

NEWSFLASH

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

20 Years Of Tax!

On the 4th July, 1992 BAN TACS opened its doors for the first time. Trading just under Julia's name. This month we celebrate 20 years of explaining and exploiting taxation and continue to give you the answers damn straight!

Column By Noel Whittaker

As usual, the papers are reporting a record number of super contributions made just prior to June 30.

It's certainly a good strategy to put money into superannuation if you are prepared to lose access to it to your preservation age, but you are not taking full advantage of the benefits of super if you leave it till the last minute.

There is no other investment vehicle that enables you to invest with pre-tax dollars and also to hold your money in an environment where income tax is just 15% and capital gains tax just 10% if the asset is held for over a year. You are paying unnecessary tax if you hold money in interest bearing accounts in your own name for most of the year and then transfer it to super only at the last minute.

If you have spare cash, why wait till June 30 to move it to a low tax area?

Most of us find it easier to pay commitments by a series of monthly payments, rather than save up and make a payment in a large lump sum. This is why it is customary to offer payments like health insurance on a quarterly or monthly basis.

This is why I recommend making your super contributions monthly if you can. If you are investing in growth assets such as shares, you will be able to practice a proven strategy of dollar cost averaging. Paying monthly will also free you from the burden of trying to accumulate a larger lump sum.

As always, take advice and don't exceed the contribution limits. There are heavy penalties for those who do.

Noel Whittaker is a co-founder of Whittaker Macnaught Pty Ltd. His advice is general in nature and readers should seek their own professional advice before making any financial decisions. His email is

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Disposing of Records

Don't throw out your old records as you get ready for this year's tax return. Not even if they are twenty years old! Think of the business that threw out its old records before the 15 year CGT concession was introduced. At the time they had no reason to believe the records would be needed.

When they sold the business they had no way of proving continual ownership for 15 years, through trust distribution records. If they could, the whole capital gain on the sale of the business would be tax free!

You don't know what retrospective law changes are around the corner.

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.

Available for Rent and Substantiation of Rental Expenses

In AATA 174 2012 the ATO tried to argue that a property was not available for rent so certain expenses were not tax deductible. The property was in a remote area and had been vacant for 5 years. The owner had rejected one potential tenant because “she had it on good authority that they were undesirable”. There was no local town or property manager and real estate agents further afield were not interested in listing it. She found the internet to be more useful than newspaper advertising and word of mouth the most effective. The AAT found that the property was available for rent even though attempts to find a tenant were not “vigorous”, the reason for the long vacancy was the remoteness of the location.

The taxpayer ran into trouble when it came to substantiating her expenses. For example she claimed that even though she went out to the property to maintain it three times she was only claiming two lots of \$500 for those costs, which was considerably less than what she actually incurred. Nevertheless, reasonable or not she was not entitled to just pull a figure out of the air.

There were also problems with apportioning of expenses. The phone account at the rental (necessary because the area was too remote for mobiles) was mixed in with her home account and as it could not be apportioned no deduction was allowed. Stay tuned on this topic there will be more about using diaries in the next edition of Newsflash.

Claims for amounts paid to Woolworths were not allowed because she could not show what was actually purchased. While a claim for carpet was rejected because it was capital in nature it is important to note that the AAT member, Ms G Ettinger, was also ready to reject it because it was not obvious which of the rental properties the carpet receipt was for. This is an interesting heads up even if you have one rental property you still need to be able to prove that the expenses was not incurred for your own home. So whenever possible make sure your documentation states the location the goods were delivered to.

I want to draw particular attention to the interest on her \$50,000 line of credit. As she could not show what the amounts were drawn down for she was denied a deduction for the interest.

If you are interested in reading this case go to <http://www.austlii.edu.au/au/cases/cth/aat/2012/174.html>

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.

Personal Property Security Act

There is a lot more to the Personal Property Register than just checking if a vehicle or machinery you are buying is unencumbered or to confirm that an interest in goods you have supplied on credit has been registered. The traditional way we view our rights of ownership now have to change. It is not just a case of needing to register your interest to protect your rights, a lack of registration or incorrect registration can be used to override your rights in favour of someone else who is correctly registered.

