

Monthly Client Update

Issue 2, March 2012

Claiming work-related self-education

As the new year gets underway, start planning your financial agenda for 2012 by learning what you can and cannot claim under work-related self-education expenses. Time and time again, people continue to be confused as to what precisely constitutes self-education expenses, and how the claim is calculated – with some unknowingly making incorrect claims and others, who may have a legitimate claim, failing to include it in their tax returns.

For instance, might an expense be considered deductible where a senior government architect embarks on an overseas tour devoted to the study of architecture? Similarly, could a taxpayer who partakes in a self-guided, educational discovery tour throughout Europe claim the tour as a deductible expense if it helps him obtain a promotion to head of faculty? The answer to the two hypothetical situations above is a deep, resounding ‘Yes’.

It is important to understand what falls under the work-related self-education expense (SEE) definition as the Tax Office will review your claims if they fluctuate substantially from year to year, or are significantly greater than what is deemed average. To help you keep up-to-date with what costs fall under the SEE definition, we have provided the following guide that contains categories of SEE expenses, common costs under deductible SEE and situations where SEE is not deductible.

Categories of expenses

There are essentially three types of expense categories:

- costs incurred by a taxpayer to undertake a course of study at a school, college, university or other recognised place of education
- costs incurred by a taxpayer to keep up to speed with developments and methods relating to their field of employment, and
- study costs incurred by a full-time student to satisfy study requirements to maintain eligibility for Austudy, ABSTUDY or Youth Allowance.

So how do you know if the circumstances in which you incurred these expenses are those where SEEs are deductible? In the case of the architect above, SEEs were deductible because the overseas tour dedicated to the study of architecture upgraded the qualifications of the architect’s current employment and improved specific skills or knowledge used in that employment.

In the case of the head of faculty who partook in a self-guided educational discovery tour, SEEs were deductible because the taxpayer showed that at the time he was working and studying, the self-education course led, or was likely to lead, to an increase in income from existing employment.

Trainees are not precluded from incurring SEE deductible expenses if they undertake a self-education

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About this newsletter

Welcome to Murray Business Solution’s client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us via the details below.

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course as part of a traineeship. If the incurred costs upgrade the qualifications, improve the specific skills and knowledge, or is likely to lead to an increase in employment income – these costs are considered deductible SEEs.

Common costs under deductible SEEs

Below are some of the common costs that may make up deductible SEEs:

- course or tuition fees to attend an educational institution or work-related conference or seminar
- the cost of professional and trade journals and text books
- depreciation of items used for self-education purposes such as technical instruments and equipment, computers, calculators, professional libraries, filing cabinets and desks etc.
- student union fees
- stationery/photocopying
- computer expenses (interest, repairs, depreciation)
- running expenses (heating, cooling, lighting of a room set aside for self-education purposes)
- interest incurred on funds borrowed to pay for self-education, and
- allowable travel expenses (airfares incurred during study tours, sabbaticals, work-related conferences and seminars; meal expenses; travelling costs to and from home and taxpayer’s place of education).

Travel expenses that are deductible SEEs

The following table sets out the circumstances in which travel expenses are deductible as self-education expenses.

Travel expenses: Deductible as self-education expense?				
Home	Yes →	Place of education	Yes →	Home
Home	Yes →	Place of education	No →	Work
Work	Yes →	Place of education	No →	Home
Work	Yes →	Place of education	Yes →	Work
Home	← No →	Work	← Yes →	Place of education

Situations where SEE is not deductible

Can a public service clerk studying for a law degree claim SEE deductible expenses? Can a mining engineer obtaining an MBA? The answer to both questions is typically ‘No’. Deductibility was denied in the aforementioned two circumstances because the SEEs were incurred to obtain employment, new employment or to open up a new income-earning activity and therefore incurred ‘at a point too soon’ to be regarded as gaining or producing assessable income.

Other situations where SEEs are not deductible include:

- certain higher education contribution payments
- meal costs while attending an educational institution, work-related conference or seminar where the taxpayer is not required to sleep away from home
- accommodation and meal costs where a taxpayer travelling to another location for self-education purposes has established a new home
- accommodation and telephone costs where a postgraduate is studying overseas
- childcare costs while taxpayers attend lectures or engage in other self-education activities, and
- costs associated with attending a taxpayer’s graduation ceremony. ■

New private health insurance means test

Singles earning more than \$129,001 and families earning more than \$258,001 will lose access to their private health insurance rebate from the 2012-13 financial year onwards, under a means test that recently secured passage through the House of Representatives and which will be effective on July 1, 2012.

