

# NEWSFLASH

## **BAN TACS** Accountants Pty Ltd



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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

Whenever you think about financial affairs, there are a few things that are really simple including spending less than you earn, and never borrowing for things that depreciate.

But the moment the government gets involved, regulations become complex, and family tax benefits is one such area. While financial planners have sophisticated computer programmes to assist them, the programmes are expensive and beyond the reach of the average household. **Fortunately, for those receiving family tax benefits, help is available via a computer programme called MOTHER (Maximize Our Take Home – Everything’s Relevant).**

Creator, Glenn Thorpe, advises that when changes made this year to the tax scales and the low income tax offset, interact with Family Tax Benefit Part B, some families could be \$2,000 richer by ensuring joint income is split optimally.

For moderate income families a 50/50 income split is not the best way to maximise income. For example, a family splitting \$41,000 income \$30,000/\$11,000 gains \$2,000 over a \$20,500/\$20,500 split.

These quirks mean any family with a combined income of under \$120,000, who can allocate income or deductions to either partner, should identify its optimum income split and arrange its finances accordingly.

Even small transfers, such as re-allocating deductions or interest income can help. Sometimes reducing the lower-earning partner’s income by allocating \$1,000 of *deductions* to them provides a benefit of \$280 more than if the deduction was allocated to the higher-income earning partner. Sometimes allocating \$1,000 *income* to the higher earning partner can provide the \$280 benefit.

The situation for lower income families receiving Parenting Payment is even more critical. If a family with \$30,000 combined income splits income 50/50 it loses \$2,900 in family income compared to splitting 80/20.

Adjust your affairs early in a financial year to take advantage of this situation. While self-employed families’ allocation of income can often be done after 30<sup>th</sup> June, the allocation of income or deductions from other sources generally depends upon in whose name an asset is placed. For instance, bank interest from joint accounts is usually split 50/50.

Glenn’s programme normally sells for \$99. However, as a special deal to readers, it is available free until 30<sup>th</sup> June. Simply go to <http://www.simpeff.com> and follow the prompts to download.

I recommend it to you and compliment Glenn for his generosity in letting you have a free trial. If it’s appropriate for you it will pay for itself many times over.

Noel Whittaker is a proper authority holder for Whittaker Macnaught Pty Ltd - licensed dealer in securities  
ABN 96 009 793 971. Reg office address is L22, 215 Adelaide Street, Brisbane 4000

**David Thompson from Whittaker Macnaught is regularly available to see clients in our office.**

# A Summary of the Issues With SMSF Borrowings

Refer Newsflash 160 for a discussion on how super fund borrowings work. That basic knowledge is assumed in this article.

When the laws were changed to allow superfunds to borrow (if the lenders recourse was limited to the asset the fund borrowed to purchase) there was, surprising, very few changes to the legislation. It left the field wide open, so the object of this article is to list the relevant issues and divide them into must haves and best to avoids. The must haves are specified clearly in the legislation or recent ATO statements and the best to avoids are a grey areas or areas that may change once the dust settles so if you must go there make sure you have an ATO ruling first.

Due to our cheeky name and clever tricks you may consider us to be teetering on the edge of legitimate tax concessions. Its' not the edge we are looking for it is the wall. We take our clients to the absolute limit of where there is clear precedents in case law, legislation or ATO rulings. The BAN TACS advantage is we do the research to find this wall then we find what lays beyond and advice our clients to apply for a ruling to go to the edge. This article shows you the wall and the edge:

**The Wall – Must Haves – Clearly required by legislation or ATO warnings**

- 1) An “instalment” trust must be set up to hold the new asset until it is no longer required as security
- 2) The asset purchased must be of the type permitted to be purchased by SMSFs ie not domestic rental properties from members or not in breach of the in house asset rules
- 3) The purchase must be within the scope of the investment strategy
- 4) The SMSF trust deed must allow borrowings in this fashion
- 5) The sole motive of entering into the transaction must be to provide for the retirement of the SMSF members.
- 6) The lender of the funds must not have access to any of the superfund's other assets, in the event of default the lender can only take the asset held in the instalment trust.
- 7) If the lender is a member (currently allowed but an area of contention with the ATO) the funds must be lent to the SMSF at market rates, no more or less.

