

NEWSFLASH

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BAN TACS Accountants Pty Ltd

BAN TACS
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Pty Ltd is a
CPA Practice



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Welcome to the BAN TACS News Flash

Our aim is to provide short but succinct updates tax issues that maybe of interest to our clients

Column By Noel Whittaker

Today I'm going to tell you a true story that shows how honest people with the best of intentions can find themselves suffering financial loss through no fault of their own.

Some years ago a woman who had never married met a widower who had several grown up children. They decided to spend the rest of their lives together, got married, and bought a home to live in. They each contributed half the purchase price and made a pact that on the death of one of them, the survivor would remain in the house. Then, when the survivor eventually moved out of the property and sold it, half of the proceeds of the home would stay with that person, probably to fund entry to a nursing home, and the other half would be given to the family of the person who died first.

When husband died the widow continued to live in the house until declining health forced her into a hostel where she is living today. The home was sold for \$600,000 to provide the accommodation bond for the hostel and in accordance with the promise she had made to her late husband, she paid \$300,000 (being half the proceeds of the home) to her late husband's children.

Now all that sounds very reasonable, but unfortunately Centrelink saw it differently. In their eyes she had gifted away \$300,000 which sum was to be treated by them as a deprived asset, and subject to the deeming rules for the next five years. Because she had done the right thing she lost most of her pension, and also was forced to pay much higher fees for her accommodation. It was the ultimate double whammy.

Of course with the benefit of hindsight it's easy to say that the couple should have documented their intentions, but they come from an era where your word is your bond. They simply acted with the most honest of intentions and the widow had no hesitation in honouring the agreement.

I would like to be able to tell you that this is an isolated incident, but the sad news is that this is just the tip of the iceberg. Other occurrences that have come to my notice include a case where a pensioner unwittingly gave her house to the only child because she no longer needed it when she entered a nursing home, and a situation where a pensioner signed over two thirds of the home to the child in exchange for the child moving into the home to care for her. In both cases the pension was lost.

This is just another illustration of the importance of taking expert advice before executing wills and entering into arrangements with family members. Centrelink have a free financial advisory service which is available to all their clients, but anyone whose affairs are complicated should take other advice as well. Often a few hundred dollars in fees will save tens of thousands of dollars in lost benefits and legal fees.

Noel Whittaker is a director of Whittaker Macnaught, a division of HBOS Australia.

This advice is general in nature and readers should seek their own expert advice before making financial decisions.

Whittaker Macnaught Pty Ltd - licensed dealer in securities ABN 96 009 793 971

Budget Highlights

One can't help wondering if the Treasurer has been reading Newsflash because they certainly made a mess of some of our favourite tricks in Tuesday's budget.

Salary Sacrifice Trick – It looks like they will remove the otherwise deductible rule for benefits provided in regard to jointly owned assets (including shares and rental properties). The original loop hole was created to avoid problems faced by most couples when everything is in joint names. It will be interesting to see how this problem is solved so don't go jumping ship just yet. Another reason not to panic is that because this arrangement was perfectly legal there will be no retrospective claw back. Those people who have already entered into such an arrangement can continue to do so until 31st March 2009, by which time we should know the details of the new law. I think we should be happy that we got to make hay while the sun shone. It is quiet probable that as more people entered into the arrangement the government finally decided to take action. I say finally because the test case was in 1993. It is much more palatable to us that the average person gained this advantage while it was available even though this is what contributed to its demise. In summary our advice is to continue until 31st March, 2009 in any arrangements you currently have, know the budget clearly gives you permission to do so but don't enter into anymore until we see the new legislation go through parliament and don't hold your breath for another loop hole, it is clearly this trick that they are aiming to stop. In the meantime SMSF non recourse borrowings are looking very attractive. There is an article in our next edition summarising the benefits and traps.

Laptops, Personal Digital Assistants and Tools of Trade – From 1st April 2009 you will not be able to receive a these as an exempt fringe benefit unless they are used primarily for work purposes. Further the double dip will be stamped out too ie claiming depreciation on this same laptop in your personal tax return if you do use it for work purposes. Though if the item was purchased before 13th May, 2008 then you will still get the deduction for the 2007/08 year.

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

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

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

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

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

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

SMSF Purchasing Your Rental Property

BAN TACS is getting quite a reputation for coming up with tax solutions that are thinking outside of the box. But we have to give some credit to our imaginative clients. This one was all her idea we just had to check up on the legislation.

The client has a home that is also her place of business but it looks like a normal home on the outside. She would like to get this property across into her SMSF because she wants to live elsewhere but is happy for the business to continue operating from the house. Her question was if the business is operating from there is it business real property which qualifies for the exception under section 66(2) which will allow the SMSF to purchase it from its members. The answer is yes! She was talking about changing the zoning etc but the legislation makes no mention of commercial zoning being necessary, though on the other hand it may interfere with the argument that a business is being carried on in the premises if it is not permitted by council to do so. The property must be exclusively used in a business (not necessarily the business of the owner) so this means she would have to move out and use the whole property in the business. This also means that a simple home occupation right with council will not suffice because it would be conditional upon the owner living there.

