NEWSFLASH BOOKLET

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BAN TACS Accountants Pty Ltd is a CPA Practice

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BACKPACKING FRUIT PICKERS ON A WORKING HOLIDAY VISA

Important – This booklet is simply a collection of Newsflash articles relevant to backpacking fruit pickers on a working holiday visa. The articles are transferred from Newsflash into this booklet so it is best read from the back page forwards to ensure you are reading the latest article on the topic first. Note that the information contained in this booklet is not updated regularly so it is important that you seek professional advice before acting on it.

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Introduction

The Australian financial year runs from 1st July to 30th June.

Non residence of Australia for Tax purposes are subject to a tax rate of at least 29% on their earnings in Australia. Once their income exceeds $30,000 they are taxed at 30% until their income reaches $75,000 then it is taxed at 40% until $150,000 when it is taxed at 45%. This means that once their income exceeds $30,000 non residents are subject to the same rates as residents but no Medicare levy. There is considerable advantage in being a resident for tax purposes because the first $6,000 you earn per year (pro rata if only a resident for part of the year) is tax free and the next $24,000 is only taxed at 15%, plus Medicare levy of 1.5% if applicable.

International students doing a course that exceeds 6 months are considered residents for tax purposes but due to the conditions of their visas it is very difficult for visitors on a working holiday visa to qualify as residents.

For a quick test on whether you are a resident go to:
http://calculators.ato.gov.au/scripts/axos/axos.asp?CONTEXT=&KBS=resident.xr4&go=ok

If you have worked in Australia your employer would have made superannuation contributions on your behalf. With the exception of New Zealanders all overseas residents on a working holiday or student visa are entitled to claim this superannuation back when they return to their home land. Note it will be taxed at 30%.

Residency basics

Whether you are a resident for tax purposes has nothing to do with your country of residency. Just being in Australia for 6 months could make you a resident for tax purposes.

TR 98/17 (available from www.ato.gov.au) discusses this matter in detail. If you reside here permanently it is not a problem but if you enter Australia temporarily the issue is complex. Relevant factors are:

1) The length of time in Australia – 6 months is the key here. If you are here for less due to unforseen circumstances but had originally intended to stay for longer you may still qualify. But 6 months is not enough you must also meet point 2) below
2) The nature of your activities while here:
   (a) Whether you were working or holidaying.
   (b) Whether you settled into a routine resembling that of having taken up residence. For example setting up a home and involvement in regular social and sporting activities.

It is point 2) that makes it difficult for fruit pickers to qualify as a resident for tax purposes. Usually the fruit picking is a minor part of a holiday and the very nature of fruit picking makes it difficult to have a "settled routine" and home. Further the working holiday visa only allows you to work for the same employer for a maximum of 3 months, though you can apply to have this extended once you arrive in Australia.

Example 9 from TR 98/17 states:

Janine Edgerton is a British national who has longed to spend twelve months 'down under'. After saving for years, she takes twelve months leave from her work and departs for Australia on her twenty-fourth birthday. Although she travels with considerable savings, her intention is to spend at least part of her time working. She has obtained a restricted working visa enabling her to work for no more than three months with one employer.

Through a contact in Australia she is assured of work in Perth for the first three months. After that period she decides to travel to the east coast via Adelaide. She spends a month in Adelaide where she works for two weeks and continues her journey to Melbourne.

Once there, she meets some friends from back home. After working for a further three months, she decides to spend the balance of her time in Melbourne and uses her savings for living expenses. To keep costs down, she leases a house with two other friends. At the end of her twelve months in Australia, she returns to the United Kingdom.

Although Janine obtains work, by travelling from place to place she has not established a pattern of habitual behaviour, even though she is physically present in Australia for twelve months and she co-leases a house. Janine's main purpose for being here is to have a holiday and she is merely supplementing her savings by working.

In example 10 a student stays for less time than Janine but he is considered a resident.

Example 10 from TR 98/17:

Dipak Neviott is a student from India who comes to Australia to study for a four year bachelor degree in civil engineering. Dipak lives in rental accommodation near the university with fellow students and works part-time at the university social club as a barman. After six months, he has to withdraw from his studies and return to India because his father is ill.

Dipak's routine of study and continuing accommodation on campus establishes a pattern of habitual behaviour over the six months. His employment adds support to the conclusion he is residing here.

Both examples exceeded the 6 months so it is not really a matter of the time spent but the lifestyle while they were here. If you do not have a home base somewhere else other than Australia you could argue you are a resident even if you are here for less than 6 months but, again, if you were mainly holidaying this would not be the case.

