

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

Claiming Home Office Expenses

The ATO allows you to claim 34 cents per hour for each hour you spend working in your home office. This amount is to cover electricity and wear and tear on furniture, carpet etc. It is not necessary that you have to work at home because you don't have an office elsewhere. To make this claim you can simply have chosen to work at home. Phone calls, internet, computers and printers can also be claimed but utilizing the 34 cents per hour rate will prevent you from being able to depreciate the furniture in your home office.

If you have purchased furniture this year you may be better off claiming actual costs rather than the ATO's hourly rate. If you choose to do so here is some information that will help you calculate how much you can claim for the electricity. A computer costs about 5 ½ cents an hour to run and a fluorescent light about 3 cents an hour. The cost of running an air conditioner varies depending on the kilowatt input figure. To be accurate you should multiply the kw input figure by the rate you are charged per kilowatt for your electricity. As a general guide air conditioners cost around 17 cents an hour to run.

Before you can make any claim for all these home office expenses you need to keep a diary for one month showing how many hours the office is used for work related purposes, this includes managing your tax affairs and investments. In the case of equipment and furniture the diary will also need to show the ratio of deductible to nondeductible use so the expense can be apportioned.

Australian Government Sweat Shops

It made news in January that Apple had to admit that some of its suppliers were breaching its standard of a maximum 60 hour work week and minimum one day off per week. As I prepare my BAS and deal with various other government shackles placed on small business owners, how I wish that the Australian Government had a similar policy.

Column by Noel Whittaker

Falling interest rates give borrowers a chance to shorten the term of their loan. This is why I have always recommended that you maintain your current repayments whenever an interest rate cut is announced.

This is why I was surprised to read that a major Australian bank has received adverse publicity in the media for not notifying their borrowers that they had the option of reducing their repayments, now that the rate being charged on their loan had dropped.

The bank should have been commended, not criticised.

Keeping the payments at their present level does more than shorten the term of the loan - it also gives you a safety buffer if rates rise, or you find yourself in a tough financial situation because of unemployment or sickness.

Remember, even though interest rates appear to be in downtrend now, it is a fundamental principle that interest rates move in cycles. There is no guarantee that interest rates in two years will not be higher than they are today.

A cut of .25% is worth about \$5 a week for every \$100,000 you owe. This is just \$15 a week on a \$300,000 mortgage. Surely that money is better reducing the principal, rather than going into your pocket, where it is almost certainly going to be frittered away.

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 noelwhit@gmail.com

Problems Buying A Second House Through A SMSF

As readers are no doubt aware you cannot use the equity accumulated in the first property owned by a SMSF as a deposit for another property.

Now to buy another property you are going to need, at least a 20% deposit so you will probably have to save up around \$100,000 before buying the next property. The question is what can you do with these savings over the several years that it will take to accumulate \$100,000? At the start you may invest it in shares but Noel Whittaker recommends that you should aim to hold shares for around 5 years. Most of the savings will be held for too short a period to make shares worthwhile. This probably just leaves holding the money in a term deposit. The trap is that you cannot maximise the return on the savings by paying off your first investment property because you will not be entitled to redraw it. This probably means the money is earning two percent less than you are paying!

A solution would be an offset account. Do any of our readers who are brokers know if there are any lenders to SMSFs that provide offset accounts? It seems to me that there is a great need for these in SMSFs. If you know of such a product could you please post it on our forum or contact julia@bantacs.com.au

Refresher on APSI or 80/20 Rule

The Alienation of Personal Services Income (APSI) laws are intended to prevent contractors splitting income from personal exertion. Since its introduction several contractors have tested the APSI rules in the courts with no success. The legislation is very specific.

This is a brief summary, the full detail is available in our booklet

www.bantacs.com.au/booklets/Alienation_Of_Personal_Services_Income_Booklet.pdf

You can be caught by the APSI rules even if less than 80% of your income is from one source. The test really is whether you earned income from at least two unassociated to you or each other, sources, due to advertising, making offers to the public or word of mouth, you will not be caught by APSI. Here are the circumstances, at least one of which is necessary to avoid being caught by the APSI rules

- The invoice is primarily for the supply of goods, or equipment has a major part in providing the service such as a truck owner driver
- In at least 75% of the circumstances the contract is to produce a result, supply plant and equipment or tools of trade (if it is normal in your industry to have tools) and liability for the cost of rectifying defective work or liability for damages remains with the contractor
- Except for unusual circumstances, you would have earned income from at least two unassociated to you or each other, sources, due to advertising, making offers to the public or word of mouth
- You employed an apprentice for at least half the year

- Business premises were maintained at all times during the year (or if not, for unusual circumstances) which were used almost 100% to produce income for the contract in question? Note these premises need to be physically separate from any premises used by an associate or customer or your home. In the Explanatory Memorandum using a shed in the backyard of the home of the brother, of the owner of the business was not considered to be physically separate. The draft ruling implies that a shop with residence above would be considered physically separate
- non associates perform at least 20% of the market value of the work for that year or if not, only because of unusual circumstances.

If you are caught by the APSI rules you cannot claim a deduction for payments made to associates, unless the work they perform directly relates to the principal work provided to customers or clients. Section 85-20 makes it clear that if it is any payment to an associate, it could be for the purchase of goods to use in your business.

