

## **Tax and Sailing**

This article answers some frequently asked questions on how your boat and your sailing may be affected by tax laws.

### ***Can my business sponsor my boat?***

It certainly can. Whether you will be able to claim the sponsorship payments as a business expense is another question.

ATO decision ID 2005/284 dealt with the issue of whether motorcycle sponsorship is deductible. It explained that section 8-1 of the *Income Tax Assessment Act 1997* allows a deduction for all losses or outgoings to the extent that they are incurred in gaining or producing assessable income or are necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income. No deduction is available to the extent that the expense is of a capital, private or domestic nature

This means if your business is sponsoring your boat you may face some difficulties in showing that the sponsorship is an advertising expense directed at enhancing the business's income producing capabilities, rather than being privately motivated. If it appears that you sponsored your boat so that you, as the boat owner, could enjoy the sponsorship money, no deductions will be available. If the sponsorship will benefit your business and is paid for at the same price you would pay a third party, the sponsorship should be a deductible expense.

### ***If I sell my boat at a loss can I claim the loss for tax purposes?***

It depends. If the boat is owned by you personally, for private use, any capital loss is disregarded.

If the boat is wholly used in business (i.e. there is no personal use) and is treated as a depreciating asset, a balancing adjustment amount may arise and there is no capital gain or loss.

If the boat is used partly for business and partly for personal use, only that share of the loss or gain that related to non-business use is relevant for capital gains tax (CGT) purposes.

Gains or losses on depreciating assets are calculated differently to most other capital gains or losses. You make a capital gain if the 'termination value' of your boat is greater than its cost. You make a capital loss if the boat's cost is more than its 'termination value'. Its termination value will be the greater of:

1. The amount you receive on the sale of the boat; or
2. The sum of amounts deductible or deducted, or taken into account in working out deductions, as a result of the sale, and any amount by which the amount deductible was reduced because of an amount received for the sale.

### ***If I sell my boat at a profit is such a gain assessable for tax purposes?***

If you hold the boat for your personal use and you purchased it for over \$10,000, any gain on its sale is assessable.

If you purchased the boat for \$10,000 or less and it is held for personal use, any gain you make on the sale of the boat is disregarded.

If the boat is used in a business, the capital gain is calculated in the same way as a capital loss (see above). If quarantining applies to the boat (see below), the capital gain is reduced by any quarantined amount, in essence treating the capital gain as though it was income from boating activities.

***If I charter my boat out can I claim any expenses for tax purposes?***

Yes. Boat owners who decide to charter their boat can claim deductions. There are two categories of charter boat owners for tax purposes: those persons who fulfil the ATO's 'business test', and those who do not.

If you pass the ATO's 'business test' and are 'carrying on a business', the expenses incurred in carrying on that business are deductible under the usual rules for deductions. Please note that, if you are carrying on a boat hire business and are planning to purchase a new boat, now may be a good time due to the Government's investment allowance package that may give businesses a one-off tax deduction equal to 30 percent of the capital cost of eligible new equipment. See the Butlers website for an article on this specific tax break:

<http://www.butlers.net.au>.

If you are not carrying on a business but still charter out your boat, the deductions available for expenses incurred in relation to chartering out the boat are limited under a 'quarantining system'. This system allows taxpayers who cannot demonstrate that they are carrying on a business using a boat to:

- deduct expenditure relating to their boating activity up to the level of income generated from their boating activity; and
- allow any excess deductions to be carried forward and deducted against income from that boating activity in future years.

These provisions ensure that where an individual or business generates an income using their boat, they are not unfairly taxed. It also guards against such people using the tax system to subsidise private use of boats.

There are very specific tests to determine whether in chartering your boat you are carrying on a business or whether you are simply receiving passive income from leasing out an asset. The ATO has issued Tax Ruling 2003/4 which sets out the tests for whether boat hire activities constitute a business.

The ATO considers these indicators:

- Whether there is significant commercial purpose or character;
- Whether you can show that you have a belief that the business will be profitable;
- Whether you do activities similar to the kind carried out in ordinary trade, such as:
  - the boat is available for charter to the general public;
  - you own or lease the appropriate licenses and permits required for charter activity;
  - the owner and/or operator have appropriate indemnity cover; and
  - the use of the boat is not primarily directed at private use.
- Whether there are organised, systematic, business-like operations, such as:
  - keeping appropriate business records;
  - the pursuit of profitable activities and discontinuation of unprofitable activities;
  - personal use of the boat does not take priority over availability for charter.
- Whether your charter activities are regular, and of a size and scale to be commercially viable.

None of these factors alone will determine whether you are ‘carrying on a business’, but they give an overall impression of the nature of the activity. Basically, if you want to pass the business test, you should be actively involved in the chartering business, ensure that it also provides support services, is aimed at a long term profit, keeps regular hours, maintains licenses, provides experienced operators, and is generally conducted in a businesslike manner. You also need to be willing to limit your own personal use of the boat and ensure that it is available for charter for all or most of the year.

***When can I claim the GST on the purchase of my boat and other connected expenses?***

Once again, the issue of whether you can claim GST depends on whether you are carrying on a business. If a taxpayer buys a boat for use in an enterprise, it will be able to claim the GST (or part of it). If the boat is used partly in a business and partly for personal use, the amount of GST input credits that can be claimed are proportionately reduced.

***When can I claim Fuel Tax Credits?***

If you have a business that is registered for GST and Fuel Tax Credits, and you use your boat in carrying on that business, you can claim credits of up to 38.124 cents per litre on the fuel your boat uses in carrying on the business.

***What about Fringe Benefits Tax?***

FBT may be a hidden trap for employers. If you own a boat and invite your employee and/or their family for a sail on the weekend, this could fall within the FBT regime and you could end up paying FBT at the rate of 46.5% on the value of the benefit provided.

Fringe benefits tax is payable when an employee or their associate receives a benefit from their employer or a third party because of their position as an employee. If the benefit is provided for a different reason, for example if you and your employee have been friends and sailing buddies for years and have always used each other’s yachts, then FTB will not apply.

If the employee’s use of the boat has a value of less than \$300 and the benefit is provided irregularly, it may fall within the minor benefits exemption and no FBT will be payable.

If FBT is payable, the employer will be able to deduct the costs of providing the benefit.

***Should I personally own my boat or should it be owned by my company or trust?***

This is a good question, and one that is worth considering to ensure you get the most out of your boat. There are many different factors that are relevant to this decision, including the following:

- If you own the boat, any capital gain made on sale of the boat may be eligible for the individual 50% discount.
- If a company owns the boat, it is slightly easier for it to pass the ‘business test’ because there is a presumption that a company exists to make a profit.
- Whichever entity owns the boat is the one that will have to pay for it and the one that will be able to claim any deductions.



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