Example 12 from TR 98/17

Abdul Farouk is a talented self-employed computer programmer who is able to obtain contract work with different multinational corporations around the world. Abdul is single and has no particular social or economic ties to any country. He is a successful businessman with investments scattered around the world.

Abdul spends five months in Australia working as a computer programmer with a large multinational manufacturing company. Before arriving in Australia he spent four months in Singapore working with a pharmaceutical company, and when he leaves Australia he plans to spend five months working in Japan.

During his stay, Abdul rents an apartment in Adelaide where the majority of his business is conducted, although he does spend one month commuting between the Sydney and Brisbane branches of the company.

Abdul is regarded as a resident for the duration of his stay in Australia. Abdul has no particular ties to any other country and his stay in Australia is within the ordinary habits of his lifestyle as a worldwide travelling computer programmer. In this instance, these factors outweigh the short duration of his stay.

Your visa may be a deciding factor for example if it only allowed you to work for a small percentage of the time you are in Australia. TR 98/17 states at paragraph 36 that individuals who are enjoying an extended holiday in Australia are not treated as residents. Paragraph 48 states that a settled purpose, such as employment or education may support an intention to reside in Australia. However, the intention must be more than merely being a traveller or visitor who may supplement their savings by obtaining casual employment. Paragraph 49 also points out that a person staying for a short period (such as 4 weeks) just for the purpose of employment will still not qualify as a resident.

Note our double tax agreements have specific rules for exchange teachers and students.

Visas

Most overseas fruit pickers come into the country on a 12 months working holiday visa (class 417) that only allows them to work for up to 3 months for any one employer. The very nature of this visa does make it difficult for fruit pickers to meet the residency criteria of settled routine. Nevertheless, it is possible to still live at the one house for more than six months and have two different employers in the same area. Combine this with joining a social club and you are on your way to meeting the residency requirements. If you spend the majority of your time travelling you will not qualify as discussed above. If you are thinking of using the fruit picking circuit to see Australia you will not be settled enough to meet the residency requirements.

The Australian government has made it easier to extend your visas to allow you to work for one employer for up to 6 months and stay in Australia for another 12 months; up to a total of 2 years. The extra 12 months extension needs to be applied for after you arrive in Australia.

For more information about work visas go to www.dimia.gov.au

Rates of tax

Non Residents

If you are a non resident for tax purposes you are not charged the Medicare levy. Australian Tax Rates will change between the 2006 and 2007 financial year.

1-7-08 to 30-6-09		1-7-09 to 30-6-10	
$0 to $34,000	**29%**	**$0 to $35,000**	**29%**
$34,001 to $80,000	30%	$35,001 to $80,000	30%
$80,001 to $180,000	40%	$80,001 to $180,000	38%
Over $180,000	45%	Over $180,000	45%

In 2008 the tax rate is 29% on the first $30,000 then 30% on the next $45,000 and 40% on the next $75,000. If your Australian taxable income is over $150,000 it is then taxed at 45% on every dollar over.

Residents

Most residents are subject to a 1.5% Medicare levy plus an extra 1% surcharge if you have no private health insurance are single with no dependant children and your income exceeds $50,000. If you are a family the combined threshold is $100,000. New residents to the country who do not qualify for a Medicare card do not have to pay the levy. There are a few other exemptions such as members of the defence force, low income earners etc. Excluding the Medicare levy the resident rates of tax are:

1-7-08 to 30-6-09		1-7-09 to 30-6-10	
$0 to $6,000	**0%**	**$0 to $6,000**	**0%**
$6,001 to $34,000	**15%**	**$6,001 to $35,000**	**15%**
$34,001 to $80,000	30%	$35,001 to $80,000	30%
$80,001 to $180,000	40%	$80,001 to $180,000	38%
Over $180,000	45%	Over $180,000	45%

Note some rebates may apply to reduce the tax amount i.e. low income rebate of $750, zone rebates, dependant rebates, medical expenses rebates etc.

Withholding Tax

If your employer is aware that you are a non resident he or she should be deducting tax from your pay at the rate of 29%. Australian resident fruit pickers will only have tax deducted from their pay at the rate of 13%. Tax deducted by employers is only a method of collection, your true tax liability is calculated when you lodge your income tax return. If you have paid less than 29% on any of your Australian income you will be required to pay the balance at this time.

Superannuation

While you are working in Australia your employer should be making a contribution equal to 9% of your "ordinary times earnings" to an Australian superannuation fund on your behalf. Once you have left Australia you can apply to the superannuation fund to have the amount paid to you. It will be taxed at 30% so you may consider leaving it with the fund until you retire. Though if it is only a small amount its earnings may not exceed the fees charged. Before leaving your superannuation in Australia you should check the tax laws in your country of origin. You may find that the earnings on the superannuation will be taxed as if you actually earned the income yourself, even though the proceeds remain within the superannuation fund in Australia.

