BAN TACS
National Accountants Group

NEWSFLASH BOOKLET

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This booklet has been collated from articles in other booklets and put together for our insurance broker Authorised Representative, Tony Townsend, who just loves these little loopholes.

Important

This booklet is simply a collection of Newsflash articles. The articles are transferred from Newsflash into this booklet so it is best read from the back page forwards to ensure you are reading the latest article on the topic first. Note that the information contained in this booklet is not updated regularly so it is important that you seek professional advice before acting on it.

Minor Fringe Benefits and Employee Contributions

Employers, if you want to take advantage of the $300 minor benefit exemption from FBT but the expense exceeded that amount, simply have the employee make an employee contribution sufficient to bring the expense down to the $300. You will still get a full input credit (providing the benefit is not entertainment) for all the expense as you will be liable for GST on 1/11th of the employee contribution unless the employee contribution is towards motel accommodation or a GST free expense such as health insurance.

Note there are other requirements to meet the minor benefit exemption under 58P as follows:

- 58P(1)(a) The benefit is provided in respect of employment
- 58P(1)(b) The benefit is not an airline transport benefit
- 58P(1)(c) The benefit must not be a inhouse expense payment, inhouse property, or inhouse residual.
- 58P(1)(f) The benefit must be infrequent and irregular

Note There are special conditions for exempt employers. Also section 58P(2) links associated benefits i.e. a benefit of $175 to an employee and the same sort of benefit to their spouse makes the amount $350 i.e. $50 over the threshold. Note until the 1st April, 2007 the minor benefit limit is $100. It increases to $300 as used in this article on 1st April, 2007.

Travel Allowance

Each year the ATO releases rulings setting out the amount that the ATO considers a reasonable travel allowance. This ruling actually states that you can claim a deduction, against a travel allowance that you receive, in excess of that allowance, if the allowance is under the amount the Commissioner considers reasonable. "A domestic or overseas travel allowance expenses claim is considered to be reasonable if the amount of the claim covered by the allowance received by an employee, does not exceed the relevant reasonable amount shown in the Ruling." In TR 2000/13 to further emphasise this point, at paragraph 105 the ruling gives an example of an employee travelling overseas who is paid $100 per day for meals when TR2000/13 states that $141.99 per day is reasonable. The employee incurs $120 per day in meal expenses. As the $120 per day is under the reasonable amount of $141.99 the employee is entitled to claim this amount i.e. $20 per day in excess of the allowance paid, without the need to keep any written evidence, providing any other requirements such as a travel diary are met.

Note there may be other prerequisites to qualify for a travel allowance claim without substantiation. The above is just highlighting a point in those rules that is not often realised.

Kilometre Method

The cents per kilometre method of motor vehicle substantiation is only limited to 5,000km per car per owner. In other words, a taxpayer can claim for more than one car if he or she is the owner of more than one car and uses it for deductible purposes. Further, if two taxpayers own the same car they can claim 5,000km each providing they are not the same 5,000kms. For example:

> A and B are brother and sister and both are required to carry bulky tools to and from work each day because there is no secure storage provided by either of their respective employers. A and B buy two cars each car in both their names. Both of them travel 10,000km per year to and from work. If they swap cars half way through the year they will each be able to

claim 10,000km at the 5,000km rate. If the cars have an engine capacity exceeding 2.6 litre that is a tax deduction (based on 2006 rates) of $6,700 each.

On a related issue, Case S29 states that tools weighing more than 18kg are considered bulky. Therefore, transporting them to and from work, if there is no secure storage at work, is deductible. Weight is not the only determinate of bulky. Difficultly in carrying on public transport is also relevant. For example two light but large boxes.

Avoid Adjustment Periods by Keeping Invoices under $1,000

If you are registered for GST and incurred an expense that has both a business and private use you have had to estimate an apportionment percentage when claiming the GST back in your BAS. If the amount of the expense is more than $1,000 (net of GST) you are required to review this apportionment at regular intervals and make an adjustment in your BAS if the ratio of business to private use has changed. Note because of the $1,000 (net of GST) limit you would probably only think of durable assets but this could include a large motor vehicle repair. This is the amount of each individual item or service. For example GSTR 2000/35 states that each progress payment is for a separate acquisition so it does not matter if the final product is over $1,000 it is the individual items invoiced that count. There may be an advantage gained here by packaging items into invoices under $1,000 where ever possible.

The intervals that you are require to review your apportionment are determined by the original cost of the item as follows:

$1,001 to $5,000 net of GST -12 months after the first 30th June after the purchase and again 12 months later. For example purchase in July 2000 the first adjustment date is 30th June, 2002 the next adjustment date is 30th June 2003 and no more after that.

$5,001 to $500,000 net of GST -12 months after the first 30th June after the purchase and again 12 months later and each year after that for the next 3 years i.e. 5 adjustment periods. For example purchase in October, 2001 the first adjustment date is 30th June, 2003 then 30th June, 2004 then 30th June 2005 then 30th June, 2006 then 30th June, 2007 and no more after that.

$500,001 or more net of GST - 12 months after the first 30th June after the purchase and again 12 months later and each year after that for the next 8 years.

Note the above is different if you are making financial supplies.

Claiming Meals as a Tax Deduction

IT2675 – "Providing morning and afternoon tea to employees (and associates of employees) on a working day either on the employer's premises or at a work site of the employer is not the provision of entertainment. The cost of providing these refreshments is therefore not excluded as a deduction by subsection 51AE(4) of the ITAA. In most cases, an income tax deduction is allowable under subsection 51(1) of the ITAA. However, it is necessary that the requirements of subsection 51(1) be met in each particular case for the cost of providing the morning or afternoon tea to be deductible. Broadly stated, the requirements are that the expenditure be incurred in the course of gaining assessable income (or carrying on business for this purpose) and that it not be of a capital, private or domestic nature.

