed on you.

As noted above, third party information passed to the ATO to pre-fill your return can be late or missing and if you lodge a return without full disclosure of all your income — even if you've relied on the ATO to get it right — then you're responsible for the omission, not the ATO.

Once you have lodged, the ATO will usually accept at face value the information you lodge with the tax return and process the return without checking or verifying any of the information.

Checking generally happens at a later date. This can happen automatically, by cross-referencing the information you have supplied with that provided by third parties, or it can be in the form of a review or audit, where the ATO will verify your claims by

sighting receipts and checking that transactions have been dealt with in accordance with the law. It is important to keep your tax documents in a safe, well-organised place and don't claim for anything if you don't have substantiation. If you cannot substantiate your claims, the penalties can be between 25% and 95% of the tax avoided plus GIC.

If you decide to amend your tax return, perhaps because you forgot to include something or you made a mistake, you generally have two years from the day after the date you received your notice of assessment to make it (unless you didn't receive a notice of assessment, in which case it's two years from the day after the return was lodged).

Example

If you receive your notice of assessment for the tax year 2015/16 on 8 November 2016, your amendment period starts on 9 November 2016 and runs to 8 November 2018.

The same period also applies to amendments the ATO may wish to make so any review or audit they undertake must be completed within that two-year period. The two-year period applies to individuals and small businesses; for other taxpayers (such as large businesses), it's four years.

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¶1-030 What is income?

Broadly speaking, most amounts you earn which arise from any form of economic activity will be income for tax purposes and therefore taxable (that includes income from illegal activities such as drug dealing). Money you receive from a windfall or which has already been taxed somewhere else or on somebody else generally isn't taxable.

The following types of income are taxable and need to be included on your tax return:

- income from your job, such as wages, salary, bonuses and allowances
- investment income such as bank interest, share dividends and rent
- capital gains from assets you have disposed of
- distributions you are entitled to receive from trusts of which you are a beneficiary — even if you don't physically receive the payment
- income you receive from running a business
- income you receive from being a partner in a partnership
- pensions and annuities from your super
- government payments such as the age pension
- foreign income, including from overseas employment, foreign investments and pensions, and
- income from employee share schemes.

The following types of income are not taxable but may still need to be included on your tax return:

- some government allowances, pensions and benefits, and
- some redundancy and employment termination payments.

The following are not regarded as income for tax purposes and don't need to be included on your tax return:

- inheritances
- small gifts received (such as cash on birthdays)
- prizes (unless you won it through a competition organised by a financial institution like a bank or building society)
- maintenance, alimony and child support
- gambling winnings, and
- money you brought with you to Australia when you moved here.

¶1-040 What are deductions?

The chances are you will incur certain costs as part of earning your income.

Recognising that often the only reason you incurred those costs in the first place was in generating income, the tax law generally allows you to deduct those costs from your income so that you only pay tax on the difference.

Tax deductible expenses are most obviously seen where someone is in employment or running a business, whereby all sorts of different costs are incurred in generating a wage or a business profit. However, any form of taxable activity will usually come at some cost and that cost will often be tax deductible.

You're only allowed to claim costs which are directly related to your income earning activity. Costs which relate to your home life or which are private in nature (like the weekly shopping bill, rent or mortgage payments) are not claimable. Some costs can have a dual purpose, being partly income related and partly private (such as a mobile phone bill where you have made both work and private calls) and these can be apportioned.

We'll look in more detail at specific deductions as we head deeper into the book (see ¶4-020 and following).

¶1-050 Offsets and rebates

We've already established that your taxable income is arrived at by reducing your income by any deductions which you are eligible to claim. Broadly speaking, you then pay tax on the net figure.

However, in some cases, the amount of tax you are finally required to pay is further reduced by one or more of the various offsets or rebates which are available to many taxpayers. These directly reduce your tax payable figure, though generally they can't reduce your tax payable below zero.

We'll discuss many of these offsets and rebates elsewhere in the book, including:

- private health insurance rebate (see ¶5-030)
- beneficiary tax offset (see ¶7-030)
- net medical expenses tax offset (see ¶5-020)
- seniors and pensioners tax offset (see ¶19-090)
- low income superannuation tax offset (see ¶17-050), and
- zone and overseas forces tax offsets (see ¶4-120).

Low income tax offset

If you earn less than $66,667, you will be entitled to the low income tax offset. If you earn $37,000 or less, you'll receive the full offset of $445. If you earn more than $37,000, the amount of the offset is reduced by 1.5 cents for every dollar you earn in excess of $37,000, which means that the offset gradually tapers away to nothing as you reach the higher threshold of $66,667.

The effect of the offset is that you can earn up to $20,542 each year and pay no income tax. This is because you'll benefit from the combination of the $18,200 tax-free threshold and the low income tax offset of $445, which equates to an additional tax-free amount of $2,342.

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¶1-060 How long do I need to keep my tax records for?

You must keep all the records, receipts and other documentation you have used to prepare your tax return. If you are claiming deductions, you must keep written evidence to verify your claims for those deductions.

If you are an individual, you must keep proper records relating to your tax affairs for at least five years from the date you lodged your tax return.

If you are a small business, you must keep proper records relating to your tax affairs for at least five years from when the business record is prepared or the transaction is completed, whichever occurs later.

If at the end of the five-year period, you are involved in a dispute with the Commissioner (an audit, for example), the five-year period is extended.

If you use information from your records in a later tax return, you may have to keep records for longer. So, if you carry forward a tax loss, you must keep the records until the end of any period of review for the income tax return in which the loss is fully deducted.

If you own an asset which will be subject to capital gains tax on disposal, you will need to keep records covering the entire period of ownership until five years after lodgment of the tax return recording the disposal of the asset.

Given that paper records get lost or fade, it makes sense to securely keep documents electronically, suitably backed up of course in case the computer you use breaks down or is lost!

¶1-070 Your rights as a taxpayer

The ATO expects every taxpayer to comply with their tax obligations but the relationship between you and the ATO is a two-way street and you're also entitled to certain rights in your dealings with the taxman.

The ATO has published a Taxpayers Charter which sets out every taxpayer's rights and entitlements under the law, and the service and other standards that can be expected from the ATO. There is an expectation that all tax officers will follow the Taxpayers Charter in their dealings with taxpayers.

What you can expect from the ATO

As set out in the Charter, you can expect the ATO to:

- treat you fairly and reasonably
- treat you as being honest in your tax affairs unless you act otherwise
- offer you professional service and assistance to help you understand and meet your tax obligations
- accept that you can be represented by a person of your choice and to get advice about your tax affairs
- respect your privacy
- keep information held about you confidential, in accordance with the law
- give you access to information held about you, in accordance with the law
- give you advice and information that you can rely on
- explain to you the decisions it makes about your tax affairs
- respect your right to a review
- respect your right to make a complaint
- administer the tax system in a way that minimises your costs of compliance, and
- be accountable for what it does.

If the ATO fails to live up to the standards outlined in the Charter, you can lodge a complaint. It's generally best to try to resolve issues with the ATO officer you have been dealing with (or their superiors) first but if that doesn't work, a complaints form is available on the ATO website and this can be sent to the ATO online, by fax or by post.

If you're still not satisfied, you can escalate the matter to the ATO's ombudsman, the Inspector-General of Taxation (www.igt.gov.au). He is independent of the ATO and his office is committed to investigating complaints about the administration of the tax system.

Your right to privacy

The ATO collects lots of information about you and also has access to additional information supplied from third parties. It has an obligation to keep that information confidential.

The law allows the ATO to disclose certain information to others for specific purposes, such as to determine eligibility for government benefits. If the ATO does anything to compromise your privacy or confidentiality, you can complain to the ATO or to the Privacy Commissioner.

You also have a right under the Freedom of Information Act to access the information the ATO holds about you. You can also access the documents that may have helped the ATO come to a decision about your tax situation, such as public rulings and ATO guidelines. Under the Act, you have the right to correct information that you believe is incomplete, incorrect, out of date or misleading.

The disclosure of certain documents may not be possible, as some are exempt from the Freedom of Information Act, such as information that "could reasonably be expected to prejudice an investigation" or that would necessarily involve disclosing information about someone else.

If you need to make a request for information under the Freedom of Information Act, you have to make it in writing to the ATO and there may be a fee.

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What can you claim as a tax deduction?

As a general rule, you can claim a tax deduction for expenses that you incur while performing your job. Generally, a work-related expense is incurred when you have spent the money.

