

NEWSFLASH

Visit us at www.bantacs.com.au



BAN TACS
Accountants
Pty Ltd is a
CPA Practice



For website technical support email technicalservices@bantacs.com.au

For all accounting & tax support contact one of our offices or just go to [Ask BAN TACS](#)

Issue Number: 311

Pages: 4

Date: 15th July, 2016

New South Wales		Chatswood CA	Mackay CA
Burwood CPA	Phone: 1300 367 688 E-mail: burwood@bantacs.com.au	Phone: (02) 9410 1366 E-mail: chatswood@bantacs.com.au	Phone: (07) 4951 1848 E-mail: mackay@bantacs.com.au
Central Coast MNIA	Phone: (02) 4390 8512 E-mail: centralcoast@bantacs.com.au	Queensland	
Tenterfield PNA	Phone: (02) 6736 5383 E-mail: tenterfield@bantacs.com.au	Gold Coast PNA	Stanthorpe PNA
Sydney CPA	Phone: 1300 367 688 E-mail: sydney@bantacs.com.au	Bribie Island Road, Ningi CPA	Toowoomba CPA
		Phone: (07) 5497 6777 E-mail: ningi@bantacs.com.au	Phone: (07) 4681 4288 E-mail: stanthorpe@bantacs.com.au
		Brisbane (Morningside) CPA	South Australia
		Phone: 1300 911 227 E-mail: brisbane@bantacs.com.au	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.

Liability limited by a scheme approved under Professional Standards Legislation

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

Our 25th Year - What Does BAN TACS Mean?

On 4 July 2016, BAN TACS started its 25th year in practice; though back in those days the practice name was simply *Julia Hartman*. The practice grew rapidly, and soon the Beachmere premises were not big enough. As there was nowhere else in Beachmere of sufficient size, the practice moved to Ningi. This prompted us to register the name Beachmere and Ningi Tax Accountants but while filling out the form, in a two-second creative flash Julia noticed the initials B.A.N.; and every accountant knows that the initials of Taxation, Accounting, Computer & Services is phonetically the same as Tax.

At first the name was a bit of an embarrassment until we realised no one ever forgot it, and that is all that matters.

Becoming SuperStream Compliant

The deadline for employers to become SuperStream compliant has been extended to the 28th October, 2016. For more details go to <https://www.ato.gov.au/Tax-professionals/Newsroom/Superannuation/Extra-time-to-become-SuperStream-compliant/?tpissue-24-2016>

If you have payroll software such as MYOB, Xero and Quickbooks you can use their clearing house facility. Alternatively the ATO has a clearing house

<https://www.ato.gov.au/business/super-for-employers/paying-super-contributions/small-business-superannuation-clearing-house/>

\$500,000 Life Time Cap - Scott Morrison's Stuff-Up Conceded

The introduction of the life time cap of \$500,000 for non-tax deductible superannuation contributions has not just created an uproar in the LNP, it has created a problem for people who signed up to buy a property in their SMSF before budget night. Generally, investors use a non tax deductible (non-concessional) superannuation contribution to put some money into their SMSF to contribute to the purchase of the property. If since 2007 they have already contributed \$500,000 into super in non-tax deductible contributions, they will **not** be able to put this cash in. Even though it is not yet legislation it applies to any contributions made since budget night.

This can put an SMSF into a position of losing their deposit, because they do not have the cash to complete the contract. It also shows how little real world awareness our law makers have. When Noel Whittaker pointed this out to Scott Morrison he wrote back to Noel saying he would include in the legislation transitional provisions to allow contributions under these circumstances. So that is a win but as the government isn't publicly admitting this problem exists and as the actual legislation is a long way off, you will probably need a copy of the letter to appease your auditor. Here it is at <http://www.bantacs.com.au/topics/smsf/>

You will also be entitled to make non-tax deductible superannuation contributions if they are necessary to make ends meet in the SMSF, or to correct a member lending arrangement that does not comply with the ATO's new guidelines, **BUT** only until 31 January 2017. Of course all these contributions must still meet the old rules such as maximum of \$540,000 using the drawing forward provisions.

