# NEWSFLASH

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Issue Number: 224 Pages: 4 Date: 1st April, 2011


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**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 on all tax issues**

# Did You Claim a Deduction For Superannuation Last Year?

Section 290-170(1)(b) ITAA has, since 2007, set the end of the following financial as the deadline to notify your superannuation fund that you are claiming your superannuation contribution as a tax deduction. Further you must have advised the fund before you lodge your tax return so it really should be notified well before the end of the next financial year anyway.

The trap here is even if you don't lodge your 2010 tax return on time you must advise the superannuation fund, before 30th June 2011 that you intend to claim the contribution as a deduction, or you will simply not be entitled to that tax deduction.

The ATO has no discretion to extend this time. No matter how good your excuse you simply cannot go beyond the end of the next financial year. If you miss the deadline the contribution will be treated as a undeducted contribution so at least it won't be taxed in the hands of the superannuation fund but it is locked away until you retire.

# Column by Noel Whittaker

An innovative product from Austock Life - ChildBuilder Bonds - has all the advantages of ordinary investment bonds but have some extra bells and whistles as they are offered under a master trust system. This enables the investor to spread their funds across a range of wholesale managed funds, but best of all also allow switching between the funds at any stage with no capital gains tax.

The bonds are initially held in the name of the investor, usually the parent or grandparent, with a provision that the proceeds will vest in the nominated child at a set age that can be between 10 and 25.

David and Kate are determined that their one year old son, Nicholas, will go to a private secondary school. They make an initial investment of $2,500 in a ChildBuilder Bond and then make a commitment to invest $200 a month into the bond. The outcome is very important to them, so they take advantage of the 125% add on feature and increase their contributions by 25% each year.

If the fund earns a net 7% a year there will be $137,000 there when Nicholas turns 12. As this will more than meet their target they would then stop contributing and start making regular withdrawals. After allowing for inflation they calculate that the school fees will average $20,000 a year over the next six years.

If all goes to plan there should be $55,000 left in the bond when Nicholas finishes school - this will enable the parents to spend $25,000 on a well earned second honeymoon. The $30,000 remaining in the bond could be worth $42,000 when Nicholas turned 23 and would be a great help to him then as a house deposit.

Because these bonds are a tax paid investment there is nothing to declare on anybody's tax return each year, nor is there any tax on withdrawal or transfer to Nicholas.

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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**

# Spending Money on Your Rental Before Year End

If you have a bit of spare cash and feel you pay too much tax you maybe considering spending it on your rental property before 30th June, 2011. Here are some of the basic strategies explained.

**Payments in advance:**

This is simply borrowing deductions from next year to claim in this year. It is not good if you will be in a higher tax bracket next year, in those circumstances waiting the extra year for the benefit will mean a bigger refund. You can only pay a maximum of 12 months in advance. In the case of interest payments you could get one year ahead and keep it that way but it is best to save this for when you need it most because it can only be used effectively once. And if you don't keep on paying interest in advance from that point onwards, you will have a year with no interest deduction. It is really a tool for evening out fluctuating incomes. Check if the bank will let you do this and that they do take it as an interest payment not just let it reduce the loan balance. If you have recently purchased a property consider organising your quantity surveyors report before the end of the year so that you get tax deduction for the cost in your 2011 tax return.

**Repairs and maintenance:**

You need to make sure you at least incurred the expense before the end of this financial year. This means organising for the work to be done even if you have not paid for it yet. This is particularly important if your tenants have moved out and you do not intend re letting the property. If you don't "incur" the repairs now you will not be entitled to a tax deduction next year because the property has not earned any rental income in that year.

**Buying plant and equipment:**

As these items are usually depreciated over many years buying them towards the end of the financial year could mean you only qualify for one month's depreciation which would be a very small faction of wat you have spent. Items costing $300 or less can be written off immediately. Like items must be added together when applying the $300 test so it may be better to buy one set of curtains this year and wait until July before you buy the next set. Items costing under $1,000 will qualify for depreciation of 18.75% in the first year, regardless of when you purchase them. Both these thresholds are per owner so a $1,900 hot water system for a property owned by 2 people would qualify as under $1,000.