**The Edge – Best to Avoid – Quite possibly legal but considering the costs involved in setting up this arrangement, best to get an ATO ruling before going this far.**

- 1) Utilising the equity in an asset held in the instalment warrant trust to purchase another property
- 2) The CGT and stamp duty ramifications if the instalment warrant trust is anything other than a bare trust for the SMSF
- 3) A member lending the funds for the investment. This is currently permitted but can lead to so many problems the government may well have to change the law to prohibit such arrangements.
- 4) The members of the SMSF or its trustee or the trustee of the instalment trust giving personal guarantees to the lender.

## **Lender Update:**

The main stream banks are finally entering the market, this is bringing down borrowing costs and interest rates but of course they are conservative. Westpac is the first to release its SMSF loan, price wise it is very competitive, but it requires a guarantee from the SMSF member, so we suggest you get an ATO ruling that this will be acceptable. There is a boutique lender, Calliva Funding, offering a loan that does not venture into the areas we are concerned about but it is a bit more expensive. NAB have just released a product for commercial property only with no personal guarantees if the LVR is 65% and the rent covers the repayments. On the surface it looks like the NAB is a bit cheaper than Westpac.

## **The Benefits:**

So you maybe saying why, when things are so uncertain and costs so high, are people jumping in so enthusiastically? Borrowing through your superannuation fund combines four very sought after benefits:

- 1) Asset protection – providing your contributions to the super fund are not out of character, your creditors cannot access your super fund's assets in bankruptcy.
- 2) Negative gearing – by salary sacrificing or if you have no employer support by making tax deductible contributions to the superfund you are effectively getting a deduction for those payments at your highest marginal rate. If the property is negatively geared in the superfund it will not have to pay the 15% tax on those contributions because they will be offset against the rental property losses. This is as good as if the property was in your own name for tax deduction purposes but it gets even better .....

- 3) Unlike, if the property was still in your name when you sell or it becomes positively geared the superfund is the one taxed on it at only 15% for the net rent and 10% for the capital gain. Or if the fund has changed to pension stage there is no tax on the net rent or capital gain.
- 4) You get a tax deduction for principle repayments because you get a tax deduction for the super contributions that make the principle repayments but the superfund will have to pay 15% tax on those contributions. So if you are in the 31.5% bracket you are getting a 16.5% tax deduction for making principle repayments, still a lot better than no tax deduction if you make them in your own name. If you are in the 46.5% bracket it means you are effectively getting a 31.5% tax deduction for principle repayments. Further the 15% can be offset by any depreciation that is available to be claimed.

## **ATO Answers Hybrid Questions**

The ATO have very kindly provided a written response to some questions we put to them about Hybrids. We include our questions but have removed any part that would identify a particular promoter of a Hybrid trust. The ATO answers are untouched so you can see they are not pointing the finger at anyone in particular.

*1) Q. Have you ever given a positive private ruling to a hybrid trust arrangement that achieves negative gearing, asset protection and later tax effectively streaming income to low income family members. I believe that asset protection cannot be achieved while negatively gearing the units because they would need to entitle the unit holder to both income and capital. And the high income earner would have to pay CGT on a capital gain at market value to transfer income rights to the low income spouse so no real tax benefit achieved. A direct answer to this may help clear some of the smoke screen created by the promoters.*

**A.** The Tax Office has indicated, in published rulings, that we will deny deductions in respect of borrowings used to fund trust interests where such deductions lack an adequate commercial explanation; see IT 2684, the Tax Office's ruling on negatively-geared property unit trusts. In addition we have a longstanding, public view that expenses relating to interests in discretionary trusts are non-deductible (refer to IT 2385).

It is important to recognise that a private binding ruling is binding on the Commissioner only in relation to the specific entity named in the written binding advice. The binding advice is based on the facts of a specific situation as advised to the Tax Office and reflects our view of the law in force at the time the advice was issued. For this reason the records on the *Register of Private Binding Rulings* cannot be relied upon as precedent or used for determining how the Tax Office will apply the law in other cases.

