

NEWSFLASH BOOKLET

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2008-2009 FINANCIAL YEAR END TAX STRATEGIES

Please note this booklet is updated in May each year. Until the budget is released our strategies for the year are not certain. This booklet is provided to give you some guidelines in planning but please check again in June before you commit.

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Introduction

The key points for reducing your tax in this financial year are:

- 1) 2008/09 tax rates are very close to the same as 2009/2010, the only real difference being in the amount of low income tax offset. So make sure, that due to a capital gain or unusual spike in income you are going to at least be in the same or a lower tax bracket next year before you implement strategies that transfer deductions from next year into 2008/09.
- 2) The investment allowance is probably the most effective tax strategy for 2008/09 and 2009/10 the trap here is it is all in the one year so you may need to plan to move other deductions into the year you don't claim the investment allowance, generally the best tax planning is to keep your tax rate around the same bracket each year and of course make sure that is the minimum possible on average.
- 3) 2008/09 presents a new opportunity for a deduction. With interest rates dropping incurring the costs to break a fixed loan are looking more attractive, especially if you do so before 30th June so you can get the ATO's contribution back asap.
- 4) One of the most effective tax planning strategies is to level out your income over each year and each member of your financially dependent family over 18. It does not particularly matter that the amount of income is the same each year and for each family member it is more important that the tax bracket is the same. Keeping the tax bracket the same gets a bit complicated if one or more of the members has an income of over \$30,000 but less than \$48,750. In this range they are really in the 34% tax bracket because their low income tax offset is shading out. In line with this method of thinking is making sure you are in the same tax bracket each year rather than pulling all your tax deductions into this year when you are taxed at 31.5% when next year you will not be able to avoid the 46.5% bracket. Though with the new tax brackets you may never be in the 46.5% bracket again as you would need to have a taxable income of \$180,000 from the 2009 financial year.

Tax Rates

Promises for 2008/09	Promises for 2009/10	Promises for 2010/2011
0 - 6,000 0%	0 - 6,000 0%	0 - 6,000 0%
6,001 - 34,000 15%	6,001 - 35,000 15%	6,001 - 37,000 15%
34,001 - 80,000 30%	35,001 - 80,000 30%	37,001 - 80,000 30%
80,001 - 180,000 40%	80,001 - 180,000 38%	80,001 - 180,000 37%
180,001 + 45%	180,001 + 45%	180,001 + 45%

Note excludes 1.5% Medicare Levy.

Tax Offsets

In the 2008/09 year if you earn \$14,000 or less you will not pay any tax so it is important to make sure you use all of this threshold up.

Year	Offset Amount	Tax Free Income*	Starts to Shade out	Lost at	Tax Rate While Shading
2008/09	1,200	14,000	30,000	60,000	19% till \$34,000 then 34%
2009/10	1,350	15,000	30,000	63,750	19% till \$35,000 then 34%
2010/11	1,500	16,000	30,000	67,500	19% till \$37,000 then 34%
2012/13	2,100	20,000	30,000	82,500	19% till \$37,000 then 34%

* This only applies if that is all the taxable income you have, otherwise you will start paying tax at \$6,000.

Passive Income of Minors

The increase in the tax offset amounts also means that children under 18 can receive more passive income without paying tax. Minors are subject to penalty rates as high as 66% on passive income. This does not apply if they have earned the income and there are other concessions for income that is not primarily from an income splitting arrangement. Providing they do not have any other income to use up their low income tax offset they can use it to offset the higher minor tax rates.

Year	Low Income Tax Offset	Free Income Threshold, above this 45%
2008/09	1,200	2,666.66
2009/10	1,350	3,000.00
2010/11	1,500	3,333.33
2012/13	2,100	4,666.66

Superannuation

To take advantage of any of these superannuation concessions your contribution must have been received by your superannuation fund before 30th June, 2009.

Co Contribution – If you contribute \$1,000 to your superannuation fund and do not salary sacrifice it nor claim it as a tax deduction, the government will kick in another \$1,500 if you pass certain requirements. The co contribution is reduced on a pro rata basis if you contribute less than \$1,000. The government's \$1,500 and your \$1,000 will not be taxed in the hands of the superannuation fund. Your assessable income needs to be under \$30,342 if it exceeds this but is less than \$60,342 you will still get some co contribution, the \$1,500 shades out at the rate of five cents for every dollar over the \$30,342. Note assessable income is not your taxable income it is our income plus reportable fringe benefits and before tax deductions. It is for this reason that you are better to prepare a partnership tax return for jointly owned rental properties. Then only the net amount (after tax deductions) will show in your personal income tax return. Where as, an individually owned rental property will appear in detail in your tax return and the rent received will count towards the threshold for the co contributions without allowance for the deductions.