If an employer (including a partner in a partnership) provides morning and afternoon tea to employees on a working day, and consumes morning or afternoon tea from the same source available to employees, the additional costs for the morning or afternoon tea consumed by the employer is not denied deductibility under the ITAA. The provision of morning and afternoon teas to visitors to the taxpayer's premises or work site is not the provision of entertainment if it is provided on the same basis as employees. Morning and afternoon tea includes light refreshments such as tea, coffee, fruit drinks, cakes and biscuits etc but does not include alcohol. Light meals are treated in the same way as morning and afternoon tea. It is not the provision of entertainment to provide sandwiches and other hand food, salads, orange juices etc., that are intended to and can be consumed on the taxpayer's premises or work site. As light meals become more elaborate, they take on more of the characteristics of entertainment. There is no particular point at which this will become obvious. Normal business practice will be the yardstick.

If alcohol is provided at a morning or afternoon tea or at a light meal this constitutes the provision of entertainment in terms of subsection 51AE(4) of the ITAA and unless one of the exemptions set out in subsection 51AE(5) applies, expenses incurred on the food and drink (including the alcohol) are denied deductibility. The provision of morning and afternoon tea and light meals to employees is an exempt benefit under section 41 of the FBTAA."

How to Pay Your Home Off Sooner

The following is only written for Companies, Trusts and Partnerships in business whose owners have personal debt. As Noel Whittaker is constantly reminding us there is good debt and bad debt. Good debt is borrowed to acquire income producing assets and is therefore tax deductible. If you are in the maximum tax bracket and want to pay $1,000 off a loan for your own home you have to earn $1,869.16, even more if you have a child support liability or are subject to the Medicare surcharge. So one of the most tax effective tools is to change your non deductible debt to tax deductible debt.

In Roberts and Smiths case July 1992 Federal Court set the precedent that a business could borrow to repay capital contributed by the owners and claim a deduction for the interest. The ATO interpretation of this is in TR95/25. Basically if your business owes you money (i.e. the working capital you initially put into it) and you are not operating as a sole trader the business can borrow money to pay you back and claim the interest on the new loan as a business expense.

Claiming Interest After Business or Investment Sold

The ATO has lost a few cases in this regard namely, FC of T v Jones, 2002 ATC 4135 and FC of T v Brown, 1999 ATC 4600. As a result they have issued TR 2004/4 conceding the point.

Everything you can do to bring yourself into line with the positive points of the cases mentioned above should be done. Some of the relevant facts that you may be in a position to do something about are:

1) All the proceeds of the sale should be used to repay as much of the loan as possible.
2) Endeavour to appear to be unable to repay the loan from other assets other than the family home. This may mean as a couple if only one member owned the investment or business sold at a loss the other member should hold any further investments.
3) Don't refinance the loan to extend its term or increase the interest rate. You must appear to be doing all that is possible to eliminate the loan. So refinancing to reduce the interest rate is ok. On the other hand if you have to change the loan from principle and interest to interest only because that is the only way you can afford the repayments you may be able to justify changing the loan.
4) If the loan is already fixed at the time the investment is sold, then you have an argument that you could not pay it out. This is a factor to consider if you are refinancing before the sale.

In the case of a business the ATO has issued a statement that division 35 cannot work to quarantine the interest in these circumstances as the taxpayer is no longer in business. Division 35 has its own booklet if you need to know more but all you really need to know is that Division 35 will not stop you claiming the interest.

Consider STS if Purchasing Assets Under $1,000

If you have made a large asset purchase, purchased assets under $1,000 (which are not part of a set) or, if you have purchased identical assets that combined are under $1,000, there may be considerable tax advantages in switching to the simplified tax system to claim a far greater write off or depreciation. The disincentives to enter the STS have been removed so there is no down side.

But it is not a commitment for life anyway as in the following year you can elect to remove your business from the simplified tax system and return to normal but all the concessions you gain in regard to plant and equipment continue with you. For example you do not have to reverse the write offs and anything that started

being depreciated at the concessional accelerated rates for members of the simplified tax system can continue on that rate after you leave. Note you cannot rejoin the simplified tax system for 5 years after you leave it voluntarily. If you leave it because you no longer qualify you can return as soon as you do qualify i.e turnover increases beyond $2million must leave STS.

Income Insurance When on a Low Income

Low Income earners can have a problem with insuring their income with an income protection policy as most companies will only cover up to 75% of Taxable Income (for a self employed person this is their Gross Income less expenses incurred).

For self-employed people there is an option available called business expenses Insurance. This enables them to insure critical business expenses under a separate cover. Business Expense items are fixed expenses which will continue regardless of whether a person is working or not, as a consequence of disability caused by injury or illness. E.g. lease payments, rent, administration staff, interest on loans, accounting fees, insurances, some vehicle costs, just to name a few.

Any person in business whose business income is based on their personal efforts and whose business expenses are predominantly met by this personal exertion revenue, could qualify for this type of cover.

18% Return Overnight Government Guaranteed

The rebate for making super contributions for your spouse is $540 if you contribute $3,000, providing your spouse's assessable (**not** taxable) income is under $10,800 (shading provisions apply after that). If your spouse is retired from the workforce and over 55 years of age, he or she will be entitled to draw all that money straight back out. Effectively netting you an 18% return on an overnight investment. For example on the 30th June you make a $3,000 contribution for your spouse and on 1st July they withdraw the money because they are retired. You still have your money plus another $540 when you do your tax return. Note if your spouse has never held paid employment they will have to wait until they are 65 years of age. Spouse super contributions can only be made until the spouse reaches 65 years of age. The rebate is only available to offset tax so if your taxable income is too low to pay tax this will not benefit you.

