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Gumtree or Facebook group sourced assets, and the realities of making a claim

A recent case before the Administrative Appeals Tribunal (AAT) brought into focus a growing phenomenon that you should keep in mind for work-related or business expense deduction claims, especially where the acquisition of claimable assets is made in a certain way.

The engineer and his "invoice"

The case involved a taxpayer's attempt to make a claim for the cost of work-related tools that he bought through the classified ad and community exchange site Gumtree. The online buy-and-sell site has enjoyed increasing usage since it launched in 2007, and has seen an expansion of the range of items listed on its pages beyond the proverbial spare bookcase or cheap bicycle.

In the case concerned, the taxpayer, an engineer, allegedly bought a set of very expensive aircraft maintenance tools he found on Gumtree for which he paid about $25,000 (apparently a bargain for the sort of tools concerned).

The seller provided an "invoice" of sorts, that merely listed his contact details and a description of the tools, which was handwritten on a sheet of paper. Not only this, but the engineer paid cash that he said was made possible by way of gambling winnings, and which he had not deposited in a bank but kept at home.

By the time of the AAT hearing the ATO had already looked at the "invoice" and found that the contact details were false. There was also no evidence of the gambling winnings, and also no evidence of the existence of the tools apart from the handwritten description. The engineer said he had since "sold" the tools in a similar manner.

Of course the AAT disallowed the engineer's claim for the cost of the tools as a tax deduction.

The take-away

The conclusion from the whole sorry saga however, and the warning to be inferred from it, is the substantiation difficulties that can be encountered when buying items that would probably otherwise be claimable when they are bought through peer-to-peer sites such as Gumtree or even through Facebook groups.

The case, and the lesson to be learned from it, is not so much about the deductibility of work-related expenses, but rather the need to be able to substantiate such deductions — and what may or may not be accepted by the ATO.

The requirements, and the exceptions

The legislation provides that to deduct a work expense, a taxpayer needs to substantiate it (if more than $300) by getting "written evidence". The relevant section of the legislation sets out the rules relating to written evidence, and provides that the taxpayer must get a document from the supplier that sets out the:

a) name or business name of the supplier
b) amount of the expense
c) nature of the goods or services
d) day the expense was incurred; and

e) day it is made out.

There are two exceptions that the ATO typically allows:
a) If the document does not show the day the expense was incurred, the taxpayer may use a bank statement or other reasonable independent evidence that shows when it was paid.

b) If the document does not specify the nature of the goods or services, the taxpayer may write in the missing details before lodging their tax return.

There is also further leeway in that the ATO has the discretion to still allow a deduction, if the somewhat stringent conditions listed above are not met, if the nature and quality of evidence available satisfies it that a work expense was incurred and a valid deduction should be allowed. This could include, for example, bank statements, credit card statements, photographs or photocopies of a product or service offered at a particular price.

The problems with peer-to-peer transactions

But let's get back to the case of the engineer above, or at least to the fact that his purchase was made, allegedly, via the peer-to-peer website Gumtree.

It's not hard to imagine that there may be many other instances where a buyer agrees to meet a seller at a neutral location such as the local shopping centre (and it's not uncommon for this to happen, to maintain privacy and/or security) and, given that the transaction is face-to-face and most likely conducted by cash, for none of the expected documentation (from a tax point of view) to exchange hands.

And this is not an unusual situation. In many if not most cases, these sellers could be just private citizens getting rid of clutter around their homes, and they are not running a business of selling these items. They therefore will have little interest in drawing up "formal" documents or perhaps even be unwilling to disclose all their personal details to a stranger. Mostly they'll be focused on that cash in the buyer's hand.

For business transactions (the most likely to seek a deduction for such an expense), a taxpayer with an enterprise, or commencing one, may use one of several platforms to buy an asset for work purposes — such as Gumtree, Trading Post or a Facebook Buy-Swap-Sell group for the local area. A taxpayer may also use a platform such as Airtasker to engage someone for a one-off business activity, or perhaps even rent some premises through Airbnb for a few days for business purposes.

For example, imagine a business operator using one of these platforms to:

- purchase a second hand domestic lawnmower to commence a gardening business
- purchase a second hand car in good condition to earn money from driving for Uber
- rent a holiday property to host a weekend yoga retreat
- purchase second hand furniture to furnish a home office.

Many vendors on these platforms are not running businesses. They may be individuals who, in their private capacity, wish to sell things they no longer need (like the lawnmower), make some money from renting an unused property on Airbnb, or earn income in their spare time by performing specific tasks (for example someone may advertise on Airtasker than they can assemble flat-packed furniture). Of course with these online platforms there is always the possibility of keeping tabs of the electronic trail.

Is there a solution?

