

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

Buying Non Residential Property In Your SMSF

Your SMSF can only purchase real estate from you if it is solely used in a business, not necessarily your business. The legislation uses the term “wholly and exclusively”. Regardless of whether the SMSF purchases the property from you or anyone else you cannot use the property for private purposes unless it is a farm or motel, something where the residential accommodation is minor and related to the business operations. Note that if your SMSF owns a holiday unit, even one leased back to a resort you cannot even stay one night in the unit. So if you go there for a holiday make sure the resort gives you one that you do not actually own and you pay for it.

SMSFR 2009/1 is the ATO ruling on these issues

<http://law.ato.gov.au/atolaw/view.htm?DocID=SFR/SMSFR20091/NAT/ATO/00001>

Providing the private residential area of the farm is less than 2 hectares members of the SMSF are allowed to live there and if already owned by the member the SMSF is permitted to buy it from the member. Note 2 hectares residential use of a small farm would not qualify for the concessions.

Here are some extracts from the ruling:

The 'wholly and exclusively' threshold will be met if:

- the area containing the dwelling and used primarily for domestic or private purposes does not exceed 2 hectares; and
- the domestic or private use is not the predominant use of the property.

SMSFR 2009/1 also so allows the ‘wholly and exclusively’ test to be met when part of the land is not used for any purpose at all. It is a matter of examining only the part of the property that is actually in use. But of course the more of the land that is not used the less likely that business use is predominant over residential use.

Column By Noel Whittaker

By now, the joy of welcoming the New Year may have been replaced by frustration that all the resolutions made so earnestly just a few days ago are starting to look a little shaky.

The fact that you made a resolution means you know it's important to make changes in your life - the way to make that happen is to set goals. They work because, once you set a goal and work toward it, the achievement of that goal becomes your dominant thought.

First, look forward 20 years, and imagine your future if you don't improve your money management skills. Every week will be a growing struggle to pay bills, each interest rate rise a nightmare and you will face years of waiting if you need major surgery. Now imagine the opposite – a house paid off giving you free rent for life, a growing investment portfolio, freedom to travel, and the ability to have the best medical health if it becomes necessary

Gaining financial independence is a matter of putting aside part of your current income and investing it to be used in the future. Obviously to do this you must be spending less than you earn, so the first step is to do a simple budget to find out exactly where you stand. It's only a matter of listing your income on one side of a piece of paper and your expenditure on the other.

You will probably know what the outcome will be before you do the figures. If you are spending less than you earn you will have no pressure on your finances and should be investing regularly, if you are line ball you are probably just getting by, if you are over spending you will probably be living on credit cards as you won't be able to pay the balance each month.

The best way to effect change is by small consistent steps. If two people are walking side by side, and one starts to take a different path, they will still be close after an hour or so. However, after five years, they may be a world apart.

My hope for you for the coming year is that you will start on the road less travelled and make the changes that will make a dramatic difference to your financial future.

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.

Repairing A Fence In A Rental Property

About to repair a fence? First take a serious look at just what is holding it up. You see you are not entitled to an outright tax deduction when you replace something in its entirety. Completely replacing a roof is not a replacement in its entirety because it relies on the house walls to hold it in place. It is the whole building that is the entirety. Likewise completely replacing one boundary's fence may not be a replacement in its entirety if the corner post relies structurally on both the side and back fence.

GST Purchasing Farm Land or Commercial Premises

In a recent media release the Government has announced it will be introducing legislation on reverse GST charges to Parliament in 2014.

Regular readers would be well aware of my concerns about GST clauses in real estate contracts. A reverse GST charge is intended to solve some of these problems where both parties to the contract are registered for GST and the contract is for the sale of a going concern or farmland. A reverse charge means that the seller does not have to pay any GST to the ATO, it is the purchaser's responsibility but at the same time they claim the GST back so it should have a net result of nil. There is also talk of widening the occasions when a going concern concession would apply.

It is intended that the new legislation will allow the margin scheme to be used in a reverse charge contract. This is a great change because at least if the ATO come along and decide, no the contract should have included GST the GST will only be 10% of the margin between the sellers purchase price and the selling price.

The new law will remove the old so developers entering into options or long term contracts on farm land should be concerned that the law could change between signing the contract and the eventual settlement. It may be worth considering not using the GST concessions at all. Pay GST and claim it back in your next BAS but you need to consider that the stamp duty on the contract will be higher as a result. At least make sure that your contact considers a possible change in the law before settlement.

Travel Allowances

It has always concerned me when clients rely on ATO rulings that allow them not to keep receipts or records. An example of this is not keeping meal receipts when an employee is paid a travel allowance. Too many times have I heard of the ATO attacking one little technicality in order to deny a whole year's deductions.

For example a minister of religion was denied a claim for any of his motor vehicle expenses because he had missed signing some of the entries in his log book. Even when this case went to court the judge apologised for the ATO's behaviour but had to rule against the Minister, the law said the deduction was not allowed so there was nothing he could do.

Even though I am not required to do so I keep a log book all year every year for my vehicle and all receipts relating to my travel allowances. Whenever I see rulings that use terms like it would be reasonable to assume the allowance has been fully expended or that even though you have kept a log book for 3 months, you must, each year, adjust the percentage claimed to allow for any variations, I remember all the horror stories of ATO bullying and keep the records just in case.

