NEWSFLASH BOOKLET
MINERS

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Introduction

The following booklet is compiled from questions frequently asked by Miners or situations they can unwittingly be caught in. Many of the articles in this booklet are **important to know before you take on work as a Miner**. For example salary packaging your relocation costs, covering yourself with private health insurance for the full year in the first financial year you start mining and making sure you are actually employed before you incur any costs to attend courses. It also covers typical tax deductions for Miners and Noel Whittaker has contributed a couple of articles to help you invest your increased wages wisely. This booklet is available under the booklets section of our web site www.bantacs.com.au. Please spread the news around.

Before You Start Work

Relocation costs

The cost of relocating your household, 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. 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
- Furniture Removal
- 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.

Claiming Memberships and Courses

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

Home to work travel

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.

When negotiating your salary package try to have your employer cover 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. .

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.

What Can You Claim A Tax Deduction For?

Claiming Travel

The only opportunity a miner has to claim travelling expenses is if he or she requires tools or equipment as part of their job, they are bulky or over 18kg, there is no safe storage at the mine site and he or she uses his or her car to transport them. You can also claim for travel to abnormal workplaces this could cover training.

The easiest method to claim your motor vehicle is the kilometre method. You can claim up to 5,000kms per car and it does not require receipts or a log book but simply a detailed reasonable estimate. So if you travel to similar areas each month a record of the purpose of each journey and the kilometres travelled in the period multiplied to cover the whole year is sufficient record. Also keep a record of one off trips. The rate per kilometre can vary depending on the size of your car. For example in the 2013/2014 financial year a car with a motor larger than 2.6 litres qualified for 77 cents per kilometre.

If you do go 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 you spouse's car sometimes. You can also claim up to 5,000kms in that 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 spouse's 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. For other methods of claiming a motor vehicle refer our booklet on the topic http://www.bantacs.com.au/booklets/Claiming_A_Motor_Vehicle_Booklet.pdf

If you have safe storage at work, such as a locker that no one else has access to you cannot claim for carrying your tools even if you do. A trip from work to home carrying bulky equipment so you can do work at home would not be deductible because you only take them home as a matter of convenience. That is you could finish the job off at work but you would prefer to work at home.

TR 95/34 covers a lot of the other circumstances where a car can be claimed as a work related expense. 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 offices, inspecting branches displays etc. If you go home, rather than back to your work, after these meetings etc you can also claim the trip home.

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 an agency nurse without a normal workplace you cannot make this claim if you only visit one hospital for the day. For a nurse with a permanent position the abnormal workplace claim would cover travelling to other hospitals for meetings, attending courses, 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 travel to one workplace on Monday and Tuesdays and another the rest of the week both these places would be considered your normal workplace so no abnormal workplace claim is available for either place.

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.

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 stopping at another office to do some work or have a meeting on the way to work will make the whole trip deductible.

Casuals - 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. Casuals can claim their travel to and from work if they attend more than one work site during a day without returning home in between.
Note - 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**.**

Called Into 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.
IT 112 discusses this matter in great detail.

Claiming 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 Ausidustry 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 and safety non slip shoes. High visibility wear and heavy duty drill clothing. 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.

If a strictly enforced uniform policy that includes a logoed item that qualifies and that policy also dictates the colour, style and type of the conventional clothing to be worn with it 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.

Even if you can't claim a deduction for conventional clothing this 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.

Other Protective Items

TR 2003/16 is based on Morris' case which gave us sunscreen deductions, 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 eye sight, however prescription sunglasses are claimable if you need protection from the sun.

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.

Claiming 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.

Travelling to see your accountant

Travel to your tax agent is fully tax deductible providing that is the primary purpose. If there is also a private purpose to the travel the expenses have to be apportioned. If you are away from home over night in order to visit your tax agent you are also entitled to claim a deduction for your meal, accommodation costs and if applicable air fares. Reference TD 94/92.

Travel, Meal and Living Away From Home Allowance

With the Living Away From Home Allowance (LAFHA) losing its exemption from Fringe Benefits Tax (FBT) in most circumstances, employers are looking for ways of providing their employees with the same remuneration package but not having to pay fringe benefits tax on it.

The simplest way of an employer avoiding the FBT is to call the allowance anything else than a living away from home allowance. You see, on any other allowance the employee is responsible to pay the tax on what they receive. Worse still, in an attempt to keep employees happy during the year we are finding some employers are not taking any tax instalments out of the allowance. This gave the employee the impression that nothing had changed in their package because their take home pay remained the same. That was until they lodged their tax return.

If the employer does not take enough tax out of your pay they are not responsible for the shortfall. The ATO simply considers you to have got the money in your hand instead and when you do your tax return it is time to hand it over. For the employee it is too late to renegotiate their package, though if you have evidence of your agreement I would be asking your union or other representative whether they have breached it.

The following is a list of some of the most relevant allowances and how they should be treated; please check your next payslip and avoid a big shock in your next tax return. If you need to argue the point with your employer this link gives you a list of when tax is to be deducted from the allowance www.ato.gov.au/Business/PAYG-withholding/In-detail/Taxing-of-allowances,-bonuses,-commissions-and-leave-payments/Withholding-from-allowances/. This link to TD 2014/19 will give you the maximum travel and meal allowances you can receive tax free without keeping receipts for the 2014/2015 financial year. http://law.ato.gov.au/atolaw/view.htm?docid=TXD/TD201419/NAT/ATO/00001

***Travel Allowance* –** Tax concessions only apply to travel allowances if the employee is required to sleep away from home overnight, otherwise it is just included in gross wages, with PAYG instalments deducted.

If an employee is paid a bona fide travel allowance this can be included in their tax return and they can claim expenses against it. Receipts are not required if the amount claimed is within the reasonable amounts that appear in TD 2014/19. What is considered a reasonable amount depends on the salary of the employee and where they are travelling to, it is around $120 a day for food and incidentals and around $200 per day for accommodation within Australia.

MT 2030 states that an employee **may** not be considered to be travelling if they stay in the one place for longer than 3 weeks. Thought there are rulings that suggest the limit can be as much as 6 months.

If the allowance is not directly related to actual travel then it will not qualify for the travel allowance substantiation concessions. For example if a flat weekly rate of travel allowance is paid to all truck drivers at a depot regardless of how many nights they sleep away from home, is considered part of their normal wage and not a travel allowance.