The measures – which still have to pass the Senate, expected to be a formality – also mean the Medicare surcharge for the groups above will increase from 1% to 1.5% if they do not take out private health insurance. That translates into \$1,935pa for high-earning singles and \$3,870pa for high-earning families.

At present, almost anyone aged less than 65 years old, regardless of how much they earn, can get a 30% refund from the federal government for the cost of their private health insurance. Those aged between 65 and 69 years old can receive a 35% refund and those aged over 70 years old can get 40% back.

The income test is based on the total sum of the taxable income, reportable fringe benefits, reportable super contributions and total net investment losses, less other taxed elements depending on a person’s age and circumstances.

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Make gains on your holiday house

Only the family home is exempt from capital gains tax, so owning a property other than your 'main residence' (such as a holiday house) is rightly assumed to put capital gains tax (CGT) squarely on the table for all your tax equations.

Although you may never rent out your beach shack or bush retreat (viewing these as lifestyle assets instead of investments), tax-wise these properties will still be subject to the CGT provisions upon disposal.

This of course means that you will be expected to pay CGT if you make a gain on the sale of your second property as it is not your main residence. However the cost base of the asset can be increased by including expenses such as interest and rates and taxes (provided the property was acquired after August 20, 1991) which will lead to a reduced capital gain. Keeping accurate and valid records from the time you buy your weekender is essential.

The CGT liability is calculated by subtracting, from the sale price, the cost base plus any eligible expenses built up over the time you have owned the property. Where it has been owned for at least 12 months, 50% of the capital gain is added to your taxable income for the year in which you are selling the second property, to be taxed at your marginal tax rate.

Expenses that qualify to be added to the cost base of your holiday house include:

- legal fees and stamp duty on the purchase
- selling costs such as sales commissions and legal expenses, and
- capital improvement costs incurred along the way.

There is even scope to include:

- 'holding' costs, such as water or council rates
- mortgage interest, and
- running costs such as repairs, maintenance, gardening and cleaning.



Note: It must be emphasised that expenses can only be added to the cost base if the property was acquired after August 20, 1991.

Any additions or improvements could be added to your cost base, but as always it is better to get professional advice at the time. Again, make sure you keep accurate records all along the way, as without proper records it is nigh impossible to substantiate your claims if you are asked.

If you have owned the holiday house since before September 20 1985, there'll be no CGT to worry about.

If you rent out your second property at any time, you will be able to claim some expenses incurred during the rental period as tax deductions, however expenses which are deductible cannot be added to the cost base for CGT purposes. ■

Holiday house acquisition date, and CGT cost base claims		
<i>Bought before Sep 20 1985</i>	<i>Bought between Sep 20 1985 and Aug 20 1991</i>	<i>Bought after Aug 20 1991</i>
No CGT applies, therefore no need to account for expenses.	Must account for capital gains, but no deduction of either cost base or expenses.	Cost base plus eligible expenses able to be deducted from capital gain.

New private health insurance means test (cont)

Below is a breakdown of the private health insurance tiers for 2012-13:

Tier	Income	Private health insurance rebate			Medicare levy surcharge
		Below 65 yrs	65 to 69 yrs	70 yrs or over	
No tier	Singles: \$0 - \$83,000; Families: \$0 - \$166,000	30%	35%	40%	nil
1	Singles: \$83,001 - \$96,000; Families: \$166,001 - \$192,000	20%	25%	30%	1%
2	Singles: \$96,001 - \$129,000; Families: \$192,001 - \$258,000	10%	15%	20%	1.25%
3	Singles: \$129,001+; Families: \$258,001+	0%	0%	0%	1.5%

Are you a contractor or an employee?

Do you have control over the way a task is performed and do you work standard hours? Do you submit tax invoices for payment and do you file GST returns?

In a time when 'sham contracting arrangements' are on the rise, according to Minister for Trade Craig Emerson, the answers to the questions above are a crucial indicator as to whether you are an employee or an independent contractor.

Contractors – particularly in engineering and computer technology industries – are under the compliance microscope in 2012 as the Tax Office says it will use information provided by labour hire firms and auditing companies to apprehend contractors that it believes may have wrongly classified themselves as conducting a personal service business. The benefit of being classified as a contractor is qualifying for the company tax rate of 30% (or even lower if the entity is a trust) rather than personal income tax rates. It is vital you know the distinction between a contractor

and employee to avoid instances of exploitation or penalties in the event of a breach of tax laws.

Under 'sham contracting arrangements', employers treat workers as independent contractors to avoid meeting employee entitlements such as leave entitlements, workers' compensation insurance and superannuation guarantee obligations.