The latest example of bullying by the ATO is *Gleeson v FC of T 2013 ATC*. The taxpayer had a win but they had to be prepared to fight the case in the AAT and are now no doubt hoping that the ATO does not use its unlimited power funded by the taxpayer to continue to drag him through the courts until they have a win, he gives up or runs out of money.

It is far better to have the extra substantiation needed rather than have to fight the ATO. I am not reporting this case as an example of why you don't have to keep records, even though the taxpayer won. Quite to the contrary, it is to show just how difficult the ATO can be in an audit situation.

Food, accommodation and incidentals are tax deductible to employees if they are required to temporarily sleep away from home for work purposes. TD 2013/16

<http://law.ato.gov.au/atolaw/view.htm?docid=TXD/TD201316/NAT/ATO/00001> list what the ATO considers to be a reasonable travel allowance and states that if you are paid a travel allowance and are required to sleep away from home then as long as you do not claim more than the reasonable amount as a corresponding tax deduction you do not need to keep receipts.

The ATO in *Gleeson's* case obsessed about the need to be paid a travel allowance. They tried to argue that the allowance paid to *Gleeson*, who was a truck driver, did not meet the definition of a travel allowance because it was calculated on a per kilometre basis, simply as an administration practice by *Gleeson's* employer. The ATO argued that to qualify as a travel allowance it need to be calculated on the basis of the actual costs likely to be incurred by the employee. Fortunately the AAT didn't buy this argument and made the ATO stick to the ruling. On this basis the Administrative Appeals Tribunal (AAT) found that the employers' purpose for making the payments and the circumstances in which they were paid had to be examined, regardless of the description given to the payments or how they were calculated. In addition, the taxpayer's travel allowances did not need to equate to his actual expenditure for them to be classified as travel allowances. Fortunately the payroll manager appeared in court to verify the allowance was a travel allowance.

The irrelevance of the description given to the payment is great news for employees whose employers don't specifically call the payment a travel allowance. As long as the payment relates to the fact they are travelling they should be right.

The AAT also directed the ATO to Division 900-200 1997 ITAA

<http://law.ato.gov.au/atolaw/print.htm?DocID=PAC%2F19970038%2F900-200&PiT=99991231235958&Life=10010101000001-99991231235959> which was introduced to the

substantiation legislation after the Minister of Religion's case. Div. 900-200 states that if you had a reasonable expectation that receipts were not required then not having them cannot prevent you from making the claim. Again do not rely on this section unless you can afford to go to court because still, 30 years after the Minister of Religion's case, the ATO continue to try the technicality line.

I wonder how many taxpayers had their legitimate deductions denied by the ATO until someone finally stood up to them and funded a court case? It is not right that a deduction can be clearly allowed in the law ID Div. 900-200 but the ATO can just knowingly ignore this to extract excessive taxes.

Readers may also be interested in section Div. 900-195 which allows the ATO discretion to not apply the substantiation requirements when it is clear that the expense has been incurred but correct records have not been kept. The ATO must exercise its discretion reasonably. This means that the ATO cannot

completely deny you a deduction for travel costs when you are required to sleep away from home for work purpose, even though you may not have receipts or received an allowance. Obviously you must have incurred some costs; you had to eat so even though the amount claimable may be smaller than what you incurred, you are entitled to some tax deduction.

Seminar

Destiny Property Investor Night – Free, Guest Speaker Julia Hartman

Wednesday 19h March, 6.50pm till 9pm

Crows Nest Community Centre, 2 Ernest Place Crows Nest NSW

This is a discussion group style event where we will present independent research material on two property markets in Australia that match our preferred criteria. Julia will be talking about and answering questions on property tax and self-managed Superannuation Funds. If you would like to attend, please email Tracy Tracy.Little@Destiny.com.au For more information go to <http://www.bantacs.com.au/seminars.php>

Where is Julia?

Still at home in SEQ. I will be travelling to Sydney in March for Your Money Your Call live on Foxtel on the 10th March and to appear at a Destiny seminar at Crows Nest on 19th March.

Ask BAN TACS

For \$69.95 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.

Winning Property Tax Strategies – The Book

Once again a brilliant combination of Noel Whittaker's easy reading style with Julia Hartman's mind numbing attention to detail. Lots and lots of new stuff plus updated basics for the first time reader so it is much bigger, 300 pages but still the same price. New chapters including young investors, SMSFs, renovators, granny flats, investment and budgeting strategies, fires and floods, mass marketing spruikers, commercial properties, subdividing and development. You can also purchase it online by going to www.bantacs.com.au/book_winning-property-tax-strategies.php The cost is still a low \$29.95 plus \$5.95 postage – tax deductible of course!

What Is New on www.bantacs.com.au

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With the [forum](#) and the [Ask BAN TACS Notice Board](#) the information on the site regularly changes. Three very generous askbantacers have allowed their questions and answers to be placed on the notice board.

<http://www.bantacs.com.au/QandA/index.php?q=510> Is an interesting question covering a reader's experience during an ATO CGT audit and how they dealt with the lack of records for expenses that there is no doubt would have been incurred.

<http://www.bantacs.com.au/QandA/index.php?q=511> covers the age old question of how do I prove to the ATO that it wasn't my intention to build and sell the house; it was really intended to be a rental property?

<http://www.bantacs.com.au/QandA/index.php?q=512> has the answer to some typical questions about owning a property overseas.

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.