

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

Internet Sales Outside of Australia

Are you or your business selling goods or services to overseas customers? We are concerned about our clients who sell goods or services over the internet that might be unknowingly attracting a consumption tax liability in other countries. For example, the USA has 50 states with differing consumption tax laws; although there is talk of changing it to a federal system, which would be a challenge. So from Australia it is not just a case of finding out where you are liable for consumption tax on your overseas sales, but also keeping abreast of the changes.

There are several services available to help you calculate the tax and report it, but the difficulty we have found is getting advice when you actually become liable. Fortunately, in the USA you have to have over USD1million in sales **and** a business connection to the location before you are liable; but in the UK they deem the sale to have taken place wherever the customer lives, even if that sale is a service i.e no delivery takes place.

As we find out more information on this we will post it in *Newsflash* and then transfer the article into our overseas booklet. Please note we cannot advise on worldwide consumption tax laws. Our aim is to alert you if this situation applies to you and/or your business, and provide you with whatever we can reliably find out, together with connections with overseas experts. We also ask our readers to please share with us useful resources and advisors.

For some interesting information regarding the United States of America:

- Here is a link listing all the nexus rules, with a direct link to the legislation, for all the USA states; *but please note it is written assuming you are operating from one of those states*. Before this applies to you I believe you have to exceed the \$1million threshold. <http://blog.taxjar.com/sales-tax-nexus-every-state/>
- taxjar@peisnerjohnson.com should be able to advise you whether consumption tax should apply to your sales in the USA.

Overtime Meals

Which of these two sentences appear to you to make their point the clearest?

If you get paid an overtime meal allowance under an industrial instrument and buy food and drink on overtime
Or

The allowance is to enable you to buy food or drink in connection with overtime that you work

The first sentence is from the ATO's web site; the second is the actual tax legislation. Makes you wonder why the web site chose the words "on overtime" instead of "in connection with overtime" and require you to "buy food and drink" not just "food or drink", doesn't it? After all the legislation is clear enough and the use of the word "on" seems out of place. Well in my opinion they changed it so that ATO auditors could point to it and tell taxpayers they could only get the deduction in the very, very limited circumstances where an employee can manage to buy both food and drink while they are actually working overtime.

Now you might think I have finally lost it and am becoming totally paranoid about the ATO bluffing and bullying taxpayers. Well you are wrong, they have tried to use this simple little change to deny taxpayers the tax concessions available when paid an overtime meal allowance.

It has been our experience of late that the ATO look for any little thing they can try on to deny tax deductions. They don't care what the law says as long as they can get away with it and they treat their web site as the only law. Yet much of the information provided on their web site is brief and one sided. Most taxpayers have to accept the ATO's interpretation of their own rewording of the law because they can't afford to fight in the courts.

So back to what they are doing with the two sentences above. They are saying that "on overtime" means that you must buy the food and drink while you are actually working the overtime!!!! Not practical for most people unless the company has a canteen and the staff also work overtime. So now a whole lot of taxpayers miss out and have to pay tax on their overtime meal allowance.

Obviously, the legislator could see many workers would have trouble buying a meal while working late, that is why they chose the words "in connection" rather than simply saying "while working overtime". The legislator would have no hope of getting such a ludicrous requirement through the scrutiny that legislation must pass. Of course, there is no such scrutiny of ATO auditors' attacks on individual taxpayers so they know they can twist things as they like, no matter how illogical.

Please stand up for yourself in these situations this change in attitude of twisting the law to see what they can get away with, is only going to stop if we make them accountable.

How To Claim Your Car Using The Log Book Method

To claim your motor vehicle expenses using the log book method you need to keep receipts for the full year, take your speedo reading at 30th June and keep a log book for 3 months every 5 years. How are you going keeping all your fuel receipts? Have they faded?

Fortunately, you can estimate your fuel costs. This is done by filling up your petrol tank and recording the speedo reading. Next time you fill up your tank record the speedo reading, how many litres it took and how much that fill costs. By deducting the speedo reading took on the previous fill from this one you can work out how many kilometres you travelled and how much those kilometres cost you in fuel. Now divide these kilometres into the price you just paid to fill the tank, to find out how much it costs you in fuel per kilometre. By taking your speedo reading, as required by law, every 30th June you will know the total kilometres you have done for the year. You just multiply this by the cents per kilometre cost of fuel that you have just worked out to get your fuel costs for the whole year.

We now have available, for free, on our remote workers, miners and tradies page
<http://www.bantacs.com.au/topics/remote-workers/> an electronic log book to make this as easy as possible.

Buying an Investment Property 99:1

Do see your Accountant, before you sign an investment property contract! You may decide that your proposed property is best purchased in the name of only one member of a couple. If this is the case, then take some time to think about owning that property 99:1.

