LUSI & CO
CORPORATE ACCOUNTANTS

Client Information Newsletter
- Tax & Super

November 2024

How taxable is that side hustle?

With Australia going through a major cost of living crisis and interest rates not coming down as quickly as hoped, more and more people are looking at ways of creating additional cash flow to help make ends meet.

About this newsletter

Welcome to our monthly newsletter. Should you require professional advice on any matters contained in this newsletter, our team of Accountants are here to assist.

T: 03 9842 1166 | F: 03 9842 1110
W: www.lusi.com.au | E: office@lusi.com.au

What is a side hustle?

Earning extra income on top of your primary job is sometimes known as a side hustle. While the extra money is no doubt welcome, it's important to stay on top of the tax issues this sort of activity can throw up.

Side hustles can take many forms and may include:

- posting content to platforms such as TikTok and attracting viewing hours;
- being an influencer on a social media platform and attracting followers;
- picking up casual work through platforms such as Airtasker;
- garden maintenance;
- providing tech support;
- cleaning business premises or private homes;
- coaching or tuition;
- dog walking or pet sitting;
- freelance writing;
- creating and selling art;
- gold fossicking.

continued overleaf ⇨

How taxable is that side hustle? cont

Business or a hobby?

Whether or not the net income from these kinds of activities is subject to tax depends on whether they amount to a business, and this is where the sometimes fuzzy boundary between a business and a hobby comes into play.

In determining on what side of the line your activities fall, the following questions have to be answered:

- does the activity have a commercial purpose?
- do you have the intention of making a profit?
- is the activity conducted in a business-like manner?
- do you advertise or employ people?

In many cases the answer will be obvious – the whole point of a side hustle is to earn extra money so you can afford to keep paying the mortgage or cover the rent. Getting gigs through Airtasker to provide services, or picking up garden maintenance jobs would generally be something done with the intention of making a profit.

Gold fossicking, on the other hand, tends to be something people take up as a hobby. They enjoy seeing the countryside and any gold nuggets they may find are a bonus. But while occasional finds involving valuable nuggets might get a run on the evening TV news, they are rare. Most fossickers would run at a net loss, although whether the activity is actually profitable is not necessarily determinative.

And what if you own the most adorable cat who enjoys being dressed up and posed for photos? After putting a few shots up on social media you might be shocked to find you have many thousands of likes and your cat has more followers than Taylor Swift.

That sort of online attention can be monetised, sometimes for astonishing amounts. It does happen occasionally, even where there were no expectations of generating any revenue. If all you do is put up fresh shots on a regular basis and just collect the advertising revenue, you might fall outside the tax net. It all depends on the facts, but something that throws off a lot of money isn't always taxable.

We can help you sort out where on the taxable spectrum your side hustle sits.

Tax compliance issues

If the activity falls on the business side of the dividing line, the income from your side hustle is just as taxable as the income from your primary job. You will need to keep track of all your income and deductions and pay tax on the net profit.

You will also need to register for GST (and charge GST) if your annual turnover exceeds $75,000. Registering for GST comes with an Australian Business Number (ABN), although you can apply for an ABN before reaching the $75,000 threshold. Once you have an ABN you need to keep the details up to date and cancel the ABN on closing your business.

The net profit from any side hustle that is conducted as a business gets added to taxable income from your primary job, which can leave you with a tax bill come tax time. To avoid any nasty surprises you could put aside some of your net profit as you go along to cover the tax bill when it arrives. How much to put away depends on what tax bracket the combined income from your primary job and your side hustle puts you in. You can also ask your employer for your primary job to take out more by way of PAYG deductions by completing a withholding declaration. We can help you work out the best course of action.

