

Wage Earners

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Important

This booklet is simply a collection of Newsflash articles relevant to wage earners. 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.

Depreciation for Wage Earners

Ruling TD 93/145 states that an employee is entitled to claim depreciation on an item of plant used for income producing purposes even though his/her employer has reimbursed him/her the purchase price of the plant. Further if the purchase price is \$300 or less the depreciation rate is 100%. The reimbursement is not taxable income in the hands of the employee as section 51AH applies to reduce the amount claimable by the reimbursement but this does not apply to reduce the cost base for depreciation purposes.

This ruling combined with the exempt fringe benefits legislation can be used to acquire a laptop at only 3% of its original purchase price. For example:

A is a sole trader who employs B. Both A and B are in the maximum tax bracket. B buys a laptop computer for \$5,000, which will be solely used to produce income for A (if there is some private use then claim needs to be pro rata). A fully reimburses B for the expense and as laptops are an exempt fringe benefit A claims the full \$5,000 as a tax deduction but no FBT is payable. As a result of the tax deduction A receives a tax refund of $\$5,000 \times 48.5\% = \$2,425$. B can still claim depreciation on the laptop at a prime rate of 27% for the next 3.71 years until the whole \$5,000 is claimed, resulting in another \$2,425 from the ATO.

Note you cannot be an “employer” to yourself but if you have an interposed entity such as a company or trust you can become an employee of it and take advantage of this ruling. Note the maximum tax rate for companies is 30%. Therefore, the laptop can only be acquired for 21.5% of its original purchase price.

Rebates

The amount of rebate claimable for a dependant spouse is determined by his or her separate net income. Taxpack discusses this in detail. Of particular interest is that a spouse’s separate net income can be reduced by childcare fees and the costs associated with going to work such as clothing, meals and travel expenses. Travel expenses can be the costs of a motor vehicle between home and work. This can be measured on the cents per kilometre method i.e. up to 67 cents a kilometre. However, unlike tax deductible motor vehicle expenses, there is no 5,000km limit.

A rebate is available for medical expenses exceeding \$1,500. This includes items purchased from a chemist that are prescribed by a doctor. A written prescription is not necessary. For example if a doctor recommends you take iron tablets and you buy them from a chemist they qualify for the rebate. Further Chiropractic care can be included in the calculation provided a medical doctor suggests you see one. This can be done retrospectively.

Motor Vehicles – Cents Per Kilometre

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 2001 rates) of \$5,590 each.

On a related issue, Case S29 states that tools weighing more than 20kg 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. Difficulty in carrying on public transport is also relevant. For example two light but large boxes of say teaching aids would still be considered bulky, as it is impossible to carry them both at once.

Medicare Levy Surcharge and Child Maintenance

Many taxpayers are being charged the Medicare levy surcharge incorrectly. The surcharge applies if you do not have private hospital insurance with a low or no excess 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 you shared custody of the child. But for surcharge purposes this area is widened and 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. In particular a single person without private hospital insurance who earns more than \$50,000 but less than \$100,000 is not liable for the 1% surcharge if they pay child maintenance. Reference ITAA1936 Section 251V.

Travel Allowance

TR 2000/13, the ruling that deals with the current year's reasonable travel allowances, 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. At paragraph 21 the ruling states: "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." 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.

Diaries and Home Office Expenses

The ATO has released practice statement PS2001/6 which reinforces the importance of keeping diaries to substantiate claims, whether you are a wage earner or in business. Diaries should be kept for one month **every year**. They are necessary when an item has both business and private use. The diary must record both the business and private use. Examples of expenses that this ruling could apply to are telephones, computers, photocopiers, etc. A record should also be kept as to the number of hours an office is used for business.

The ruling points out that a deduction is allowable only where additional running costs are incurred. For example if the family room is also used as an office there would be no deduction for the electricity to light the room if the room was also being used, at the same time, by family members to watch TV.

Claims for non variable expenses such as rent, mortgage interest and rates are only deductible if your business fits the definition of a place of business. Due to a recent case one of the main deciding factors is whether clients or customers regularly visit the premises. Note this is not decisive as your home can still be a place of business without seeing clients or customers there but you would have to be strong on the other points which are:

- Whether the area is clearly identifiable as a place of business
- Whether the area is not readily suitable or adaptable or use for private or domestic purposes
- Whether the area is used exclusively or almost exclusively for business purposes
- The essential nature of the area and the nature of the taxpayer's business

A more detailed discussion on this matter can be found in TR 93/30.

Note you may not wish to have your home considered a place of business, as this will make it subject to capital gains tax. So this is only beneficial if you are renting or purchased the house before 19th September, 1985. Claiming electricity, depreciation of equipment and telephone will not trigger capital gains tax.

Death Benefits in Your Super – Tax Consequences

Careful consideration should be given to who you nominate as beneficiary of the life insurance component of your superannuation policy. A dependant will receive the death benefit tax free if the benefit does not exceed the pension reasonable benefit limit of the deceased which is over a million dollars (140ZF(5)). The definition of dependant defined at section 27AAA(3) as:

“Any person who is or was the spouse of the taxpayer, and any child or the taxpayer who has not attained the age of 18.” Refer 27A(1).

Note the definition is not limited to this (refer IT2168) and it is recognised that a dependant does not have to be solely dependant on the deceased to qualify. For example a brother living with the deceased but receiving a social security payment would still be considered a dependant if it was proved that the social security payments were not enough to cover the dependant’s share of living expenses. Further, a parent has been found to be a dependant of a deceased child, not on the basis of financial dependence but on the fact the parent was reliant on the deceased for nursing care.

If the payment is received by a non dependant it will be taxed at 15% (subject to some exceptions) in the beneficiary’s hands if the payment is from a superannuation fund. If the payment is from the deceased’s employer it will be taxed at 30% if paid to a non dependant.

If the death benefit is just paid to the estate of the deceased you are at mercy to the Commissioner’s discretion. Section 27AAA(3) states that the only tax free component is:

“such amount (if any) as the Commissioner considers appropriate having regard to the extent to which dependants of the deceased taxpayer may reasonably be expected to benefit from the estate.”

Otherwise the amount is taxed in the deceased estate. Note a deceased estate can be taxed at the deceased tax rates (i.e. the first \$6,000 tax free then only 17% until \$20,000) for the first three financial years after death if the winding up of the estate is not unreasonably delayed. So if your beneficiary does not fit any of the exempt definitions it is better to pay the amount to the estate then directly to them.

In same sex relationships it is important to consider if the definition of spouse extends this far. If it doesn’t, you should, if your spouse has income, leave the benefit to your estate with provisions in your will dealing specifically with death benefits of your superannuation fund. In many cases the definition of dependant is left up to the trustees of the superannuation fund. If you are truly concerned about providing for your family, look into your superannuation funds rules before you fill out the beneficiary form.

If you have only been in the work force a short time superannuation entitlements may be minimal and you may disregard this article. But note your death benefits can be significant even if you are new to the fund.

In short, your will should specifically deal with your superannuation death benefit in the most tax effective way subject to your circumstances (i.e. paid to dependants only). Any generalisations will only result in the ATO being a beneficiary of your estate. And if you thought you hated paying the ATO while you were alive and able to provide for your family.....

In conclusion we need to further look at your superannuation contract and your will to ensure the ATO does not benefit. Now you have your family in order it is ideal to name beneficiaries in your will. Further, having recently done a course on deceased estates, if you are making any changes to your will and considering the possible conflict with John’s family I would like to be given the right to ensure your family, as you intended, benefits.

Bad Habits

Did you know that, if, instead of consuming the following items over a 25 year period you invested the money on a monthly basis in a well diversified growth portfolio you would achieve the following returns plus tax credits depending on the performance of the portfolio:

Bad Habit	Avg 9%	Avg 12%
20 packets of cigarettes per month @ \$8	\$181,000	\$304,000
A monthly subscription to cable TV @ \$45	51,000	85,000
Buying your lunch on weekdays say 22 days per month @ an increased cost per day of \$4 compared with bringing it from home	99,000	167,000

It is the small but regular expenses that really cost in the long run. Likewise a small but regular investment that compounds will really add up over time. If you expect your working life to be 40 years and you don’t buy your lunch too often and invest the money instead you could have between \$417,000 and \$1,050,000 at the end of your working life. So by not buying your lunch and investing the money you could have over a million dollars when you retire if your portfolio averages 12%pa.

Salary Packaging – Explained

If your salary package reduces your gross pay to less than \$150,000 you can improve your take home pay at the ATO’s expense by making employee contributions. Fringe benefits tax is based on the assumption that

if you received the money for the benefit in your pay packet all of it will be taxed at the maximum bracket. So if your salary package before the sacrifice is over \$150,000 but under \$150,000 once the sacrifice is deducted please contact our office and we will calculate the optimal employee contribution you should make as the formula is too complicated to explain here.

If your package is under \$150,000 before deducting the salary sacrifice you should make employee contributions to reduce the “taxable value” of the benefit to zero. An employee contribution is not necessary with exempt fringe benefits that are salary sacrificed such as superannuation, laptops, mobile phones, minor benefits etc. because their taxable value is already zero. The “taxable value” is normally the market value of the benefit you receive, so, if your package is under \$150,000, the only items worth salary sacrificing are the exempt benefits or in most cases a car (providing it is unlikely to have much business use and it will travel a reasonable amount of kilometres).

Note you will not be able to claim a tax deduction in your personal income tax return for the cost of using a salary sacrificed car for your work.

Salary Sacrifice and Employees of Hospitals or Public Benevolent Institutions

Employees of Hospitals and Public Benevolent Institutions can receive a limited amount of fringe benefits without their employer being liable to pay fringe benefits tax. This effectively means the benefit is received tax free just like the good old days. There is a limit of \$7,984 taxable value for hospitals and \$14,090 taxable value for Public Benevolent institutions. The taxable value is normally the actual cost of the benefit supplied. A statutory formula can be used to calculate the taxable value of a car the formula works as follows:

Statutory Fraction	
Taxable Value of Vehicle	Total kilometres p.a. less than 15,000 0.26
GST Inclusive Coat of Vehicle	Total kilometres p.a. 15,000 to 24,999 0.20
Multiply by the Statutory Fraction _____	Total kilometres p.a. 25,000 to 20,000 0.11
Taxable Value	Total kilometres p.a. over 40,000 0.07

Exempt fringe benefits such as superannuation, laptops, mobile phones and minor benefits are not included in the limit and are not subject to FBT so these are effectively tax free as well, though superannuation is taxed in the hands of the superannuation fund.

If your taxable income after salary sacrifice is under \$125,000 make sure you only salary sacrifice exempt benefits and otherwise only up to the limit. If you do more than this it will be necessary to make an employee contribution to cancel the taxable value of the extra benefit down to zero. Otherwise you are effectively paying the maximum tax rate on the excess benefit when if you had received the cash instead it would have been taxed at a lower rate.

Note you will not be able to claim a tax deduction in your personal income tax return for the cost of using a salary sacrificed car for your work.

Taxable Value of Vehicle

GST Inclusive cost of the vehicle		Statutory Fraction	
Multiply by statutory fraction		Total kilometres pa less than 15,000	0.26
		Total kilometres pa 15,000 to 24,999	0.20
		Total kilometres pa 25,000 to 40,000	0.11
		Total kilometres pa over 40,000	0.07
Taxable Value	_____		

Calculate The Cost to the Employer of Providing the Car:

Lease Payments		Actual Running Cost*	
Fuel		Add: GST Payable on Employee	
Registration		Contribution	
Insurance		Add FBT Payable	
Repairs and Maintenance		Less: GST on Running Costs	
Tyres		Less: Employee Contribution	
Total Costs GST Inclusive	_____*		
For GST on Above Divide by	11		
		Real Cost to Employer and normally	_____
GST on Running Costs	_____	the amount of the salary sacrifice	

How to Claim a Tax Deduction for Life Insurance

Normally life insurance premiums are not tax deductible but income insurance is. 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 employer's 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.

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.

Secret Plans and Clever Tricks – Claiming Meals

Claiming Meals as a Tax Deduction when not Travelling

How Employees can Claim:

RE Pollak Partners – Had the cost of lunch consumed during computer training courses been incurred by the computer trainers (rather than by their employer) such cost would have been allowable because the trainers were required to consume lunch with the course participants and to perform their duties while eating lunch.

How Employees can Maximise a Meal Allowance Claim:

TR 2000/13 – “Overtime meal allowance expense claims up to an amount of \$17.90 per meal are considered to be reasonable for the 2000-2001 income year where the overtime meal allowance is paid under an industrial instrument. If a deduction claimed is more than the reasonable amount, the whole claim must be substantiated with written evidence, not just the excess over the reasonable amount.”

The ruling does not limit the claim to the amount of the allowance received but to what the Commissioner considers reasonable i.e. \$17.90. TR1999/7 is the ruling for the 1999/2000 year and the reasonable amount is \$16.20. The wording of TR1999/7 is basically the same as TR2000/13

Motor Vehicles

Wage earners can claim their motor vehicle expenses when they meet the substantiation requirements and they travel as follows:

- 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 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. Case S29 prescribed more than 20kg was bulky. Taxpack gives the example of a ladder and drum kit not because they weigh more than 20kg but because they full fill the difficulty to carry side of bulky.
- 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 to relieve providing you were not employed predominantly to relieve. This covers seminars 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. Though if you drop off the mail on the way home you can claim for the distance off the track this takes you. Also refer TD 96/42 and TD 96/43.
- 3) **Between Jobs** - note this includes travel from home when home is the base of operations or work begins there. In Payne’s case a pilot was successful in claiming travel from home to the airport because he ran a primary production business from home. Note the ATO will probably appeal against this case. Home can also be considered a base of employment if employment related duties have begun before leaving there, providing those employment related duties did not begin merely for the convenience of the taxpayer. Taxpack provides the example of a computer programmer 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 when he left home.
- 4) **Itinerant work** refer TR95/34 which is available from the ATO web site or our office.
For example more than one workplace each day on most days.

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.

Tax Minimisation Schemes Alert

The Australian Securities and Investment Commission has warned that advertisements by Richard Sherland and SMC, claiming to give people access to their superannuation before retirement are misleading. They state that Members of superannuation funds who wish to access their superannuation before retirement can do so only on grounds of severe financial hardship or compassionate grounds. Further, the arrangement involves investing funds offshore through SMC which is not an Australian registered Superannuation Fund.

Sun Protection Now Tax Deductible

Hats, sunglasses and sunscreen will now be tax deductible if you use them for work. The Cancer Council has backed a successful case in the Melbourne Federal Court. This deduction can be claimed for 2001/2002 and you can amend previous tax returns up to four years back. The victory does not extend to protective clothing such as long sleeve shirts. The ATO may issue a ruling discussing how much time a taxpayer needs to spend outdoors in their job before they qualify for a tax deduction.

Reader’s Question – Investment Property Sold at a Loss

A reader has sold an investment property for less than the amount he borrowed. He wants to know if he can still continue to claim the interest on the balance of the loan. The ATO has lost a few cases in this regard lately so there is a good chance that the reader will qualify for a tax deduction. The ATO states the contrary

to this in TR 2000/17 but in light of FC of T v Jones, 2002 ATC 4135 and FC of T v Brown, 1999 ATC 4600 this will have to be withdrawn. TD 95/27 has already been amended as the ATO recognizes that an employee using a car for work purposes that sells for less than the outstanding loan can continue to claim the interest.

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) Endeavor 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 property 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.

The above also applies if the investment was shares or if a business was sold for less than what is owing on it. 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 is discussed in our Miscellaneous Small Business booklet. But all you really need to know is that Division 35 will not stop you claiming the interest.

Reader's Question – Nursing Care in your Home

A reader has a friend who is paying Nurses to provide around the clock care to his bedridden wife in their own home. He has been advised that this is not a medical expense for the purposes of the medical expenses rebate. I question this in view of the legislation, in which the definitions found at 159P(4) states a medical expense is payments to:

- (a) a legally qualified medical practitioner, nurse or chemist, or a public or private hospital, in respect of an illness or operation; and at
- (h) a person for services rendered by him as an attendant of a person who is blind or permanently confined to a bed or an invalid chair.

Section 159P(5) widens the above to include payments to the employers of the people listed in (a) but does not extend this to (h). So if the carer is not a registered nurse or medical practitioner, the payment will not be a medical expense if paid to an agency rather than the person actually giving the care. For example in Case S57, 85 ATC 412 payments to a city council for its home help service were not rebatable because it was not direct to the person providing the service.

For the 2002 financial year a rebate applied to any medical expenses over \$1,250, in 2003 the threshold will be \$1,500. This threshold applies only once in the year to all the medical expenses of all the family members i.e. parents and children under 21 regardless of the fact that these family members may have plenty of income in their own right. In very limited circumstances the medical expenses of grand parents and invalid relatives can be included in the threshold.

Secret Plans and Clever Tricks – 18% Return Overnight 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 \$10,000 (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. 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.

Working Overseas

If you work overseas for less than two years you could still be considered a resident of Australia for taxation purposes. But section 23AG exempts from Australian taxation employment income earned overseas providing the following conditions are met:

- 1) The employment is for a continuous period of 91 days. Note continuity is not broken by absences due to accidents or illness or recreation leave, which is part of the terms of your employment contract. Weekends, public holidays, compassionate leave etc do not break continuity nor do business trips for the foreign employer. But continuity is broken by long service leave or leave on reduced or no pay. More detail can be found in TR96/15 which also addresses the absentee credit system.

and

- 2) You are taxed on this income in the foreign country. Note Australia has different double tax agreements with each country so you will need to know exactly what applies to your country.

But note while section 23AG exempts the income earned overseas it does not exempt from Australian tax your other income such as interest, royalties, dividends, rent etc., if you are still considered to be an Australian Resident for tax purposes. That is you intend to return to Australia within less than 2 years. This 2 year rule is not hard and fast it boils down to a question of fact. You will be taxed on any interest, royalty, dividend and rent income as if you were a resident but your net overseas income (calculated in accordance with Australian Tax Law) will be taken into account in determining your tax bracket.

Salary Packaging a Car – Sometimes it Can Go Wrong

Note the following is not for employees of hospitals or public benevolent institutions.

Recently we have come across some salary packaging of cars that has actually made the employee worse off. About a year ago we published some articles on the calculations to work out the actual benefits of a salary package and these are still available in the FBT booklet. We understand that the calculations are quite complicated so the following is a list of **some** of the pit falls. If you think these could apply to you it is worth reading the booklet or talking to us. Note the following is not conclusive just some examples we have come across. To really know if your package is right you must crunch the numbers.

- 1) The ATO determine the FBT payable by your employer by a formula that increases the amount of FBT payable if the kilometres travelled by the car are low, the higher the kilometres travelled the more business purpose the ATO assumes the car has. The formula takes the purchase price of the car (assuming less than 4 years old) and multiplies it by one of the following:

Total kilometres p.a. less than 15,000	0.26
Total kilometres p.a. 15,000 to 24,999	0.20
Total kilometres p.a. 25,000 to 20,000	0.11
Total kilometres p.a. over 40,000	0.07

If your car is only doing 15,000 kilometres and it cost \$38,000 the ATO considers you to be receiving a benefit worth \$9880 per year or \$823 per month. Now unless your lease payments, fuel, repairs, registration and insurance are more than this your salary package is being reduced by FBT your employer has to pay on a benefit you are not really receiving. In other words the ATO's formula calculates the benefit of the car to you to be greater than the cost of running the car. So you would be better paying the tax on your package and providing the car for yourself.

A log book can be used stop the negative effects of the above but it will only restore equilibrium. A log book will not put you in a better position than if you provide the car for yourself.

- 2) If your gross wage after the salary sacrifice is less than \$60,000 you will need to make an employee contribution to reduce your fringe benefit to zero or at least bring your salary up to \$60,000. The tax your employer pays on your non exempt salary sacrifices is at 48.5%, the maximum personal tax bracket and is not reduced just because your own personal tax rate is lower. Therefore it is important that you make an employee contribution to bring the taxable value of your benefit to zero as you will pay less tax on the money than your employer. There is still a benefit in salary packaging a car even if you are under the maximum tax bracket threshold. If you are doing a high amount of private

kilometres as discussed above the ATO assumes in its formula that there is a high business portion and reduces the FBT payable accordingly. If your package is under \$60,000 the only fringe benefits that are worth sacrificing are exempt benefits (laptops, superannuation, minor etc) or a car doing high kilometres. In the latter case it is imperative that the numbers are crunched to ensure there is a real benefit.

- 3) If you pay some of the car's expenses yourself the ATO does not reduce the amount of FBT your employer pays under the formula in point 1) above. So you must keep the receipts and give them to your employer to include in the FBT calculation as employee contributions. If you don't do this you are effectively being double taxed because you have already paid tax on the money you use to buy the fuel etc but your employer is also deducting from your package the FBT he or she has to pay on the ATO's estimate of what the fuel expense will be. If you are in the maximum tax bracket and you pay \$100 in fuel out of your own pocket you have had to earn \$194.17. On top of that the ATO in its formula discussed in 1) above have taken into account that car will use that in fuel so will charge your employer FBT which your employer will take out of your pre tax salary package. You are effectively paying tax twice on the same tank of fuel not to mention the fuel tax we all pay.

We also have a Microsoft Works spreadsheet that will allow you to do some analysis for a salary packaged car. We do not recommend basing your final decision on the results of the spreadsheet without consultation with us as the spreadsheet was only written for use by accountants who can identify unusual circumstances.

Home to Work Travel an Exempt Fringe Benefit

Most fringe benefits are effectively taxed at 46.5% so there is no real advantage in receiving them and a big disadvantage if you are not in that tax bracket yourself. Some may gain an advantage from reducing their taxable income as Fringe Benefits are not included in your taxable income but the grossed up value of them is included on your group certificate and in your income tax return. Whenever your taxable income is relevant, the authority you are reporting to will probably request the Fringe Benefits Tax Amount as well. Therefore the only real advantage gained by arranging a Fringe Benefit Package is from those benefits that are either exempt, concessionally taxed or not reportable.

Exempt use includes "Non Cars" – Providing the following vehicles are only used for home to work travel, business purposes and other minor, infrequent and irregular travel. The benefit received is exempt, MT 2034.

- a) Motor Cycles
- b) Vehicles designed to carry a load of at least one tonne
- c) Taxis, panel vans, utilities and commercial vehicles designed to carry a load of less than 1 tonne but not principally designed to carry passengers. According to MT 2024 this includes Nissan Navara Dual Cab Ute DX, Mazda Bravo 4WD Dual Cab Ute DX5, Toyota Hilux 4x2 Dual Cab Ute, Ford Courier 4x2 Crew Cab pick-up GL and Holden Ute Series III 179kw V8. Other vehicles that have more load space than passenger space may well qualify.

If you have a long way to travel to work and cannot make that trip otherwise deductible (i.e. carry bulky tools due to no safe storage at work) it may be worth purchasing a vehicle that fits into one of the classes above, if you have another car to use for private. This will effectively allow you a tax deduction for your entire home to work travel. Or in dollar terms halve your costs for running the vehicle if you are at the maximum tax rate.

Cashing in Leave

Annual Leave – Some Federal Awards allow employees to receive the cash value of their annual leave rather than taking the time off. In Western Australia employees can cash in up to 50% of the annual leave they have accrued. Employers in NSW are specifically prohibited from paying their employees for their annual leave rather than them taking it.

Long Service Leave – Some Federal Awards allow employees to receive the cash value of their long service leave rather than taking the time off. In Queensland, South Australia, Tasmania and Western Australia can cash in all or part of their long service leave entitlement.

Teachers - Work Related Travel

It is not normally worthwhile for a Teacher to keep a full log book and receipts unless they are itinerant. Usually a teacher will do less than 5,000 deductible kilometres per year. To claim these the kilometre method can be used which does not require receipts or a logbook but simply a detailed reasonable estimate. If the Teacher travels to similar areas each term or month a record of the purpose of each journey and the kilometres travelled in the period multiplied to cover the whole year is a sufficient record. Also keep a record of one off trips. For the 2003 year you will be entitled to 50 cents per kilometre if your car has a cubic capacity of 1.6 litres or less. Over 1.6 litres up to 2.6 litres 60 cents. Over 2.6 litres is 61 cents per kilometre.

If you go do over 5,000 kilometres a log book may be beneficial but usually a better claim is available by rotating cars if you have more than one car. For example you are a member of a couple and use your spouses car sometimes. You can claim up to 5,000kms per car under the kilometre method. You must be the owner of the car to claim it under the kilometre method. If the car is only in your spouses name you can make a declaration of joint ownership. If the car is in your parent's name but you pay all the associated costs because it is really your car you are considered the owner of the car.

You cannot claim a deduction for travel between home and your normal school unless you carry bulky equipment. A trip from work to home carrying bulky papers to mark would not be deductible if you take them home as a matter of convenience. That is you could mark them at school but you would prefer to work at home.

