NEWSFLASH

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BAN TACS Accountants Pty Ltd is a CPA Practice

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BAN TACS Accountants Pty Ltd

BAN TACS Accountants are a co-operative of accountants who pool their resources and knowledge to provide exceptional client service. All the advantages of a large national firm with the personal services of individual practitioners.

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

Column by Noel Whittaker

The expected interest rate rise didn't happen last week but you can bet that more rises are on the cards. As a result many people are asking "Is it the right time to lock into a fixed rate?"

Unless you are terrified of rates rising, my inclination is to stay with a variable rate to give yourself flexibility. Remember, insurance always has a cost - if rates start to fall you will be locked into the higher rate and may leave yourself open to a hefty penalty if you try to get out of your fixed rate loan before the term ends. Often the penalty will be equal to what you would save by re-financing the loan to a variable rate.

Whenever you make financial decisions you have factor in some assumptions. Right now the variable rate is about 7% and most five year fixed rates are around 8%. Rates tend to rise in .25% increments so it would take four rate rises before your current variable rate went up to the current five year fixed rate.

A disadvantage of fixing rates is that you can lose flexibility if you wish to make lump sum payments, or need to pay the loan out because you've sold your house. I suggest you stay with variable if selling is on the cards, but if you are sure you will be staying put, and think you will be able to make extra repayments, you could consider converting your loan to a “cocktail”, where part of the rate is fixed and part is variable. Then you could pay any surplus funds into the variable portion of the loan without penalty.

Finally, always check out what fees are involved if you wish to refinance. There is no point in refinancing if the costs outweigh the benefits.

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

Centrelink Part A and Education Tax Offset

The following is a link to the Centrelink page for the income test for Part A http://www.centrelink.gov.au/internet/internet.nsf/payments/ftb_a_iat.htm Taxpayers who’s income is too high to receive any Part A from Centrelink will not qualify for the education tax offset. There are concessions if the reason you do not receive Part A is because the child receives some other form of income or benefit.

Related Party Loans and SMSFs

In ID 2010/162 the ATO has changed its previous opinion that when a loan to a superannuation fund is from a related party the interest rate must be no more or less than market rates. On examining section 109 (1)(b) it is only required that the interest rate charged to the SMSF must not be more than would be required by an arm’s length loan under similar conditions. Accordingly, you could lend money to your superannuation fund at below market rates as a way of getting more money into the fund if you are struggling to stay under the contributions cap.

The catch is where do you get the money from? You can not use the SMSF’s assets or the asset being purchased as security for any borrowings. Further, if you charge the SMSF a lower interest rate than the rate you are borrowing the funds to on lend, the interest incurred over and above that received from the SMSF would not be deductible.

Nevertheless, this is an excellent trick if you have spare cash that you want working for you in the SMSF. We can now also be confident that it is ok to borrow, personally, at lower rates from the bank because it is not necessary for that loan to be limited recourse then on lend to the SMSF at the same rate and even though this loan is limited recourse it is still ok to charged the SMSF the same interest rate that you borrowed at.

Choosing a business structure

The factors relevant to this decision are usually adaptability for the future, asset protection and tax minimisation. Asset protection needs to work both ways, if someone sues you they should not be able to access the business assets and if someone sues the business they should not be able to access your assets. Obviously this means holding the business in a separate entity from yourself such as a trust or company. The trap is if you own shares in the company or units in the trust, where your business is, then there is a good chance that your personal creditors will gain access to the business.

Discretionary trusts give you no rights to the assets held in the trust. It is at the discretion of the trustee, each year, who gets the profits or any assets distributed. The trustee would be a company which you will no doubt control by being the director and shareholder but it is not the trustee company that owns the assets it is the trust over which no one has any rights unless the trustee says so. You would also make sure you or someone you trust is the appointer of the trustee. The appointer can at anytime remove the current trustee and put another one in its place. A bankruptcy trustee cannot access your rights as an appointer and unlike directorships a bankrupt is not prohibited from being an appointer. So if you personally go bankrupt and the bankruptcy trustee seizes the shares in the trustee company it cannot then access the discretionary trust because you simply step in and change the trustee to an entity the bankruptcy trustee cannot access.

Superannuation funds are not permitted to run a business, though they do provide excellent asset protection and tax benefits so they are certainly the place to put resources you can do without until you retire. They can also own your business premises.

In many businesses it is impossible to separate yourself from the business because of your professional liability such as gas fitters, doctors, accountants etc. In these circumstances you would be more interested in keeping your personal assets out of your own name. Or at least set up a mortgage trust to make sure there is very little equity available for your creditors

A discretionary trust will provide you with the best barrier between yourself and your business but any losses from the business are locked into the trust, so not good if the business is just a side line to your wages job and you wanted to offset the losses against your wages income. Though with the non commercial loss rules it may not be possible to offset the business losses even if it was in your name. For more details on this refer our Division 35 booklet in the freebies section of our web site.