How to Claim a Tax Deduction for Life Insurance

Normally life insurance premiums are not tax deductible. If your income insurance does provide life insurance as well you are required to dissect the premium and not claim the portion applicable to life insurance. This requirement to dissect the premium does not apply if it is through a superannuation policy. So if you qualify to claim a deduction for your superannuation contributions i.e. you are self employed you can ask your superannuation fund to provide you with life insurance and the increase in premium is just as deductible as the superannuation contribution.

If you are an employee you could salary sacrifice into superannuation to cover yourself for life insurance. If you are a low income earner you won't get a tax deduction for your superannuation contributions but they will count towards the governments $1,500 co contribution.

There are superannuation funds that will permit you to make superannuation contributions small enough just to cover your life insurance. So you don't even need to invest extra into superannuation to get life cover.

Tony Townsend Registered Life Broker has offered to review all our clients insurance needs free of charge. He provides a detailed evaluation of all your insurance needs and can see you in your home or our office

Medicare Levy Surcharge and Child Maintenance

Many taxpayers are being charged the Medicare levy surcharge incorrectly. It applies if you do not have sufficient private hospital insurance and your income is more than $50,000 for singles or $100,000 for families. The threshold includes taxable income and fringe benefits. The definition of family is based on whether you have dependants i.e. contribute to a spouse or child's (under 16 or full time student under 25) maintenance. Spouses are automatically considered dependants of each other. In the case of separated couples the normal Medicare levy only entitles you to consider a child your dependant if you would be entitled to

claim Part A benefit from Centrelink in other words the child is with you for at least 10% of the year. But for surcharge purposes a child would be considered a dependant even if he or she does not live with you but you contribute to his or her maintenance. So a single person without private hospital insurance earning more than $50,000 but less than $100,000 is not liable for the extra 1% surcharge if they pay child maintenance. Reference ITAA1936 Section 251V.

Offsetting Business Losses Against Other Income – Div 35

From other articles in Newsflash you are probably well aware that Division 35 prevents business losses being claimed unless one of the following points are met but there is opportunity in the detail:

a) If the loss is primary production and the total gross assessable non primary production income is less than $40,000 the loss maybe offset against other income. This concession also applies to a professional arts business. Note the $40,000 does not include capital gains or fringe benefits. If the other income is from a partnership it is only your share of the net profit of the partnership that is added to your assessable income if the partners are natural persons. This makes forming a partnership a very attractive option even if APSI requires you to return the net profit as 100% yours. If you were a sole trader your assessable income would be the total sales of the business before deductions rather than the net profit in the case of a partnership. If you are a wage earner, a partnership will not solve your problem therefore salary sacrificing may be the solution if you are just over the $40,000 limit. But note fringe benefits are effectively taxed at the 46.5% rate. If your income is $40,000 each extra dollar is taxed at 31.5% until you reach 75,000 when it is taxed at 41.5% until $150,000 where it is taxed at 46.5%. So you need to consider the cost of the effective tax rate against the potential gain of offsetting the losses. There may also be benefits of salary sacrificing a vehicle and taking advantage of the formula method if the car does higher than average kilometres

b) The assessable income from the business activity is at least $20,000. The assessable income is sales plus the increase in stock i.e. closing stock less opening stock. Therefore if you purchase more trading stock you will increase the closing stock and therefore increase the assessable income . Note the trading stock has to be on hand for it to be included in closing stock (Section 70-15 ITAA97). So you cannot just order it and bring it into account as a creditor. References Section 35-30 and 70-40 to 70-45. Buying and selling will also increase assessable income so there are plenty of ideas to work with here. There is also a concession for the first year of trading. If a "reasonable estimate" would conclude that had you been trading for the full year you would have made $20,000 worth of sales plus closing stock (no opening stock in first year) then you are considered to have turned over the $20,000. This also applies to the last year of trading but in that year there will be opening stock.

c) The business has produced a taxable profit in at least 3 of the last 5 years including the current year. **Note** this is a profit before deducting any carried forward losses from previous years.

d) The value of real property used in carrying on the business is at least $500,000.

or

e) The value of other assets used in carrying on a business is at least $100,000.

The 50% CGT Discount

As you are probably aware you need to hold onto a property for over 12 months from the date of signing the agreement to purchase to the date of signing the agreement to sell in order to qualify for the 50% CGT discount. Some clients have been making a very quick gain on properties and are impatient to sell in case prices fall. The choice is sell now and lose a lot of the profit in tax or hold on and take a risk on future prices. From the buyers point of view they are probably more concerned that prices will continue to escalate but are not in a rush to start paying interest on the loan. In fact the chance to fix a contract at today's prices but not have to pay anything for several months could be very attractive to some buyers.

ATO ruling TD 16 states - If an option is granted the date of the acquisition for the buyer and the selling date for the vendor, is the date of the exercise of the option.

Of course an option gives a purchaser the chance of avoiding entering into the contract to buy the property so you must charge a large enough amount for the option to ensure that the purchaser will exercise it after the date you specify.

