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How does the ATO treat Uber, Airbnb style services? What you need to know!

Uber is calling for drivers, Airbnb is seeking more hosts but what are the implications of becoming part of the sharing economy?

The basics of tax apply regardless of how you earn money. That is, even though you may be earning income from different sources or using different platforms to generate income, the fundamental tax issues remain the same. You don't have to be carrying on a business to pay tax on income you earn.

And, given that so many of these services are through sharing platforms, the Australian Tax Office (ATO) has the capacity to data match money flowing through to financial institutions specifically from these platforms.

'Sharing' a room or an entire house

Sharing a room or your house through services such as Airbnb can be a great way to earn income from an existing asset. The tax treatment of what you earn from these services is the same as any other residential rental property arrangement. This means you must include the rental income in your income tax return. For example, if a husband and wife jointly own a property that they rent out through a sharing service, whatever they earn needs to be declared on their income tax returns in the same proportion as the ownership of the house in the year they earned the income.

Hosts can also claim tax deductions for expenses associated to the rental, such as the interest on your home loan, professional cleaning, fees charged by the facilitator, council rates, insurance, etc. But, these deductions need to be in proportion to how much and how long you rent your home out. For example, if you rent your home for two months of the financial year, then you can only claim up to 1/6th of expenses such as interest on your home loan as a deduction. This would need to be further reduced if you only rented out a specific portion of the home.

GST does not generally apply to residential rental income.

Be aware that renting out your home may have a direct impact on your tax-free main residence exemption for capital gains tax (CGT) purposes. In general, your home is exempt from CGT when you sell it. However, if you use your home to earn assessable income, then you might only qualify for a partial exemption on the sale unless special concessions apply. If you are renting out part of your home while still living in the property, then it is unlikely that any gain you make on your home will be fully CGT-free. You might also need to obtain a valuation of your home at the time it was first used to generate rental income.

Hosting for investors

A number of investors are generating income from renting residential investment properties exclusively on sharing services rather than traditional longer-term rental arrangements – rental income can be higher for short-term accommodation and the host has the capacity to increase prices easily for peak periods. Just a quick look at properties available around the world on sharing sites shows how quickly this style of arrangement has attracted investors, particularly where the property is located in high demand tourist areas.

But what are the tax implications if you own one or multiple investment properties and rent them on a sharing service? Firstly, it's important to get good advice as this can be a complex area and being on the wrong side of the tax law can have significant implications. For example, if the ATO deems you to be providing commercial residential accommodation, they will treat your activities in the same way as hotels and motels meaning that the rent could trigger a GST liability for you (although you might be able to claim back some GST credits on expenses you pay). Broadly, accommodation falling into this category would have multiple occupancies such as a block of apartments, central management of the properties, and provide services to the guests beyond the accommodation such as breakfast or room servicing.

Before becoming a host, as a minimum, it's important to understand the tax implications of your arrangement, check if there are council restrictions, and ensure that you have the right insurance in place.

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Sharing property owned by your SMSF

Can your SMSF become a host and rent residential property on sites such as Airbnb? There is nothing that prevents an SMSF from providing host services assuming that the investment strategy of the fund allows for the risks associated to this style of rental and the liquidity issues have been thought through by the trustees. In general, the rules apply the same way as other residential rental property arrangements, in particular no one associated to the fund including the members, their relatives, or their associates can use the property. And, because the fund is not using a commercial property agent, for audit purposes, it will be essential to keep excellent paperwork to prove how, when, and to whom the property was rented. Also check the insurance is appropriate to protect the fund's assets.

Ride sharing & sourcing

The ATO regards ride-sourcing services as a taxi service, which means that if you are providing these services, you need to register for GST regardless of how much you earn from driving.

Normally, taxpayers need to reach the $75,000 threshold before they are forced to register and remit GST but in the case of 'taxi services' this threshold does not apply. The ATO is definitive in its stance that ride-source drivers provide taxi services. The grace period for drivers to comply with the ATO's strict stance expired on 1 August 2016 so all ride-source drivers should now be registered for GST.

