

# Practice Update

March 2020

## Court confirms ATO's position on foreign income tax offsets

The ATO has welcomed the decision of the High Court to basically uphold the decision of the Full Federal Court in a case which the ATO won, in relation to foreign income tax offsets ('FITO').

An Australian tax resident had sold some US investments and paid US tax on the gains.

The taxpayer was then basically taxed on half of those gains in his assessable Australian income (i.e., the gains were eligible for the CGT discount in Australia).

The taxpayer included the whole of the US tax paid in his FITO to offset against his Australian income tax.

However, when determining the FITO available, the ATO only allowed the proportion of the US tax paid that related to the capital gain included in his Australian assessable income.

The Full Federal Court affirmed the ATO's position.

*"This decision reminds taxpayers that they can only claim the foreign income tax offset to the extent that the capital gain is assessable in Australia, rather than the full amount assessed in a foreign jurisdiction,"* Deputy Commissioner Tim Dyce said.

*"We believe that others may have similarly incorrectly claimed the foreign income tax offset. Now is the time to review any claim and make any necessary voluntary amendments as we intend to commence compliance activity on this issue in the near future."*

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## Employer's requirements and the deductibility of WREs

Some employees may wonder whether a work-related expense (or 'WRE') becomes deductible

merely because their employer specifically requires the employee to incur the expense.

Importantly, the ATO's recent draft ruling on the deductibility of work-related expenses reiterates that an employer's requirements do **not** determine the question of deductibility.

Specifically, a number of examples contained in the draft ruling confirm that a WRE expense may be deductible without an employer requiring the expenditure. For example, a taxpayer incurring expenditure in relation to a course directly connected to their current employment (without their employer's specific support) may still be in a position to claim self-education deductions.

Alternatively, expenses may be non-deductible despite an employer's specific directions, such as a restaurant requiring its waiters to dress in 'black and whites', or support such as where an employer encourages a dental practice receptionist to undertake a 'Certificate in Dental Assisting' so as to open up a new career opportunity.

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## SMS scam targeting natural disaster victims

The ATO is warning the community about a new SMS scam which promises an 8% bonus on 2020 tax returns to victims of recent natural disasters.

The scam text message says: *"Due to natural disasters, Australians are entitled to an 8% bonus on their tax return. Please begin the process by filling out the form below. Link: <https://my.gov.validation-digital.com>."*

ATO Assistant Commissioner Karen Foat said this is a classic case of fraudsters impersonating the ATO in an effort to collect personal information from people like names, addresses, emails, phone numbers and online banking login details.

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This particular scam includes a link to a fake myGov website which looks genuine.

Over the past few years the ATO has seen an increasing number of reports of scammers contacting members of the public pretending to be from the ATO by SMS, email, and phone, and the scammers are becoming more and more sophisticated.

*“Last year, over 15,000 people reported to us that they provided scammers with their personal identifying information”, Ms Foat said.*

*“If you receive an SMS, call, or email and aren't sure if it's genuine, it's OK to not respond.”*

The ATO does send SMS and emails, and also makes phone calls to taxpayers, but note that the ATO does **not** project their phone number onto the recipient's caller ID — so people can be sure that, if there's a number on their caller ID, it's not the ATO calling.

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### Further STP developments

*Editor: In an indication of the far-reaching changes that Single Touch Payroll ('STP') will be bringing, Treasury has recently finished consulting on draft legislation that expands the data that may be collected through STP by the ATO (as announced in the 2019/20 Budget).*

The legislation, if enacted, will broaden the amounts that employers can voluntarily report under the STP rules, to include employer withholding of child support deductions from salary or wages and child support garnishee amounts from salary or wages that are paid to the Child Support Registrar.

Amendments will also be made to ensure that if employers choose to report under STP to the Commissioner of Taxation, they do not also have to report the amounts to the Child Support Registrar.

### STP and employer clients

The ATO has advised that over 580,000 small employers have made the transition to STP reporting, and they are encouraging tax practitioners to help any clients who have yet to

engage with STP reporting make the transition now.

They will also send reminders to small employers who are not yet reporting through STP.

*Editor: So if you receive any such correspondence and/or simply want to discuss this with us, please call our office.*

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### Valuing car parking fringe benefits

Where businesses provide car parking fringe benefits to their employees, the taxable value of these benefits must be calculated correctly to ensure they are meeting their fringe benefits tax ('FBT') obligations, regardless of the method used.

The ATO has advised they may directly contact businesses who have engaged an arm's length valuer, as required under the 'market value method'.

According to the ATO, in some instances, valuers have prepared reports using a daily rate that doesn't reflect the market value, meaning the taxable value of the benefits is significantly discounted or even reduced to nil.

The ATO wants businesses to understand that engaging an arm's length valuer does not mean they've met all the requirements for working out the taxable value of their car parking fringe benefits.

It is actually the business's responsibility to confirm the basis on which valuations are prepared, and they are expected to examine any valuation they suspect is incorrect or which considerably reduces their liability.

*Editor: We can help check if a valuation report required under the market value method meets the ATO's requirements.*

In addition to the valuation report, businesses need a declaration relating to the FBT year that includes the:

- number of car parking spaces available to be used by employees;
- number of business days; and
- daily value of the car parking spaces.

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.