NEWSFLASH

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BAN TACS Accountants Pty Ltd

BAN TACS Accountants Pty Ltd is a CPA Practice

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Queensland

Gold Coast ***PNA***
Level 5, Seabank Building Marine Parade
Southport Qld 4215
Mail to: 98 High St, Tenterfield NSW 2372
Phone : **Phone:** **(02) 6736 5383**
Fax: (02) 6736 5655
E-mail: goldcoast@bantacs.com.au

Ningi ***CPA***
Shop 17A 1224 Bribie Island Rd,
Ningi Qld 4511
Mail to: Location
Phone: **(07) 5497 6777**
Fax: (07) 5497 6699
E-mail: ningi@bantacs.com.au

Stanthorpe ***PNA***
63A Maryland Street, Stanthorpe Qld 4380
Mail to: 98 High St, Tenterfield NSW 2372
Phone: **(02) 4681 4288**
Fax: (02) 4681 4028
E-mail: stanthorpe@bantacs.com.au

New South Wales

Kiama ***NIA***
2/114 Terralong Street,
Kiama NSW 2533
Mail to: PO Box 5062 Nowra DC NSW 2541
Phone: **(02) 4233 2825**
Fax: (02) 4447 8169
Email: kiama@bantacs.com.au

Nowra ***NIA***
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

Central Coast ***CPA***
127 Diamond Head Drive, Budgewoi NSW 2262
Mail to: PO Box 322 Budgewoi NSW 2262
Phone: **(02) 4390 8512**
Fax: (02) 4390 0075
E-mail: centralcoast@bantacs.com.au

Tenterfield ***PNA***
98 High Street, Tenterfield NSW 2372
Mail to: Location
Phone: **(02) 6736 5383**
Fax: (02) 6736 5655
E-mail: tenterfield@bantacs.com.au

Burwood ***CPA***
Suite D, 37A Burwood Rd,
Burwood NSW 2134
Mail to: Location
Phone: **(02) 9744 7880**
Fax: (02) 9744 7882
E-mail: burwood@bantacs.com.au

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.

Western Australia

Perth ***CPA***
312 Oxford Street, Leederville WA 6007
Mail to: PO Box 1, Mt. Hawthorn WA 6915
Phone: **(08) 9443 5199**
Fax: (08) 9443 5299
E-mail: perth@bantacs.com.au

Victoria

Melbourne ***CPA***
St Kilda Road Towers, Suite 615, 1 Queens Rd
Melbourne VIC 3004
Mail to: PO Box 8152 Newtown Vic 3220
Phone: **(03) 5222 6962**
Fax: (03) 5222 1477
Email: melbourne@bantacs.com.au

Geelong ***CPA***
Level 1, 80 Pakington Street
Geelong West VIC 3218
Mail to: PO Box 8152 Newtown Vic 3220
Phone: **(03) 5222 6962**
Fax: (03) 5222 1477
E-mail: geelong@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

Congratulations Jane & Rodger!

Jane Zhang, the proprietor of our Burwood office, delivered a healthy baby boy on the 26th April, Oliver James.

While Jane takes 3 months leave Julia will be based in the Burwood office. Due to other commitments she cannot be there every single day but will be there the majority of the time. So please phone first.

How To Roll Your Roll Over Relief Continuously

As part of the small business CGT concessions you can avoid paying CGT on the sale of an active asset, for CGT purposes, if you roll the gain into another active asset. The catch is when you sell that later active asset the CGT raises its head again. The idea is to then roll it into another active asset.

The definition of active asset to which the small business concessions apply excludes motor vehicles, trading stock, plant and equipment. This is to say that when you make a gain on any of these you cannot roll the gain over. But the definition of active asset into which you can roll a capital gain does include these items. So rolling your capital gain into your trading stock, assuming it is a fraction of your normal stock holdings, would ensure that the gain is protected for the life of your business.

Column by Noel Whittaker

As their superannuation grows many Australians are wondering whether they should start their own self managed superannuation fund (SMSF) and "take control" of their finances.

There is no easy answer because running your own fund is not as simple as it sounds. It involves three major jobs - administration (doing the paperwork), investment (deciding where to place the money) and arranging insurance where appropriate.