Truck drivers who are paid a travel allowance are not entitled to the same concessions referred to above for other employees. It is assumed a truck driver will sleep in their truck so they are not entitled to claim accommodation against their allowance unless they actually have a receipt. TD 2014/19 states that the reasonable amount for truck drivers' meals is $93.40 per day if their income is under $112,610 per annum and $101.85 per day if their income is over $112,610 per annum.

If an employee wants to claim more than the reasonable amount they need to keep receipts for all their travel expenses. If an employer pays more than the reasonable amount they must withhold tax from the excess. If the travel allowance is under the reasonable amount then it does not have to have any tax withheld from it or appear on the PAYG summary. If your employer pays less than the reasonable amount it is worth keeping track of what you are paid so that you can include it as income and claim the reasonable amount back against it if you generally spend the reasonable amount. If your employer does not pay a travel allowance or it is so low that it would not be reasonable to consider it to be paid to cover your travel costs i.e. $5 a day, then you must have receipts for every travel expense you want to claim.

***Overtime Meal Allowance* -** Meals are not deductible to employees, who are not sleeping away from home, unless they work overtime and are paid an allowance under an industrial award or EBA. When an overtime meal allowance is paid they can claim up to $28.20 per overtime shift without receipts in the 2014/2015 financial year. Employees need receipts for the whole expense if they want to claim more than the $28.20. The meal can be purchased on the way home from the overtime shift.

Overtime meal allowances of $28.20 or less, that are paid when overtime is actually worked do not have to have tax deducted from them and are not required to appear anywhere on the PAYG summary. Note, if your employer pays less than the $28.20 it is worth keeping track of how many times you receive it so you can include it as income and (if you do spend more) claim up to the $28.20 as a tax deduction.

***Living Away From Home Allowance (LAFHA)* –** This is never taxable in the employee's hands, the tax consequences are totally the concern of the employer through the Fringe Benefits Tax regime. No FBT is payable if the employee is only at the location for less than 12 months and continues to maintain a home in Australia away from the employment location. If the employee does not qualify to be exempt from FBT the employer must pay the FBT and include the grossed up amount in the reportable fringe benefits box on the PAYG summary.

***Award Transport Payments* –** This only applies to award payments that were in force at 29th October, 1986, where there will be deductible transport expenses. So if you receive this and get a company Ute it will not qualify because you are not incurring any deductible transport expenses. In the unusual circumstances that it ticks all the boxes, tax does not need to be withheld from the payment.

***Allowances for Working Conditions or Special Qualifications* –** No extra deductions are allowed when these allowances are received; they are just wages under a different name and must have tax withheld from them. They don't even belong in the allowance box and should just be included in gross wages.

***Tool Allowance* –** Whether you receive this allowance or not you can claim a deduction for tools you purchase but you must have receipts. This appears on the PAYG summary in the allowance box but tax must still be withheld from the payment.

***Car Allowance Paid on a per Kilometre Travelled Basis* –** If the amount is paid in regard to travel that would be tax deductible to the employee, for less than 5,000kms and the amount is within the ATO set kilometre rate tax does not have to be withheld, it is to be shown on the PAYG summary in the allowance box and the employee must include it in their tax return and then claim a deduction for their travel in accordance with the substantiation provisions for motor vehicle claims which are set out in our Claiming a Motor Vehicle booklet www.bantacs.com.au/booklets/Claiming_A_Motor_Vehicle_Booklet.pdf

Medicare Levy Surcharge and Private Health Insurance

High income earners may be subject to a Medicare Levy Surcharge if they do not have private health insurance and to add insult to injury high income earners are not entitled to a discount (government rebate) on their health insurance. Of course there are all sorts of thresholds, the following will apply to the 2014/2015 financial year right through to the 2017/2018 financial year.

Medicare Levy Surcharge

Singles - If your income is over $90,000 you will be subject to the Medicare Levy Surcharge if you do not have private hospital insurance. The rate of surcharge adjusts according to your income. The surcharge is 1% if your income is under $105,000, between $105,000 and $140,000 it is 1.25%, over $140,000 it is 1.5%

Families - If your combined income is over $180,000 plus $1,500 for each child after the first, you will be subject to the Medicare Levy Surcharge if you do not have private hospital insurance. The rate of the surcharge payable changes according to your income. The surcharge is 1% if your income is under $210,000, between $210,000 and $280,000 it is 1.25%, over $280,000 it is 1.5%

Private Health Insurance Rebate

Singles - If your income is over $140,000 you will not be entitled to any private health insurance rebate (discount) but it will still be necessary to have private hospital cover or you will be hit with the Medicare Levy Surcharge. The rebate shades out between $90,000 and $140,000.

Families - If your combined income is over $280,000 you will not be entitled to any private health insurance rebate (discount) but it will still be necessary to have private hospital cover or you will be hit with the Medicare Levy Surcharge. The rebate shades out between $180,000 and $280,000.

It is not unusual for the private health insurance provider to automatically reduce your premiums by the rebate. If this has happened to you and you exceed the threshold you will have to pay back the rebate through your tax return. There is no penalty for doing this so may be the best option if you are unsure of your income.

The Fine Print

Income is defined as your taxable income plus your reportable fringe benefits, reportable superannuation contributions and any amount that was subject to family trust distribution tax. You also need to remove (add back) deductions for net investment losses or rental property losses and superannuation contributions you have personally claimed a tax deduction for. Note if you or your spouse have a negative income for the year, you start with the base figure of zero then increase it by your add backs. This means that if your only income is a rental property loss then it is added back twice, once when your negative income is automatically considered to be zero and again when the loss is added back. There are concessions for lump sum superannuation payments received by taxpayers aged between 55 and 59 years.

If you do not have private health insurance for the full year the surcharge will still apply but it is apportioned pro rata, so don't muck about. The insurance must cover all your dependants this includes your spouse, your children whether they live with you or not and your spouse's children if they stay with you at all because you will be considered to have contributed to their maintenance. Dependent children covers children under 21 years of age or full time students under 25 years of age. If you are single but contribute to the maintenance of your child you are entitled to the family rates, even if that child does not live with you, ITAA 1936 Section 251V,

The private health insurance excess must be under $501 for singles or $1,001 for families. You are only required to have hospital cover, extras is not necessary. A high income earner can expect the surcharge to be more than private **hospital** insurance premiums.

Taxpayers over 65 are entitled to a slightly larger discount/rebate than those under 65 years of age.

You are considered to have had a spouse if you actually had a spouse on the 30th June. This can make a real mess of things if your new spouse didn't have private health insurance beforehand.

