Claiming mobile phone, internet and home phone expenses: rewrite of PS LA 2001/6, 17 August 2015

The ATO has released **information** on claiming mobile phone, internet and home phone expenses to reflect the significant rewrite of *Practice Statement* **PS LA 2001/6** to include contemporary electronic device issues. The rewrite also updates the ATO's approach to the apportionment of mobile phone, home phone and internet expenses.

If a taxpayer uses their own phone(s) or internet for work purposes, they may be able to claim a deduction if they paid for these costs and have records to support their claims. If a taxpayer uses their phone(s) or internet for both work and private use, they will need to work out the percentage that reasonably relates to their work use.

Substantiating claims

Taxpayers need to keep records for a four-week representative period in each income year to claim a deduction of more than $50. These records may include diary entries, including electronic records, and bills. Evidence that a taxpayer's employer expects them to work at home or make some work-related calls will also help the taxpayer demonstrate that they are entitled to a deduction.

When a taxpayer can't claim a deduction for their phone

Employer provided phone

If a taxpayer's employer provides them with a phone for work use and is billed for the usage (phone calls, text messages, data) then the taxpayer is not able to claim a deduction. Similarly, if a taxpayer pays for their own usage and is subsequently reimbursed by their employer, they are not able to claim a deduction.

How to apportion work use of a taxpayer's phone

As there are many different types of plans available, taxpayers will need to determine their work use using a reasonable basis.

Incidental use

If a taxpayer's work use is incidental and they are not claiming a deduction of more than $50 in total, they may make a claim based on the following without having to analyse their bills:

- $0.25 for work calls made from taxpayer's landline
- $0.75 for work calls made from taxpayer's mobile, and
- $0.10 for text messages sent from taxpayer's mobile.

Usage is itemised on taxpayer's bills

If the taxpayer has a phone plan where they receive an itemised bill, they need to determine their percentage of work use over a four-week representative period which can then be applied to the full year.

The taxpayer will need to work out the percentage using a reasonable basis. This could include:

- the number of work calls made as a percentage of total calls
- the amount of time spent on work calls as a percentage of the taxpayer's total calls
- the amount of data downloaded for work purposes as a percentage of the taxpayer's total downloads.

Example: phone calls are itemised on taxpayer's bill

Julie has an $80 per month mobile phone plan which includes $500 worth of calls and 1.5GB of data. She receives a bill which itemises all of her phone calls and provides her with her monthly data use.

Over a four-week representative period, Julie identifies that 20% of her calls are work-related. She worked for 11 months during the income year, having had one month of leave. Julie can claim a deduction of $176 in her tax return (20% × $80 × 11 months).

Usage is not itemised on taxpayer's bills

If the taxpayer has a phone plan where they don't receive an itemised bill, they determine their work use by keeping a record of all their calls over a four-week representative period and then calculate their claim using a reasonable basis.

Example: non-itemised account

Ahmed has a prepaid mobile phone plan which costs him $50 per month. Ahmed does not receive a monthly bill so he keeps a record of his calls for a four-week representative period. During this four-week period Ahmed makes 25 work calls and 75 private calls. Ahmed worked for 11 months during the income year, having had one month of leave.

Ahmed calculates his work use as 25% (25 work calls /100 total calls). He claims a deduction of $138 in his tax return (25% × $50 × 11 months).

Bundled phone and internet plans

Phone and internet services are often bundled. When a taxpayer is claiming deductions for work-related use of one or more services, they need to apportion their costs based on their work use for each service.

If other members in the taxpayer's household also use the services, the taxpayer needs to take into account their use in your calculation.

If the taxpayer has a bundled plan, they need to identify their work use for each service over a four-week representative period during the income year. This will allow the taxpayer to determine their pattern of work use which can then be applied to the full year.

A reasonable basis to work out the taxpayer's work-related use could include:

Internet

• the amount of data downloaded for work as a percentage of the total data downloaded by all members of the taxpayer's household, and

• any additional costs incurred as a result of the taxpayer's work-related use — for example, if their work-related use results in them exceeding their monthly cap.