Reducing CGT on a Rental Property

Due to the recent increase in property prices a reader has a nice problem in that the value of their rental property has nearly doubled in the year they have owned it. They are now in a position to sell their own home and the rental property to build their dream home debt free. That was until they realised the huge CGT liability on the rental property. If they move into the rental property for 12 months until their new home is completed and then sell the rental property, they have halved the portion of capital gains that will be taxable on the sale. But there are even further benefits available from section 118-140 as discussed in Newsflash 50:

> **Section 118-140** Your main residence exemption applies to two homes for a period of up to 6 months. This is intended to allow you time to sell your old home after purchasing a new one.
> To qualify:
> 1) The first home must have been your residence for a continuous period of at least 3 months in the 12 months immediately preceding the date of sale.
> 2) If you were not living in the first home at any time during the 12 months preceding the date of sale it can not have been used for producing income (i.e. rented out or used as a place of business).
>
> **Note** section 118-140 is not optional it must apply so if you have made a capital loss during the period of overlap you cannot claim it.

The above does not put any restrictions on the new home so it is not relevant that it was owned for more than 12 months before the sale of the original home or that it was rented out for the first 12 months. The reader is still entitled (in fact it is compulsory) to the 6 month overlap that exempts from CGT the new home for the 6 months before they move in. Accordingly, if they sell after owning the property for 2 years and living in it for 1 year, they will now only be taxed on one quarter of the capital gain and that will then be halved to allow for the CGT discount on properties held for more than 12 months.

Tens of thousands of dollars saved by getting the right information first. This just emphasises the need to talk to an accountant before you do anything.

Ultimate Secret Plan and Clever Trick With Rental Properties

National Australia Bank v FCT 1993 ATC 4914 states that a loan provided jointly to an employee and associate is exempt from FBT under the otherwise deductible rule, even though the employee would have only been entitled to 50% because the other 50% was in regard to an associate of the employee i.e. a spouse.

Not only does this allow a high income earner to maximise the negative gearing benefits but when the property is sold at a profit the capital gains will still be apportioned on the basis of ownership. Therefore the low income spouse receives an equal share of the gain despite the fact he or she did not claim an equal share of the expenses. Further this provides brilliant flexibility in that if the low income earner becomes the higher income earner simply change the person who participates in the salary sacrifice arrangement.

There were many doubters that such a golden opportunity has existed since 1993 without being brought to public attention. To prove our point we applied to the ATO for a ruling. They took many months as they were reluctant to concede the case has set a precedent. Eventually, under threat of taking the matter to the problems resolution unit they issued their ruling and it accepted that this case was valid.

Now this ruling is a private ruling so can only be enforced on the ATO by the individual applicant. Accordingly, each employer wishing to rely on this ruling needs to make their own application. Employees will have a problem persuading their employers to enter into these arrangements as they get no real benefit from the arrangement yet would be made to pay FBT if the ATO takes a narrow view. To be protected the

employers would have to pay their accountants to apply for a ruling. This is probably why the concept has not yet taken off which is a shame as it can save employees thousands of dollars per year.

To solve this we have prepared a kit to present to your employer. The kit explains the whole concept in detail. There is a page for the employer, the employee and the employer's accountant. There is also a checklist of dos and don'ts to make sure you stick within the bounds of the precedent case, a worked example, suggested issues for the employment agreement, an employee declaration and booklets of advice on CGT and Rental Property Taxation Issues. The kit includes a copy of the ruling we have received and all the paperwork necessary for the employer to apply for their own private ruling by simply putting in their personal details, signing and posting. At $150 (tax deductible) the kit is considerably cheaper than your employer going through the ruling process from scratch. But more importantly it will help you explain it to your employer and your employer's accountant how simple it is for you to save tax every year. More details are available on our web site www.bantacs.com.au or phone 07 5497 6777 for a copy.

Relocation Expenses

The cost you incur transferring your household to another work location are not deductible but they are an exempt fringe benefit so you should negotiate with your employer to have them pay these costs even if there is a corresponding reduction in your income before tax.

Claiming company & trust losses in your personal tax return

The trick here is to find a way of failing the APSI test. Shouldn't be too hard seeing as the legislation was designed to catch you anyway. Finally, something positive for taxpayers out of the APSI legislation. For more information on APSI refer to our booklet on Alienation of Personal Services Income.

If your company or trust made a loss you will be permitted to offset the loss against your personal income if the loss is in regard to personal services income caught by the APSI legislation. This initiative was announced in the May 2003 budget. It effectively gives taxpayers caught by APSI an advantage over other taxpayers operating through a company or trust as other taxpayers' losses are quarantined until that company or trust makes a profit and satisfies other requirements. The new concession will be backdated to losses generated in the 2000/2001 financial years and all following years. Tax returns can be amended for up to four years back from the date of their original assessment.

Claiming your Trip Around Australia as a Tax Deduction

Ever think about those vital looking middle age people that throw in the daily grind the minute their children grow up to take on a nomadic lifestyle picking fruit when they need money. It's not just an ideal lifestyle but also an excellent way of claiming your basic living expenses as a tax deduction. So much so that you may find your after tax dollar to be as good as what you were getting in your daily grind.

If you are considering fruit picking or a similar circuit (i.e. shearing) your way around Australia, with careful planning and record keeping you can claim your motor vehicle expenses (including depreciation), meals and accommodation as a tax deduction against the income you earn. In all these expenses your argument for deductibility is strengthened by being self employed i.e. contract to the farmers and provide them with an ABN. If you take this option make sure you get advice on your tax withholding responsibilities.

As a result of Case S29 85 ATC 276 the ATO accepts that Shearers, on a circuit, are able to claim their motor vehicle costs, meals and accommodation from the moment they leave home. Fruit Pickers should do everything they can to align their circumstances to that of a Shearer. The ATO states in TR95/34 at paragraph 9 it is how you go about your work not your occupation that counts. A detail of the names and dates of every town you visit is also worth keeping in case you qualify for a Zone Rebate. There are six basic rules that need to be abided by to align yourself with Shearers.