Zones

To claim an Australian zone rebate (tax offset) you must be in a zone for 183 days. 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 the tax you paid on your wages 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 Australia Zone List in the search box. TR 94/27 will also give you 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 maybe even help you justify going fishing in the gulf. 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 of any level 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. 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.

Fringe Benefits and Salary Packaging

Most fringe benefits are effectively taxed at the maximum tax rate so there is no real advantage in receiving them and a disadvantage if you earn less than $180,000 a year unless you package exempt or concessionally treated fringe benefits. Further, the benefit is still reported on your PAYG summary so Centrelink will take it into account.

As a miner you should consider salary sacrificing for a car, if you are in the market for a new car anyway. If you do and earn less than $180,000 a year, you should also make an employee contribution to reduce the amount subject to FBT to zero. An employee contribution is taxed at your marginal rate but this is still better than the FBT rate which is the maximum tax rate regardless.

Salary sacrificing into superannuation also works well as the effective tax rate drops to 15% but you money is locked away until you retire.

There are certain expenses such as relocation costs and the cost of travelling to and from work that are not normally deductible to wage earners. Consider salary sacrificing these as they are exempt fringe benefits to your employer which means the cost is covered out of your before tax pay and no FBT is payable.

If you salary sacrifice one of the following vehicles and it is only used for home to work travel, business purposes and other minor, infrequent and irregular travel. The benefit is exempt.

a) Motor Cycles
b) Vehicles designed to carry a load of at least one tone
c) Taxis, panel vans, utilities and commercial vehicles designed to carry a load of less than 1 tone 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 4x2Crew Cab pick-up GL and Holden Ute Series III 179kw V8. Other vehicles that have more load space than passenger space may well qualify.

So 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 asking your employer to provide you with 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. Just make sure the salary packagers know there will be no private use.

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.

Miners' Salary Sacrificed Cars

While this article has come about after discussions with miners on the areas of salary sacrificing their vehicles that they don't understand, it may also be of interest and in most cases will apply to all employees who salary sacrifice cars. Caution, when applying this article, as employers may have different policies or terminology, all we can cover here is how the law works and generally how employers would apply it to your package.

Your employer will reduce your salary package by the cost to it of providing you with a vehicle. Obviously they do not know just how much this will be so they work on an estimate and at some time during the arrangement, maybe even on an annual basis, you will be asked to top up the kitty if your running expenses exceed the estimate. This top up also comes out of before tax dollars.

As part of the process of providing you with the vehicle you will be asked to estimate the kilometres you expect to travel. This will help your employer estimate how high to set the kitty and also how much FBT they have to pay.

Fringe Benefits Tax (FBT) can be calculated on an actual cost method (covered in our FBT booklet) or on the formula method. The latter giving the best result when the vehicle is mainly used for private purposes. Unless otherwise arranged your salary sacrifice package will have the FBT calculated on the formula method. The formula method simply calculates your fringe benefit as 20% of the GST inclusive price of the vehicle.

Because the fuel etc is paid for in before tax dollars and the amount of FBT does not change regardless of how many kilometres you drive the salary sacrificed car should be the main vehicle used and certainly the one driven by the family member travelling the furthest. There is no requirement that the salary sacrificed vehicle be driven by the person who's wages pay for it. Of course more kilometres will mean that you may be asked to kick more into the kitty but this is only to cover the extra fuel etc, it comes out of before tax dollars and is exclusive of GST so a lot cheaper than putting fuel in another car you own.

Note if the car has been owned by the employer or an associate of the employer for more than 4 FBT years then only two thirds of the original cost is multiplied by the 20% to calculate the fringe benefit.

The value of this benefit is grossed up and taxed as if you were in the maximum tax bracket. In simple terms this means that the value of the benefit is almost doubled then multiplied by the maximum tax rate to calculate the amount of FBT your employer has to pay. Your employer will no doubt reduce your salary package by the amount of FBT it has to pay.

The maximum tax rate cuts in when your income exceeds $180,000 so if you are not in this bracket then you should make an employee contribution from your after tax dollars of the amount of the fringe benefit, if you are using the formula method that fringe benefit amount is 20% of the GST inclusive price of the vehicle. An employee contribution effectively means that the taxable portion of the arrangement is only taxed at your lower tax rate rather than the maximum.

At this point you may be feeling that there is a lot more money going out than the car is worth. This only appears to be the case because most people kid themselves just how much it costs to run their car and of course this is a brand new car and the purchase costs are factored into the package. If you don't think you can afford the package then you certainly can't afford a new car any other way. Further, if you don't want a new car then salary packaging is not for you anyway. But if you are going to buy a new car this is an excellent way to cover the costs out of before tax dollars.

The idea is to keep the car in the salary sacrifice arrangement for as long as possible to keep your running costs coming out of before tax dollars and net of GST. Accordingly, if you have the opportunity to re lease the residual payout, do so. However the package is presented to you, look for the combination of lease arrangements that will give you the longest term even if it means taking a slightly short first lease so the vehicle is still young enough to re-lease when the first lease expires.

A trap to watch out for is exceeding the luxury car limit, since 1st July 2010 up to at least the 30th June 2015 the limit has been $57,466. If your vehicle is close to this get professional advice because the way the GST applies to this test is quite complicated. If your vehicle exceeds the luxury car limit there are all sorts of disincentives such as not all of the lease payments being able to come out of before tax dollars and some of the GST not being claimable. So it is well worth staying under this limit.

Let's Just Check Your PAYG Summary

Before you see your Accountant it is worth checking that your employer has put the right figures in your Reportable Fringe Benefits box and the Reportable Superannuation Contributions box.

Reportable Fringe Benefits Box – The gross up amount for fringe benefits appearing in this box is 1.8692 yet in most cases when calculating the FBT your employer has to use a gross up rate of 2.0647. If you know the base value of the fringe benefit you have received then multiply it by 1.8692 and compare it with the amount appearing in this box. Further, if the amount in this box is less than $3,738.40 then it is incorrect as fringe benefits of less than $2,000 in total are not reportable, multiply this buy 1.8692 and you get $3738.40. Note Centrelink will multiply your reportable fringe benefits by 0.535 (in other words halve it) before adding it to your income for their purposes.

Reportable Superannuation Contributions Box - This box should not include any superannuation contributions your employer is required to pay for you under the super guarantee or under your award. If this box contains more than the amount you salary sacrificed, then ask questions.