You also need to have 10% or more of your income from employment where your employer is required to make superannuation contributions for you. This 10% rule can also apply to income from running a business. Or wages and business income can be combined to reach the 10% threshold. Finally you need to be under 71 years of age and you will need to lodge a tax return.

Age Restriction to Claiming a Tax Deduction For Your Superannuation Contribution - If you do not have employer support, and you are under 65 years of age you can make a tax deductible superannuation contribution for yourself up to the age base limit of \$50,000 if you are under 50 and \$100,000 for 50 and over.

From the day you reach 65 years of age qualifying to make a superannuation contribution becomes unnecessarily complicated. Much of the restrictions on people over 65 years, making a superannuation contribution for themselves, revolve around a work test. This means the person must have worked more than 40 hours in a period of 30 days or less in the financial year the contribution is made. Careful here, if you retire at the 30th June and decide to make a superannuation contribution for yourself the very next day you will not meet the work test because the contribution was made in a different financial year.

If you are 65 years of age or over your employer is entitled to make a superannuation contribution for you and claim it as a tax deduction providing it is only the amount your employer is required to contribute under the superannuation guarantee or your award. There is one exception to this rule, if you are less than 69 years of age and satisfy the work test above your employer's contribution is not limited to the guarantee or the award, so you can utilize salary sacrifice.

If you are between 65 and 75 years of age but satisfy the work test you are entitled to make a superannuation contribution for yourself. If you do not have employer support you will be entitled to claim the contribution as a tax deduction providing it is less than \$100,000. You have up to 28 days after your 75th birthday to make the contribution.

Rebate for Low Income Spouse Contributions - The tax offset for making non deductible super contributions for your spouse is \$540 if you contribute \$3,000, providing your spouse's assessable (**not** taxable refer co contribution discussion above) income is under \$10,800. Shading provisions reduce the amount of Co Contribution you receive by one dollar for every dollar over \$10,800 disappearing completely when your spouse's income exceeds \$13,800.

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

Changes to Superannuation Caps in 2009/10

From the 1st July, 2009 people under 50 will only be allowed to claim a tax deduction for a maximum of \$25,000 in superannuation contributions in a year. The \$25,000 threshold will be indexed each year. People over 50 but under 75 will only be entitled to claim \$50,000 per year, and from 1st July 2012 this will be reduced to \$25,000 plus indexing. Of course they still need to qualify, i.e. have no employer support.

The reduced cap will make it even more difficult for property investors to shield their capital gains from tax by depositing some of the proceeds from the sale of a property into superannuation. The reduction of the cap discriminates against people who have a sudden spike in their income. One year they may not be able to afford to put any money into superannuation, and then the next year because of the sale of a property they need the deduction to prevent the gain from pushing them into a higher tax bracket. The contribution must be made in the same year as the gain so in most cases only \$25,000 will be able to be contributed. This also means that people earning wages of more than \$277,778 will not even be able to contribute the full 9% superannuation guarantee so salary packages will need to be re-negotiated.

Investment Allowance

Please make sure you would have bought the new asset in the near future anyway the last thing a business needs in a recession is unnecessary debt. The year in which you get to claim the investment allowance is the year in which the asset is installed ready for use. You have a choice between 2008/09 and 2009/10 carefully consider you expected tax bracket to make the most of it and consider strategies to move deductions into the year that you are not claiming the investment allowance, in order to keep you income in the same tax bracket over both years.

Conditions :