What is the difference between the two? If you are an employee, you are paid a salary. You receive leave entitlements such as sick leave, annual leave and long service leave. You're supplied with all the tools and equipment needed to perform your job, such as a computer for instance, and you are expected to perform certain duties as agreed during work hours set out in your contract. You are recognised as part of the business. You take no commercial risks and cannot make a profit or loss from the work performed.

This table below will help you determine whether you are an independent contractor or an employee:

Criterion	Employee	Independent contractor
Do you have control over the way a task is performed?	No	Yes
Do you supply/maintain your own tools or equipment?	No	Yes
Do you work standard hours?	Yes	No
Are you integrated into the organisation?	Yes	No
Do you work at your employer's place of business?	Yes	Yes/No
Are you paid on task completion rather than receiving wages based on time worked?	No	Yes
Do you incur any loss or receive any profit from the job?	No	Yes
Do you accept responsibility for any defective or remedial work that was your own doing?	No	Yes
Are you free to work for others at the same time?	No	Yes
Do you accept that work lasts for the term of each particular task or contract?	No	Yes
Do you have the right to employ or sub-contract any aspect of your work to another person?	No	Yes
Do you have the right to employ an apprentice or trainee in the execution of contracts?	No	Yes
Do you understand the arrangement with you as a contract for services?	No	Yes
Does your employer deduct tax from you pay?	Yes	No
Do you provide your own public liability and sickness and accident insurance cover?	No	Yes
Do you receive paid holidays or sick leave?	Yes	No
Do you receive superannuation entitlements?	Yes	No
Do you submit tax invoices for payment?	No	Yes
Do you file GST returns?	No	Yes*
Are you paid at the end of each contract or project?	No	Yes
Do you carry out work under a business name, partnership or company structure?	No	Yes

* but you may not have to if your turnover is less than \$75,000 per annum (exclusive of GST)

If you are a contractor, you are paid on the basis of results achieved. You supply your own tools and equipment for the job and you can delegate your duties to another person. You are free to accept or decline work as you please and you can make either a profit or a loss while employed as a contractor. In other words, the working arrangements for an independent contractor are more flexible and unpredictable than that of an employee.

There is no single criterion that can conclusively determine if you are an employee or an independent contractor, but rather a range of combined factors.

Why is it important to know which one you are? If you are an employee being incorrectly classified as an independent contractor, you are losing out. There is no withheld tax from your salary and there is no legal

entitlement for leave, superannuation and workers' compensation insurance.

As a contractor, there are also a different set of tax obligations you will have to follow. You will require an Australian business number (ABN) to avoid having tax deducted at the top marginal rate of 46.5% (including 1.5% Medicare levy) and may also need to register for goods and services tax (GST).

You have to register for GST if your GST turnover is at, or above the GST turnover threshold of \$75,000 (exclusive of GST) and \$150,000 (exclusive of GST) or more for non-profit organisations.

Come the end of every financial year, contractors have to take care of their own tax liabilities unlike their employee peers whose taxes are withheld under the PAYG withholding system. ■

Work tool, or just cool? iPad & FBT



Tax and remuneration experts are reporting that many employers have been declining requests to provide tablet devices such as the iPad as a fringe benefit for fear of being found to be in breach of the fringe benefits tax (FBT) rules as they apply to exempt benefits.

Including 'portable electronic devices' into remuneration packages has been part and parcel of the FBT regime for many years, with employees able to include laptop computers, mobile phones, PDAs and more. But advances in technology have also led to a blending of some of the functionalities offered by various electronic tools. For example, a mobile phone may also have calendar/organiser functions, much like a traditional PDA device. However, presently for FBT purposes, a mobile phone and a PDA are considered separate items, each able to be included in a salary package without losing the applicable FBT exemption.

It is important to remember that the FBT rules include a 'substantially identical functions' test (which is very important in that only one item classified as a 'portable electronic device' can be supplied to an employee on an exempt basis per year). Applying this

test to the above phone/PDA conundrum, for example, resulted in the two items deemed to have 'functions in common' but not functions 'that are the same in most respects' – so an employer can provide each as a benefit which is exempt from FBT.

As far as the iPad goes, the Tax Office has classed it as a 'portable electronic device' in regard to the FBT regime, but this does not, as might be assumed, lump iPads in with laptop computers with regard to their tax treatment in all situations. The Tax Office says it accepts that an iPad does *not* have 'substantially identical functions' to a laptop computer. 'Although an iPad may have some functions in common to a laptop, an iPad does not have functions that are the same in most respects to a laptop.'

