

# NEWSFLASH

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BAN TACS  
Accountants  
Pty Ltd is a  
CPA Practice



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

## Booklets Updated

Our Miners booklet [http://www.bantacs.com.au/booklets/Miners\\_Booklet.pdf](http://www.bantacs.com.au/booklets/Miners_Booklet.pdf) and our Claiming A Motor Vehicle booklet [http://www.bantacs.com.au/booklets/Claiming\\_A\\_Motor\\_Vehicle\\_Booklet.pdf](http://www.bantacs.com.au/booklets/Claiming_A_Motor_Vehicle_Booklet.pdf) have both been updated and re organised for a more systematic approach.

## Remote Workers, Miners And Tradies Page

We have created a new page on our web site just for remote workers, miners and tradies, under *TOPICS*. Or just click here <http://www.bantacs.com.au/topics/remote-workers/> If you scroll down to the spreadsheet, you can check if the weight of your uniforms and personal protection equipment is consider sufficiently bulky that you may qualify to claim your travel from home to work and back.

## Warning About Australian Government Grants

The ACCC has issued a warning about *Australian Business Funding Centre Pty Ltd* which also trades as Australian Business Financing Centre and operates a website called [www.australiangovernmentgrants.org](http://www.australiangovernmentgrants.org) They charge businesses to find out if they qualify for government grants after misleading the businesses into believing grants are available.

To read the warning issued by the ACCC, go to:

<http://registers.accc.gov.au/content/item.phtml?itemId=1196566&nodeId=790fb7f11b5cf74eaf8c4a0228495c2e&fn=Notice%20-%20Public%20warning%20notice%20-%20ABFC%20Pty%20Ltd%20-%202027%20June%202016.PDF>

## Relocating Could Be More Expensive Than You Think!

Are you are affected by the downturn in many parts of the mining industry? Perhaps you may be considering moving to find work? Odds are that many of your neighbours are in the same position which may mean a considerable drop in the value of your home.

It is a difficult decision whether to sell your home at a loss or keep it, hoping that strong prices will return. Some people may even be in the position that they can't really sell because they now owe more to the bank than the property is worth.

I don't have a crystal ball, sorry; I can't tell whether it is better to hold on or sell. However, I do want to point out a factor that is basically never considered in this decision making process, **yet it is crucial!** You must ensure that you do not trigger a reset of the cost base!

Section 118-192 of the 1997 Income Tax Assessment Act ("the Act") is your enemy in this situation. This section is compulsory if you meet the qualifying criteria. That is, if you have covered the property with your main residence exemption from the time you purchased it, right up until it is first used to produce income.

If this applies to you, you will have the cost base for your home reset to a fraction of what you paid for it and be taxed on any increase in its value from that point.

Take this example, based on recent prices in Mackay, Qld: You may have paid \$500,000 for the property, but it is only worth \$250,000 when you first rent it out. **Your cost base for capital gains tax purposes is therefore reset to \$250,000.** If you are really lucky, one day it might come back to the price you originally paid, i.e. \$500,000. If you sell then, the ATO will calculate that you have made more than \$250,000 in capital gain, yet you are not a cent better off! Worse, in fact, because you will probably also have to write back any building depreciation you have claimed during the period of rental, not to mention the fact that there is no allowance for inflation over the years. This means that the \$500,000 you got for the sale has far less purchasing power than the \$500,000 you originally paid for the property. Basically the ATO is using smoke, mirrors, numbers and tricky legislation to create a tax bill out of a loss situation.

You should take the issue up with your local member or union. Section 118-192 of the Act should be optional, **not** compulsory.

So, what should you do if you are caught in this situation? It is a reason to sell rather than rent, but there are a couple of ways to avoid being caught by section 118-192. Maybe one of the following could work for you:

- 1) Continue to cover the property with your main residence exemption. While the cost base will still be reset, you can use section 118-145 (the 6 year rule) to continue to cover the property with your main residence exemption for up to 6 years while it is rented (indefinitely, if it is not earning income). This will mean that CGT is not applied when you sell so the reduced cost base does not matter. The trap is that if you buy a home in your new location, you cannot cover it with your main residence exemption, at the same time. Further, you are in strife if you go beyond the 6 years.
- 2) Mess with your main residence exemption so you fail the test in section 118-192. This could be achieved by not immediately renting your home out. Leaving it vacant and **not** electing to use section 118-145 (6 year rule) to continue to cover it with your main residence exemption. Fortunately, section 118-145 gives you the choice as to whether you apply the 6 year rule or not.

## Considering Subdividing To Give Land To Your Children?

If you are registered for GST then you are likely to have to charge GST even if you gift the land to your child, the GST will be calculated on the market value of the property. This is an absolute certainty, if the property is used in a business that is registered for GST. That is, unless you farm it for 5 years!

Section 38-475 of the GST Act (New Tax System 1999) allows a farmer to gift part of the farm to a child, and providing it has been farmed for at least 5 years the farmer does not have to pay GST. Even if the child pays for the land, as long as it is below market value this section can apply. It is restricted only to gifts to associates of the farmer.

This means that if the child is not registered or required to be registered for GST, they could later on sell the property without charging GST so it slips through the loop hole.

**Warning!** Before gifting get advice on the Centrelink and CGT consequences.

## Superannuation Contributions When You Are Over 65

You might remember in the May 2016 Federal Budget, it was proposed to remove the work test for people over 65 who wanted to contribute to super. The Government has now abandoned this change, so it is back to having to work at least 40 hours in 30 days to qualify to contribute to superannuation if you are over 65 years of age. This is very inconsistent, seeing as the Government has raised the pension age to 67.