1) Have a web of workplaces. This means you must organise the next farm you visit before you leave the current one and go to more than one farm before returning home.
2) Keep the necessary diaries, log books and written evidence to substantiate your claims.
3) Maintain a home other than the farms you visit i.e. a bedroom at your adult child's home.

4) Do not set up permanent accommodation i.e. take a 3 month lease on a house.
5) Improve your entitlement to claim travel expenses by justifying the need to carry more than 18kgs of tools or equipment that is large and awkward, with you.
6) Do not stay at the one farm for longer than 6 months and make sure your accommodation is temporary in nature such as a tent or caravan.
7)

TR95/34, available from the ATO web site is the foundational ruling in this regard. In particular consider paragraphs 43, 49, 55 and 42. Before you embark on this adventure make sure you get more details by e-mailing us by downloading our booklet *Claiming Your Trip Around Australia As A Tax Deduction* from the free publications section of www.bantacs.com.au. If you can't BAN TACS at least minimise it legally.

Travelling to See Your Accountant

Travel to your tax agent is fully tax deductible providing that is the primary purpose. If there is also a private purpose to the travel the expenses have to be apportioned. Further, if you travel to your tax agent in your car your kilometre claim is not subject to the 5,000km limit. So you can claim up to 5,000km for that car regarding your job and still claim for travel to your tax agent at up to 67 cents a kilometre. If you are away from home over night in order to visit your tax agent you are also entitled to claim a deduction for your meal, accommodation costs and if applicable air fares. Reference TD 94/92.

Registered tax agent fees are also tax deductible. Contributions to a fighting fund (fund set up to challenge ATO interpretations through the courts) are also deductible, reference TD 2002/1.

Tax Concessions for Charity Auctions and Dinners

Fund raising events should have even greater appeal now that payments for goods, entertainment and/or meals, in excess of their value, can be claimed as a tax deduction.

Previously the rule was, if you received some benefit for a contribution you made to a charity it was not considered a donation so no deduction was available for any portion of the amount even if all you received was a pen. The new concessions are directed at charity auctions and gala dinners where the true value of the benefit received is less than $100 (GST Inclusive), less than 10% of the amount paid and the amount paid exceeds $250. Of course the event has to be held by a charity that is registered as tax deductible. The deductible portion of the amount contributed is the difference between that and the market value of the benefit actually received. The organisers of such events are required to provide you with the market value of the benefit on their receipt.

Making the Most of Allowance Concessions

This article is for the benefit of both employers and employees. By making the most of the ATO concessions for reasonable allowances employers can increase their employees' tax deductions for food that they are probably not claiming at the moment. Organising salary packages around these concessions can increase employee loyalty at no extra cost to the employer.

If an employee receives a travel allowance or overtime meal allowance under an award, the employee is entitled to claim a tax deduction without receipts providing they have some method of showing that the amount was incurred. Further the employee is entitled to claim more than the actual allowance received providing they do not exceed what the ATO considers reasonable.

Full details of what the ATO considers reasonable are available each year in ATO rulings on the ATO web site. For the 2006 financial year the reasonable overtime meal allowance is $21.10. The rates when you sleep away from home vary depending on your income but for example, Truck Drivers who sleep away from home are entitled to $69.45 and employees travelling to Sydney are entitled to claim $248 for meals and accommodation. Not only are employee truck drivers not permitted the concession for accommodation because it is assumed they will sleep in their truck they are allowed considerably less than other employees for the food component of their allowance. If a truck driver wishes to claim a tax deduction for accommodation he or she must provide receipts.

In TD 2004/19 the ATO states that neither the allowance nor the expenses need to be shown in the employees tax return if the allowance does not exceed the reasonable amount and it was fully expended. Both the allowance and the expenses need to be included if the allowance is more than the reasonable amount or more than the amount expended. If the amount expended exceeds the allowance received but the claim is limited to the amount that the ATO considers reasonable both the allowance and the expenses need to be included in the employees tax return.

The employer does not have to pay the actual amounts the ATO consider reasonable but they must pay a "bona fide amount". For example the ATO tried to argue that a truck driver who only received $39 per night was not actually in receipt of a bona fide travel allowance because the amount was not enough to cover the cost. The ATO lost this argument in the courts but we recommend that the allowance received should be at least half of the amount the ATO states as reasonable.

Employees required to work overtime and who are entitled to a meal allowance under their award do not need to sleep away from home or eat the meal while working. They can stop at a restaurant on the way home from working overtime and spend the money then. They do not need to keep a receipt but it is advisable that on at least one occasion they get a receipt as evidence of the amount normally spent.

The employer needs to show the allowance clearly on the employee's PAYG Summary to assist in the calculation of the claim. It is important that the employee knows how many days the allowance was paid for and what type of allowance was paid. The employee will need to keep a travel diary if they are away for more than 5 nights in a row. The employee must keep a record to show he or she has incurred expenses. Don't try and claim you stayed in a Motel if you didn't. The Motel register can be easily checked. The ATO will not accept a flat claim that the allowance is fully expended, you will have to show how you worked out the claim. For example an employee truck driver who is required to sleep away from home and receives an allowance is entitled to a claim of $69.45 per day. Ideally the truck driver should have receipts for one day showing that such an amount is normally expended but a detailed estimate such as the following will suffice:

Breakfast Mixed Grill with Eggs, Toast & Coffee	$18.00
Coke and Mars Bar for the Road	5.00
Burger and Chips & Coke for Lunch	10.00
Coke and Mars Bar for the Road	5.00
Dinner Steak & Salad	18.00
Desert & a Beer	7.00
Two Cokes and Mars Bar for Midnight snack	7.00
	70.00

Providing the truck driver reduces his or her claim to $69.45 per day he or she can claim this amount, without receipts, for each day he or she sleeps away from home. Note sleeping away from home would include truck drivers who leave home in the afternoon and drive to the markets early so they are at the start of the queue to be unloaded and then sleep while they are waiting. They may be home again in less that 24 hours but nevertheless they are entitled to the meal allowance concessions.