In determining what you can and can't claim, there are a few basic rules to consider before you go ahead and make the claim:

- You must have incurred the expense in the current tax year.
- You must be genuinely out-of-pocket. So, you can't claim an expense which has been or will be reimbursed to you by your employer (or any other person).
- You must have necessarily incurred the expense in the course of earning your assessable income. In addition, the expense must not be private, domestic or capital in nature. For example, the costs of normal travel to and from work or buying lunch each day are private expenses and are not tax deductible.
- If you incurred an expense that is partly related to work and partly private or domestic, you can only claim a deduction for the work-related portion of the expense. For example, if you use your mobile phone for work and privately, you can only claim a tax deduction for the work-related part of the bill.
- If you incurred an expense for services paid in advance, provided the expense is not paid for a period exceeding 12 months, the expense is allowable in the current tax year. For example, if you subscribe to a professional organisation for the calendar year, you can claim the whole expense in your tax return this year, even though half of your subscription relates to the next tax year.
- You must be able to substantiate your claims with written evidence if the total claimed for expenses, not including claims for car, meal allowance, award transport payments allowance and travel allowance expenses, is greater than $300. If the total claimed is $300 or less, you need to be able to show how you calculated your claims, but you do not need written evidence. If your total claims are greater than $300, you need to be able to substantiate the whole claim, not just the bit over $300.

Tip

There is a widespread misconception that you can claim $300 worth of deductions automatically, without having to worry about proving them. As the bullet point above shows, that's not the case. If you didn't actually incur the expenses — and can't show how you calculated the amount of your deduction — you can't make a claim.

Allowances

Receiving an allowance from your employer (for a car, travel or work clothing for instance) does not automatically entitle you to a deduction — you must still meet the basic rules listed above to make a claim. You can claim only the total amount you actually spent even if the allowance is more.

¶4-020 Tax deductions: the guide

Bearing in mind the basic rules above, in this section we'll look at some of the more common tax deductions and seek to establish exactly what you can and can't claim.

¶4-030 Self-education and personal development

Most of us want to better ourselves at work and a large part of doing that is equipping yourself with the skills you need to advance your career. The good news is that you can often do that, and claim a tax break on the costs you incurred at the same time.

Self-education expenses are tax deductible when the course you undertake leads to a formal qualification and:

- has a sufficient connection to your current job
- maintains or improves the specific skills or knowledge you require in your current job, or
- results in, or is likely to result in, an increase in your income from your current job.

You can't claim a deduction for self-education expenses for a course that does not have a sufficient connection to your current employment even though it:

- might be generally related to it, or
- enables you to get a new job.

Example

You are a nurse and choose to undertake a Masters of Nursing in your chosen field. This will allow you to take on additional responsibilities in your job and should move you on to a higher pay scale. This increases your skills in your chosen field of endeavour and is connected to your current income earning activities. You will be able to claim a tax deduction for undertaking the Masters degree, and all related costs (see below).

Example

You are a nurse and wish to train to become a doctor. You commence a medical degree. This opens up new income earning opportunities in the future and the cost of the course is incurred too soon to be regarded as being incurred in earning your assessable income. The costs of the medical degree will not be tax deductible.

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What can I claim?

You can claim the following expenses in relation to your self-education:

- course and tuition fees
- textbooks and trade, professional or academic journals
- fares, accommodation and meals (if you are away from home overnight)
- computer consumables (such as paper or ink)
- depreciation on assets such as computers or laptops (where the cost exceeds $300)
- purchase of equipment or technical instruments costing $300 or less
- equipment repairs
- home office running costs (for any home study) such as heat, lighting, etc
- interest on any money borrowed to fund the course
- internet usage
- parking fees
- phone calls
- stationery
- student union fees and other student services and amenities, and
- travel costs.

Expenses you can't claim

You can't claim the following expenses in relation to your self-education:

- repayments of Higher Education Loan Program (HELP) loans
- Student Financial Supplement Scheme (SFSS) repayments
- home office occupancy expenses (such as mortgage interest or rent), and
- meals where not sleeping away from home.

You can't claim for the first $250 if the course is provided by a school, college, university or other place of education. However, if you incur expenditure on otherwise non-deductible items like childcare, meals where not sleeping away from home and certain non-deductible travel, you can offset these against the $250 and potentially reduce the amount you can't claim.

Personal development: attending conferences and seminars

Even though attending such an event doesn't typically generate a formal qualification, you can also claim the cost of attending seminars, conferences or workshops that are sufficiently connected to your work activities. This can include formal education courses provided by professional associations. The requirement to disallow the first $250 of the claim does not apply to these sorts of expenses.

Example

You are a nurse and you attend a two-day professional development conference highlighting the latest advances in your field of nursing. The knowledge you gain from attending this conference will be directly applied in your work when you go back to the hospital where you work. You can claim the costs of attending the course, as well as ancillary costs such as travel, accommodation and meals.

If, as is often the case, the conference or seminar is held somewhere warm and sunny, and you decide to stay on for a short holiday afterwards, you will need to apportion your expenses between conference-related and holiday-related expenditure.

¶4-040 Travelling expenses

Many people are required to travel as part of their job. Work-related travel might be something as simple as a short trip to see a client for an hour or two or a prolonged trip lasting several days interstate or even overseas.

Costs which you incur in travelling for work are generally tax deductible. The law in this area is very complex, though, and with the ATO regularly keeping a close eye on people making incorrect travel claims, it pays to take care to get it right.

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Using your car for work

If you're required to use your car for work, you are entitled to a deduction for the costs which you incur while at work. This specifically excludes the cost of the commute from home to work, except in very limited circumstances (see below).

Typical situations where you might be able to claim for using your car for work include:

- travelling between workplace sites during the working day
- travelling directly from one job to another where you have a second job (provided you don't go home first)
- travelling to a business-related meeting with a client, supplier or prospect, and
- travelling to a work-related course.

There are two ways you can make this claim:

- **Cents per kilometre.** You can claim a flat rate of 66 cents per kilometre for every business kilometre you travel. You'll need to keep a diary of all work-related journeys so you can work out how many kilometres you've travelled for work. This method can only be used for claims up to 5,000 km per vehicle.

  Generally, if you travel more than 5,000 km per year in a particular vehicle, you'll need to use the logbook method (below).

Tip

If you change your car part-way through the year, you can claim 5,000 km for both vehicles.

Tip

A LAFHA paid to you is **income tax free** and should not be included as assessable income in your tax return. Conversely, you **cannot claim a deduction** for expenses which have been covered by a LAFHA.

However, your employer may be required to pay fringe benefits tax (FBT) on the value of the allowance or benefits provided.

LAFHAs are often confused with travel allowances. Travel allowances are paid to employees that are travelling on business but not living away from home. Generally, an employee travelling for business for less than 21 days will receive a travel allowance, not a LAFHA.

You can receive a LAFHA in respect of family members that also live away with you, including your spouse and your children.

If you maintain a home in Australia that your duties of employment require you to live away from, your employer does not have to pay FBT for any living-away-from-home benefits they provide to you for 12 months. After that period, your employer will have to pay FBT on any benefits they provide to you.

Keeping records of expenses

You must keep records of your living-away-from-home expenses and will need to give your employer either:

- documentary evidence of the expense such as receipts, credit card or bank statements (copies are acceptable), or
- a declaration setting out information about the expenses.

If you choose to provide a declaration to your employer, you must do so by the date on which your employer's FBT return is due to be lodged with the ATO or, if they don't have to lodge a return, by 21 May. You must also keep your documents to substantiate the expenses incurred for a period of five years from the declaration date. However, you do not need to keep the documents if you provide documentary evidence of the expenses to your employer.

Food or drink expenses

Any food or drink expenses you incur while living away from home only need to be substantiated where the expenses exceed an amount considered to be reasonable by the ATO (see *Taxation Determination* TD 2016/13).

If your food or drink expenses exceed the reasonable amount, you must be able to substantiate the full amount of these expenses, not just the excess amount.

Accommodation expenses

The full amount of accommodation expenses you incur must be substantiated.

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¶4-060 Home office expenses

Work patterns have changed in recent years and one of the effects of that is that many people are increasingly working from home rather than from — or in addition to — a traditional office. That might be by choice or it might not (if you have a tight deadline and need to work a weekend to get that crucial report finished, the chances are you'll do it from your home desk) but either way, many people are kitting out a home office to help them do their job.

What can I claim?

The expenses that you can claim include the work-related proportions of:

- heating, cooling and lighting bills
- depreciation of home office furniture and fittings
- depreciation of office equipment and computers
- small capital items such as furniture and computer equipment costing less than $300 can be written off in full immediately (they don't need to be depreciated), and
- computer consumables (like printer ink), stationery, telephone and internet costs.

Many people try to claim a percentage of rent or the interest on a mortgage if they work from home using a home office. This isn't allowable.

Ideally, you should have a specific room set aside as a home office. If you are using a room with a dual purpose (eg dining room), or a room shared with others (eg lounge room) you can only claim the expenses for the hours you had exclusive use of the area.

So, how do you make your claim? There are two methods:

Diary method/actual running expenses

Keep a diary to work out how much of your running expenses relate to doing work in your home office. The diary needs to detail the time you spend in the home office compared with other users of the home office. Keep your diary record for a representative four-week period. The "work-use proportion" you come up with over that four-week period can then be applied to all your actual expenditure over the course of the year. Of the two methods this usually produces the larger deduction, but the record-keeping requirements are more stringent.

