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Announcing a 14th BAN TACS Office - Caboolture

We are very pleased to announce that on 10th July we opened an office in Caboolture. It is an offshoot of our Ningi office, which has a very strong reputation in the region. Now it will be easier for many of our clients to reach the office during business hours.

The details are: Shop 7, 1 King Street, Caboolture Qld. Phone number is 07 5497 6777

Happy New Year! Our Checklists Are Ready

It's that time of year again when Accountants shine. We are suddenly not boring at all and feel like Santa Clause as we deliver fat refund cheques.

The trick to avoid extra accounting fees and having your tax return processed as quickly as possible is to prepare well before your appointment. To help, we have updated our checklists. They are available in the library section of our website. <http://www.bantacs.com.au/media-library/checklists/>

New booklet for Expats

With the dramatic changes to the taxation of non-residents for tax purposes Expats need their own booklet. We have created one with Margaret Lomas from Destiny. It is available on our web site <http://www.bantacs.com.au/booklets/Expats%20and%20Australian%20property%20booklet.pdf>

Destiny has been training property investors for over 20 years and all their services are available online, perfect for Expats wanting to buy a property in Australia.

Benchmark Interest Rate For Div 7A Loans

Do you owe money to your company? TD 2017/12 sets the interest rate to 5.3% p.a. for Division 7A loans, for the 2017-2018 financial year.

New Opportunities To Claim Travel in TR 2017/D6

This ruling is exciting stuff! There are some backflips on the ATO stance on travel, and some long-awaited clarity. Well worth a read

<https://www.ato.gov.au/law/view/document?DocID=DTR/TR2017D6/NAT/ATO/00001>

Yes, it is only a draft ruling. Drafts are the ATO's opinion that it submits to the profession for comment so you would expect that the profession is only likely to comment in the taxpayers' favour.

The ruling addresses the question of when meals and accommodation are tax deductible, where travelling for work. Note that you must have a home base before you can claim travelling to another place for work.

Exciting points from the ruling:

Cost of maintaining an additional home – paragraph 56 and example 13 cover this. Gone is the principle, well established in case law, that once you move from temporary accommodation to leasing or buying a home, you are no longer travelling. This change has huge potential, the ruling clearly states that if you buy a second home in a place where you travel for work then you can claim the interest, rates, insurance, basically all holding costs as long as they don't exceed the what it would cost you to stay in a motel. If they do exceed motel costs then you can only claim up to the amount the hotel costs would be. The rest would just increase the cost base of the property.

Mining Camps etc - This will be of interest to mine workers who have to pay for their own accommodation and meals which is sometimes the case when they are first employed through a labour hire firm. It will also be of interest to organisations who have employees that stay in camps. If the camp is not in a remote location and even Geraldton in WA is not considered remote then the employer will have to pay FBT on the cost of providing accommodation and meals to their employees unless they can prove that the cost would be tax deductible to the employee were they to incur the expense themselves, the otherwise deductible rule.

The first test is that the work the employee performs, requires them to sleep away from home; but does not include situations where the employee merely chooses to stay near-by rather than go home, or carers who may sleep while at work. It is a practical test as to whether the employee needs to stay near the work site, because there is not enough time for them to safely drive home.

Paragraph 81 describes a typical miners' camp situation but in paragraph 82 it says that, in addition to these factors, the project must be for a fixed period. It will not apply to all mining employees; only those who are temporarily located at that site. In example 3, a twelve month assignment was considered to be for a fixed period.

Abnormal Workplace – There has been some uncertainty as to just when an abnormal workplace becomes a normal workplace. The reason this is so important is, because you can claim travel costs to an abnormal workplace. In example 2, a three month assignment to another office two days per week was considered a normal workplace so the additional travel costs (motor vehicle) were not deductible. However, this appears to be primarily because the employee could still drive back home each night. It is a different case altogether if the travel requires an overnight stay. In that case, you can, not only claim your meals and accommodation, but also the cost to get there, such as motor vehicle costs. So, the next question is, how far away do those offices need to be to justify staying over-night? At paragraph 169 of the ruling, 200 kilometres was considered far enough to have to stay overnight. But don't let this limit you; after all, 100kms in Sydney would take up the whole working day, and it is really a matter of practicality.