How then can the purchaser ensure that they can substantiate their purchase? Here are a few suggestions that may help the ATO use its discretion to allow a claim. For example:

- draw up the document for the vendor and only ask that they sign it

- remember that the ATO can accept alternative evidence, so if the seller is unwilling to, say, provide their address, the purchaser and vendor could countersign a document specifying that the transaction took place at a specific location, day and time
- if the sale takes place in public, evidence from a related transaction may assist (perhaps a receipt for a coffee or snack bought at the date, time and place of the sale)
- photographic evidence of the exchange of goods and money
- withdraw the exact amount involved in the transaction from the bank near the time of the transaction so that there is a record on a bank statement
- keep a screenshot of the relevant internet advertisement (this is important as most ads are deleted once an item is sold). While this will not conclusively prove that the transaction took place, at least it shows that the item was really offered by the specified vendor at that price in the relevant timeframe.
- keep a record (again, perhaps screenshots, or even print-outs) of messages between purchaser and vendor —such as arranging the meeting time and place, negotiating the purchase of the item, and so forth.

We will need to see such receipts and other documents to allow for eligible deductions. Of course consult with us if you have any other concerns or questions.

Getting deductions for clothing and laundry expenses right

The ATO allows certain taxpayers to claim a deduction for the cost of buying and cleaning occupation-specific clothing, items of protective wear and for certain unique, and usually distinctive, uniforms.

To claim a deduction it is generally expected that you will be able to provide evidence that you purchased the clothing concerned, and will have diary records or other evidence of your cleaning costs.

If you receive an allowance from your employer for clothing, uniforms, laundry or dry-cleaning, it will be necessary for us to show the amount of this allowance on your tax return.

Occupation-specific clothing

You can claim for clothing that is specific to your occupation and is not everyday in nature. Generally this sort of clothing also allows the public to easily recognise your occupation — such as the checked pants a chef wears.

But the ATO will resist allowing claims made for the cost of purchasing or cleaning clothes you bought to wear for work but that are not specific to your occupation — for example, the black trousers and white shirt generally preferred by waiters or bartenders, or an office worker's suit and tie.

Protective clothing

You can claim for clothing and footwear that you wear to protect yourself from the risk of illness or injury that may arise from your income-earning activities, or from the environment in which you are required to carry out these activities.

To be considered "protective", the items must provide a sufficient degree of protection against that risk. Therefore protective clothing includes:

- fire-resistant and sun-protection clothing
- high-visibility vests
- non-slip nurse's shoes

- rubber boots for concreters
- steel-capped boots, gloves, overalls, and heavy-duty shirts and trousers
- overalls, smocks and aprons you wear to avoid damage or soiling to your ordinary clothes during your income-earning activities.

Ordinary clothes (such as jeans, drill shirts, work shorts, trousers, socks, closed shoes) are not regarded as protective clothing if they lack protective qualities designed for the risks of your work.

The ATO generally disallows claims for the cost of purchasing or cleaning ordinary clothes that you wear for work that may also serve to protect the wearer. For example, you can't claim for normal, closed shoes, even though by wearing them you will protect your toes and feet.

Work uniforms

Generally, you can make a claim for a uniform (either compulsory or non-compulsory) that is unique and distinctive to the organisation you work for.

Clothing is unique if it has been designed and made specifically for an employer. Clothing is considered distinctive if it has the employer's logo permanently attached and items are not available to the public.

Claims are generally disallowed that are for the cost of purchasing or cleaning a plain uniform (that is, neither unique nor distinctive).

Compulsory work uniform

A compulsory work wear is a set of clothing that identifies you as an employee of an organisation with a strictly enforced policy that makes it compulsory for you to wear the uniform while you're at work.

You may also be able to claim a deduction for shoes, socks and stockings where they are an essential part of a distinctive compulsory uniform and where their characteristics (colour, style and type) are specified in your employer's uniform policy.

You may be able to claim for a single item of distinctive clothing, such as a company shirt or jumper, if it's compulsory for you to wear it at work.

Non-compulsory work uniform

You can't claim expenses incurred for non-compulsory work uniforms unless your employer has registered the design with AusIndustry. Shoes, socks and stockings can never form part of a non-compulsory work uniform, and neither can a single item such as a jumper.

Cleaning of work clothing

You can claim the costs of washing, drying and ironing eligible work clothes, or having them dry-cleaned. It will be expected however for you to have written evidence, such as diary entries and receipts, for your laundry expenses if both:

- the amount of your claim is greater than $150, and
- your total claim for work-related expenses exceeds $300 (not including car, meal allowance, award transport payments allowance and travel allowance expenses).

If the amount seeking to be claimed is less than the above, and you don't need to provide written evidence for your laundry expenses, you may use a reasonable basis to work out your claim. For washing, drying and ironing you do yourself, the ATO considers that a reasonable basis for working out your laundry claim is:

- $1 per load (this includes washing, drying and ironing) if the load is made up only of work-related clothing, and
- 50 cents per load if other laundry items are included.

