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

Charging GST When Used For Private

Quite often we are asked whether a person who is registered for GST has to charge GST on all taxable supplies they make when the item might not have been intended to be part of their business. Examples would be a carpenter who is registered for GST and built a rental property, as an owner builder. Does he or she have to charge GST if they sell the property. A husband and wife partnership who are registered for GST in a retail outlet but subdivide off their back yard and sell it. A builder who builds his or her own home but later sells it.

It is all a question of whether the sale is in the course and furtherance of a business, which unfortunately again boils down to proving what you were thinking at the time. The 1998 explanatory memorandum to the A New Tax System Act, at paragraph 3.10 went so far to say that even when a car dealer sells his or her own private car GST would not apply.

Of course, in these circumstances you would not claim the GST input credits when you built or subdivided.

Column by Noel Whittaker

At a recent seminar, I was astounded to hear the speaker claim that the mathematical skills of over 50% of the population were limited to the ability to add and subtract. It was in the context that "complicated" financial terms like compound interest were far beyond the comprehension of the average person.

This paints a sorry picture because knowledge of compounding is essential if you are going to build wealth and it's really quite simple. When you leave the earnings of an investment to compound, you leave them to grow instead of withdrawing them.

For example, if you had $100 000 in the bank and you earned $5000 in interest, you could withdraw the $5000 or else leave it in the account. If you leave it in the account, you now have $105 000 working for you – this is called compounding.

Provided the interest rate stayed the same and you left the account alone, you would earn $5250 interest in the following year and your account balance would be $110 250. If that was left to compound, the interest the next year would be $5513 and your new balance $115 763.

Notice how both the interest and the principal are growing every year because every year you've got more money working for you.

If you have property, the growth automatically compounds because you can't hack off the back patio and sell it, and if you have shares, you can join the dividend reinvestment plan whereby dividends are used to buy more shares and not paid to you directly. Not all companies offer this. Of course if you've got managed funds, it's only a matter of ticking the reinvestment box.

Compounding is really that simple. If the interest is paid to you, you will find that it will be spent and lost forever. If you reinvest it, you will find yourself the proud owner of a portfolio that grows faster and faster every year.

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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

Deducting Education Expenses On Youth Allowance

Despite the ATO's unlimited taxpayer funded resources to appeal to every court in the land when it loses a case, truth and justice has prevailed in Anstis' Case. Nevertheless, despite losing the case hands down and being refused leave to appeal the ATO is still not actually admitted defeat (let alone how much money they wasted), its only recourse now is, in the words of Assistant Treasurer Bill Shorten, is to analyse the judgement and produce a decision impact statement on ATO's position and how the law would be administered as a consequence of the decision. The Sydney Morning Herald which draws parallels between the Symone Anstis case and the movie The Castle quotes the ATO as urging people who believe they might be affected by the ruling to be patient. Patient! We have already waited years while the ATO has dragged the issue through every court it could.

Patient for what? In our opinion, it is very simple, the cost associated with studying are deductible when you receive youth allowance to study ie study costs are a cost of earning income.

Symone Anstis was studying to be a teacher when she attempted to claim costs amounting to $920 for computer depreciation, books, stationery and prac teaching costs such as travel and teaching aids. Fortunately her father is a solicitor so she could afford to challange the mighty ATO. Something that the rest of us defenseless common folk are grateful to them for.

The bottom line is, if you have received youth allowance in the last four years and incurred expenses in relation to your education, you should consider amending you previous tax returns to make a claim. Of course you can't get back more tax than you have paid so you firstly have to consider whether you would have been taxable in those years anyway. If your taxable income in the relevant year exceeded the following thresholds you should consider amending your tax return:

2006/07	$10,000	2007/08	$11,000
2008/09	$14,000	2009/10	$15,000

Personal Service Income That Passes the 80/20 Rule

In Newsflash 216 we discussed the considerations when choosing a business structure. This lead to a brief discussion on the restrictions on splitting personal services income with your family. It was pointed out that even if you passed through all the alienation of personal income test, if the income is primarily generated by your labour you still have to pass the common law tests. In this edition we delve deeper.

In IT 2639 the ATO states that using a trust or company to split income with your family is a scheme with the dominant purpose of a tax benefit so it can use Part IVA to remove the tax benefit. The point being that income from your personal labour can never be taxed in someone else's hand unless it is generated in a personal services business where other people also provide labour to customers. One of the guidelines in IT 2639 is that there is at least as many employees who's services are being charged to clients as there is owners of the business. Administration staff do not count unless their services are being billed to clients.