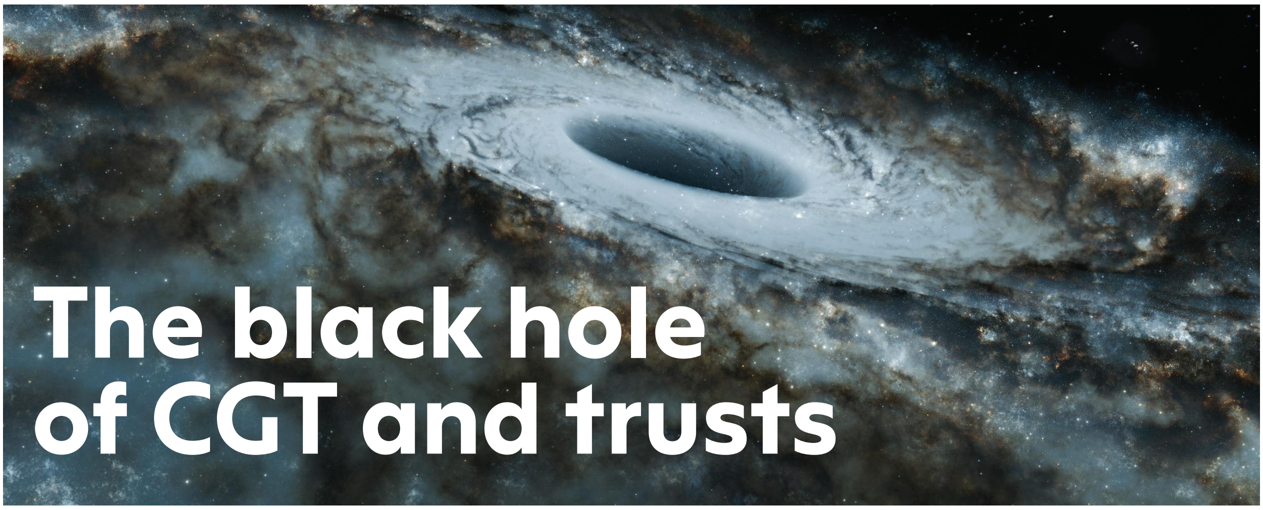
If you make a net loss from your side hustle, but the activity qualifies as a business, you may not be able to offset the loss against the income from your primary job if the non-commercial loss rules apply to quarantine the loss until the business grows.

Deductions

What sort of deductions you can claim very much depends on the nature of your side hustle. Bear in mind that any amounts you may want to claim have to be incurred in carrying on your business and you cannot claim private expenses against business income. Some things, like car expenses, may need to be apportioned (and it would be helpful to maintain a logbook or diary that keeps track of business and private use of your car).

Occupancy costs for your home (mortgage interest, rates and taxes, house insurance) are only deductible where part of your home is used exclusively as business premises. Using the dining table in the evenings to prepare invoices doesn't cut it.

We can help you sort out what is what on the deductions front and prevent your side hustle becoming a tax hassle.



The black hole of CGT and trusts

To say that the interaction of the Capital Gains Tax (CGT) laws and trusts is complicated is probably one of the greatest understatements that anyone could make about the operation of the tax laws.

The laws of physics may be much simpler – and, in this regard, it was Einstein who apparently quipped that "the hardest thing in the world to understand is the tax law" (when filing his income tax return in the United States in the 1950s).

That being said, here are a few basic things that are worthwhile noting if you hold an asset in a trust or transfer an asset to a trust. They are as follows:

- if your home is held in the name of trust – rather than in the name of an individual or individuals – you cannot get any CGT main residence exemption regardless of what type of trust it is (unless it is a "special disability trust");
- if you transfer an asset to a trust, or declare a trust over an asset, there will always be CGT implications (in the same way that there are always CGT implications in transferring or selling an asset to a third party);
- there are special rules (and ATO policy) that applies where the trust arrangement involves "life and remainder interests" ie, where the asset is owned by a trust for the benefit of a person while they are alive (eg, a surviving spouse) and, on that person's death, ownership of the asset reverts to "remaindermen" (eg, children of the spouse);
- if an asset is transferred out of a trust to a beneficiary in satisfaction of their entitlement to that asset, then there are CGT implications for both the trustee and the beneficiary (and these implications are specifically set out in the CGT legislation);
- if an asset is held by trust "absolutely" for a beneficiary – so that the beneficiary has an "indefeasible" right to it – then any actions of the trust in relation to the asset are taken to be those of the beneficiary (but, first, you have to determine the extremely difficult task of whether you have such a trust); and
- where a person dies, their assets come to be owned by a trust for the purposes of administering the estate for beneficiaries – and as you may be aware the rules that apply can be complex, especially in relation to an inherited family home where a lot of tax-free capital gains may be at stake.

