

# NEWSFLASH

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

## Public Superannuation Fund Checklist

We provide a lot of information on SMSFs but it is only in limited circumstances, i.e. wanting to purchase direct property, that a SMSF is worthwhile. If you want to hold shares there are even some public funds that allow you to pick and choose the companies your superannuation is invested in.

Not all public funds are the same. For example, the lower fee industry funds generally provide less options. When choosing your superannuation fund here are some of the questions you should ask:

- 1) Do they provide an anti detriment payment? This is a payment to your spouse and children of all the tax paid by the superannuation fund on contributions made by you or your employer, during your life time. Your heirs can also receive compensation for loss of earnings on the tax. It is important to find out how the fund calculates the anti detriment payment. For example, if they use the ATO formula your heirs will get a lot less (in fact if you have used a re contribution strategy they will get nothing under the formula method), than if they keep actual records of the amount of tax paid.
- 2) Do they allow binding nominations? If they simply allow you to state who you would like your superannuation paid to in the event of your death, then the trustees are not bound and can pay it to whoever they please, within the constraints of their trust deed. There are so many reasons you want control over who receives your superannuation they can't all be mentioned here, but just for starters consider that by the time you die you may have two families including step children. Further, the trustees can be more inclined to pay people living in your household than your natural descendants. The very reason these people are free loading on you i.e. they can't support themselves, could lead to them taking precedent over your own financially independent children.
- 3) When you switch to pension stage, do they simply move the investments you hold across to the pension fund or do they actually have to sell them down, thus triggering a CGT event at 10% and then transfer them into the pension fund where there would have been no CGT on the sale. In other words, do they force you to trigger a CGT event just to get your superannuation into a pension fund.

Don't compromise on these issues as they are worth a lot of money to you later in life (or death). It would be unusual for an industry fund to offer these.

## Column by Noel Whittaker

Today I'll discuss a sure way to wealth. I call it the "guaranteed secret of wealth" and it's based on the concept that money in your wallet gets frittered away, and that everybody will pay their commitments and spend the rest.

This is why nobody has any trouble paying their PAYG tax or the taxes that are levied through excise and sales, gambling and fuel taxes - they are taken automatically.

Some years ago a person I'll call Pat, came to one of our branches to ask about investing \$6000. This is not unusual except that Pat has few assets, lives on a government benefit, and rents a cheap unit.

You would be right in assuming that Pat is like many who live near the poverty line, through circumstances that are often outside their control. What makes Pat different is that she has no intention of staying where she is. She has that resourceful spirit that once made this country great.

The obvious question is "How could somebody in her situation manage to save up \$6000?". The answer is enlightening. Pat has a simple belief - "I never spend a \$5 note". Every time a five dollar note comes into her possession it goes straight into a small compartment in the back of her wallet. As soon as she gets home it's transferred to a sealed money box.

She admitted, "on a few occasions I have broken a \$10 note and asked for the change in coins so as not to get a \$5 note, but that doesn't happen too often".

This is a classic example of the principle that we all pay our commitments, and spend the balance. All we have to do to create wealth for ourselves is to start to make saving a commitment, instead of something we try to do with what's left over.

Noel Whittaker is a director of Whittaker Macnaught Pty Ltd. His advice is general in nature and readers should seek their own professional advice before making any financial decisions. His email is [noel.whittaker@whittakermacnaught.com.au](mailto:noel.whittaker@whittakermacnaught.com.au)

## SMSF, GST and Commercial Property

Quite often commercial property is purchased as a going concern. The objective of the GST going concern concessions is to allow the sale to take place without any GST charges.

Firstly, we should point out that, as a general rule we advise sellers that it is better to pay the GST up front and let the purchaser claim the GST back. The bottom line is the same, it is just a matter of funding the GST until the ATO refunds it. The advantage is, that you don't have to worry about an ATO narrow view of the going concern rules coming back to bite.

Now, back to the point which is such a typical example of how the ATO can nitpick and throw the whole going concern concession out the window. In most cases when a SMSF buys a commercial property they borrow to do so. This means that the property must be purchased in the name of a bare trust, which is required to hold the property until the loan is paid off. To purchase a property as a going concern both the seller and purchaser must be registered for GST. In this situation the ATO will require both the SMSF and the bare trust to be registered for GST.