If you can handle these tasks with ease, you are well on your way, but you also need to take into account the assets the fund will hold. If these are not at least $300,000, the setting up costs and the annual expenses are probably not worth the exercise.

Far too many people start their own fund after a market crash because they think "I could do better myself". If this is your attitude, you need to ask what is your track record in handling growth assets like property and shares before you take the plunge and decide to forsake the experts and do it yourself.

Having said that, I admit that there are good reasons for having your own SMSF in certain circumstances. These include the ability to hold specific investments such as business property that are not available through a retail fund, or if you enjoy and are successful at trading shares or if you have complex estate planning issues.

Also, the government is less likely to come to your aid if you are a DIY investor. Just last week the Gillard government announced a bailout of $55m for superannuation fund members who invested in the failed Trio Capital. Members of self managed superannuation funds were not allowed to participate on the grounds that trustees of SMSFs "have the benefit of direct control over where their money is invested". In other words, if you choose to do your own thing don't expect any help from the government.

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

Natural Disaster Rebuild Tax Trap

If you are rebuilding your home (some may be forced to by their insurance company) after it has been destroyed but do not move back into it immediately after it is completed and then cover it with your main residence exemption for at least 3 months, you will lose your main residence exemption for the whole period you owned the property.

It could have been the family home for 20 years yet you will be subject to CGT on all the gain you have made (which is really just inflation) for the whole period of ownership.

For example a property that cost $200,000 around 1990 would now be worth around $700,000. That is $500,000 in capital gain less the 50% discount leaving $250,000 taxable gain which is sure to push you into the maximum tax bracket. You are likely to lose over $100,000 in capital gains tax, let alone selling costs and stamp duty to buy another property. You are either going to have to downgrade considerably in your next property or accept a mortgage of around $150,000 (close to what you paid for the property in the first place) which is going to cost you over $300 per week in extra repayments. Most of this short fall is in state and Federal taxes.

This is not going to be an uncommon scenario as victims settle into new accommodation while waiting for the rebuild or decide they don't want to live in a flood prone area. So common you would think that the ATO would at least be out there warning people. No, we have a tax system that profits from ignorance and fear. Accordingly, the ATO is no doubt be simply sitting back waiting to reap the rewards. They will have a 100% success rate because they data match with the titles office. I wonder if Swan has already included it in his budget forecasts?

There are two exceptions to this situation. Firstly, is section 118-160 which allows the sale of vacant land to be covered by the main residence exemption when the dwelling that qualified for the main residence exemption is accidentally destroyed. This section specifically excludes land with a dwelling on it.

The second is section 118-147 which allows people using the absence rule to continue to cover the rebuilt property with their main residence exemption if the original property was already being protected by this rule. It does not provide any protection if it was your home at the time of the natural disaster.

The only section that covers moving out of your home, demolishing it and rebuilding is section 118-150 and this requires you to move into the new construction immediately after it is completed. This does not even allow you to let the kids finish their term before they change schools again, or any other considerations

except maybe hospitalisation. Then you must cover it with your main residence exemption for at least 3 months before you sell.

Don't believe me? Have a look at the section 118-110 and 118-115(2) which states the basic case and that it covers only the dwelling, not the land underneath. It is section 118-120 that covers the land but always conditional upon the dwellings existence.

So if you intend not to live there in the future, don't rebuild or move back in before you sell.

Superannuation Concessions for Low Income Earners

The government will make a co contribution of up to $1,000 into your superannuation fund if you contribute $1,000 out of your after tax pay that you don't claim a tax deduction for. Neither yours nor the government's $1,000 will be taxed in the hands of the superannuation fund. The co contribution is reduced on a pro rata basis if you contribute less than $1,000. Your assessable income needs to be under $31,920 if it exceeds this but is less than $61,920 you will still get some co contribution, the $1,000 shades out at the rate of 3.333 cents for every dollar over the $31,920. Note assessable income is not your taxable income, it is your income plus reportable fringe benefits and reportable superannuation contributions (generally those you salary sacrifice). In the case of self employed their assessable income is not reduced by any superannuation contributions for which they claim a tax deduction. Generally expenses you claim as a tax deduction cannot reduce your assessable income. Though, sole traders are allowed to reduce their assessable income by business deductions. In the case of partnership or trust income it is only your share and the net amount (income less deductions) that is included as assessable income, regardless of whether it is business or passive income. If you are the sole owner of a rental property then the gross rent is included in your assessable income without deduction for the expenses. But if you own the property with at least one other person then it is only your share of the net income from the property that is included in your assessable income. It may be necessary to lodge a partnership tax return to ensure this happens.