TR 95/34 covers a lot of the circumstances where a car can be claimed as a work related expense. Of particular interest to teachers would be paragraphs 23 to 35. This ruling is available on the ATO web site. Tax deductible work related travel falls into the following categories:

Itinerant - 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.

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 schools, inspecting sporting fields etc. If you go home, rather than back to your school, after these meetings etc you can also claim the trip home.

Abnormal Workplace – Taxpack at item D1 and MT 2027 paragraphs 32 to 35 discuss claiming travel to an abnormal workplace. It is important to note that you must first have a normal workplace to have an abnormal one. You can claim for travel from home to an abnormal workplace and back home or to another workplace or vice versa. In *FC of T v Genys* (1987) 17 FCR 495; 87 ATC 4875; (1987) 19 ATR 356 the Federal court made it clear that if you are a relief teacher without a normal workplace you cannot make this claim if you only visit one school for the day. For a teacher with a permanent position the abnormal workplace claim would cover travelling to other schools for meetings, inspecting sports grounds, excursions, etc. even if they spent the whole day there. In other words the travel was merely home to work travel but because they have a normal workplace and this travel is to an abnormal workplace they are entitled to claim home to work travel. If you regularly teach at one school on Monday and Tuesdays and another the rest of the week both these schools would be considered your normal workplace so no abnormal workplace claim is available for either place.

Bulky Equipment – In case S29 it was accepted by the court that equipment weighting more than 20kg was considered bulky. If there is no safe storage at work you may be able to claim a deduction for taking your equipment to and from school. Relief teachers may be able to have a field day with this one. Safe storage means somewhere you can lock up your belongings that other people do not have a key to. It is not sufficient that you take the equipment home for your own convenience it must be out of necessity. Bulky equipment does not have to be heavy it can just be impossible to transport on public transport, for example a ladder or drum kit.

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. This article will be continued in the next edition of Newsflash.

Transporting Students – Whenever you are transporting students 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

Work Related Tasks on the Way to or From Work - MT 2027 states that the task cannot be insignificant such as dropping off the mail at the post office. Though if you drop off the mail on the way home you can claim for the distance off the track this takes you. Also refer TD 96/42 and TD 96/43 available on the ATO web site. If you perform a significant work related task on the way home you can claim the whole trip. For example checking the condition and availability of a sports ground on the way to work will make the whole trip deductible.

Home a Based of 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 so his home was the base where most of his work was performed. This case is very narrowly interpreted by the ATO.

Casual Teachers - In FC of T v Genys (1987) 17 FCR 495; 87 ATC 4875; (1987) 19 ATR 356 an agency nurse was not permitted to claim the cost of attending a different hospital each day because it was merely home to work travel. She only went to one hospital each day and as she had no normal workplace she could not claim travel to an abnormal workplace. Casual teachers can claim their travel to and from work if they attend more than one school during a day without returning home. The most likely justification a casual teacher will have for claiming home to work travel is the transportation of bulky equipment. For example, if they are only in the school for a day they will need to take teaching supplies with them. It is then a matter of getting these supplies up to the state of "bulky". An example would be a guitar, story books and sports equipment.

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.

Drawing on Your Super Before 65 Due to Invalidity

If you retire early for health reasons you are entitled to receive part of your superannuation payout tax free. The tax free portion is calculated by working out the percentage of your working life that has been cut short and applying this percentage to your superannuation payout. Your superannuation fund trustee should work this out and give you an a Eligible Termination Payment Statement (ETP) with an invalidity component. It has been our experience that some Superannuation Funds do not bother making this apportionment. The best option is to try to get the Superannuation Fund to prepare the ETP correctly. If they will not, you can ask the ATO to change it. The ATO simply require a certificate from two doctors stating that you are permanently unable to work. Making this effort can save you thousands of dollars in tax so if you are under 65 years of age, unable to work due to ill health and have received a Superannuation payout you should check that your ETP statement shows an Invalidity Component.

It is also important that you do not use the hardship provisions to draw out your superannuation. The payout must be as a result of termination of employment to qualify for this concession.

Relocation Costs

The cost of relocating your home when you are transferred is not considered by the ATO as tax deductible even though a taxpayer in case T92 was successful in claiming her relocation expenses. Nevertheless, a simpler method is to salary sacrifice the relocation costs as they are exempt fringe benefits to your employer. This will mean that you will be paying for the relocation out of before tax dollars, which is exactly the same as receiving a tax deduction for that amount. Relocation costs covered under the FBT exemption include:

- Travel, Meals and Accommodation en route including family members
- Temporary Accommodation in the old or new location
- Home sale and purchase costs. For example Stamp Duty, Legal Fees and Commissions.

Make sure your employer pays the actual costs. No exemption is available if you are only given a relocation allowance rather than reimbursement for the actual expenses.

Self Education – Explained

To be deductible against your income the course you are doing must be related to your work obligations either because it is improving the skills you need in your current job or keeping you up to date. You can also claim for expenses that will qualify you for advancement with your current employer but you cannot claim expenses relating to study that will lead to a job with a different employer. If you quit work to undertake the study or work is simply as a result of your study (i.e. prac) no deduction will be available.

If you attend a place of education as opposed to a professional membership body that also provides some courses on the side, you can not claim the first \$250 of Text books, stationery, Car expenses under the log book or 1/3 method, Student Union and Course Fees (not including HECS). But there are many ways that you can use up this \$250 without having to reduce your claim. For example;

- 1) Expenses that you do not have receipts for or are related to the study but not deductible such as childcare cost, still reduce the first \$250.
- 2) The cost of capital items purchased that year reduce the first \$250 as well as qualifying for a depreciation deduction.
- 3) Car expenses calculated under the kilometer or 12% method reduce the first \$250 as well as being fully claimable without reduction.
- 4) Refer below for deductible travel in relation to self education. The journeys not covered by this can be utilized to reduce the first \$250. For example travel from the place of education to work.

The following journeys are deductible:

Home – Place of Education – Home

Work – Place of Education – Work

Work – Place of Education – but not the home journey if next

Home – Place of Education – but not the work journey if next

The confusion created by the above is best explained by taking into account that the ATO does not want you claiming for any trips that are purely between your home and work.

Uniforms

To be able to claim a deduction for the purchase and/or laundry of clothing it must fit into one of the following categories:

Compulsory Uniform – A uniform is compulsory if there is a strictly enforced policy compelling you to wear it. To the extent that if you did not turn up to work in it you would be reprimanded or sent home. It needs to be unique and distinctive to your organization. For example have the employers name on it. Once you have met the requirements of a compulsory distinctive uniform other items of clothing can also be claimed if the compulsory uniform policy specifies their colour, style and type. This extends to items of clothing that do not have the employers name on them such as pants, shoes, socks and stockings. An example would be the requirement to wear black, closed in leather shoes. But you must meet the first requirement that you have a distinctive, unique and compulsory uniform.

Non Compulsory Uniform – If the uniform is not compulsory you will only be able to claim for items of clothing that are part of a registered design. Information on registered designs is available on the Ausindustry web site www.ausindustry.gov.au

Protective – This can be used to protect either yourself or the clothes you are wearing underneath. It also covers steel cap boots. Claims under in this category do not have to be part of a uniform.

Occupationally Specific – A dentist's shirt is not considered occupationally specific because Pharmacist also wears the same shirt. If you wear something under the Dentist/Pharmacist's shirt you could class it as protective. Chef's chequered pants are considered occupationally specific. According to the ATO occupation rulings a traditional nurses uniform and a graduation gown for a teacher are occupationally specific.

Note simply having a logo on an item of clothing does not make it claimable. The clothing must be part of a compulsory uniform policy or the logo must be a registered design to qualify for a claim.

Wage Earners Claiming Travel to Work

For full details refer to our claiming a motor vehicle booklet. Employees can claim travel from home to their normal place of work if they have begun their work at home so their home is either another workplace or a base of operations. The following is an example of successful cases on this principle:

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 so his home was the base where most of his work was performed. This case is very narrowly interpreted by the ATO.

In Collings Case 1976 – A computer programmer was required to be on call at all times and her employer installed a computer terminal in her home so that she could access the main computer through the telephone line. On the occasions that she couldn't fix the main computer from home she would have to travel into work. The court found that the trips into work were tax deductible because she had already started work before she left home, in that she had tried to fix the computer through the telephone line. This changed the nature of the journey. Instead of being travel to work it became travel on work because her duties had already commenced.

Owen V Pook 1970 – A medical practitioner required to be on call in the case of an emergency at the Hospital where he is employed. When contacted on the telephone he would give instructions on the patient's care before travelling to the hospital. Accordingly, the court found that his responsibility for the patient began before leaving home so the travel was while working not to get to work.

IT112, which is available on the ATO web site (www.ato.gov.au) discusses this matter in great detail.

Sports People

The Australian Olympic Committee funded the taxpayer in Stone v Commissioner of Taxation 2003, because it was concerned about the non-taxable status of its medal incentive scheme. This case gives some good guidelines into the tax treatment of payments received by Athletes and other Sports People. The ATO has appealed but in the mean time TR 1999/17 should no longer be considered an authority on the subject.

The ATO accepted that a payment from Little Athletics as “role model of the year” was not taxable. The court found that Sponsorships and appearance money was normal taxable income because they were clearly for services performed.

The court did not consider services to be performed when the athlete is competing unless they received appearance money. The prize money could not be considered a fee for entertainment. Prize money, goods, services, grants, non sponsorship bonuses and incentives such as the Australian Olympic Committee Medal Incentive Scheme could only be considered taxable income if the athlete was considered to be carrying on a business. Due to the following factors Stone was not considered to be carrying on a business:

- 1) She had a full time job in the police force and only trained and competed in her spare time.
- 2) She chose the events she competed in on the basis of experience gained rather than the amount of the prize money or her chances of success.
- 3) Seeking sponsorship did not change the athletes status to a business
- 4) Neither the amount of success or money received had any bearing on whether the athlete was in business.
- 5) Even the ATO conceded that the profit motive was not her predominant purpose but argued that it was sufficient that she desired to obtain income. The court felt this was not enough and looked to other factors such as businesslike methods, repetition and a purpose of profit making.

This case may also reduce the number of sports people who have to pay GST on their winnings according to GSTR 2002/3.

Claiming Your Trip Around Australia as a Tax Deduction

We have just released a new booklet particularly for Fruit Pickers and Shearers called Claiming Your Trip Around Australia As A Tax Deduction. The concepts can apply to other itinerant travellers, so whatever your means of making your way around Australia it is worth a read and its free. Visit our web site at <https://www.bantacs.com.au/media-library/booklets/>

Medical Expenses Rebate Tips

Taxpayers are entitled to a rebate for Medical Expenses if the family's expenses for the year exceed \$1,500. Section 159P(1) excludes from the definition of medical expenses amounts that have been reimbursed by "a government or public authority or a society, association or fund". Accordingly, Medical Expenses reimbursed through a compensation claim are still available to be counted towards the rebate. Reference ID2003/95.

Medical Expenses as discussed above can include the cost of an Electric Scooter if the taxpayer has mobility problems and the scooter is prescribed by a doctor. The claim can also include cost of compulsory third party insurance and maintaining the scooter. The costs of insuring the scooter against damage and theft cannot be included as a Medical Expense. Reference ID2003/978 & 979.

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.

Operating Cost Method can Save a Fortune in FBT

When calculating the FBT payable on a car the employer has a choice of two methods:

- 1) The operating cost method which is the actual costs apportion between business and private use according to a log book.

Or

- 2) The formula method which is a percentage of the original price of the vehicle (unless more than 4 years old). The percentage applied depends on the number of kilometres travelled by the vehicle. The formula assumes that the more kilometres travelled by the vehicle the higher the ratio of business use to private use.

As you can see from the above if a car does not travel many kilometres yet the travel is mainly for business a better FBT result will come from a log book. This is also the case if the vehicle has a very high percentage of business kilometres. On the other hand the formula method can allow some of the cost of a car used solely for business to be exempt from FBT.

In short if the vehicle that is subject to FBT does less than average kilometres or has a very high percentage of business use it is worth doing the calculation to see if the operating cost method gives a better result.

Don't forget that if the employee is not in the maximum tax bracket and employee contribution should be made to reduce the FBT to zero. **Note** GST is payable on the employee contribution.

Year End Tax Planning for Individuals

Take the speedo reading, as at 30th June, 2004, for each car you want to claim using the log book method. If you have not kept a log book and want to claim more than 5,000kms per car make sure you start a log book before 30th June, 2004.

Consider spouse superannuation contributions if your spouse's assessable income is under \$10,800. If you make a contribution of \$3,000 for him or her, you will qualify for a rebate of \$540. The rebate shades

out between \$10,800 and \$13,800 Note the assessable income is the gross income before tax deductions but does not include exempt payments such as Centrelink's family payment.

If you have made a capital gain it is worth considering selling other assets (such as shares) that you know will create a capital loss on disposal and are unlikely to improve so that the loss can offset the gain. A loss in the future without a gain to offset it against may take a long time to recoup. If you are currently holding onto shares that, if sold, would realize a capital loss, but you want to hold onto them as you feel they have potential, simply sell them and buy them straight back.

Consider purchasing stationery and other deductible consumables that will be used up within the next 3 months (IT333). But note as this only moves a deduction from next year into this year you should only do this if you are going to be in the same or lower tax bracket next year as you are in this year.

The most important tax strategy is to keep receipts. Without receipts your claim for work related expenses is limited to \$300 in most cases. Cars are one of the exceptions, you can claim up to 5,000kms for work related travel in your car. But note the 5,000km is per car so if you have two and rotate your cars correctly you can claim up to 10,000kms on a detailed reasonable estimate without receipts or a log book. Assuming you have kept or can get copies of your electricity and phone bills, you should consider keeping a diary, for a month of the business of these utilities. To claim electricity you need to record the average number of hours you are using electricity at home for the business. For example, working in the study but not in the family room that is also used for private purposes. To claim STD phone calls and calls to mobiles, made on your home phone, you just need to dissect the bill based on the numbers listed. As local calls are not listed individually you will need to keep a record for one month to determine the ratio of local business to local private calls and apply this to the total charge for local calls.

These items need to be attended to before the end of this financial year. In July I will write more about what you should be claiming in your tax return.

Claiming Protective Items

TR 2003/16 is based on Morris' case which gave us sunscreen deductions last year and has opened up the possibilities for claiming protective items.

Basically you can claim for a protective item if, by its nature, it would be reasonable to conclude that it will protect you from the risk of injury or illness in your workplace and that risk is not remote or negligible. This is unlikely to apply to items of clothing that are conventional in nature and you need to have a risky workplace so office workers haven't got a chance.

The item can be conventional in nature providing it is used principally for your protection. An example of this would be moisturiser with sunscreen included. This also opens up the opportunities to claim special non slip shoes if they are required for your work. Conventional clothing such as rain coats, woollen underwear and jumpers are protective if your job exposes you to water or extreme temperatures whether mechanical or climatic.

Long sleeve shirts and jeans are not considered protective but this would change if they had reflective stripes, a UV rating or the material was heavy duty and your job necessitated that protection.

The risk of injury must be as a result of your work not a personal factor such as poor eyesight, however prescription sunglasses are claimable if you need protection from the sun. A claim for prescription sunglasses offers a field day especially if you have private health insurance. For example a truck driver can claim the full cost of prescription sunglasses, as per the receipt made out to him, even if his health fund has reimbursed part of the costs. He can then also claim the non reimbursed portion as part of his medical expenses rebate. Effectively claiming the expense twice.

If the protective item is also used for private purposes, such as sunglasses, a diary should be kept for 1 month so that the cost can be apportioned between business and private use on a time basis.

This ruling does not change the law, just clarifies it. Accordingly, you can amend previous tax returns up to 4 years back to make any claims you have previously missed.

Austudy

Students on Austudy sometimes get quite a shock when they lodge their tax returns.

If a student has only Austudy income all year, it is not a problem; they don't even need to lodge a tax return if they have not had tax deducted from their payment. If they did ask Centrelink to deduct tax they will need to lodge a tax return to get that tax back.

The problem arises if the student takes on part time work. Unless they are a foreign resident, a minor with passive income or a student who has just given up full time education for the first time, they are entitled to receive their first \$120 per week in income, tax free. If their Austudy is more than this and it is the only income they have, they are allowed the whole amount tax free.

In most employment relationships the employer will not deduct tax from the first \$120 earned per week. This is called the tax free threshold. If a student is receiving Austudy and working part time the Austudy payment will have already used up their tax free threshold unless they are having tax deducted from it. They will be stuck with a tax bill unless their employer taxes them as if it is their second job. In other words, does not allow them the tax free threshold. The student can formally organise this by completing a Tax File Number Declaration form (NAT 3092-10.2002 off the ATO web site). Item 9, on this form, must have the NO box ticked then they can be reasonably confident of having nothing to fear from their tax return.

If and when you start to receive your Austudy payment you are not sure whether you will be working, it is a shame to have the tax taken out as this locks you into having to prepare a tax return. It also deprives you of money when you need it most. A better strategy is to wait until you get part time work and give your employer the form excluding the tax free threshold from your tax calculation. This should ensure a positive tax return but make sure you also advise Centrelink, regularly, how much you have been earning in wages before tax. Otherwise you could be asked to pay back some of your Austudy allowance.

Basic Austudy for a single person with no children is \$318.50 per fortnight and the student can earn another \$236 per fortnight without the payment being reduced. To qualify the student must be 25 years of age or over and undertaking an approved full time course. Students under 25 can apply for Youth Allowance but this will be subject to a parental means test unless they qualify as independent.

Tax Tips for Wage Earners

Without receipts your claim for work related expenses is limited to \$300 in most cases. The following are some of the more interesting issues you should be considering when preparing your 2004 income tax return.

Claiming Interest After Business or Investment Sold - If you have sold an investment property or a business for less than what you owed on it you can claim the interest on the remaining loan as a deduction against your wages income, providing you stick to the following guidelines:

- 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.
- 5)

Reference: FC of T v Jones, 2002 ATC 4135 and FC of T v Brown, 1999 ATC 4600

Claiming a Motor Vehicle - Even if you have not kept a log book there are other methods of substantiation that you can use to claim a motor vehicle. For example the kilometre method only requires a detailed reasonable estimate but it is limited to 5,000km per car you own. You should consider a claim if you have to carry bulky equipment for work, if you have days when you work at more than one place or use your car during your working day. You may also be able to claim travel if you go to an abnormal workplace or your home is a base of operations. For more information refer our Claiming Motor Vehicles booklet which is available on our web site.

Telephone – Assuming you have kept or can get copies of your phone bills, you should consider keeping a diary, for a month of the business use of these utilities. To claim STD phone calls and calls to mobiles, made on your home phone, you just need to dissect the bill based on the numbers listed. As local calls are not listed individually you will need to keep a record for one month to determine the ratio of local business to local private calls and apply this to the total charge for local calls. The ATO is getting very pedantic about

diaries as it recently was successful in persuading a court to disallow a taxpayer any claim for mobile phone calls because the taxpayer did not have a diary yet the taxpayer used the phone 95% for business.

Electricity – You can claim electricity based on the number of hours you have used a room solely for work related purposes. The rate is 26 cents and hour and includes other costs associated with the room such as furniture and carpet wear. You will need to keep a diary for a month to substantiate this claim.

Uniforms – To be able to claim a deduction for the purchase and/or laundry of clothing it must Compulsory as part of a strictly enforced uniform policy and it is unique and distinctive to your organization. If the uniform is not compulsory it must be part of a registered design. Note simply having a logo on an item of clothing does not make it claimable. The clothing must be part of a compulsory uniform policy or the logo must be a registered design to qualify for a claim. You can also claim for occupationally specific clothing such as Chef's chequered pants but not for a Dentist/Pharmacist's shirt as this applies to many occupations.

Reader's Question – Rebatable Employers

Your employer paying the interest on your rental property has created quiet a problem and it has cost you because your salary package would have been reduced by more than just the amount of the interest. This is probably best explained by way of an example.

Lets say your package is \$80,000 per year and you salary sacrifice \$1,000 in interest on your rental property. Your employer will reduce your available package by the cost to them of providing this benefit. Because your employer has not applied the otherwise deductible rule to your interest the whole amount has been subject to FBT though at a reduced effective rate because they are rebatable. The \$1,000 would have reduced your package as follows:

Actual expense paid by employer	\$1,000
FBT on the grossed up amount $\$1,000 \times 1.9417 = 1,942 \times 48.5\%$	942
Less Rebate because your employer did not receive a tax deduction on the FBT $942 \times 48\%$	<u>(452)</u>
	\$1,490

This means that for every \$1,000 of interest you have sacrificed your employer would have reduced your package by \$490 more than it should have because they have not taken into account the otherwise deductible rule. A refund of this amount over the years will be huge.

It does not matter if the rental property and loan is in your husband's name as well, as long as it is in joint names the otherwise deductible rule will apply to the whole amount. Note the rebate is only available on the taxable fringe benefits you receive up to a grossed up amount of \$30,000. Exempt benefits such as your super and rental property interest should not contribute to this taxable threshold. You also need to check that this problem has not also caused your employer to miss out on some of the rebate.

To correct this, your employer will need to go back and amend their FBT returns.

I know the above is complex. This is why I have taken so long to get back to you. It has not been easy to find the words to explain it. While you may not fully understand it I hope the person who works out your FBT will.

Double Dipping a Motor Vehicle Claim

I am a great fan of double dipping tax deductions and claiming a deduction for expenses you would have had to incur for private purposes anyway. Wage earners have a lot of opportunities to do this when claiming their car for work. If fully utilised they can claim home to work travel and work travel during the day using the kilometre method to claim up to 62 cents a kilometre for more than 5,000kms if they use both their's and their spouses car. Then they can arrange for their employer to reimburse them, tax free for all their motor vehicle expenses anyway.

Stage 1: Keep a log book on your car determining the business to private use of the vehicle and keep receipts for all expenses relating to the car. If you have a spouse, do this for his or her car as well and endeavour to use the cars equally. You can claim a tax deduction for your car when it is used for travel to and from work if it is to an abnormal workplace, you are carrying bulky equipment or you have more than one workplace in the day. Once you have arrived at work you can claim a deduction for your car for any work related travel during the day.

Stage 2: This stage involves your employer parting with cash so you may have to “salary sacrifice” some of your wages to cover your employer’s costs. This is to your advantage as you will end up receiving the money tax free back into your pocket. Having come to this arrangement with your employer you submit to him or her all your car expense documents and a declaration, supported by your log book, stating the percentage the car is used for business purposes. If you have a spouse, do this for both cars. Your employer then reimburses you tax free for the expenses and the otherwise deductible rule means your employer does not have to pay FBT on the amount but can claim it as a tax deduction. As this is the reimbursement of actual expenses it does not appear on your group certificate as either an allowance or reportable fringe benefit. GST provides another benefit here in that your employer can claim the GST back on the expenses so should only reduce your salary by 10/11ths of the amount claimed.

Stage 3: The fact that your employer has reimbursed you for the deductible portion of all your motor vehicle expenses does not prevent you from claiming for the motor vehicle/s on the kilometre basis in your tax return as well. Accordingly, you can still claim your work related travel in the car, up to 5,000kms per car. If your car has an engine capacity of more than 2.6 litres this could mean a further tax deduction of up to \$3,100 per car.

Note you cannot double dip if your employer reimburses you on a kilometre basis rather than for the actual expenses you have incurred. You cannot utilise this arrangement if the vehicle you are driving is provided by your employer including via a novated lease.

If you can’t BAN TACS at least minimise it legally. Kisses and hugs to the ATO.

Salary Packaging – Re-Evaluate

With the maximum tax bracket Threshold lifting to \$150,000 in the 2006/2007 year it is time to re evaluate your salary package. If you are receiving fringe benefits as part of your package your employer will be paying FBT on these at the maximum tax rate. If you are not in the maximum tax bracket any more it is important that you make an employee contribution to bring the taxable benefit down to zero. This will effectively mean the benefit is taxed at your tax bracket rather than the maximum bracket.

Overtime Meal Allowance

The award overtime meal allowance for most awards has increased to \$9.60. Some employers pay this amount straight out of petty cash and don’t bother recording it on their employee’s PAYG Summary. It is worth your employee knowing how many meal allowances they have received during the year. They have to include it as income but they can claim back expenses they have incurred, far in excess of this amount without receipts. The employee does not have to consume the meal at work they can stop on the way home. For the 2003/2004 the ATO allowed employees to claim up to \$19.75, without receipts, for each overtime meal allowance they received.

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 in TD 2004/19 on the ATO web site. Examples would be \$20.55 for an overtime meal, \$67.55 for meals for a truck driver who sleeps in his truck and earns less than \$78,750 per year. Employees, that are not truck drivers and are earning less than \$78,750 per year are entitled to \$245.55 per night to cover meals and accommodation while travelling to Sydney. 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 they must provide receipts.