The legislation states:

SECTION 85-20 Deductions for payments to associates etc.

85-20(1) You cannot deduct under this Act:

- (a) any payment you make to your associate; or
- (b) any amount you incur arising from an obligation you have to your associate; to the extent that the payment or amount relates to gaining or producing your personal services income.

85-20(2) Subsection (1) does not stop you deducting a payment or amount to the extent that it relates to engaging your associate to perform work that forms part of the principal work for which you gain or produce your personal services income.

85-20(3) An amount or payment that you cannot deduct because of this section is neither assessable income nor exempt income of your associate.

Section 318 defines associate to include spouse, children, related business etc, but it also includes a relative of the natural person, so, if you buy your stationery from your cousin, then you cannot claim a tax deduction for it! In fact the definition of associate goes even wider than this with trusts, but to the extent that it is unlikely the court would enforce it in relation to section 85-20.

Nevertheless, it shows that our legislation is not well scrutinised before it is passed through parliament, and that Treasury has no hesitation in pushing through, catch all wording so taxpayers are left in a state of not being able to operate normally without fear of the ATO. In general the APSI rules are intended to prevent a contractor being entitled to any more tax deductions than an employee, so you may be able to argue that employees are entitled to a tax deduction for stationery purchased from their cousin. Nevertheless persuasive argument has very little chance of standing up against specific words in legislation.

Don't think that the ATO would not use its powers so unfairly. It does so all the time. Even when it doesn't get its own way it continues to use taxpayers' money to appeal through the courts while fining the taxpayer as much as possible so that eventually they can no longer afford to fight. And it just doesn't happen to the bad people. Back in the 80's they denied a minister of religion tax deductions for his car because he had not signed every entry in his log book. In court the judge said that there was no doubt the minister undertook the trips for work related purposes but the ATO had him on a technicality and the judge had to rule in accordance with the law, so the minister lost his case.

The ATO is getting just as carried away with Part IVA, using it to tell taxpayers when they can buy or sell shares without it being a scheme to create a capital loss. In TD2011/D8 they are requiring taxpayers to give first priority from their cash flow including wages to make the loan repayments on a rental property with no consideration that they may have other more pressing expenses such as food. Then there are their bullying tactics, look at what they did to Paul Hogan, wouldn't let him leave the country when he came back for his mother's funeral and then they had to drop their whole case against him as they had nothing of substance on him at all.

Why are they getting away with this? I'm sure people care about this but are just too busy. We really can't afford to let the ATO continue getting bolder. It is time they were reminded they are public servants not public nuisances. Please take the time to write to the newspapers, your local Federal member, the taxation ombudsman and the ATO complaints department. Maybe we can get accountability of the ATO as a Federal election issue next year.

Looking to Capitalise on the Mining Boom?

<http://www.abc.net.au/news/2012-02-11/coal-mines-given-significant-project-status/3824662> Has an article on two new mines west of Hervey Bay. They have an expected life of 25 years and should employ 1,000 people.

Booklet Advertising

Downloading our free booklets from our web site is becoming more popular, in fact the growth in downloads of booklets has exceeded the growth of any other area on the web site. Most booklets have experience at least a 50% increase in downloads in the last 6 months. What is even more amazing is the growth of our CGT booklet. The downloads of our CGT booklet have increased over the last 6 months by over 135%. In January it was downloaded 1,758 times which is amazing considering it is more than 60 pages long.

It only costs \$1,000 per year to place a half page ad on the front of the CGT booklet and it is the only ad in the booklet. Now is a chance to lock into the future growth as well, before the prices are re appraised in June. Considering the amount of time a reader will spend on the booklet after it is downloaded it may provide exceptional exposure.

Forum Improvements

We have had a lot of problems with robots registering on the forum. Hopefully the latest list of gate questions will fix this but for those who are not into politics the answer to the question is

Labor

Julia Gillard
Wayne Swan
Kevin Rudd

Liberal

Tony Abbott
Malcolm Turnbull
John Howard

If you have had trouble gaining access please try again or email Julia@bantacs.com.au

Where is Julia?

Still at home, still not got own accounts up to date! Recently my email laptop died so I lost a lot of email addresses and some saved emails. So if you are still waiting on a reply from me, please resend your email.

Ask BAN TACS

For \$59.95 at [Ask BAN TACS](#) you can have your questions regarding Capital Gains Tax, Rental Properties and Work Related Expenses answered. We will include ATO references to support our conclusion.

What Is New on www.bantacs.com.au

Want more? Please go to www.bantacs.com.au/publications.php for back issues of newsflash or download our free booklets where past newsflash articles are collated according to their topic.

With the forum and askbantacs notice board the information on the site changes daily but here is a list of significant changes in the past couple of weeks:

The Forum – We have a new section called Product and Services Review where Julia details what she has found out about the Dux heat pump hot water system. www.bantacs.com.au/forum/ Please consider helping other home owners by sharing what you know.

Notice Board – Two askbantacsers have kindly agreed to have their question made public on the notice board. www.bantacs.com.au/QandA/index.php?q=358 is about the best entity to own a property with development potential and www.bantacs.com.au/QandA/index.php?q=357 looks at the problems of buying a commercial property as a going concern so there is no GST charged.

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.