

NEWSFLASH

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BAN TACS **Accountants Pty Ltd**

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CPA Practice



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

Education Tax Offset

Please remember to bring your receipts with you, for any expenses you have incurred for your child's education, when you do your tax return. Expenses that count towards the offset are:

- Laptops, Printers, USB flash drives and Computers including repairs and associated running costs.
- Computer software, Internet Connection and Ongoing fees.
- Text books, study guides and stationery.
- Tools required for school based apprenticeships – not otherwise tax deductible.

Surprising exclusions from the list are school fees, excursions, tutoring costs, library fees and subject levies.

If you have more receipts than you need for this year, don't discard them as they can be used next year. If the expenditure for one of your children is over the limit this overflow can be used against the limit for another one of your children. The maximum amount of expenses that you can claim for each primary school child is \$750 and secondary school \$1,500. If your child has gone from primary to secondary during the financial year you are entitled to the higher \$1,500. But if the child finished school at the end of last year you will only be entitled to half the amount. The offset means you will get half of the expenditure amount back. This is achieved by either reducing your tax payable for the year or by a refund cheque sent to you if you have no tax liability for the year.

Note if you are an independent student under 25 years of age you may qualify to claim the education offset for yourself, if you are receiving certain types of government assistance.

Column by Noel Whittaker

The property market throughout Australia is staying reasonably flat – the only exception is the lower end which has been stimulated by the first home owner's grant. This raises the question of whether it is better to buy now or wait and save a larger deposit in the hope that property prices will come down when the grant reduces, and all the demand that has been brought forward peters out.

It is not an easy decision because nobody can forecast with perfect accuracy what interest rates will do in the future, or what property prices will do in the area in which you intend to buy. However, it would be reasonable to believe that the first home owner's grant has artificially pushed up prices of cheaper houses and therefore these properties will fall, or at least stay flat, when the grant is reduced this year. Also, it's a reasonable bet that the interest rates will rise within the next two years.

Therefore, if you are a first home buyer I suggest your best strategy is to get to know the market in the area where you intend to buy so you will know a bargain when you see one, save the biggest deposit possible to eliminate mortgage insurance and when you eventually buy do your budget based on interest rates at 8%. This will give you a good safety buffer against rising rates.

NOEL WHITTAKER IS A DIRECTOR OF WHITTAKER MACNAUGHT, A DIVISION OF ST ANDREW'S AUSTRALIA. THIS ADVICE IS GENERAL IN NATURE AND READERS SHOULD SEEK THEIR OWN EXPERT ADVICE BEFORE MAKING FINANCIAL DECISIONS. NOEL'S E-MAIL ADDRESS IS NOELWHIT@GMAIL.COM
DAVID THOMPSON & JULIE LOCKERIDGE FROM WHITTAKER MACNAUGHT ARE REGULARLY AVAILABLE TO SEE CLIENTS IN OUR OFFICE

Developers who hold to Rent

GSTR 2009/4, in a very timely fashion addresses the GST considerations when you build a property to sell but due to poor market conditions decide to rent it out for a while.

The problem is that during the construction period you would have claimed all the input credits back. If a property is used to produce domestic rental income then you are not entitled to claim the GST back on the costs of its construction.

Don't panic, you do not have to pay the GST back straight away and you may only have to pay back a very small portion if you continue to list it for sale while you are renting it out. Or intend only renting it for a short period of time and then putting it back on the market.

You do not have to worry about paying back any input credits until the first adjustment period which is 12 months after the first 30th June after you claimed the GST and you only have to look into invoices for more than \$1,000 GST exclusive.

Now if you have taken it off the market completely and decided to keep it as a rental for an indefinite period of time then you will have to pay back the GST. If, instead you are still holding it to sell or will at least put it back on the market in the near future then you can use the following formula to determine how much the GST you are entitled to keep.

Selling Price

Selling Price Plus Rent Received

So if the selling price is 950,000 and the rent received is \$50,000 then you are entitled to still keep 95/100ths or 95% of the GST so only 95% needs to be paid back. Note the selling price used has to be what you could sell it for in the current market.

If you are living in the property while you are waiting to sell it you can substitute market rent in the above formula. Adjustments do not need to be applied to costs associated solely with selling the property such as advertising it for sale.

GST Adjustment Periods

Each 30th June is an adjustment period so you need to consider this for the BAS you are currently preparing. An adjustment is necessary when the ratio of deductible to non deductible use of an item has changed from that on which you originally apportioned the GST. Any invoices under \$1,000 do not have to be considered but don't forget to consider all invoices over \$1,000, for example motor vehicle repairs when the ratio of business to private use of the vehicle has changed.