SMSFs Have Until 31 January, 2017 to Sort Member Loans

The ATO has granted a further extension of time for members of SMSFs who have lent their SMSFs money to get their loans onto a commercial level. Basically you need to find a publicly available loan and make sure your loan agreement complies in every way, including the amount of deposit required, which seems to be the main stumbling block. For more information on the ATO requirements refer PCG 2016/5 <https://www.ato.gov.au/law/view.htm?DocID=COG/PCG20165/NAT/ATO/00001>

ATO Contradiction On Borrowing For Repairs

You might recall a few years ago the ATO sending us a letter saying they would consider borrowing to pay for repairs that were foreseeable to be a scheme with the dominant purpose of a tax benefit and the interest on those borrowings would not be tax deductible. Here is a copy of that letter <http://bantacs.com.au/docs/Latest-word-from-the-ATO-on-Interest-Deductions.pdf>

Have a look at page 10 of the ATO's own guidelines to rental property investors <https://www.ato.gov.au/uploadedFiles/Content/MEI/downloads/Rental-properties-2015.pdf> it says that interest on money borrowed for repairs is tax deductible with no mention of whether they were foreseeable. But note there is no such statement in regard to rates, interest and insurance so these are best not paid out of a line of credit or redraw facility.

This is an example of how in a one-on-one situation the ATO will try and bully you with anything they can and you have to be prepared to take the matter to court to have your circumstances dealt with according to the actual law of the land. It also shows that the ATO consider Part IVA (voiding schemes with a dominant purpose of a tax benefit) a big stick they will just use whenever they want. Leaving taxpayers with no real certainty on how to prepare their tax returns other than just don't claim any tax deductions.

Interestingly, the ATO have a new motto "*we're reinventing*". Looks to me like they just invent the law as they go, to suit themselves. The following article is another example of this.

Silly Unprecedented ATO Audit Requirements

There seems to be a new attitude at the ATO; their auditors appear to be arguing anything they think is at all plausible in order to deny tax deductions without any consideration of legal precedents or their own tax rulings. Don't let this stop you claiming a tax deduction. If necessary, you may just need to object to the auditor's findings. But let's try and avoid this where ever possible by not giving them even a glimmer in the first place. The following points are for your amusement as to just how crazy the ATO can be, but also as tips, as there are some things you can do to avoid being caught up in this silliness.

- 1) Assessing the sale of your home as subject to Capital Gains Tax until you prove differently. It is important to keep things like the removalist's bill so that you can prove you moved into the house. Make sure you change your address on your licence, electoral role etc. asap and keep evidence that you did so.
- 2) Don't get receipts in your spouse's name. One client ordered his work wear over the internet and put the order in his wife's name so she could pick it up from the post office. The ATO denied the deduction claiming he didn't incur the expense his wife did, even though it was perfectly clear that the clothing wasn't for her, it was obvious by the size that it was for her husband.
- 3) The ATO tried to deny a car claim under the kilometre method, demanding that the taxpayer keep a diary for the full year. The requirement at law is that you produce a detailed reasonable estimate. Not a full record of all journeys. Further it is against section 900-200 of the 1997 ITAA for the ATO to require more records when it was reasonable for the taxpayer to assume they could rely on the substantiation concessions. But if you want to be bullet proof keep the diary all year.
- 4) You can't claim for tools unless your award specifies that you must supply tools. Absolute rubbish but at least get your employer to give you a letter saying you need to supply certain tools. Do this before the ATO come knocking as we are finding some employers crumble when face to face with the ATO.

Alternatively, they try and argue that because the employer does have a few tools lying around that you should not need yours. Take photos, get letters from employers beforehand, it is simply a question of fact if you use your tools to do your job they are deductible. If there is no safe storage at work and they are bulky you are also entitled to claim a deduction for transporting them between home and work. The ATO uses the argument that it is your personal choice to use your tools, this is ok anyway and they are misquoting a court ruling that you can't just transport your tools to and from work as a matter of personal choice but you can choose to use your own tools, reference Vogt's Case:

"illustrates what I consider to be matters relevant to the proper categorisation of the expenditure, is that of a concert pianist who insists upon playing on his own piano. If he were to keep this at a studio where he practised, the expense of carrying it from the studio to the place where he was to perform should clearly be regarded as a business expense and deductible under sec. 51(1). Would it be any the less deductible if he were to keep it at home and travel with it in the same vehicle to the place of performance? I think not. "

