NEWSFLASH

Visit us at www.bantacs.com.au
For website technical support email technicalservices@bantacs.com.au
For all accounting & tax support contact one of our offices or just go to www.bantacs.com.au/ask-bantacs.php

BAN TACS Accountants Pty Ltd

BAN TACS Accountants Pty Ltd is a CPA Practice

Issue Number: 273 Pages: 4 Date: 15th July, 2013

Queensland

Gold Coast ***PNA***
Phone : (02) 6736 5383
E-mail: goldcoast@bantacs.com.au

Mackay ***CA***
Phone: (07) 4957 8340
E-mail: mackay@bantacs.com.au

Ningi (Bribie Island Road) ***CPA***
Phone: (07) 5497 6777
E-mail: ningi@bantacs.com.au

Stanthorpe ***PNA***
Phone: (07) 4681 4288
E-mail: stanthorpe@bantacs.com.au

Toowoomba ***CPA***
Phone: (07) 4638 2022
E-mail: toowoomba@bantacs.com.au

New South Wales

Burwood ***CPA***
Phone: 1300 367 688
E-mail: burwood@bantacs.com.au

Central Coast ***MNIA***
Phone: (02) 4390 8512
E-mail: centralcoast@bantacs.com.au

Tenterfield ***PNA***
Phone: (02) 6736 5383
E-mail: tenterfield@bantacs.com.au

Victoria

Geelong ***CPA***
Phone: (03) 5222 6962
E-mail: geelong@bantacs.com.au

Melbourne ***CPA***
Phone: (03) 5222 6962
E-mail: melbourne@bantacs.com.au

South Australia

Adelaide ***CPA***
Phone: (08) 8352 7588
E-mail: adelaide@bantacs.com.au

*Visit **Bantacs.com.au** About Us section to view office location details and information about BAN TACS practitioners.*

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

Start Log Books Now!

The government has just announced that it will abolish the statutory method of calculating the fringe benefits tax (FBT) on cars provided to employees by their employer. No details are available yet. The only other method of calculating the portion of car expenses that are not subject to FBT is the log book method. As the law currently stands if they simply remove the statutory method, employer provided cars will be subject to FBT at 46.5% of the grossed up value of all the costs associated with running the vehicle including depreciation and notional interest, unless a log book has been kept for 3 months. Grossing up means that the tax will be roughly the same as the running costs of the vehicle.

This will also apply people with their own business that operates through a company or trust. Even sole traders and partnerships if they provide their employees with the use of a car. In short, unless the car you drive is simply owned in your personal name and not used by your employees, you had better start a log book now. They have to be kept for 3 consecutive months. That is quite a challenge, to remember to make an entry every time you drive the car, it will take some practice to get it right 3 months in a row.

For details on keeping a log book go to pages 3 to 5 in our Claiming a Motor Vehicle Booklet. www.bantacs.com.au/booklets/Claiming_A_Motor_Vehicle_Booklet.pdf

Employee or Contractor

Getting this wrong will land the payer (employer) in all sorts of hot water. It is not just about whether you should deduct tax from the payments but also whether you are liable for the superannuation guarantee and workers compensation.

Payers/employers usually feel comfortable if they are making payments to a company or a trust. Recent cases have shown this is not enough if the contract stipulates that the service be provided by a particular person. And as has always been the case if the contractor/employee is simply paid for hours worked rather than producing a result, the contract will be considered one of employment not contracting.

Column by Noel Whittaker

The age pension thresholds and the deeming rates changed on 1 July.

The asset cut-off points for a homeowner couple are now $1,092,000 - for a single pensioner $735,750. The income test cut-off points are $70,553.60 per annum for a couple and $46092.80 for a single.

Financial assets are now deemed to be earning 2.5% for the first $77,400 ($46,600 for singles), and 4% on the balance. For example, if a couple had $300,000 of financial assets their deemed income would be $10,839 a year being 2.5% on $77,400 ($1935) and 4% on $222,600 ($8,904). These include interest bearing deposits, debentures, shares, share trusts, and friendly society and insurance bonds. However, it does not include property, and money in account-based pensions.