- 1) If you qualify as a small business (turnover of less than \$2mil) you will get the 50% investment allowance if you spend \$1,000 or more. The contract for the expenditure must be entered into before 31st December, 2009 and the equipment must be installed ready for use by 31st December 2010. Land, buildings, computer software and intellectual property do not qualify.
- 2) Big business must spend at least \$10,000 and it will only receive 30% and are stuck with the old 30th June, 2009 deadline for entering into a contract and the equipment must be installed by 30th June, 2010.
- 3) Batches of identical items or items that form part of a set, can be added together to pass the threshold and identical items acquired during the 50% or 30% time frame can be added to those purchased during the 10% time frame to see if the threshold has been passed. But if total identical purchases before 31st December, 2009 are under the threshold then even if purchases after that date bring them up to the threshold they will only be entitled to the 10% investment allowance.
- 4) You must purchase a new asset or new improvements to a current asset. Section 41-20 (3) allows for reasonable testing or trialling so demonstrator vehicles may still be considered new it is all a matter of what is reasonable. In the explanatory memorandum it states that an asset is still brand new if it has only been held as trading stock or held ready for resale. It gives an example of a demonstrator vehicle that the dealer used to drive to and from work and says the allowance is not available so if you are going to buy a demonstrator you best get a certificate that it has only been used for test drives and make sure there are only a "reasonable" (to quote the Bill) number of kilometres on the clock.
- 5) You will still be entitled to depreciation on the full amount paid for the equipment.
- 6) It does not apply to rental properties because it must be used in a business The asset must, at the time it started to be used in the business, be principally used in Australia to carry on a business.
- 7) As long as it is principally used for business purposes the allowance does not have to be apportioned for private use.
- 8) Buildings, land, computer software and intellectual property do not qualify for the allowance.
- 9) It does not apply to cars that will be claimed under the 5,000km method.
- 10) The tax deduction is 50% of the purchase price net of GST if the purchaser qualifies for input credits.
- 11) It is the person that is entitled to claim depreciation for the car that is entitled to the allowance. This becomes a little messy in partnerships and the partnership agreement needs to be referred to, to decide who is entitled to the depreciation on the asset and so the allowance. In the case of a leased vehicle it is the lease company who is entitled to the depreciation unless the car is a luxury car then it is the lessee who is entitled to

the depreciation so the lessee in these circumstances would be entitled to the allowance. The luxury car limit for 2009 is \$57,180 (Reference TD 2008/17).

12) If your car exceeds the luxury car limit then you can only claim 50% of the luxury car limit..

13) There is no claw back of the allowance once the car is sold or its use is no longer principally for business unless it was not bona fide purchased for the business in the first place.

14) Note the allowance is a tax deduction not a tax credit so if the deduction reduces your income below the taxable threshold it is wasted and you will not be able to get any cash back for it though it can create a taxable loss you can carry forward after offsetting exempt income and maybe helpful to you in the following year.

Medicare Levy Surcharge

The income levels at which the Medicare Levy Surcharge of 1% will apply, if you don't have private health insurance, will be the same for both the 2008/09 and 2009/10 financial years. \$70,000 for singles and \$140,000 for couples with an increase in the threshold if they have more than one child.

May 2009 Budget Highlights

High Lights:

Major Changes to the 30% Investment Allowance – The 30% has now been increased to 50% and you have until the 31st December to enter into a contract to buy the equipment as long as it is installed, ready for use by 31st December, 2010

First Home Owners Grant – The \$14,000 for established homes and \$21,000 for new homes will be extended for an extra 3 months to 30th September, 2009. Then between 1st October, 2009 and 31st December, 2009 the grant will be \$10,500 for established homes and \$14,000 for new homes. After that it will be back to just \$7,000.

Superannuation Caps – From the 1st July, 2009 people under 50 will only be allowed to claim a tax deduction for a maximum of \$25,000 in superannuation contributions in a year. The \$25,000 threshold will be indexed. People over 50 and under 75 will only be entitled to claim \$50,000 per year and from 1st July 2012 this will be reduced to \$25,000 plus indexing.

Co Contributions – The Government's Co Contribution amount and upper qualifying threshold will be temporarily reduced. Note the 2008/2009 financial year has been left unchanged so if you make a \$1,000 undeducted contribution to superannuation and your assessable income is under \$30,342 the government will kick in \$1,500 if your income exceeds the \$30,342 threshold the co contribution shades out at the rate of five cents for every dollar over \$30,342 so no contribution will be received if your income exceeds \$60,342. Note it is assessable income not your taxable income it is your income plus reportable fringe benefits and before tax deductions. From the 1st July, 2009 this will also be adjusted to add back any investment losses and salary sacrificed superannuation contributions. The changes will be as follows:

Year	Maximum Government Co Contribution	Shade out rate
2009-2010	\$1 for \$1 up to a maximum of \$1,000	3.333 cents per \$1 over the threshold
2010-2011	\$1 for \$1 up to a maximum of \$1,000	3.333 cents per \$1 over the threshold
2011-2012	\$1 for \$1 up to a maximum of \$1,000	3.333 cents per \$1 over the threshold
2012-2013	\$1.25 for \$1 up to a maximum of \$1,250	4.167 cents per \$1 over the threshold
2013-2014	\$1.25 for \$1 up to a maximum of \$1,250	4.167 cents per \$1 over the threshold
2014-2015	\$1.50 for \$1 up to a maximum of \$1,500	five cents per \$1 over the threshold

Minimum Pension Draw Downs- Retirees receiving concessionally taxed income streams from their pension funds will only be forced to withdraw half the normal percentage in the 2009-2010 financial year.