IT 2639 looks firstly to see if the income is being generated primarily by personal services as opposed to the assets of the business. If it is not primarily an asset or sale of goods that generates the income then it is a head count to see whether chargeable employee staff exceed business owners. Paragraph 10 states:

> If the practice company or trust has at least as many non-principal practitioners as principal practitioners, then income is considered to be derived from the business structure (ie not personal exertion).

Practitioners are described in paragraph 11 as:

> "Practitioners" include both full-time professional and non-professional staff whose function is to derive material fees from the practice. Part-time staff count proportionately. The term does not include administrative, clerical or support staff, For example , a nurse under the direction of a doctor or a legal secretary under the direction of a solicitor are not "practitioners" unless they earn material fees in their own right.

It seems that you can dissect the income of the business if there is some that is not directly earned from personal exertion. In paragraph 9 of IT2639 it recognises that the initial commissions earned by an insurance broker are income from personal services but the renewal commissions would not be caught. This would also no doubt be the same for trails received by finance brokers and financial planners.

IT professionals should also consider that if they write a program and then sell it the income of their business is not from personal exertion but from sale of goods.

Note that when the business is a partnership between individuals then all the partners are personally liable so the ATO accepts that they should all be entitled to the profits, even if the income is mainly generated by one partners labour. The catch is of course that a business does not provide any asset protection.

Controlling An Overseas Company

In view of the difficulties facing Paul Hogan, readers may be interested in knowing their responsibilities if they have an ownership interest in an overseas company or fixed trust. This is quite a complex area, in attempting to keep it simple we ask that the following only be used as a guide on you should seek advice.

As a resident of Australia for tax purpose (excluding temporary residents) you must declare all your overseas income without exception. In fact even regular foreign gifts need to be reported in your tax return though they may not be taxable. The catch with controlling an overseas company or trust is that you may also be taxable on its income even when you don't receive anything. The aim of the controlled foreign company (CFC) rules is to tax you on any increase in the value of your share of the company or trust so that earnings are not stored up, out of the ATO's reach.

Sometimes the company actually becomes a resident of Australia. Generally a company has to have its business in Australia to be a resident but in the case of passive investment companies it is sufficient that its central management and control (namely you) has moved to Australia (TR 2004/15). This of course would not be the case if you owned the company with other non residents.

Now back to the question of whether it maybe a CFC, where you are required to include its income in your tax return, even if it has not yet been distributed to you. Firstly this would only apply if you controlled the company. The next step is to look at the type of income generated by it. If it is 95% or more from business activities then the controlled foreign entity rules do no apply to you, but if it is from passive investments keep on reading!

The next test is whether the income from passive investments is from a country that has a similar tax regime to Australia. There are only seven countries that qualify, namely:

New Zealand United Kingdom United States Canada France Germany Japan

These countries have similar tax systems to Australia so passive income earned in a company or trust in these countries will not be taxed in Australia until it becomes your income, providing that it's income is taxed in that country. The income is not considered taxed if the rate is reduced, ie to attract investment. An example of this would be how New Zealand does not tax capital gains. New Zealand is in the list above so net rent would not be taxable in your hands unless received but because the capital gains was not taxed in New Zealand that would have to be taxed in your hands even if retained by the company or trust.

So if you control a foreign company or trust and it has a passive income in any country and it is not taxed in that country then Australia will tax you personally on the company's or trust's income. If the company or trust earns passive income in a country other than the seven listed above then even if it is taxed in that country Australia will still include in your tax return your share of that income. The only advantage of earning passive income in the seven listed countries is you don't have to worry about the controlled foreign entity rules unless the company or trust receives income that is not taxable or concessional taxed in its country of origin.

South Australia

Julia will be in Adelaide early in December. Are there any readers who are accountants interested in joining the BAN TACS group that would like to meet with her while she is there? Please ring 0428381864.

Employment Opportunities in SEQ

A position has become available in our Bribie Island Road office for a Tax Accountant with at least 3 years post graduate experience. It is a full time position with flexibility for children.
For more information please contact Cathy Jones on 07 5497 6777.

BANTACS Forum

Little by little the number of people prepared to reveal their identity to participate on the forum are growing. Certainly a lot of people viewing. It is tempting to allow anonymous participation to help the number increase but it is more important that we keep the content real and relevant by holding participants accountable for their posts. If you would like to participate the link to the forum is at the top of the left hand menu.

Ask BAN TACS

For $59.95 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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How Not To Be A Developer	*Divorce*	*FBT for PBIs*
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Goods and Services Tax	*Overseas*	*Professional Practices*
Key Performance Indicators	*Real Estate Agent*	*Rental Properties*
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