The changed rates should mean a pension increase for most part pensioners, and it may mean that people who were previously ineligible may now qualify for a part pension. There is an important message here for holders of the Commonwealth Seniors Health Card – they are the ones most likely to find themselves now qualifying.

Even though the part pension may be small it does entitle you to most of the prized concessions.

Your superannuation is not counted until you reach pensionable age. We often encounter situations where the husband may be 65 or more and where the wife less than 60. Wherever possible we encourage as much superannuation as possible to be held in the wife's name, as it is not counted by Centrelink, and this enables the husband to maximise his pension.

Noel Whittaker is the author of Making Money Made Simple and numerous other books on personal finance. His advice is general in nature and readers should seek their own professional advice before making any financial decisions. Email: noelwhit@gmail.com

Salary Sacrificed Cars

The statutory method of calculating FBT on cars is about to be abolished. This method always assumed a certain amount of business use even if there was none. Accordingly, it was attractive to salary package a car that had no business use at all. This is no longer the case.

It appears that the only way FBT will now be calculated in these circumstances is to simply take all the actual costs including notional interest and depreciation, gross them up (basically double them) then charge tax at 46.5%. The tax can be reduced to the employee's marginal tax rate being applied to the actual costs plus depreciation and notional interest by making an employee contribution.

We suspect these changes will destroy the salary sacrificing industry and certainly recommend that do not enter into any salary sacrifice arrangements until this has all passed through legislation and we know just what to expect. As salary sacrificing involves entering into a lease arrangement it is important that you do not lock yourself in. For those who are already in a salary sacrificed lease arrangement, don't panic there may be some transitional concessions.

Changing Main Residences

A reader was recently very surprised to find out just what a huge tax mess he had got himself into because when he moved from his old home into something bigger and better, it took him more than 6 months to sell his old home.

This is a terrible trap in the CGT legislation. You are only allowed to cover both properties with your main residence exemption for 6 months, back dated to the last 6 months before you sell your old house. But there are other conditions such as the old house must not be used to produce income while you are not living there and it must have been used as your home for at least 3 months in the last 12 months before its sale. This means that if the period in which you hold both properties is for longer than 9 months after you move into the new home you will not be entitled to the 6 months overlap concession at all.

Further, there is no resetting of the cost base to the market value when you first moved out because that section requires it to become income producing. So you are stuck with a choice to expose to CGT your new house or your old house for any period exceeding the 6 months. The one you choose to expose will have to have its capital gain calculated for the whole period you owned it and then apportioned between days covered with your main residence exemption and days not. If you purchased the home after 20th August 1991 you will be entitled to increase the cost base by anything associated with holding it, even maintenance such as cleaning and lawn mowing.

Paying Yourself Travel Allowance or LAFHA

Of course you can only pay yourself an allowance if you employ yourself. This would require you to set up a company or a trust and invoice the people who pay you. The ATO allows people who employ themselves through a company or trust to pay themselves the concessional taxed Living Away From Home Allowance (LAFHA) and Travel Allowance. This is the case even if the income is from personal services and caught by the "80/20" rule. (Reference TR 2003/10 and Garret v FCT 82 ATC 4060).

MT 2030 attempts to define when you are travelling for work or living away from home. The definition has not been that important in the past because both allowances provided some very generous tax concessions. Now that the opportunity to qualify for a living away from home allowance (LAFHA) has been considerably reduced, it is far more important to understand the line to which a travel allowance can be pushed. You might think that if you pay yourself a travel allowance and the ATO take the view you were really living away from home, it should not be a problem because you can instead call it a LAFHA. After all you appear to qualify because you still have a home to go back to and you are away for less than 12 months. This might be ok the first time that you go to that location but the catch is you cannot claim a LAFHA for any subsequent visit to the same site.

Now back to the travel allowance, MT 2030 suggests that over 3 weeks in the one place means you are no longer travelling but have relocated ie are living away from home. This does seem a little ridiculous that you could go somewhere for just a month and the ATO could argue that you have set up a new home. Wish they would take that attitude when taxpayers travel overseas.

TR 98/9 seems to take a more practical view at example 6 it takes the boundary as far as somewhere less than 6 months but examines whether the traveller is accompanied by their family and the type of accommodation they stay in.