If you choose a different basis to work out your claim, you may be asked to explain that basis to the ATO.

Dry-cleaning expenses

You can claim the cost of dry-cleaning work-related clothing. If your **total** claim for work-related expenses exceeds $300 (not including car, meal allowance, award transport payments allowance and travel allowance expenses), you must have written evidence to substantiate your claim.

The deductibility of clothing and uniform expenses can be tricky – contact this office if you require assistance.

What is your "total superannuation balance" and why does it matter?

Recent superannuation reforms introduced a concept of "total superannuation balance", which on the surface may give the simple impression that it is the sum of the balances of a person's superannuation interests. However, this is not the case.

What is the total balance relevant for?

The total superannuation balance is relevant in determining a super fund member's eligibility for:

- making non-concessional contributions according to the non-concessional contributions cap
- receiving the government co-contribution
- the tax offset for spouse contributions
- using the segregated assets method to determine exempt current pension income (ECPI), and
- the unused concessional contributions cap carry forward (this measure comes into effect from July 1, 2018).

Broadly, the first three of the above will not be available to an individual if his or her total superannuation balance is greater than the new general transfer balance cap (set at $1.6 million for the 2017-18 financial year and indexed in $100,000 increments in line with the CPI).

The yet-to-be-initiated unused concessional contributions cap carry forward is going to be tested against a $500,000 total superannuation balance. The test time for this balance is to be set immediately before the start of the financial year in which a fund member seeks to get or access an advantage — for instance, to make a non-concessional contribution.

Contributors to the total superannuation balance

A member's total superannuation balance at a particular time is the sum of the following:

1. the accumulation phase value of superannuation interests that are not in the retirement phase
2. the balance of a transfer balance account, if there is such an account. If this balance is below zero (that is, in debit), then it is taken to be nil. Note that the transfer balance account is modified for the purposes of the total superannuation balance in cases where

the member receives certain account-based income streams in the retirement phase (more below), and

3. the amount of any roll-over superannuation benefit not already reflected in the member's accumulation phase value of superannuation interests or transfer balance.

Accumulation phase value

The first component of the total superannuation balance is accumulation phase values that are not in the retirement phase. This is defined as the total amount of the superannuation benefits that would become payable if the individual voluntarily caused the interest to cease at a particular time. Additionally, regulations may specify that value or a method for determining that value.

Note that superannuation income streams that are not in the retirement phase, or which lost their retirement status due to non-compliance with a commutation authority, are included in the accumulation phase value.

An ATO guideline notes that the following are included in the accumulation phase value:

- transition to retirement income stream
- non-commutable allocated annuity
- non-commutable allocated pension.

A deferred superannuation income stream that has not yet become payable and where the taxpayer has not met a relevant condition of release is included in the accumulation phase value.

Modified transfer balance account

The second component of a member's total super balance is their transfer balance (but not less than nil). Importantly, the transfer balance account is modified if a credit has arisen in the taxpayer's transfer balance account in regards to the following account-based income streams:

- an allocated annuity/pension
- an account-based annuity/pension, or
- a market linked annuity/pension.

In determining the modified transfer balance account the value of a lump sum that can be withdrawn due to the commutation of existing pension is taken into account.

The determination of the modified transfer balance account is complex and SMSF trustees should seek assistance with this task.

Roll-overs

The third component of the total superannuation balance is the sum of any roll-over superannuation benefits that are not reflected in the member's accumulation phase value or their transfer balance. However this is usually relevant where a taxpayer requests a rollover on or close to June 30 and the roll-over is still in the process of being transferred to the new account as at the end of financial year.

Structured settlement contributions

Because structured settlement contributions arise mainly as a result of damages for personal injury, these are excluded from the calculations.

The amount of structured settlement contributions made to the individual's superannuation is disregarded in the calculation of their total superannuation balance.

Generally, this means that if an individual makes a contribution of $200,000 arising out of the structured settlement, then their total superannuation balance will not increase by $200,000.

The new reforms to the superannuation regime are complex, but it is essential to ensure continued compliance and ongoing income stream integrity. Ask for our help for any problematic areas.

Simplified depreciation and the small business pool

The simplified depreciation rules are attractive for small businesses as they allow an immediate write-off for assets costing less than $20,000. In contrast, tax paying entities that do not qualify as a small business must use the general depreciation rules (also known as the uniform capital allowance rules), where assets costing more than $100 need to be depreciated over their effective life. (And just to clarify, a small business is defined for tax purposes as an entity with an aggregated annual turnover of less than $2million.)

Where a small business chooses to access the simplified depreciation rules, it is required under these rules to pool most depreciating assets and deduct at a rate of 30%. A rate of 15% applies to newly acquired assets in the first year regardless of when the asset was acquired during that year.