In TD 2004/19 the ATO states that neither the allowance or 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 in TD 2004/19.

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 \$67.55 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	16.00
Desert & a Beer	7.00
Two Cokes and Mars Bar for Midnight snack	<u>7.00</u>
	68.00

Providing the truck driver reduces his or her claim to \$67.55 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.

Super Co Contribution Alert

If during 2004 you made an undeducted superannuation contribution for yourself that was not salary sacrificed, in other words it was made out of after tax dollars and your assessable income plus reportatble fringe benefits was under \$40,000, you will be entitled to a Co Contribution from the government.

Your superannuation fund should apply to the Government on your behalf. After October, 2004 the ATO started paying the Co Contribution to qualifying people who have lodged their 2004 income tax return. It has come to our notice that if the ATO cannot find your account they will not make the Co Contribution and they will not notify you that the Co Contribution has not been made. This problem can arise when you have changed superannuation funds or retired before the Co Contribution is received. In some cases superannuation funds close the account if the amount is too small and transfer the funds to an unclaimed superannuation fund account. If this is the case your Co Contribution will not find its way to your new account.

The ATO will notify you in writing when your Co Contribution has been made. If you do not receive this notification by the end of December or within 2 months of lodging your 2004 income tax return (whichever is the latest) please follow the matter up.

Baby Bonus Strategy

Care needs to be taken when choosing the base year for a baby bonus claim. It may be better to delay the claim a year so that a higher income year can be used as the base. The base year can be the year in which the child was born or the year before. The base year is the benchmark by which the formula determines a parent's eligibility to the bonus which is intended to compensate the parent for a drop in income as a result of the birth. For example when the claimants taxable income is over \$25,000 and exceeds the taxable income in the base year the parent will no longer receive the bonus. If this happens consideration should be given to transferring it to the other parent if their income is lower than the previous year. Regardless of when a claim is started or whether it switches to the other parent the bonus can only be claimed for 5 years from the date the first claim is made. The baby bonus applies to children born after 30th June 2001 and before 1st July 2004.

Home to Work Travel For Miners

Many miners travel to remote areas to work for several weeks and then return home for a week or two. Because the mines are in remote areas they expect that they should be entitled to claim any costs of getting there as a tax deduction. Just like an office worker cannot claim travelling to their normal place of work each day neither can miners.

In ID 2001/80 the ATO discusses the example of a miner who works two weeks on for one week off, whose employer pays for the air fares back to a capital city but not all the way home. The ruling states that the miner cannot claim for the cost of travel from the airport because travelling to the job happens before the income earning activity starts so it is not part of the cost of earning income, regardless of how far the distance. The same rule would apply if the miner had to pay the air fare.

The only opportunity a miner has to claim travelling expenses, in these circumstances, is if he or she require tools to do his or her work, the tools are bulky, there is no safe storage at the mine site and he or she use his or her car to transport them. If this is not the case it is better to negotiate a salary package that covers all of your home to work travel costs even if it means a lower take home pay. When working on a remote mine site any cost your employer incurs in transporting you to and from that site is an exempt fringe benefit. This effectively means that if your employer pays the travel costs it is out of pre tax dollars. If you pay the travel costs they will be payable out of after tax dollars. For many miners that are in the maximum tax bracket this means the travel costs will cost them twice as much as it would their employer.

When negotiating this in your salary package refer your employer to TD 95/49. Warning, an employer does not technically have to pay super on anything you salary sacrifice and only the cash portion of your salary package is covered under Workcover so make sure your agreement includes some compensation for this.

Changes to Centrelink Family Payment Thresholds For 2004/2005

Even if one parent is earning hundreds of thousands of dollars a year Centrelink's Family Tax Benefit Part B is still payable if the lower income parent earns less than \$18,947 per year and they have a child under 5. If the youngest child is over 5 the low income parent can earn up to \$14,421 per year and still receive some Part B. Neither the high income earner's income or the family's assets are taken into account. To qualify for full Part B the low income parent must have an income below \$4,000. The payment is reduced by 20 cents for every dollar of income, the low income parent receives, above the \$4,000. Previously the threshold was \$1,825 and the payment was reduced by 30 cents for every dollar above the \$1,825. These changes, only introduced this financial year, certainly allow a lot more room for the low income parent to hold profitable investments in their name.

Following from our discussion on how negative gearing is less attractive now that the maximum tax bracket threshold has increased. Consider just how attractive a profitable investment is when no tax is payable on the income because the owner is earning below the taxable amount. Further any franking credits will be refunded by the ATO.

The only catch is finding the profitable investment. The idea is simple enough make sure the income exceeds the expenses associated with earning it. Usually the most significant expense is interest. If you have a decent deposit the investment may be profitable for tax purposes. Or you could consider a monthly investment into a managed fund with spare cash. If you owe money on non tax deductible debt it may be better to borrow for the investment and use your spare funds to reduce the non deductible debt. Don't limit your thoughts to houses and please remember return is normally a reflection of the risk. To get the optimum strategy see a financial planner.

ATO's Latest Attack on Workers

The ATO is reviewing 2004 income tax returns and comparing the amount of wages actually earned to the amount of expenses claimed for earning the wages. In true public service fashion they are asking "why doesn't your employer pay these costs? You shouldn't have to incur such large expenses to work". In one case they have even asked a taxpayer, who claims for carrying his tools in his car, to provide them with a letter from their employer to explain why the employer does not provide him with a vehicle.

Taxpayers who claim their motor vehicle are the most vulnerable to this sort of questioning. After all the ATOs rate of over 60 cents a kilometre can really add up. Especially if you claim for two cars. The kilometre method is limited to 5,000kms per car so you can claim up to 10,000kms if you rotate cars with your spouse.

A popular car claim is for carrying bulky equipment to and from work because there is no safe storage at work. Most ATO publications give a ladder and a drum kit as an example of bulky. But bulky can be based on weight as well. For example, bulky equipment was defined in the following cases as:

Cestani AAT 13169 1998 – One tool box weighing 27 kilograms 10 inches wide by 10.5 inches high by 22.5 inches long.

AAT case S29 1985 – Shearers equipment weighing 18 kilograms

Unreported Tribunal Decision – Tool box of 11 kilograms and a fridge of 15 kilograms was bulky for a truck driver. The Fridge was 55 centimetres long and 31 centimetres wide. The toolbox was 41 centimetres long and 23 centimetres wide.

There is even AAT case 75 in 1987 which states "where the employment creates the need, as a matter of practical necessity, for a worker to transport his own tools, of a bulk which makes it impractical (or indeed illegal) to carry them on public transport, the expense thus incurred constitutes an allowable deduction".

Tax Offset for Workers Over 55, 2004/05

When lodging their tax return at the end of this financial year employees and business owners, who operate as sole traders or in partnership, will be entitled to a Tax Offset of \$500 if their income is under \$58,000. The threshold of "income from employment" at which this cuts out is \$58,000 for the 2004/2005 financial year but it reduces at the rate of 5% once you cross the \$48,000 mark. The rebate is 5% of net income up to a maximum of \$500. Income from employment includes net income from partnerships and sole traders but only includes wages income from trusts and companies. As distributions from your trust or dividends from your company are excluded, clients who are over 55 should be careful how they draw their income from their business. Income from employment includes Reportable Fringe Benefits but does not include investment income.

Tax Offset for Workers over 55, 2005/06

The threshold at which this cuts out has been increased to a net income of \$63,000 for the 2005/2006 financial year but it reduces at the rate of 5% once you cross the \$53,000 mark. The rebate is 5% of net income up to a maximum of \$500. The trick is in the definition of net income. It is only income from working plus reportable fringe benefits. So if you work for your own company or trust it is worth keeping your wage under \$53,000 and taking the rest of the profits as a trust distribution or company dividend.

The Money is in the Paper Work

Despite the chaos you may find your life in, as a result of having a child, do not lose sight of your bureaucratic obligations. It's all about keeping receipts and getting the forms in on time and there is too much money at stake to miss out.

In the 2005 budget the Government increased the Maternity payment from \$3,079 for children born in the 2005 and 2006 financial year to \$4,000 (indexed) for children born in 2006/2007 and 2007/2008, then \$5,000 (indexed) for children born in 2008/2009. The catch is Centrelink will not pay up unless you apply within 26 weeks of your child being born. In the case of adoption you need to apply within 26 weeks of the child being placed in your care. Currently the adopted child must be less than 27 weeks old when it came into your care but the government intends to extend this age to 2 years. If you are a foster carer you need to be entrusted with the care of a child less than 14 weeks old, apply within 26 weeks of the care beginning and expect to continue to care for the child for at least 13 weeks.

Unlike the baby bonus this payment is not income tested and is not just for the first child born after the introduction date but for all children born after 1st July, 2004. You are also entitled to the payment if you deliver a stillborn child of at least 20 weeks gestation. The payment is not taxable.

The Government's new childcare tax offset available through the tax system is even better than claiming a tax deduction for childcare for many parents. It has long been a complaint of working parents that they are not entitled to claim child care as a cost of earning their income. The offset allows parents to reduce their tax on other income by 30% of any childcare fees they incur that are not reimbursed under the Child Care Benefit. Parents earning less than \$21,600 per year would only be entitled to a tax refund of between 15 and 18.5% if they could claim the deduction so they are better off with the offset. A parent has to earn more than \$58,000 in the 2005 financial year to pay more than 31.5% tax and Medicare. In 2006 it is \$63,000 and in 2007 it is \$70,000. With the responsibilities of a child it would be hard to earn enough to be taxed higher than 31.5%. So the offset really does address this issue very effectively for low to medium income earners. The maximum amount of offset you can receive is \$4,000 per child. Qualifications for the offset are basically the same as for the Child Care Benefit. An offset can only be used to reduce tax on other income for either parent. It applies to childcare expenses paid in the 2004/05 year but be warned, you can't claim them until you do your 2006 tax return. That's right you have to wait up to 2 years to get your money and worst still keep your receipts for that long.

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.

Self Education – Enrolment Fees

When you are collecting together your receipts for your tax return don't forget enrolment fees for a course of study that is related to your income earning activities. This is so even if you never finished the course. Tax Office decision ID 2005/69 states that even if you never attended the course the fees are still deductible if they have not been refunded.

When is a Choice Not Really a Choice?

When one looks at the amount of exemptions from the choice of superannuation fund legislation you really have to wonder why the government is spending so much money on advertising it to the public. The sceptical amongst us would say they were really just spending taxpayers' money promoting the Federal Government.

After years of waiting finally on 1st July, 2005 employees were going to be able to direct their employers to make their superannuation contributions to the fund the employee chose. But this is not possible if the employee is caught within one of the many exemptions from the legislation. In fact some employers may be misled into thinking they can offer a choice when they are really breaching the award by doing so.

Your employer is not required to allow you to choose your superannuation fund if your employer makes superannuation contributions for you under a:

- A certified agreement
- An Australian Workplace Agreement.
- A state award or industrial agreement.
- The Coal and Oil Share Mine Workers Superannuation Act
- A Local Government Act
- Most Defined Benefits Plans
- Most Public Service agreements

Makes you start to wonder who on earth will qualify. Basically employees who are likely to qualify are those that are employed under a Federal award yet are not public servants. Also employees who are not employed under an award or one that does not address superannuation.

If you want to get into the nitty gritty go to www.superchoice.gov.au/employers/eligibility or as the site suggests ask your employer!

So what was all the noise about again? Better to ask what they were trying to divert our attention from at the time.

If you would like to check if you have any unclaimed superannuation benefits go to www.ato.gov.au or ring 131020. You will need your tax file number. **Note** if you have reached 65 years of age your unclaimed superannuation contributions will be transferred to the Unclaimed Moneys Register. If you would like more information about your award you are employed under go to www.wagenet.gov.au

Medical Expenses Relating to Your Job

Many clients ask why they cannot claim a tax deduction for medical expenses they incurred as a result of their work. Depending on the nature of the expense you may be entitled to claim it as part of your medical expenses rebate but not as a direct deduction against your income. Examples of these types of expenses would be glasses required to bring your less than perfect vision up to 20:20 standard to be able to clearly see the work in front of you or physiotherapy for a back problem caused in the workplace. The ATO will always argue that there is something fundamentally wrong with you in the first place for you to need the treatment and the cost of bringing yourself to the state of physical fitness necessary to do your job is a private expense and therefore not tax deductible.

Naturally many clients have found this unbelievably unfair. Recently a taxpayer challenged this issue and lost in *VBI v Commissioner of Taxation* (2005) AATA 683 (19 July 2005). The taxpayer was a registered nurse working in specialist medical units dealing with children who were seriously ill and sometimes died. The taxpayer found that he was engaging in substance abuse in order to cope with the pressures of his job. Soon after seeking the help of a Psychologist the substance abuse ceased and his career advanced. The ATO successfully argued that the expenditure was private in nature in that “the psychology was necessary to strengthen his personality in order to enable him to cope more effectively with life itself. All of the applicant’s life problems needed to be dealt with and was not limited to the performance of his employment. Good physical and mental health may well be a pre-requisite to the derivation of employment income, but are also relevant to many other life activities. It is difficult to accept that the essential character of outgoings related to treatment of personality and mental well being can be considered as a working expense with the required connection or nexus to the derivation of salary income. The outgoings were related to his overall mental outlook and not the specific professional skills involved in his employment. Here the finding is that the required essential character of the outgoings cannot be found in the income earning activity nor is it incidental and relevant to that activity. It is relevant to the overall mental health and life skills of the applicant. Treatment for physical or mental health is inherently of a private nature.”

The taxpayer had spent nearly \$10,000 a year on Psychological care. To add insult to injury the taxpayer was not even entitled to claim the expense as a medical expense rebate because the money was paid to a Psychologist not a Psychiatrist. To claim a medical expense it must be paid to a medical practitioner or to a therapist who is recommended by a medical practitioner. A Psychiatrist is recognised as a medical practitioner but a Psychologist is not. Though if the taxpayer had simply gone to his doctor and asked for a referral to the Psychologist the fees could have been included in his claim for all his medical expenses rebate.

Doing the Double Dip

We are coming up to 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 48.5 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 48.5% if your taxable income ends up under \$150,000 you may only get 43.5% 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.

This trick works well with laptops and the ATO have even issued a public ruling approving this one. Once a year your employer is allowed to provide you with a laptop as an exempt fringe benefit. If you actually purchase the laptop yourself and ask your employer to reimburse you the full amount, your employer will be entitled to claim the GST back and get a full deduction for the price. This does not stop you keeping a diary on the business use of the laptop and claiming depreciation on it in your personal tax return. This also works for tools of trade.

Changes to Double Dip

The ATO has withdrawn TD 93/145 and issued TD 2005/D17. This is a draft ruling so we cannot be sure of the final outcome. Nevertheless it is important to warn clients immediately as it is the ATO's intention to apply the ruling retrospectively.

TD 93/145 is the ruling on which we based our laptop double dip. This is where the employer reimbursed the employee for the value of the laptop but was not subject to FBT on the payment even if the employee only used the laptop for private purposes. If the employee did use the laptop for work purposes they would also be able to claim depreciation in their personal tax return. Accordingly, the employer and employee both claimed a tax deduction for the same laptop. The legitimacy of this arrangement has not changed with the withdrawal of TD 93/145 and the issue of the draft ruling. Laptops are still able to be packaged this way. But the use of this type of arrangement with other tools of trade is now a problem.

The draft ruling in the first 2 paragraphs accepts that section 51AH which would normally prevent double dipping does not catch expenses amortised over more than one year. Such as depreciation on a laptop. In paragraphs 3 and 4 the ruling declares that the same limits apply to the otherwise deductible rule in FBT legislation. The otherwise deductible rule means that employers do not have to pay FBT on any thing they provide to an employee that would be deductible in the employee's personal tax return. The catch is this only applies to a one off deduction in the year of purchase. Therefore it cannot apply to items that are subject to depreciation.

This opens a whole can of concerns. The first being employers need to be very much aware of an employee's entitlement to a tax deduction (not whether they have claimed it or not) before applying the otherwise deductible rule to reduce their FBT liability. If the item in question has a life expectancy of more than 12 months and cost more than \$300 the employee would only be entitled to claim depreciation on the item. This means that the employer would be subject to FBT on the value of its supply to the employee. As FBT effectively taxes the benefit at the 48.5% tax bracket and only 10% of the population will be in this bracket next year, this is a very bad out come. Employers in most cases would be better off paying the employees a tool allowance and the employees buying these items themselves. Alternatively the items could remain the property of the employer.

The reason laptops are not caught is because they do not require the otherwise deductible rule to exempt them from FBT. Laptops and their printers are specifically named in FBT legislation as exempt items.

Based on the comments of the judge in the NAB case 1993 we see there is support for the argument that the otherwise deductible rule can only apply to expenses incurred in that year that qualify for a one off deduction so we agree with the draft. This is a major issue for employers of tradesmen who set their apprentices up with tools. On this basis there may be some compromise in the final ruling. Nevertheless laptops and other exempt fringe benefits are still up for the picking.

Non Lodgers Beware

There was a time when all the PAYG summaries the ATO received from employers were simply reviewed from the employers point of view and stored. The ATO didn't bother matching them to the employee's file. This is one of the reasons people have been able to not lodge tax returns for years and not hear anything from the ATO. The ATO is now entering PAYG summaries into their computer by employee tax file number. The computer will now, very easily, be able to check who has worked yet not lodged a tax return. So now is the time to get your affairs in order. We recommend starting at the most recent year and working backwards. Once you have lodged the current year's, the ATO will probably notify you of the years they think are outstanding.

A Win for Meat Workers' Car Expenses

The ATO challenged a claim we made for a meat worker's car expenses to travel to and from work. The ATO normally considers travel to and from work to be private in nature. Our argument is that the trip was deductible because the client was required to carry bulky equipment to and from work. We have just received notification that the ATO accepts our argument. The relevant points that made our client's claim successful were:

- 1) There was no safe storage at work i.e. the employer did not provide personal lockers for tools
- 2) The client carried a set of knives, sharpening stone, mesh apron, mesh gloves, protective boots, hardhat, knife pouch and chain. These weighed between 25 to 30 kilograms and required a bag 100cm x 40cm x 40cm in which to carry them.
- 3) The client owned the tools and took them home each night for no other purpose than safe keeping.
- 4) These tools were used each day in the clients work.

Initially the ATO was of the opinion a meat worker could not possibly have tools of a bulky nature. But occupation is completely irrelevant it is simply a question of size and necessity.

The moral of the story is to make sure you have a mesh apron because they are worth their weight in tax deductions. These claims are very lucrative as you can claim over 60 cents per kilometre up to 5,000 kilometres per car. It really adds up over the year.

Workers' Tax Deductions

The following is intended as a quick summary of the information the average worker needs to collect for them to be able to claim work related expenses as a tax deduction. It is certainly not conclusive as many occupations have peculiarities but it is a basis to start from.

Car Expenses: Wage earners are entitled to claim a tax deduction for using their motor vehicle to travel between work places, travel to an abnormal workplace, course or trade night when they have a normal workplace, when they travel to more than one workplace before returning home or if they carry bulky equipment (over 18kg or awkward such as a ladder) from home to work or between work sites. As a minimum you need to keep a "detailed reasonable estimate" of the kilometers traveled. An example of this would be keeping a diary (similar to the sample enclosed) for 1 month of the typical journeys undertaken, multiply it by 12 and add unusual journeys to it. If you travel more than 5,000 per year per car you own you may want to consider keeping a log book. Full details of this are in our Claiming a Motor Vehicle booklet under free publications on our web site.

Uniforms and Protective Items: Simply having a logo on an item of clothing does not make it claimable. The clothing must be part of a compulsory, strictly enforced, uniform policy or the logo must be a registered

design to qualify for a claim. The uniform needs to be unique and distinctive to your organization, a logo covers this if the uniform is compulsory. Once you have passed the distinctive and compulsory test If you have a compulsory distinctive test, other, non logoed, items of clothing can also be claimed if the uniform policy specifies their colour, style and type eg black, closed in leather shoes. If the uniform is not compulsory you will only be able to claim for items of clothing that are part of a registered design. Information on registered designs is available on the Ausindustry web site www.ausindustry.gov.au Occupationally Specific clothing, ie chef's chequered pants, are also deductible but note a dentist's shirt is not considered occupationally specific because Pharmacist also wear the same shirt. If you wear something underneath the Dentist/Pharmacist's shirt you could claim as protective. According to the ATO occupation rulings a traditional nurses uniform and a graduation gown for a teacher are occupationally specific. Protective items are deductible if there is a real chance of injury that the item is designed to protect you from. For example UV protective clothing, King Gee work wear, steel caps, non slip shoes, sunglasses and sunscreen. If the item is also used for private purposes such as sunglasses, you will need to keep a diary for one month to show the ratio of work to private use. If an item qualifies you can claim the cost of purchase and maintenance such as laundry and dry cleaning.

Home Office: Claiming the running costs (not rates, interest and building insurance) will not effect your CGT exemption, unless part of your home is clearly a place of business and you see the public there. Running cost such as telephone, computer and electricity are claimable for the portion that relates to work. A diary like the sample enclosed will need to be kept for one month.

Tools: Tools costing less than \$300 can be claimed in full the year they are purchased. Otherwise they will have to be depreciated over their effective life. If the tool is part of a set the set must cost less than \$300. Identical items are grouped together and their total price must be under \$300 so it may be worth buying less than \$300 of them in one year and buying less than \$300 worth the following year.

Other Work Related Expenses: The trick here is keeping the records. Keep the receipt when you buy stationery, parking and tolls when you go to seminars & courses. Keep the itemized account for your mobile.

Self Education: Costs associated with courses that you do at a place of education are treated differently to seminars and courses run by organisations that are not primarily educational institutions. The main difference is that you are not entitled to claim the first \$250 of these expenses. This does not apply if you have incurred \$250 in relation to the education that is a motor vehicle expense claimed on the kilometre basis, a capital purchase, child care expense or educational items for which you don't have a receipt. We will sort this out for you when doing your tax return. The main point is that you include any records you have of these items in this envelope.

The following journeys are deductible:

Home – Place of Education – Home

Work – Place of Education - Work

Work – Place of Education – but not the home journey if next

Home – Place of Education – but not the work journey if next

Note the non deductible leg of the journey above is still allowable to reduce the first \$250.

If you feel you have missed out in 2005 your tax return can be amended. If you want to get it straight for next year we can help by providing you with an envelope in which you can keep the relevant information and covered with reminder notes. Just ring the office closest to you. The next edition of Newsflash will discuss what records you need to keep to be able to claim the above.

ATO Concessions for Work Related Expenses

Last edition we detailed the typical work related expenses claimed by wage earners. Usually a receipt showing the item purchased, the amount, the date and the name of the supplier is required to claim a tax deduction for the expense. If there is a private portion of the expense the amount claimed will have to be

apportioned. The ATO has made some concessions regarding apportionment and expenses that are difficult to receipt. These are:

Laundry – You can claim 50 cents per mixed load and \$1 per full load of qualifying uniforms or protective clothing, up to \$150 per year. Simply work out how many loads you average per week and multiply it by the number of weeks you worked.

Less Than \$300 – If you claim less than \$300 in work related expenses such as self education, tools, uniforms, protective items, stationery, union fees etc you do not need to substantiate your claim with receipts at all. Any claim you make for motor vehicle expenses or travel costs (includes tolls and parking) is not counted towards the \$300 limit.

Less Than \$10 – If each individual expense is less than \$10 and the total of all such expenses does not exceed \$200 you do not need to keep a receipt but must have a diary entry showing the name of the supplier, date, amount and a description of the purchase. This concession also applies if it would be unreasonable for the ATO to expect you to keep a receipt such as tolls and parking meters, even when they exceed \$10.

Allowances – Each year the ATO produces a list of what it considers reasonable travel allowances. If your employer pays you an allowance and you do not claim more than the amount listed by the ATO as reasonable you do not have to substantiate with receipts the amount you incurred. But you do have to have incurred the expense. For example don't try to claim for a motel when their register does not show that you stayed there. On the other hand a diary entry of your food expenses is sufficient. If you are away from home for more than 5 nights you will need to keep a travel diary of what you did each day. You can still claim up to the ATO reasonable amount even if your employer paid you less as long as it was a bona fide allowance (ie not just \$5 per night but sufficient to live off). The ATO also releases what it considers a reasonable overtime meal allowance each year. Again you can claim up to this amount even if your employer pays you less but you must be paid the allowance under an award.

Electricity - The ATO allows you 26 cents per hour for every hour you are working at home in an office separate from the rest of the family. This covers electricity and maintenance on the room. You need to keep the diary for 1 month, showing how much the office is used.

Motor Vehicle - By keeping a diary for one month each year you can claim up to 5,000 kilometres per vehicle you own. If you own a car together with another person and it is only their name on the registration papers they can complete a declaration of joint ownership so you can claim it. You are also considered to be the owner of a car even if it is registered in the name of another family member but you are the one who pays all the expenses relating to it.