Finally, of course, if a family trust makes a capital gain from any dealing with a CGT asset, and the trust wishes to stream that capital to a beneficiary of the trust so that it retains its "character as a concessionally taxed capital gain" in the beneficiary's hands, then there are very complex rules which must be followed. And these rules can impact on how much other income from the trust will be taxed – and to whom!

If nothing else, this is a matter in which you must seek our assistance, as the rules cannot be understood by the "average person" – even, if he or she were an Einstein!

What we know so far about payday super

The government has shared more details about its proposed new "payday super" plan, which will start on 1 July 2026.

What is payday super?

Starting in July 2026, employers must pay superannuation guarantee (SG) contributions to their employees at the same time they pay their salary and wages – weekly, fortnightly, or monthly. Currently, employers are legally required to pay their employees' SG contributions on a quarterly basis.

What this means for employers

All employers, no matter the size, will have to make SG contributions when they pay their workers. This might affect cash flow, especially for small businesses, and could create an extra administrative burden if they don't have the right systems in place (such as payroll software, etc).

What this means for employees

The goal of payday super is to make SG contributions more transparent and help boost retirement savings. For example, according to the Government, a 25-year-old earning the median income and receiving superannuation could have about $6,000 extra by retirement because of the proposed changes.

Further details announced

The government recently released further policy design details on the payday super measure.

Here's what we know so far regarding the proposed payday super model:

- Super must reach employees' funds within 7 days of being paid, except for new employees or small, irregular payments.
    - For new employees, the timeframe will be 14 days after they commenced employment, and
    - SG contributions in relation to small and irregular payments can be made within seven days of the next regular ordinary time earnings (OTE) payment.
- Super is still calculated based on an employee's OTE which includes regular salary and wages but excludes overtime.
- If employers don't pay on time, they will continue to face penalties.
- Small businesses will need to find alternative payroll software solutions to pay their employees' super as the ATO's small business clearing house will close from 1 July 2026.

Where to from here?

The government is still finalising its payday super plan and aims to introduce legislation soon. As always, we'll keep you updated on this measure as more information comes to hand.

What tax receipts do I need to keep?

Only the ones you want to claim as a tax deduction, might be a common response.

Work-related expenses

But that isn't quite right, as the tax rules in fact enable you to make legitimate claims for work-related expenses for up to $300 in a financial year without having receipts, provided:

- you have spent the money;
- the expense is directly related to earning your income;
- you haven't been reimbursed by your employer;
- it is not of a private or capital nature; and
- you have a record of the expense (other than a receipt).

Work-related expenses can include, among other things, tools and small items of equipment, office supplies, union or professional association fees, uniforms and protective clothing and associated cleaning costs, newspapers and periodicals and many more.

The cost of laundering work uniforms and protective clothing can be included without having receipts for an amount of up to $150. These costs form part of the $300 deductible limit without needing receipts. However, where total work-related expenses exceed $300, it is not necessary to have receipts in relation to costs for laundering work uniforms for these expenses if they do not exceed $150. The ATO will accept a rate of $1 per load where the laundry is done at home, or half that amount when accompanied by private items. Dry cleaning costs are not included in the receipt-free $150. Minor items costing up to $10 can be claimed without a receipt, up to $200 per financial year, and are also included in the $300 limit. But again, where total work-related expenses exceed $300, it is not necessary to have receipts for these costs.

The record of the expense can be in the form of a diary that records how much you have spent, what you spent it on, how you paid for it and how it relates to earning your income. You will need to retain those records for five years.

Of course, there is nothing wrong with keeping all your receipts as you go along, just in case you unexpectedly overshoot the $300 limit later in the financial year. Where that happens, you will need receipts and invoices to substantiate your entire work-related expense claim – not just for the excess over $300.

Car expenses

Instead of keeping receipts and invoices for the actual running costs of the employment-related use of your own car, you can elect to claim on a cents per kilometre basis for up to 5,000 business kilometres. The rate you can claim is 88 cents per kilometre for the 2024-25 financial year (the maximum claim is $4,400).

continued overleaf ⇨

What tax receipts do I need to keep? ... cont

The claimable use of a private car covers situations where, for example:

- you visit a client's premises after arriving at your usual place of work;
- you're working at another location that is not your usual place of work; or
- you drive to a work-related conference.

The cost of driving between home and work is generally regarded as a private expense.