Note that you can't depreciate certain types of assets under these rules, including horticultural plants, capital works, and software. Also note that if a business has been using the general depreciation rules in previous years, you are not locked in and can choose instead to use the simplified depreciation rules, as long as you qualify as a small business. However after June 30, 2017, businesses that opt out of simplified depreciation will be required to wait five years before they can re-elect to use these rules.

General small business pool

Small businesses can allocate depreciating assets that cost more than the instant asset write-off threshold of $20,000 or more to their general small business pool to be depreciated at a rate of 15% in the year of allocation and 30% in other income years on a diminishing value basis, irrespective of the effective life of the asset.

Note however that the threshold was temporarily increased to $20,000 from May 2015 to June 30, 2017, and is planned to revert to its previous level of $1,000 after that time. This will have the effect of drawing out the period of depreciation. This year's federal budget may hold a pleasant surprise and retain the $20,000 instant write-off threshold, but time will tell. For now, assets costing $20,000 or more can be allocated to the general small business pool up to the end of the current financial year.

Even if the income producing purpose use of the assets determines the amount to be depreciated to be less than $20,000 (or $1,000 in the future), the asset must still be allocated to the single general small business pool. The taxable purpose is the proportional value of a depreciating asset used for a taxable purpose (that is, in earning assessable income). For example, if a business owner buys a new computer for $1,200 and uses it 80% for business purposes and 20% for personal use, the taxable purpose proportion will be $960 (80% of $1,200).

Assets held at the time of choosing the simplified depreciation rules

When a small business chooses to access the simplified depreciation rules, it must allocate the taxable purpose proportion of the "adjustable value" of assets held at the start of the income year to the relevant pool at the beginning of that year.

The adjustable value of an asset is generally its cost less any decline in value to the date of adopting simplified depreciation, regardless of whether the decline in value amounts were deductible for tax purposes. Depreciating assets used or installed ready for use prior to choosing to use the simplified depreciation rules qualify for a deduction at the full pool rate of 30%.

To sketch this out by way of example, say Craig is a small business owner who chose to apply the simplified depreciation rules from July 1, 2014, when the threshold was $1,000. He owns a specialised mainframe computer in his app development business. This was purchased for $30,000 in the 2013 year, and the decline in value to date amounts to $6,000.

Craig estimated that the asset would be used 90% of the time for the purpose of producing assessable income. This means the taxable purpose proportion of the computer's adjustable value was $21,600 (90% of [$30,000 – $6,000]). This amount was allocated to Craig's general small business pool at the beginning of that year and depreciated at a rate of 30%. The same approach is adopted for the $20,000 threshold period, but with different dollar amounts, to June 30 this year. As Craig's general pool will most likely have reduced to below the current threshold before it reverts to $1,000, he can write-off the lot next tax time.

Newly acquired assets

Depreciating assets that cost more than the threshold ($20,000, or $1,000 from July 1, should no change be made) that a small business first uses, or has installed ready for use, during an income year in which it adopts the simplified depreciation rules must be allocated to a small business pool at the end of the year. The small business will qualify for a deduction at half the pool's normal 30% rate in the first income year, irrespective of when during that first year the asset is first used or installed ready for use.

This reduced 15% rate does not apply to depreciating assets used or installed ready for use prior to choosing to use the simplified depreciation rules. The full pool deduction rate would apply in these circumstances.

Pool balance falls below instant asset write-off threshold

Broadly, if the value of a small business pool before subtracting the depreciation deduction for the year is less than $20,000 (or less than $1,000 from next financial year), the small business may claim the entire pool, so the closing balance becomes zero.

Note however that the pool balance to be written off is not the "closing pool balance"; instead, a special calculation applies in working out the balance.

In simple terms, the balance is:

- the opening pool balance
- plus the cost of any additions to the pool (adjusted for any private use)
- plus the cost of any modifications, and update to or moving of, existing assets in the pool (adjusted for any private use)
- less the consideration received from the disposal of any pool assets.

To use another example, say Luisa's Dog Washing is a mobile pet washing business and satisfies the conditions to use simplified depreciation. In the 2013-14 income year, Luisa's

Dog Washing purchased a fitted out van for $20,000. The van was used 100% for a taxable purpose. The business did not have any other assets in its general small business pool.

In its 2013-14 income tax return, as the cost of the van was more than the then $1,000 threshold that applied for that income year, the business claimed a deduction for 15% of the cost ($3,000), with the remaining cost ($17,000) being deductible in later income years under the pooling rules.

The business did not make any further purchases during the 2014-15 income year and the balance of the pool at the end of that year remained at $17,000. In its 2014-15 income tax return, Luisa's Dog Washing claimed a deduction of $17,000 for the balance of the general small business pool, as the balance of the pool at the end of the year is below the $20,000 threshold that applied for that year.