Telephone – To claim STD and mobile calls from your home phone go through one month's itemised account and work out the numbers that are work related. This percentage of work related calls can be applied to the mobile and STD calls in the other months. Local calls can be apportioned after keeping the diary for 1 month. Each time you or anyone else makes a local phone call simply tick whether it was private or work related. To claim a portion of the rental look at the overall percentage (on dollar value) the work related calls are for the sample month and apply this percentage to the rental for all months.

Mobile Phones – Take a representative phone account and go over each number dialled to determine the percentage of calls that are work related. Apply this percentage to your mobile bills for the year or the relevant period if that is shorter.

Commissioner's Discretion – If you have sufficient evidence that you have incurred the expense and would be have been entitled to a deduction if you had a receipt then the ATO must still allow you the deduction but it needs to be beyond doubt that you incurred the expense.

For next tax year we will have an envelope available for workers to collect their receipts in. This envelope also contains sample diaries.

Allowances

Allowances really only fall into two categories. Those that are not included in your taxable income and those that are. The only allowances that are not included in your taxable income are those on which your employer has already paid Fringe Benefits Tax or the allowance is exempt from Fringe Benefits Tax for example Living Away From Home Allowance. Any allowance that falls into the Fringe Benefits Tax category should not appear in the Allowance box on your PAYG summary. If it is in the allowance box on your PAYG summary it must be included in your tax return as income. With the exception of an overtime meal or travel allowance. The fact that you receive an allowance does not in anyway enhance your chances

of claiming a tax deduction in relation to the expense the allowance covers. Your tax deduction must stand on their own merit ie they must be a cost of earning your income whether you receive an allowance or not.

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.

Medical Expenses Tax Offset

Cosmetic procedures are no longer included in the definition of medical expenses for the purpose of the tax offset for the 2006 and future income tax returns. This includes dental services and treatments that are solely cosmetic and operations for which you would not be entitled to claim under Medicare. Braces and gold fillings still count towards the offset but teeth bleaching or having a jewel inserted are no longer counted. Botox injections and nose jobs are out unless it is to correct a break or breathing difficulty. Laser vision still counts towards the tax offset.

Check Your PAYG Summaries

This week readers should be getting their PAYG summaries from their employers. Take a good look at the amount that appears in the Reportable Fringe Benefits box, normally appearing at the top right hand side of the summary. This amount can affect your Centrelink entitlements and your likelihood of paying the Medicare Levy Surcharge. While employees have strict rules as to how they calculate this amount they have relative freedom in apportioning benefits between employees, for example a company car used by various employees.

Most employers use the formula method to calculate the amount of a car fringe benefit. If you are provided with a company car that is mainly used for business purposes this method may not be the most economical. For example if you are a sales representative it may be better to keep a log book on the car and use the actual cost method. This will reduce the amount appearing in your reportable fringe benefits box and the amount of FBT your employer pays.

Another mistake employers make is to calculate the reportable benefit using the gross up amount of 2.1292 which is used, in most cases, to calculate the FBT payable but is not the correct figure to use to calculate the reportable fringe benefit amount for your PAYG summary. It should be 1.9417.

If you are concerned about any of these issues ask your employer for the working papers used to calculate your reportable fringe benefit amount and bring it along when you have your income tax return prepared so we can check it for you.

Claiming a Tax Deduction for Gym Fees

Basically you can only claim Gym fees and other fitness related expenses if your job requires an extremely high level of fitness. The teachers' occupational ruling TR95/14 states that even Physical Education teachers do not require a high enough level of fitness to be entitled to claim any fitness related expenses.

The occupational booklets and rulings (TR95/13 & TR95/17) for the Police and Military recognise that only some members are required to maintain a high level of fitness. Examples given are Divers, Emergency Squads, Police Dog Handlers, Police Academy Physical Training Instructors, Military Training Instructors, SAS and Special Combat Squads.

The Military ruling includes Gym fees as a fitness expense but strangely enough, while the Police ruling and booklet allows other fitness expenses it specifically denies gym fees. The ruling quotes the old section 51AB denying a deduction for recreational club membership. This section has since been replaced with 26-45 in the 1997 legislation. To be excluded as recreational club membership under section 26-45 the fees must be paid mainly to provide facilities for drinking, dining, recreation and entertainment. Most Gyms would not be caught here so the ATO is over stepping the mark. Yet the 2006 booklet for the police still states Gym fees are not deductible no matter how high the level of fitness required. We believe this to be wrong and rely on both the legislation and another ATO ruling TD93/114, also intended for Police officers, which says at paragraph 4 that Gym fees are deductible if a high level of fitness is required.

Other occupations this could apply to are Aerobic Instructors and Trapeze Artists. Ultimately it is not your occupation that counts but the level of fitness it requires.

Don't forget to claim your expenses for travelling to the Gym as well and protective shoes ie high impact. If you have a home Gym you can claim depreciation on the equipment instead but you cannot claim for travelling home to use the Gym.

Zones

To claim an Australian 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 but over 2 years you have been in a zone for 183 days you can claim the zone rebate in the second year. For some workers who fly in and fly out 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 quite 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.

Members of the Defence Force who serve in a qualifying overseas locality for more than 182 days are entitled to a rebate of \$338 plus 50% of the notional rebates if they have dependants. A spouse receiving parenting allowance does not reduce the notional rebate you are entitled to receive for him or her and it does not matter that these dependants are not in that zone with you. If you serve less than 183 days the amount is apportioned. If you qualify for both an Australian zone rebate or an overseas rebate you are only entitled to claim the one that gives you the biggest entitlement. For example if you have 183 days overseas but 10 days in a special zone A. Then your zone rebate can be based on 10 days in special zone A and 173 days overseas. If your overseas income is exempt you do not qualify for the rebate during that time. The rebate is not available if you are part of the Australian Embassy or Legation. Qualifying overseas areas are decided by the Federal Treasurer. TR 97/2 lists some of these but it has not been updated since 1998 so it is better to go to www.ato.gov.au for a more up to date list. TR 97/2 also explains when you are considered to have arrived or left an area.

If you have been missing out on claiming this rebate subsection 79B(5B) allows you unlimited time to go back and amend your tax return.

Changes to Bankruptcy Laws

In theory if you are declared bankrupt all your assets are seized by your bankruptcy trustee, other than basics such as certain tools of trade, a low value car, household property and clothes. But there is usually a long period of time between the bankruptcy trustee stepping in and the person becoming aware that bankruptcy is inevitable. In fact many potential bankrupts lead their creditors a merry trail for as long as possible. As the bankruptcy trustee has a time limit on how far he or she can claw back the transfer of assets

the longer they can delay the bankruptcy trustee stepping in the better chance the potential bankrupt has of hiding assets from creditors.

The new laws attempt to stop some of this evasion but there needs to be a balance to ensure that bona fide transferees are not discriminated against. The claw back laws now allow the bankruptcy trustees to examine transfers to related entities or relatives 4 years before bankruptcy is declared. The trustee will not only have powers to claw back assets transferred but also to access property owned by other people to which the bankrupt has contributed either directly or indirectly to increase to owners equity in the property, if the bankrupt has some use or benefit from that property. If the bankrupt was not solvent 5 years before bankruptcy the trustee can go back that extra year. Solvency is being able to pay ones bills when they become due.

In the past potential bankrupts were inclined to destroy records so that the bankruptcy trustee could not prove they were insolvent. The law has now been changed to put the onus of proof onto the bankrupt i.e. unless they have records to prove the contrary they are assumed to be insolvent.

The bankruptcy trustee also has powers to claw back the transfer of assets (this includes money ie paying a bill) to unrelated parties. The trustee can demand a creditor to return a payment they have received in relation to a bona fide debt because it may be considered a payment in preference to other creditors. Further, if an innocent third party purchased an asset at market value from a person who became bankrupt within the next 2 years or was insolvent at the time and became bankrupt within the next 5 years the trustee can claw this asset back. The purchaser is entitled to a refund of the price paid for the asset but is not entitled to receive the current market value. Of course the purchaser does not have the means of proving whether the potential bankrupt was solvent or not at the time of the transfer so the protection to innocent parties, to my mind, seems inadequate.

Generally monies held in a superannuation fund are safe from the Bankruptcy Trustee unless recent abnormally high contributions have been made. At the end of last month the Government announced stricter guidelines in this regard after a Bankruptcy Trustee failed to claw back such contributions in *Cook v Benson*. The new legislation will look at the size of contributions made in the past and if there is a contribution that is out of character it will be considered to have been made to defeat creditors so the Bankruptcy trustee will be entitled to claw it back. These laws will also apply to contributions to a related third party such as contributions to a spouse's superannuation fund.

Claiming Memberships

Ongoing membership of an association that relates to your occupation is a tax deduction. If it does not relate to the way you earned your income during the year you are only entitled to claim the first \$42 of the expense but note you are entitled to claim up to \$42 for each association. Initial joining fees, even if they relate to your current occupation, are not tax deductible but they also qualify for the \$42 limit.

Some industry qualifications involve doing a course and paying a one off fee. Providing the course is related to your current occupation it can be claimed as a cost of self education, just be careful that the fee is for the course not a one off joining fee to a professional association. If the course is run by an education institution such as a College or University you cannot claim the first \$250 of your costs. But these costs include things you would not normally get a deduction for such as child care fees while at the course or expenses you forgot to get a receipt for. Also if your motor vehicle expenses under the kilometre rate in relation to the course exceed \$250 you do not have to reduce your costs by \$250 at all, this does not stop you also claiming these motor vehicle expenses if they qualify. If the course is run by a trade or professional association you do not have to worry about the \$250 rot.

The cost of obtaining a qualification that is a pre-requisite to taking a job with a new employer is not tax deductible because it is incurred before the income earning activity begins. Again this would qualify for the \$42 concession. The trick is to make sure you are employed before you do the course. This problem often applies to the generic certificates needed to enter the mining industry. References TR98/6 and TR2000/7

Saving for Retirement With a Non Working Spouse

The following is directed at couples in their 50's and 60's who no longer have dependant children and are busy saving for retirement. In some cases one of the spouses has retired or not returned to the workforce since raising children. Many investment and tax strategies ignore the benefit of the spouse rebate and the cost of moving assets from one entity to another. Even if the capital gains on moving the assets are diverted

to a superannuation fund to minimise the impact. Don't forget a tax deductible contribution to a superannuation fund is still taxed at 15%. No tax would be applicable if the capital gain was not realised in the first place ie no change of the ownership of the assets. Typically this happens when they are moved from individual ownership into a superannuation fund. Thinking that will cap future earnings to 15% tax.

For example:

Assumptions – The wife is under 65 and they have no dependant children. She is not currently working but has worked in her life time (if not she would not be able to access her superannuation until 65), The couple have accumulated \$200,000 in managed funds with an expected return of \$10,000 including fully frank dividends but not including capital growth of the units in the fund, these assets are held in the wife's name.

Question – Would it be better to transfer the \$200,000 portfolio into a superannuation fund. While this would realise a large capital gain it could be offset by claiming a tax deduction for the contributions to superannuation. But as they are tax deductible contributions they would be taxed at 15% in the hands of the superannuation fund. Is this worth it so that the husband can claim a spouse rebate?

Answer – The \$10,000 the portfolio is currently earning is tax free to the wife as she has no other income. This means she will be refunded the franking credits. But her husband will miss out of receiving the spouse rebate so the effective tax is \$1,610. The rebate starts to shade out at 25 cents for every dollar the wife's income exceeds \$282 so by \$6,720 it disappears completely. But there is a small trick here. Franking credits are not included as income to the wife for the purposes of the spouse rebate. In this case it means her \$10,000 in taxable income becomes \$7,000 separate net income. Still too high and it is reasonable to assume that this income will go up and once over the \$10,000 threshold she will start paying tax at 15% the same as the superannuation fun. The best tax situation is achieved by the wife only having \$282 in separate net income and the rest being taxed in the superannuation fund's hands as the spouse rebate is worth more than her entitlement to earn the first \$10,000 tax free. That is the rebate shades out at 25 cents in the dollar so it is her effective tax rate whereas the superannuation fund is only taxed at 15%. But there is a sting in the tail. In order to get the units in the managed funds across to the superannuation fund she must realise a capital gain. This can be offset by claiming a tax deduction for some of the contributions to the superannuation fund. Just enough to reduce the CGT to zero but the superannuation fund will then have to pay 15% tax on the deducted contributions. If she kept the units in her own name no capital gain would be realised and therefore no tax payable! Unfortunately superannuation contributions do not reduce income for dependant spouse rebate purposes. Accordingly, her best strategy is to continue to own the units in her own name but make a superannuation contribution to keep her income below the Medicare levy threshold where her marginal tax rate will go from 15% to 16.5% and thus be higher than the entry tax into the superannuation fund.

Reasonable Allowances

If you receive an over time meal allowance in line with the award you are entitled to claim costs you have incurred up to \$21.10 per meal in your 2006 tax return and \$21.90 in your 2007 tax return, without receipts.

Employee truck drivers who sleep away from home and receive an allowance are entitled to claim, without receipts, daily meal costs, in 2006 of \$69.45 if their income is less than \$81,401. Truck drivers whose income is higher than that are entitled to claim \$75.75. In the 2007 financial year truck drivers who earn under \$84,251 can claim up to \$72.10, higher incomes can claim \$78.65 per day, without receipts.

Reasonable Allowances - Update

If you receive an over time meal allowance in accordance with your award you are entitled to claim costs you have incurred up to \$21.90 per meal in your 2007 tax return, without receipts. This increases \$22.60 from 1st July, 2007. Your employer may only pay you \$10 under the award but if you have spent more you can claim it up to these amounts

Employee truck drivers who sleep away from home and receive an allowance are entitled to claim, without receipts, daily meal costs, for the financial year ended 30th June, 2007 up to \$72.10 if they earn under \$84,251. If they earn over \$84,251 their limit is \$78.65 per day, without receipts.

For the financial year that started 1st July, 2007 the over time meal allowance increases to \$22.60. The daily allowance for employ truck drivers who sleep away from home increases to \$74.30 per day if their income is \$87,200 or less. If their income is over \$87,200 the amount is \$81.05. Reference TD 2007/21

More Workers Allowed a Choice of Superannuation Fund

Many workers missed out on being given a choice of which fund the superannuation paid under the guarantee, by their employer, was paid into, because they were covered by state awards. Employees covered by state awards were not effected by the Federal Governments choice of superannuation fund rules. This changed on 1st July, 2006 when the new Federal workplace relations system was introduced. Now employers that are companies may have to allow their employees a choice.

To find out if you or your employees now have a right to choose their superannuation fund go to www.workchoices.gov.au or ring 1300 363 264.

Remote Area Housing

If your employer provides you with residential accommodation they are not subject to fringe benefits tax on the costs of providing that accommodation, if it is in a remote area. This effectively means that they can provide you with a home out of before tax dollars. Note the concession does not apply to an employer reimbursing you for rent paid in a remote area.

Now the difficult part is determining what is a remote area. The easy answer is refer to PSLA 2000/6 it has a list of these areas and is available at www.ato.gov.au To calculate whether your area qualifies make sure that it has a population of less than 14,000 people or 28,000 people if it is within a zone A or B. Then check that there are no other towns within 40kms, by the shortest practical route, that have a population of more than 14,000 people or 28,000 people if in a zone A or B. If it does not pass the 40kms test it will still be considered remote if your area is further than 100kms away from a town with a population of more than 130,000. Populations are based on Census information.

Late lodgements, Interest & Other Penalties

If you are late lodging your income tax return the ATO can fine you \$110 for every 28 days or part onward that the return is late, up to a maximum of \$550. Though, the late lodgement penalty is usually waived if you are due a refund. Even if you are not due a refund it is worth writing to the ATO, explaining your circumstances and asking the ATO to consider remission of the penalty under TAA Sch 1 s 298-20. If the ATO refuses to remit the penalty and it is for more than \$220 you can object.

Late lodgement of a BAS can be far more serious as the \$110 is per tax that is reported on the BAS. This means if you report your GST, PAYG withheld and FBT on your BAS the penalty is \$330 for every 28 days up to a maximum of \$1,650 (5 x \$330) The penalties also increase with the size of the business for example once the turnover exceeds \$1,000,000 the penalties at least double.

Penalties for late lodgement of income tax returns, BAS and ASIC forms are not tax deductible. A penalty for under estimating GST instalments is tax deductible (section 25-5 1997).

The interest the ATO charges for late payment of taxes is tax deductible but if you borrow the money to pay off your personal tax debt the interest on the monies borrowed is not deductible. On the other hand if you are in business and the borrowings are connected with the business the interest on money used to pay taxes is deductible but not for the partner's in the business's personal tax. (IT2582)

This still doesn't mean it is better to owe the ATO instead of the bank, because the ATO charge a lot higher interest. The current interest rate charged by the ATO is 12.87%, after allowing for tax deductibility this is an effective rate of 8.816% if you are in the 31.5% tax bracket (\$25,000 to \$75,000). Even at the maximum tax bracket which doesn't kick in until your taxable income reaches \$150,000 the 12.87% interest charge is 6.89% after allowing for tax deductibility. So unless you are in the maximum tax bracket, if you can borrow against the equity in your house at housing loan interest rates there is a saving in doing this as soon as possible. Though for short term debt also factor in the costs of borrowing.

In conclusion it is important that you at least lodge your BAS or tax return even if you do not have the money to pay the tax and it is usually better to borrow at housing loan interest rates to pay of your tax bill than have the ATO charge you interest.

Note it is not just the penalties you should fear. The ATO also has the right to prosecute you but if they do this the penalty provisions are not applicable.

Centrelink Site Becoming Really Useful

Go to www.centrelink.gov.au in the middle of the horizontal list of options under the heading on the home page is online services. This provides a whole range of useful information. Probably the most useful being the Family Assistance Estimator which can be used without identifying yourself. This is an excellent tool for performing some what if analysis to workout if you are any better off earning extra money or planning your salary package. Note that even though you are required to enter the grossed up amount of your reportable fringe benefits ie the amount appearing on your PAYG summary, the calculator will automatically divide that amount by 1.8692 so that it is only the value of the actual benefit you receive that is taken into account, any applicable taxes are ignored.

If you log into online services section you can also obtain a print up of the information you will need to be able to claim your 30% child care tax offset. Obtaining this information before you come in and have your tax return prepared will save time.

Work Related Tax Deductions

The ATO has issued bulletins covering work related expenses for Miners, Construction workers, Security workers and people in the fitness and sporting industries. Most of the points Newsflash readers would already be aware of.

The bulletins address the question of whether improving your skills is deductible. There are a few traps to watch out for.

- 1) Whether you have incurred the cost at a time too early to be a cost of earning your income. In other words you did the course to get the job rather than improve your skills in the job. Examples of this would be induction certificates to start work in the mining industry or costs of studying to obtain qualifications to be a pilot while you are working as a sales rep. Don't be bluffed here, there is nothing wrong with claiming expenses to improve your skills to obtain a promotion in your current line of work.
- 2) Initial costs for qualifications are not deductible. Many professional associations have a cost to become a member and then an annual fee. Only the annual fee is deductible. An example given in the bulletin for mining site employees is that you cannot claim a deduction for obtaining your first machinery licence or ticket. For construction employees the example is the 'cards' require to work on building sites, occupational health and safety certificates or other regulatory permits. For security officers the example is the pre-vocational course you have to do to get your basic security licence.

Note if you are caught with one of these non deductible expenses you can at least claim the first \$42 of the expenses as a deduction. That is \$42 per expense. Further, if you are not working in the occupation for which you incurred an ongoing membership fee you can only claim the first \$42 of the expense.

Transferred Interstate For Up to Three Years

If you are transferred interstate for less than 3 years it will be well worth negotiating a living away from home allowance as part of your package. This means your employer can pay the rent on your accommodation in your new location for the whole period of time you are there, as an exempt fringe benefit. Your employer does not have to pay FBT, you do not have to pay tax on the allowance and the amount does not affect your Centrelink entitlements.

The same concessions apply to your food bill for up to 3 years too. The only difference is the first \$42 per adult and \$21 per child under 12 years of age, is not an exempt benefit. You do not need to present your grocery bill each week, it can be based on an estimate. For example you may present your grocery bill for the first week, your employer checks that this would be a reasonable estimate of the cost and just deducts from the amount \$42 for each adult and \$21 for each child in your family. The balance can then be paid to you as an exempt living away from home allowance.

You do not have to continue to maintain a home at the place you moved from as long as it is your intention to return there. You can even receive rent on your original home without having to reduce the amount of the exempt allowance. All you have to do is give your employer a declaration about your normal residence, as outlined in MT 2030. You do not necessarily have to continue to own or rent a property back at your normal location to qualify.

While you are at it, be sure to package all your relocation costs as these are also exempt and include any costs of buying and selling houses.

If you do rent out the family home, while you are away, and it is owned jointly with your spouse, who is unable to work while in the new location, you should consider utilising our salary sacrifice rental property kit (details on our web site) to effectively shift all the cash flow tax deductions on the property into your package as another exempt benefit, under the otherwise deductible rule.

Donations to Politicians and Political Parties

On 22nd June, 2006 the maximum threshold for tax deductible political donations, contributions or membership fees was increased from \$100 to \$1,500. There are two thresholds, one for donations to Political Parties and one for donations to independent Politicians, both thresholds are \$1,500. An independent Politician is a candidate or a member of Parliament that does not belong to or is endorsed by a Political Party. So in theory you could claim up to \$3,000 in a year this way by contributing \$1,500 to a Political Party and \$1,500 to an independent candidate. Only donations in relation to candidates or members of the State and Federal Parliament are tax deductible, it does not apply to Council elections.

If you made a contribution between 22nd June and 30th June 2006 you can amend your 2006 return to claim it.

Deductions for Commission Wage Earners

The definition of what is considered a cost of earning your income, is wider for employees whose wages are paid on a commission basis. TR98/6 is a ruling for Real Estate Agents but the concepts would apply to all wage earners whose income is based on commission. It recognises expenses not directly related to earning income would still be deductible because there is a prospect they will result in greater income in future years. These sorts of expenses include advertising properties, signs, letter box drops, sponsorship, property presentation costs, referral rewards, gifts and greeting cards.

Note even though taking someone out to lunch would have the same benefit, it is specifically not deductible because it is entertainment. Buying them a beer would also be entertainment but buying them a gift of wine or beer that has not been opened i.e. they can take it home, is not considered entertainment so would be deductible as would any other gift.

Employees Paying Wages to Their Family

TR98/6 is a ruling for Real Estate Agents. It recognises that even though the sales people are paid wages as an employee they are entitled to claim a tax deduction for any wages they pay to family members for helping them. The family member must do something significant, it is not enough to just answer the phone and a diary of the hours worked must be kept. The wage must be at market rates. If the sales person is paid at flat wage with no commission the ruling doubts that they would be entitled to this claim but invites the public to come forward and they will fund a test case to bring the matter before the courts.

This concept does not just apply to Real Estate Agents. It is applicable to all employees who's wages are on a commission basis. Section 26-35(1) says you can deduct an amount of a payment you make or a liability you incur, to a related entity. Section 8-1(1) ITAA 1997 states "You can deduct from your assessable income any loss or outgoing to the extent that it is incurred in gaining or producing your assessable income. This means that you do not need to prove that the payment was actually made. Only that the work was done therefore you have a liability to pay the family member. This is important when spouses run a joint bank account as it is difficult to prove the money has actually been paid.

Ryan's case decided in July 2004 by the AAT gives us the opportunity to take this one step further. Dr Ryan ran a computer consulting company that employed him and his wife. Ryan's wife only performed secretarial work for his company. She was paid at commercial rates for the amount of time she spent on company business. This was a relatively small amount but much more was contributed to superannuation on her behalf. The AAT found that Ryan was entitled to a tax deduction for these superannuation contributions.

It's Never Safe to Dispose of Records

In March the ATO released TD 2007/2, stating that in the case of carried forward losses records need to be kept for a lot longer than the record retention period prescribed under income tax law. This applies

whether the losses are from normal income or capital in nature. This may surprise property investors who have carried forward capital losses and businesses with carried forward revenue losses.

Losses are included in the income tax return for the year they are incurred and carried forward until offset. In the case of business losses it may not be long before the losses are offset but capital losses require future capital gains to be offset so this may take quite a long time. TD 2007/2 states that records must be kept until the expiry of the review period (up to 4 years) from the last tax return when the losses are fully absorbed and even then it warns that “where a formal dispute arises in relation to a loss a taxpayer should retain relevant records until any objection or appeal in relation to a loss has been finally determined”. The ruling goes on to point out that the ATO has the power to go beyond the time limits, make a new assessment and put the onus of proof back on to the taxpayer to prove the assessment is excessive. So the real advice is you can never be safe. Ignore what you read in Taxpack, about only needing to keep records for 5 years, you can’t rely on that or any other statement by the ATO because, the ruling says: Taxpayers should have regard to their own particular circumstances in making any decision whether or not to retain documents for longer periods.