Protecting your home from Capital Gains Tax

CGT Basics

In order to protect your home from Capital Gains Tax (CGT) it must be considered your main residence. The first condition you need to satisfy is moving into it as soon as possible after purchase. Note there is a 4 year concession if you are renovating or building on land but only if you do not have another main residence at the time. If you do not move in straight away the home will always be subject to CGT on a pro rata basis so you will need to keep records of all the money you spend on it including rates, interest, improvements, plants, insurance, repairs etc for all of the time you live there.

Once you have established a house as your main residence there are concessions that allow you to move out but leave your main residence exemption with the house. Whether the house is your main residence or not is a question of fact. The ATO has issued TD51 as a guideline (not law) of what the ATO considers relevant in establishing your main residence somewhere. The following is an extract from that ruling:

Some relevant factors may include, but are not limited to:

(a) the length of time the taxpayer has lived in the dwelling
(b) the place of residence of the taxpayer's family
(c) whether the taxpayer has moved his or her personal belongings into the dwelling
(d) the address to which the taxpayer has his or her mail delivered
(e) the taxpayer's address on the Electoral Roll
(f) the connection of services such as telephone, gas and electricity
(g) the taxpayer's intention in occupying the dwelling

The relevance and weight to be given to each of these or other factors will depend upon the circumstances of each particular case. Mere intention to construct a dwelling or to occupy a dwelling as a sole or principal residence, but without actually doing so, is insufficient to obtain the exemption. A house can only be classed as your main residence if your name is on the title deed. Further, if you buy your home in the name of a company or trust it will not be protected from CGT by your main residence exemption. As indexing for inflation is now only available in very limited circumstances it is important to protect your main residence exemption. CGT could reduce the proceeds of the sale of your home to the extent that you will not be able to purchase a similar property, simply because of normal increases in prices in line with inflation.

Section 118-145 If you move out of your main residence you can (although not compulsory) continue to give it your exemption for capital gains tax purposes but you can only use the exemption on one property. Note couples are only entitled to one residence between them. If during the time the property was actually your residence it was also income producing, you will only be able to claim the exemption on the portion that was your residence even if, after you move out, the other portion does not produce income. If, after you move out, you rent the property out, your exemption will only last 6 years but if you move back in, the 6 years clock starts all over again. If you do not rent the property out or produce income from it, during the time you are not living there, your CGT exemption is unlimited. Be careful this rule is the absence rule it only applies if you are not there so it will not protect you if you rent out part of your home while still living there

Section 118-140 Your main residence exemption applies to two homes for a period of up to 6 months. This is intended to allow you time to sell your old home after purchasing a new one. To qualify:

1) The first home must have been your residence for a continuous period of at least 3 months in the 12 months immediately preceding the date of sale.
2) If you were not living in the first home at any time during the 12 months preceding the date of sale it can not have been used for producing income (i.e. rented out or used as a place of business).

Note section 118-140 is not optional it must apply so if you have made a capital loss during the period of overlap you cannot claim it.

Section 118-150 A vacant piece of land can be covered by your main residence exemption for up to 4 years before you finish building a dwelling on it, if all of the following apply:

1) You move into the dwelling as soon as practical after it is completed.
2) You continue to use that dwelling as your main residence for at least 3 months before it is sold.
3) During the whole time you are not using your main residence exemption on another property though note you are still entitled to the overlap of 6 months under Section 118-140 above.

Section 118-150 can also apply if you move out of your home to renovate it though using 118-145 will give you an indefinite time frame rather than just 4 years.

If the house is only entitled to your main residence exemption part of the time, the taxable gain will be multiplied by the percentage of time the house did not qualify. Accordingly, you will have to keep records of all capital improvements for the whole period of ownership as the gain for the whole period of ownership has to be worked out first. You will need to be very diligent to record all capital improvements as they include trees, floor tiles, the extra wiring for say an outside light, a hose if there wasn't one there before etc. If the house was purchased after 20th August, 1991 you are also entitled to increase your cost base by the ownership costs of the property while you are living there. This can include, interest, rates, insurance, cleaning, repairs etc.

The way the formula works the costs while you were living there reduce the capital gain while you were not. You can also include in this category most other cost associated with the property that you have not claimed as a tax deduction against the rent. So start collecting records including digging up old bank statements on the loan, asking Council and your insurance company for copies of all that you have paid them since you purchased the house. Reference Section 110-25 subsections (4) some examples are travel, rates, land tax, interest expenses, building insurance, repairs and maintenance. Note repairs and maintenance this has huge potential, just start thinking about it. It can even include changing a light bulb.

If in doubt throw it all in a big box. The biggest tax minimisation scheme is just plan keeping records.

Renting out your home for the first time

Section 118-192 If your home is first rented out after 20th August 1996 and has qualified as a main residence up to that date you are forced to set a new cost base of the market value at the time of renting.

Warning – Don't rent out part of your home

With the housing shortage in Mining towns it is very tempting to rent out part of or a room in your home. The trouble is the rent you receive will be taxable and it will mean that part of your home is not protected by your main resident exemption. The 6 year rule will not protect you here because you are still living there; it only applies if you are absent. IT 2167 discusses when you are considered to be renting out part of your home. If your tenants pay you more than just their share of expenses such as electricity, phone and food then you are in a profit making arrangement and should declare the rent you receive. If your tenants make a contribution towards your mortgage this is not part of sharing the expenses this crosses the line to having to declare the income.

Insurance

Adequate Insurance

With the increased earnings you will no doubt come with increased commitments. In other words you can now afford a better car and house but will probably borrow to have these items sooner. If you were to die you would not like your family to have to compromise their lifestyle ie sell the family home because they can no longer afford the repayments. The obvious solution is to insure your life. But have you considered that if your spouse was to die you would no longer be able to work away from home in the mines. 24/7 day care on a 4 days on 4 days off basis is impossible to find and not what you want to put your children through at that time. Accordingly, you should insure your spouse's life for just as much as you have insured yourself because if either of you were to die the high income of a Miner would no longer be available.

How to claim a tax deduction for life insurance

Normally life insurance premiums are not tax deductible but income insurance is. Even 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. Ask your employer's superannuation fund to provide you with life insurance. The increase in your superannuation contributions to cover the premium is deductible to your employer so they can take it out of your before tax dollars as a simple salary sacrifice into superannuation.

If your spouse is on a low income it may be better for him or her to make an undeducted (non concessional) contribution to superannuation and qualify for the government co contribution of up to $500 and use that to pay for the life insurance.