So does this mean that an employer can provide an iPad **AND** a laptop computer in the same FBT year? Well, that depends, says the Tax Office. It says it will still need to be satisfied that an iPad is to be used 'primarily for use in the employee's employment', and that it will be a 'question of fact' as to whether the iPad's use and function is 'substantially identical' or different to the use and function of a laptop computer used by the employee (although if used in their intended manner, the current Tax Office interpretation would support the view that the laptop and iPad are sufficiently different to fall outside 'substantially identical').

So as far as being able to provide an iPad as an exempt fringe benefit, the question seems to have been settled in the affirmative (although an employer will have to agree to package). However the iPad brings with it a further requirement to prove, case by case, that the electronic device is used primarily for work purposes. ■

SMSFs: Individual v Corporate Trustee

More than 90% of recently established self managed superannuation funds (SMSFs) operate under an individual trustee structure rather than a corporate trustee arrangement, according to statistics released by the Tax Office. Although the latter is the less utilised option, does that mean it is the less wise choice? We examine the pros and cons of each trusteeship arrangement below.



Benefits of the corporate trustee structure

1. Asset ownership

Under an individual trusteeship, all SMSF assets must be in the name of all trustees. Each time a member of a fund with an individual trusteeship dies, retires, loses capacity, leaves the fund or a new member joins the fund – trustees are required to amend the ownership of their investments by notifying all relevant share registries, banks and titles offices. Complications may arise if your fund has numerous investments – particularly in real estate and shares – because a transfer of the new titles for all assets is likely to require a significant amount of time, effort and money. Trustees must also prepare a deed of appointment and retirement for each incoming and outgoing trustee.

Conversely, when a corporate trustee is utilised, the addition or retirement of a member of the fund requires only notification of a change of directors. The legal title of all assets remains vested in the company which continues to act as a trustee. All corporate trustees have to do is notify the Australian Securities and Investments Commission (ASIC) within 14 days of the change.

2. Number of members

According to trust law, a sole member SMSF cannot exist in an SMSF where there are individual trustees. A sole member SMSF must have at least two individual trustees and whilst the second person does not have to be a member, they do have to be actively involved in

the trustee decisions made in relation to the fund – a disadvantage if a trustee wants full control. Further, the incoming person would be required to sign a ‘trustee’s declaration’ which is designed to make trustees fully accountable for their actions and fund compliance.

Under a corporate trustee structure, a sole member SMSF can exist. An SMSF can have an individual who is both the sole member and the sole director of the trustee company.

3. Succession upon death

When an individual trustee leaves a fund or dies, the fund may face administrative difficulties, for example if it is reduced to a single member fund. However, a company has an infinite life span therefore the operation of a corporate trustee SMSF can continue even after the death of an individual SMSF member/director. In relation to this, a corporate trusteeship ensures greater flexibility for estate planning as the trusteeship does not change as a result of the death of a member.

4. Liability of the trustee

If an individual trustee is subject to litigation, their personal assets may be exposed if their right of indemnity against the SMSF is not sufficient to discharge the liability. On the other hand, if a corporate trustee goes into liquidation, the assets of the fund are outside the reach of creditors because companies are subject to limited liability.

Benefits of the individual trustee structure

1. Red tape

Individual trustees do not have to complete ASIC forms in the event of a change in the fund and membership nor ongoing ASIC annual reviews as corporate trustees do. A corporate trustee also has to ensure that it adheres with both the constitution of the company and the requirements of the trust deed. While individual trustees also have to adhere to the requirements of their trust deed, they have fewer procedural issues to consider as there are more flexible requirements for holding trustee meetings.

2. Set-up costs and fees

The fund can be less costly to establish if you are an individual trustee as you don't have to set up a separate company to act as trustee. The average establishment fee for an individual trustee is approximately three times less than that of a special purpose SMSF trustee company. While establishing a company will

be a substantial expense at the start, it will not be a significant ongoing cost – corporate accounting costs are minimal.

Both individual and corporate trustees have to lodge an SMSF annual return and pay an annual supervisory fee to the ATO. On top of that, corporate trustees have to pay an initial ASIC registration fee and a lesser,