Working Overseas – The budget proposes to remove the exemption from Australian tax of income from wages earned overseas by tax residents of Australia. This applies to the "90 day rule" if you work overseas for more than 90 days. The 90 day period was not broken by returning to Australia for rostered leave so many Australians were working overseas and still living in Australia on the sort of 3 weeks on 2 weeks off arrangements that mining companies offer. This will mean it will mean working overseas would be no more attractive tax wise than working in an Australian mine.

Medicare Levy Surcharge – From 1st July 2010 the Medicare levy surcharge and insurance rebate will have 4 tiers:

Income Range		Health Insurance Rebate	Surcharge Applicable
Single	Couple	(premium reduction)	If not covered
Under \$75,001	Under \$150,001	Under 65 30%, 65 to 70 35%, Over 70 40%	0%
\$75,001 to \$90,000	\$150,001 to \$180,000	Under 65 20%, 65 to 70 25%, Over 70 30%	1%
\$90,001 to \$120,000	\$180,001 to \$240,000	Under 65 10%, 65 to 70 15%, Over 70 20%	1.25%
Over \$120,001	Over \$240,001	Zero	1.5%

Non Commercial Losses – This is the hobby farm issue that has been bandied around. Refer our booklet Division 35 for details of the restrictions on offsetting losses from a business against other income. There are many exceptions. The budget announced that people with other income exceeding \$250,000 will not be entitled to these exceptions. The only concession being that they can apply to the ATO in exceptional circumstances or if the business has been independently assessed as commercially viable but due to the nature of its activities is currently experiencing a temporary loss.

Entrepreneurs Offset – this tax offset for micro businesses was to be income tested but. This has now been delayed until the 2009-2010 financial year.

Mirror Trusts or Trust Cloning – Appears to be back for fixed trusts.

Great Southern Plantation etc

The collapse of Great Southern Plantation should worry taxpayers looking for a financial product that will reduce their tax. The problem for investors in the Great Southern Plantation was that even though they may have been aware that it was on shaky ground there was nothing they could do to get out because these type of investments do not have a secondary market.

If this isn't enough to scare you off these types of investments then at the very least make sure they have a product ruling from the ATO and that that product ruling accurately describes the investment you are making.

Year End Tax Strategy to Refinance

Most investors with a fixed loan have no doubt been toying with the idea of refinancing at a lower interest rate. But the break costs are scary. Note even if you have to borrow the money to pay the break costs you will still get a full deduction for the costs in the financial year they are paid and, as long as the property is income producing the interest on the loan for the break costs is also deductible.

If you expect to be in a higher tax bracket this year compared with next the numbers on refinancing might be even more attractive. Certainly the tax refund you will get on the break costs will be higher this year than if you wait until next year. And the reduced interest rate will result in a lesser deduction next year when your marginal rate will be less.

In other words if you take tax into account when calculating the benefit of incurring the break costs and you will be in a lower tax bracket next year then breaking the loan now as opposed to next year will stack up a lot better.

Be careful, break costs on a rental property are deductible because they will save you deductible interest in the future but if you incur the break costs because you have sold the property then they are not a cost of reducing future interest deductions they are a cost of selling the property so will only be included in the cost base under section 110-25(4) which cannot increase a capital loss and cannot apply to properties purchased before 20th August, 1991. The 50% CGT discount usually makes expenditure that contributes to increasing the cost base of an asset only half as attractive as deductible expenditure.

Child Support Changes

From 1st July, 2009 voluntarily salary sacrificed superannuation contributions and investment losses will automatically be added to taxable income to determine a parent's child support liability

Start Diaries Before the End of The Year

For a diary to apply to the 2006/2007 financial year it must be started before 30th June, 2007.