It is not necessary to hold your income insurance inside of superannuation in order to make it tax deductible and due to restrictions on superannuation funds paying any money out to you before you retire or die, it is not recommended that you hold your income insurance inside of super.

Now A Bit On Keeping Hold Of Your Money

The Miracle Of Compounding Interest - By Noel Whittaker

If you want to become wealthy you will need to understand about the miracle of compounding - the very root of making money. It happens when you let the earnings of an investment compound instead of withdrawing them and spending them. For example, if you had $10 000 in an account and it earned $500 interest, you would be practising compounding if you left the interest in the account to grow further. It happens because you are now earning interest on $10,500, not just the original $10,000.

What has always fascinated me is that it works in ways that seem totally illogical. Think about two young people who start investment programs. The first starts putting $2 000 a year away at age 19 but stops at 26 to buy a home. The second does not start till age 26 but then invests, without fail, $2 000 a year till age 65.

Who do you think will end up with the largest sum of money if the rate of return is 10% in each case? Strange though it may seem the winner is the first one who contributed only $14 000 but ended up with $945,000. The loser is the one who delayed and finished with $894,000 for a total investment of $80,000.

It's a bit like climbing a mountain - it's less stressful if you take your time and walk up the gentle slope rather than trying to make up for lost time by sprinting up the face.

A good way to start is to invest in share based managed funds and reinvest all the earnings. You could also use insurance bonds and superannuation as the earnings automatically accrue each year.

Borrowing To Invest - By Noel Whittaker

Borrowing for investment is usually the best strategy for those who are trying to get ahead financially, but the recent publicity about interest rate rises is leading many to canvass “positive gearing”. This occurs when the income from an investment is more than the interest.

It’s hard to find a positively geared property these days, but the numbers still look good if you borrow for shares.

Think about a person who earns $80,000 a year and borrows $100,000 at 7% to invest in a portfolio of Australian shares with a yield of 4% per annum franked. They would be liable for interest of $7,000 but would receive $4,000 in dividends, so on the face of it, they have a cash deficit of $3,000 a year. However, they would receive $1,714 in franking credits, which could be credited towards their tax bill. When the tax saving is added to the tax deductible shortfall they have a total of $2,228 to put towards their $3,000 deficit. Thus it is costing them just $772 a year to own $100,000 of shares. All that is needed is capital gain of more than 0.772% - less than one percent a year for them to break even. In the past, Australian shares have achieved a capital gain of more than 6% per annum, so your odds are good.

Of course, you should make the effort to reinvest the dividends and not spend them to really put compound interest to work for you. The sum of $100,000 invested at 6% for 30 years would grow to $602,000 - if a return of 10% could be achieved due to dividend reinvestment, the final total would be a massive $1.98 million – that’s compounding in action.

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%
10 packets of cigarettes per month @ $16	$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.

Investing For Your Children's Future - By Noel Whittaker

Back in 1990, in my book "More Money", I wrote about the magic of compound interest and the power of investing just $2.74 a day ($1000 a year) for a new born baby.

Time passes quickly - recently we found ourselves celebrating the 21st birthday of our youngest child. It only seems such a short time since we had three children under four – now they are aged 21, 23 and 24.

Yes, it's a great concept but, unfortunately, like most people, I never "got around" to starting. However, being one who likes to ponder on what might have been, I did some calculations to find out what the outcome would have been if I had made the time to invest that paltry $1000 a year into a managed fund that matched the All Ordinaries Accumulation Index.

The eldest, now aged 24, would have $164,000, the second would have $122,000 and the youngest who just turned 21, would have $89,000. Notice the impact of time on the investment. Because the youngest is four years younger than the eldest, her theoretical portfolio would have been worth about half as much as his, because the length of time of her investment would have been four years shorter.

It encouraged me to do some more calculations. If we made no more contributions to the eldest son's $164,000 portfolio, it would grow to $8.8 million at age 64 if the investment could average 10% per annum. That's a return of $8.8 million for a total investment of $24,000 (24 years x $1,000).

Now think about somebody who is reading this, who is aged 24, and becomes sold on the idea of having a portfolio worth $8.8 million in 40 years time. Because they are starting from scratch they have to invest $1,380 a month ($16,560 a year) to reach their target of $8.8 million.

Yes, the person who put away $1,000 a year from birth and then stopped at age 24 outlays only $24,000 for a return of $8.8 million. The one who delays the program and then starts at age 24 has to find a staggering $662,400 to end up in the same place. This is the cost of delay.

Noel's Rules of Thumb

Rule of 72 – the number of times the return on your investment goes into 72 determines how long it will take for your investment to double in value. For example a 9% return compounded will double every 8 years, so $100,000 becomes $200,000 in the first 8 years then $400,000 in the next 8 years.

$12 for every $1,000 – If your monthly home loan repayment is $12 for every $1,000 you owe you will pay off the home loan within 10 years. For example on a $100,000 loan the monthly repayments should be $1,200.

Just A Bit On Rental Properties

Reading

For lots more information you need on rental properties please download our free booklets:

Before You Buy A Rental Property
http://www.bantacs.com.au/booklets/Before_You_Buy_A_Rental_Property.pdf
Buying a Rental Property http://www.bantacs.com.au/booklets/Buying_A_Rental_Property.pdf
Owning a Rental Property http://www.bantacs.com.au/booklets/Owning_A_Rental_Property.pdf
Selling A Rental Property http://www.bantacs.com.au/booklets/Selling_A_Rental_Property.pdf
Your Own home http://www.bantacs.com.au/booklets/Your_Own_Home.pdf

For a complete guide and much easier reading we recommend Winning Property Tax Strategies by Julia Hartman and Noel Whittaker http://www.bantacs.com.au/book_winning-property-tax-strategies.php

For an education on picking the right location for your property we recommend 20 Must Ask Questions by Margaret Lomas http://amzn.to/1EODEV8

When are rental property travel expenses claimable?

Travel re Purchase and Signing of Contract to Buy or travel to improve the property - Part of cost base for CGT purposes, if the property was purchased after 20th August, 1991, section 110-25(4).

Travel to Improve the Property – Part of cost base for CGT purposes section 110-25(4)

Travel to Repair & Maintain the Property While Rented – Claimable against current year income

Travel to Repair & Maintain the Property While Not Rented – Part of the cost base for CGT purposes section 110-25(4) if the property was purchased after 20th August, 1991. This is the case even if you are living in the property at the time of the travel but for some reason during the time you own the property it is not covered by your principle place of residence exemption.