The number of adjustment periods depends on the GST exclusive amount of the invoice. Invoices for \$1,001 to \$5,000 have two adjustment periods. Invoices for \$5,001 to \$499,999 have 5 adjustment periods and for \$500,000 or more there are 10 adjustment periods.

SMSF Rulings

SMSFR 2009/3 states the ATO considers that a SMSF may have contravened the inhouse asset rules, arm's length rules and sole purpose test if it is entitled to a distributions from a related trust but the distribution is not promptly paid across to the SMSF.

The distribution maybe considered not paid across to the SMSF if it is not paid within a month of the lodgement of the relevant trust tax return.

Final Ruling on Hybrid Trust

The ATO has issued TD 2009/17 as its final ruling on hybrid trust deeds. Our rental property booklet has many articles full of our issues with hybrid trusts used for property investment. If you are not familiar with the topic it would be worth reading those articles for background to this one.

As expected the ATO have basically said that the unit holders must receive all the benefits from the investment of the borrowed money to be able to claim all the interest as a tax deduction. Further, it is not just a matter of what is received it is a matter of what the trust deed says. So if for example the deed says that the units can be redeemed by the trustee for the original price paid then the trust is caught ie interest not deductible, even if the units are never actually redeemed.

The first step is to check your deed for the following clause that will mean your trust is caught:

- The units carry no entitlement to capital gains
- The units only carry an entitlement to part of the income produced by the money invested
- The units can be redeemed by the trustee for less than the market value of the underlying assets
- The units only carry an entitlement to the capital gain

The last two points will result in no interest being deductible. The first two will result in the interest being apportioned between the benefit the borrowings provide to the unit holder and the other private expense of providing benefits to the family of the unit holder. A rule of thumb given in the determination is that the interest deduction should not exceed the amount of the income received from the trust.

Even some fixed trust deeds have some flexibility in them that could result in them being considered hybrids. This is the case even if they are never used as hybrids because the ATO looks at the possibilities provided within the wording of the deed, not what has been done to date.

So what to do now if you have an investment in a trust? If you are operating that trust as discretionary trust already there is nothing to worry about. If you are operating the trust as a fixed trust you need to have the deed examined to ensure it does not have any hybrid properties, for example the ability to change to any of the 4 points above. If you do have a hybrid trust you need to consider the CGT and stamp duty costs of transferring the property out of the trust. This will depend on how much the negative gearing benefits are worth to you if you are only caught by one of the first two points above. On the other hand if you are caught by one of the last two points then none of the interest on the loan will be tax deductible so it is almost certainly worth moving the property out of the hybrid.

If only one of the first two points apply to you then you need to apportion your interest expense between the return on the investment to which you are entitled and the other benefits provided to your associates. While the determination suggests, as a rule of thumb, that you cannot claim more interest than the amount of income you received from the trust, there is room for negotiation here, on the basis that the benefit to associates will be small. We recommend you apply to the ATO for a ruling on your method of apportionment before you claim any more interest than the amount of income you receive from the trust.

Do not ignore this ruling and hope you will fly under the radar. Every trust tax return has to answer a question on whether it is a hybrid or not so it won't be long before the ATO look into your affairs.

The ruling is only 6 pages long so worth a read if you are affected.

If you are still considering entering into a hybrid trust you need to think about what actual benefits you intend to achieve. Usually the primary concerns are asset protection and tax minimisation. As creditors would be entitled to the units you hold in the trust its asset protection abilities are inferior to a discretionary trust or superannuation fund. If you are limited to only claiming interest up to the amount of income you receive from the trust then the negative gearing benefits are locked in the trust just as they would be in a discretionary trust. Accordingly, there seems to be no relative advantage of a hybrid arrangement. The bottom line is not to accept that anyone's trust deed circumvents the problems expressed here, without an ATO class or private binding ruling stating this.

Seminars

Become an Investment Property Tax Expert- Cost \$495 Directed at Accountants, Speaker Julia Hartman Ring (03) 9328 2688 to book. Presented by CPDS Brisbane – 1st September, 2009 9.30 am to 4pm

Where is Julia?

Avoiding winter in Northern Queensland with a new motto. Don't miss out on your childhood, you could end up like Michael Jackson. If in doubt have another one just to be sure.

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.

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Miners
Professional Practices
Rental Properties
Small Business
Teachers
Year End Tax Strategies

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.