

# NEWSFLASH

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## **BAN TACS** Accountants Pty Ltd

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### South East Queensland

#### **Ningi**

Shop 17A 1224 Bribie Island Rd  
Ningi Q 4511

**Mail to:** Location  
**Phone:** (07) 5497 6777  
**Fax:** (07) 5497 6699  
**E-mail:** [admin@bantacs.com.au](mailto:admin@bantacs.com.au)

#### **Sunshine Coast**

1<sup>st</sup> Floor, Cnr The Esplanade  
& Second Ave, Cotton Tree Q 4558

**Mail to:** PO Box 465, Cotton Tree  
Q 4558  
**Phone:** (07) 5443 8004  
**Fax:** (07) 5479 2202  
**E-mail:** [admin@bantacs.com.au](mailto:admin@bantacs.com.au)

### The Granite Belt

#### **Tenterfield**

98 High Street, Tenterfield NSW 2372

**Mail to:** Location  
**Phone:** (02) 6736 5383  
**Fax:** (02) 6736 5655  
**E-mail:** [tenterfield@bantacs.com.au](mailto:tenterfield@bantacs.com.au)

#### **Stanthorpe**

37B Maryland Street, Stanthorpe Qld 4380

**Mail to:** Location  
**Phone:** (07) 4681 4288  
**Fax:** (02) 6736 5655  
**E-mail:** [stanthorpe@bantacs.com.au](mailto:stanthorpe@bantacs.com.au)

### Southern New South Wales

#### **Nowra**

93 BTU Road  
Nowra Hill  
NSW 2540

**Mail to:** PO Box 5062 Nowra DC NSW 2541  
**Phone:** (02) 4447 8686  
**Fax:** (02) 4447 8169  
**Email:** [nowra@bantacs.com.au](mailto:nowra@bantacs.com.au)

#### **Kiama**

3/114 Terralong Street  
Kiama  
NSW 2533

#### **Southern Highlands (Moss Vale)**

Suite 2, No.2 Arthur Street,  
Moss Vale NSW 2577

**Mail to:** PO Box 5062 Nowra DC NSW 2541  
**Phone:** (02) 4869 4888  
**E-mail:** [mossvale@bantacs.com.au](mailto:mossvale@bantacs.com.au)

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Welcome to the BAN TACS News Flash Our aim is to provide short but succinct updates on all tax issues

## Column by Noel Whittaker

Now is the perfect time to decide whether you can boost your finances by the clever use of salary sacrifice. In its simplest form all it takes is for your employer to pay part of your gross salary into superannuation instead of giving it to you. It's a great way of saving tax because salary sacrificed contributions lose tax of just 15% - in contrast to at least 31.5% if the money went to you instead of your superannuation.

Think about somebody earning \$80,000 a year who receives a pay rise of \$10,000. If it goes into their pocket they will lose \$4,150 in tax, and have just \$5,850 left over. However, if the employer contributed it to their super fund it would lose only \$1,500 in tax, leaving them with \$8,500 in an environment where income tax is just 15%, and where it cannot be touched until they reach their preservation age which is at least 55.

It can also be used to reduce or eliminate capital gains tax if action is taken early enough.

Case study: A couple are in their early 50's and both earn \$80,000 a year. They receive a legacy of an investment property worth \$600,000 on which the unrealised capital gain is \$200,000. The property is run down and has little potential so they decide to sell it and invest the proceeds into shares while the market is down. When the 50% discount is taken into account the total gain drops to \$100,000 and CGT will be calculated by adding \$50,000 to the taxable income of each one of them in the year the sales contract is signed.

They cannot make a tax deductible contribution to super because their employer is contributing for them, but if they act early enough in the financial year they can salary sacrifice their incomes down to \$30,000 each by having their employer contribute an extra \$50,000 into super for them. The cost of this will be \$7,500 each being the 15% contributions tax. Of course their take home pay would be greatly reduced but they can handle this by living off part of the proceeds of the house after the sale.

If they had taken no action the total CGT would have been \$20,750 each, or \$41,500. Taking good advice and acting early has saved them \$26,500. The rules prevent past salary being sacrificed so they would not be able to implement this strategy if they waited until the financial year was almost over.