Phone - A detailed phone account statement analysing each phone call will substitute for a diary on a mobile phone and for the STD and mobile calls on the home phone but unless your local calls from home are itemised you will have to keep a diary for them. Just divide a piece of paper into two, one side for business and the other side for private. Tick the relevant column when you make a local call. Do this for 1 month to work out

the ratio of business to private calls and apply this percentage to the local calls on your phone statement. Phone rental is apportioned on the total dollar value of the business calls as a percentage of all calls. The ATO is getting very pedantic about diaries as it recently was successful in persuading a court to disallow a taxpayer any claim for mobile phone calls because the taxpayer did not have a diary yet the taxpayer used the phone 95% for business.

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

Cars - You can use the kilometre rate if you only want to claim 5,000 kms per car you own. The 5,000 kilometres is per car per owner so if you rotate cars with your spouse and you both use your car for work purposes you can claim up to 10,000kms each. The 2007/08 kilometre rates are; up to 1.6 litre 58 cents a kilometre, between 1.601 and 2.6 litres 69 cents and over 2.6 litre 70 cents.

You may be able to claim for your car if you transport bulky equipment to and from work, if there is no secure storage at work. A claim is also allowable for travel to an abnormal workplace if you have a normal workplace. Also consider travel during the day after you have reached work i.e. banking or travel to another job. In order to be able to make these claims you must have a detailed reasonable estimate of the kilometers travelled and which car you used. This is simply a diary of the trips you did and the kilometres travelled. If the distance is the same every day record the days travelled. A one month diary is ok if this is reflective of the rest of the year but don't forget those one off trips at other times during the year. If you are going to travel considerably further than 5,000km per car consider keeping a log book for 3 months that is started before 30th June. Also keep receipts for all expenses all year and take the speedo reading each 30th June. More details on the record keeping requirements are in our Claiming A Motor Vehicle Booklet.

Buying Equipment to Reduce Tax

Make sure you read up on the Investment Allowance discussed at the start of this booklet.

If the equipment is going to be depreciated under normal circumstances there is not much benefit in buying it at the year end because the depreciation claimable is apportioned over the year and life of the item so the deduction would be minimal.

It would be different if you leased the equipment, qualified as a small business and made 12 months lease payments in advance. You would get a full deduction for those prepayments.

There are concessions for small purchases. Note the basic difference between a small and large business is the \$2 million turnover threshold.

Large Businesses – Equipment costing less than \$100 (GST exclusive if registered) can be written off immediately.

Small Businesses - Can immediately write off equipment costing less than \$1,000 (net of GST if claimable) if the item is part of a set the whole set must be under \$1,000.

Wage Earners – Can immediately write off equipment costing less than \$300 (GST Inclusive) but all items that are identical must be added together for the \$300 test. If an item is part of a set the set must be under \$300.

Large Businesses - that buy a piece of equipment for less than \$1,000 can write 18.75% of the purchase price off in the year of purchase regardless of when it is bought.

Small Business - can write off 15% of any equipment in the year it is purchased if the life expectancy is less than 25 years.

Wage Earners and Rental Property Owners – Can claim 18.75% in the first year, on equipment costing less than \$1,000 regardless of when purchase. The threshold for rental property owners is actually \$1,000 per owner so a \$1,900 hot water system for a property owned by 2 people would qualify.

Payments In Advance

Making payments in advance will move deductions from next year into this year, if you are an investor, wage earner or small business. Don't pay more than a year in advance. Expenses a business could consider are rent, lease payments, advertising etc. Investors and businesses paying interest in advance must make sure it is treated as such by the bank. If you simply pay an amount into the loan account it will be treated as a repayment of principle and not tax deductible. All taxpayers should consider tax-deductible repairs, stock up on office supplies and generally make sure all your bills are paid before 30th June. Large businesses can only prepay expenses less than \$1,000 (net of GST if registered), wages and payments required by law to be paid 12 months in advance ie vehicle registration.

Protective Items

Wage earners may also consider buying, before the 30th June items they will need for work in the following year.

For example protective items such as sunscreen. 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 though if it is used principally for your protection it would qualify as a deduction. 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. You can claim for conventional clothing such as raincoats, 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.

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.

Non Commercial Losses (Div 35)

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

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

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

c) Salary package the expenses relating to the non commercial business. As they are otherwise deductible your employer will not have to pay FBT. This should make the non-commercial business actually profitable and you wages income will be reduce. This would have the same effect on your tax payable as claiming the business expenses as a tax deduction.

Trusts Be Warned

Before the end of the financial year all taxpayers who have discretionary trust should execute a minute determining how the profits for the 2009 financial year will be distributed. As the exact amount will not be known this should be done on a percentage basis or by exact amounts with a beneficiary who will receive the balance. Note children under 18 are only allowed to earn \$2,666.66, in passive income a year before being subject to tax at the top marginal rate. If they also have income from a part time job this amount reduces.