## NIB Return of Capital

On the 21st July 2011, NIB returned capital to their shareholders at the rate of 16.07 cents for every share owned. As this amount is probably less than the cost base of the shares, it simply reduces the cost base rather than create a capital gain. It is important that you keep the information on this return of capital until you finally sell your NIB shares as it is relevant to the final CGT calculation.

If you acquired your NIB shares under the demutualisation of NIB on 1 October 2007, the cost base of each of your NIB shares is \$0.85, so the return of capital has reduce their cost base to 68.93 cents a share.

The ATO has issued a product ruling CR 2011/56 if you need more detail.

## Rumour Mongering - Property Prices

Such speculation is not within the normal material covered by Newsflash but, as this information is not getting much press and may be relevant we have included it. It is up to you to decide how relevant it is.

From an extremely reliable source we have heard that the banks have ramped up their repossessions beyond historical figures. Apparently they went a bit soft during the natural disasters and are in catch up mode. These repossessed houses could result in a short term glut on the market.

This is not a dooms day warning, more a short term strategy of 'don't sell right now' and alternatively be prepared to grab bargains.

## Renovating and Scrapping

Scrapping is when items are removed from a rental property and dumped as they have no value. Of course, quite a bit of this happens when a property is renovated. If the items have not been fully written off for tax purposes, the balance of any unclaimed depreciation can be completely written off in the year of the renovation, that is if the property is considered to be producing income before the renovations take place.

The belief that you can claim a tax deduction for items scrapped on a property you buy to renovate, and afterwards rent out, still seems to persist. Apparently some quantity surveyors are advising clients that they should just advertise the property for rent for a couple of weeks, then start the renovations, or list it with a real estate agent, even though it is not actually liveable during the renovation. You should not rely on this without a ruling from the ATO.

What I find most alarming about this, is that if the ATO decides that merely advertising the property is not sufficient for it to be considered income producing, then the taxpayer has lost any chance of ever being able to claim a scrapping deduction. It would seem prudent to actually rent the property out before the renovation rather than take the risk. And I do think it is a risk, in fact I am of the opinion, especially in these times of high rental demand, that you will not be able to legitimately claim that the property has been used to produce income unless you actually have a tenant in the property before you renovate.

Now for the detail. Firstly, there are two types of depreciation, the following link will take you to the ATO rental booklet which, at the back, has a detailed list of all relevant items dissected into Div 40 and Div 43 [www.ato.gov.au/content/downloads/IND00270214N17290611.pdf](http://www.ato.gov.au/content/downloads/IND00270214N17290611.pdf)

Division 40 of ITAA 1997 is for plant and equipment, for example, carpets, stoves, dishwashers, hot water systems and curtains, generally the items that are not that fixed to the building. You can estimate the value of these items yourself.

Division 43 includes the actual building, tiles, kitchen cupboards, bath tub, doors, windows etc. Unless you have evidence of the original building costs, you need to have them estimated by a quantity surveyor or similarly qualified person and usually they will estimate your division 40 depreciation at the same time. Division 43 depreciation is written off evenly over a 40 year period from the date of original construction, 25 years in very limited circumstances.

To scrap an item subject to Division 43 depreciation, the legislation states:

***SECTION 43-40 Deduction for destruction of capital works 43-40(1)***

*You can deduct an amount if all or a part of\* your area is destroyed in an income year and:*

*(a) you have been allowed, or can claim, a deduction under this Division, or former Division 10C or 10D of Part III of the Income Tax Assessment Act 1936, for your area; and*

*(b) there is an amount of\* undeducted construction expenditure for your area; and*

*(c) you were using your area in the way that applies to it under Table 43-140 (Current year use) immediately before the destruction or, if not, neither you nor any other entity used your area for any purpose since it was last used by you in that way.*

Notice the use of the word “and” between (b) and (c), this means all these points must apply. It is my opinion that (c) is intended to make sure you don’t live in a property that used to be your rental, then apply (a) above because it is destroyed while it is your home simply because at some stage depreciation had been claimed.