Summary table of pros and cons		
	Corporate Trustee	Individual Trustee
Asset ownership	<input checked="" type="checkbox"/> If members are appointed or cease to be members, that person has to become, or cease to be a director of the corporate trustee. There is no need for a change in the title to all assets as it remains in the name of the corporate trustee.	<input checked="" type="checkbox"/> If a member is appointed or ceases to be a member, they need to become, or cease to be a trustee. This will require the title of all assets to be transferred to the new trustee.
Number of members	<input checked="" type="checkbox"/> Sole member corporate trustee SMSFs can exist. An SMSF can have an individual who is both the sole member and the sole director – ensuring full control of the fund.	<input checked="" type="checkbox"/> Sole trustee/member SMSFs cannot exist. A sole member SMSF must have at least two individual trustees where the second person does not have to be a member but they do have to be actively involved in the trustee decisions made in relation to the fund.
Succession upon death	<input checked="" type="checkbox"/> A company has an indefinite life span and therefore cannot die. A corporate trustee structure can make control of an SMSF more certain in the event of a death/incapacity of a member.	<input checked="" type="checkbox"/> Immediate action must be taken once a member has died to ensure the trustee/member rules are satisfied. See Asset Ownership above.
Liability of the trustee	<input checked="" type="checkbox"/> As companies are subject to limited liability, a corporate trustee enjoys greater protection if a party sues for damages.	<input checked="" type="checkbox"/> If an individual trustee suffers any liability, their personal assets may be exposed.
No more lump sum		
Red tape	<input checked="" type="checkbox"/> A corporate trustee has to complete ASIC forms, ASIC reviews and adhere with both the constitution of the company and the requirements of the trust deed.	<input checked="" type="checkbox"/> Individual trustees have to adhere to the requirements of the trust deed but do not have to complete ASIC forms in the event of a change or complete ASIC annual reviews.
Set-up costs and fees	<input checked="" type="checkbox"/> Set-up costs for a corporate trustee are approximately three times that of an individual trustee. They also have to pay ongoing fees such as an annual review fee to ASIC.	<input checked="" type="checkbox"/> Individual trustees can set up an SMSF at approximately three times less the cost than that of a corporate trustee.
Penalty unit regime	<input checked="" type="checkbox"/> Under superannuation law, courts have the ability to impose a higher fine on companies than individuals – up to 5 times more.	<input checked="" type="checkbox"/> Under superannuation law, courts are less likely to fine individual trustees if compared to corporate trustees in the event of a breach.
Minor children members	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> Minor children members cannot be corporate trustees because minors cannot be directors of a company – a mandatory requirement of a corporate trustee. However, a proposed new law is set to change that and allow a parent or guardian of a minor child member to be a trustee-director in the minor member's place.	<input checked="" type="checkbox"/> Minor children members (under the age of 18) can be a member of the fund if a parent or guardian acts as a trustee on the child's behalf.

ongoing annual review fee to ASIC. Other annual costs for both trustees include optional financial adviser's and accountant's fees and the obligatory auditor's fee. Both trustees have to appoint an independent approved auditor to audit the fund each year.

3. Penalty unit regime

Under the Superannuation Industry (Supervision) Act, courts have the ability to impose a higher fine on companies rather than individuals – the company fine is five times more than the individual one.

4. Parent and minor children members

An SMSF operating under an individual trustee structure is currently the only SMSF where there can be a child member of the fund under the age of 18 as the parent or guardian can act as a trustee for the child. If a member of an SMSF is a minor and does not have a legal personal representative, the member's parent or guardian may act as a trustee of the fund on the member's behalf.

A corporate trustee SMSF was traditionally regarded as not appropriate for child members under the age of 18 because a minor cannot be a director of a company

and super law requires that all members of a corporate trustee fund be directors of the trustee company. However, a proposed new law is intended to abolish and replace the section of the act pertaining to that rule – thus allowing a parent or guardian of a minor child member to be a trustee-director in the member's place if the member does not have a legal personal representative. The law is currently before Parliament and if passed, the change to the act will apply from 8 October, 1999.

Having reviewed all options, can I change my current SMSF structure?

Yes, you can. However, bear in mind that as with any change, it will be necessary to amend the trust deed, report the change to the Tax Office and transfer all assets into the name of the new trustee.

Regardless of what trustee structure you may choose, bear in mind that it is crucial you remain compliant as the Tax Office will scrutinise several key areas in 2012 – newly registered SMSFs and the lodging of their first annual returns, related-party transactions, exempt current pension income, non-arm's length income as well as re-reporting of contributions. ■



Upcoming key lodgement dates

The following deadlines are for lodgement with the Tax Office. Please make sure to get your documentation into this office in plenty of time to allow proper processing.

21 March 2012	<ul style="list-style-type: none"> Monthly activity statement for February 2012
31 March 2012	<ul style="list-style-type: none"> Income tax return for companies and super funds with total income in excess of \$2 million in latest year lodged (excluding large/medium business taxpayers). Income tax return for head company of a consolidated group that does not have a member who has been deemed a large/medium business taxpayer in the latest year lodged, but does have a member who had total income in excess of \$2 million in latest year lodged (unless due earlier). Income tax return for individuals and trusts which were tax level 6 as per latest year lodged (excluding large/medium business trusts).

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