Apportionment of Cost When Accompanied by Others - Case law has gone either way on this, but until this draft ruling the ATO was of the opinion that if someone accompanied you on your travels, and shared your accommodation, then you had to apportion the cost between the number of people who stayed in the room. At paragraph 156 the draft ruling states that if you can prove that the room would have cost you the same amount regardless of whether one person or more stayed there then you can claim the full cost of the room.

When Have You Set Up a New Home? – Again, the three month period appears to be significant in example 18, where a train driver is based at various locations during the year for periods of three months at a time. He stays in caravan parks, and is considered to be living away from home, not travelling so his accommodation costs are not tax deductible. Nevertheless, if his employer was to pay him a Living Away from Home Allowance, that would not be taxable in his hands. The trap is that once he has stayed at the same location for more than 12 months (accumulative), the employer will have to pay Fringe Benefits Tax on that allowance.

Get A Letter from Your Employer re Work Related Expenses

The ATO's new approach seems to be to poke and prod at work related expenses claims until they can find just one error and then attempt to throw out the whole claim. In particular, they are playing employers off against their employees. For example, Bechtel made a statement to the ATO that they provide their employees with all the tools necessary to do the job and then prohibited their supervisors from giving employees letters saying any different. As a result, the ATO would not even accept that Electricians used their own tools even though they had ferry documents showing they took them to Curtis Island, and letters from work colleagues stating that specialist tools were not available.

In Walkers case AAT 2017, the ATO successfully argued that as the taxpayer had on some occasions intermingled private (to get food) and work car travel, so that none of the trips were deductible, because they could not be separated, even though the law only required a detailed reasonable estimate to make the claim. The taxpayer was denied any tax deduction at all because the ATO could point to an error in the records. This was also the case with Walker's phone diary where the ATO successfully argued that some of the calls to his employers were not tax deductible and as a result the AAT did not allow any deduction for any phone calls.

In Davy's case AAT 2017 the truck driver's log book showed he was away from home overnight for 261 nights. This was the basis for his meal expense claim; but when questioned by the ATO, the employer claimed that the truck driver was only away from home for 218 nights. So the truck driver's claim was reduced, **and** he was fined. The ATO also dug deeply into these trips, to find that on some occasions the truck driver would have got home in time, or left home at a time where he could have consumed a meal at home. Therefore, he was not entitled to claim for all three meals for the day even though he slept away from home that night.

In some cases, the employer's interests are contrary to the employee's interest. For example, if your employer pays for the fuel in your car because you use it a lot for work, then they are subject to Fringe Benefits Tax on the fuel you use for private purposes. They are never going to admit this to the ATO, and their contradiction of your tax return information can be used to place a cloud over the whole claim.

The ATO is also ignoring well established definitions of bulky equipment, and just saying no, you don't need all that stuff for work; you only need to take a smaller tool box, so your equipment is not bulky. This is despite the fact you can produce tools weighing more than 20kgs. On a one-on-one basis, ATO auditors are also claiming that tools have to weigh more than 30kgs to be considered bulky. This is nothing but bullying by auditors, on the basis very few taxpayers can afford to fight them. There is no way a person can carry tools weighing more than 30kgs to work each day, they need a car to transport them, so if their employer does not provide a personal locker to store the tools, they can claim for transporting them to and from work. If the ATO tries this one on remind them of case S29 1985 ATC 276 where 18kgs was considered bulky. Also, Crestani v Com of Tax 1998 40 ATR 1037 where the Tribunal found that tools weighing about 27kgs could not be conveniently carried for any distance. In Ballesty's case 1977, the maximum weight was 18kgs, in fact, less on some occasions. In T106 and TR 95/34 two shovels and a brick rake were considered bulky. In Vogt, even lighter equipment is bulky if it is awkward to carry. Who do the ATO think they are? It is generally accepted by Workplace Health and Safety guidelines, that 16kgs is the maximum one person should be expected to lift!