ATO rate per hour method

You can use a fixed rate of 45 cents per hour for home office expenses for heating, cooling, lighting and the decline in value of furniture instead of keeping details of actual costs. You just need to keep a record of the number of hours you use the home office and multiply that by 45 cents per hour.

Finally, a word of warning: It is quite common for people to have insufficient documentation to support a home office claim, particularly around the proportionate split between business use and personal use so be sure to keep records.

¶4-070 Work clothing

Do you need to wear a suit to work? Or perhaps you need to wear a uniform emblazoned with your company's logo? Perhaps you work in a clothes shop and have to come to work wearing clothes bought in that store?

Whatever the case, you have to conform to your employer's dress policy so there might be an expectation that you'll be treated the same way by the ATO when it comes to claiming tax deductions for your work clothing.

If only it was so simple . . .

What can I claim?

You can claim a deduction for the cost of buying and cleaning:

- clothing which is specific to your job
- protective and unique clothing (ie not clothes you'd wear as part of your everyday activity outside work)
- clothing that allows the public to easily recognise your occupation — such as the checked trousers a chef wears
- distinctive uniforms
- clothing and footwear that protects you from the risk of illness or injury posed by your job or the environment in which you do your job. That might include:
  - fire-resistant and sun-protection clothing (including sunglasses)
  - hi-vis vests
  - non-slip nurse's shoes
  - rubber boots for concreters
  - steel-capped boots, gloves, overalls, and heavy-duty shirts and trousers, and
  - overalls, smocks and aprons you wear to avoid damage or soiling to your ordinary clothes while at work.

Expenses you can't claim

You can't claim the cost of purchasing clothes you bought to wear for work that are not specific to your job, such as a bartender's black trousers and white shirt, or a business suit. Bad news for office workers!

If you work in a clothing store, you can't claim the cost of clothing you purchased in that store, even if you're required to wear it to work, since those items of clothing are not specific to your occupation (you could also wear them outside work, on a Saturday night out for instance).

Ordinary clothes (such as jeans, shirts, shorts, trousers, socks, closed shoes) are not regarded as protective clothing if they lack protective qualities designed for the risks of your work. To take the example of closed shoes, you may seek to argue that such shoes provide a level of protection for your feet from work-place hazards but unless that protection is something specific, over-and-above a general level of foot protection, you're not going to be able to claim a deduction.

You can only claim for an item which is required as part of your job. For example, an agricultural worker who works in the fields may be able to claim for sunglasses but a nurse, typically, couldn't.

Compulsory work uniforms

If you are obliged by your employer to wear a uniform — a set of clothes that marks you out as an employee of the organisation — the cost of those items of clothing is tax deductible, to the extent that you (rather than the employer) suffers the cost.

You may be able to claim a deduction for shoes, socks and stockings where they are an essential part of a compulsory uniform and where their characteristics (colour, style and type) are specified in your employer's uniform policy (as is sometimes the case with air cabin crew and nurses for instance).

You may be able to claim for a single item of distinctive clothing, such as a jumper bearing your employer's logo, if it's compulsory for you to wear it at work.

Non-compulsory work uniforms

You can claim for a non-compulsory uniform provided it is unique and distinctive to the organisation you work for.

Clothing is unique if it has been designed and made only for your employer. Clothing is distinctive if it has your employer's logo permanently attached and the clothing is not available to the public.

You can't claim the cost of purchasing or cleaning a plain uniform (eg a generic white shirt and pair of black trousers, as worn by many hospitality workers).

Non-compulsory work uniforms must usually have a design registered with AusIndustry in order to be tax deductible.

Shoes, socks and stockings can never form part of a non-compulsory work uniform, and neither can a single item such as a jumper.

There has been some pressure on the government to scrap tax deductions on non-compulsory work uniforms, although at present no such step has been taken.

Cleaning of work clothing

If you can claim a tax deduction for purchasing an item of work-related clothing, you can also claim a tax deduction for the cost of having it washed, dried and ironed, or having it dry-cleaned. Conversely, if you can't claim a tax deduction for the item of clothing, you can't claim laundry costs in relation to it.

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¶4-080 Mobile phones

Recent research has revealed that there are over 30 million mobile phones in use in Australia[2], which amounts to more mobile phones than there are people. The explosion in mobile phone usage over the past few years has led to a widespread expectation that employees will be contactable at almost any hour of the day, any day of the week.

So, if you are one of the millions using your mobile phone to make or receive work calls and with average phone bills exceeding $700 per head annually, you should be claiming a tax deduction for any work-related costs you incur.

So, what are the common reasons for people not to claim a deduction? First of all, there's a simple lack of awareness that you can even claim in the first place. Secondly — and more commonly — there's a failure to keep the right records. As with all tax deductions, being able to support your deduction claim with records is vital.

The basic rules

If you use your own phone for work purposes, you can claim a deduction if you paid for these costs and have records to support your claims.

If you use your phone for both work and private use, you will need to work out the percentage that reasonably relates to your work use.

You can't double-dip and claim for phone expenses that have been reimbursed by your employer. You also can't claim for a work-provided phone where all costs are met by your employer.

How do I substantiate my claim?

The good news is you don't need to go through every phone bill for the whole year, highlighting your work calls. Instead, if your deduction exceeds $50, you need to choose a typical four-week period from some point in the tax year and keep detailed records (including bills and possibly a diary) of your phone use during that period.

If you have a phone plan where you receive an itemised bill, you need to determine your percentage of work use over that four-week period from the bill. You can then apply that to the full year.

You need to calculate the percentage using a reasonable basis. This could include:

- the number of work calls made as a percentage of total calls
- the amount of time spent on work calls as a percentage of your total calls, or
- the amount of data downloaded for work purposes as a percentage of your total downloads.

2 Australian Communications and Media Authority Communications Report 2013–14 at www.acma.gov.au/theACMA/Library/Corporate-library/Corporate-publications/communications-report.

Example

Roger has a $100 per month phone plan. He receives a bill which itemises all of his phone calls.

Over a four-week representative period, Roger identifies that 50% of his calls are work-related. He worked for 11 months during the income year, having had one month of leave. Roger can claim a deduction of $550 in his tax return (50% × $100 × 11 months).

If you have a phone plan where you don't receive an itemised bill, you determine your work use by keeping a record of all your calls over a four-week representative period and then calculate your claim using a reasonable basis (eg the number of work calls as a proportion of total calls). You may need to keep a diary of all your calls.

If you incur extra charges in a particular month, for example because you have exhausted your data allocation and had to pay for more, you can also claim the work-related element of those extra costs.

If you purchased your handset outright, you can also claim a deduction for a percentage of the handset cost based on your work-related usage. If the handset costs less than $300, you can claim an immediate deduction. If the handset costs more than $300, you can claim a deduction over several years for the decline in value.

Example

Joe purchases a mobile handset for $250. He uses the phone 50% for work. He can claim a deduction for $125 in this year's tax return.

Minor use

If the total deduction you are claiming for the year is less than $50, you don't have to analyse your bills at all. Instead, you can claim the following flat rate amounts:

- 25 cents for each work call made from your home phone
- 75 cents for each work call made from your mobile, and
- 10 cents for each text message sent from your mobile.

¶4-090 Deductions for specific occupations

While the material above highlights the sort of deductions that are of fairly broad application, there will also be certain deductions which are quite specific to particular occupations. Helpfully, the ATO produces a series of occupation-specific rulings and factsheets which explain in detail the kinds of deductions which can be claimed if you work in that particular job. These include:

- Adult industry workers (factsheet at www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Deductions-for-specific-industries-and-occupations/Adult-industry-workers---claiming-work-related-expenses)
- Airline employees (*Taxation Ruling* TR 95/19)

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- Australian Defence Force employees (*Taxation Ruling* TR 95/17)
- Building workers (*Taxation Ruling* TR 95/22)
- Business professionals (factsheet at www.ato.gov.au/individuals/income-and-deductions/in-detail/deductions-for-specific-industries-and-occupations/business-professionals---deductions-you-may-be-able-to-claim)
- Civil marriage celebrants (*Income Tax Ruling* IT 2409)
- Cleaners (*Taxation Ruling* TR 95/8)
- Earthmoving plant operators (factsheet at www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Deductions-for-specific-industries-and-occupations/Earthmoving-plant-operators---claiming-work-related-expenses)
- Electricians (factsheet at www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Deductions-for-specific-industries-and-occupations/Electricians---claiming-work-related-expenses)
- Engineers (factsheet at www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Deductions-for-specific-industries-and-occupations/Engineers---claiming-work-related-expenses)
- Factory workers (*Taxation Ruling* TR 95/12)
- Fitness and sporting industry employees (factsheet at www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Deductions-for-specific-industries-and-occupations/Fitness-and-sporting-industry-employees---claiming-work-related-expenses)
- Guards and security employees (factsheet at www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Deductions-for-specific-industries-and-occupations/Guards-and-security-employees---claiming-work-related-expenses)
- Hairdressers (*Taxation Ruling* TR 95/16)
- Hospitality industry employees (*Taxation Ruling* TR 95/11)
- IT professionals (factsheet at www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Deductions-for-specific-industries-and-occupations/IT-professionals---claiming-work-related-expenses)
- Itinerant workers (*Taxation Ruling* TR 95/34)
- Journalists (*Taxation Ruling* TR 98/14)
- Lawyers (*Taxation Ruling* TR 95/9)
- Mechanical, automotive and electrical tradespeople (factsheet at www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Deductions-for-specific-industries-and-occupations/Mechanical,-automotive-and-electrical-tradepersons---deductions-you-may-be-able-to-claim)
- Mechanics (factsheet at www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Deductions-for-specific-industries-and-occupations/Mechanics---claiming-work-related-expenses)
- Members of Parliament (*Taxation Ruling* TR 1999/10)