Phone

• the number of work calls made as a percentage of total calls

• the amount of time spent on work calls as a percentage of the taxpayer's total calls, and

• any additional costs incurred as a result of the taxpayer's work-related calls — for example, if the taxpayer's work-related use results in them exceeding their monthly cap.

Example 1: apportioning bundled services

Sujita has a $100 per month home phone and internet bundle. The bill identifies that the monthly cost of Sujita's phone service in her bundle is $40, and her internet service is $60. Sujita brings in her mobile phone plan of $90 per month and receives a $10 per month discount. Her total costs for all services are $180 per month.

Sujita worked for 11 months during the income year, having had one month of leave.

Based on her itemised accounts, Sujita determines that the work-related use of her mobile phone is 20%. Sujita also uses her home internet for work purposes and based on her use, she determines that 10% of her use is for work. Sujita does not use her home phone for work calls.

As the components are part of a bundle Sujita can calculate her work-related use as follows:

Step 1 — work out the value of each bundled component

Mobile phone

$90 per month minus the $10 per month discount = $80 per month

Internet

$60 per month as identified on her bill

Home phone

Sujita does not need to determine the home phone costs as she does not use this service for work purposes.

Step 2 — apportion your work-related use

Home internet use

10% work-related use × $60 per month

= $6 work-related use per month × 11 months

Sujita can claim $66

Mobile phone use

20% work-related use × $80

= $16 per month × 11 months

Sujita can claim $176

In her tax return Sujita claims a deduction of $242 for the financial year ($66 home internet use + $176 mobile phone use)

Sujita cannot claim work-related use of her home phone as she did not use it for work.

Example 2: apportioning bundled services

Des has a $90 per month home phone and internet bundle, and unlimited internet use as part of his plan. There is no clear breakdown for the cost of each service. By keeping a record of the calls, Des makes over a four-week representative period, he determines that 25% of his calls are for work purposes. Des also keeps a record for four- weeks of the data downloaded and determines that 30% of the total amount used was for work.

Des worked for 11 months during the income year, having had one month of leave. As there is no clear breakdown of the cost of each service, it is reasonable for Des to allocate 50% of the total cost to each service.

Step 1 — work out the value of each bundled component

Internet

$45 per month ($90/2 services)

Home phone $45 per month ($90/2 services)

Step 2 – apportion work-related use

Home phone

25% work-related use × $45 per month × 11 months

= $124

Internet 30% work-related use × $45 per month × 11 months

= $149

In his tax return Des claims a deduction of $273 ($124 + $149) for the year.

If a taxpayer purchased a smart phone, tablet or other electronic device and uses it for work, they can claim a deduction for a percentage of its cost.

*Source: ATO **website**, 14 August 2015.*

No entitlement to conservation tillage offset, 17 August 2015
Marwood v Secretary of the Department of Agriculture

The AAT has affirmed the Secretary of the Department of Agriculture's decision to refuse an application made by the taxpayer for the issue of a certificate under former s 385-190 of ITAA 1997, that would have entitled the taxpayer to a conservation tillage offset for the 2013/14 income year, on the basis of the taxpayer's failure to complete a conservation tillage survey within the statutory time limit.

Facts

On 10 July 2014, the taxpayer applied, under former s 385-185 of ITAA 1997, for the issue of a certificate under former s 385-190 in order to claim the conservation tillage offset for the 2013/14 income year. The taxpayer stated in a section of the application preceding the survey section that the relevant eligible no-till seeder was installed and ready for use on 12 April 2014.

Former Subdivision 385-J of ITAA 1997 (former s 385-175 to 385-235) was enacted by the *Clean Energy (Consequential Amendments) Act 2011* (Act No 132 of 2011). The subdivision was repealed by Act No 83 of 2014, from the 2014/15 income year, when the carbon pricing mechanism (also known as the "carbon tax") was abolished. Prior to its repeal, former Subdivision 385-J originally provided a 15% refundable tax offset for "eligible no-till seeder" machinery purchases from 1 July 2012 to 30 June 2015. The government, however, has since restricted the offset to apply only from 1 July 2012 to 30 June 2014. As a result of the repeal, taxpayers will no longer be able to claim the tax offset when they first use or install an eligible no-till seeder. Taxpayers who have claimed, or who are eligible to claim, the offset for prior income years will not lose their entitlements as a result of the repeal.