Discretionary trusts, through their ability to decide, each year, who gets the income also provide good flexibility for the future. And of course the tax benefit of being an employee of your own business and deciding at the end of each year who is in the best tax position to take the profits means a discretionary trust covers all three of our requirements – tax(except for offsetting losses), asset protection and adaptability.

In order to carry forward losses a discretionary trust may need to make a family trust election for tax purposes. Accordingly, you would only want members of your family to be beneficiaries. This can create a problem if two families come together to run a business. They should not use the same discretionary trust in case it has to make a family trust election or needs to pass the significant individual test to access the CGT small business concessions. When two separate families go into business together they should form their own individual family trusts then operate as a partnership of those trusts.

Unlike companies discretionary trusts also qualify for the 50% CGT discount.

Generally a discretionary trust is the best structure for a business because offsetting losses against your wages income would not be part of your plan otherwise why would you be going into business anyway? But the catch is if it flops you are going to have trouble using up the losses you accumulate. There is only one set of circumstances where trust losses can be offset against your other income in your personal tax return, and that is where the income of the trust is considered to be your personal services income. This is discussed in detail in our Alienation of Personal Services Income booklet available in the freebies section of our web site. The catch is if the income of the trust, once it starts making a profit is still your personal services income then you cannot distribute those profits to anyone other than yourself. So it sort of defeats the purpose of having the trust unless during the loss stage it is your personal services income but by the time it starts to make a profit you have other people working in the business providing services to clients that it is no longer income from your personal services. Briefly, income is caught as your personal services under two areas of law. There are the APSI rules which look firstly at whether your income is primarily from one payer and you are not liable to fix your own mistakes at your own expense. You will not be caught under APSI even if you only have one payer if you have an apprentice or business premises separate from your home. There is also a carve out for people who have lots of clients but only one payer such as Doctors who bulk bill and insurance brokers. If you get past the APSI rules then you still have to consider the old common law principles which examine whether the business income is for personal services (income of an owner driver truckie would not be for personal services because the truck is the primary supply) primarily from your service. An example of this would be an accountant with two clerical staff whose time is not charged to clients and a part time accountant. In these circumstances the income could not be split through a trust because the majority of it is earned by the practitioner accountant. There has even been arguments by the ATO that if the employee accountant was full time, the fees would still be considered primarily for the personal services of the practitioner accountant because the practitioner’s charge out rate would be higher so make a bigger contribution to the total practice fees.

There is an exception to this rule. Individual partners in a partnership are allowed to split income even if the majority of the work is done by one partner. This is because a partnership provides no asset protection so the reasoning is that as the other partner or partners are equally at risk with the working partner they should be entitled to a share of the profit. Partnerships are, subject to the non commercial loss rules, so for example if the business doesn’t have a turnover of more than $20,000 the losses are locked into the partnership. Otherwise the partnership is entitled to distribute any losses into the personal tax returns of the partners to be offset against their other income. So if asset protection is not a priority for you and you pass through the APSI rules because you have many clients but are caught out by the fact most of the income is generated by you then a partnership could be the best structure for you.

Property Investing Education

Destiny Financial Solution's approach to property investing is unique. They don't just show you how to buy property; they teach you how to build a property portfolio that will generate future income.
You'll learn Destiny's property investing principles, and have the opportunity to be supported ongoing. Having the appropriate education and support means you'll achieve your financial goals sooner.
Destiny has a robust property investment system, which is accessible to most Australians. Destiny's methodology focuses on both cash flow and capital growth to ensure investors can afford to hold their portfolio as it appreciates in value.
To start, most clients attend a interview with a Destiny branch. At this meeting, your Destiny adviser will explore your goals, assess your current situation and recommend a path forward. Destiny's web site is www.destiny.com.au

Simple Solutions

Experience has taught us that more is not better. We have created some very simple excel spreadsheets that will show you, right before your eyes, what we have been trying to explain to clients for years. We have realised that you don't need an elaborate program that makes coffee as well. What you need is simple spreadsheets that not only helps you calculate the basics but gives you confidence that you have covered all the relevant issues without needing to produce a complex result you do not understand.

This is what we aim to achieve in each of our simple spreadsheets. A result where you understand how it was calculated and enough questions to ensure you have included sufficient relevant information.

All for a very cheap price because we almost feel embarrassed to charge for such basic programs but have now realised that it is more economical for you, if we create the template rather than you reinventing the wheel. Keep on buying these little spread sheets and we will keep them coming. Simply explaining basic business and investment concepts but helping you ensure that you have covered all the relevant items.

For the list so far take a look at the right hand column of our shopping page. Note these are not intended to eliminate the need to discuss with your accountant the answers, they are designed to prepare you for that interview to such an extent that they will save you more than their purchase price in accounting fees.

Where is Julia?

She is back in the Brisbane area and will be heading south to Sydney shortly.

Ask BAN TACS

For $59.95 you can have your questions regarding Capital Gains Tax, Rental Properties and Work Related Expenses answered. Just go to the Ask Bantacs link under 'Most Popular' on the home page.

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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.

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