- Mining site employees (factsheet at www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Deductions-for-specific-industries-and-occupations/Mining-site-employees---claiming-work-related-expenses)
- Nurses (*Taxation Ruling* TR 95/15)
- Performing artists (*Taxation Ruling* TR 95/20)
- Plumbers (factsheet at www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Deductions-for-specific-industries-and-occupations/Plumber-employees---claiming-work-related-expenses)
- Police officers (*Taxation Ruling* TR 95/13)
- Real estate industry employees (*Taxation Ruling* TR 98/6)
- Sales and marketing managers (factsheet at www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Deductions-for-specific-industries-and-occupations/Sales-and-marketing-managers---claiming-work-related-expenses)
- Sales representatives (factsheet at www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Deductions-for-specific-industries-and-occupations/Sales-representatives---claiming-work-related-expenses)
- Shop assistants (*Taxation Ruling* TR 95/10)
- Teachers (*Taxation Ruling* TR 95/14)
- Travel agent employees (factsheet at www.ato.gov.au/Individuals/Income-and-deductions/In-detail/Deductions-for-specific-industries-and-occupations/Travel-agent-employees---claiming-work-related-expenses)
- Truck drivers (*Taxation Ruling* TR 95/18)

Keeping records

Written evidence rule — records you need to keep for claims of more than $300

You must have written evidence to prove your deduction claims if your total claims exceed $300. The records you keep must prove the total amount, not just the amount over $300.

The $300 limit does not apply to claims for car, meal allowance, award transport payments allowance and travel allowance expenses. There are special written evidence rules for these claims (such as the logbook for car allowances and the substantiation exemption for travel expenses less than the ATO's reasonable amount).

What is written evidence?

Written evidence can be:

- a document (such as an invoice or receipt) from the supplier of the goods or services, showing:
  - the name of the supplier
  - the amount of the expense

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¶11-020 Capital gains

As part of any financial settlement, there will usually be a split of assets between the separating spouses. This means that legal ownership of some assets will change, which would normally be a trigger for a CGT event. So how does CGT actually impact separating couples?

Roll-over relief for transfers between spouses

In most cases, where an asset subject to CGT is transferred between spouses as a result of a relationship breakdown, a CGT roll-over will apply which has the effect of disregarding any capital gain or loss arising on the transfer. The receiving spouse is effectively treated as if they had always owned the asset and will be liable to CGT on the full capital gain when they ultimately dispose of it. A similar exemption applies to stamp duty.

This type of roll-over is automatic. You cannot choose whether or not to apply it.

Note that the roll-over provisions only apply where the asset recipient is an individual. If the recipient is not an individual (eg the asset is transferred into a discretionary trust or a company), the roll-over provisions do not apply and CGT will be charged, with deemed proceeds for the disposal equal to the market value of the property at the date of transfer.

Tip

For tax purposes, it is important that any financial agreement put in place is formalised by a court order, maintenance agreement or binding financial agreement. Avoid "informal" private agreements. This is because in order for the roll-over provisions to apply, the asset must be transferred under a formal agreement or settlement. If the transfer is agreed as part of a private agreement, the roll-over provisions do not apply. Instead, the normal CGT rules will apply. In a separation situation, this means that the assets will be treated as sold at their market value by the disposing spouse (triggering a capital gain if the market value is greater than cost) and will be acquired at market value by the receiving spouse.

Main residence

In most relationship breakdowns, either the family home is sold and the proceeds split, or the home is transferred to one of the separating spouses. In both cases, no CGT generally arises because of the operation of the main residence exemption.

If the home is sold, the only occasion where CGT might be an issue is where the home was used to generate assessable income, perhaps because a business was run from there or part of the home was rented out. In that case, a partial CGT exemption should still be available (see Chapter 12 for a detailed description of the main residence exemption rules).

If the home is transferred to one of the spouses, even if the main residence exemption is not fully available, any gain can be rolled over using the roll-over relief provisions (see above).

The CGT consequences for the receiving spouse will broadly depend on what happens to the property after the separation and can be summarised in three likely outcomes:

(1) The receiving spouse continues to live in the house. In this case, the main residence exemption continues to apply and the house can be ultimately sold free of CGT.

(2) The receiving spouse rents out the property but does not nominate another main residence. In this case, the six-year absence rule applies and the main residence exemption will continue to be available for that period (see ¶12-060).

(3) The receiving spouse rents out the property, buys another and nominates the other property as their main residence. In this case, the receiving spouse will be deemed to have acquired the property at the date it was first rented out for its market value at that time, which will then become its CGT cost base. No main residence exemption will be available and the gain arising from the date the property was first rented out to the date it was sold will be fully chargeable to CGT.

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¶11-030 Transfer of assets held within a company

One of the trickiest situations which can arise is where the spouses run a business together through a private company or a trust. On the breakdown of a relationship, it is common for the assets of the company — typically cash or a property — to be divided between the former spouses, possibly by way of transfer from the company or trust to one of the parties to the relationship, with the other party retaining the company from which the assets were transferred.

The CGT roll-over provisions outlined above will cover such a transaction (and any stamp duty consequences too) since the CGT exemption also applies to a company or trust that is required to transfer an asset to one of the parties to the relationship.

What is less well-understood is that the Div 7A rules, which apply to payments or loans from private companies to shareholders (see ¶9-060), can also apply and there is no exemption in the case of relationship breakdowns.

If the Div 7A provisions apply, a deemed unfranked (but potentially frankable) dividend can arise to the former spouse who has received the asset, which can result in them being left with a tax liability at the top marginal rate (49% in 2016/17; 47% in 2017/18, including the Medicare levy), potentially payable out of whatever they have received on the property settlement. Given that the CGT roll-over will also leave them exposed to a full capital gain on the ultimate disposal of the asset, they are potentially left with a situation that amounts to double taxation on the same asset.

Tip

The Div 7A rules also apply where an asset is made available for the use of a shareholder so if the property settlement gives one party the right to live in a property, such as a house or apartment, owned by the family company, this too could give rise to a deemed dividend, even if the property itself is not transferred.

It should be noted that while there is no exemption available for the Div 7A charge, there are ways of structuring a transfer in such a way that the Div 7A rules are not triggered in the first place, perhaps by splitting the company into two, with the relevant assets transferred into a new company which is then owned by the receiving spouse and the remaining assets remaining in the old company which is owned by the paying spouse. Alternatively, it may be possible to use the small business concessions (see ¶18-030) to transfer the business to the paying spouse, leaving the assets to be transferred in the old company which the other spouse retains. Either way, at this level of complexity, affected taxpayers will certainly be looking to take legal and taxation advice to ensure that the transfer is done with as few negative tax consequences as possible.

¶11-040 Other assets

Motor vehicles are not normally subject to CGT, so can be transferred without tax consequences.

Pre-CGT assets (ie assets acquired before 20 September 1985) are also exempt from CGT.

¶11-050 Superannuation

The *Family Law Act 1975* and the *Superannuation Industry (Supervision) Act 1993* (SISA) allow an interest in superannuation, or a super payment, to be divided or split by agreement or court order in the event of a relationship breakdown.

When couples separate, funds held within the superannuation system generally need to remain within the superannuation system unless the individual has satisfied a condition of release, such as retiring after reaching the preservation age (see ¶19-020), turning 65 or starting a transition to retirement pension.

There are typically three options available to separating couples.

An interest split

This occurs where the fund is divided between the two spouses. The part paid to the non-member spouse can itself be treated in one of three ways:

- a new interest can be created in the same fund
- the interest can be transferred to another fund, or
- where a condition of release is met, a lump sum payment can be made to the non-member spouse.

Typically, the steps involved in splitting superannuation benefits are:

- request information about the spouse's super from the super fund
- value the superannuation benefit
- reach an agreement, or if that isn't possible, obtain a court order

- send a copy of the agreement or order to the super fund trustee
- split the super benefit, and
- ensure that a new member account or fund is in place to receive the split super for the non-member.