Salary sacrifice is also the perfect strategy for high income earners in their 50's with a mortgage. Because the term is fairly short, and lack of access is not a worry, they are ideally placed to move their mortgage to interest only and concentrate on salary sacrificing. What's the point of losing up to 46.5% of your salary before you get the money to pay off your mortgage when you can lose just 15% if you put it into super and then take it out tax free when you retire.

The above examples show what a powerful tool superannuation can be. Anybody who is not using it to the full is paying too much tax.

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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.

## The Numbers for a SMSF With an Investment Property

Borrowing in your Self Managed Superannuation Fund allows you to combine three very important goals, tax effectiveness, asset protection and leverage. The tax effectiveness allows you all the normal advantages of negative gearing but when the property becomes positively geared it will be taxed at a maximum of 15% or zero if you have reached pension stage. Capital gains will be taxed at a maximum of 10% (providing the asset has been held for more than 12 months) or zero if you have reached pension stage. If that wasn't enough in itself the asset protection provided by a superannuation fund is arguably better even than even that provided by a discretionary trust (which is now under a cloud since Richstar's case). Providing you have not made an unusually large superannuation contribution to avoid creditors your creditors are not entitled to touch your superannuation savings. The only area that SMSFs lack is leverage. Now that they are able to borrow there is some leverage available, the only trouble is that the asset can only be borrowed against once. You can refinance but not to draw more equity out of that asset and once the original borrowings are repaid the asset belongs to the superannuation fund which still cannot borrow against any asset it owns.

To explain how the tax effectiveness works here is an example of a superannuation tax return profit and loss:

Rental Income	\$20,000	\$20,000
Salary Sacrificed super contributions	\$20,000	\$15,000
Less Expenses:		
Rates, Insurance, Repairs, Management Fees etc	\$ 8,000	\$ 8,000
Interest	\$27,000	\$27,000
Depreciation	<u>\$ 5,000</u>	<u>\$ 5,000</u>
Taxable income to super fund	0	\$ 5,000 loss

If the above property was held by the individual it would show a \$20,000 loss in their tax return. Because \$5,000 of that loss is depreciation the taxpayer would have only outlaid \$15,000 to achieve this loss. To have the same effect on the individual's taxable income through a SMSF arrangement they would have to salary sacrifice \$20,000 into their SMSF. Their taxable income would be the same but they have contributed an extra \$5,000 in before tax dollars. If they are in the 31.5% tax bracket this will reduce their take home pay by \$3,425. If they are in the 41.5% tax bracket their tax home pay would be reduced by \$2,925 and at 46.5% by \$2,675. But they don't lose that money it is just in the SMSF instead so their overall wealth increases because instead of just having the tax refund that \$5,000 would have generated wrong!!! they still have the full \$5,000 but just can't touch it until they are at least 55 years old. And yes it is the full \$5,000 no tax is payable on this money or the other \$15,000 going into the SMSF fund because the SMSF can deduct the rental property losses against the contributions received to pay zero tax. If the individual chooses not to make the extra \$5,000 contribution then the loss is carried forward by the fund. Now remember this \$5,000 extra you put in was not needed to meet the costs associated with the rental property so it is available to make more investments or pay principle off the loan.

It gets even better than this because you can effectively get a tax deduction for principle repayments on the loan. If you salary sacrifice more funds into the SMSF to pay the principle off the loan the full amount of the pre tax dollars go into the fund, providing you have not reached the age limits discussed below. So the worse tax rate they will face is 15% in the hands of the SMSF if it does not have any other deductions to offset against the contribution. If you are looking to maximise your leverage it maybe better not to pay any principle off the loan but instead use the extra contribution as a deposit for the next property purchase.

Don't go overboard on this strategy, remember if you are under 50 years of age you can only make \$50,000 worth of deductible superannuation contributions a year. Even if you are 50 or over, so qualify for the \$100,000 per year, this is only available until 2012 and your investments could stay negative for longer than that.

## ATO Audits

Doing so many seminars lately I am hearing too many horror stories about ATO auditors. Please do yourself a favour and make sure you inform the auditor you will be taping the whole process and make sure you do. This will make them take much more care when making comments and prevent them from bluffing.