To arrange to withdraw your superannuation go to www.ato.gov.au/departaustralia once you have permanently left Australia.

New Zealanders regardless of the visa they come into Australia on are not entitled to draw their superannuation back out when they leave.

Deductions

Given the right circumstances fruit pickers are entitled to claim their meals, motor vehicle expenses and accommodation from the moment they leave home. To qualify they need to have a home base which can be a room at their parents or children's home. They also need to work at, at least two different places before they return home and they must not set up another home while they are travelling. Note this will work against any plans to qualify as a resident for tax purposes unless you have a family home in Australia. To substantiate your claim you will need to keep a travel diary and receipts.

Full details of the deductions available to fruit pickers are documented in our Claim Your Trip Around Australia Booklet which is under the free publications section on our website.

To be considered an Australian resident Summary

To be considered an Australian resident for tax purposes (except for unusual circumstances) you would need to have settled into a routine and home in Australia for 6 months. The visas issued to overseas fruit pickers only permit them to work for the same employer for a maximum of 3 months (though an extension of another 3 months can be applied for) and generally they use the fruit picking circuit as a method of seeing the country. This lifestyle would have to be modified considerably to qualify as a resident of Australia for tax purposes. Unless they do not meet the residency criteria of any other country they will generally not qualify as residents for tax purposes.

Non residents of Australia for tax purposes will be taxed at a minimum of 29 cents in the dollar. Farmers normally only withhold 13% tax from fruit picker's pay. They should actually withhold 29% if the fruit picker is a non resident. When a non resident fruit picker lodges his or her Australian tax return the ATO will request the rest of the tax. If the fruitpicker keeps diaries and receipts they may be able to claim their living and travelling expenses as a tax deduction against their fruit picking income. More details on this are available in our Claim Your Trip Around Australia Booklet.

Lodging your tax return

You can prepare the tax return yourself by going to www.ato.gov.au If you would like professional help from a firm specialising in this matter please contact one of the offices on the front page of this booklet. You may even consider contacting BAN TACS before you enter Australia and make arrangements to use their mailing address for your PAYG summaries so that when you have returned home they can still complete the tax return for you and e-mail your details of any tax owing or deposit refunds directly into your bank account.

Please note that BAN TACS will require an up front payment of $160 before work will commence on the preparation of your income tax return. If you are not claiming more than the basic tax deductions the $160 should cover the full cost of the return. Consider arranging and paying for your tax return before the 30th June in the year you work in Australia as your fee for the tax agent will be deductible against your Australian earnings. If you wait until after the 30th June the fee will be deductible against the next year's Australian earnings and as you will have none, will be of no benefit to you at all.

Becoming a temporary resident of Australia

New rules apply to temporary residents of Australia from 1st July, 2006, so the tax return these residents will be preparing very soon will be the first to be affected by these changes.

To qualify as a temporary resident you must meet all of the following three conditions:

1) Hold a temporary visa granted under the Migration Act
2) Have not and never have been an Australian resident as defined in the Social Security Act which defines a resident as residing in Australian and is either an Australian citizen, the holder of a permanent visa or the holder of a protected special category visa.
3) The taxpayer's spouse is not an Australian Resident as defined in point 2) above.

Based on the above I would doubt that a New Zealand resident would qualify as a temporary resident.

Temporary residents are still residents for tax purposes so they are entitled to the low tax rates applicable to residents but Australia will not be entitled to tax most of their foreign source income. TR 98/17 discusses

when you become a resident for tax purposes and there is a questionnaire on the ATO web site that can help you work out what applies to your particular circumstances
http://calculators.ato.gov.au/scripts/axos/axos.asp?CONTEXT=&KBS=resident.xr4&go=ok

Australia will not tax temporary residents on dividends, interest, rent, business income and royalties that have their source somewhere other than Australia. Temporary residents will be taxed on any capital gain they make either directly or indirectly on real estate in Australia because it is considered “Taxable Australian Property”. Shares in public companies in Australia or any overseas assets are not considered to be “Taxable Australian Property” so temporary residents will not be taxed on any gains made on these. More details on the definition of “Taxable Australian Property” are available in Division 855 of the 1997 ITAA.