If your trust does not make a profit it is not entitled to distribute franking credits and they will be lost forever. So if your trust receives franked dividends it is important that you do interim accounts to ensure a profit will be made.

Property Investors

In addition to the above property investors should note the following:

Repairs - If you are considering doing repairs to your rental property before the end of the financial year, take care to make sure they will qualify for a full tax deduction. This will not be the case if you replace something in its entirety. For example replace a worn fence a bit at a time over a few years rather than all at once. Replacing all the cupboards in a kitchen so they match rather than just the damaged one will mean that none of the expenditure is deductible on the other hand replacing a vanity can be deductible as a repair if the pipes from the old vanity are used.

Durable items for a rental property normally need to be depreciated over time but if they are under \$300 they can be written off immediately. Like items must be added together when applying the \$300 test so it may be better to buy one set of curtains this year and wait until July before you buy the next set.

If you are looking to do some repairs to your rental property to reduce your taxable income before the end of the year make sure they qualify as repairs not improvements. For example if the house needed painting when you bought it then painting it would be an improvement or if the house did not have a garden hose then purchasing one would be an improvement and therefore not deductible. On the other hand if during the time of your ownership the hose wears out and you replace it or the paint starts to peel and you repaint, these expenses would be a deduction. A repair can become an improvement if it does not restore things to their original state i.e. replacing a metal roof with tiles. But a change is not always an improvement. The ATO says the cost of removing carpets and polishing the existing floorboards is a deductible repair yet underpinning due to subsidence is considered to be an improvement.

Tree removal is claimable if the trees have become diseased or infested during the time of ownership. Removal is also claimable if the tree is causing damage such as roots interfering with pipes and the damage was not present when you purchased the property. If a tree is removed because it may cause damage in the future or you are fed up with the leaf litter that has always happened since you bought the property, then you are making an improvement which is not deductible.

Take care to perform repairs only when the premises are tenanted or in a period where the property will be tenanted before and after with no private use in the middle. It is better not to make repairs in a financial year during which you may not receive any rental income. If a property is used only as a rental property during the whole year then a repair would be fully deductible even though some of the damage may have been done in previous years when the property was used for private purposes.

Travel Costs - You are entitled to claim for your travel costs to inspect the property, repair it or collect the rent. Don't worry, if you do not have a log book or receipts you can use the kilometre method which, depending on the size of the motor in your car, will allow you to claim around 60 cents a kilometre. All you need is a record of the times you travelled to the property and multiply them by the distance between your home and the property or the shops and the property if you are getting materials. There is a 5,000km limit on this method but the limit is per car per owner of the car so if you also use your spouse's car your limit is extended to 10,000 kilometres. If your spouse also owns the property and you take turns in driving you can claim up to 5,000 kilometres each for the same car but this does not mean you can claim the same trip twice.

Interest etc - Consider prepaying the interest on the rental property loan up to 12 months in advance and get a tax deduction in the year that it is paid. Make sure your bank understands what you are trying to achieve.

Simply depositing the amount into the loan account will not work as it will be considered a repayment of the principal.

If you have sold a rental property for less than the debt relating to it you can still claim the interest on the debt as a deduction against your other income. Take care to stay within the guidelines of the two successful cases in this regard. All the net proceeds of the sale should be used to repay as much off the loan as possible. Appear to be unable to repay the loan from the sale of other assets other than the family home. Don't refinance the loan to extend its term or increase the interest rate. You must appear to be doing all that is possible to eliminate the loan so refinancing to reduce the interest rate is ok. On the other hand if you have to change the loan from principle and interest to interest only because that is the only way you can afford the repayments as you are no longer receiving rent, you may be able to justify changing the loan.

Don't let the fact that the property has not been rented all year stop you from claiming the expenses relating to it. So you may still want to prepay interest etc on a vacant property if you need the tax deduction. Just as long as it has not been used for private purposes and your intention all year was to use it as a rental property. It may have been empty due to renovations or a suitable tenant could not be found.

Last year this issue was put to rest in Ormiston's case where a property was vacant for 4 years and he was still entitled to deductions totally \$70,000 over that period. Ormiston purchased a house he intended to use as a rental property after performing some renovations himself. 4 years down the track he had still not completed the renovations but was entitled to claim expenses such as rates, insurance, interest etc as a tax deduction, for all of the 4 years despite the fact the house never earned a cent of income. He never completed the renovations and sold the property before it was ever rented.

