

NEWSFLASH

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+Welcome to the BAN TACS News Flash. Our aim is to provide short but succinct updates on all tax issues

Noel Whittaker's Column

Investors love to buy anything that appears to be in a permanent up trend. This is why gold has become the flavour of the month as everybody rushes to get on board before it doubles in price again.

Gold has never been a favourite of mine because the price depends entirely on investor expectations - if the majority of traders think the price will rise and they all start to buy, gold prices will go up. Conversely a pessimistic mood in the market will cause prices to fall.

Warren Buffet is one of the world's smartest investors - this is what he thinks about gold. "If you took all of the gold in the world it would make a cube roughly 67 feet on each side. At today's prices that cube of gold would be worth about \$7 trillion - probably about a third of the value of all the stocks in the United States".

Buffet summed up the difference between investing in gold and investing in productive assets. If he chose the gold all he could do would be to look at it, touch it and fondle it occasionally. If the alternative was all the farm land in America including all the cotton, corn and soy beans and seven ExxonMobiles and in addition \$1 trillion of walking around money "you might call me crazy, but I would take the farmland and the ExxonMobiles anytime".

I have never heard it put better. When you buy gold you are doing nothing more than having a flutter on a commodity price and hoping you will be lucky enough to buy on the up trend. In contrast, investing in blue chip shares gives you the opportunity to share in the profits of well run businesses that are growing as the economy does. Best of all they pay you an income that you can re-invest or spend.

Noel Whittaker is a co-founder of Whittaker Macnaught Pty Ltd. His advice is general in nature and readers should seek their own professional advice before making any financial decisions. His email is

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Trust Streaming

Don't be concerned if your Accountant has not sent you a letter suggesting you have your trust deed reviewed in view of the trust streaming provisions and the decision in Bamford's case. The absence of this suggestion may actually mean your accountant is more pro active than those that send out a form letter to all clients with trusts.

You see there are many reasons that you may not need a review, yet. Sure a review is necessary to ensure you can take advantage of every tax planning opportunity in the future but if those strategies are not of use to you in the next year or two then delaying the review is recommended because the current trust streaming provisions are only temporary. Further, considering that minors are no longer allowed to utilise the low income tax offset, trust distributions to children are far less relevant so there is not so much need for fancy wording in the distribution minute to try and prevent the children receiving additional income should the ATO conduct an audit and increase the taxable income of the trust.

In short, the vast majority of discretionary trust owners will not be utilising any strategies needed to combat the current array of changes to the taxation of trusts so it is best to hold off reviewing the deeds until the changes have all finished.

Claiming Clothing

Way back in 2002, 10 taxpayers took to the court the ATO's view of what is tax deductible for protecting yourself while working. We are telling you this because several new clients didn't even keep receipts for their heavy duty clothing as they had been told by their previous accountant they couldn't claim for anything unless it had a logo on it. This is not even the case when it comes to a uniform. The logo does not have to be on every item of clothing. If a strictly enforced uniform policy that includes a logoed item, dictates the colour, style and type of the other items then these more conventional items can still be claimed as a tax deduction and you can claim for their cleaning. An example would be when the strictly enforced uniform policy specified black tailor slacks to be worn with a logoed shirt.

The point is that you should not confuse the uniform rules with rules relating to deducting expenditure on items that protect you or your conventional clothing. The latter being overalls, aprons, lab coats etc. Just for the record you can also claim for occupationally specific clothing such as a chef's chequered pants.

The case in 2002 that we are referring to, is *Morris vs FCT 2002 ATC 4404* which was all about sun protection. The taxpayers won on the basis that the sun protection allowed them to work outside for longer periods and was necessary to protect them from harm i.e skin cancer, a danger that applied because their job involved staying outside for long periods of time. The ATO's unsuccessful argument was that protecting yourself from the natural environment was a private expense. The point that came from *Morris* case is that protecting yourself from risk of injury while working is tax deductible.

After its loss in the courts the ATO issued TR 2003/16 which sets out the type of clothing that it considers protective and therefore does not require a logo or a uniform policy to qualify for a tax deduction. Examples are anything that includes reflective high visibility material, heavy duty fire resistant work wear such as your classic long sleeved king gee shirts, trousers and non slip shoes. Interestingly the ruling specifically excludes jeans despite their durable protective nature. Though, we expect that a few rows of reflective material would change this.

Note there is a condition that there must be a related risk at work. So if you work all day in an office in the city, wearing high visibility clothing will not be deductible.

In paragraph 3 of TR 2003/16 it states that protective items' means items that, according to their design properties and practical application, protect you against illness or injury. The following is an extract from the ruling that considers the circumstances and appropriate protective items – it is expected that more than just one point would apply.

- you are required to work in an environment which could be harmful if adequate safety precautions are not taken;
For example - do you work in extreme weather conditions?
- the use of the item in the work place makes it unsuitable for private or personal use;
For example - does your protective work clothing become so soiled in protecting you at work that it is unsuitable to wear to and from work?
- expenditure on the item is additional to your normal private or domestic expenditure on such items;

For example - do you need to wear additional protective clothing at work to guard against risk or injury from extreme weather or other potentially unsafe conditions?