Unlike permanent residents moving to Australia, temporary residents will not be deemed by our CGT laws to have purchased their assets, excluding “Taxable Australian Property” when they enter Australia. When they leave the country they are deemed to have disposed of these assets that are not “Taxable Australian Property” but any gain or loss is not taxable. It is important to note that the old rules apply to temporary residents that arrived here before 6th April, 2006. The old rules did not tax a capital gain on assets not connected with Australia of temporary residents, if they owned them before they came here or inherited them while they were here, if they were here for less than 5 years. The result will probably be the same but the old rules are not exactly the same so if applicable you should consider them in regard to your particular circumstances. If the asset is Taxable Australian Property no CGT event is triggered by leaving or entering Australia because tax will be payable on it when it is sold regardless of where the owner lives.

If a temporary resident becomes a permanent resident he or she is deemed to have acquired any assets that are not Taxable Australian Property at the asset’s market value when he or she becomes a permanent resident, unless the asset was originally acquired before 20th September, 1985 ie pre CGT.

While you are a temporary resident of Australia you will be taxed in Australia on all your employment income even if it is earned overseas. This would include income earned as a contractor if it is for your personal services even if the income is diverted through a family company or trust. Note that it is unlikely for foreign employment income to be caught because it is quiet likely that you won’t be a temporary resident while you earn it or that the 91 day rule would exempt it anyway. This section is probably only intended to catch the income of temporary residence if, as part of their Australian employment, they travel overseas for a short period of time, for example a meeting with members of the overseas parent company.

The controlled foreign entity rules will not apply to temporary residents

Medicare and Overseas Backpackers

The test to qualify for Medicare benefits (subsidised health care) is different to residency for tax purposes. People in Australia temporarily will generally not qualify for Medicare benefits. In some cases Australia has reciprocal medical arrangements with other countries. Check with your embassy.

New Zealanders are entitled to full Medicare benefits. If you do not have a Medicare card you will be charged a fee but you can take your passport to a Medicare office and claim back the refundable portion.

Paragraph 251U(1)(f) of the Medicare Levy Act 1986 ensures that people who do not qualify for the benefits do not have to pay the Medicare Levy even if they are residents for tax purposes. If you are a resident for tax purposes you will be automatically charged the Medicare levy when you lodge your tax return unless you utilise the exemption at item M1.

Tax returns for non residents on working visas

The Australian financial year runs from 1st July to 30th June. Non residence of Australia for Tax purposes are subject to a tax rate of at least 29% on their earnings in Australia. In the 2005/2006 year once their income exceeds $21,600 they are taxed at 30% until their income reaches $63,000 then it is taxed at 42% until $95,000 when it is taxed at 47%. This means that once their income exceeds $21,600 non residents are subject to the same rates as residents but no Medicare levy. There is considerable advantage in being a resident for tax purposes because the first $6,000 you earn per year (pro rata if only a resident for part of the year) is tax free and the next $15,600 is only taxed at 15%, plus Medicare levy of 1.5% if applicable.

International students doing a course that exceeds 6 months are considered residents for tax purposes but due to the conditions of their visas it is very difficult for visitors on a working holiday visa to qualify as residents.

For a quick test on whether you are a resident go to:
http://calculators.ato.gov.au/scripts/axos/axos.asp?CONTEXT=&KBS=resident.xr4&go=ok

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You can prepare the tax return yourself by going to www.ato.gov.au If you would like professional help from a firm specialising in this matter please contact us. You may even consider contacting BAN TACS before you enter Australia and make arrangements to use their mailing address for your PAYG summaries so that when you have returned home they can still complete the tax return for you and e-mail you details of any tax owing or deposit refunds directly into your bank account.

Please note that BAN TACS will require an up front payment of $160 before work will commence on the preparation of your income tax return. If you are not claiming more than the basic tax deductions the $160 should cover the full cost of the return. Consider arranging and paying for your tax return before the 30th June in the year you work in Australia as your fee for the tax agent will be deductible against your Australian earnings. If you wait until after the 30th June the fee will be deductible against the next year's Australian earnings and as you will have none, will be of no benefit to you at all.

Saving Tax on Your Investment Property – The Book

"Every investment property tax-related question you've ever wondered about is answered here and – perhaps more importantly – the ones you didn't think to ask but should have! For property investors who want to refine their strategy for maximum gain, this resourceful handbook will make a great constant companion." Eynas Brodie, Editor, Australian Property Investor magazine.

Combining Noel Whittaker's easy reading style with Julia Hartman's mind numbing attention to detail was a major challenge which ran way over schedule but it is finished, printed, and in the book stores. You can also purchase it online by going to: www.bantacs.com.au/property.php. The cost is $29.95 plus $5.95 postage – tax deductible of course!

Ask BAN TACS

For $39.95 you can have your questions regarding Capital Gains Tax, Rental Properties and Work Related Expenses answered. For your Accountant, we will include ATO references to support our conclusion. Just go to www.bantacs.com.au and look for the Ask Bantacs link under 'Most Popular' on the home page.

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