## Depreciation Rate Update

TR 2008/4 has recently been released by the ATO with updated depreciation rates for Primary Producers, the Resource Industry, Manufacturing, Medical, Building Industry, Hospitality, Communications Industry and Transport. It does include the depreciation rates for rental properties but these remain the same as in previous years. The ruling is quite detailed, here is just a sample of some more common rates

Item	Effective Life	Prime Deprn Rate	Diminishing Deprn Rate
Nailing Guns	3 years	33.3%	66.6%
Forklifts	11 years	9%	18%
Generators	20 years	5%	10%
Trailers	15 years	6.67%	13.3%
- if used in water	8 years	12.5%	25%
Poly Tanks	15 years	6.67%	13.3%
Tractors	12 years	8.33%	16.66%
Farm Motorcycles	5 years	20%	40%

## Buck Stops With Taxpayer

It seems everyone else can make mistakes except taxpayers. The Australian taxation system is based on self assessment, that is taxpayers when lodging their income tax returns declare that they are correct at law, even though the highest courts in the land have trouble deciding just how that law works. Based on such a faulty premise it is not surprising there is little justice in our taxation system.

In *Zhu v FCT* the taxpayer was fined 25% of the tax shortfall because the ATO considered him to have failed to take reasonable care when preparing his income tax return. The taxpayer simply filled in his tax return with the information provided to him by his employer as per his PAYG summary. It appears there was an error in the PAYG summary and the taxpayer, despite only immigrating to Australia in the previous year and still experiencing language difficulties should have realised the amount was incorrect. The AAT upheld the ATO's approach, claiming that the taxpayer failed to discharge his burden of proving the ATO incorrect.

The taxpayer still believes the amount on the PAYG summary was correct but the ATO chose to believe a spreadsheet provided by his employer's solicitor over the taxpayer. Strangely enough the amount of tax deducted by the employer was only enough to cover the income shown on the original PAYG summary and the spreadsheet only materialised when the ATO audited the employer's records. But we all know that no one would dare exploit their new immigrant employees.

## SMSF Investment Strategy Document

Auditors of Self Managed Superannuation Funds (SMSFs) will, from the 1<sup>st</sup> July, 2008, be required to report the SMSF to the ATO if they have not maintained an investment strategy. This is a minute that must cover all of the following:

The fund's investment objectives - ie the return required to achieve long term goals, income versus capital growth etc

Each member's profile - ie years till retirement, expected future contributions, size of fund etc

Risk factors – What is an acceptable risk for a higher return?

Cash flow – Restricting the money available to invest considering the need to pay benefits in near future and bills as they become due.

Diversification - Ideally setting out a percentage of the funds to be held in each asset class. Though there is no actual prohibition to investing in just one class.

It is important that each year you review this statement to make sure it does not contradict the activities of the fund.

## Seminars.

Tuesday 16<sup>th</sup> September, 2008 – A Forum with Julia Hartman – Have Your Questions Answered  
 6pm to 9pm No cost and food and drinks are provided  
 RSVP 12<sup>th</sup> September, 2008 [katy@juresicfinance.com.au](mailto:katy@juresicfinance.com.au) 07 3899 8066  
 Juresic Group Offices, 9 Godwin Street, Bulimba Qld

## Survey – Technical Writing

Our Computer Guru is branching out into Technical Writing and would like to do some market research. If you have any interest in the following services could you please assist her by completing the survey on [www.bantacs.com.au/docs/Questionnaire\\_Market\\_Research.pdf](http://www.bantacs.com.au/docs/Questionnaire_Market_Research.pdf)

- Researching and writing user and reference documentation for computer systems
- Writing hardware manuals and technical descriptions
- Writing policy and procedure documents
- Editing and formatting documents; and
- Writing technical and functional specification documents

We would also be interested to hear from any readers who have just for the first time realised that they may need the services of a Technical Writer. This includes managing the information you provide on your web site.

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YOUR PROPERTY IS OUR REPUTATION

## Where is Julia?

North Queensland between Mackay and Port Douglas for the rest of the winter. Will be back in Brisbane in time for the Property Expo.

## 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.

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*GST*  
*Overseas*  
*Real Estate Agents*  
*Miners*  
*Small Business*

**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.