Spouse Rebate

A spouse's separate net income is different to taxable income. Separate net income (SNI), not taxable income determines whether a spouse is dependant for dependant spouse rebate purposes. If your spouse does not qualify for FTB Part B from Centrelink but has a low income or travels a long way to work or has high child care costs, you should consider claiming them as a dependant spouse in your tax return.

Separate net income is more aligned to the spouse's income after deducting the costs associated with going to work. Accordingly, deductions that are not normally allowable against taxable income are allowable against separate net income. Examples of these include child care expenses, clothing used exclusively for work, lunch while at work. But the most lucrative claim is for the cost of travel to and from work and child care if

applicable. This can be claimed using the ATO kilometre rate of around 60 cents a kilometre but there is no 5,000km limit. On the down side you cannot reduce your income by costs that are not associated with earning it. For example tax agent fees or superannuation contributions that your spouse may have claimed as a tax deduction cannot be used to reduce his or her income for SNI purposes so they have to be added back.

As a dependant spouse rebate can increase your refund by around $1,400 it is worth keeping track of these expenses. The substantiation rules do not apply so receipts or log books are not necessary just a record or calculation.

Getting the ATO to Fund Your Arguments With Them

Every year the government allocates funds to help taxpayers defend themselves against the ATO. These funds accumulate each year and unlike other government budgets are rarely used. This concept is not so hard to understand when you realise it is effectively the ATO that decides who gets the funding.

In anticipation of the Inspector-General of Taxations review of this matter the ATO has broadened the categories of cases it will fund and simplified the criteria necessary to qualify.

If you are interested in applying to the ATO for funding of your legal costs you will need to make a formal application at least 3 months before you go to court. The following factors will influence your success:

1) Your issue must be a question of law not one of fact. For example you are asking the courts whether a certain category of expense is deductible. On the other hand they would be unlikely to fund you to argue a question of fact as to whether you actually incurred the expense.
2) The question of law needs to be one that is of interest to a substantial segment of the public or a particular industry.
3) How co operative you will be in bringing the case before the courts promptly.
4) Your financial ability for funding the case yourself.
5) Tax avoidance schemes are unlikely to be funded but new questions as to the application of Part IVA (Anti Tax Avoidance provisions) in the public interest will be considered.

The funding is far more likely to be granted if the Commissioner appeals a decision made in your favour in the AAT or Small Claims Tribunal. These courts are very cheap to apply to so it is worthwhile considering starting in these courts even though there is room for further appeals. Funding is also easier to get if you have already been funded and the case is appealed.

Applications should not be made lightly as there are considerable costs to the taxpayer, which will not be reimbursed, in just applying and not all costs of the case will necessarily be funded. There is a panel that sometimes includes people from outside the ATO but not all applications go before the panel as senior ATO staff have the authority to deny or approve applications.

Zone Tricks

To claim a zone rebate (tax offset) you must be in a zone for 183 days of the financial year. The 183 days can be accumulated over 2 years. If in the previous year you did not claim a zone rebate and over the 2 years you have been in a zone for 183 days you can claim the zone rebate in the second year. For some workers on fly in fly out arrangements this means they may only be able to claim a zone rebate every second year.

The rebate for being in a special zone is $1,173 in tax credits that you can use to pay your tax instead of the instalments deducted from your pay. Accordingly, when you do your tax return some of your instalments should be refunded. Certainly worth the effort of tracking where you have been. You can check what zone applies to your area by going to the ATO web site www.ato.gov.au, simply put the word zone in the search box. While you are there you should read TR 94/27 to get more detail on how to qualify.

On the bottom end of the scale the rebate for a zone B resident is only $57. Many parts of Queensland are zone B including big towns such as Mackay and Townsville. While the $57 might not be worth much

being in any zone helps towards your 183 days. The calculation first asks has the taxpayer been in any or various zones for 183 days. If so they can claim a rebate. How much they can claim is determined by picking the best 183 days. For example if you have spent 200 days in a zone B and 50 days in a special zone your rebate would be made up of two parts. $1,173 divided by 183 times 50 would be your entitlement for the special zone rebate. The balance would only be paid at the zone B rate i.e. $57 divided by 183 times 133. The total rebate is $361 which is a vast improvement on $57 simply for being in a special zone for 50 days. As you can see the main purpose in zone B is to get your 183 days up so you can benefit from every day in other zones. You only have to be in the zone for part of the day for the whole day to qualify.

This trick can be useful when planning your holidays. If you live in a zone B record every day or part there of that you are in another zone area to boost your claim. If you work in a mine on a fly in fly out basis and don't quiet spend 183 days per year there, you only need to go to a zone B to top up your quota.

If you have dependant children and or a spouse you are entitled to claim a zone rebate for them too if they were with you.