No this is not an April Fool’s Joke.

The 50% Education Tax Refund

There is no difference between the parties tax policies on the low income tax offset rates and the only income tax rate difference in the next three years is that Labor will delay the introduction of a lower top marginal rate in order to finance a 50% Education Tax Refund.

For primary school age children the maximum refund is \$375 per child. To qualify the family must be eligible for Part A payment from Centrelink and have spent \$750 per child on education materials such as computers, internet, printers, education software and school text books.

Families with children in secondary school can also qualify for a refund of up to \$750 per year per child if they spend \$1,500 per child on education expenses and are eligible for Part A.

The exciting difference about this tax offset is if you do not have a high enough tax liability to fully utilise it they will pay you the amount instead.

Summary of Labor’s Promises to Watch For

The following is a list of the election promises made by Rudd that may affect your financial decisions over the next few years.

- 1) Provide a 50% refund of costs incurred on education expenses. The maximum refund you can receive will be \$375 per primary school aged child and \$750 per high school aged child.
- 2) By the 2013/14 financial year reduce income tax rates to just 3 brackets – 15%, 30% and 40%
- 3) To maintain Howard government’s tax cuts promised in the May 2007 budget,
- 4) By 2010/11 taxpayers who earn less than \$16,000 per year will pay no tax and by 2012/13 taxpayers who earn less than \$20,000 per year will pay no tax.
- 5) Increase the child care rebate from 30% to 50% and pay it quarterly. The maximum rebate paid per year per child will be increased to \$7,500.
- 6) From 1st July, 2008 donations to political parties will no longer be tax deductible.
- 7) First home savers will only be taxed at 15% on earnings they put into a home savings account. Up to a limit of \$5,000 per year. The tax applicable to interest on this account will be capped at 15%.
- 8) A tax offset will be available to landlords who install insulation in their rental properties. It is not certain which financial year this will apply to so at the moment the plans to insulate a rental property should be delayed.

Depreciating a Laptop Provided by Your Employer

We used to call it double dipping. You ask your employer to provide you with a laptop as part of your salary package. Your employer gets a full deduction for the laptop in the year it is purchased and no FBT is payable providing you only receive one a year as it is an exempt fringe benefit. Then you can depreciate the laptop in your personal tax return up to the extent it is used for deductible purposes. Then the depreciation law was re written and we were unsure whether this little gap still existed.

In PBR 65239 the ATO has advised that the double dip is still on. All you need to do is buy a laptop and take the receipt to your employer. Ask your employer to reduce your gross wage by 10/11ths of the price of

the laptop and reimburse you for the full cost of the laptop. The other 1/11th the employer will get back in GST from the ATO. On top of getting 1/11th of the purchase price paid by the ATO you do not have to pay any income tax on the money used to buy the laptop. You then keep a diary for 1 month to work out the ratio of deductible to private use of the laptop. You can then depreciate the GST inclusive price of the laptop over 3 years after adjusting for the private use portion.

Let's assume the deductible use is 60% and the laptop cost \$3,300. Using the prime rate you are entitled to claim \$1,100 per full tax year less the private use of 40% so the deduction in your tax return would be \$660. If you use the diminishing rate of depreciation the amount you can claim as a tax deduction in the first full year would be \$2,200 less the private portion. But under the diminishing method it will take much longer than 3 years to write off the remaining \$1,100.

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

2008 Budget Limits Laptop Benefit

Laptops, Personal Digital Assistants and Tools of Trade – From 1st April 2009 you will not be able to receive a 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.

Other 2008 Budget Announcements

Family Payments - Families where the high income earner has an income in excess of \$150,000 will no longer qualify for Part B payment. Part B is paid to the low income member of a couple if their personal income is low enough. In the case of sole parent families Part B was paid regardless. From 1st July, 2009 it is intended to widen the income definition for Centrelink purposes to include salary sacrificed superannuation contributions and to add back all negatively geared investment income. From 1st July, 2009 family payments will not be able to be received through your tax return, they will only be able to be claimed through Centrelink.

The \$150,000 threshold will also apply to the dependant spouse tax offset which applies when the spouse does not care for dependant children.

The baby bonus will be increased to \$5,000 from 1st July, 2008. From the 1st January, 2009 the bonus will be paid over 13 weeks rather than in a lump sum and to qualify a family's combined family income in the six months after birth must be less than \$75,000.

Other tax related issues from the budget that might interest readers include:

1) The ATO will set up a clearing house where employers can contribute their employee's superannuation and the ATO will divvy it up to the funds the employer chooses.

- 2) The seniors health care card income test will now include income that is salary sacrificed into superannuation and superannuation payments from a taxed source but it doesn't look like it will include income from a pension fund.
- 3) The depreciation period for the cost of developing inhouse computer software has been increased from 2.5 years to 4 years. Note the diminishing value method is not available for computer software ie any expenses now incurred after 13th May, 2008 must now be depreciated at the prime rate of 25% per year.
- 4) The entrepreneurs tax offset will now be income tested by examining the rest of the family's income.
- 5) They will be putting a stop to salary sacrificing wages into superannuation in order to reduce your income to qualify for the co contribution.
- 6) It is also intended to tighten up many of the tax and Centrelink concessions that can be obtained by redirecting wages through salary sacrifice or negative gearing.
- 7) From the 1st July, 2008 the level of income at which a person will trigger the Medicare levy surcharge will increase to \$100,000 for singles and \$150,000 for families.

Note the above does not include election promises previously covered in November.

Higher Education

If your degree will improve your skills in your current job or increase your chances of promotion with your current employer you are entitled to claim the costs associated with studying and attending University as a tax deduction.

HECS is not tax deductible, to a student, under any circumstances. On the other hand if you do not qualify for HECS you may qualify for FEE-HELP which is basically the same as HECS in that it is a loan to pay your University fees. Of course this only applies if your studies increase your chances of promotion or improve your skills in your current job and the 20% loan fee loading is not claimable. Nevertheless, it may be that students who don't qualify for HECS are better off.

FEE-HELP just like HECS does not have to be repaid until the student's income reaches a certain threshold. The deduction is allowable in the year that the fee is paid to the University not the year the student repays the loan.

Reasonable Allowances Update

If you receive an over time meal allowance in accordance with your award you are entitled to claim costs you have incurred up to \$23.60 per meal for the 2008/09 financial year, without receipts, even though the allowance you received would have been less. This amount is \$22.60 for 2007/08 tax return you will be lodging in the near future. Employee truck drivers who sleep away from home and receive an allowance are entitled to claim, without receipts, daily meal costs, for the financial year ended 30th June 2009 up to \$77.55 per day if their income is under \$90,000 and up to \$84.60 if their income is over \$90,000. For the 2007/08 tax return the limit is \$72.10 if they earn under \$84,251 and \$78.65 if they earn over \$84,251, all without receipts. References TD 2007/21 and TD 2008/18

Buck Stops With Taxpayer

It seems everyone else can make mistakes except taxpayers. The Australian taxation system is based on self assessment, that is taxpayers when lodging their income tax returns declare that they are correct at law, even though the highest courts in the land have trouble deciding just how that law works. Based on such a faulty premise it is not surprising there is little justice in our taxation system.

In *Zhu v FCT* the taxpayer was fined 25% of the tax shortfall because the ATO considered him to have failed to take reasonable care when preparing his income tax return. The taxpayer simply filled in his tax return with the information provided to him by his employer as per his PAYG summary. It appears there was an error in the PAYG summary and the taxpayer, despite only immigrating to Australia in the previous year and still experiencing language difficulties should have realised the amount was incorrect. The AAT upheld the ATO's approach, claiming that the taxpayer failed to discharge his burden of proving the ATO incorrect.

The taxpayer still believes the amount on the PAYG summary was correct but the ATO chose to believe a spreadsheet provided by his employer's solicitor over the taxpayer. Strangely enough the amount of tax deducted by the employer was only enough to cover the income shown on the original PAYG summary and

the spreadsheet only materialised when the ATO audited the employer's records. But we all know that no one would dare exploit their new immigrant employees.

Repaying Workers Compensation Payments

Many years ago we published an article advising readers that if they had paid tax on income they later had to repay they could amend the previous year's tax returns to remove that income. This is no longer the case for workers compensation payments section 59 of the 1997 ITAA which allows income that has to be repaid to not be considered taxable income and specifically excludes payments for compensation or damages for a wrong or injury you suffered in your occupation. The logics behind this being that the tax is taken into account when the amount of compensation is calculated.

Nevertheless if you are required to repay taxable income from Centrelink or your employer, don't forget to amend the tax return for the year you originally received the income, to remove the amount you have to repay.

When You Can Claim Super, Has Changed

A little realised trap created by the changes to superannuation means that people who have only a small wages income say less than \$450 or because you are under 18 and work less than 30 hours a week or you are over 70. Note from 1st July, 2007 you may (subject to all the normal limitations) qualify for a tax deduction for superannuation contributions you make if they are made before 28 days after your 75th birthday.

Can still not claim their superannuation contributions unless they satisfy the 10% rule. This is due to a change in the wording of the legislation so just because you could claim last year doesn't mean you will be able to this year.

For example if you are on a low wages income of less than \$450 per month but have, say, a \$35,000 capital gain you cannot get a tax deduction for any money you put into superannuation even though your employer is not required to contribute for you, because more than 10% of your income is from wages, even though those wages do not attract employer superannuation contributions. The best you can do in this situation is to ask your employer to salary sacrifice your earnings into superannuation.

The Catch with No Deposit No Interest Terms

Most readers will be aware that if they don't pay off the loan within the prescribed time they will be charged an extortionate interest rate. But did you realise that in some cases the repayment amount you are given will not pay the amount of your purchase within the term so you will have to make a large payment at the end of the term or cop the high interest rates.

Details on the Education Tax Refund

If you are considering buying a computer for your children for Christmas, don't forget to keep the receipt. The Education tax refund will apply to your 2009 income tax return so it covers any qualifying expenditure since 1st July, 2008. It also covers text books so keep those receipts in January when you send them back to school. The details are as follows:

- The refund is 50% of the amount spent
- The maximum refund for each primary school child is \$375 (\$750 expended)
- The maximum refund for each secondary school student is \$750 (\$1,500 expended)
- If you do not have to lodge a tax return the tax refund can be claimed by lodging a form with the ATO
- Only Parents who qualify for Centrelink's Family Tax Benefit or who's children received Youth Allowance, a Disability Support pension or ABSTUDY Living Allowance will qualify.
- Expenditure on computers, internet connection, printers, educational software, school related trade tools, text books and stationery qualifies.

We recommend that you keep a diary on the computer and internet use for one month. The diary should show the percentage of education related use compared to the total use. There is nothing yet specifying a diary must be kept but we would be very surprised if the eventual application forms don't require some sort of apportionment.

If your expenditure in a given year exceeds the maximum amount then the balance can be carried over to the next financial year.

Donations to the Bushfire Victims

Don't forget to get a receipt so that you can afford to give more because it will be tax deductible. To check whether the fund you are donating to qualifies as a tax deductible gift recipient you can go to

[http://www.abn.business.gov.au/\(e1qcvvrg0okfaf45nipadrys\)/main.aspx](http://www.abn.business.gov.au/(e1qcvvrg0okfaf45nipadrys)/main.aspx)

The ATO has announced that you can claim up to \$10 in bucket donations without a receipt.

Results of High Court Challenge to your \$900

The high court has ruled that the \$900 stimulus package was valid. Seven judges considered the case and the majority decided it was valid but the fact some judges did not show that this was not just a nuisance case and just how complex our laws have become. So here is what you should be receiving.

Tax Bonus for Working Australians – If in your 2008 tax return you paid tax after tax credits and offsets were taken into account and your taxable income was under \$100,000 you qualify. Note paying tax does not mean you received a tax bill from the ATO as a result of lodging your 2008 tax return. Tax deducted from your wages or PAYG instalments may have covered the tax and you even ended up with a refund of some of the tax you had paid during the year. As long as you did not get back all of the tax you paid during the year you will qualify. To qualify for the full \$900 your taxable income for 2008 must be \$80,000 or less. If your taxable income is between \$80,001 and \$90,000 you will get \$600. Between \$90,001 and \$100,000 only \$250. You will receive the payment in the same way you received your tax refund or tax bill for your 2008 tax return. You will not qualify for this payment if you do not lodge your 2008 tax return by 30th June, 2009.

Single Income Family Bonus – If you qualify for Part B payment on 3rd February, 2009, from Centrelink then you will qualify for \$900 which will be paid into the same account as your Part B payment. If you have opted to receive your Part B payment at the end of the year when you know your taxable income then you will not receive this bonus until you lodge your 2009 income tax return.

Farmer's Hardship Bonus – This is a \$950 payment to farmers and rural-dependant small business owners who on 3rd February, 2009 were receiving any of the following payments:

Exceptional Circumstances Relief Interim Income Support Transitional Income Support
Farm Help Income Support.

It will be paid through Centrelink into the account that the above payments are made.

Back to School Bonus – This applies to each eligible school age child between 4 and 18 on 3rd February, 2009 if their family qualifies for Part A from Centrelink and will be paid into the same account as the Part A payments.

Training and Learning Bonus – A \$950 bonus is payable to recipients of Youth Allowance, Austudy and Abstudy. Recipients of Sickness Allowance and Special benefit can also qualify if they return to education or training. The Education Entry Payment has been increased by \$950 for income support recipients who return to study between January 2009 and 30th June 2010.

Useful Rates for the 2009/2010 Financial Year

Maximum income at which people of age pension age do not have to pay tax or Medicare:

Singles \$29,867 Each Member of a Couple \$25,680

Threshold at which Medicare Surcharge will be payable if you do not have private health Insurance:

Singles \$70,000 Family (includes non custodial parents contributing to a child's maintenance) \$140,000

Amount of passive income a minor can have without paying tax providing they have no other income:
\$3,000.00

Tax Thresholds:

0	-	6,000	0%	6,001	-	35,000	15%	35,001	-	80,000	30%
80,001	-	180,000	38%	180,001	+		45%				

Tax Offset - Amount of offset \$1,350 No Tax payable if income only \$15,000

Truck Drivers Reasonable Meal Allowance – no substantiation required if employer pays allowance. Salary below \$93,601 \$82.05 Above \$93,600 \$89.50 Reference TD 2009/15

Overtime Meal Allowance – Maximum amount you can claim without receipts if you receive an overtime meal allowance: \$24.95 Reference TD 2009/15

FBT Interest Rate –5.85% Applicable to employee loans and notional calculation of interest on car provided to an employee. For the FBT year 1st April, 2009 to 31st March, 2010. Reference TD 2009/16

Div 7A Loans - 5.75% reference TD 2009/10

Improvements to Pre 1985 Assets – You can spend up to \$124,258 in 2009/10 improving a pre 1985 asset without having the improvement classed as a separate post 1985 asset but note the construction of a building on pre 1985 land will always be considered a separate asset. Reference TD 2009/12

Luxury Car Limit - \$57,180 same as for the 2008/09 financial year. Reference TD 2009.13

Investment Allowance Key Points - The following only applies to businesses that have a turnover of less than \$2 million

- 1) 50% of the amount spent if entered into the contract before 31st December, 2009 and installed ready for use by 31st December 2010
- 2) Must spend more than \$1,000
- 3) All amounts are net of GST if you are entitled to claim GST
- 4) Purchases after 31st December, 2009 will only qualify for 10%
- 5) Land, buildings, computer software and intellectual property do not qualify.
- 6) Batches of identical items or items that form part of a set, can be added together to pass the threshold and identical items acquired before 31st December 2009 can be added to those purchased after that period to see if the threshold has been passed. Though then only 10% will apply.
- 7) You must purchase a new asset or new improvements to a current asset.
- 8) The asset must, at the time it started to be used in the business, be principally used in Australia to carry on a business.

These are the basics. The issue is covered in detail in our year end tax strategies booklet for 2009.

Education Tax Offset

Please remember to bring your receipts with you, for any expenses you have incurred for your child's education, when you do your tax return. Expenses that count towards the offset are:

- Laptops, Printers, USB flash drives and Computers including repairs and associated running costs.
- Computer software, Internet Connection and Ongoing fees.
- Text books, study guides and stationery.
- Tools required for school based apprenticeships – not otherwise tax deductible.

Surprising exclusions from the list are school fees, excursions, tutoring costs, library fees and subject levies.

If you have more receipts than you need for this year, don't discard them as they can be used next year. If the expenditure for one of your children is over the limit this overflow can be used against the limit for another one of your children. The maximum amount of expenses that you can claim for each primary school child is \$750 and secondary school \$1,500. If your child has gone from primary to secondary during the financial year you are entitled to the higher \$1,500. But if the child finished school at the end of last year you will only be entitled to half the amount. The offset means you will get half of the expenditure amount back. This is achieved by either reducing your tax payable for the year or by a refund cheque sent to you if you have no tax liability for the year.

Note if you are an independent student under 25 years of age you may qualify to claim the education offset for yourself, if you are receiving certain types of government assistance.

Medicare Levy Surcharge

Readers are by now probably well aware that as long as you contribute to the support of your child then, even if they don't live with you, they are considered your dependant. This means you are entitled to the family threshold for the purposes of the Medicare Surcharge, which is a combined income of \$140,000 for the 2009 financial year and the 2010 financial year. A step child can also be included as your dependant if you contribute to its care, for example provide some food, shelter etc. This means that if your spouse's child primarily lives with its other parent but visits your home on weekends it is still considered your child for the purposes of the surcharge.

To avoid the surcharge all your dependants must be covered by private hospital cover. They don't necessarily have to be covered under your policy just covered. So if you are a high income earner cruising along on single hospital cover to avoid the surcharge but considering that cohabitation commitment or your partner hasn't gone home for a while, don't just get couples cover if they have children. You will need family cover unless the children are covered by their other parent's health insurance. There is no pro rata, unless all your dependants are covered, there is no exemption at all from the surcharge. Of course if you have children of your own then you also need to have family cover to avoid the surcharge even if you are single and they don't live with you but you contribute to their maintenance.

Medicare Levy Surcharge

Unlike the Medicare levy, which just applies to your taxable income, the surcharge applies to your taxable income and reportable fringe benefits. In the 2009/10 year it will also apply to your reportable superannuation contributions and total net investment losses. In both these years the threshold at which the surcharge will be payable, if you do not have private hospital cover, is \$70,000 for singles and \$140,000 (plus \$1,500 for each child after the first) for couples.

If your income exceeds the threshold then you are liable for the surcharge on a pro rata basis for every day you are not covered. So generally taking on private cover during the year will only reduce the amount of surcharge you have to pay. You would have to have private hospital cover from the 1st July through to the 30th June to completely avoid the surcharge. However, unique to the 2008/09 financial year is a concession to compensate for Parliament taking so long to pass the new thresholds. If you obtained private hospital insurance before the 1st January, 2009 and continued to hold it you will not be liable for the surcharge.

If you are single and with no dependants for only part of the year, for example you enter or exit a relationship, then only your income is tested against the threshold. Yet you are still entitled to the higher threshold for the days you were not single. For example your income is \$100,000 and you do not have private health insurance but you were part of a couple for a quarter of the year. Then you will only be liable for three quarters of the surcharge regardless of your partner's income.

Reportable Superannuation Contributions

Reportable super contributions are going to be included as part of your income for the following:

- the Medicare levy surcharge threshold calculation
- the Medicare levy surcharge (lump sum payment in arrears) tax offset
- all dependent tax offsets
- the senior Australian tax offset
- the pensioner tax offset
- the Higher Education Loan Programme and Student Financial Supplement Scheme repayments.

Before a superannuation contribution can even be considered reportable it must have been claimed as a tax deduction either by you or your employer.

Any superannuation contributions you make for yourself that you qualify for a tax deduction for, will be added back to your income when the definition of income for that particular threshold includes reportable benefits.

If you are an employee your reportable superannuation contributions will be any your employer makes for you over and above the following:

- The 9% required under the guarantee
- An amount required to be paid by an industrial agreement
- Required by the trust deed or governing rules of a super fund
- Required by a federal, state or territory law

In other words if you salary sacrifice into super it will now be a reportable superannuation contribution.

Note this only applies from 1st July, 2009 so will not flow through for a while yet but employers may need to adjust their record keeping to have the necessary information available when they prepare next year's PAYG summary.

Taxpayers that qualify to claim a tax deduction in their personal tax return (generally self employed or retirees under 75 years of age) will also have that deduction added back to their income in a similar way to the reportable super amount for an employee. There is no concession for the 9% guarantee etc but on the other hand their personal contributions will not be added back when testing the thresholds for:

- the mature age worker tax offset
- the spouse super contributions tax offset
- super co-contributions
- deductions for personal super contributions.

If you are a Centrelink customer, your reportable super contributions will be included in your income to work out if you are eligible to receive certain Centrelink benefits.

How the ATO Calculate Your PAYG Variation

When you lodge a PAYG variation form with the ATO they calculate the amount of tax that you should pay over the whole year on the amount of income you have told them you will have. They then deduct from this the tax you have paid so far this year, this could be zero if you have put your application in before 1st July. The ATO then divides the remaining tax it wants to collect from you by the number of pay periods left in the year. They then work out what percentage this amount is of your monthly, fortnightly or weekly pay then write to your employer and say that you have a flat tax rate of this percentage.

Redundancy

The maximum tax free redundancy payment you can receive in the 2009/10 financial year is \$7,732 plus \$3,867 for every full year of employment. If you are self employed but have to close your company because you lost the contract for the work you were performing you could also qualify for these tax free amounts but the amount paid must be along the lines of what would be paid if it was an arm's length arrangement.

The redundancy in both cases must be genuine ie your job no longer exists. The tax free portion of the redundancy payment is also not considered exempt income so it does not reduce any carried forward loss that may result this year.

If you find another job before the end of the financial year note that your current PAYG variation won't apply to your new employer so you will have to re apply. If you don't normally lodge a PAYG variation this maybe the time to do it if cash flow has got a bit tight while you were unemployed. Even if you don't normally get a big refund at the end of the financial year a period of unemployment could result in one so you want to get your hands on the money as soon as possible.

Whatever you do don't go reducing deductible debt with your redundancy payment. If it takes a while to find a new job and you end up having to draw the funds back out for living expenses then part of the loan will become non deductible. The redundancy payment is best directed towards non deductible debt or placed in an offset account.

What is Included in the Medicare Surcharge Threshold

From 1st July, 2009 if your income for Medicare Surcharge purposes is over \$70,000 for singles and \$140,000 for families plus \$1,500 for every child after the first, then you will be subject to the 1% surcharge on your taxable income and reportable fringe benefits. Note it is 1% of your taxable income and reportable fringe benefits even though other sources of "income" are taken into account to decide if you have exceeded the threshold. As a result your taxable income and reportable fringe benefits may only be \$60,000 but you still exceed the surcharge because of \$15,000 in investment losses. Nevertheless your surcharge will only be \$600, 1% of \$60,000.

Your income for surcharge purposes includes your taxable income, reportable fringe benefits, reportable superannuation contributions (as discussed in Newsflash 194), and net investment losses. The latter referring to all your investments whether they be losses or profitable, being added together and only added back for surcharge purpose if the net result of them combined is a loss.

Negotiating Your Salary Package?

The following are some important points to consider when negotiating the superannuation portion of your package.

People 50 and over (up to 75 if satisfy work test) can put \$50,000 a year into superannuation but if they earn more than 10% of their income from employment then they are not entitled to claim the deduction in their personal tax returns. This means they must ask their employer to reduce their pay and put it into a super fund for them – before tax. The employer will then get a tax deduction for the contribution just as they would have for the wages. Note the \$50,000 a year limit is from all sources so it includes the 9% guarantee

already paid and contributions from multiple employers are added together. From 1st July, 2011 people over 50 will only be able to contribute \$25,000 per year into super but we are hoping by then the government will be back on the stop spending and save bandwagon so they will up the limits

People under 50 can put \$25,000 a year into superannuation but if they earn more than 10% of their income from employment then they are not entitled to claim the deduction in their personal tax returns. This means they must ask their employer to reduce their pay and put it into a super fund for them – before tax. The employer will then get a tax deduction for the contribution just as they would have for the wages. Note the \$25,000 a year limit is from all sources so it includes the 9% guarantee already paid and contributions from multiple employers are added together.

Before a superannuation contribution can even be considered reportable it must have been claimed as a tax deduction either by you or your employer. The following only applies to employees. Reportable superannuation contributions will be any your employer makes for you over and above the following:

- The 9% required under the guarantee
- An amount required to be paid by an industrial agreement
- Required by the trust deed or governing rules of a super fund
- Required by a federal, state or territory law

In other words if you salary sacrifice into super it will now be a reportable superannuation contribution, unless of course you can get it through as part of an industrial agreement.