Flag the benefit and defer the decision until another time

Flagging the super benefit effectively defers a decision until a later date, allowing the couple to protect their interests until a key event, such as retirement or the valuation of an asset occurs. Once that key event happens, a flag-lifting agreement is entered into and the trustees can then deal with the super account (usually by way of a payment split, using one of the options listed above).

Take super into account, but leave the fund untouched

Under this option, the value of the super fund is included in the total pool of assets, but the fund itself is left untouched. Instead, the member spouse compensates the non-member spouse for the value of their share of super by giving them an increased allocation of non-super assets, such as a bigger share of the family home.

Note: In Western Australia, the superannuation benefit of a person involved in a heterosexual or same-sex de facto relationship cannot be split, so only the third option is available.

Tax consequences of splitting super

Superannuation lump sum payments: If a payment split is made to a receiving spouse who meets a condition of release and it results in a lump sum payment, the payment is assessed to the receiving spouse. It will be received tax-free if they are over 60, and taxed at their marginal rates less 15% (the first $195,000 for 2016/17; $200,000 for 2017/18 is tax-free) if they are under 60. The benefit payment will be divided into a taxable and tax-free component in the same proportions as the total benefit just prior to the payment split.

Superannuation income stream: Where an income stream or annuity is split, a new income stream starts for the receiving spouse and is assessed to them. It will be tax-exempt if they are over 60 or taxed at marginal rates less 15% if they are under 60. The benefit payment will be divided into a taxable and tax-free component in the same proportions as the total benefit just prior to the payment split.

Capital gains tax exemptions: Where capital gains or losses arise from the creation of rights when a superannuation agreement is entered into or terminated, these are disregarded for CGT purposes.

¶11-060 Self managed super funds and relationship breakdown

If you run a self managed super fund (SMSF) and you're separating from your spouse, an additional level of complication is added to the picture, particularly if both spouses are trustees of the fund.

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Whatever personal difficulties the trustees may have with each other, they are still obliged to act in the best interests of all the members of the fund. This means they must continue to discharge all their legal responsibilities as trustees to ensure that the fund is managed properly. In particular, they cannot:

- exclude another trustee from the decision-making process
- ignore requests to redeem assets or roll over money to another super fund, and
- generally act outside the terms of the SMSF trust deed or disregard the provisions of the *Superannuation Industry (Supervision) Act 1993* (SISA).

So, for a time at least, both spouses will have to work together to administer the fund, including undertaking day-to-day administrative tasks (such as signing cheques) and making big decisions about fund investments. If they fail to discharge their duties as trustees, the fund can be made non-compliant by the ATO and the trustees can be disqualified from acting in that capacity in the future.

The problem for many SMSFs is that often the whole fund is tied up in one asset which cannot be easily liquidated, such as a property. So, if a court order determines that a $2m fund is to be split 50:50 between the parties, but the only asset of the fund is a property worth $2m, how can that court order be satisfied unless the property is sold? There are solutions to this, usually involving either borrowing to pay out the departing spouse or restructuring the trust such that a separate interest inside the existing trust is set up for the benefit of the departing spouse. Either way, specialist advice will be essential.

Where assets can be transferred out of the SMSF, tax is not usually an issue. CGT roll-over is available where assets are transferred from an SMSF to another super fund as a consequence of relationship breakdown. So, as with the roll-over between individuals, no CGT is payable at the time of the transfer and the new fund inherits the original cost base of the asset.

Tip

The roll-over only applies where assets are transferred in specie to the new fund. It does not apply where the asset is sold first and then the cash proceeds are transferred to the new fund.

The rules relating to dividing super assets in the event of a relationship breakdown or divorce are complex and getting legal or specialist super advice is essential. Even where the separation is amicable, the super laws require each party to get independent advice before signing an agreement relating to super benefits, if the agreement is to be binding on the trustees of the super fund.

CHAPTER 12

Tax and the family home

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The course of our lives is marked by many significant moments, some pleasant, some less so. From our first day at school to our retirement via relationships, marriage, travel and work, a typical life will have many milestones. Few are more significant than that day when we first step on to the property ladder; the day we pick up the keys and cross the threshold of our own house for the first time.

During a typical life, the chances are that we'll own several houses. Work, relationships or simply the desire for change might trigger a move. We might upsize or we might downsize. At times, because we become more prosperous or because circumstance forces us, we might own more than one house at the same time.

Of all the financial transactions we undertake in a lifetime, none will be more significant than that initial step into the property market.

As a nation, we favour those who choose to buy a home. This favouritism is reflected in the rather benign tax structure we have built around home ownership.

But pointing out that the tax law as it applies to the family home is relatively kind, doesn't mean that there aren't pitfalls. In a simple situation, where you buy the family home, live in it and at some point in the future, sell it and buy another, tax is probably the least of your considerations . . . well, except for the persistent irritant that is stamp duty. But if for whatever reason you find yourself owning two homes at the same time, or if you decide to subdivide your land or if you decide to rent out a room in your house, or even rent out the whole house, suddenly tax becomes an issue and if you're not sufficiently on top of the tax law, you can receive a very nasty surprise from the ATO.

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¶12-010 Will I pay tax if I sell my family home?

Typically, when you sell an asset, you must pay capital gains tax (CGT) on any profit which you make on the sale.

For most of us, the most valuable asset which we own is our family home and, with house prices heading upwards across large parts of the country, many of us stand to make a large profit if we sell.

So does that mean that you have to pay CGT when you sell your house?

Fortunately, in most cases, the answer is no. The tax law provides an automatic exemption for any capital gain (or loss) which arises when a taxpayer sells their main residence.

Tip

The main residence exemption is only available to individuals and not to a company. Usually, it is not available to trustees though it may be available to the trustee of a deceased estate (see ¶20-060). Bear this in mind when buying a house, particularly if you choose to purchase through a corporate or trust structure.

However, this isn't a blanket exemption. There remain situations where some or all of the gain arising on disposal of your main residence may be liable for CGT.

In this section, we look at what the phrase "main residence" actually means and look at some of the situations where the CGT exemption might not be available.

¶12-020 What is my main residence?

In short, it's your home.

The ATO has set out some of the factors which it looks for in determining whether the property you have disposed of is your main residence. These include:

- whether you and your family live there
- whether you have moved your personal belongings into the home
- whether your mail is delivered to the property
- whether the residence is your address on the electoral roll
- whether you have services and utilities connected (eg phone, gas, or electricity), and
- whether you intend the dwelling to be your main residence.

There is no minimum time that you have to live in a home before it can be considered to be your main residence, although a period of greater than three months is often taken as the benchmark. Even if you only own a house for a short period — six months, say — provided you tick all the boxes above, the property will be your main residence.

To obtain the exemption, it isn't enough to simply own the house; it must also qualify as your main residence throughout the period of ownership. This period begins at settlement of the purchase contract and ends at settlement of the sale contract.

Simply intending to occupy the dwelling — without actually doing so — is not good enough to trigger the exemption.

The main residence exemption can only apply to a property which includes a dwelling, ie anything that is used wholly or mainly for residential accommodation.

Examples of a dwelling are:

- a house or cottage
- an apartment or flat
- a strata title unit
- a unit in a retirement village, and
- a caravan, houseboat or other mobile home.

Simply owning land isn't enough to claim the exemption, even if you intend to build a dwelling at a later date. However, you can choose to treat land as your main residence for up to four years before a dwelling is constructed in certain circumstances. You can choose to have this exemption apply if you acquire land and you:

- build a dwelling on the land
- repair or renovate an existing dwelling on the land, or
- finish a partly constructed dwelling on the land.

There are a number of conditions that you must satisfy before you can claim the exemption. You must first finish building, repairing or renovating the dwelling and then:

- move into the dwelling as soon as practicable after it is finished, and
- continue to live in the dwelling as your main residence after it becomes your main residence, ideally for at least three months.

¶12-030 What about the land surrounding the house?

The CGT exemption includes any land adjacent to or surrounding the house, to the extent that that land is used for private or domestic purposes in association with the dwelling. What that means is that a garden is fine but an agricultural field is not.

To qualify, the house, together with the land on which the house sits, should not exceed two hectares in area. Anything over two hectares would not be covered by the exemption and a gain (or loss) would arise on the surplus part. The taxpayer can choose which two hectares to include, but it must include the land on which the house is situated.

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The land need only be close to or near to the land to qualify as adjacent. So, even if the land was across the road from the house, it would still be adjacent.

The exemption also covers a garage, store room or any other structure that is attached to or forms part of the house, provided it is used primarily for domestic purposes. For example, if you run a business from the garage, the exemption would not apply to the garage, but if you simply park your car there, it would apply.

If adjacent land (or a garage, store room, etc) is sold separately from the rest of the property, the CGT exemption will not be available in relation to that disposal unless the land has been compulsorily acquired.

¶12-040 Moving into the house

The main residence exemption also covers any period from when the dwelling is acquired to the time it is first practicable to move in. This takes account of situations where, for example, there is a delay in moving in because of illness or some other reasonable cause.