If the entity that actually has possession of the goods is placed into administration or liquidation and your interests are not listed on the register then the administrator or liquidator can treat the goods as belonging to the entity in administration or liquidation and sell them to meet the debts owing to all creditors. You may well be able to line up along with the other creditors for some payment but you will not be specifically entitled to recover the goods or the proceeds of the sale of those particular goods.

There are transitional measures until 30th January 2014 for unregistered interests, which means you must register before that date but there is much debate currently among lawyers about whether these measures cover goods you sold on account even though you may have a valid retention of title clause written into your terms. The transitional measures do not cover arrangements entered into after 30th January, 2012 such as new customers signed up after 30 January, 2012

The full ramifications of this Act are far from clear with it already being tested in the courts by the WOW Sight and Sound Receivers who are busily trying to challenge the rights of any supplier, that was not already listed on the register, in favour of a secured creditor.

At a bare minimum, here are some of the circumstances readers should be concerned about:

- 1) Where you hold your plant, equipment, machinery, vehicles etc in a holding entity separate to your trading entity. The problem is they are either hired or leased for more than 90 days by the trading entity. If not registered, this arrangement will no longer provide you with any form of asset protection should your trading entity be placed into liquidation. The liquidator is entitled to treat the equipment in the possession of the insolvent trading entity as owned by the trading entity unless the holding entity has registered its interest.
- 2) Lease or hire arrangements with customers or subcontractors/drivers to use your machinery or equipment over a period exceeding 90 days must be registered. The machinery or equipment must be "serial numbered" assets such as motor vehicles, earthmoving equipment and plant. Even if your equipment is something else, you must also register for any lease or hire arrangements exceeding twelve (12) months.
- 3) If you are supplying goods on account you will also need to register your interest for each customer, if you want to retain the title in those goods, should the customer not pay for them immediately. Fortunately, your interest does not have to be itemised just a general interest in their stock. We encourage you to obtain legal advice before registering your interest.
- 4) In the case of service providers such as storage facilities and repairers who do not release cars, goods or machinery until they are paid. This right maybe enforceable against your customer but if someone else has already registered their right over that equipment they are entitled to it.

Point 1 above would apply to many of our business clients. If any of these circumstances apply to you or you would like to talk to someone about your particular concerns we recommend you contact the following PKF branch, depending on which state you are in.

Queensland - Matthew Joiner on 07 3811 4441 matthew.joiner@pkf.com.au

Victoria – Dennis Turner 03 9603 1804 dennis.turner@pkf.com.au

NSW – James White 02 8264 6507 james.white@pkf.com.au

CGT Calculator

If you have had a capital gain on a property in the 2011/2012 financial year our CGT calculator will help you collate your CGT information for your Accountant, hopefully reducing your accounting fees by much more than its bargain cost of \$35.00. As with all BAN TACS calculators it is guaranteed not bells and whistles and no complicated manuals. Buy on line www.bantacs.com.au/shopping_property_cgt.php

Where is Julia?

Still not in NQ but not for want of planning just too much going on in SEQ. One exciting distraction is a Toowoomba firm joining the group, more about that next edition. Should be in Mackay by mid July (I hope)

Ask BAN TACS

For \$59.95 at [Ask BAN TACS](#) you can have your questions regarding Capital Gains Tax, Rental Properties and Work Related Expenses answered by Julia. We will include ATO references to support our conclusion.

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Disclaimer: Please note in many cases the legislation referred to above has only just passed through parliament. The full effect is not clear yet but it is already necessary to make you aware of the ramifications despite the limited commentary available. On the other side of the coin by the time you read this information it may be out of date. The information is presented in summary form and intended only to draw your attention to issues you should further discuss with your accountant. Please do not act on this information without further consultation. We disclaim any responsibility for actions taken on the above without further advice as to your particular circumstances.