When Is Interest Tax Deductible?

The following applies to loans for both share investments and rental properties. Much more detail is available in our Claimable Loans booklet http://www.bantacs.com.au/booklets/Claimable_Loans_Booklet.pdf

Traditionally, the interest is only claimable on a loan where the actual money borrowed is used directly to produce income i.e. buy the income producing property.

It is dangerous to use a line of credit facility on an investment loan when you will be drawing funds back out to pay private expenses. Based on the principle that the interest on a loan is tax deductible if the money was borrowed for income producing purposes, the interest on a line of credit could easily become non-deductible within 5 years. For example: A $100,000 loan used solely to purchase a rental property is financed as a line of credit. To pay the loan off sooner the borrower deposits his or her monthly pay of $2,000 into the loan account and lives off his or her credit card which has up to 55 days interest-free on purchases. The Commissioner now considers there to be $98,000 owing on the rental property. In say 45 days when the borrower withdraws $1,000 to pay off his or her credit card the loan will be for $99,000. However, as the extra $1,000 was borrowed to pay a private expense, viz the credit card, now 1/99 or 1% of the interest is not tax deductible.

The next time the borrower puts his or her 2,000 pay packet into the account the Commissioner deems it to be paying only 1/99 off the non-deductible portion i.e. at this point there is $96,020 owing on the house and $980 owing for non-deductible purposes. When, 45 days later, the borrower takes another $1,000 out to pay the credit card, there will $96,000 owing on the house and $1,980 owing for non-deductible purposes so now only 98% of the loan is deductible, etc, etc.

Imagine how you would feel if you borrowed $100,000 to invest in shares. Then when it came time to do your tax return your Accountant told you the interest is not tax deductible because the money went from your loan to your cheque account so you could write a cheque to your broker. In Domjan's case the AAT decided that if loan funds are intermingled with other funds before being used for income producing purposes they are no longer considered to have their source in the loan.

6 Point Property Spruiker Test

We are concerned about the large number of mass marketed developments and other dubious investments being promoted in an unregulated environment. Sometimes this is justified by claiming investors should not use financial planners because all they can do is sell you shares. Just remember that non financial planners are under very little regulatory control. So one might say you could be lambs to the slaughter.

In particular with negatively geared property investment, it is about owning something for which the demand has increased. For this to be the case there must be something unique and in short supply about the property. This in itself is not possible in a mass marketed estate.

The moral of the story is you need to either pay someone to act on your behalf or do your own research if you want to find something unique.

Spruiker Test:

1) Be wary of one stop shops that provide all professional services. This removes you from independent advice and bank valuation information.

2) Consider why the property needs to be marketed outside its local area. Why aren't the locals buying? This is particularly relevant in mining towns where the locals certainly have the money to buy.

3) Don't make an investment decision because you want to reduce your tax. The investment has to be able to stand on its own two feet. The tax advantage is just a bonus.

4) Take inflation into account when viewing any projections you are given. Inflation means the purchasing power of your dollar is decreasing over time. For example if the inflation rate is 3% then a property can go from $400,000 to $537,567 over 10 years and not make any real gain. The $137,567 increase being just the reduction in purchasing power of the dollar.

5) Consider, is there any property guru you have ever heard of that made their money on mass marketed property developments?

6) Use www.realestate.com au and Australian Property investor magazine to form you own opinion of the value of properties, rent returns and growth potential of the area For more on spot the spruiker go to our forum under the topic Information Resources is an interesting article on the points to watch for.

Newsflash

Please make sure you subscribe to our free newsflash to keep your knowledge up to date http://www.bantacs.com.au/newsflash.php At irregular intervals relevant articles from the newsflash are transferred into this booklet by adding them to the bottom of the booklet. So the latest articles are at the end of the booklet. This now begins the section of the booklet that is simply an update of Newsflash articles.

Claiming Clothing in Detail!

Way back in 2002, 10 taxpayers took to the court the ATO's view of what is tax deductible for protecting yourself while working. You should not confuse the uniform rules with rules relating to deducting expenditure on items that protect you or your conventional clothing. For example overalls, aprons, lab coats etc

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.

Taking Tax Advice from Financial Planners

In Stewart v FCT 2013 AATA 845 the taxpayer was fined 25% of the tax avoided because he failed to take reasonable care even though he consulted a financial planner as to the tax ramifications of an employer share acquisition scheme. The financial planner was not a registered tax agent and gave the wrong advice. The lack of reasonable care on the part of the taxpayer was not consulting an appropriately qualified adviser.

Mining Industry Contractors

The ATO has written to mining companies and other business that provide services to mining companies, asking for the details of any contractors that operate in a business entity rather than as a sole trader, who the mining companies pay for personal services. In other words contractors operating as a trust, partnership or company will have their data collected. The ATO's objective is to collect a data base of contractors in the mining industry that maybe using a business structure to split income, from their personal efforts, to members of their family. They will also be looking at GST registrations and compliance.

If you are a contractor in the Mining industry you should be concerned if you turnover (total income received before deduction) exceeds $75,000 and you are not registered for GST or have not been declaring all your mining income on your BAS.

If you are splitting your income with your family through a partnership do not be too concerned. You should be ok if you are paid to produce a result, supply your own tools and your partner does participate in the business even if it is in a lesser capacity than you. To produce a result you must be responsible for the result your work produces, for example have to rectify mistakes at your own costs.

You should also not be concerned if you have people working for you that produce more of the business's income than you do.

If none of the above apply to you and you contract in the mining industry other than as a sole trader then you need to study up on our free Alienation of Personal Services Income (API) booklet http://www.bantacs.com.au/booklets/Alienation_Of_Personal_Services_Income_Booklet.pdf There is still nothing wrong with you conducting your business in an entity other than a sole trader, as long as all the profits are taxable in your hands.

Redirecting Employer Superannuation Contributions

Some big employers and government departments who traditionally paid their employees' superannuation into an employer based fund are loosening their rules a little to allow their employees to have their own SMSF. Unfortunately, in many cases the employer will still pay the employee's superannuation into the employer sponsored fund but that fund then allows the employee to transfer the funds into their own SMSF at monthly or annual intervals.

If your employer will not pay your superannuation directly into your SMSF and you have a negatively geared rental property in your fund then the loss from the property cannot be used to reduce the contributions tax on your employer's contributions.