Depreciation - If your domestic rental property was built after 17th July, 1985 you are entitled to claim building depreciation. The rate is 4% for properties constructed before 16th September, 1987 and 2.5% for properties built after that date. This rate is applied to the building costs of the original owner of the building. This information is required by the act to be passed on by each seller of the property. If, and only if you can't find out the original cost of the building you can have it estimated by a quantity surveyor. Many investors think that they will have a quantity surveyor estimate the cost in the hope of getting a higher base for the depreciation. Don't waste your money if you have the original costs as you cannot use the quantity surveyors report. Unlike building depreciation, you can estimate the value of the plant and equipment in a house when you first purchase it. You do not need to use a quantity surveyors report, the ATO will accept a reasonable estimate of the second hand value of items such as carpets, stoves, hot water systems, air conditioners, light fittings (not hard wired), fans, curtains etc.

Capital Gains - If you have a purchaser interested in buying your rental property but you don't want the gain to be included in this year's taxable income yet are concerned they may buy elsewhere if you wait till July, give them an option to buy the property after June 30th. Make sure the option price is high enough that they will not back out. They will probably be glad to secure the property at today's prices with settlement date in the future. This strategy also works if you are delaying selling until you have held the property for 12 months to qualify for the 50% discount.

Wash Sales

TR 2008/1 is the relevant ruling on when the ATO will apply Part IVA (scheme with the dominant purpose of a tax benefit) to a share transaction that creates a capital loss in a year that loss would be very handy in offsetting a capital gain. Not a problem unless you somehow retain the benefit of the shares. So effectively all you have done is triggered a capital loss but still hold the shares in the hope of making a future capital gain. Quiet a topic for this financial year considering the drop in share prices.

A key quote from the ruling:

"The term wash sale does not have any precise meaning. In commerce the term wash sale is used to describe the sale and purchase of the same, or substantially the same, asset within a short period of time of each other. The sale and purchase cancel each other out with the result that there is effectively no change in the economic exposure of the owner to the asset. More generally, the expression wash sale is used to describe arrangements where a disposition of an asset occurs without an intention of ceasing to hold an economic exposure to the asset."

Examples in the ruling are:

- (a) The taxpayer disposes of, or deals with, the asset and at the same time, or within a short period after, acquires the same or substantially the same asset,
- (b) Shortly prior to, or at the time of disposing of, or dealing with, the asset the taxpayer acquires the same, or substantially the same, asset;
- (c) Shortly prior to, at the time of, or shortly after disposing of or dealing with the asset the taxpayer enters into an arrangement to acquire the same, or substantially the same, as asset at a future point in time at a price that is substantially the same as the sale proceeds received on disposal of the original asset and acquires that asset under the arrangement
- (d) Shortly prior to, at the time of, or shortly after disposing of, or dealing with, the asset the taxpayer enters into derivatives or financial instruments that substantially provide continued exposure to the risks and opportunities of the asset, as if the taxpayer had continued to hold the asset,
- (e) Shortly prior to, at the time of, or shortly after disposing of , or dealing with, the asset the taxpayer enters into arrangements under which the taxpayer is entitled to, relative to the taxpayer’s prior interest, the future income produced by the asset and/or any capital appreciation in the asset, or to a reimbursement for any future income produced by, or capital appreciation in the asset,
- (f) The taxpayer disposes of or deals with the asset to a company which the taxpayer is a member of, or to a trustee of a trust the taxpayer is a beneficiary or an object of, and the taxpayer controls or influences the company or trustee, or is the trustee or appointor,
- (g) The taxpayer disposes of or deals with the asset to a company which the taxpayer controls or has influence over but is not a member of, or to a trustee of a trust which the taxpayer controls or has influence over or is the trustee, or appointor or, but is not a beneficiary or an object of. The financial benefits of the asset are not distributed to the members or beneficiaries/objects but rather the company or trustee disposes of the asset to the taxpayer or enters into arrangements to provide the financial benefits of the asset to the taxpayer,
- (h) The taxpayer disposes of the asset or otherwise deals with the asset in circumstances where there is a significant overlap in the individuals who had direct or indirect interest in the asset before and after the disposal or dealing. For example, the asset is transferred from one wholly owned company to another, or between two trusts with the same trustee and class of beneficiaries or objects, or
- (i) The taxpayer disposes of the asset to family members and an arrangement or understanding exists between the parties to the effect that the asset will be reacquired by the taxpayer, the future income produced by the asset and or any capital appreciation in the asset will be provide to the taxpayer or applied for the benefit of the taxpayer or there is otherwise no change in how the financial benefits produced by the asset are utilised by the taxpayer when compared to what occurred prior to the disposal.

