

## ***Your landlord clients need to be prepared to lose this deduction***



New legislation recently tabled in Canberra puts a measure first announced with the last Federal Budget closer to reality. Your landlord clients need to be prepared to lose this deduction

The Treasury Laws Amendment (Housing Tax Integrity) Bill 2017 solidifies the government's intention to deny all travel deductions relating to inspecting, maintaining, or collecting rent for a residential investment property.

Once enacted, the measure will apply from July 1, 2017 — so will affect relevant clients for the entire current financial year.

It is intended that travel expenditure incurred in gaining or producing assessable income from residential premises used as residential accommodation will not be deductible. The travel expenditure will also not be recognised in the cost base of the property for CGT purposes.

Taxpayers will be able to continue to deduct travel expenditure if:

- The losses or outgoings are necessarily incurred in carrying on a business for the purposes of gaining or producing assessable income; or
- They are an "excluded class of entity".

The ATO explains these as being:

- A corporate tax entity;
- A superannuation plan that is not an SMSF;
- A public unit trust;
- A managed investment trust; or
- A unit trust or a partnership, all of the members of which are entities of a type listed above.

The accompanying Explanatory Memorandum states that the amendments to the rules will "improve the integrity of the tax system by addressing concerns that some taxpayers have been claiming travel deductions without correctly apportioning costs, or have claimed travel costs that were for private purposes".

However it is also explained that the measure is not intended to affect deductions for institutional investors in residential premises, as "the same integrity concerns do not arise for such investors".

The amendments also do not affect deductions for travel expenditure incurred in carrying on a business, including where an entity carries on a business of providing property management services.

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## ***SMSF trustees have some specific deductions available***

The ATO has issued guidance to allow for certain expenses to be specifically deductible to superannuation funds, including of course SMSFs. SMSF trustees have some specific deductions available

Taxation ruling TR 93/17 says “the following types of expenses typically incurred by a superannuation fund are ordinarily deductible”. They are:



- Actuarial costs
- Accountancy fees
- Audit fees
- Costs of complying with a “regulatory provision” (that is, government regulations) as defined in section 38A of the Superannuation Industry (Supervision) Act 1993 unless the cost is a capital expense
- Costs in connection with the calculation and payment of benefits to members (but not the cost of the benefit itself)
- Investment adviser fees and costs in providing pre-retirement services to members,
- Subscriptions for membership paid by a fund to The Association of Superannuation Funds of Australia Limited and other such industry bodies, and
- Other administrative costs incurred in managing the fund.

Note that the first two are accompanied by a conditional note inserted by the ATO, which states “except those incurred in complying with, or managing, the fund’s income tax affairs and obligations which are ordinarily deductible under section 25-5” (tax-related expenses). An example the ATO uses is Subdivision 295-F (exempt income).

For other expenses that the ATO recognises as being commonly incurred by an SMSF, it makes the following comments:

- The superannuation supervisory levy is deductible as a tax-related expense (however, any penalty for late payment of the levy is not),
- The deductibility of legal expenses usually depends on whether the expenses are of a capital or revenue nature,
- Up-front costs incurred in investing money are of a capital nature and are not deductible,
- Investment or administration charges levied by a life assurance company or pooled superannuation trust will generally not be deductible to the fund, and
- The costs of amending trust deeds are allowable as a deduction, provided the expenditure is not of a capital nature.

With regards to the latter, the ATO concedes that if deed amendments are in order to comply with changed government regulations, or are made to ensure the SMSF’s day-to-day functioning continues to satisfy compliance obligations, then the costs associated with this can generally be considered to be revenue in nature, and therefore deductible.

However most other deed amendment activities, according to ATO guidance, are deemed to be on capital account, and include:

- Establishing a trust,
- Executing a new deed for an existing fund, and
- Amending a deed to enlarge or significantly alter the scope of activities.

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