If you already have an individual ABN, for example you might do IT contracting, then you can use the same ABN for ride-source services and register for GST using this ABN.

If you drive infrequently for a bit of cash on the side, you also need to declare any money you earn on your income tax return. But, you can also claim any expenses you paid for providing ride-sharing services if you own or lease the car you use for ride-sourcing (i.e., it's owned or leased in your name). If you drive less than 5,000 kilometres in the financial year in the course of earning income, you could choose to simply claim a 66 cent per km deduction for the kilometres you travel while providing ride-source services. Or, you can keep a log-book for 12 weeks to work out your deductions that way. And, because you are registered for GST, you can also claim GST credits on expenses you incur in providing ride-source services. Just be aware that if the car is not used exclusively for ride-sourcing, you can only claim deductions and GST credits for the portion of expenses that apply to providing ride-source services – not everything you spend. Simply turning on the app is not enough – you need to be actually providing the service to claim a deduction.

If you are in the business of providing ride-sharing services – for example ride-sourcing is all you do and you have set up a business structure to support it, like any other business, you have access to a broader range of deductions. This might include access to a broad range of small business concessions including an immediate tax deduction on assets costing up to $20,000 (GST excl.). However, you could also be subject to some strict rules which apply to losses made from business activities.

Other sharing economy services

There are a wide range of other services that could potentially be provided through the sharing economy. This could include using your ute or other commercial vehicle to provide removal or delivery services.

In each case, it is important to work through the basic rules to determine whether the activities amount to a business, the income and deductions that need to be declared on your tax return, the records that need to be kept in order to support the claims that are being made, as well as the ABN and GST issues that go along with providing services.

This is an area that is clearly on the ATO's radar so it is important to ensure that all relevant tax obligations are identified and are being managed appropriately.

What postcode loses the most super?

There is over $11.7 billion in lost super sitting with the Australian Tax Office (ATO) and Mackay in QLD is responsible for $49,256,340.55 of it.

While Mackay and its surrounding suburbs top the list, Cairns comes in a close second with $49,101,868.85.

But it's not all holiday zones that make the top 10 lost super postcodes – Liverpool and Campbelltown in NSW and Sydney's CBD all make the list.

If you have registered for myGov, you can link your account to the ATO's online services and bring up any super accountants attached to your Tax File Number.

Australian Government

Warning on Super Contributions

The 2016-17 Federal Budget announcements on superannuation have caused a lot of concern. These include:

- A $500,000 lifetime non-concessional contributions cap from Budget night
- A reduction in concessional contribution cap from 1 July 2017
- The removal of the tax exemption on earnings supporting transition to retirement income streams (TRIS) from 1 July 2017
- The extension of the 30% super contributions tax on high income earners
- Tax free super balances capped at $1.6m from 1 July 2017

Many clients have asked, what should we be doing? The main area to be mindful of is the $500,000 lifetime cap on non-concessional contributions as what you do now, may have a lasting and potentially detrimental impact.

Under the current rules, you can use the 'bring forward rule' and contribute up to $540,000 across a 3 year period to your super fund. Anyone utilising these rules in the current year may find that the proposed rules, if they come into effect, will radically change their position.

It's really important that anyone contemplating making large contributions to super or utilising the bring forward rule, get advice first.

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ATO LODGEMENT DUE DATES

Date	Obligation
21 Sept	August 2016 monthly activity statement – due date for lodging and paying.
30 Sept	Annual TFN withholding report for closely held trusts where a trustee has been required to withhold amounts from payments to beneficiaries during the previous financial year – final date for lodgement

HR MATTERS

Does casual service count towards NES redundancy and notice entitlements?

The Act defines a period of service as a period during which the worker is employed by the employer, but does not include:

- any period of unauthorised absence;
- any period of unpaid leave or unpaid authorised absence (except community service leave or stand down).

In a recent decision the Fair Work Commission (FWC) considered whether a period of regular and systematic casual employment counted as service for the purposes of notice of termination and redundancy pay.

The question arose as to whether this prior casual employment was to be counted with the period of permanent employment when calculating redundancy pay and notice entitlements.

A casual employee does not have any entitlement to redundancy pay or notice.