In paragraph 6 it states “Where a taxpayer disposes of shares in one company, and purchases shares in a competitor company that carries on a similar business, the shares in the two companies do not constitute substantially the same assets”. So at least you can still stay in the same industry and recognise a capital loss. The ruling also targets sales to associates, so selling the shares to your spouse or selling your shares and your spouse buying the same may be caught

Of course you do not have to worry if the sale does not result in a loss.

I have particular trouble with this attitude because the taxpayer is making a simple choice and Part IVA is not supposed to interfere with taxpayers simply choosing a course of action that is readily open to them. The ATO uses its usually elusive naughty thoughts argument. The scheme is supposed to be, thinking about, maybe even discussing future purchase prices with a broker, selling the shares to trigger the capital loss, with thoughts of buying them back. This sounds like, to borrow a concept from Hart’s case, how can any rational person not consider this benefit?

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The sale and purchase cancel each other out with the result that there is effectively no change in the economic exposure of the owner to the asset. More generally, the expression wash sale is used to describe arrangements where a disposition of an asset occurs without an intention of ceasing to hold an economic exposure to the asset.”

Examples of the sort of transactions the ruling would apply to include the following but only when the ATO considers that the dominant reason for the transaction is a tax benefit.

Buying and selling the substantially the same asset in a very short period of time including the use of options or derivatives to extend the time.

Arrangements where title might pass but the benefits of ownership are retained under an agreement with the purchaser.

Transferring the asset to a trust or company that the tax payer controls or transferring to a family member.

A full list of the transactions listed in the ruling is available in our Year End Tax Strategies Booklet.

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What Is In and What Is Out Now for Tax Offsets

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

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

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

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

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

Co Contribution

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

2009/10, 2010/11 and 2011/12 – The government will match you dollar for dollar up to a maximum of \$1,000

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

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

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

Saving Tax on Your Investment Property – The Book

“Every investment property tax-related question you’ve ever wondered about is answered here and – perhaps more importantly – the ones you didn’t think to ask but should have! For property investors who want to refine their strategy for maximum gain, this resourceful handbook will make a great constant companion.” Eynas Brodie, Editor, Australian Property Investor magazine.

Combining Noel Whittaker’s easy reading style with Julia Hartman’s mind numbing attention to detail was a major challenge which ran way over schedule but it is finished, printed, and in the book stores. You can also purchase it online by going to: www.bantacs.com.au/property.php. The cost is \$29.95 plus \$5.95 postage – tax deductible of course!

Ask BAN TACS

For \$39.95 you can have your questions regarding Capital Gains Tax, Rental Properties and Work Related Expenses answered. For your Accountant, we will include ATO references to support our conclusion. Just go to www.bantacs.com.au and look for the Ask Bantacs link under ‘Most Popular’ on the home page.

Back Issues & Booklets

To obtain free back issues of the fortnightly BAN TACS Newsflash or any of the following booklets visit our web site at www.bantacs.com.au/publications.php. You can also subscribe to our Newsflash reminder.

<i>Alienation of Personal Services Income</i>	<i>Buying a Business</i>	<i>Capital Gains Tax</i>
<i>Claim Your Trip Around Australia</i>	<i>Claimable Loans</i>	<i>Claiming a Motor Vehicle</i>
<i>Defence Forces [Military]</i>	<i>Death and Taxes</i>	<i>Division 35</i>
<i>How Not To Be A Developer</i>	<i>Divorce</i>	<i>FBT for PBIs</i>
<i>Fringe Benefits Tax</i>	<i>Investors</i>	<i>Miners</i>
<i>Goods and Services Tax</i>	<i>Overseas</i>	<i>Professional Practices</i>
<i>Key Performance Indicators</i>	<i>Real Estate Agent</i>	<i>Rental Properties</i>
<i>Overseas Backpacker Fruit Pickers</i>	<i>Selling a Business</i>	<i>Small Business</i>
<i>Secret Plans and Clever Tricks</i>	<i>Subcontractors</i>	<i>Teachers</i>
<i>Self Managed Superannuation Funds</i>	<i>Wage Earners</i>	<i>Year End Tax Strategies</i>

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