

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: 319

Pages: 4

Date: 15th April, 2017

New South Wales					
Burwood	CPA	Chatswood	CA	Mackay	CA
Phone: 1300 367 688		Phone: (02) 9410 1366		Phone: (07) 4951 1848	
E-mail: burwood@bantacs.com.au		E-mail: chatswood@bantacs.com.au		E-mail: mackay@bantacs.com.au	
Central Coast	MNIA	Queensland		Stanthorpe	PNA
Phone: (02) 4390 8512		Gold Coast	PNA	Phone: (07) 4681 4288	
E-mail: centralcoast@bantacs.com.au		Phone: (07) 4681 4288		E-mail: stanthorpe@bantacs.com.au	
Tenterfield	PNA	Bribie Island Road, Ningi	CPA	Toowoomba	CPA
Phone: (02) 6736 5383		Phone: (07) 5497 6777		Phone: (07) 4638 2022	
E-mail: tenterfield@bantacs.com.au		E-mail: ningi@bantacs.com.au		E-mail: toowoomba@bantacs.com.au	
Sydney	CPA	Brisbane (Morningside)	CPA	South Australia	
Phone: 1300 367 688		Phone: 1300 911 227		Adelaide	CPA
E-mail: sydney@bantacs.com.au		E-mail: brisbane@bantacs.com.au		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

Claiming Travel Expenses To Visit Your Financial Planner

ATO private binding ruling 23196 <https://www.ato.gov.au/rba/content/?ffi=/static/rba/content/23196.htm> states that you can claim a tax deduction for visiting your financial planner if you are seeing him or her as part of the ongoing management of your income producing investments.

Private binding rulings are only binding on the ATO if you are the person who applied for the ruling. Nevertheless, this is a pretty straight forward issue. IT 39

<http://law.ato.gov.au/atolaw/view.htm?docid=ITR/IT39/NAT/ATO/00001> which is binding on the ATO by all taxpayers also says that when the visit is not regarding the initial setting up of investments the travel is deductible. PBR 23196 just gives you more detail.

So it is really just a question of whether the appointment with the financial planner is for tax deductible purposes. If this is the case you can claim your transport costs ie car or airfares and if you stay away from home overnight you can claim your accommodation and meal costs. In PBR 23196 the taxpayers arrived interstate on the first day, saw their financial planner on the second day and returned home on the third day without any of the trip being considered to be for private purchases. This meant they were entitled to claim for 2 night's accommodation.

Now for the appointment with the financial planner to be tax deductible so that the travel is tax deductible you must be seeing the financial planner regarding ongoing advice that relates to an income producing investments. Your first visit to the financial planner to hand over cash to be invested would not be tax deductible. Further, in the rare circumstances the investment was not income producing, that it is only intended to produce capital gains, then the travel would not be deductible because it would not be a cost of earning income.

Discretionary Trusts with NSW Property

Back in our January edition of Newsflash http://www.bantacs.com.au/newsflash/Newsflash_316_15th-January-2017.pdf we warned readers that unless a discretionary trust has a very narrow definition of beneficiaries then it would be taxed as a foreigner for stamp duty and land tax purposes if it owned a NSW property. Surprisingly this didn't lead to a scurry of clients wanting to amend their trust deeds!!!!

Well this problem has not gone away but the NSW Office of State Revenue has made it a bit more workable. Last month they issued revenue ruling number G 010

<http://www.osr.nsw.gov.au/info/legislation/rulings/general/g010> which allows you to back date the necessary amendments to your trust deed, to 21st June 2016 which means you won't be caught for foreign resident land tax rates this financial year but you still have to act now!

There is no set form that you send to the NSW Office of State Revenue. Some trust deeds will allow you to amend the beneficiaries by simply making a minute, others will require an amendment to the deed itself and care needs to be taken to make sure this does not create a resettlement.

If you have a discretionary trust that owns or will own property in NSW you must immediately do the following:

- 1) Get advice on how your particular deed needs to be amended to prohibit non-resident beneficiaries.
- 2) Undertake the determined amendment process
- 3) Write to the Chief Commissioner of State Revenue, GPO Box 4269, Sydney NSW 2001 enclosing a copy of your deed and amendment asking that he exercise his discretion to exempt your trustee from foreign ownership surcharge.