Don travels to London to undertake a 3 week course of study to maintain and improve knowledge relevant to his income-earning activities. He stays in hotel accommodation until the end of the 3 week period when he decides he should extend his stay and complete a more extensive 6 month course of study. He rents an apartment and arranges for his family to join him in London. Expenditure on accommodation and meals during the initial 3 week period is deductible as Don is away from home. However, depending on all the relevant facts, Don may be considered to have established a new home for the period of his stay in the apartment with his family.

It seems that a more realistic view would take into account not just the time spent away from home but also the type of accommodation and whether your family are with you.

Let's now look at the situation when you are self-employed and have to travel to fulfil your contract obligations. If you only have one work location before you return home and the contract is undertaken at the payer's premises then no matter how far you travel it is simply considered home to work travel so not deductible in most cases.

You will need to be able to show that you have a base of operations, where you regularly work, other than the place you are travelling to. This may be a branch of the other party to the contract that is near your home. Then when you travel interstate to say co-ordinate the networking of all their computers the interstate travel would be deductible, subject to the discussion above about setting up a new home, but the travel from your home to the local branch would not be deductible unless there is something else causing the travel such as carrying bulky equipment in your vehicle.

Ideally, you need to argue that your home is your regular place of employment and that it qualifies as a place of business, not just somewhere you work for convenience. This will allow you to claim any travel from there (except if it is to another job as a wage earner) to client premises. Features that will identify your home as a place of business are seeing clients there, having an area of the home clearly set aside for the business and not used for other purposes, signage and not having another place where you can work.

Claiming that your home is your regular place of employment will probably qualify it as a place of business (refer TR 93/30 for more discussion on this). This is great news if you are renting because you can claim part of your rent. If your home is a place of business then you are not entitled to cover the area used by the business with your main residence exemption. You may be able to use the small business concessions to eliminate the CGT anyway but the catch is it is not a straight out exemption like the main residence exemption. To utilise the small business concessions you must keep all your records and actually calculate the capital gain before applying the concessions to reduce it

Travelling Workers

The above discussion may worry our travelling workers as to whether they will still be considered travelling for work when they stay in one place for up to 6 months.

It is a bit of a concern and it would be great if you could move on every 3 weeks even if staying in the same location but working in a different place even if it is for the same employer. If that is not possible I would not be too concerned. Unlike the case stated above you do not have just one workplace, you have at least two workplaces before you return home. The basis of your claim is that your work is itinerant and the main ruling on that, TR 95/34 has not been changed
www.law.ato.gov.au/atolaw/view.htm?DocID=TXR/TR9534/NAT/ATO/00001

As you can see from the example below from the ruling it is open to interpretation whether your workplace has become a regular or fixed place of employment. So the more irregular the better. It is also important that you are staying in temporary accommodation.

*43. **Example:** Valerie is a fruit picker. She does not have a regular circuit, but organises her next job before completing the work at the current farm. Valerie normally works and lives at many properties before returning home, remaining at each farm for two to three weeks. Valerie is engaged in itinerant employment because:*
***(a)** her employment has a web of work places; and*
***(b)** There is continual travel from one farm to another before returning to her normal place of residence.*
44. Although each case must be considered on an individual basis, the frequency of travel between work sites is an important element. What needs to be determined is whether the length of time spent at a work site qualifies it as a regular or fixed place of employment. This will be a matter of fact.

CGT Calculation

If you have sold a property this year that is subject to CGT you may find our CGT calculator a useful guide in collating the information your Accountant will need.
www.bantacs.com.au/shopping_property_cgt.php

Where is Julia?

In Sydney, then she is heading out to Orange, Dubbo and back north as fast as she can peddle, all the way to Mackay for the rest of the winter.

Julia's internet laptop died recently and some emails have been lost, if you are waiting for a reply please send your email again.

Booklets

To make space for some future webinars on our home page the link to the booklets has been moved to the horizontal menu along the top of the page.

Ask BAN TACS

For $69.95 at Ask BAN TACS, www.bantacs.com.au/ask-bantacs.php, 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. There are over 30 topics, for example How Not To Be A Developer, Claiming Your Trip Around Australia As A Tax Deduction, Claimable Loans, Rental Properties, Overseas, FBT, Claiming a Motor Vehicle, GST etc.