Reportable super contributions are going to be included as part of the income test for the following:

- the Medicare levy surcharge threshold calculation
- the Medicare levy surcharge (lump sum payment in arrears) tax offset
- all dependent tax offsets
- the senior Australian tax offset
- the pensioner tax offset
- the Higher Education Loan Programme and Student Financial Supplement Scheme repayments.
- For Centrelink customers, the reportable super contributions will be included in the income test to receive certain benefits

Note this applies from 1st July, 2009

Caution – employers are entitled to use salary sacrificed contributions to reduce their obligations under the super guarantee so any agreement has to clearly state that the employer will still put in the 9%.

What Is In and What Is Out Now for Tax Offsets

From the 1st July, 2009 many income thresholds for tax concessions will include your reportable superannuation contributions and require your rental losses to be added back. Reportable superannuation contributions are explained in Newsflash 194.

Mature Age Worker Tax Offset - Up to \$500 if you are over 55 years of age and still working. Your net income from working (either as an employee or in business) needs to be under \$63,000, this includes reportable fringe benefits, reportable employer superannuation contributions (this is usually the amount you have salary sacrificed) but does not include any passive income or termination payments and can be reduced by work or business related deductions

The Senior Australian Tax Offset – You must be of age pension age and have a “rebate” income under the threshold released each year. Your rebate income is your taxable income plus any personal superannuation contributions you make and your net investment losses will be added back.

HELP, Hecs Etc – The income that will be applied to the threshold is your taxable income plus your reportable fringe benefits and reportable superannuation contributions, you will also need to add back your net investment losses and exempt foreign income.

Child Support – Reportable superannuation contributions will now be included in your income for child support purposes.

Co Contribution

To qualify for a government co contribution for your undeducted superannuation contribution your assessable income needs to be under \$61,920, this amount is indexed each year. The maximum undeducted contribution that the co contribution can apply to is \$1,000. The government has set the co contribution rates for at least the next 6 years as follows:

2009/10, 2010/11 and 2011/12 – The government will match you dollar for dollar up to a maximum of

\$1,000

2012/13 and 2013/14 – The government will match your dollar with \$1.25 up to a maximum of \$1,250
2014/15 and following – The government will match your dollar with \$1.50 up to a maximum of \$1,500

Neither your contribution nor the government's will be subject to the 15% contributions tax.

Self Education Expenses and Centrelink Payments

In *FC of T v Anstis* 2009 ATC 20-142 the ATO was once again wasting taxpayers' money by taking a case it had already lost in the Federal court all the way to a full bench of the Federal court. The argument was over whether the costs of text books etc were a cost of earning income if your income was a Centrelink study payment. In this particular case the amount claimed was \$920.

It seems the only chance a taxpayer has against the ATOs limitless budget is if, like Symone Anstis, their father is a solicitor.

The wide reaching point of this decision is the statement by the judges that “the first limb of s 8-1 was concerned with whether the outgoing was incurred in the course of deriving assessable income, not whether the outgoing was incurred for the purpose of deriving assessable income: *FC of T v Payne* 2001 ATC 4027.” This means the ATO's narrow interpretation on the deductibility of self education expenses is now in doubt. Until this case they had also denied self education deductions when your job is just a part of the process of qualifying in your profession. Arguing that claiming a deduction for your course costs was not allowed because it is putting the cart in front of the horse ie the course required the job not the job requiring the course. Now with the emphasis being put on whether the expense is incurred in the course of deriving assessable income rather than for the purpose of, a simple link may be all that is necessary.

Political Donations

A while ago we reported that donations to political candidates would not be deductible from 1st July, 2008. Well the bill is through Parliament but there was some compromising along the way. Businesses will no longer be able to claim a tax deduction for donations to political candidates but individual taxpayer will. Up to a limit of \$1,500 per year.

The Detail on Co Contributions

If you contribute \$1,000 to your superannuation fund and do not salary sacrifice it nor claim it as a tax deduction, the government will kick in another \$1,000 if you pass certain requirements. The co contribution is reduced on a pro rata basis if you contribute less than \$1,000. The government's \$1,000 and your \$1,000 will not be taxed in the hands of the superannuation fund.

Your assessable income needs to be under \$31,920 if it exceeds this but is less than \$61,920 you will still get some co contribution, the \$1,000 shades out at the rate of five cents for every dollar over the \$31,920. Note assessable income is not your taxable income, it is your income plus reportable fringe benefits and before tax deductions. For the 2009/2010 and following financial years it will also include reportable superannuation contributions so it is no longer possible to reduce your income for the Co Contribution test by salary sacrificing into super. As tax deductions do not reduce your income for Co Contribution purposes you may be better off to prepare a partnership tax return for jointly owned rental properties so that only the net amount received from the rental is entered in your tax return. Where as, an individually owned rental property will appear in detail in your tax return and the rent received will count towards the threshold for the co contributions without allowance for the deductions. The good news for sole traders is that they are allowed to reduce their assessable income by business deductions.

You also need to have 10% or more of your income from employment where your employer is required to make superannuation or from running a business as a sole trader or partnership. Finally you need to be under 71 years of age and you will need to lodge a tax return.

The following table provides some examples of how total income is counted for co-contributions and the 10% test.

Income source	Total income	Eligible income for the 10% test
Salary or wages, including employment income through a company or trust	Yes	Yes, where you are treated as an employee for the purposes of the <i>Superannuation Guarantee (Administration) Act 1992</i>
Director fees as a company director	Yes	Yes, where you are treated as an employee for the purposes of the <i>Superannuation Guarantee (Administration) Act 1992</i>
Business income as a sole trader	Yes	Yes
Other income from individually held assets (including interest, rent and dividends)	Yes	No
Business partnership distribution	Yes	Yes
Non-business partnership distribution	Yes	No
Distribution from a trust	Yes	No

If you are in your own business but operating through a trust or company, qualifying for the co contribution will take some careful planning. You see you need to have 10% or more of your total assessable income from business as a sole trader or partnership or you need to have it from wages income where you have triggered the need for your employer (can be your own company or trust) to make superannuation contributions for you, under the 9% guarantee. Dividends from companies and profit distributions from trusts will not count in the 10% rule even though they are from your own business. So if you have been using dividends or distributions to take your income from the business to avoid the 9% super guarantee you may have shot yourself in the foot if you are after the co contribution. This needs to be sorted out before 30th June, 2010, it is not something that can be fixed when your tax return is prepared.

Selling Solar Power Back To The Grid

There has been a bit of noise about this subject on TV recently. The GST side of the issue was addressed back in 2004 by the ATO. Firstly, they state that there is no netting off of supplies to the electricity authority. So even if they supply you with more electricity than you supply them that does not in anyway negate the fact that you are supplying them with electricity. Though there is a carve out for situations where the meter works in such a way that it is not possible to determine the supply by the solar panel owner separate from the supply by the electricity authority. In this case the transaction can be ignored if the overall result is that the electricity authority supplies your more power than you supply them.

In short the ATO states that if you are registered for GST and you supply electricity to your local authority as part of your enterprise then you must charge GST. Further, if you supply more than \$75,000 worth of electricity per year then you are forced to register for GST even if you do not make any other business supplies.

If you are registered for GST in your business but at home your solar panels are generating electricity that you sell back to the grid, this is not in relation to the enterprise for which you are registered for GST so the GST provisions do not apply. So even if you are registered for GST because you own a mechanical workshop or takeaway food outlet, the supply of electricity from your home to the local authority is not part of that enterprise. It maybe part of a separate enterprise but as the turnover would be less than \$75,000 that enterprise will not be required to register for GST.

Now getting back to the situation for the average house holder, they are unlikely to generate enough electricity to have to register for or collect GST. It is more the consequences of receiving income for generating electricity and selling it to the authority that they need to worry about. It was even stated by an MP on TV that Centrelink will be taking the income received into account for age pension and other entitlements. This suggests that the income will also need to be included in your income tax return. We see justification to exclude it as it is not a hobby. It seems to be business income. There are 4 main factors to consider whether you are in business, profitability, size, continuous effort and business records. None are decisive on their own but the regularity of a payment is persuasive that it is income even if it doesn't meet the definition of business income

Of course there would be a corresponding deduction for borrowings to buy the solar panels and depreciation. This would have to be apportioned between the use for generating the power your use and the use for generating power to sell so there will undoubtedly still be a profit.

But it gets worse. If these solar panels are sitting on your home then your home is used to produce income. Could this compromise your main residence exemption? If so it would only be a small portion of any gain that would be subject to CGT. It is not the CGT that is the problem it is all the record keeping you would be required to do and the fact that it would reset your cost base to the market value at the time the house started to produce income. This will preclude you forever being able to reset the cost base should you one day rent it out.

Scary stuff but this could quite possibly be the situation. Let's hope the ATO bring out a ruling on this so we have some clarity.

Overseas Fly-In Fly-Out Workers

When the Rudd Government removed the exempt income status of wages earned overseas by Australian residents it made little difference to taxpayers working in countries where the tax rate is high anyway.

For example in PNG workers who live in Australia are taxed at a flat rate of 40%. So if they earned \$200,000 per year they would lose \$80,000 of it in tax to PNG. In their Australian tax return they would declare the full \$200,000 and receive a non refundable tax credit for the tax paid in PNG. Now in Australia the tax on \$200,000 is \$64,850 so the \$80,000 tax credit from PNG would cover this but the balance of \$15,150 would not be refundable by the Australian government nor can it now be carried forward to offset against foreign income in future years. Further if the taxpayer had other income in Australia the foreign tax credits cannot be used to pay the tax on that income. The only concession offered is that the foreign income is considered the last piece of income you earn therefore subject to the highest marginal tax rate, maximizing the amount of foreign tax credits that can be utilised.

A negatively geared rental property is not going to help a resident taxpayer whose income is taxed highly in a foreign country where it is earned.

Going back to the PNG worker with \$200,000 in foreign income, the \$5,000 property loss will make their Australian income \$195,000 tax on which is \$62,600 but all this means, is that the wasted foreign tax credits are now \$17,400. Worse still when they start working back in Australia they may no longer be able to afford to subsidise the rental property so have to sell it realising a capital gain in a year when they don't have excess foreign credits. Foreign tax credits can only be used to offset tax on foreign income so even if they are still working overseas when they sell the best case scenario is that the capital gains tax is recognised first so benefits from the tax free threshold and lower rates. Nevertheless, the losses during ownership do not provide any tax benefit and the capital gain cannot utilise the wasted foreign tax credits. This is a very strong argument for finding someone or something else to own the property.

Usually choosing what name to purchase a property in involves a bit of crystal ball gazing but in the above case unless the property is going to be negatively geared for a long time and the owner is only going to work overseas for a very short period it is not hard to work out that there is no reason to hold it in their name. Alternatives are to hold it in a low income spouse's name or a discretionary trust. A SMSF is unlikely to be the best choice due to salary sacrifice problems, individually taxpayers should consider the SMSF option but as it is very unlikely to be the best outcome and a complex issue it is ignored in this discussion.

Holding it in a low income spouse's name may also waste the negatively geared property losses. If the spouse has a low income the tax refund resulting from the loss is minimal, if they have no income then the loss can be carried forward but must first be reduced by exemption income such as Centrelink family payments. There is also the risk that by the time a capital gain is realised, the low income spouse may have returned to full time work and be on a high income.

A slightly complicated and costly alternative is to hold the property in a discretionary trust. We get a bit defensive about recommending trusts because it is certainly a revenue generator for accountants and we do not want to appear to be giving a sales pitch. This is a situation where a discretionary trust can give you a better outcome if your crystal ball is a bit foggy, simply because a discretionary trust gives you more options later down the track. But it is going to cost you to set it up and each year you will need to lodge a trust tax return. Also consider land tax considerations, good or bad depending on which state you are in.

The benefit is that in a discretionary trust the losses can be safely quarantined until the capital gain is realised as there is no risk of exempt income reducing them, low income soaking them up at a minimal tax rate, or the losses reducing foreign income on which tax has already been paid. Having safely protected

these losses through the years, when the property becomes positively geared or sold for a capital gain then they can reduce the profit before it is distributed to any beneficiaries and provide you with the choice of which family member any remaining profit is distributed to, depending on the circumstances at the time. In short a discretionary trust eliminates the need for a crystal ball so unless you are very certain of your circumstances during the whole period of ownership the discretionary trust will give you the best tax outcome.

Centrelink Part A and Education Tax Offset

The following is a link to the Centrelink page for the income test for Part A http://www.centrelink.gov.au/internet/internet.nsf/payments/ftb_a_iat.htm Taxpayers who's income is too high to receive any Part A from Centrelink will not qualify for the education tax offset. There are concessions if the reason you do not receive Part A is because the child receives some other form of income or benefit.

Deducting Education Expenses on Youth Allowance

Despite the ATO's unlimited taxpayer funded resources to appeal to every court in the land when it loses a case, truth and justice has prevailed in Anstis' Case. Nevertheless, despite losing the case hands down and being refused leave to appeal the ATO is still not actually admitted defeat (let alone how much money they wasted), its only recourse now is, in the words of Assistant Treasurer Bill Shorten, is to analyse the judgement and produce a decision impact statement on ATO's position and how the law would be administered as a consequence of the decision. The Sydney Morning Herald which draws parallels between the Symone Anstis case and the movie The Castle quotes the ATO as urging people who believe they might be affected by the ruling to be patient. Patient! We have already waited years while the ATO has dragged the issue through every court it could.

Patient for what? In our opinion, it is very simple, the cost associated with studying are deductible when you receive youth allowance to study ie study costs are a cost of earning income.

Symone Anstis was studying to be a teacher when she attempted to claim costs amounting to \$920 for computer depreciation, books, stationery and prac teaching costs such as travel and teaching aids. Fortunately her father is a solicitor so she could afford to challenge the mighty ATO. Something that the rest of us defenseless common folk are grateful to them for.

The bottom line is, if you have received youth allowance in the last four years and incurred expenses in relation to your education, you should consider amending you previous tax returns to make a claim. Of course you can't get back more tax than you have paid so you firstly have to consider whether you would have been taxable in those years anyway. If your taxable income in the relevant year exceeded the following thresholds you should consider amending your tax return:

2006/07	\$10,000	2007/08	\$11,000
2008/09	\$14,000	2009/10	\$15,000

Paid Parental Leave

The Government's new paid parental leave scheme will apply to babies born or adopted from 1st January, 2011. It is only the minimum wage that is paid for up to 18 weeks so it is important to combine this with other tax planning strategies such as payments in advance aiming to stay as close as possible to the same tax bracket in the years before and after the leave as you are in during the leave.

The payment can be made to either the mother or father, currently the amount is \$569.90 per week. To qualify you must be a resident of Australia for the purposes of the social security Act and your employment must be based in Australia. Further you need to have worked for at least 10 months in the 13 months up to the date of the baby's birth. So bad luck if you have a difficult pregnancy because you are not allowed any more than 8 weeks off in a row before the actual date of birth, though this period can be extended by paid annual, sick or long service leave. Mind you the legislation takes into account part time and casual work so while the restrictions above do apply you only have to have worked 330 hours during that 10 month period. Note even if the parent worked part time before the birth they still get the full \$569.90 per week.

Self employed people also qualify but they will have to claim their payments direct from the family assistance office. Volunteers do not qualify. Paid Parental Leave must be taken in the first year of the baby's life and the parent must not have returned to work between the birth and taking the payment.

The 18 weeks Paid Parental Leave can be joined to other maternity and annual leave entitlements but not taken at the same time. During the 18 weeks the parent can return to work for up to 10 days to attend training and planning days or in the case of self employed to check up on how the business is going.

The parent on leave must have, in the previous full financial year, earned less than \$150,001. This is adjusted taxable income so includes add backs for fringe benefits, reportable superannuation contributions, tax free pensions, targeted foreign income and investment losses, child support payments are deducted from this amount. Spouse income has no effect.

The parental leave payment is taxable in the hands of the parent and (unless multiple birth) will prevent them qualifying for the Baby Bonus or Family Tax Benefit Part B for the 18 week period the Parental Leave is paid.

The payment is made by your current employer but you need to make the application. Paid Parental Leave can be salary sacrificed if "paid" by an employer. From the employer's point of view the money is received from the Family Assistance Office and it is taxable income to the employer, the corresponding payment to the parent is tax deductible so the result has no affect. The employer is responsible for deducting tax from the payment and it must be included in the PAYG summary. The Parenting Payment does not affect the employers payroll tax or workers compensation totals. While a parent is on paid parental leave they do not accrue long service leave or annual leave. The 9% superannuation guarantee does not apply to the paid parental leave.

If for some reason employment is terminated then the family assistance office will pay the parent direct. Until the 30th June 2011 an employer can choose not to be involved but from 1st July, 2011 it is mandatory.

ATO Left a Surprise Present Under the Tree for Students

You may remember a recent article complaining that the ATO was sulking in the corner considering its options after losing its case preventing students receiving youth allowance from claiming the education expenses. Well it has certainly had a change of heart, just before Christmas too!

It is now fact that recipients of youth allowance are entitled to claim their education expenses (but not HECs or HELP) as a tax deduction and they should have been able to claim them all the years that the ATO has denied the deduction. The trouble is that you can only amend your tax return back 4 years.

The generous bit is that the ATO is going to automatically allow all students in receipt of Youth Allowance a \$550 deduction for each of the last 5 years, provided they have lodged a tax return. You don't have to do anything other than bank the cheque when it arrives. Note it is a \$550 deduction not a refund. A refund is only going to result if you didn't get all your tax back originally.

If you want to claim more than \$550 then you will need to lodge your own amendment.

Baby Bonus vs Paid Parental Leave

For parents of babies born from 1st January 2011 they will need to choose between receiving paid parental leave or the baby bonus and part B. Paid parental leave is taxable where as the baby bonus and Part B are not. The baby bonus and Part B are received from Centrelink, paid parental leave is received from your employer, though they are reimbursed by the family assistance office. The Centrelink payments have less impact on other benefits because they are not included in ATI which is a benchmark for many Centrelink and tax related concessions. Note ATI is adjusted Taxable income, which is your taxable income after adding back investment losses, adding in tax free pensions etc, Targeted foreign income, reportable fringe benefits multiplied by .535 and reportable superannuation contributions, then deducting child support payments.

When tax is taken into account the payments are very similar. Fortunately, Centrelink has an estimator on their web site that will help you work out which payment produces the best result for your particular circumstances. The page address is:

http://www.centrelink.gov.au/internet/internet.nsf/individuals/ppl_working_parents_estimator.htm

You also need to consider tax strategies to try to keep your income in the same tax bracket in the year of the birth as the years before and after, such as making interest payments on a rental property in advance. Note if you end up with a taxable loss for the year of the birth, for example a negatively geared rental property, then your carried forward losses will need to be reduced by the payments you receive from

Centrelink, even though they are exempt from tax. Here is a comparison of the conditions of each payment which may in itself be enough to give you only one choice:

Paid Parental Leave	Baby Bonus
Under \$150,000 ATI in previous year. (only the income of the parent taking leave)	Under \$75,000 ATI 6 months before birth (Combined family income)
Must not return to work after birth	Can continue to work
Must have worked before birth	No need to meet work test

Flood Levy Detail

Not much point in analysing this too much until it gets through Parliament so here are the proposed numbers. The levy will only apply to people with a taxable income exceeding \$50,000 it does not appear that they will apply their new adjusted taxable income definition to the flood levy. It will only apply in the 2011/2012 financial year and will not be payable by anyone who qualified for flood relief.

The first \$50,000 after the \$50,000 threshold will attract a flood levy of ½% but only on the excess income above the \$50,000 threshold. If your income exceeds \$100,000 not only will you pay ½% between \$50,000 and \$100,000 you will also pay 1% on any income above \$100,000.

Considering Making a Superannuation Contribution?

It is that time of year again where you need to get your head around the latest changes to the superannuation contribution rules and decide what you can afford. The following covers large superannuation contributions. Next edition we will look into the low income concessions of co contributions and spouse contributions. Note that even after reading these articles you must seek professional advice on your strategy as there are just too many exceptions and traps.

If you intend claiming a tax deduction for the contribution then you need to consider the concessional contribution caps. If you are under 50 years of age you can only contribute up to \$25,000 per year to a superannuation fund and claim a tax deduction, for 50 years and over the threshold is \$50,000. Though if you are over 65 years of age you need to also pass a work test of 40 hours in a 30 day period. Once you pass the 28th day of the month after you turn 75 you can no longer make concessional superannuation contributions. The caps quoted include the amount your employer has contributed for you. If you are an employee you cannot make tax deductible contributions for yourself unless only 10% of your income is from wages. Employees can effectively get a tax deduction for their super contributions by salary sacrificing into superannuation through their employer. If you are an employee and have made a large capital gain on a rental property you cannot contribute that gain to a superannuation fund but you can live of it and instead salary sacrifice your wages into superannuation, still limited by the cap.

If you work overseas, even though your employer may not be required to contribute for you, you are also not entitled to make your own tax deductible contributions. This problem has only arisen because of recent changes to the way overseas income is taxed so hopefully this anomaly will be fixed soon.

Non tax concessional contributions (the ones you cannot claim a tax deduction for) have different rules. There is a limit of \$150,000 a year but you can put \$450,000 in one year if you are under 65 years of age or under 75 and satisfy the work test, by bringing forward \$150,000 from each of the next 2 years. If you use this completely then you can contribute nothing for the next 2 years. If you don't contribute the full \$450,000 you can make a top up contribution during the next 2 years, providing you still qualify ie under 65 or work test Non concessional contributions are not taxed when going into or coming out of the superannuation fund.

The small business concessions allow business owners to make larger contributions when they sell an active asset. For example, if they qualify under the small business retirement concession, they can contribute up to \$500,000 into superannuation from the sale of an active asset without it being taxed in the hands of the superannuation fund. Further, the capital gain up to that amount is not taxable. The 15 year exemption goes even better, not only is the gain not taxed but they can put \$1.155 million of it into superannuation as a non concessional contribution. Though the \$1.155million is reduced by any retirement exemption (the \$500,000 cap) already utilised. Note the \$500,000 and \$1.155million cap is over the taxpayer's lifetime, intended as a once off catch up for business owners that invested in their business instead of superannuation.

In all cases above make sure the money is actually in the superannuation fund before 30th June, 2011.

Superannuation Concessions for Low Income Earners

The government will make a co contribution of up to \$1,000 into your superannuation fund if you contribute \$1,000 out of your after tax pay that you don't claim a tax deduction for. Neither yours nor the government's \$1,000 will be taxed in the hands of the superannuation fund. The co contribution is reduced on a pro rata basis if you contribute less than \$1,000. Your assessable income needs to be under \$31,920 if it exceeds this but is less than \$61,920 you will still get some co contribution, the \$1,000 shades out at the rate of 3.333 cents for every dollar over the \$31,920. Note assessable income is not your taxable income, it is your income plus reportable fringe benefits and reportable superannuation contributions (generally those you salary sacrifice). In the case of self employed their assessable income is not reduced by any superannuation contributions for which they claim a tax deduction. Generally expenses you claim as a tax deduction cannot reduce your assessable income. Though, sole traders are allowed to reduce their assessable income by business deductions. In the case of partnership or trust income it is only your share and the net amount (income less deductions) that is included as assessable income, regardless of whether it is business or passive income. If you are the sole owner of a rental property then the gross rent is included in your assessable income without deduction for the expenses. But if you own the property with at least one other person then it is only your share of the net income from the property that is included in your assessable income. It may be necessary to lodge a partnership tax return to ensure this happens.

You will not qualify for a co contribution if you only have passive income. At least 10% or more of your income needs to be from wages or a business but when doing this calculation you can ignore business expenses which will make it quite easy to pass the test if you are in business. Note trust income even if from a business is still considered passive so you may need to consider having the trust pay you a wage. The following table provides some examples of how total income is counted for co-contributions and the 10% test.

Income source	Total income	Eligible income for the 10% test
Salary or wages, including employment income through a company or trust	Yes	Yes, where you are treated as an employee for the purposes of the <i>Superannuation Guarantee (Administration) Act 1992</i>
Director fees as a company director	Yes	Yes, where you are treated as an employee for the purposes of the <i>Superannuation Guarantee (Administration) Act 1992</i>
Business income as a sole trader	Yes	Yes
Other income from individually held assets (including interest, rent and dividends)	Yes	No
Business partnership distribution	Yes	Yes
Non-business partnership distribution	Yes	No
Distribution from a trust	Yes	No

The work test applies between 65 and 70 (40 hours in 30 days). Once you reach 71 no co contributions is available.

Spouse Contribution

The other low income concession is for taxpayers on any income level who have a low income spouse. If the low income spouse has assessable income (refer above) plus reportable FBT and reportable superannuation contributions of less than \$10,800 their spouse can make a superannuation contribution for them of up to \$3,000 and receive a tax offset of 18%. A tax offset reduces the amount of tax the higher income spouse has to pay. It can mean that you will receive a refund of any tax you may have paid during the year because the offset is used to pay the tax instead but if the higher income spouse's income is so low that they do not have any tax liability then the offset is wasted. So this arrangement is only beneficial when the spouse making the contribution has a taxable income above \$16,000. As the superannuation contribution for a low income spouse is not actually claimed as a tax deduction it is not taxed in the hands of the superannuation fund. If the low income spouse's assessable income is more than \$10,800 but less than \$13,800 the higher income spouse will still qualify for some tax offset the shade out rate is 18%.