- 5) Make sure it is you that is driving the car not someone else when you are using it for work purposes.
- 6) An ATO auditor tried to argue that as there was a container at work the employee didn't need to carry their tools to and from work to keep them safe. As the container could be accessed by other employees this is not safe storage. Get photos.
- 7) A taxpayer had to go all the way to court to prove he couldn't safely leave his tools at work. The ATO argued that as there were chains at work that he could padlock his tool box to, that was safe storage. They chose to ignore the fact that the number of chains available was only a fraction of the number of employees so the employer required those not on shift to take their tools home. Fortunately, the court soon set the ATO straight but why do we have to go that far when it is common sense!
- 8) The ATO tried to argue that a truck driver's portable fridge and sleeping bag were private in nature so not deductible or included in the calculation of bulky equipment in order to claim travel to and from the depot. This is a direct contradiction of TR 95/18, the ATO's own ruling.
- 9) Just because you have lost the receipt or it has faded doesn't mean you can't claim a deduction. Div. 900-195 ITAA 1997 states that the ATO cannot deny a deduction when it is clear that the expense has been incurred. So for example if you are an interstate truck driver but didn't keep receipts for your meals it is obvious that you did eat, even though you may only be able to claim a smaller amount per day you must be able to claim something.
- 10) The ATO claims jeans are not tax deductible protective work wear - TR 2003/16 makes it clear that jeans can be considered protective if they are heavy duty.
- 11) The ATO quote Payne's case at you and say you can't claim travel between two places of work. This completely ignores that Payne's case was intentionally overridden by section 25-100 1997 ITAA which states

"If you are an individual, you can deduct a "transport expense to the extent that it is incurred in your "travel between workplaces."

- 12) Even if you have a ute or van that is 100% work use filled with equipment for a wide variety of work sites

make sure you keep a diary or log book or something for a month to prove 100% work use and keep the ATO off your back as the onus of proof is on you and they are no longer being reasonable. They are looking for every single angle they can use to deny a claim even when they know darn well you have incurred the expense. Also, take photographs of interior of the ute or van, to show the items you are carrying, which are essential for your day-to-day work, which you don't have a safe place to leave at work.

13) Make sure your employer registers its logo design so you can claim for laundering your uniform. To register a design, go to <https://www.ipaustralia.gov.au/designs/understanding-designs/registration-and-certification>

Webinars

Our web site library has been updated with more webinars <http://www.bantacs.com.au/media-library/webinars/> Three new series have been included the topics are: developing your parent's home block; estate planning; and the various entities that you might consider using to purchase your investment property.

Where is Julia?

Thawing out in Mackay. I will head to Townsville and Cairns at the end of August or early September.

Ask BAN TACS

For \$79.95 including GST at [Ask BAN TACS](#), you can have your non-complex questions regarding Capital Gains Tax, Rental Properties and Work Related Expenses answered by Julia. I will include ATO references to support our conclusion, answers are generally 300 to 700 words long depending on the question. Check out the free notice board, your question may have already been answered.

How to Make Sure Your Next Property Is a Good Investment

Please see us before you sign an investment property purchase contract!

- Do you really know how much the property is going to cost you to hold?
- What name should the property be purchased in?
- Will this property fit your investment strategy and goals?
- What does the contract say about GST?
- How does the price compare with similar sales in the area?
- If it is negatively geared, how much capital growth is required before you breakeven?
- Do you know what records you need to keep and how?
- Are your financing arrangements maximising your tax deductions?
- What happens if interest rates rise?

.....and the list goes on!

To ensure you don't make a costly mistake with your next purchase, contact us today

<http://www.bantacs.com.au/topics/property-investors/pipkit/>

Note: If you are an experienced property investor we understand you might not need all of these services, please feel free to discuss exactly what you need with your local BAN TACS Accountant.



BAN TACS Library

Want more? Please go to our library on <http://www.bantacs.com.au/media-library/> for back issues of newsflash, watch our webinars, utilise our checklists and 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*, *Fringe Benefits Tax*, *Claiming a Motor Vehicle*, *GST* etc.

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.