The FWC noted that industrial justice might suggest it is unfair for an employee who has received a casual loading for a period of employment to have that period of employment also count towards the accrual of severance payments.

However, the FWC noted that a period of service by a regular and systematic casual employee is not identified as one of the exclusions from a period of service or continuous service in the FW Act.

Therefore, according to the FWC, a period of continuous service as defined by the FW Act includes a period of regular and systematic casual employment.

Implications for employers

This ruling is highly contentious and likely to be appealed to a Court by employer groups.
For instance, the ruling was based on agreement between the parties that the prior casual employment was regular and systematic basis, with no break between the casual and permanent periods of service. However, what if the casual employment was irregular?

Following this decision, it is arguable, irregular service would still need to be counted so long as the irregularity was authorised by the employer. The prior service might include irregular casual service or regular casual employment of, say, one day a week.

Furthermore, if service includes prior casual service for the purposes of redundancy pay and notice, then it will also count towards annual leave and personal/carer’s leave. A casual employee who became a permanent would instantly have paid leave accrual based on the date of commencement as a casual.

HR MATTERS Cont.

Fair to sack worker who refused perform new duties?

A senior Australian Taxation Office (ATO) worker who was dismissed for refusing to perform his new duties after being redeployed has had unfair dismissal ruling overturned by a full bench of the Fair Work Commission (FWC).

Originally, the FWC ordered the ATO to reinstate a senior officer describing him as being a "square peg that wouldn't fit into a round hole" after he was unable to perform the duties of a new role.

Commissioner John Ryan said sacking the officer after his transfer to an auditing role was a "harsh" and "blunt means" of dealing with the non-performance of his duties.

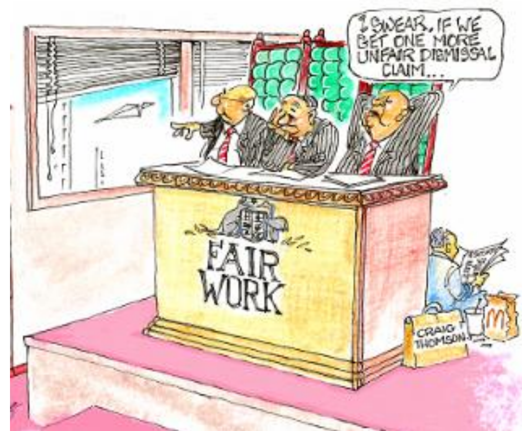
"The resolution of the problem of a square peg not fitting into a round whole which was achieved by getting rid of the square peg is harsh treatment. This is especially so when there were other means of dealing with the issue of a square peg in a round hole", Commissioner Ryan said.

But on appeal on 17 grounds, the Full Bench heard that even though the office claimed he did not possess the relevant tax knowledge to perform the new role, including engaging in client contact, he had completed more than 68 training courses that were relevant to his new position.

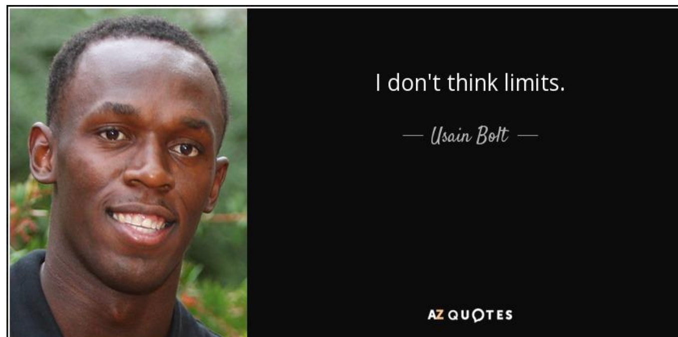
The officer could also take questions he could not answer on the spot and refer them to a senior person.

Instead of performing his duties the 11-day period, the worker undertook Community and Public Service Union-related work, and attended to matters that related to his Comcare claim and his application in the FWC.

The full bench found there was no justification for the officer's refusal to perform the duties assigned to him, rejecting claims that a medical condition was also a matter relevant for consideration.



Quote Of The Month:



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