For example say the rental property in your SMSF makes a $10,000 loss and you choose to salary sacrifice $10,000 into superannuation so that effectively that loss is offset against your taxable income ie you reduce your wage by $10,000. If paid direct to your SMSF no contributions tax is paid because the SMSF has a loss of $10,000 to offset against its income stream of your superannuation contribution.

Here is the problem, if your superannuation contribution detours via another superannuation fund first. That first fund is the one that must pay tax on it so the $10,000 is reduced to $8,500 after tax. All your SMSF is going to receive when the funds are rolled over is $8,500. This is not included as income to your SMSF it is just a rollover balance. So your SMSF has a carried forward loss of $10,000 which it may never use (no tax at pension stage) and you have lost $1,500 out of your superannuation balance. Sort of takes all the fun out of the arrangement, doesn't it.

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 http://law.ato.gov.au/atolaw/view.htm?docid=TXD/TD201419/NAT/ATO/00001 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 http://law.ato.gov.au/atolaw/print.htm?DocID=PAC%2F19970038%2F900-200&PiT=99991231235958&Life=10010101000001-99991231235959 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 $6,6800 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.

Changing Main Residences

A reader was recently surprised to find out what a tax mess he had got himself into because when he moved from his old home into something bigger and better and it took him more than 6 months to sell his old home.

This is a terrible trap in the CGT legislation. You are only allowed to cover both properties with your main residence exemption for 6 months, back dated to the last 6 months before you sell your old house. But there are other conditions such as the old house must not be used to produce income while you are not living there and it must have been used as your home for at least 3 months in the last 12 months before its sale. This means that if the period in which you hold both properties is for longer than 9 months after you move into the new home you will not be entitled to the 6 months overlap concession at all.

Further, there is no resetting of the cost base to the market value when you first moved out because that section requires it to become income producing. So you are stuck with a choice to expose to CGT your new house or your old house for any period exceeding the 6 months. The one you choose to expose will have to have its capital gain calculated for the whole period you owned it and then apportioned between days covered with your main residence exemption and days not. If you purchased the home after 20th August 1991 you will be entitled to increase the cost base by anything associated with holding it, even maintenance such as cleaning and lawn mowing.

The CGT Main Residence Exemption Should Never Be Taken For Granted

Section 118-150 allows you to back date your main residence exemption over vacant land and your homes during construction providing you move into it as soon as practical after completion. ID 2006/185 also states that if you live there for more or less than 3 months you can use section 118-145 (the absence rule sometimes referred to as the 6 year rule) to continue to cover the property after you move out, with your main residence exemption, as long as you still own it.

In Keep v FCT AAT 2013 709 the period of time that the taxpayer lived in his newly constructed home was not clear but the shortest period was just one week short of the 3 months required. The CGT was over $20,000 so I bet he wished he had stayed that extra week. Nevertheless, the use of the absence rule, section 118-145 was not argued. Maybe because there were doubts that he even established the property as his main residence at all. The judgement didn't even allow him a partial exemption for the period of time that it was agreed he actually lived there.

Here are the factors from the case that I feel may have influenced the decision that he did not actually establish his main residence exemption at all even though he was living there.

1) There was no evidence of any gas or electricity accounts kept in his name. Apparently they were connected in his ex-spouse's name so he could not produce evidence.
2) He had not changed his address for some items from his sister's place where he had lived before the house was finished and after he moved back out of the house.
3) He had a drivers licence in a different state.
4) As a fly in fly out miner he didn't always return home to the newly constructed house, instead staying at his sister's place on some breaks.
5) His income tax return for the relevant year showed his sister's address.
6) No one vouched for him in court that the place was used as his home, they only sent letters.
7) The biggest mistake of all, he represented himself in court. This probably explains why he didn't argue section 118-145 or at least a partial main residence exemption.

The judgement is disappointing because it lacks analysis of the law involved. Possibly the sitting AAT member may have been influenced by the credibility of the witness, something that is not clear in the judgement. I certainly hope Mr Keep appeals and argues, with the help of representation, far more strongly that he did at least establish his main residence exemption for some period of time and then section 118-145 takes over. It would be nice to have more test cases on this issue; people representing themselves give the ATO precedents to use against taxpayers that are not thoroughly tested. I feel that the ATO is pushing this area rather aggressively, for example in their capital gains calculation they only allowed him $70,000 for the cost of constructing the house when in actual fact the costs were nearly 4 times that amount.

The point I want to stress here is your main residence exemption is not an automatic right. It is your obligation to prove that you qualify.

ATO Bulletin on Miners

The ATO has issued a bulletin covering work related expenses for Miners. The bulletin addresses 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.

CGT on Boats and Jewellery

It is that time of year again when many people consider selling their boat. Just bear in mind that unlike cars, boats are subject to CGT if they cost you more than $10,000 reference section 100-25(2) ITAA 1997. They are a personal use asset which means if you make a capital loss on the sale you cannot offset that against other capital gains other than those made on other personal use assets.

If an item of jewellery cost you or the person who gifted it to you, more than $500 then you will be subject to CGT on its sale. Reference section 100-25(2) ITAA 1997

Income Insurance

This year I am seeing a lot of clients who have been talked into holding their income protection insurance inside their superannuation fund.

Income protection insurance is intended to replace your income when you can't work due to sickness or injury. If all of your income protection insurance is held in your superannuation fund, the insurance company will pay the superannuation fund but depending on your injury or illness the superannuation fund may not be permitted to pay this out to you..

Income protection insurance is tax deductible so you may consider simply owning the policy yourself and stay clear of your superannuation fund. Alternatively, you may prefer to insure through your superannuation fund to utilise your employer's superannuation contributions to cover the premiums. With professional advice you can organise a policy that carefully combines contributions from your superannuation fund and you personally, to make sure you are fully covered and able to access the payout.

How do I know this? Because Tony told me. Tony Townsend is our preferred insurance advisor and he has recently helped out a client who was caught in this situation. There is no cost to you for his services so please give him a call on (07) 54505039 to check that you are really covered.

Mining Town Story of Woe

I used to advise investors to visit Broken Hill before they buy in a mining town. Here is another great example
http://www.abc.net.au/news/2015-02-07/house-passed-in-at-auction-after-million-dollar-price-dive/6077724

Share Investing with a Mix of Borrowings and Cash

As Noel Whittaker will tell you Australians are very good at paying their debts but not so good at saving. This is why borrowing to invest, works so well, it is a form of compulsory saving. It also allows you to get more money working for you in the share market sooner. Which accelerates wealth creation if your shares do better than the interest rate you are paying, on the other hand if the shares go down in value you could end up owing the bank more than your shares are worth and still have to pay interest on the loan.