The work test applies between 65 and 70. Once the spouse reaches 71 no spouse contributions can be made.

There is a nice little trick if the low income spouse is between 55 and 65 and retired. The contribution can be made and then withdrawn, tax free, a few days later yet the high income spouse will still qualify for the tax offset.

In all cases above make sure the money is actually in the superannuation fund before 30th June, 2011.

Meal and Travel Allowances

TD 2010/19 sets the rates for the 2010-11 financial year. Any employee paid an overtime meal allowance under an award, law, order or industrial agreement, is entitled to claim the cost of the meal as a tax deduction whether or not it exceeds the amount of the overtime meal allowance paid. The meal allowance paid is included as income and if you have receipts for the meals they can be deducted. If you don't have receipts then you can only deduct up to the amount the ATO considers reasonable, providing of course this is equal to or less than what you expended. The reasonable amount for 2011 is \$25.80. Note that it is not necessary for the meal to be purchased during the overtime work. It can be purchased on the way home.

Employee truck drivers who sleep away from home are also entitled to treat their travel allowances in a similar way. They must actually be paid a travel allowance and have some record that shows a typical days expenses. If so then they are entitled to claim up to \$84.90 per day without receipts providing that is within the range of their record of a typical day's expenses. This amount increases to \$92.65 per day if their income exceeds \$97,100. If they are not paid an allowance then they will need to keep receipts but nevertheless their costs of meals and possibly accommodation are tax deductible.

So if you have not kept a record of your typical meal expenditure and you receive one of these allowances, make sure you do so before 30th June and put it in with your tax records.

Unusual Medical Expenses that Qualify for the Tax Offset

As you collate you paper work for your tax return consider your medical expenses. For the 2010/11 financial year they have to exceed \$2,000 before you start to qualify for the offset. The offset is 20 cents for every dollar in excess of the \$2,000 threshold. The whole family's medical expenses can be added together to meet this threshold.

In case Q21 84 ATC 77 an allergy to cow's milk was considered an illness. Accordingly, because the milk substitute was prescribed by a doctor and purchased from a chemist it qualified towards the medical expense tax offset. But make sure the milk substitute is purchased from a chemist and the doctor makes a file note that it is recommended (IT 2146)!

Therapeutic treatment also qualifies if it is prescribed by a doctor. The doctor must name the therapeutic practitioner and specify the treatment. Examples of this would be chiropractors, osteopaths, masseurs, speech therapist and dieticians.

Students Receiving Centrelink

The financial year just finished (2010/11) is the last time students will be able to claim their self education costs as a tax deduction against any Centrelink payments they receive for studying, as the law has now been changed.

The expenses are treated the same as the self education expenses of employees studying in relation to their job, except for the motor vehicle claim. Students on Centrelink payments can only claim motor vehicle expenses to and from their place of education if they have to carry something bulky ie more than two trips from the car or weighing over 18kg. If students go somewhere else other than their regular place of education, but in relation to their course then they can claim the trip. If they travel between their place of education and their part time job they can claim the trip.

The kilometre method is probably the easiest method of calculating the claim. It requires a detailed reasonable estimate up to a maximum limit of 5,000kms per vehicle. The rate is 63 cents p/km for an engine capacity of 1.6 litres or less, 74 cents if 2.6 or less but over 1.6, 75 cents p/km if over 2.6.

A claim for self education expenses is required to be reduced by \$250 but if the motor vehicle expenses exceed \$250 none of the expenses have to be reduced.

Carbon Tax Rates and the Truth for High Income Earners

All the press releases are comparing the new tax rates associated with the carbon tax to the current year's tax rates. Short memories! Am I the only one old enough to remember the tax rate promises of the 2007

election campaign where John Howard lost to Kevin Rudd? When these rates were introduced the plan was to give the low income earners the tax cuts first then just about now the tax cuts for the high income earners were intended to kick in. As you will see in the following tables when the 2007 promised tax cuts are included high income earners are considerably worse off, over \$10,000 per year on \$250,000

Do not read the following table as you would a normal tax bracket table. This is looking at your total income and what tax rate applies to the last dollar you earn. These are not stepped up rates but the actual rate you pay on your last dollar if your net taxable income is the amount below. So for example if you total taxable income is \$67,500 this year then one dollar less will still be taxed at 34% but one dollar more will be taxed at 30%. That's right because before that your low income tax offset was reducing at 4 cents for each extra dollar but by the time your income hit \$67,500 you completely lost the low income tax offset ie you have nothing left to lose so you are back to the 30% effective tax rate. If you can't stay under the \$67,500 then even though your spouse has a lower income than you, if you have the flexibility, it is best to give them less income and you more. The new tax rates place less emphasis on the low income tax offset so in the future if you find yourself in this unusual position the effect will only be minor.

Dark figures are the new tax rates proposed as part of the carbon tax measures. The lighter figures are the tax rates we would have had if nothing had changed, the effect of the low income tax offset is also taken into account, which is why there are so many brackets and why in some cases the rate decreases as the income increases. **Note** under the new tax rates the thresholds for 2013/14 will now be the same as the new tax rates for 2012/13.

	2011/2012	2012/13	New 2012/2013	2013/14	New 2015/2016
Zero tax	\$ 16,000	\$ 20,000	\$ 20,542	\$ 20,000	\$20,979
15% tax	\$ 30,000	\$ 30,000		\$ 30,000	
19% effective tax	\$ 37,000	\$ 37,000	\$37,000	\$ 37,000	\$37,000
34% effective tax	\$ 67,500	\$ 82,500	\$66,660	\$ 82,500	\$67,000
32.5%			\$80,000		
33%					\$80,000
30% tax	\$ 80,000	\$ 80,000		\$180,000	
35%		\$180,000			
37%	\$180,000		180,000		\$180,000
Maximum Tax Rate	45%	40%	45%	40%	45%

The way the table works is, for example if you earn \$37,001 in 2012/13 then that last dollar would have an effective tax rate of 34% under the old rules and it is the same under the new rates but leading up to that the old tax rate would have been 15% it is now 19%. The effective rate takes into account the shading out of the low income tax offset. The plan originally was that in 2013/2014 you would not leave the 19% tax bracket until your income reached \$82,501 but now that will happen at just \$67,001 in 2015/2016 and of course \$67,000 in 2015/2016 will buy a lot less than it does today. It will certainly be a below average wage. The tax rate increases as a result of the government's carbon tax plans are much higher when you compare them with the promised tax cuts that middle to high income earners have been waiting to receive since promised in 2007.

It is important to know what bracket you are in. If you are close to the bottom of your tax bracket then an additional expense, super contribution or negatively geared investment will push you into a lower tax bracket decreasing the amount the ATO will contribute. This maybe a good reason for delaying expenditure, if possible.

It is also important when deciding whose name to buy a property in as the high income earner may already be negatively geared into the same bracket as the low income earner. In these circumstances consider putting the property in the low income earners name as they will get exactly the same contribution from the ATO but have a lot more room to absorb a capital gain.

The objective of income splitting is to aim to have both members of a couple in the same tax bracket. Once this happens there is no further tax benefit of shifting income from one to the other. Though there is an exemption to this rule when one spouse is pushed over the low income tax offset upper threshold. As you can see in the table below once the low income tax threshold is lost the effective tax rate is less than it was before so an income splitting strategy should also consider keeping one spouse's income low enough to get as much of the low income tax offset without dropping below another bracket and the other spouse going

well over the threshold at which the low income tax offset is lost as long as they don't go into the next tax bracket. Accordingly, it is important to know the upper income threshold for each bracket as shown in the table above.

If you are a high income earner you might like to know that Kevin Rudd and John Howard both promised that by 2012/2013 people on over \$180,000 per year would only pay a maximum tax rate of 40%. The argument was actually based on the fact that high income earners could afford to wait and low income earners got the benefit of the early round of tax cuts.

The tax rates introduced by the carbon tax reforms have removed the promised 40% maximum tax bracket for next financial year and replaced it with a 45% one! I believe the reason tax cuts were necessary in the higher tax brackets were because Australia was having trouble keeping its skilled workers. We need skilled workers more than ever. The truth of the matter:

	2011/2012	2012/13	New 2012/2013	2013/14	New 2015/2016
Actual Tax Payable by a Taxpayer Earning \$30,000	\$2,100	\$1,500	\$1,797	\$1,500	\$1,714
Actual Tax Payable by a Taxpayer Earning \$37,000	\$3,430	\$2,830	\$3,127	\$2,830	\$3,044
Actual Tax Payable by a Taxpayer Earning \$80,000	\$17,550	\$17,450	\$17,547	\$17,450	\$17,534
Actual Tax Payable by a Taxpayer Earning \$180,000	\$54,550	\$52,550	\$54,547	\$47,550	\$54,534
Actual Tax Payable by a Taxpayer Earning \$250,000 Ignores Medicare Levy and Flood Levy	\$86,050	\$80,550	\$86,047	\$75,550	\$86,034

Now to look at the franking credit situation. Noel Whittaker was criticised by Julia Gillard for claiming that self funded retirees would no longer benefit from effectively receiving a tax free income from dividends. Dividends from robust corporations normally come with a franking credit of thirty cents in the dollar. So if the self funded retiree is in the 30% tax bracket any franked dividends they receive while in that tax bracket will have no effect on their tax payable assuming they do not go beyond the 30% tax bracket. Next year they only have to have over \$37,000 in income and they are out of that tax bracket. If the promised tax rates were kept then they would not leave the 30% tax bracket until their taxable income reached \$82,500.

The Concessions for Students on Youth Allowance Extended

In newsflash 229 we explained the deductions that students were allowed to claim against income they had received from Centrelink to study. This is as a result of the Anstis case.

This principle has been extended to Centrelink recipients who are paid newstart and youth allowance while looking for work. Don't get too excited the law was changed this year. Nevertheless, this information is relevant to your 2010/2011 income tax return and you are entitled to amend previous tax returns back to 2007.

Job seekers who receive support from Centrelink will be entitled to claim a tax deduction for the costs of looking for work. This includes phone calls, motor vehicle expenses, stationary, computers and internet. Written evidence of the expense will be required. In the case of a motor vehicle claim a detailed reasonable estimate can be used. Unfortunately, job seekers are not entitled to the \$550 flat deduction for previous years, that students received.

Claiming Clothing

Way back in 2002, 10 taxpayers took to the court the ATO's view of what is tax deductible for protecting yourself while working. We are telling you this because several new clients didn't even keep receipts for their heavy duty clothing as they had been told by their previous accountant they couldn't claim for anything unless it had a logo on it. This is not even the case when it comes to a uniform. The logo does not have to be on every item of clothing. If a strictly enforced uniform policy that includes a logoed item, dictates the colour, style and type of the other items then these more conventional items can still be claimed as a tax

deduction and you can claim for their cleaning. An example would be when the strictly enforced uniform policy specified black tailor slacks to be worn with a logoed shirt.

The point is that you should not confuse the uniform rules with rules relating to deducting expenditure on items that protect you or your conventional clothing. The latter being overalls, aprons, lab coats etc. Just for the record you can also claim for occupationally specific clothing such as a chef's chequered pants.

The case in 2002 that we are referring to, is *Morris vs FCT* 2002 ATC 4404 which was all about sun protection. The taxpayers won on the basis that the sun protection allowed them to work outside for longer periods and was necessary to protect them from harm i.e skin cancer, a danger that applied because their job involved staying outside for long periods of time. The ATO's unsuccessful argument was that protecting yourself from the natural environment was a private expense. The point that came from *Morris* case is that protecting yourself from risk of injury while working is tax deductible.

After its loss in the courts the ATO issued TR 2003/16 which sets out the type of clothing that it considers protective and therefore does not require a logo or a uniform policy to qualify for a tax deduction. Examples are anything that includes reflective high visibility material, heavy duty fire resistant work wear such as your classic long sleeved king gee shirts, trousers and non slip shoes. Interestingly the ruling specifically excludes jeans despite their durable protective nature. Though, we expect that a few rows of reflective material would change this.

Note there is a condition that there must be a related risk at work. So if you work all day in an office in the city, wearing high visibility clothing will not be deductible.

In paragraph 3 of TR 2003/16 it states that protective items' means items that, according to their design properties and practical application, protect you against illness or injury. The following is an extract from the ruling that considers the circumstances and appropriate protective items – it is expected that more than just one point would apply.

- you are required to work in an environment which could be harmful if adequate safety precautions are not taken;
For example - do you work in extreme weather conditions?
- the use of the item in the work place makes it unsuitable for private or personal use;
For example - does your protective work clothing become so soiled in protecting you at work that it is unsuitable to wear to and from work?
- expenditure on the item is additional to your normal private or domestic expenditure on such items;
For example - do you need to wear additional protective clothing at work to guard against risk or injury from extreme weather or other potentially unsafe conditions?
- the item is qualitatively different to items of a comparable nature used privately or domestically;
For example - is the item made to cope with more rigorous work conditions?
- you use the item principally for income producing activities;
For example - do you use the item only at work or, if there is some private or domestic use, is this use only incidental to its main use at work?
- It is a requirement of your employer, work-related safety laws or an industrial agreement for you to use protective items;
For example - does your industrial award provide for payment of an allowance for you to purchase protective items for use at work?
- the use of the item adds to your workplace productivity; and
For example - does your use of the protective item enable you to work for more sustained periods?
- any other feature of your use of the item for protective purposes which may further indicate your expenditure on that item has the essential character of an outgoing incurred in gaining your assessable income.

Paragraph 38 requires that there be a material risk of injury or illness at you workplace and the protective clothing you wear provides a sufficient degree of protection against that risk. Then at paragraph 39 it lists the indicators that the item of clothing is protective rather than conventional

- is made to cope with more rigorous conditions, where conventional clothing would be inadequate;
- is designed to protect you - for example heavy duty shirts and trousers, as distinct from ordinary cotton drill trousers, shorts and short sleeve shirts that may be regarded as work wear but do not offer the degree of protection necessary to give expenditure on such items the character of a working expense; and

- has a density of weave which gives a UV rating sufficient to protect you from the sun where your job requires you to work outdoors.

Examples are given in paragraph 40:

- fire-resistant woollen clothing for protection against intense heat and flying sparks of metal from a blast furnace and which were so soiled as to be unsuitable for use outside work: Case A4569 ATC 270; Case 24 15 CTBR (NS) 161;
- waterproof jacket, woollen jumper and thick socks which were worn only when working outdoors during winter in an alpine area: Case V79 88 ATC 550; AAT Case 4353 (1988) 19 ATR 3504;
- special cold room gear or thermal clothing for working in cold rooms;
- sunhats for protection from the risk of injury or illness from exposure to the sun while carrying out income earning activities: the Morris Case;
- safety coloured shirts or vests (e.g. when used to direct vehicles in a road works area);
- aprons and overalls worn to stop you coming into contact with harmful substances; and
- lead aprons worn to prevent exposure to X-rays.

The ruling finishes off with several examples the most relevant being:

Example 5

48. Bob from the previous example at other times wears heavy denim trousers, steel capped boots and a hard hat when working at the building site. The inherently protective nature of these items means that the essential character of their use is more concerned with meeting Bob's needs for protection at work than with his requirements of modesty, decency and warmth. As the expenditure is not private or domestic in nature and there is the necessary connection between the expenditure and Bob's income earning activities, he can claim a deduction for the cost of these items.

Just because you can't claim a deduction for conventional clothing does not mean that you can't claim for cleaning it. Cleaning and even replacement can be claimed if there is abnormal wear and tear. This deduction is generally ignored by the ATO in their publications but there is just a hint of it in TD 93/232 which states "expenditure on laundry associated with a proven claim for excessive expenditure on clothing. The courts have also supported this position, for example in:

Case M28 80 ATC 187 the senior member stated – "expenditure resulting from excessive wear and tear due to the nature of the occupation is deductible.

Westcott v FC of T 97 ATC 2129 – Where a head waiter was allowed the cost of dry cleaning his black trousers because of the frequent staining of food and wine and that dry cleaning was the only way the stains could be removed.

So if you are in an occupation where you choose to still wear conventional clothing but the nature of your work ruins the clothes or makes them difficult to clean or makes such a mess of them that you have to change into other clothing to travel home then you will qualify for cleaning them and possibly even replacing them. It is all just a matter of being abnormal.

Public Superannuation Fund Checklist

We provide a lot of information on SMSFs but it is only in limited circumstances, i.e. wanting to purchase direct property, that a SMSF is worthwhile. If you want to hold shares there are even some public funds that allow you to pick and choose the companies your superannuation is invested in.

Not all public funds are the same. For example, the lower fee industry funds generally provide less options. When choosing your superannuation fund here are some of the questions you should ask:

- 1) Do they provide an anti detriment payment? This is a payment to your spouse and children of all the tax paid by the superannuation fund on contributions made by you or your employer, during your life time. Your heirs can also receive compensation for loss of earnings on the tax. It is important to find out how the fund calculates the anti detriment payment. For example, if they use the ATO formula your heirs will get a lot less (in fact if you have used a re contribution strategy they will get nothing under the formula method), than if they keep actual records of the amount of tax paid.

- 2) Do they allow binding nominations? If they simply allow you to state who you would like your superannuation paid to in the event of your death, then the trustees are not bound and can pay it to whoever they please, within the constraints of their trust deed. There are so many reasons you want control over who receives your superannuation they can't all be mentioned here, but just for starters consider that by the time you die you may have two families including step children. Further, the trustees can be more inclined to pay people living in your household than your natural descendants. The very reason these people are free loading on you i.e. they can't support themselves, could lead to them taking precedent over your own financially independent children.
- 3) When you switch to pension stage, do they simply move the investments you hold across to the pension fund or do they actually have to sell them down, thus triggering a CGT event at 10% and then transfer them into the pension fund where there would have been no CGT on the sale. In other words, do they force you to trigger a CGT event just to get your superannuation into a pension fund.

Don't compromise on these issues as they are worth a lot of money to you later in life (or death). It would be unusual for an industry fund to offer these.

Disaster Relief Payments

The following is a list, by state of the various disaster relief payments and their tax consequences. Most are not taxable but take care if you have revenue losses as many of these payments can reduce the amount of loss you can claim, even though the payment is not taxable.

NSW

Personal Hardship and Distress Assistance	Not taxable, does not reduce losses & not included in ATI*
Business Transport Freight Subsidies	Taxable with a corresponding deduction for the expense
Business Concessional interest rate loans	The interest paid is deductible

VIC

Personal Hardship and Distress Assistance	Not taxable, does not reduce losses & not included in ATI*
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WA

Personal Hardship and Distress Assistance	Not taxable, does not reduce losses & not included in ATI*
Up to \$10,000 for the replacement of white goods and floor covering	Not taxable, does not reduce losses & not included in ATI*
Interest rate Subsidies for Businesses	The subsidy is taxable and the interest tax deductible
Professional advice grants	Taxable with a corresponding deduction for the expense
Freight Subsidies for Primary Producers	Taxable with a corresponding deduction for the expense

QLD

Business Concessional interest rate loans	The interest paid is deductible
Freight Subsidies for Primary Producers	Taxable with a corresponding deduction for the expense

*ATI is adjusted taxable income which is used for Centrelink benefits/medicare levy surcharge etc.

The question of whether GST is payable on the relief or subsidy only arises if the grant is made to your business and it is registered for GST. Providing you are not making a supply or taking any action as a requirement of receiving the grant then you are not making a supply so you do not have to pay 1/11th of the amount you receive to the ATO in GST.

Claiming Home Office Expenses

The ATO allows you to claim 34 cents per hour for each hour you spend working in your home office. This amount is to cover electricity and wear and tear on furniture, carpet etc. It is not necessary that you have to work at home because you don't have an office elsewhere. To make this claim you can simply have chosen to work at home. Phone calls, internet, computers and printers can also be claimed but utilizing the 34 cents per hour rate will prevent you from being able to depreciate the furniture in your home office.

If you have purchased furniture this year you may be better off claiming actual costs rather than the ATO's hourly rate. If you choose to do so here is some information that will help you calculate how much you can claim for the electricity. A computer costs about 5 ½ cents an hour to run and a fluorescent light about 3 cents an hour. The cost of running an air conditioner varies depending on the kilowatt input figure.

To be accurate you should multiply the kw input figure by the rate you are charged per kilowatt for your electricity. As a general guide air conditioners cost around 17 cents an hour to run.

Before you can make any claim for all these home office expenses you need to keep a diary for one month showing how many hours the office is used for work related purposes, this includes managing your tax affairs and investments. In the case of equipment and furniture the diary will also need to show the ratio of deductible to nondeductible use so the expense can be apportioned.

Get Those Superannuation Contributions in on Time

Employers have until the 28th July to make the superannuation contributions they are obligated to pay for the June period, under the superannuation guarantee. But if the contribution is made after the 30th June, 2012 the employer will not be entitled to a tax deduction for it until the 2012/2013 financial year even though the liability fell in the 2011/2012 financial year.

If you are contributing salary sacrificed contributions or have employees who are close to the \$25,000 or \$50,000 cap you should also take a careful look at their particular circumstances. The amount contributed for the purposes of the cap is also based on the date it is received by the fund. Delaying these contributions until after 30th June could result in your employees missing out on maximising their cap this year and possibly exceeding their cap next year.

On the other hand if last year you made the June contribution in July but this year you are making it in June your employees will have 5 quarters' worth of contributions in the 2011/2012 financial year. Before you do this make sure you will not be pushing anyone over their cap.

In Peaker 2012 AATA 140, the employer posted the contribution on 28th June but it was not recorded as income of the fund until 5th July. This meant that the employee exceeded his cap for the following year. The AAT upheld the ATO's assessment of excess contributions tax as there were no special circumstances which would allow the amount to be allocated to another year.

Due to data matching the ATO will always be informed should your cap be exceeded.

Employees when negotiating their salary package should consider including a clause requiring their employer to physically make the superannuation contribution in the month that it is sacrificed.

Diaries

Please make sure you start your diaries before the 30th June. The ATO is being particularly fussy about these now. If you want to claim a deduction for home office expenses or the use of equipment such as phones and computers that have some private use you will need to keep a diary for one month to determine the ratio of private to work use.

Temporary Reprieve for LAFHA Changes

Due to the short notice of the changes to the Living Away From Home Allowance (LAFHA) announced in May and the draft legislation not even being available until the 28th June, 2012 the government has agreed to delay the introduction of changes to the Living Away From Home Allowance concessions until 1st October, 2012.

The following are the major points in the draft:

The 12 month Rule – The allowance can only be paid for the first 12 months that the employee lives away from home. This 12 month period does not start until 1st October, 2012 even if the employee begins living away from home before then. When the employee returns home for holidays etc this will not restart the 12 month clock but the time they are at home will not count towards the 12 months, yet they will still be entitled to a tax deduction for any accommodation costs they incur (back at their workplace) while at home but not food.

Taxable food component – Is the portion of the food component of the allowance that is considered to cover normal food costs so does not qualify for concessional treatment. This will now be held at \$42 per week for people over 12 years of age and \$21 per week for children. Previously, employers could simply reduce the amount they paid by this amount and no FBT would apply. It is now intended that whatever portion of the allowance that is paid for food will be deemed to include this component and the employer will have to pay FBT on it. Basically, forcing an employer to pay a taxable amount before they can pay an exempt amount.

Hopefully this problem will be able to be solved by an employee contribution. Note employees must also give their employer a “deductible food and drink expense declaration”.

Transitional Rule – Agreements that were in place on 8th May, 2012 remain unaffected until 1st July, 2014 providing they are not varied or renewed. A variation could simply be an increase in pay rate.

Taxable to Employees – Any LAFHA received, other than the food component, will be taxable income to the employee for which they will have to produce receipts to make claims for accommodation etc. In the case of food the ATO will issue guidelines on what is reasonable and receipts will only be necessary, for all food expenses, if the claim is for more than these reasonable amounts.

Opportunity When not Receiving LAFHA – It will no longer be a requirement that your employer pay a LAFHA to qualify for this concession. All employees that meet the requirements of living away from home while maintaining another home in Australia will qualify to claim their costs, in the first 12 months, if they have the necessary receipts.

Maintaining Another Home in Australia – Of course this means no LAFHA concessions for people coming to Australia to work from overseas. Also people who lived with their parents etc before relocating will not be entitled. Maintaining another home means owning it or leasing it in your name or your spouse’s name. It cannot be rented out while you are away but if you had boarder that was living with you before you relocated then they can continue to live there and you will still qualify.