- the item is qualitatively different to items of a comparable nature used privately or domestically; For example - is the item made to cope with more rigorous work conditions?
- you use the item principally for income producing activities; For example - do you use the item only at work or, if there is some private or domestic use, is this use only incidental to its main use at work?
- It is a requirement of your employer, work-related safety laws or an industrial agreement for you to use protective items; For example - does your industrial award provide for payment of an allowance for you to purchase protective items for use at work?
- the use of the item adds to your workplace productivity; and For example - does your use of the protective item enable you to work for more sustained periods?
- any other feature of your use of the item for protective purposes which may further indicate your expenditure on that item has the essential character of an outgoing incurred in gaining your assessable income.

Paragraph 38 requires that there be a material risk of injury or illness at you workplace and the protective clothing you wear provides a sufficient degree of protection against that risk. Then at paragraph 39 it lists the indicators that the item of clothing is protective rather than conventional

- is made to cope with more rigorous conditions, where conventional clothing would be inadequate;
- is designed to protect you - for example heavy duty shirts and trousers, as distinct from ordinary cotton drill trousers, shorts and short sleeve shirts that may be regarded as work wear but do not offer the degree of protection necessary to give expenditure on such items the character of a working expense; and
- has a density of weave which gives a UV rating sufficient to protect you from the sun where your job requires you to work outdoors.

Examples are given in paragraph 40:

- fire-resistant woollen clothing for protection against intense heat and flying sparks of metal from a blast furnace and which were so soiled as to be unsuitable for use outside work: Case A4569 ATC 270; Case 24 15 CTBR (NS) 161;
- waterproof jacket, woollen jumper and thick socks which were worn only when working outdoors during winter in an alpine area: Case V79 88 ATC 550; AAT Case 4353 (1988) 19 ATR 3504;
- special cold room gear or thermal clothing for working in cold rooms;
- sunhats for protection from the risk of injury or illness from exposure to the sun while carrying out income earning activities: the Morris Case;
- safety coloured shirts or vests (e.g. when used to direct vehicles in a road works area);
- aprons and overalls worn to stop you coming into contact with harmful substances; and
- lead aprons worn to prevent exposure to X-rays.

The ruling finishes off with several examples the most relevant being:

Example 5

48. Bob from the previous example at other times wears heavy denim trousers, steel capped boots and a hard hat when working at the building site. The inherently protective nature of these items means that the essential character of their use is more concerned with meeting Bob's needs for protection at work than with his requirements of modesty, decency and warmth. As the expenditure is not private or domestic in nature and there is the necessary connection between the expenditure and Bob's income earning activities, he can claim a deduction for the cost of these items.

Just because you can't claim a deduction for conventional clothing does not mean that you can't claim for cleaning it. Cleaning and even replacement can be claimed if there is abnormal wear and tear. This deduction is generally ignored by the ATO in their publications but there is just a hint of it in TD 93/232

which states “expenditure on laundry associated with a proven claim for excessive expenditure on clothing. The courts have also supported this position, for example in:

Case M28 80 ATC 187 the senior member stated – “expenditure resulting from excessive wear and tear due to the nature of the occupation is deductible.

Westcott v FC of T 97 ATC 2129 – Where a head waiter was allowed the cost of dry cleaning his black trousers because of the frequent staining of food and wine and that dry cleaning was the only way the stains could be removed.

So if you are in an occupation where you choose to still wear conventional clothing but the nature of your work ruins the clothes or makes them difficult to clean or makes such a mess of them that you have to change into other clothing to travel home then you will qualify for cleaning them and possibly even replacing them. It is all just a matter of being abnormal.

Seminars

October is Investor Education Month In Mackay

Every Tuesday Night there is *FREE* Seminar for Investors

Get the answers DAMN STRAIGHT from our panel of professionals and specialists in their field of expertise at no cost to you.

4th October - Panel of 6 Professionals and Specialists

This is a service money cannot buy. Use their knowledge to answer your questions about Tax, Loans, Financial Planning, Property Law, Real estate and Personal insurance

Julia Hartman-Accountant, Michael Rossiter-Real Estate Agent, Kim Evetts– Financial Planner, Gail Roots-Home Loan Specialist, Anna Dutton-Conveyancer, Steven Schill-Personal Insurance

11th October - Spruiker Proofing your Life

Gain the knowledge to protect yourself against the Investment Sharks

Julia Hartman and Paul Wilson

18th October - Claimable Loans and Interest

Losing tax deductibility is easier than you think. We will help you avoid the traps.

Julia Hartman and Gail Roots

25th October - Self Managed Superannuation Funds

Learn more about combining the best asset protection with the best tax concessions

Tanya Read, Julia Hartman and Kim Evetts

Presented by: The Home Loan Specialists and Bantacs, to book your seat please call 07 4957 5244.

Venue: Mackay City Bowls Club, Shakespeare Street, Mackay Time: 6pm to 7.30pm

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Disclaimer: Please note in many cases the legislation referred to above has only just passed through parliament. The full effect is not clear yet but it is already necessary to make you aware of the ramifications despite the limited commentary available. On the other side of the coin by the time you read this information it may be out of date. The information is presented in summary form and intended only to draw your attention to issues you should further discuss with your accountant. Please do not act on this information without further consultation. We disclaim any responsibility for actions taken on the above without further advice as to your particular circumstances.