If you can't immediately amend your deed you can still apply to the Commissioner for the exemption which will be granted on the basis that you amend the deed within 6 months.

The bottom line is if you have a NSW property in a discretionary trust you need to talk to your Accountant or Solicitor soon or you will have to pay the foreigner's surcharge on land tax and stamp duty.

Depreciation - Build or Buy Established?

House and land packages are popular with investors because the newer the house the more likely that the depreciation is higher. Depreciation is a non cash flow tax deduction that can greatly increase your tax refund and help to push the property towards a positive cash flow after tax. Here are some of the factors you should consider when making the choice between buying an established home or building:

- 1) If you are buying your investment property in a SMSF you can't borrow to buy when you are going to construct a house on the land.
- 2) House and land packages are popular with spruikers because they are paid by developers to sell the estate yet the spruikers are likely to claim they are acting in your interest by recommending that you buy brand new.
- 3) Depreciation on the building each year is 1/40th of the original construction cost of the building. This is the case whether you are the first owner or the 10th. Once the building is more than 40 years old there is no depreciation left to claim. If the building is only a couple of years old its original building costs may be very similar to the one you could construct now. You may only qualify for 38 years of depreciation claims but are you going to keep it that long anyway?
- 4) Do you have the time to deal with the builder?
- 5) You will have to pay interest on your loan and rates etc during the construction period without any rent coming in. These expenses are tax deductible but the ATO only give you back a percentage of the dollar you spend.
- 6) Is the contract to build going to cover everything ie established gardens, window furnishings etc?
- 7) Usually you can save stamp duty by just buying vacant land and building than buying a completed house.
- 8) If you are buying in a large estate consider that when you advertise for rent or sell you are competing with a lot of similar properties. It's not all about tax deductions as a house a couple of years older but closer to amenities may fetch a better price, higher rent and have a lower vacancy rate.
- 9) There may be some government incentives to build a house rather than buy an established house.

Licenced Financial Advisors and Registered Tax Agents

In Newsflash 318 there is an article explaining all the changes to superannuation contributions that will come into effect on 1st July, 2017. It is important that you get financial advice on this matter, the problem is making sure you get the right advice. Here are some tips to help you avoid an unscrupulous advisor who is really a spruiker in disguise.

Make sure their licence is not issued by an unregulated body. You are looking for someone who is a registered tax agent or licenced financial advisor recognised by the tax agents board or the ASIC. It is quite easy to do a search. The only complication is that they may operate under various business names so it is worth asking for their licence number. To check if your tax agent is registered go to <https://www.tpb.gov.au/search-register> take care here to make sure they are a tax agent not a BAS preparer. For financial advisor go to https://connectonline.asic.gov.au/RegistrySearch/faces/landing/ProfessionalRegisters.jspx?_af.ctrl-state=u32vdi6h5_4

Unfortunately, property investors tend to stay clear of financial planners because they expect that all they will want to do is push them into managed funds. This is where your Accountant/tax agent comes in. It is possible that he or she is also a licenced financial planner but does not primarily make their living that way so their advice should be more objective. Even without a financial planning licence they can advise you on the tax ramifications of your plans and evaluate an investment property you are considering. They are also allowed to answer most of your questions about financial facts but without a financial planning licence they are not allowed to give you financial planning advice specific to your particular circumstances. Financial planners are required to undertake an initial fact find before they advise you which greatly increases their cost whereas your Accountant will already know much of this information. Speak to your Accountant first. That may be all you need but if you need more, then he or she will be able to refer you to someone they trust.

How the \$1.6mil Superannuation Cap Effects This Year

After 30th June, 2017 if you already have \$1.6 million or more in superannuation you will not be permitted to make un-deducted (non concessional) contributions. So if you are lucky enough to have close to or more than \$1.6 million already in super and want to put some more in you had better get good advice and act quickly.