The moral of the story is to get a letter from your employer stating that you need tools for your job, listing the tools and that there is no personal locker for your tools available at work. Keep a detailed record of your travel and get your employer to sign off on it. Ask your employer to put any conditions of your employment that are associated with you incurring expenses, in writing, for example needing to do some work at home. It may seem silly but this is the game that the ATO is playing and they are winning because taxpayers are not expecting such detailed attacks on claims where the law states that all you need is to use a reasonable amount or estimate the distance travelled. These supposed concessions in the Act are now the danger areas because the ATO will always be able to find some fault with an estimate.

Please don't think you can leave it and just ask your employer to back you if the ATO come a knocking. Who knows what terms you will be on with your employer then or whether they will even be alive. What if the ATO holds something over them? Or consider a recent situation for a client where the EBA clearly stated what we needed to prove our claim, but as there had been a staff change, the taxpayer could not provide the ATO with a written statement from anyone in authority at the time that the EBA was adhered to. We are still fighting that one. It is the new standard at the ATO; they just keep on asking for more and more information, until

finally you run out of things you can provide to prove your claim. Even tradies are being asked to prove why they need a tool.

About 30 years ago the Chatswood office of the ATO tried this sort of behaviour. They denied a minister of religion any claim for his motor vehicle expenses because he omitted to sign a couple of entries in his log book. The court had to rule in the ATO's favour, letter of the law but were so outraged with the ATO's behaviour recommendations were made that the law should be changed. This was done by introducing section 900-200 ITAA 1997 which states:

"Not doing something necessary to follow the rules in this Division does not affect your right to deduct an amount if the only reason was that you had a reasonable expectation that you would not need to do it in order to be able to deduct that amount."

ATO auditors of course ignore this section but it will be useful if you decide to fight. There are a couple of steps you can take before you start to incur court costs. You can lodge a complaint with the ATO, and if that does not solve the problem you can then apply to the Taxation Ombudsman.

When You Have Spent Too Much on Plant & Equipment

The \$20,000 immediate write off for small businesses purchasing plant and equipment is all well and good if you spend the money in a high-income year. But what happens when you do your year end accounts and realise that it wasn't that good a year after all?

Let's say for example your business is your only source of income, and after immediately writing off all the plant and equipment you purchased, your income from the business is only \$10,000. Well you could have had \$20,542 in income and still have paid no tax. This means that \$10,542 of that immediate write off is completely wasted. It has not given you a tax benefit because you can't pay any less than zero and you have lost the advantage of being able to slowly write the amount off over the years when you need it to reduce tax you really have to pay.

All is not lost; the small business concessions are optional. You can opt out, but it is all out or all in, each year. So, for the 2017 financial year you could choose to depreciate all of your plant and equipment rather than utilise the immediate write off. In the 2018 tax year, if your income is high you can opt back into the small business depreciation concessions. This means, of course, any plant and equipment you buy for \$20,000 or less, in the 2018 financial year will be immediately written off. Further, if your depreciation pool (which is where you will now have the equipment you purchased in 2017) at the start of the 2018 financial year is less than \$20,000 and you do not buy any equipment costing more than \$20,000 then you are required to write off the balance. This effectively delays the 2017 tax deduction until the 2018 financial year. If your income is also not that good in 2018, you can continue to forgo using the small business immediate write-off concessions and just continue to gradually depreciate.

In short, you cannot choose that some equipment under \$20,000 is written off immediately and some is not, but you can choose each year whether or not you are going to utilise the small business concessions.

Note, if your business is in a trust or company you can use wages to fix the problem, but you need to sort this out with your Accountant before you send off your PAYG summaries to the ATO.

This is the BAN TACS difference; we don't just prepare tax returns and financial statements. We take a deep and thorough look at your position, and apply our in-depth knowledge of tax law.

Tax Accountants Needed

Are you interested in providing personal service to our clients in a friendly, flexible working environment? Consider decentralising; some of our offices are in lovely locations where you can buy a house for under \$300,000. We are seeking enthusiastic accountants with more than 2 years' experience in a professional practice. We realise that you may need flexibility for study and family, and when you are ready you will want to advance all the way to becoming a practitioner. Together we can take you through every step of your dream career. If you are looking for a great career opportunity in a firm that will grow with you please email julia@bantacs.com.au

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.