Mining Accommodation – These changes will also affect employer provided meals and accommodation but this will only be of concern to the employer not the employee. The employer will only be able to exempt from FBT the portion of the costs that the employee would have been able to deduct if they were paid an allowance. This of course means no concessions after 12 months. It appears the remote area housing concessions will not be changed. The LAFHA concessions are not applicable to fly in fly out workers.

Now before you go acting on this remember, it is not through parliament yet, so anything could happen.

Time To Reconsider Your Salary Package

For the 2012/13 and 2013/2014 financial years people 50 years of age or over will no longer be entitled to a tax deduction for contributions to superannuation funds that exceed \$25,000. If you have been salary sacrificing into superannuation and in particular if you are involved in a transition to retirement strategy it is important that you completely re-evaluate your strategy in the very near future.

Keeping Diaries

Due to the ATO’s extraordinary interest in diaries this year and their tendency to completely deny deductions without a diary showing the apportionment between business and private use of computers, phones, cars, internet, etc. we have developed a little spread sheet to help clients get started. As always, no bells and whistles, a clear presentation with minimal instructions and optional additional information if required. This is available on the shopping section, <https://www.bantacs.com.au/shop-2/> of our web site for \$5.95.

If you would like to receive this free, all you have to do is take the time to sign up for our forum. Something that you will find well worth your while anyway but we want to provide a little incentive. To initiate the process go to www.bantacs.com.au/forum_introduction.php. To become a member of our forum you need to prove your identity and any qualifications. This enhances the quality of the information on the forum. If you are already a BAN TACS client simply tell us which office and we will take it from there. Please don’t let this discourage non clients from joining, they are just as welcome, it is just the identification process that may take a little longer.

Substantiating Travel Expenses for an Allowance

TR 2004/6 explains how when an employee receives a travel allowance and sleeps away from home for work purposes they can claim up to a reasonable amount as a tax deduction against that, though they must be able to convince an auditor that such expenses have been incurred.

It has come to our attention that some ATO auditors are demanding a diary itemising every expense incurred. This of course is more trouble than getting receipts but easy enough to make up if you were trying to rout the system. So I fail to see how this stance assists revenue collection other than from taxpayers who

are extremely honest yet not good record keepers. If anything it just encourages taxpayers to produce lie sheets. Further, this approach by the ATO seems to be in direct contradiction with paragraph 38 of TR 2004/6:

38. If the travel allowance expense or overtime meal allowance expense claimed qualifies for exception from substantiation, it is not necessary to keep written evidence as would otherwise be required under Subdivision 900-E of the ITAA 1997. **The objective of the exception is to relieve taxpayers, who are covered by the exception from substantiation, from the requirement to determine claims relying on detailed calculations based on records or receipts.**

39. However, a taxpayer may still be required to show the basis for determining the amount of their claim and that the expense was actually incurred for work-related purposes. What counts as evidence for a claim subject to the substantiation exception will vary according to individual circumstances and the nature of the expense. If necessary, it is acceptable for a reasonable estimate to be the basis for claims having regard to the taxpayer's occupation and the types of expenses that would be expected to be incurred. This is a significantly lesser requirement than the need to keep written evidence.

Now it would seem to me that a diary entry of every expense incurred is a detailed calculation based on records. This statement is much more likely to describe keeping receipts for a day or two and using them to estimate the rest of the trip. Maybe it is just a case of individual auditors bullying and bulling rather than referring to the ATO guidelines.

The simple solution is not to get your employer to put the travel allowance on your PAYG summary. Employers are not required to report travel allowances on the PAYG summary when it is within the reasonable amounts set by the ATO and the employer is of the opinion it has been fully expended. Of course if your employer does this it will be difficult for you to claim as a deduction the difference between what your employer pays you and the reasonable amount set by the ATO.

Truck Drivers Claiming Travel Costs

In Newsflash 251 we discussed the finer points of qualifying to claim a reasonable travel allowance. In this article we look at what Truck Drivers need their employer to do and when.

If you sleep away from home because of your job then you are entitled to claim your meal and accommodation expenses but you will need receipts. In TD 2012/17 the ATO will allow you to claim for your meals without receipts for each night that your employer pays you a travel allowance, providing you do not claim more than \$89.60 per day if your salary is less than \$104,870 and \$97.75 per day for salaries above that. Of course you can't claim more than you actually spend and you still have the onus of proving to an ATO auditor that you did actually spend that amount, as discussed in Newsflash 251.

The travel allowance you receive must be bona fide, for example a reasonable amount at least more than \$5 per day. It is not enough that your salary package includes an allowance for the costs you might incur while travelling. It must actually be a separate allowance for overnight travel.

If your employer believes that the amount is fully expended they do not have to include it on your PAYG summary. Though the onus is still on you to include the amount in your tax return if it is not fully expended. You can claim more than the allowance you actually received if you have receipts or you are not claiming more than the \$89.60 or \$97.75 per day but if your PAYG summary does not show the amount of the allowance you have received you are going to need to have kept records of what you received, include that as income and then claim a deduction for your actual expenditure.

The best possible arrangement your employer could offer is to pay you a daily allowance up to the \$89.60 or \$97.75, all of which you of course spend on food so your employer does not put it on your PAYG summary at all and you don't have to argue with an auditor because nothing would go through your tax return yet you would be receiving the maximum amount you can tax free without receipts.

Note this amount is only for food, if you claim accommodation you need to keep receipts, whether you receive an allowance or not.

If you are an owner driver the substantiation concessions do not apply so you need to keep a receipt for everything.

Travel Allowance Instead Of LAFHA?

As October, 2012 fast approaches and the end of Living Away From Home Allowance (LAFHA) for people who do not have a home that they are living away from, many questions are being asked.

Unfortunately we still don't have the legislation but it is very clear that you will be required to have a home in your original location, that is not rented out, before you will qualify for LAFHA, which is exempt income.

So what about calling the food and accommodation costs, travel costs instead? The first problem of course is you would have to be moving on pretty regularly. Further, these costs are only deductible to employees if they sleep away from home. So again you need to have a home base.

If your employer reimburses you for your "travel expenses" your employer will be subject to FBT on the payment unless the otherwise deductible rule applies (reference TR 97/17). For the otherwise deductible rule to apply all the requirements must be met to the extent that the employee would have been able to claim the expense in his or her tax return. So a home base is still required.

Overtime Meal Allowances

If your employer pays you an overtime meal allowance as part of the award or industrial agreement you work under, you can claim a deduction for your meal. Unlike the other allowances we have discussed, even if you have the receipts for your meals and worked overtime, you will not be entitled to claim a tax deduction for them unless you have received an allowance. It is not enough that as part of your wage negotiation you are paid more to take into account the fact you have to buy meals when you work overtime. This will not count to make those meals deductible. You must actually receive the individual allowance each time.

Once you qualify by receiving the allowance you can then claim much more than you received, provided you do spend more and you have a receipt for the expenditure. Note you can stop at a restaurant on your way home after working overtime and claim that meal.

If you haven't kept a receipt for the meals then you are only allowed to claim up to \$27.10 (reference TD 2012.17) and then only if you actually did spend that amount or more. This is the rate for the 2012/2013 financial year, a new amount is issued by the ATO each year.

Note employers do not have to put the overtime meal allowance on your PAYG summary if they believe it has been fully expended, so you will need to record for yourself the amounts you receive. If you want to claim a tax deduction in excess of the allowance you will need to include the allowance in your tax return as income to make a corresponding deduction.

If you operate your own company or trust you will be an employee of the company or trust but you will only be entitled to pay yourself a meal allowance if your trust or company pays you in accordance with the relevant award or industrial agreement. This is sometimes difficult for business owners as they only tend to get paid when the business has money available.

For a discussion on meal allowances for employee truck drivers please refer to Newsflash 252.

Maintaining a Home for LAFHA Purposes

The changes to the Living Away From Home Allowance came into effect at the beginning of this month and the tax office has updated their web site to define maintaining a home.

To qualify for the Living Away From Home Allowance concessions an employee must maintain a home in Australia that is immediately available for their use. So effectively the LAFHA is now more restrictive than being paid a travel allowance and employers should give consideration to paying a travel allowance instead.

The ATO web site requires the employee or their spouse to have an ownership interest in the home, this could be holding a lease over the property. It would not be sufficient for the employee's parents to be the ones with the ownership interest. The employee must incur the ongoing costs of maintaining the home such as mortgage or rental payments and be able to return to the home at anytime and live there immediately so it cannot be rented out or sublet while they are living away from it.

Stay tuned we will update you on any further advancements in this area.

LAFHA – Maintaining A Home In Australia

Readers are no doubt aware that there have been major changes to the Living Away From Home Allowance concession. The two major concerns have been that the allowance can only be paid for a maximum of 12 months per place of relocation, the employee must still maintain their original home and it must be located in Australia.

Section 31C of the FBT act defines maintaining a home in Australia as follows:

The employee satisfies this section if:

- (a) the place in Australia where the employee usually resides when in Australia:
 - (i) is a unit of accommodation in which the employee or the employee's spouse has an ownership interest (within the meaning of the *Income Tax Assessment Act 1997*); and
 - (ii) continues to be available for the employee's immediate use and enjoyment during the period that the duties of that employment require the employee to live away from it; and
- (b) it is reasonable to expect that the employee will resume living at that place when that period ends.

The term ownership interest used above is the same as the CGT definition in section 118-130 and includes a right to occupy. This means that despite what you might initially assume by reading the section above, you can rent the home you maintain in Australia, you do not have to own it.

More information is available on the ATO web site at www.ato.gov.au/individuals/content.aspx?menuid=0&doc=/content/00333793.htm&page=5#P46_4178 This information includes the requirement that the home must be available for your immediate use and enjoyment at all times while you are living away from it and you expect to resume living at the home when you return. Note a home can include a hotel, guesthouse, bunkhouse, caravan or boat. An ownership interest will not normally exist when you live in your parents' home. The website also states that you cannot rent out or sublet your home while you are away and you must pay the ongoing costs of maintaining the home ie rates, rent or mortgage. If you do have a boarder or tenant who would normally live with you anyway they can stay as long as their presence does not prevent you also occupying the home. You can utilise a house-sitter to look after your home while you are away but they must either vacate when you return or live in a way that does not impinge on the availability to you to also use the place as your home.

More Information On Living Away From Home Allowance

To qualify to receive the exempt fringe benefit Living Away From Home Allowance (LAFHA) you need to maintain a home other than where you are living for work. In the February FBT subcommittee minutes there seems to be a window of opportunity for people to claim that they maintain a home that they share with their parents. There are some conditions though, just paying board doesn't cut it but if there is a commercial rent agreement in place and an allocation of utility costs they may qualify. Best to apply for a ruling first.

Living Away From Home Allowance (LAFHA) 2013/2014

The ATO has released TD 2013/4 which sets out the ATO's latest reasonable amounts for food and drink for LAFHA. If the employer pays more than this amount then either the employee will have to produce receipts to justify that they have spent all of the food component of the allowance on food and drink or the employer will have to pay FBT on the amount of the LAFHA paid that exceeds the reasonable amounts listed in the ruling. Accommodation is just done on an actual cost basis which should be pretty straight forward for record keeping anyway.

The full transcript of the ruling can be found at

<http://law.ato.gov.au/atolaw/print.htm?DocID=TXD%2FTD20134%2FNAT%2FATO%2F00001&PiT=99991231235958&Life=20130227000001-99991231235959>

Note the above does not apply to people receiving a LAFHA under the transitional provisions, that is people who already had their LAFH package in place before 8th May, 2012.

There have been changes along the way to this becoming law, so don't be alarmed if this sounds different to what you have heard. The final situation is that LAFHA will remain completely in the FBT regime. This means that any employer who pays a LAFHA that does not meet the new requirements, for example the employee does not maintain another residence, will be liable to pay FBT on the amount. For more details on the new requirements refer Newsflashes 261 and 264.

FBT is payable at the maximum tax rate so there is much to be gained by not calling the payment a LAFHA if it does not qualify for the exemption. In many cases the employee will be earning less than \$180,000 per year so not be in the maximum tax bracket. Any other allowance will be taxed in the employee's hand. Nevertheless, an employee is not going to be allowed a deduction for food, drink and accommodation unless they are travelling for work. Travelling is generally where the employee is without his or her family and away from home for less than 3 weeks.

There is room for negotiations between employer and employee to bring down the tax liability when the arrangement doesn't qualify for the exemption. If for example the employee had already been in the location for 12 months (after 12 months in the one location the LAFHA exemption no longer applies) but an employer may need to continue to pay an allowance to prevent the employee moving on to another location and possibly another employer. If the employer offers \$1,000 after FBT of 46.5% is paid that leaves only \$535 to pay the employee. If instead the employee was paid an extra \$1,000 in wages, say a site allowance, and the employee's income is over \$80,000 but under \$180,000 then their marginal rate of tax will only be 38.5% which leaves \$615 in the employee's hand after tax.

At first this might not seem worth haggling over but when you consider rent and food for your whole family your LAFHA could easily be \$900 a week so this adds up. Be careful when you do the numbers to negotiate that you gross up the amount. Here is a worked example:

For the employer to pay you \$900 clear they would have to pay \$782.26 in FBT ($\$900 \times 1.8692 \times 46.5\%$) so your gross pay could increase by \$1,682.26 ($\$900 + \782.26) and the employer would be in the same position. If you are still under \$180,000 for the year and are not subject to the Medicare Levy surcharge then you will pay tax of \$647.67 ($\$1,682.26 \times 38.5\%$) netting you \$1,034.59 An extra \$134.59 a week after tax. If you live away from home for 3 years that is \$20,996.

Make sure you also take full advantage of the FBT exemption for relocation where the employer can pay the costs associated with the move including temporary accommodation and meals, even reimbursing the employee's buying and selling costs.

Dwindling Incentives for Private Health

The Private Health Insurance Rebate was an initiative set up to provide assistance to individuals and families struggling with the cost of maintaining Private Health Insurance, however, continuing changes are gradually eroding the incentive.

A new tiered rebate system has already been introduced which means those in higher income brackets receive a lesser percentage. The next step is the removal of the rebate from any lifetime health cover loading. Then as a final measure the government is proposing a cap on the rebate based on annual index of commercial premiums or CPI. While the percentage of rebate will remain the same there is no guarantee that premiums will not increase far in excess of the calculated average.

All of these changes and proposed changes have been publicly announced but not particularly well explained. To be as succinct as possible, right now if your individual income exceeds \$84,001 or family (with no dependents) income exceeds \$168,001 and you have your rebate deducted from your premium you should check that you are not still receiving the full 30% rebate. If you are then you may find yourself with a tax bill at the end of the year.

The changes are also prompting a lot of clients to ask whether it is worth continuing with Private Health Cover. Unfortunately that is not an accounting question. Certainly the financial incentives are not as strong as they used to be but finances are not the only considerations when it comes to your family's health.

The best advice we can give is make sure you stay up to date with your concessions and entitlements and as always shop around to find the best fit for your budget and your lifestyle.

This article was provided by Lyn Gower owner of our Tenterfield, Stanthorpe and Gold Coast offices.

Donations to School Building Funds

To claim a tax deduction for donations to a school building fund the payment must be voluntary. So a "donation" that is part of the school's fees would not qualify.

Further, it must be to a public fund whose sole purpose is to provide money for the acquisition, construction or maintenance of a building used as a school by a government, public authority or a non profit organisation. TR 2013/2 provides much more detail.

LAFHA Meal Rates

TD 2013/4 contains the amounts that the ATO considers to be reasonable for the food component of a Living Away From Home Allowance (LAFHA), for the FBT year 1st April 2013 to 31st March 2014.

If the following amounts are paid to employees and their families living away from home but in Australia, then no FBT will be payable providing all the other requirements, discussed in recent editions of newsflash are met, such as maintaining another home elsewhere that is not rented out and that the LAFHA is only paid for the first 12 months at any location.

If more than the following amount is paid then FBT will be payable on the excess unless the employee provides the employer with receipts for food and drink expenditure up to the full amount paid. In other words even the amounts below will need to be covered by receipts, not just the excess.

	Per week
One adult	\$233
Two adults	\$350
Three adults	\$467
One adult and one child	\$292
Two adults and one child	\$409
Two adults and two children	\$468
Two adults and three children	\$527
Three adults and one child	\$526
Three adults and two children	\$585
Four adults	\$584

('Adults' for this purpose are persons who had attained the age of 12 years *before* the beginning of the FBT year).

For overseas rates, larger families and more detail please refer to [TD 2013/4](#)

Note it will be the employer that pays FBT if the amount is exceeded without receipts, not the employee. FBT is effectively a tax at the maximum tax rate so it maybe more cost effective to pay any excess simply as wages.

Tax Deductible Donations

As the tax year comes to an end it is traditionally a time to think of others less fortunate than ourselves and look for tax deductible donations. There are many worthwhile causes vying for your generosity. Most of them will be registered Deductible Gift Recipients (DGR) which means that your donation will be tax deductible.

There are, however, situations where this will not be the case. Some organisations while offering charitable services are not DGR's and as such you cannot claim a deduction. The purchase of raffle tickets, or products is also not considered a deduction as you deemed as receiving a benefit or advantage from your payment.

If you are unsure of an organisations status you can check the DGR status by visiting www.abn.business.gov.au and entering the organisations name or ABN.

This article was provided by Lyn Gower from our Tenterfield office

No Deduction Even When a Travel Allowance Received

In *Laurence Fox v Commissioner of Taxation* [2013] AATA 471 the taxpayer received a travel allowance and incurred expenses for motels and food but was denied a tax deduction on the basis the travel was really home to work travel.

Just as office workers cannot claim the cost of travelling from their home to the office neither can "fly in fly out" workers who choose to live such a distance from their place of work that it is necessary for them to sleep away from home. If the work is in a remote area and the expenses are paid by the employer then they are tax deductible, to the employer, without any FBT consequences but never deductible to the employee.

In this case Mr Fox drove from Adelaide where he lived to Port Augusta where he worked and stayed in a motel. He did receive a travel allowance from his employer. Nevertheless, no expenses were deductible against the allowance because he was not travelling for work purposes, just to work.

Travel Allowances

It has always concerned me when clients rely on ATO rulings that allow them not to keep receipts or records. An example of this is not keeping meal receipts when an employee is paid a travel allowance. Too many times have I heard of the ATO attacking one little technicality in order to deny a whole year's deductions.

Whenever I see rulings that use terms like it would be reasonable to assume the allowance has been fully expended or that even though you have kept a log book for 3 months, you must, each year, adjust the percentage claimed to allow for any variations, I remember all the horror stories of ATO bullying and keep the records just in case. For example a minister of religion was denied a claim for any of his motor vehicle expenses because he had missed signing some of the entries in his log book. Even when this case went to court the judge apologised for the ATO's behaviour but had to rule against the Minister, the law said the deduction was not allowed so there was nothing he could do.

The latest example of bullying by the ATO is Gleeson v FC of T 2013 ATC. The taxpayer had a win but they had to be prepared to fight the case in the AAT and are now no doubt hoping that the ATO does not use its unlimited power funded by the taxpayer to continue to drag him through the courts until they have a win, he gives up or runs out of money.

It is far better to have the extra substantiation needed rather than have to fight the ATO. I am not reporting this case as an example of why you don't have to keep records, even though the taxpayer won. Quite to the contrary, it is to show just how difficult the ATO can be in an audit situation.

Food, accommodation and incidentals are tax deductible to employees if they are required to temporarily sleep away from home for work purposes. [TD 2014/19](#) list what the ATO considers to be a reasonable travel allowance and states that if you are paid a travel allowance and are required to sleep away from home then as long as you do not claim more than the reasonable amount as a corresponding tax deduction you do not need to keep receipts.

The ATO in Gleeson's case obsessed about the need to be paid a travel allowance. They tried to argue that the allowance paid to Gleeson, who was a truck driver, did not meet the definition of a travel allowance because it was calculated on a per kilometre basis, simply as an administration practice by Gleeson's employer. The ATO argued that to qualify as a travel allowance it need to be calculated on the basis of the actual costs likely to be incurred by the employee. Fortunately, the AAT didn't buy this argument and made the ATO stick to the ruling. On this basis the Administrative Appeals Tribunal (AAT) found that the employers' purpose for making the payments and the circumstances in which they were paid had to be examined, regardless of the description given to the payments or how they were calculated. In addition, the taxpayer's travel allowances did not need to equate to his actual expenditure for them to be classified as travel allowances. Fortunately, the payroll manager appeared in court to verify the allowance was a travel allowance.

The irrelevance of the description given to the payment is great news for employees whose employers don't specifically call the payment a travel allowance. As long as the payment relates to the fact they are travelling they should be right.

The AAT also directed the ATO to Division [900-200 1997 ITAA](#) which was introduced to the substantiation legislation after the Minister of Religion's case. Div. 900-200 states that if you had a reasonable expectation that receipts were not required then not having them cannot prevent you from making the claim. Again do not rely on this section unless you can afford to go to court because still, 30 years after the Minister of Religion's case, the ATO continue to try the technicality line.

I wonder how many taxpayers had their legitimate deductions denied by the ATO until someone finally stood up to them and funded a court case? It is not right that a deduction can be clearly allowed in the law ID Div. 900-200 but the ATO can just knowingly ignore this to extract excessive taxes.

Readers may also be interested in section Div. 900-195 which allows the ATO discretion to not apply the substantiation requirements when it is clear that the expense has been incurred but correct records have not been kept. The ATO must exercise its discretion reasonably. This means that the ATO cannot completely deny you a deduction for travel costs when you are required to sleep away from home for work purpose, even though you may not have receipts or received an allowance. Obviously you must have incurred some costs; you had to eat so even though the amount claimable may be smaller than what you incurred, you are entitled to some tax deduction.

Substantiating Travel Expenses That Are Exempt From Substantiation

If you are paid an overtime meal allowance under an industrial instrument or a travel allowance when you are required to sleep away from home overnight the ATO will allow you to claim expenses against that

allowance without receipts providing the amount is within its reasonable guide lines and you have spent that much. That is right, you don't need receipts but you still need to prove that you spent the money!

Now these "reasonable amounts" are quite substantial. For example, the amount for overtime meals is \$28.20, around \$100 for meals while travelling and depending on the area between \$100 and \$200 for accommodation, per night. Truck drivers on the other hand are considered to sleep in their trucks so must produce receipts if they want to claim accommodation but are entitled to \$93.40 and \$101.85 per night for meals depending on their pay grade.

If you are a truck driver who is away from home most nights and is paid maybe \$60 per night in travel allowance, claiming that extra \$33.40 per night for say 200 nights of the year would mean an extra deduction of \$6,680 which will easily increase your tax refund by more than a couple of thousand dollars! Even the overtime meal allowances pay handsomely. In Mackay 10 to 12 hour shifts are the norm with many tradespeople receiving \$10 per night in overtime meal allowances for all 5 days of the week. The \$10 allowance is included as income but \$28.20 claimed as a tax deduction, a difference of \$18.20 for 5 nights times 52 weeks equals \$4,372 extra tax deduction. Your employer is not required to include these allowances on your PAYG summary if they consider them to be fully expended so you will need to keep all your payslips so these amounts can be calculated. When it comes to an overtime meal allowance you can stop and have a meal at a tavern on your way home after the shift. Ideally keep at least a couple of receipts to show a typical meal cost.

Naturally enough the ATO is attacking this area with total disregard to the wording of the legislation, bullying taxpayers out of their deductions unless they want to face the ATO and its unlimited taxpayer funded legal power in the courts. So despite the law being on your side, the reality is you really need to keep some records.

Here are some of the hot spots:

- 1) Make sure your employer pays you a bona fide allowance ie an amount that could be considered to be enough to cover your costs. In TR 2004/6 the ATO says if you are only receiving \$5 per night that is not enough to live off so even if it is called a travel allowance they would not treat it as one. In *McIntosh v FC of T*, the ATO argued that even though the employee in that case had received an amount of approximately \$39 per day as an allowance as it did not cover his full expenditure of \$60 per day it was not a bona fide allowance. Fortunately, the ATO lost but gives you an idea of how little consideration they give the clear wording of the legislation when it suits them.
- 2) Keep some receipts to give an example of the typical amount you would spend. In *Fardell v FCT* the long distance truck driver lost his claim for nearly \$20,000 a year in meal expenses. The ATO threw everything they could at him like expecting him to produce menus from the places where he ate.
- 3) Make sure that your employer clearly states what the allowance is intended to cover and that you can show how you worked out how many nights it applied to. In *Gleeson's case*, truck driver's allowance was actually calculated on a kilometre basis as a method of convenience. Fortunately for *Gleeson* the paymaster vouched for him and he won this case but it was based more on how convincing the witnesses were than the records provided.

At least keep the receipts for a couple of day's food and incidentals and a diary of all the nights you slept away from home, a truck driver's log book would suffice. You can multiply receipts of a typical day's consumption by the number of nights away from home as a reasonable method of justifying your expenditure.

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.

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