Non Commercial Losses (Div 35)

Division 35 prevents business losses being claimed against other income unless certain conditions are met but there is opportunity in the detail with some of these conditions, for example:

a) If the loss is primary production and the total gross assessable non primary production income is less than $40,000 the loss maybe offset against other income. This concession also applies to a professional arts business. Note the $40,000 does not include capital gains. If the other income is from a partnership, it is only your share of the net profit of the partnership that is added to your assessable income if the partners are natural persons. This makes forming a partnership a very attractive option even if APSI requires you to return the net profit as 100% yours because if you were a sole trader your assessable income would be the total sales of the business before deductions. If you are a wage earner, a partnership will not solve your problem therefore salary sacrificing may be the solution if you are just over the $40,000 limit, but mainly exempt benefits or concessionally treated car benefits. Otherwise the FBT payable at 15% more than your marginal tax rate would erode the advantages of being able to offset the losses.

b) Losses can also be offset against other income if the assessable income from the business activity is at least $20,000. The assessable income is sales plus the increase in stock i.e. closing stock less opening stock. Therefore if you purchase more trading stock you will increase the closing stock and therefore increase the assessable income. Note the trading stock has to be on hand for it to be included in closing stock. So you cannot just order it and bring it into account as a creditor. Buying and selling will also increase assessable income so there are plenty of ideas to work with here. There is also a concession for the first year of trading. If a "reasonable estimate" would conclude that had you been trading for the full year you would have made $20,000 worth of sales plus closing stock (no opening stock in first year) then you are considered to have turned over the $20,000. This also applies to the last year of trading but in that year there will be opening stock.

c) Salary package the expenses relating to the non commercial business. As they are otherwise deductible your employer will not have to pay FBT. This should make the non-commercial business actually profitable but you will have less wages income.

Doing the Double Dip

June seems to be the silly season when people start to spend unreasonable amounts of money just for the sake of avoiding paying tax on it. This is all very well if you are buying something that you would buy anyway. But if you wouldn't normally spend your money in this way you are giving up the whole dollar to, at the very most, receive 46.5 cents back from the ATO. Under the new tax scales you will have to earn over $150,000 this year before you even qualify for the 46.5% if your taxable income ends up under $150,000 you may only get 41.5% or 31.5% back.

I much prefer doing the double dip. This is where you claim a tax deduction for an expense but you are not actually out of pocket because your employer has reimbursed you for it. As these expenses are tax deductible to you, your employer does not have to pay FBT on the reimbursement. This secret plan and clever trick does not work for all expenses, only items that are claimed under arbitrary methods. For example if you

own a car, keep a log book of your business use and ask your employer to reimburse you for the business use portion of the running expenses of the car. Your employer does not have to pay FBT nor deduct PAYG tax from the money he or she pays you. You do not have to include this money in your tax return, not even as a reportable fringe benefit. So effectively you have that portion of your car expenses paid out of tax free dollars. Then you can use the kilometre method to claim the very same business kilometres in your personal tax return, up to 5,000kms per car. This could give you a further tax deduction of over $3,000 despite the fact that you have been reimbursed for the cost of travelling those kilometres.

Salary Sacrificing Rental Property Expenses When Employee Only Owns 10%

Joint owners of a rental property that are in different tax brackets can gain considerable tax benefits by the high income earner salary sacrificing all the cash flow rental property expenses. This means that the high income earners package is reduced by the value of these expenses but the employer does not have to pay FBT because of the otherwise deductible rule. This is as good as the high income earner receiving a tax deduction for all the expenses with the added advantage that the employer can claim the GST back where applicable and Centrelink cannot add back the rental property loss because there is none. All that goes into the couple's tax returns is the rental income and depreciation so it is positively geared in the return. This works quite well when the property is owned 50:50, but imagine the advantage as the high income earner owns less of the property. This means the low income earner receives more of the rent and future capital gain but the high income earner still effectively claims all of the rental property expenses as a tax deduction.

Some conservative commentators have recommended that as the original test case on this type of arrangement was 50:50 ownership then investors should not vary from this. It is our opinion that as the legislation says jointly liable not equally liable then the ratio of ownership does not matter. This has now been verified by PBR78388 where 90:10 and 95:5 ownership ratios were approved. But be warned PBRs are private rulings so cannot be enforced by anyone other than those who originally applied for the ruling, so for your employer to be confident you need to apply for your own. Details of how to do this are on our web site.

Don't Pay More Than 15% Tax if You Are Over 55

If you are over 55 years of age and earn less than $130,000 per year you should not be paying more than 15% tax. This can be achieved by taking a pension from your superannuation fund, continuing to work but salary sacrificing most of your wages into superannuation. Make sure you get professional help to structure this correctly.

The Latest Salary Sacrifice Rulings

The ATO is now answering the tough questions regarding the Salary Sacrificing kit. This is where the high income earner salary sacrifices the rental property cash flow expenses. This leaves just the rental income, capital gains and depreciation to be included in the owners' tax returns so the property is running at a profit (no Centrelink add back) but the high income earner effectively received the deductions for the low income earner's expenses. This was explained in detail in our last edition where we reviewed PBR78388 which approved of the high income earner owning as little as 5% of the property.

The latest rulings from the ATO approve of the high income earner owning the property with a discretionary trust and the arrangement being used for shares instead of a rental property. The shares ruling has been approved but not yet listed on the private binding rulings register so we will advise you of that rulings number in a future issue. The ruling number for the property being co owned by a discretionary trust is PBR 77937. The reason the trust was considered an associate of the employee is because the employee was a beneficiary of the trust.