## When a Claim Can Be Made for a Motor Vehicle Expense

If their travel fits within one of the points below, wage earners can claim their motor vehicle expenses when they meet the substantiation requirements.

For more detail on the substantiation requirements refer our claiming a motor vehicle booklet <http://www.bantacs.com.au/booklets/Claiming A Motor Vehicle Booklet.pdf>

- 1) **Bulky Equipment:** Home to work travel is claimable if there is no safe storage at work and as a result you transport bulky equipment, that you need for your job, between home and work. Safe storage is defined as similar to your own personal locker. Therefore, a container on a building site to which all and sundry has a key is not safe storage. Safe storage means somewhere you can lock up your belongings, that they will fit into and that other people do not have unauthorised access. It is not sufficient that you take the equipment home for your own convenience; it must be out of necessity. Case S29 prescribed 18+kg as bulky. We think you are very safe if your equipment weighs 27kgs. The ATO use examples of a ladder and drum kit not because they weigh more than 18kg but because they fulfil the difficulty to carry side of bulky. Relief school teachers may be able to have a field day with this one.
- 2) **Abnormal workplace:** This is defined in Taxpack at D1 as:

From your normal workplace to an alternative workplace (for example, a client's premises), while still on duty, and back to your normal workplace or directly home. From your home to an alternative workplace for work purposes and then to your normal workplace or directly home.

This would include being sent to another branch or shop for relief work, providing you were not employed predominantly on this basis. This covers seminars, trade nights and visits to customers etc. It also includes work-related tasks performed on the way home or to work: but note MT 2027; the task cannot be insignificant such as dropping off the mail at the post office. Although if you drop off the mail on the way home, you can claim for the distance off the track this takes you.

If you perform a significant work related task on the way home you can claim the whole trip. For example stopping at another office to do some work or have a meeting on the way to work will make the whole trip deductible.

If you regularly travel to one workplace on Monday and Tuesdays and another the rest of the week, both these places would be considered your normal workplace so no abnormal workplace claim is available for either place.

MT 2027 paragraphs 32 to 35 discuss claiming travel to an abnormal workplace. It is important to note that to have an abnormal workplace you must have a *normal* workplace. If you don't have a normal workplace and you have more than one place of work before you return home then the whole trip could be tax deductible because you are itinerant. Itinerancy is discussed further down.

- 3) **Between Jobs:** Section 25-100 of the Act allows you a deduction for travel between two workplaces, providing you engage in work activities at each one and that neither of them is your home.

Home can be considered a base of employment, and therefore travel from it to another place of employment is deductible, if employment related duties have begun before leaving home. That is, providing those employment related duties did not begin merely for the convenience of the taxpayer.

For example, a computer programmer was contacted at home to fix a problem over the internet. When this wasn't possible, she then proceeded to work, hence the travel was deductible. Another example is a doctor contacted at home regarding a hospital emergency. He gave advice as to treatment and contacted other staff before leaving for the hospital so the trip to the hospital was deductible because he had already begun work before he left home.

TD 96/42 and Payne's case make it very clear that just because you run a business from home doesn't mean travel from home to your day job is tax deductible, though travel from home regarding your business or for a dual purpose such as taking produce to market on the way to your day job would be deductible.

- 4) **Home-Based Operations:** In case W4, a semi-retired University Lecturer was allowed a claim for home to work travel because he did not have an office at the University where he could prepare his Lectures. Therefore, his home was the base where most of his work was performed. This case is very narrowly interpreted by the ATO.
- 5) **Itinerant:** [Ref TR95/34]. In FC of T v Wiener 78 ATC 4006; (1978) 8 ATR 335, a teacher was required to teach at a minimum of four different schools each day, and comply with a strict timetable that kept her on the move throughout each of these days. The court found that she was itinerant and therefore able to claim her travel costs, from the moment she left home until she returned home. A minimum of two workplaces in one day will class you as itinerant, unless one was your normal workplace. If you first go to your normal workplace, you can only claim for travel after you reach there.
- 6) **Travel After You Have Started Work** - If you go out from your normal workplace and then return, you can claim for that trip but not the trip to and from your home and your normal workplace. Examples of this sort of travel would be meetings at other offices, trade nights, inspecting branches displays etc. If you go home rather than back to your work, after these meetings etc you can also claim the trip home.
- 7) **Transporting Students, Patients etc** – Whenever you are transporting students, patients etc in relation to your work, the trip is tax deductible including the leg between their home and yours. This is the case even if you are transporting them to your normal place of work. TR 95/14 gives an example of a coach picking up players on his way to his normal school for a Saturday football match. He is entitled to claim the whole trip from when he leaves home to pick up the students

*Note:*

- The above can also apply to the self-employed possibly in addition to other claims.
- If claiming for a car on the kilometre basis the limit is 5,000 kilometres per **car**, not per taxpayer.
- If you have salary packaged the car you use for deductible purposes you cannot claim a deduction for these trips in your income tax return because you are not the owner of the vehicle.

## Facebook

For daily property tax tips and a bit of fun, like us on <https://www.facebook.com/BANTACSpropertypage/>

## 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.

Three very generous askbantacsers have allowed their question and answer to be posted on the notice board.  
<http://www.bantacs.com.au/QandA/index.php?q=760> Buying a property with a relative subdividing then sell.  
<http://www.bantacs.com.au/QandA/index.php?q=767> CGT calculation when property more than 5 acres and owned two homes for part of the time.  
<http://www.bantacs.com.au/QandA/index.php?q=768> Owning your home in a trust.

## What Is New on [www.bantacs.com.au](http://www.bantacs.com.au)

Want more? Please go to <http://www.bantacs.com.au/media-library/> for back issues of Newsflash, watch our webinars or download our free booklets. 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.