You will not qualify for a co contribution if you only have passive income. At least 10% or more of your income needs to be from wages or a business but when doing this calculation you can ignore business expenses which will make it quite easy to pass the test if you are in business. Note trust income even if from a business is still considered passive so you may need to consider having the trust pay you a wage. The following table provides some examples of how total income is counted for co-contributions and the 10% test.

Income source	Total income	Eligible income for the 10% test
Salary or wages, including employment income through a company or trust	Yes	Yes, where you are treated as an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*
Director fees as a company director	Yes	Yes, where you are treated as an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*
Business income as a sole trader	Yes	Yes
Other income from individually held assets (including interest, rent and dividends)	Yes	No
Business partnership distribution	Yes	Yes
Non-business partnership distribution	Yes	No
Distribution from a trust	Yes	No

The work test applies between 65 and 70 (40 hours in 30 days). Once you reach 71 no co contributions is available.

Spouse Contribution

The other low income concession is for taxpayers on any income level who have a low income spouse. If the low income spouse has assessable income (refer above) plus reportable FBT and reportable superannuation contributions of less than $10,800 their spouse can make a superannuation contribution for them of up to $3,000 and receive a tax offset of 18%. A tax offset reduces the amount of tax the higher income spouse has to pay. It can mean that you will receive a refund of any tax you may have paid during the year because the offset is used to pay the tax instead but if the higher income spouse's income is so low that they do not have any tax liability then the offset is wasted. So this arrangement is only beneficial when

the spouse making the contribution has a taxable income above $16,000. As the superannuation contribution for a low income spouse is not actually claimed as a tax deduction it is not taxed in the hands of the superannuation fund. If the low income spouse's assessable income is more than $10,800 but less than $13,800 the higher income spouse will still qualify for some tax offset the shade out rate is 18%.

The work test applies between 65 and 70. Once the spouse reaches 71 no spouse contributions can be made.

There is a nice little trick if the low income spouse is between 55 and 65 and retired. The contribution can be made and then withdrawn, tax free, a few days later yet the high income spouse will still qualify for the tax offset.

In all cases above make sure the money is actually in the superannuation fund before 30th June, 2011.

Meal and Travel Allowances

TD 2010/19 sets the rates for the 2010-11 financial year. Any employee paid an overtime meal allowance under an award, law, order or industrial agreement, is entitled to claim the cost of the meal as a tax deduction whether or not it exceeds the amount of the overtime meal allowance paid. The meal allowance paid is included as income and if you have receipts for the meals they can be deducted. If you don't have receipts then you can only deduct up to the amount the ATO considers reasonable, providing of course this is equal to or less than what you expended. The reasonable amount for 2011 is $25.80. Note that it is not necessary for the meal to be purchased during the overtime work. It can be purchased on the way home.

Employee truck drivers who sleep away from home are also entitled to treat their travel allowances in a similar way. They must actually be paid a travel allowance and have some record that shows a typical days expenses. If so then they are entitled to claim up to $84.90 per day without receipts providing that is within the range of their record of a typical day's expenses. This amount increases to $92.65 per day if their income exceeds $97,100. If they are not paid an allowance then they will need to keep receipts but nevertheless their costs of meals and possibly accommodation are tax deductible.

So if you have not kept a record of your typical meal expenditure and you receive one of these allowances, make sure you do so before 30th June and put it in with your tax records.

Where is Julia?

Currently still at our Bribie Island road office but will be travelling down to Sydney to look after our Burwood office for 3 months starting the second week of May.

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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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.