The exemption does not extend to cases where you can't move into the dwelling because it's being rented out or because it would simply be "inconvenient to move in", eg because you were employed elsewhere or because you were seconded to a new employment before moving in. However, it would cover a period after a tenancy ends if the owner could not move in immediately because repairs need to be done to the property to make it habitable again.

This rule means the exemption will only be partially available if the house is not moved into from the time it is first practicable to do so.

¶12-050 Can I have more than one main residence?

You can only ever have one main residence at any given point in time. The exception is if you're selling your old property and buying another. In this case, you're entitled to an overlap period of six months when both properties can be your main residence as long as:

- the new property will be your main residence after the sale of the old property
- you lived in the old property for at least three continuous months in the 12 months prior to sale, and
- the property wasn't used to generate rental income in any part of the 12-month period that it wasn't your main residence.

If that six-month period is exceeded, you can claim the main residence exemption for the six-month period up to the disposal of the old house, but a partial exemption will apply to whichever house did not qualify as the main residence beyond the six-month date.

¶12-060 Can I earn income from my main residence?

Increasingly, people are using their home to produce income. Sometimes they do that by renting out part or all of the property, sometimes they do it by running a business from home. In the last few years in particular there has been a boom in the number of home-based businesses. If you tick one of those boxes, you may be forsaking part of your CGT exemption. This is because you cannot usually obtain the full main residence exemption if you used any part of your home to produce income during all or part of the period you owned it.

Tip

People who simply work from home as part of their job (such as teachers who might do some marking in the evening or anyone else who might do a bit of overtime away from the office) are not affected.

If you use your home to produce income, you are generally only entitled to a partial main residence exemption. That could affect you in one of three ways:

(1) You might use all of the home to generate income while you're absent, perhaps by renting it out. The period you're absent will not qualify for the main residence exemption and you'll need to calculate the chargeable part by multiplying the total gain by the number of days the home wasn't your main residence, multiplied by the number of days you owned the property in total. This is subject to the "six-year absence" rule (see below) which allows you to earn income from a property from which you are absent for up to six years in certain circumstances and still claim the full exemption.

Example

Sylvia acquired a house on 1 July 2010 and moved in on that date. On 1 July 2013, she acquired another house which she moved into immediately. She rented out the first home and decided that the second home would be treated as her main residence.

On 30 September 2016, she entered into a contract to sell the first house. Settlement date was 14 October 2016. She made a capital gain of $200,000. She is not entitled to a full main residence exemption. She can claim the main residence exemption for the period that the first house was her main residence. Her capital gain is:

$200,000 × (1,202 days/2,297 days) = $104,658

(2) You might use part of the home to generate income, eg by renting out a room or running a business from a designated home office. In that case, you won't qualify for the main residence exemption for any part of the house which is used in your income-earning activity. If you are affected, you will need to calculate how much of the profit on disposal of your house is taxable. In most cases, this is done by working out the proportion of the floor area of the home that is set aside to produce income over the period the home was used to produce income, and applying that to the capital gain.

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Example

Greg runs an IT consultancy from home as a sole trader, in addition to his day job working in IT for a major corporation. He undertakes projects working largely in the evenings and at weekends and converts a spare bedroom in his three bedroom house into an office, from where he runs his business. He bought his house in 2006 for $500,000 and sells it in 2016 for $1,000,000. He estimates that approximately 10% of the floor area of the house is used in his home-based business. He commenced the business when he bought the house in 2006.

Ordinarily, the $500,000 profit on sale of his house will be exempt from CGT. However, he used 10% of the property to earn assessable income. This means that $500,000 × 10% of the gain ($50,000) will be taxable.

(3) You might do both of the above, in which case you'll need to perform both calculations for the relevant period of income-earning activity.

Special rule for first income-producing use

The above rules are further complicated by an additional rule that applies where you have lived in the property for some time without generating income from the property and then commence an income-earning activity.

In this case, you are taken to have acquired the dwelling at the first time it was used to produce income for its market value at that time. This effectively wipes out the tax history of the property up until the time you started your income-earning activity.

Tip

If you start to earn income from your property for the first time, you will need to get a market valuation for the property on the date you commence your income-earning activity. It makes sense to get a market valuation done at that date by a qualified valuer.

Example

Louise purchased a home in December 1991 for $200,000. The home was her main residence. On 1 November 2013, she started to use 50% of the home for a consultancy business. At that time the market value of the house was $320,000. She decided to sell the property in August 2015 for $350,000. As Louise was still living in the home and using it partly for business, she could not get a full exemption under the "continuing main residence status after dwelling ceases to be your main residence" rule. The capital gain is 50% of the proceeds less the cost base:

Percentage of use × (proceeds – cost base) = capital gain

50% × ($350,000 – $320,000) = $15,000

Louise is taken to have acquired the property on 1 November 2013 at a cost of $320,000.

Source: ATO

Renting out the whole property — the "six-year absence" rule

In some situations, it is possible to continue to enjoy a full main residence exemption even though you are totally absent from the property and are earning income from it, possibly through renting it out.

If you own a property which is currently your main residence, you can move out of the property for up to six years and still get the full exemption provided no other property becomes your main residence during the absence.

During that time you can earn rental income on the property and claim a tax deduction for expenditure as you would with a normal investment property. It isn't necessary to move back into the property before the disposal for the "six-year absence" rule to apply.

Note that the "six-year absence" rule resets each time you move back into the property and live in it as your main residence. That means that if you move back in and then later move out again, renting the property to tenants, you get a further six-year absence period during which the main residence exemption is protected. In theory, that cycle can continue indefinitely until the property is finally disposed of.

The six-year concession can only apply if the house has actually already qualified as your main residence.

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Tip

If you purchase another property while absent, you only need to make the choice as to which property to treat as the main residence on disposal of the first dwelling, not at the time of the absence. This gives you an opportunity to plan and pick the property with the better tax outcome.

Tip

If the property is merely left vacant (and not rented out or otherwise used to generate income), the main residence exemption will continue to apply indefinitely, provided you don't acquire another main residence elsewhere.

Examples

Renting out the whole house while temporarily working away from home

Bob bought a house in Perth for $500,000 in 2005. In 2012, he was employed to work in the mines in a remote area of Western Australia. He was provided with rental accommodation in that remote area by his employer. While away, he rented out his whole house in Perth. In 2016, he sold the house for $1,000,000.

Ordinarily, the $500,000 profit on the sale of the house will be exempt from CGT and that is indeed the case here. The tax law allows you to live away from your home and earn assessable income from renting it out for up to six years (the six-year absence rule) without losing the

main residence exemption, provided you don't acquire another main residence in the meantime. As Bob lived in rented accommodation while absent, he can take advantage of the six-year absence rule and claim a full exemption from CGT on the sale.

Renting out the whole house and buying another

Amy bought an apartment in Melbourne for $300,000 in 2010. In 2012, she took a job in London and moved overseas, renting out her Melbourne apartment. Shortly after moving to London, she bought a new flat in the city and has lived there ever since. She has opted to make the London flat her new main residence for tax purposes. She has no intention in the short-term of moving back to Australia and accordingly, sells the Melbourne apartment in 2016 for $600,000.

Ordinarily, the $300,000 profit on the sale of the apartment will be exempt from CGT, but that is not the case here. Amy cannot take advantage of the six-year absence rule since she acquired a new main residence (the fact that it was overseas is not relevant). Accordingly, she can claim the main residence exemption for the period she lived in the apartment (2010 to 2012) but not the period since she acquired the London apartment (2012 to 2016). $200,000 of her profit will be chargeable to capital gains tax.

¶12-070 Does the main residence exemption apply to property renovators?

Yes it does provided you actually occupy the renovated property as your main residence, even if only for a short period.

If you purchase a property, occupy the dwelling while you are renovating it and then sell the property, any profit you make on the sale of the property is generally tax-exempt, even if you then move into another property and repeat the process.

Tip

If you become a professional house "flipper" — someone who continuously buys, renovates and sells properties — the ATO may seek to tax your profits as business income (rather than capital gains). Even if you live in the house during the renovations, the main residence exemption will be irrelevant in these situations.

¶12-080 What if I inherit a home from a deceased relative?

The general rule is that if you inherit a home from a deceased relative which was their main residence and you then live in it as your main residence, there will be no CGT either on the inheritance or on your ultimate sale of the property.

Different rules may apply where the deceased earned income from the property prior to death or you choose not to reside in the inherited property.

The CGT rules around inheriting a property from a deceased relative are considered in more detail in Chapter 20 at ¶20-060.

¶12-090 What if I can no longer live in my main residence?

The main residence exemption can also apply where the owner is no longer able to reside in the dwelling, because they have lost the ability to live independently and require full-time care. This ensures that if you have to spend an extended period in hospital, relocate to a residential care facility, or relocate to live with a carer, you can still access the main residence exemption when you sell the property to pay living and medical expenses.