The relevant of the Superannuation Industry Supervision Act 1993 are:

Section 66(2) (b) if the fund is a superannuation fund with fewer than 5 members – the asset is business real property of the related party acquired at market value.

Section 66(5) Business Real Property (a) any freehold or lease hold interest of the entity in real property or (b) any interest of the entity in Crown land, other than a leasehold interest, being an interest that is capable of assignment or transfer Where the real property is used wholly and exclusively in one or more businesses.

Business includes any profession, trade, employment vocation or calling carried on for the purpose of profit including:

(a) The carrying on of primary production; and

(b) The provision of professional services

But does not include occupation as an employee

Of course such an investment needs to be within the fund's investment strategy.

Claiming Over 5,000kms for Your Car change for 2008

If your car does less than 5,000 kms for tax deductible purposes you can use the kilometre method set by the ATO. For the financial year ending 30th June, 2007 the rates are 58 cents per kilometre for cars with an engine capacity of 1.6 litre or less, between 1.61 litres and 2.6 litres it is 69 cents a kilometre and over 2.6 litres you are allowed 70 cents a kilometre.

If your car does more than 5,000 kilometres you maybe better off using one of the other methods which are listed in our Claiming Your Motor Vehicle Booklet. Many people choose to just reduce their claim to 5,000 kilometres and use the kilometre method described above. The 12% of cost method may give them a better result with the only record keeping required being evidence of the original cost of the car and that it has travelled more than 5,000kms for tax deductible purposes.

If your car did do over 5,000kms, it is 1.6 litres or less and cost you more than \$24,166 you would be better off using the 12% of cost method. For cars between 1.61 litres and 2.6 litres the threshold is \$28,750 and over 2.6 litres the threshold is a cost of \$29,167

Hybrid Trust Test Case

Don't go getting too excited, this one was a bit of a clay pigeon for the ATO the deed gave the trustee far too much discretion. In Case 2/2008 2008 ATC the AAT held that interest payments on loans taken to purchase units in a trust were not deductible.

“Under the trust deed, the beneficial interest in the fund was divided into the unit component (held on trust for unit holders) and the discretionary component (held on trust for discretionary beneficiaries). The trustee could, in its absolute and uncontrolled discretion, determine the proportion of either component. The discretionary powers of the trustee applied to a wide range of amounts, including income, profits and capital gains or losses. The trustee could make decisions as to whether any such amounts were capital or income, and whether expenses were to be paid out of capital or income.”

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.

Its finally finished! 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 will be in the book stores soon. If you want a copy straight away you can 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!

Seminars

Property Related:

- 26th May, 2008 – Plum Property Seminar - Capital Growth The formula for Successful Investing
6.45 for 7pm start till 9pm Speakers Julia Hartman and
Karen McGlinchey Solicitor & Buyer’s Agent Ph 02 9518 1617
Wyndham Suites, Cnr Wentworth & Goulbourn Streets, Sydney
- 3rd June, 2008 – Mini Property Expo – Mittagong RSL 6.15 pm. A chance to ask questions of our panel of experts and a presentation on what to look for when investing in property. Julia will be one of the speakers and on the panel.
- Tuesday 10th June, 2008 – Tax Implications for Buy and Hold Investors. 6pm to 9pm
No cost and food and drinks are provided
RSVP 6th June, 2008 katy@juresicfinance.com.au 07 3899 8066
Juresic Group Offices, 9 Godwin Street, Bulimba Qld
- Tuesday 15th July, 2008 – Tax Implications for Small Property Developers. 6pm to 9pm
No cost and food and drinks are provided
RSVP 11th July, 2008 katy@juresicfinance.com.au 07 3899 8066
Juresic Group Offices, 9 Godwin Street, Bulimba Qld
- Claim Your Trip Around Australia As A Tax Deduction**
Saturday 12th July, 2008 – 10am On the Sunshine Coast with No Boundaries

Where is Julia?

Getting ready to head north for the winter but needs to stay in NSW until the 5th June when she will be answering viewers rental property questions, with Noel Whittaker, on Sky TV’s Your Money Your Call.

Back Issues & Booklets

To obtain free back issues of the fortnightly BAN TACS Newsflash or any of the following booklets visit our web site on www.bantacs.com.au. 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>Claiming Your Trip Around Australia</i>	<i>Claimable Loans</i>	<i>Claiming Motor Vehicles</i>
<i>Death and Taxes</i>	<i>Defence Forces [Military]</i>	<i>Division 35</i>
<i>Divorce</i>	<i>Teachers</i>	<i>Fringe Benefits Tax</i>
<i>Year End Tax Strategies</i>	<i>How Not to be a Developer</i>	<i>GST</i>
<i>Investors</i>	<i>Key Performance Indicators</i>	<i>Overseas</i>
<i>Overseas Backpacker Fruit Pickers</i>	<i>Wage Earners</i>	<i>Real Estate Agents</i>
<i>Rental Properties</i>	<i>Subcontractors</i>	<i>Miners</i>
<i>Secret Plans and Clever Tricks</i>	<i>Selling a Business</i>	<i>Small Business</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.