LOWE LIPPMANN
Chartered Accountants & Business Advisors

JULY 2017

TAX ALERT: TRAVEL EXPENSES BEING TARGETED BY THE ATO

Introduction

The Government has recently made several announcements in relation to denying or restricting tax deductions in relation to travel expenses incurred by taxpayers.

Draft Legislation: Restricting tax deductibility of travel expenses for residential rental properties

The Treasury released draft legislation in relation to denying tax deductions for travel expenses relating to inspecting, maintaining, or collecting rent for a residential rental property.

The draft legislation applies to individuals, discretionary trusts, smaller unit trusts, and SMSFs only. However, companies, large super funds and widely held trusts are specifically excluded from the new rules.

Surprisingly, partnerships are not specifically excluded, and this raises some uncertainty as to how the law will apply to a partnership which has one of the excluded entity types as a partner. We will need further clarification on this matter before the draft legislation is finalised.

The denial of deduction applies to "residential premises", which is a phrase defined in the tax law and is on balance with the same definition used elsewhere in the income tax and GST law.

Travel could reasonably be expected to include car expenses when visiting a real estate agent, either locally in a nearby suburb, but it could also include an airfare to a different city or state. Along with the airfare, it may also include any meals or accommodation costs incurred whilst travelling.

From 1 July 2017, the draft legislation indicates that a landlord driving to their rental property to maintain the gardens once a fortnight will be non-deductible travel.

The guidance materials considers the following example; a landlord who owns a residential rental property in an area subject to extreme weather has to travel there to undertake urgent repairs in order to mitigate damage (as no tradespersons are available due to increased demand during the storm), and returning the property back to a condition it can be rented again.

Under the new draft laws, the travel to get to the property is not deductible, however the draft law does not address the question of whether the costs of the owner being there (ie. for meals and accommodation) whilst repairing the property are deductible. Materials used to restore the property to its original state will continue to be tax deductible.

Level 7 616 St Kilda Road Melbourne
Victoria Australia 3004
(PO Box 130 St Kilda Vic 3182)
T 61 (03) 9525 3777
F 61 (03) 9537 1104
E office@lowelippmann.com.au
W www.lowelippmann.com.au

The last issue to consider is that all non-deductible expenses are specifically not able to be included in the CGT cost base of the relevant rental property, so these draft rules completely remove any tax benefit for the taxpayer. Expenses for investors who engage third parties such as real estate agents will remain tax deductible.

Draft Tax Ruling: When are deductions allowed for employees' travel expenses?

The Australian Taxation Office (**ATO**) recently released Draft TR 2017/D6: *Income tax and fringe benefits tax: when are deductions allowed for employees travel expenses*?

The draft ruling consolidates and updates a number of former ATO guidance documents. It sets out the ATO's interpretations on the general principles for determining whether an employee's travel and accommodation would otherwise be deductible for income tax and FBT purposes.

The ATO separates the analysis of deductibility between transport and other travel costs outlining four key considerations under each area, as follows:

Transport expenses	Accommodation, meal & incidental expenses
• whether the work activities require the employee to undertake the travel • whether the employee is paid, directly or indirectly, to undertake the travel • whether the employee is subject to the direction and control of their employer for the period of the travel • whether the above factors have been contrived to give a private journey the appearance of work travel	• the employee's work activities require them to undertake the travel • the work requires the employee to sleep away from home overnight • the employee has a permanent home elsewhere, and • the employee does not incur the expenses in the course of relocating or living away from home

Given almost all employers will have some form of staff travel expenditure, this draft ruling when finalised, should be a regular reference for employers who incur employee's travel and accommodation expenses during the tax year.

Please do not hesitate to contact your Lowe Lippmann Relationship Partner if you wish to discuss any of these matters further.

Level 7 616 St Kilda Road Melbourne
Victoria Australia 3004
(PO Box 130 St Kilda Vic 3182)
T 61 (03) 9525 3777
F 61 (03) 9537 1104
E office@lowelippmann.com.au
W www.lowelippmann.com.au