¶12-100 Subdividing land

With land scarce, it's very common these days for home owners living on big blocks to subdivide their block into two or more smaller blocks. Often, they will keep the block on which the house is located and either sell the remaining blocks or develop the blocks themselves.

The process of subdividing the land does not give rise in itself to any CGT impacts since no disposal takes place. However, you'll need to subdivide the cost base of the original block between the subdivided blocks on a "reasonable" basis. The best way to do this is to get a written valuation for each of the blocks by a qualified valuer, which will identify how much of the value rests within each of the blocks.

A capital gain will only arise when one or more of the blocks is actually disposed of.

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Example

Kym bought a house on a 0.2 hectare block of land in June 2015 for $700,000. The house was valued at $240,000 and the land at $460,000. Kym lived in the house as her main residence. She incurred $24,000 in stamp duty and legal fees purchasing the property.

Kym found the block was too big for her to maintain. In January 2016, she subdivided the land into two blocks of equal size. She incurred $20,000 in survey, legal and subdivision application fees and $2,000 to connect water and drainage to the rear block. In March 2016, she sold the rear block for $260,000.

As Kym sold the rear block of land separately, the main residence exemption does not apply to that land. She contacted several local real estate agents who advised her that the value of the front block was $30,000 higher than the rear block. Kym apportioned the $460,000 original cost base into $215,000 for the rear block (46.7%) and $245,000 for the front block (53.3%). Kym incurred $6,000 legal fees on the sale.

The cost base of the rear block is calculated as follows:

Cost of the land	$215,000
46.7% of the $24,000 stamp duty and legal fees on the purchase	$11,208
46.7% of the $20,000 cost of survey, legal and application fees	$9,340
Cost of connecting water and drainage	$2,000
Legal fees on sale	$6,000
Total	$243,548

The capital gain on the sale of the rear block is $16,452. She calculates this by subtracting the cost base ($243,548) from the sale price ($260,000). As Kym had owned the land for less than 12 months, she cannot claim the CGT discount.

Kym will get the full exemption for her house and the front block if they are used as her main residence for the full period she owns them.

Source: ATO

¶12-110 Stamp duty

Stamp duty is a tax levied by all Australian states and territories on property purchases. It is paid by the purchaser of the property and is levied on the purchase price of the property.

Because stamp duty is a state-based tax, each state has its own rules and rates. In general however, those buying a property to live in will pay at lower rates than those buying an investment property. Foreign purchasers will often pay more and each state has a variety of exemptions and concessions. Some states (such as Victoria) have a more favourable stamp duty regime for first time buyers.

Almost invariably, the amount you'll have to pay in stamp duty when you buy a house will run into many thousands of dollars so it's essential to factor in this additional cost when you're budgeting the price range of property you can afford and the borrowing level you will need to finance it.

Details of the rules, rates and thresholds for each state can be found at the website of the relevant state revenue office:

- Australian Capital Territory — www.revenue.act.gov.au
- New South Wales — www.osr.nsw.gov.au
- Northern Territory — www.treasury.nt.gov.au
- Queensland — www.osr.qld.gov.au
- South Australia — www.revenuesa.sa.gov.au
- Tasmania — www.sro.tas.gov.au
- Victoria — www.sro.vic.gov.au
- Western Australia — www.osr.wa.gov.au.

¶12-120 Case studies

To illustrate how tax can impact your family home, it's helpful to look at some of the common situations encountered by homeowners and analyse the tax impacts.

Renting out space in your home

The kids have flown the nest and you find yourself rattling around a huge but empty home. Why not rent a room or two? That way you make a few dollars and the house feels full again. Or maybe you're just starting on the property ladder and the only way you can make it work is to get a lodger in to share the financial load.

If you're renting a room, the rental income will usually be taxable. You should be able to claim a tax deduction for costs such as insurance and depreciation of furniture and fittings in the rooms available for rental, as well as making a claim for part of your utilities, rates and water bills.

The family home is generally exempt from CGT but if you rent a room, part of any profit on the sale of the property may be liable to CGT, payable on a pro-rata basis for the percentage of floor space rented out.

Tip

Get the property valued before you start to rent out the room since CGT will only be due for the period the room is used to produce income.

If this is the first time you've earned income from your home, you may need to get a valuation done of the house at the date you first used it to produce income. This will replace the actual cost of the home when you come to work out your gain when you finally sell.

By comparison, letting a room for student accommodation can be non-taxable, provided you are only covering your costs rather than making a profit. These arrangements are usually made through an educational institution for foreign students with the amount paid set by the institution to cover food, laundry and other costs.

The ATO describes these arrangements as "non-economic rentals", but hosts are advised to get some sort of agreement in writing (a private ruling for instance) from the ATO to give certainty to their position, since issues can arise where the ATO regards the level of board as excessive, in which case they will seek to tax the income as outlined above.

Running a bed and breakfast business

Increasing numbers of people, particularly in tourist areas, are turning part of their home over to running a bed and breakfast (B&B) business.

If you're letting one or more rooms out for B&B, your tax treatment will depend on factors including what you charge, what services you provide, where you advertise and the regularity of income. If the B&B is designed to make a profit (which will almost always be the case), then income tax will be payable. Your income will be taxable and your expenses will be deductible.

B&B businesses generally don't need to register for GST where the business is run out of residential premises, but GST can become an issue where the business starts to be run on a commercial basis, such that the services you are offering resemble those found in a hotel or motel. In this case, you'd need to register for GST and charge GST on your accommodation rates (but you'd be able to reclaim GST on your purchases).

Again, CGT on the sale of the property will be an issue because the main residence exemption won't apply to the part which is rented, but if you're running a commercial venture you may be able to claim small business CGT concessions. Commerciality is assessed on such things like regularity of bookings, the number of rooms available and length of time they are let.

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If you leave Australia permanently, you'll cease to be tax resident from the date you leave. You'll be entitled to a partial tax-free threshold for the year, depending on when you leave. The full tax-free threshold ($18,200) consists of two elements:

- a flat amount of $13,464 which you'll get in full, and
- an additional $4,736, apportioned for the number of months you were in Australia during the income year, including the month you departed.

Non-residents are taxed on their Australian income at different rates to residents. The most obvious difference is that non-residents don't get the tax-free threshold or the lower 19% tax rate. From the first dollar earned, the 32.5% tax rate applies.

Individual income tax rates for non-residents		
Income	Tax rate[1]	Tax payable
$0 – $87,000	32.5%	32.5¢ for each $1
$87,001 – $180,000	37%	$28,275 + 37% of excess over $87,000
$180,001 and above	45%[2]	$62,685 + 45%[2] of excess over $180,000
1 These rates exclude the Medicare levy.		
2 For 2016/17 an additional 2% temporary budget repair levy applied on income over $180,001 (giving a top marginal tax rate of 47%). This expired on 30 June 2017.		

¶16-020 Becoming non-resident

Each year, thousands of Australians leave the country to start a new life somewhere else. In some cases, they leave never intending to return. In others, they leave — often to take up employment overseas — with a view ultimately to returning to Australia after a period of time. Each case is different and in each case, the circumstances that they leave behind in Australia will be different. In many cases, people assume that as soon as they leave Australia, they will cease to be resident here and will not need to account for tax on their overseas earnings. That view is often simplistic and wrong.

The ATO has applied the residency rules to a number of the common scenarios for those leaving Australia and their verdict is set out in the table below:

If you:	You are generally:
leave Australia temporarily and do not set up a permanent home in another country	an Australian resident for tax purposes
leave Australia permanently	treated as a foreign resident for tax purposes from the date of your departure

The examples provided above by the ATO are very black-and-white. In a straightforward case, where you leave the country for good and intend never to return, you will indeed become non-resident as soon as you leave. Henceforth, you will only be taxable in Australia on any Australian-sourced income or gains. This kind of clear cut scenario is probably the exception rather than the rule.

It's worth dwelling on this point because the ATO looks closely at claims to be non-resident. With the exception of working holiday makers, the ATO rarely looks at cases of non-residents claiming to be residents (because residents pay tax here, which is the way the ATO likes it). When the situation is reversed, however, the ATO's attitude is different, because each taxpayer becoming non-resident represents a loss of revenue to the government. The ATO wants to make sure that those going overseas really are becoming non-resident.

The residency rules are set out in Chapter 3. The factors taken into account in determining if a taxpayer really is non-resident are the same ones outlined in ¶3-010, but in this case, you need to apply them the other way around to determine if you are non-resident.

So, when determining if you have become non-resident you need to take into account:

- whether you intend to return permanently to Australia
- the roots you put down in your new country, such as buying a home or marrying
- the duration and frequency of any visits to Australia
- continuing family connections with Australia, particularly the presence of spouses and children, and
- continuing financial, social and emotional ties to Australia, eg maintaining assets such as a family home or car, keeping children in an Australian school or getting income paid into an Australian bank account.