As a result, a record in the Register is not a publication approved in writing by the Commissioner. It is not intended to provide people with advice, nor does it set out the Tax Office's general administrative practice. Therefore a record on this Register is non-binding and provides you with no protection (including from any penalty or interest). In addition, a record on the Register is not an authority for the purposes of establishing a reasonably arguable position for you to apply to your own circumstances.

*2) Q. Are any test cases planned?*

**A.** The Tax Office has not yet considered the option of running any test case on this type of arrangements. However, a suitable case might meet the criteria for our Test Case Litigation Program.

The purpose of the Test Case Litigation Program is to clarify the operation of the laws administered by the Commissioner of Taxation where:

- there is uncertainty or contention about the operation of areas of law
- the issue is of significance to a substantial segment of the public or has significant commercial implications for an industry segment, and
- it is in the public interest for the issue to be litigated.

In applying these criteria cases involving tax avoidance schemes or attempts to gain a benefit clearly not intended by the law will not generally be funded. Cases will be considered for funding where they test the proper meaning of anti-avoidance provisions or where the circumstances are such that there is a strong public interest served.

Next edition will include another 5 questions that the ATO answered.

## **Do you pay your PAYG Instalment Annually? Need to update**

If you pay your PAYG instalment annually (the old provisional tax) then you will be due to make your annual payment for the financial year ending 30<sup>th</sup> June, 2008 on 21<sup>st</sup> October, 2008. If, by then, you have already lodged your 2008 income tax return there is no need to worry about paying this.

# Year End Tax Strategies Booklet Updated For 2008

Our year end tax strategies booklet has now been updated to take into account the May budget changes and other issues such as election promises that are relevant to the 2008 financial year.

## Booklets Updated

All articles from the Newsflashes up to Newsflash 165 have now been transferred across to the booklet they are applicable to. This will make it a lot easier for you to search for an article you have read in an old Newsflash. Please note these booklets still need to have old out of date articles removed from them, a major job we hope to get around to soon. Even by the time this is finished it will only be a month or so before something becomes out of date so please don't rely solely on the information provided in the booklet, check with your accountant to make sure it is current and suitable to your circumstances.

## Seminars

3<sup>rd</sup> 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 10<sup>th</sup> June, 2008 – Tax Implications for Buy and Hold Investors. 6pm to 9pm

No cost and food and drinks are provided

RSVP 6<sup>th</sup> June, 2008 [katy@juresicfinance.com.au](mailto:katy@juresicfinance.com.au) 07 3899 8066

Juresic Group Offices, 9 Godwin Street, Bulimba Qld

Tuesday 15<sup>th</sup> July, 2008 – Tax Implications for Small Property Developers. 6pm to 9pm

No cost and food and drinks are provided

RSVP 11<sup>th</sup> July, 2008 [katy@juresicfinance.com.au](mailto: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 12<sup>th</sup> July, 2008 – 10am On the Sunshine Coast with No Boundaries

## Where is Julia?

Heading up the New England Highway to spend June thawing out in Brisbane, the Sunshine Coast and the Gold Coast. On the 7<sup>th</sup> & 8<sup>th</sup> of June she will be popping into the Workabout Australia stand at the Brisbane Caravan and Camping Show. Drop her an e-mail on when you think you will be there and she will try and catch up.

## 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](http://www.bantacs.com.au). You can also subscribe to our Newsflash reminder.

*Alienation of Personal Services Income*

*Buying a Business*

*Capital Gains Tax*

*Claiming Your Trip Around Australia*

*Claimable Loans*

*Claiming Motor Vehicles*

*Death and Taxes*

*Defence Forces [Military]*

*Division 35*

*Divorce*

*FBT for PBI's including Hospitals*

*Fringe Benefits Tax*

*Year End Tax Strategies*

*How Not to be a Developer*

*GST*

*Investors*

*Key Performance Indicators*

*Overseas*

*Overseas Backpacker Fruit Pickers*

*Wage Earners*

*Real Estate Agents*

*Rental Properties*

*Subcontractors*

*Miners*

*Secret Plans and Clever Tricks*

*Selling a Business*

*Small Business*

*Teachers*

### 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.