Let's assume the property is negatively geared and will remain so for most of the high-income earner's working life. If their occupation is not too risky, you may have decided to hold the property in the high-income earner's name. If the low-income earner holds just 1% of the property only a small part of the negatively gearing is transferred to them but you get to take advantage of the following benefits.

Either of you can deal with council, insurers etc. without all the complication of the privacy rules. If you travel together to inspect the property or do repairs, then if both of you are on the titled deed you will not have to halve the claim for meals and accommodation.

The 1% interest prevents the property being sold without the knowledge of that spouse. Mutuality of marriage may protect both spouse's interest but you would have to go to court to claw those sale proceeds back.

We conservatively recommend, in the case of sole ownership, that if the bank forces you to have both names of the loan for the property then the non-owning spouse should formally lend their share of the loan to the owning spouse. With a 99:1 split there is no need to worry about having to have this argument with the ATO.

When two people own an investment property together, i.e. are jointly in receipt of income they are in a tax law partnership. This means that their assessable income for superannuation purposes includes their share of the net rent income (rent less expenses). If they own the property just in their own right then it is the gross rent income, without deductions that is included in their assessable income for superannuation threshold purposes.

This partnership arrangement may also have a benefit in the future if you develop the property you may decide you want to enter a partnership agreement to apportion the proceeds of the development on a different basis to that on the title. This may be possible if there are other reasons, other than the tax benefit, such as one spouse's greater participation in the development process.

Warning to Property Investors Also in Business

An entity is only entitled to one ABN. This means you could operate several enterprises but they would all be under the same ABN because they are all owned by the same entity. This means that if you are required to be registered for GST for one of those enterprises they are all subject to GST.

This could create a difficult situation for a residential property investor holding property in their own name and operating a business in their own name. Property investors qualify as enterprises, and are entitled to an ABN, but most passive property investors don't bother to get one. If you already have an ABN for a business that is held in the same entity as the rental property (ie sole trader and own the property in your own name) then the business ABN is the rental property ABN. If the business has an annual turnover of GST supplies in excess of \$75,000 then it must register for GST. This means the owner of the rental property is registered for GST.

That is fine as far as residential rents are concerned because they are input taxed, which means you don't have to charge GST even if you are registered.

Here is the trap: The first sale of a substantially renovated home or a new home is subject to GST. Now normally this is not a problem because if the owner of the property is an investor they are not normally registered for GST and as the sale of a rental property is not part of the normal turnover of the entity, instead it is merely realising a capital asset. Then the sale proceeds do not count towards the \$75,000 test so the owner is not forced to register. Therefore, even though they are supplying goods that would normally be subject to GST they do not have to charge it because they are not registered for GST. This is very important because you will get the same price for the property whether it includes GST or not. You certainly don't want to lose 1/11 of your sale proceeds to the ATO just because you have a business that is registered for GST. Further, if you are not aware of the GST obligation you will not have put a margin scheme clause in the contract so will probably lose your chance to reduce some of that GST.

If you are caught as registered for GST in the same entity that owns the rental property and you substantially renovated the property or built the property (even if you employed a builder to do it, this catches house and land packages) then you either need to keep that property as a rental for a continuous period of 5 years before you sell; or, you have to shift the business into another entity (possibly lots of new problems with this) so that you can deregister for GST.

Reference PBR 1013085692001. If you would like to know more about what amounts to a substantially renovated property read GSTR 2003/3.

How to Make Sure Your Next Property Is a Good Investment

- 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://bantacs.com.au/Bantacs_pipkit.php

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.



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For property tax tips, webinars, opinion and a bit of fun please like our Facebook page <https://www.facebook.com/BANTACSpropertypage/>

Skype Julia

Skype has become a very effective way of consulting. Skype allows me to see the client's face so that I know they are following what I am saying. Most of the people who have used this service to date just want to talk about their overall strategy or get a straight answer to a difficult question. It is not intended to replace your current Accountant but it is an excellent method of getting specialist advice on property from investing to developing or just a second opinion. <http://www.bantacs.com.au/shopping.php>

Webinar Library

For lots of easy listening webinars for property investors check out our library section <http://www.bantacs.com.au/media-library/webinars/> they average 5 minutes in length and are sorted according to the type of investor you are and the stage you have reached in your investment journey.

Askbantacs Free Notice Board

For \$79.95 at [Ask BAN TACS](#) you can have your questions regarding Capital Gains Tax, Rental Properties and Work Related Expenses answered by Julia. They will include ATO references to support the conclusion, answers are generally 300 to 700 words long depending on the complexity.

First check the Notice Board, your question may have already been answered at someone else's expense and they have been generous enough to allow it to be published on the notice board, for example <http://www.bantacs.com.au/QandA/index.php?q=778> Working out the cost base when you subdivide a rental

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.