Rent to Buy Arrangements

FKYL vs Com of Taxation 2016 AATA 810 <http://www.austlii.edu.au/au/cases/cth/AATA/2016/810.html> is a great example of why I nag so much about facing up to the question of whether GST applies to the property you are selling before you enter into a contract to sell it. At least if you find out GST applies you can put a margin scheme clause in the contract which will considerably reduce the GST and get all your GST input credits back. It's not like you are ever going to get away with slipping under the radar, the titles office data match with the ATO.

If you build or substantially renovate a property with the intention of selling it the sale is subject to GST. You won't get more for the property just because you have to pay GST so this comes directly out of your pocket. In FKYL's case she claimed that the properties had been used as rental properties so were no longer new properties subject to GST. To do this she was taking into account the period before the properties were rented out so even though on some occasions she came close, she never reached the 5 year threshold. None of the properties were actually rented out for a continuous period of 5 years and that is what is required for them not to be considered new residential premises and so not subject to GST.

Unfortunately, this allowed the AAT to avoid having to address the fact that the 5 year period did not start until she had paid back all the input credits on construction, to show that she now intended to hold the properties solely for the purpose of rental. In a rent to buy arrangement this may well have not been possible because there was a contract for the sale in place.

BAS's can only be amended within 4 years, the ATO barely made it in time. Fortunately, she was ignorant enough of the law to have actually claimed the GST input credits anyway. If she hadn't, then by the time the ATO assessed her for the GST on the sale, as the construction costs had been incurred much earlier, she would have been very limited in the GST input credits she could have claimed back.

She was also not entitled to use the margin scheme because she did not enter into an agreement with the purchasers of the property that it would have applied. If she had simply put this clause into the contract at least the GST would have been limited to 1/11th of the difference between what she paid for the land and what she eventually sold the property for. I know I nag about this a lot but it is a no brainer, you will not slip under the radar, the titles office data match all sales with the ATO. Get the right advice on whether GST applies before you sell so you can at least minimise it by using the margin scheme. And make sure you get that advice in writing as a private binding ruling. Have a look at what the AAT member had to say about relying on advice from ATO officers:

“the Applicant is not at all familiar with the GST Act and had not obtained accounting or legal advice in respect of her duties and obligations. She appeared to have attempted to rely on explanations given to her by officers of the ATO. That is despite the fact that, of course, the ATO has no responsibility whatsoever to provide a taxpayer with advice regarding the completion of BAS returns.”

“It is of no assistance to the Applicant to say that she completed the BAS returns in the way she was told should be done by ATO personnel who had carried out the audit. While I have no doubt the ATO staff were attempting to assist the Applicant as much as possible, they are not in a position to provide her with legal advice. Had there been any concern, she should have obtained independent legal advice.”

“In addition, there is no evidence that the Applicant sought legal advice regarding the application of the five-year rule which applies to new residential premises. It is also not sufficient for the Applicant to say that she completed the BASs in the way she was told to by ATO personnel who conducted the audit in 2010/2011. It was her responsibility alone to ensure that what was contained in the BASs was true and correct in every particular. Accordingly, I find that the penalties levied by the Commissioner at the rate of 25% for failure to take reasonable care in completing the BASs during the relevant period were correct. Furthermore, no grounds for remission have been established by the Applicant.”

Makes you wonder why we bother with ATO officers at all doesn't it?

The bottom line is it could have been worse, she could have had to pay the ATO 1/11th of the sale proceeds with absolutely no input credits for the construction costs. I bet that the GST was more than her total profit on the development.

Askbantacs Free Notice Board

For \$79.95 at [Ask BAN TACS](http://www.bantacs.com.au) 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. Two very generous askbantacsers have allowed their question and answer to be posted on the notice board.

<http://www.bantacs.com.au/QandA/index.php?xq=802> Transferring property out of an NZ trust

<http://www.bantacs.com.au/QandA/index.php?xq=801> Problems associated with transferring properties between spouses

Webinar Library

For lots of easy listening webinars for property investors check out our library section <http://www.bantacs.com.au/media-library/webinars/> The latest video to go up there is on substantial renovations and the tax consequences.

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.