Salary Sacrificing Tricks for Share Investors

The ATO has just issued a private ruling agreeing that the high income earner in a family can salary sacrifice all of the interest payments on a share portfolio they own jointly with their low income spouse and their employer does not have to pay FBT because of the otherwise deductible rule. This effectively means that the high income earner gets to deduct all of the interest expenses but gets to split the income with his or her

spouse. The private ruling number is PBR 79617. PBRs are only copies of private rulings, not binding on the ATO. To be absolutely sure that your employer is protected it should get its own private ruling from the ATO.

2008 Budget Limits Laptop Benefit

Laptops, Personal Digital Assistants and Tools of Trade – From 1st April 2009 you will not be able to receive these as an exempt fringe benefit unless they are used primarily for work purposes. Further the double dip will be stamped out too ie claiming depreciation on this same laptop in your personal tax return if you do use it for work purposes. Though if the item was purchased before 13th May, 2008 then you will still get the deduction for the 2007/08 year.

2008 Budget Cans Salary Sacrifice Trick

It looks like they will remove the otherwise deductible rule for benefits provided in regard to jointly owned assets (including shares and rental properties). The original loop hole was created to avoid problems faced by most couples when everything is in joint names. It will be interesting to see how this problem is solved so don't go jumping ship just yet. Another reason not to panic is that because this arrangement was perfectly legal there will be no retrospective claw back. Those people who have already entered into such an arrangement can continue to do so until 31st March 2009, by which time we should know the details of the new law. I think we should be happy that we got to make hay while the sun shone. It is quiet probable that as more people entered into the arrangement the government finally decided to take action. I say finally because the test case was in 1993. It is much more palatable to us that the average person gained this advantage while it was available even though this is what contributed to its demise. In summary our advice is to continue until 31st March, 2009 in any arrangements you currently have, know the budget clearly gives you permission to do so but don't enter into anymore until we see the new legislation go through parliament and don't hold your breath for another loop hole, it is clearly this trick that they are aiming to stop. In the meantime SMSF non recourse borrowings are looking very attractive. There is an article in our next edition summarising the benefits and traps.

Using Rent Income To Pay Off Your Home Sooner

We have recently received a ruling from the ATO confirming that, in appropriate circumstances it is ok to use the rent you receive to pay off your non deductible debt while capitalising interest on the rental property loan and interest on that capitalised interest will also be tax deductible. In the particular circumstances of our ruling it reduced term of the clients private home loan to less than 7 years.

Now if the dominant purpose of your arrangement is to gain a tax benefit then the ATO can apply Part IVA to deny you a deduction for the capitalised interest. This approach stems from Hart's case in 2004 where the ATO proved that the taxpayers' dominant purpose in capitalising their interest was a tax benefit because they used a linked loan that was promoted by the banks for its tax benefits.

In our ruling we were successful in arguing that the dominant purpose was to pay off their home loan sooner and the tax benefit was incidental. We also showed that the property would eventually become positively geared.

Our approach was that the client was going to use the rent and other income to pay down the mortgage on her own home capitalising the interest payments on the rental properties in another line of credit. Our question was, as she was going to do this anyway it was just a matter of whether the ATO required her to apportion the interest between deductible and non deductible on the new line of credit and if so on what basis. Of course it is well settled that capitalised interest takes on the nature of the original interest so they could not say it had to be apportioned and they could not say that endeavouring to pay down your home as soon as possible had a dominant purpose of a tax benefit because every home owner tries to pay their home off as quickly as possible.

If you have been using rent to pay off your own home, possibly due to financial difficulties or any other reason that is not solely or dominantly to gain a tax benefit you might also like to apply for a ruling to make sure that the ATO can't come along later and apply Part IVA. The ruling response we received was a private binding ruling so can only be relied upon by the person who applied for it.

On the property investors page of our web site is a checklist and more information on this issue. If you have been using the rent to pay off private borrowings and are concerned we can prepare your own private ruling application for $350.

Having Your 50% Investment Allowance & Leasing it Too

Unless the car you lease exceeds the luxury car limit, it is the lease company that is entitled to the investment allowance. In ID 2009/89 the idea of buying the car then a month later selling it to a lease company was addressed.

The ID accepted that the vehicle had been used principally for business (more than 50%) during that month so the purchaser was entitled to the investment allowance and there was no adjustment when the vehicle was sold to the lease company. But note it specifically states that the use of the vehicle once it was leased back must also be taken into account. This may suggest that buying a vehicle and selling it a month later just to qualify for the investment allowance could result in the ATO using Part IVA against you. Nevertheless, it doesn't appear that anything in the law specifically prohibits this and the ID argument is based on the words the use by the taxpayer covering both the period before and after the lease. This argument wouldn't apply to the use after one month of a completely new purchaser.

Note ID's are just an expression of the ATO's opinion and not binding on them. If the above was a bit confusing the basic case is buying a vehicle, claiming the investment allowance and then selling it to a lease company is fine providing during all that time it was used more than 50% in your business. Buying a car claiming the investment allowance and selling it on the open market one month later may also be ok but the ATO still has part IVA up its sleeve so you should get a ruling before being this cheeky.

Ask BAN TACS

For $79.95 at Ask BAN TACS, https://taxquestions.com.au/ you can have your questions regarding Capital Gains Tax, Rental Properties and Work Related Expenses answered. We will include ATO references to support our conclusion. There is also a notice board where some askbantac users have generously allowed their question and answer to be published. Lots of good real life information.

More Information

Please make sure you continue to keep your knowledge up to date by subscribe to our Newsflash reminder. There are many other booklets available on our web site https://www.bantacs.com.au/media-library/booklets/ in fact the whole web site is full of useful information so also have a look around under topics.

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 make sure you see a BAN TACS Accountant before you sign