Table 43-140 describes the current year use as “for the purpose of producing assessable income”. Section 43-160 extends this to merely having the property available to produce income.

***43-160 Your area is used for a purpose if it is maintained ready for use for the purpose***

*A part of\* your area is taken to be used, for use or available for use for a particular purpose or in a particular manner at a time if, at that time:*

*(a) it was maintained ready for use for that purpose or in that manner; and*

*(b) it was not used or for use for any other purpose or in any other manner; and*

*(c) its use or intended use for that purpose or in that manner had not been abandoned*

Starting to get a bit dodgy isn’t it? Certainly worth applying for a ruling in my opinion. There is an ATO interpretive decision (ID 2010/35) disallowing a scrapping claim because the owner lived in the house for a short time before demolishing it. Certainly if you live in the house while renovating it you have blown any chance of scrapping. This ID also implied that the preparation for destruction meant that the use of

producing income had been abandoned. This may even affect people who do rent the property out first but probably not if they rent it out again after the renovations. Here is a quote from ID 2010/35

*“ In the context of paragraph 43-40(1)(c) of the ITAA 1997, immediately before refers to a relatively short period of time between the last use of your area and its destruction. In this case, the house was not let in the last few months before it’s destruction. This and the activities undertaken in preparation for its destruction as well as the taking up of residence prior to destruction show that the taxpayer’s use, or intended use, of the house for the purpose of producing assessable income had been abandoned in the period leading up to the destruction. Therefore, the house was not used for the purpose of producing assessable income immediately before the destruction. For the same reasons, the house cannot, under section 43-160 of the ITAA 1997, be taken to be used for the purpose of producing assessable income immediately before its destruction. ”*

## CGT Calculator

There has been an addition to our collection of simple spreadsheets to help taxpayers crunch the numbers before they go to their accountant. Obviously with the complexity of tax law we cannot replace the advice of an Accountant and our spreadsheets are just intended to prepare you for the most efficient interview with your accountant possible.

The latest addition is an Excel spreadsheet that will, in most circumstances, estimate the capital gain on the sale of a property. It includes an example with notes. Available in the shopping section of our web site [www.bantacs.com.au/shopping\\_property\\_cgt.php](http://www.bantacs.com.au/shopping_property_cgt.php) for a very uncomplicated \$35.00. This calculator would also be a handy tool for accountants who haven’t already created their own spreadsheet.

## More Advertising Space On Our Web Site

On the Property Investors Page and our Home page at the bottom of the right hand column we have started some smaller ads. Just two lines; the business name and activity. For example, AFG on the first line and Finance Broker on the second. Visitors to our site can click on these ads to be linked directly to your web page. This is a very simple and cheap way to catch the attention of the hundreds of daily visitors to our site. Only \$200 for the full year. If you are interested please email Julia.

## Where is Julia?

Yep, still in sunny Mackay on the beach front. She is now putting the finishing touches on the next edition of her book with Noel Whittaker that should be available in the new year.

## Ask BAN TACS [www.bantacs.com.au/QandA](http://www.bantacs.com.au/QandA)

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.

## What Is New on [www.bantacs.com.au](http://www.bantacs.com.au)

Want more? Please go to [www.bantacs.com.au/publications.php](http://www.bantacs.com.au/publications.php) for back issues of newsflash or download our free booklets where past newsflash articles are collated according to their topic.

With the forum and askbantacs notice-board, the information on the site changes daily but here is a list of significant changes in the past couple of weeks:

**CGT Calculator** – A very useful tool for estimating your CGT liability is now available on [www.bantacs.com.au/shopping\\_property\\_cgt.php](http://www.bantacs.com.au/shopping_property_cgt.php)

**Askbantacs Notice Board** - One ‘askbantacser’ has generously allowed their question to be posted on the notice board, it is in regard to selling the family home in Australia while living overseas [www.bantacs.com.au/QandA/index.php?xq=334](http://www.bantacs.com.au/QandA/index.php?xq=334)

**Destiny** – Links to Margaret Lomas’ Destiny site are now in the advertising section of the home page and property investors’ page.

**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.