The approved application form completed by the taxpayer stated that all applications must be completed and submitted within the income year that the new seeder was installed and ready for use. For example, in the taxpayer's case, since the new seeder was installed and ready for use during the 2013/14 income year, the application needed to be submitted by midnight (AEST) 30 June 2014, whereas it was submitted on 10 July 2014. The approved application form also stated that the department may consider late applications under extenuating circumstances provided a request for extension is made in writing prior to the end of the relevant income year.

Since the taxpayer did not fill and lodge his application, which included the conservation tillage survey, until 10 July 2014, it was not in dispute that the Secretary could not properly be satisfied for the purposes of s 385-190(1)(b) that the taxpayer "at any time during the income year, completed a conservation tillage survey". Nor was it in dispute that the only relevant income year for the purposes of the taxpayer's possible entitlement to a conservation tillage offset under s 385-175 was the 2013/14 income year, given that the eligible no-till seeder in question was "installed ready for use" for the purposes of s 385-175(1)(c) on 12 April 2014.

The taxpayer argued that a certificate should nevertheless be issued for the 2013/14 income year by the exercise of any discretion which might be available for that purpose. The taxpayer pointed to the fact that his survey was only 10 days late and therefore the timeliness of the information provided therein was not seriously compromised and the Secretary had nevertheless had the benefit of that information. The taxpayer argued that he had a justifiable reason for having lodged his survey late, given the circumstances of his grandmother's surgery, which had interfered with his mother's carrying out of her administrative duties and which he had evidenced. The taxpayer also pointed out that his application was made prior to the repeal of Subdivision 385-J of ITAA 1997, his application was made on 10 July 2014, while the Subdivision was not repealed until 18 July 2014. He made a further submission that the Secretary might be able to exercise a discretion granted to the Commissioner to defer the time for lodgment of an "approved form". Furthermore, the taxpayer submitted that the availability of the conservation tillage offset had been factored into his financing of the purchase of the eligible no-till seeder and that his failure to obtain a certificate, by precluding him from entitlement to the offset, caused him significant financial difficulties, particularly given dry conditions in the area in which his farm is located. Finally, the taxpayer submitted that any available discretion by which a certificate might be issued should be exercised in his favour given the importance of

encouraging young farmers like him to remain in the farming industry which would assist in the improvement of farming practices and thus the protection of the environment.

The Secretary argued that the decision by which he refused to issue a certificate to the taxpayer was correct as the taxpayer had not at any time during the 2013/14 income year completed a conservation tillage survey for the purposes of s 385-190(1)(b) of ITAA 1997, so there was no basis upon which a certificate could properly be issued to him. In that regard, the Secretary argued that he did not possess any discretion, whether within or beyond the provisions of Subdivision 385-J of ITAA 1997, by which he might relieve the taxpayer from the consequences of the failure to satisfy all the requirements of s 385-190. Accordingly, it was argued that there was no discretion available to the AAT which it might exercise in the taxpayer's favour.

Decision

The AAT held that there was no legislative warrant for it to disturb the Secretary's decision to refuse the taxpayer's application for a certificate. More particularly, in the absence of a basis upon which the Secretary might properly be satisfied that the taxpayer "at any time during the [2013-14] income year, completed a conservation tillage survey" for the purposes of s 385-190(1)(b) of the Act, there was no power or discretion, whether express or implied, under the Act or some other statute by which such a certificate might be issued to the taxpayer. The AAT found that the Department of Agriculture did not in fact possess the discretion to consider late applications under extenuating circumstances as stated in the approved form and that accordingly any policy reflected by that statement was wrong, although in any event no written document recording such a policy could be found. Furthermore, the AAT said its powers of review under s 43(1) of the *Administrative Appeals Tribunal Act 1975* do not afford any power or discretion by which the taxpayer might somehow be relieved from the consequences of his failure to comply with s 385-190(1)(b).

AAT ref: [2015] AATA 594, FJ Alpins, Deputy President, 14 August 2015, Melbourne.