# More Bullying By The ATO

The ATO penalised a taxpayer $10,000 for not notifying his superannuation fund that he intended to claim a tax deduction for his superannuation contribution. Fortunately the taxpayer could afford to fight the ATO in the AAT and won (Byron Johnston v Commissioner of Taxation). The $10,000 penalty was remitted but of course the superannuation contribution was still not deductible because of section 290-170(1)(b) discussed earlier in this newsletter. .

The following comments by the member of the AAT, S E Frost show that he considered it unfair that the ATO could mislead the taxpayer and then fine him $10,000 so he remitted the penalty.

**10. Mr Johnston could hardly be blamed for not being aware that he had to provide a "notice of intent to claim a deduction" to his superannuation fund. He is not a superannuation expert or a taxation expert, and the requirement for a "notice of intent" is not particularly well highlighted in the public material dealing with the tax treatment of superannuation contributions. Mr Johnston's research, undertaken around the time of the then Government's announcement in late 2006 and early 2007 of the so-called "simpler super" proposals, uncovered the deduction limits for a person his age but did not alert him to any additional administrative requirements for deductions to be allowable. In my view, the inclusion of the deduction claim in his 2008 tax return is not attributable to any extent to a failure on Mr Johnston's part to take reasonable care to comply with a taxation law.**

# Capital Protected Borrowings

After the Global Financial Crisis capital protected borrowings may look pretty attractive to you. This is where you borrow to invest in shares but the bank guarantees that if at the end of the term the shares are worth less than the amount you borrowed then you don't have to make up the difference you can walk away from the investment at the end of the term with no shares and nothing more to pay. On the other hand if the investment grows then you can sell the shares, pay off the loan and walk away with your profit. Naturally enough the banks will charge you a much higher interest rate on the loan because they consider themselves to be assuming a much higher risk or for the sceptics, because they think they can get away with it.

The ATO deems a portion of the interest not to be tax deductible because it is really not interest but a payment for protecting the capital portion of your investment. The undeductible portion of the interest will be included in your cost base when you calculate the CGT on the sale of the shares. If you choose to take advantage of the capital protection and not take the shares at the end of the loan term then the portion of the interest that applies to the capital protection creates a capital loss you offset against a current capital gain or carry forward.

The area of contention is what portion of the "interest" is deductible. Initially it was the amount above the RBA's rate for personal unsecured loans. There is currently a bill before Parliament to change this to 1 percent above the housing loan interest rate and it will be backdated to cover any of these types of borrowings that were entered into after 13th May, 2008. So if you have a post 13th May, 2008 capital protected loan you may need to amend your previous tax returns unless you took the proposed legislation into account when originally lodging them. The ATO has undertaken that penalties will not apply or interest charged when these amendment result it a tax bill. It is not unusual for the personal loan rate to be twice the housing loan rate or more so it could now halve taxpayers' deductions. The proposed legislation will only require taxpayers to amend back 2 years from the date the bill receives Royal Assent.

Note the limited recourse loans required for a superannuation fund to be able to borrow to invest, are effectively capital protected borrowings. Fortunately, capital protected borrowings for real estate are not caught under these provisions so the amount of deductible interest on limited recourse loans in superannuation funds is not restricted when the borrowings are for property but the above would apply to restrict the deduction to the superannuation fund for the interest limited recourse borrowings for shares.

Now if that isn't enough to put you off capital protected borrowings consider how they work. Generally the term of the borrowing would be for 5 years. Regardless of which way the shares go you have to pay interest for that whole 5 years. As you can imagine the chances of the shares being worth less in 5 years time is very slim, in fact I challenge you to find a point in history when that was the case.

Margin loan interest is fully deductible and is usually a lower rate than capital protected loans. With the added advantage that if at any time during the 5 years you find you can no longer afford the investment at least you can sell up and pay down the loan, leaving you at worst a much smaller loan repayment. Further, capital protected loans are a more suitable investment for when the market is high and you are worried it might not go any higher. Capital growth within 5 years of a low market is virtually unavoidable.

# Where is Julia?

Heading home to South East Queensland for the rest of April.

# Property Investment Training

Just got to put a little plug in here for Destiny Financial Solutions www.destiny.com.au after seeing the fees some businesses charge to mentor and train property investors. Please, please check them out first!

# 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.

# 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.

# Back Issues & Booklets

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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**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.