Now if you have a home loan but some available equity you should borrow the full amount that you are investing in shares as that loan will be tax deductible, if you have spare cash you were going to invest, pay it off your home loan instead, minimising your non deductible interest.

Young people in the mining industry or working overseas might not be ready to buy their own home, This is not a bad idea considering the cost of buying and selling a home if you are only going to live in an area for a short while. They may want to invest in the share market instead because it is so cheap to get their money back, or they may want to use the share market to help them save a deposit for their home. Note Noel Whittaker would suggest that before you invest in the share market you should be comfortable with the idea of sticking with that investment for 5 years.

If you don’t have a home you will no doubt start you investing by putting cash into the market. Then a financial advisor will probably suggest that you take the shares you have and use them as security to borrow more money to invest in more shares. This is a reasonable strategy. The problem arises when you are ready to sell the shares to buy a home.

The rule is interest is deductible on a loan when the money borrowed is used to buy an income producing asset. So the interest on the loan for the additional shares will be tax deductible. Let’s say you used $20,000 of your own money and borrowed another $40,000. You now have a portfolio of $60,000 hopefully the first $20,000 was invested and then the borrowings arranged and the next $40,000 invested separately. 7 years later, the shares have doubled in value and you are ready to buy a house. Ideally you sell off all your shares and use the sale proceeds to pay off the loan and cover the deposit for your house. But any financial planner worth their salt will not let go of you that easily. They will suggest that you sell off enough to get back your original cash, the gains and reinvested dividends but keep the borrowings invested in the market, just secure them against your home instead.

This is where the big question of what the borrowed money was used to buy kicks in. The ATO could say well you invested $60,000 all in the same managed fund and you can’t tell the difference between the units purchased with your cash and the ones purchased with the loaned funds so when you sell some off 2/3rds of the sale proceeds must pay off the $40,000 debt or part of the debt will no longer be tax deductible. Alternatively the ATO could say that originally you paid $1 per unit so for each unit you sell you have to pay $0.67 off the loan because 2/3rds of the purchase price came from borrowed funds. This works a lot better if the units have gone up in value, you get to keep the profit on the units you borrowed for and still keep the remaining portion of the loan tax deductible.

Of course many people will use the sale proceeds for their deposit and not know about this problem until they visit their accountant at the end of the year. By this time they no longer have the sale proceeds and the original loan is still outstanding. In this case the ATO would consider a portion of the interest on the loan not tax deductible.

So continuing with our example, let’s assume the original 60,000 $1 units are now worth $2 each but also that you have been reinvesting the dividends so you now have 70,000 units or $140,000 with the $40,000 still owing on the loan because you have been paying interest only. Unfortunately, you cannot distinguish which units were bought with your original $20,000 and which with the borrowed funds. This is a shame because if you could sell off your 20,000 units and the units bought with the dividends that were reinvested and leave the other 40,000 units untouched with the loan still being 100% tax deductible, Reference IT 2661. Instead you will have to work on the basis that 2/3rds ($20,000/$40,000) of the units sold will be units purchased with the borrowed funds so the original dollar borrowed for those units will have to be repaid. This means that you can never get all your cash out unless all of the loan is repaid.

If caught in this situation it is probably better just to sell up all the investment, if the CGT is not too painful, pay out the loan, buy your home then borrow against it to invest again. It is a shame CGT could have been minimised if the units purchased with the borrowed funds could have been clearly identified from those purchased with cash and those reinvested.

Column by Noel Whittaker

Anybody who has been involved in investment should be aware of the adage “there’s no such thing as a free lunch” or its fellow traveller “if it sounds too good to be true, it probably is”.

Unfortunately temptation can come from unexpected sources, as a friend I’ll call Carol received an offer which entitled her to 90% discount on accommodation in the heart of one of Australia’s prime beachfront resorts.

The offer purported to be “a marketing promotion” - the purpose of the bargain price was to enable prospective customers to sample the delights the resort had to offer.

The fine print did include a requirement that the couple attend a 90 minute presentation on the benefits of the resort, but Carol figured that wouldn’t be too much of a burden. As she said to me, “it would give me the opportunity to play some games on my iPad”.

They duly arrived at the resort where they were requested to make an appointment for the presentation. When they turned up, they found a large room containing a number of tables with a salesman sitting at each table. They were also handed a two page form to complete and sign.

The second page included a statement that the participants confirmed they had received a financial services guide (FSG), and, at the end of the presentation, would receive a statement of advice (SOA) and a product disclosure statement (PDS). The SOA would be based on the assumption that they were a two person family co-habiting for more than two years household earning more than $70,000 a year.

There was also a clause where the participant agreed that they would pay full price for the accommodation if they didn’t buy whatever was being sold.

It must have been an interesting afternoon for the sales promoters. Carol tells me she got to her feet and launched a tirade of abuse at the organisers for wasting everybody’s time, and engaging in misleading and deceptive conduct. She and her husband then stormed out as, I gather, did all the other potential victims who had turned up.

Apart from the obvious lesson here, it is also important to keep in mind that the best investments are those that you seek out yourself after detailed research, and not ones that are pushed on you at a presentation. If real estate is your ‘thing’, the way to buy it is to find an undervalued property in a top location, and strike a bargain with a vendor who is exceptionally keen to sell. This is not going to happen at a 90 minute sales presentation.

Noel Whittaker is the author of Making Money Made Simple and numerous other books on personal finance. His advice is general in nature and readers should seek their own professional advice before making any financial decisions. Email: noelwhit@gmail.com.

Ask BAN TACS

For $69.95 at Ask BAN TACS 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.

Winning Property Tax Strategies – The Book

Once again a brilliant combination of Noel Whittaker’s easy reading style with Julia Hartman’s mind numbing attention to detail. Lots and lots of new stuff plus updated basics for the first time reader so it is much bigger, 300 pages but still the same price. New chapters including young investors, SMSFs, renovators, granny flats, investment and budgeting strategies, fires and floods, mass marketing spruikers, commercial properties, subdividing and development. You can also purchase it online by going to www.bantacs.com.au/book_winning-property-tax-strategies.php The cost is still a low low $29.95 plus $5.95 postage – tax deductible of course!

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