You won't need any receipts to claim on a cents per kilometre basis, but you do have to be using your own car and you will need to maintain a logbook or a diary that records your employment-related car use. Where two taxpayers use the same car for their respective work-related purposes they can each claim for up to 5,000 kilometres.

It also needs to be a requirement of the employer that you provide your own transport for work-related purposes. There was a recent AAT case where the applicant's cents per kilometre claim failed spectacularly when it emerged in evidence that the employer provided a company car for traveling between different work sites.

Note this is not a standard deduction anyone can just claim. The ATO has previously made noises about how it has noticed there are many claims right on the cusp of the 5,000 kilometre limit and has been actively challenging some claims.

Working from home

With many employees still working from home in the wake of the COVID-19 pandemic, at least on a part-time basis, the ATO has developed an administrative method for claiming associated expenses. Working from home for the purpose of making a claim has to involve something substantive – minimal tasks such as occasionally checking emails or answering phone calls while at home are not regarded as enough.

While the option is always there to make a claim using the actual cost method (which would require receipts), taxpayers can also opt for the fixed rate method, which has been set at 67 cents per hour since 2023. The 67 cents per hour rate covers:

- energy costs;
- internet expenses;
- mobile and landline expenses; and
- stationery and computer consumables.

Depreciation on office furniture, computers and printers is available on top of the fixed rate deduction, as are repairs to those items. Since those claims fall outside the fixed rate method they will need to be supported by receipts or invoices.

A crucial requirement to qualify for the fixed rate method is to keep a diary or a timesheet of the hours worked from home during the financial year. This record needs to be maintained throughout the year – making an estimate at tax time will not be sufficient.

While you won't need comprehensive receipts for the various items covered by the fixed rate method, the ATO will expect you to retain a sample copy of an invoice, bill or bank statement verifying you have incurred each of the expenses covered by the fixed rate method. All the information has to be retained for five years.

The Commissioner doesn't like work-related expenses much, but Australian taxpayers love them which is why governments have been wary of getting rid of them.

While there are a number of specific exceptions to the need to have receipts to substantiate particular claims, all these "concessions" come with conditions attached, mainly to ensure that the expenses were actually incurred in earning assessable income. It's important to be aware of all the legal and administrative requirements so that your work-related expense claim can survive an ATO audit.

Super on parental leave pay is now law

Starting 1 July 2025, new parents will receive superannuation payments on top of their paid parental leave (PPL).

THE CHANGE

Eligible parents with babies born or adopted from 1 July 2025 will get an extra 12% of their government-funded PPL as a superannuation contribution to their nominated superannuation fund.

The lump sum superannuation payment will be paid annually by the ATO after the end of each financial year. The contribution will also include an additional interest component to account for the delay.

Eligible parents can continue to apply for PPL through Services Australia who are responsible for assessing eligibility for the payment and superannuation contribution.

WHO IS ELIGIBLE?

Currently, parents can get up to 22 weeks of government-funded PPL at the minimum wage, which will increase to 24 weeks from 1 July 2025 and to 26 weeks by 1 July 2026.

To be eligible, parents must meet the following requirements:

- Have a newborn or have recently adopted a child
- Have met an income test
- Won't be working during their PPL period, except for allowable reasons
- Have met the work test
- Have met the residency rules
- Have registered or applied to register their child's birth with their state or territory birth registry if they're a newborn.

For further information regarding the government-funded PPL scheme see the Services Australia website.

WHAT ABOUT EMPLOYER-FUNDED PPL?

PPL falls into two categories: government-funded PPL, or employer-funded PPL. If eligible, employees could receive both types.

Although it is not compulsory for employers to do so, many choose to support their employees with PPL. Generally, employers will set out a minimum service period that employees need to meet before they are eligible for employer-funded PPL, and the amount they receive (usually measured in weeks) varies from employer to employer. Employers will have their own policies when it comes to parental leave and the available benefits will depend on the employee's agreement/contract. So while some employers offer PPL and pay superannuation on top of that, the new laws ensure parents using government-funded PPL will be able to have the same benefit.

IMPACT ON FAMILIES

As super isn't currently paid on government-funded PPL, this change will enable employees to receive super contributions for the period they are on PPL. This change helps close the gap in superannuation savings, especially for women, by ensuring parents receive superannuation while on parental leave, improving financial security in retirement.