As such, it often isn't enough to simply get a job overseas, hop onto the plane and tick the box on your tax return that you aren't resident.

An illustration of the potential difficulties in proving non-residence can be provided by looking at a couple of cases which progressed to the Administrative Appeals Tribunal (AAT). In both cases, the taxpayer claimed to be non-resident and in both cases the ATO challenged that claim. In one case, the taxpayer succeeded in their claim before the Tribunal and in the other, the ATO's challenge was successful.

In *Case* 9/2014 (2014 ATC ¶1-071), the AAT considered the residency position of an engineer working in the oil and gas industry who had worked overseas since 2004 and returned to Australia on 29 April 2011. While the taxpayer's wife and children lived in a house in Perth, co-owned by the taxpayer and his wife, the taxpayer himself lived alone in a rented house in Oman. For the most part, the taxpayer was not physically present in Australia nor did he intend to live in Australia until he returned to Perth permanently to resolve family issues in April 2011. Prior to that, he worked and lived in Oman and it was his intention to continue to work and live in Oman subject to his employment contract being renewed. The taxpayer's priority was his work and career, outweighing his family ties. Finding for the taxpayer, the Tribunal accepted that the taxpayer's permanent place of abode was outside Australia until he returned permanently in April 2011. He had established his fixed and habitual abode in Oman and intended to continue to live there for as long as his employment contract continued.

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This case can be contrasted with that of *Shord v FC of T* (2015 ATC ¶10-393), which dealt with similar questions but, based on the facts, reached very different conclusions. In *Shord*, the taxpayer claimed to be a non-resident of Australia between 1999 and 2011. The Commissioner issued assessments for the 2005/06 to 2010/11 income years on the basis that he was Australian resident throughout that period. The taxpayer argued that he was non-resident. At various times, he worked overseas as a saturation diver, diving superintendent and diving supervisor on offshore platforms, barges and other vessels for foreign companies. The AAT held that in each of the income years, the taxpayer was a resident of Australia within the ordinary meaning of that term and alternatively, his "domicile" was in Australia. The Tribunal found that he had "no permanent place of abode" outside Australia. The taxpayer spent significant amounts of time between 2005 and 2009 living with his wife at the property he owned with her in Western Australia and from 2009, he spent nearly all his time there (in 2010 and 2011, for instance, he spent 305 and 311 days respectively in Australia); he transferred his earnings into his Australian bank account and identified himself on incoming passenger cards as a resident of Australia. He undertook trips to the UK but only as holiday or to visit friends. There was no evidence that he owned personal property of any kind anywhere other than Australia. His physical, emotional and financial ties to Australia throughout the period were significant.

¶16-030 Taxable Australian property

If your capital assets are "taxable Australian property" (TAP), they remain inside the Australian tax system even though you might be non-resident. In relation to those assets, your departure from Australia is a non-event. You'll pay CGT on those assets in the normal way, ie when you dispose of them.

TAP includes:

- land and buildings situated in Australia. This would include your family home, a residential or commercial investment property, land (including farmland) and mining, prospecting or mineral rights. These assets are referred to as "taxable Australian real property" (TARP)
- an indirect interest in Australian property, such as an ownership interest through a trust, company or partnership. Such an interest will be TAP where you and your associates hold 10% or more of the entity and the value of your interest is principally (ie more than 50%) attributable to Australian real property. This is intended to catch interests in Australian-based businesses, and
- a CGT asset used to carry on a business through an Australian permanent establishment.

The most significant type of asset which is not TAP is shares in an Australian listed company. If you have an investment portfolio, the chances are that your investments are not TAP.

¶16-040 Capital gains tax

When you leave Australia, you are deemed to have disposed of all your CGT assets which are not TAP (see ¶16-030 above) at their market value. Accordingly, you will have a capital gain (or loss) to report equal to the difference between the market value of the assets at your date of departure, and the acquisition cost of the assets. You will then suffer no further Australian CGT when you actually dispose of those assets, whenever that may be.

Needless to say, for many departing residents with assets such as share portfolios, triggering a CGT bill can be undesirable. As an alternative therefore the ATO allows you to elect to disregard this deemed disposal. The result of making that election is that no CGT event arises on departure and instead the assets remain within the Australian tax system and will be subject to CGT in the usual way when you finally dispose of the assets (worked out as the difference between sale proceeds and original cost). If you make the election, it will cover all of your CGT assets; you can't pick and choose which ones to include in the election.

The way in which you complete your tax return for the period of departure is taken to be evidence of whether or not you have made the election. If you don't include the deemed disposal, the election is regarded as made.

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Tip

Though nobody wants to trigger an unwanted tax bill, there can be advantages in choosing the deemed disposal route if you expect that the value of your assets will increase in future, since that increase will be protected from Australian tax.

The CGT discount

Non-residents are no longer eligible for the 50% CGT discount. This means that if you become non-resident and subsequently dispose of an asset which is subject to CGT, you'll need to do a calculation to apportion the 50% discount based on the number of days you owned the asset where you were non-resident, compared to the total ownership days. The intent is that you get the 50% discount for the ownership period that you were Australian resident, but don't get it for the non-resident period.

The family home

Your family home will be regarded as TAP and therefore won't be subject to the deemed disposal rules. That means you won't trigger a CGT event in relation to your home when you go overseas.

Even though you won't be living there, your home will continue to be covered by the main residence exemption so long as you don't buy another home and treat that as your main residence. So, if you go overseas, buy a home and elect for that to be your main residence, the main residence exemption will cease to be available from that point on your Australian property.

Rather than leaving the family home empty, you may opt to rent it out to help pay the mortgage. The property can be rented out for up to six years without jeopardising the main residence exemption (see ¶12-060). If you return and live in the property, the six-year clock resets, so if you go overseas again, you can enjoy a further six-year absence from the property without worrying about losing the CGT exemption.

Returning to Australia

If you later return to Australia as a resident, you will be deemed to have acquired all your non-TAP assets at their market value on the date of return. So, if you didn't make the election to disregard the deemed disposal on departure, and you still own the assets in question, you'll get an uplift in value to market value, which means that any growth in value while you were away will escape Australian tax when you finally dispose of the asset.

Tip

You'll need to hold on to the assets for at least 12 months after your date of return if you want to claim the 50% discount. Your period of non-residency resets the 12-month holding period.

If you did make the election to disregard the deemed disposal, your assets never ceased to be TAP, so returning to Australia has no impact.

¶16-050 Investment income

If you receive any bank interest, unfranked dividends or royalties from Australian sources after you become non-resident, the payer must deduct withholding tax at the following rates:

- 10% for interest on Australian bank accounts or term deposits
- 15% for unfranked dividends where Australia has a double tax treaty with your new country
- 30% for unfranked dividends where Australia does not have a double tax treaty with your new country, or
- up to 30% for royalties, depending on whether there is a double tax treaty.

This withholding tax is a final tax, sent by the payer to the ATO on your behalf. This means that the income you receive from these sources is regarded as exempt income and doesn't need to be included on your tax return.

Tip

Because the income is exempt, you can't claim deductions against it, such as interest on borrowings to finance the investment and other expenses/deductions (such as those set out in ¶14-060).

If you don't advise the payer of your overseas address, they will withhold tax at the highest marginal tax rate (49% in 2016/17; 47% in 2017/18, including the Medicare levy).

Most dividends received by taxpayers are franked. As the payer has already paid tax on the profit out of which the dividend has been paid (see ¶14-010), withholding tax is not due on franked dividends. Accordingly, these are included in the tax return in the normal way.

¶16-060 Superannuation

Permanent residents and citizens

You can't withdraw or otherwise access your super if you go overseas permanently. The normal rules continue to apply such that you can access your super when you retire, reach the preservation age or satisfy another condition of release, such as ill health (see ¶19-020).

You can continue to make contributions to your Australian superannuation fund while non-resident. The normal rules for concessional and non-concessional contributions (see ¶17-010 and following) apply.

Superannuation for departing temporary residents

Temporary residents departing Australia permanently are entitled to receive a refund of superannuation contributions paid by their ex-employers on their behalf. This refund is payable after the temporary resident has left the country.

The tax rates that are applied to the payment are:

- 0% for the tax free component
- 38% for a taxed element of a taxable component, and
- 47% for an untaxed element of a taxable component.

Note: the tax rates applied to superannuation for departing working holiday makers are different to those above from 1 January 2017 and are set out at ¶3-040.

The refund can be applied for online. You don't need to include this refund in your tax return.

Details of superannuation funds that the employee has contributed to must be provided to the ATO which will then send details of the application to each of the funds that has been nominated. Each fund will then make direct contact and pay the refund to you, normally within 28 days.

The ATO maintains a register of lost superannuation accounts. These are superannuation funds which no longer have a valid address. It is probable that many temporary residents are on this register. You can track down lost super through your myGov account (if you have one — see ¶1-020) or by completing the form "Searching for lost super" (NAT 2476), available on the ATO website and sending it to the ATO at:

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