

The pension loans scheme

To help pensioners who are asset rich but income poor, the government launched its own version of a financial product that has been commercially available for some time, the reverse mortgage. The government's answer is its pension loans scheme (PLS), whereby a pensioner can apply for a non-taxable loan using some form of real property as security. The PLS does not provide a lump sum, but a regular fortnightly payment.



The scheme is administered by the Department of Human Services (DHS). At present the scheme is only open to those on a full pension, but the 2018 Federal Budget announced the government intends to open the PLS to all pension-age retirees (not just those who qualify for the Age Pension). A date has not been set for this yet. Also (from 1 July 2019) the maximum allowable income stream (combined Age Pension and PLS) will increase to be 50% higher than the full pension, including supplements.

A full age pensioner may be able to apply if:

- they or their partner are of Age Pension age
- they own real estate in Australia that can be used as security for the loan (home or investment)
- they or their partner receive a rate of payment that is less than the maximum pension amount or nothing (due to either the income or assets test, but not both)
- they meet Age Pension residence rules.

There are costs associated with the scheme, which DHS will determine and send to the person seeking the loan. The current rate of interest is 5.25%, which DHS adds to the outstanding loan balance each fortnight until the loan is repaid.

The loan recipient can repay the PLS loan in part or in full at any time. If the loan recipient wants to sell a property they need to inform DHS, and they can either transfer the loan to another property including a new home or they can repay the loan on the date of settlement.

If there is an outstanding amount upon the loan recipient's death, the estate or in some cases the surviving partner's estate can make repayments.



The total loan available depends on the:

- equity in the property offered as security
- equity kept in the property, and
- the age of the recipient or their partner, whoever is younger.

Applicants can get a loan up to the maximum rate of income support payment they qualify for. Loan recipients may also use real estate owned by a private company or trust as security for the loan, if they are a controller of that company or trust. If there is more than one property, they can choose which to use as security for the loan.

DHS will register a charge with the Land Titles Office on the title deed of the property used as security, with recipients paying any costs associated with this charge. A licensed valuer will value the property, however this is done at no cost to the loan recipient.





Borrowed money to pay a business tax debt? The interest could be deductible



It was about 1990 when the ATO was asked for the third time in its history about the tax deductibility of interest on a loan a business had taken out to repay a tax debt.

According to ATO records, the matter was raised as part of two previous requests for clarification — one made as far back as 1951, and the other even further back in time, in 1921. By the 1990 query, the ATO decided to put the matter to rest and issued a taxation ruling (IT 2582), which has stood ever since. There are however curly caveats and conditions attached.

By way of background, the ATO admitted in its ruling that there were, and are, a number of “practical difficulties” associated with denying such a specific deduction for taxpayers carrying on a business. The difficulty goes right to the heart of the Income Tax Assessment Act 1997 (ITAA97), although at the time of the ruling’s issue some of the relevant sections were still in the Income Tax Assessment Act 1936. Subsection 51(1) of ITAA36 provides that: “All losses and outgoings to the extent to which they are incurred in gaining or producing the assessable income, or are necessarily incurred in carrying on a business for the purpose of gaining or producing such income, shall be allowable deductions except to the extent to which they are losses or outgoings of capital, or of a capital, private or domestic nature, or are incurred in relation to the gaining or production of exempt income.”

The “difficulties” the ATO refers to come about due to the fact that paying a tax debt is neither of a capital nature nor done to gain “exempt” income.

The relevant ruling (IT 2582) says: “Where a taxpayer carries on a business for the purpose of gaining or producing assessable income and, in connection with the carrying on of that business, borrows money to pay income tax (whether to preserve the assets of the business, maximise the return on them, retain sufficient money to fund the business or otherwise) then it is considered that the interest incurred on those borrowings is a normal incident of conducting that business.”

“That is, such an expense is an expense incurred in carrying on that business and hence qualifies for deduction under the second limb of subsection 51(1) of the act.” The ATO adds case law (Begg v FC of T (1937) 4 ATD 257) to give weight to the decision.

Care needs to be taken however, as the ruling would not apply to interest on borrowings that are not connected with the carrying on of a business for the purpose of producing assessable income. Note however that the ruling does not consider situations where individuals borrow to pay off a tax debt. In these cases, interest incurred by an individual on a loan to pay off a tax debt is not deductible.



Can claims be made for home office expenses when it's located overseas?

A question was asked of the ATO recently, via its “ATO Community” webpage that centred on the eligibility of a taxpayer to make deduction claims for home office expenses. While it is a question that would not generally warrant extensive clarification, the fact that the office in question was located offshore made the query somewhat unique. The taxpayer’s question to the ATO was as follows: “I will work remotely overseas (in a non-English speaking country) for at least one year for my Australian employer under Australian employment law (I am an Australian citizen).

“My employer does not have an office in that country, so my home will be my principal place of work and I will have a dedicated work room,” the taxpayer writes. “Can I claim my overseas home office running expenses? My receipts/paperwork will be in a different language and obviously in a different currency. If so, how does the currency exchange work? Will I have to keep note of the currency exchange at the time of purchase/payment, and will I have to keep translations of all paperwork?”

The ATO answer

The “ATO-certified” reply (answers are tagged as such where they have been checked as being clear and technically correct) was as follows.

“You are in a unique situation and you should be able to claim the home office expenditure that relates to that one room in direct proportion to expenditure for the residence where you will be residing.”

The ATO officer then suggests the taxpayer carefully reads a particular taxation ruling “as it is something that is not widely published and little known”. (Here’s a link to that ruling, TR 93/30.) The ruling states, the officer says, that a taxpayer “may be able to claim occupancy expenses if your home office has ‘the character’ of a place of business even if you are an employee”.





Paragraph 4 of the ruling states: “Whether an area of the home has the character of a place of business is a question of fact which depends on the particular circumstances of each case. This is likely to be the case where a part of a residence is set aside exclusively for the carrying on of a business by a self employed person (eg a doctor’s surgery). Another example is where part of the home is used as a taxpayer’s sole base of operations for income producing activities (eg where no other work location is provided to an employee by an employer)” [ATO emphasis].

The taxpayer is also advised that the documentation must be in English “unless the expense was incurred outside Australia” (see this ATO web page, under the sub-head “Written evidence”). As far as the issue of exchange rates is concerned, the officer directs the enquirer to this guidance, also on the ATO website.

The “ATO-certified” reply however ends with this advice: “The better way to approach this issue, so you get it all right the first time, is to apply to the ATO for a private ruling and you will get the opportunity to discuss with the ATO officer that will provide the response, and all this will make it much easier for you to understand how all of this works for you.”

