

# NEWSFLASH

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## **BAN TACS** **Accountants Pty Ltd**

BAN TACS  
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Pty Ltd is a  
CPA Practice

**CPA**



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

## **New Motto for Newsflash and BAN TACS**

If you can't explain it simply, you don't understand it well enough. – Albert Einstein.

This principle may also be a useful tool to add to your spruiker proofing kit.

## **Column by Noel Whittaker**

The Federal Government has delivered another blow to low income earners with the changes to the superannuation co-contribution rules that will take place next July.

The Howard Costello government introduced the scheme to encourage low income earners to save - initially the government made a co-contribution of \$1,500 if the employee made a personal non concessional contribution of \$1,000.

Subsequently the Labour Government have watered down the scheme by reducing the amount of the contribution and also by freezing the cut off points.

For the current tax year, the co-contribution is \$1 for every \$1 of personal superannuation contributions with a maximum co-contribution of \$1,000 for contributors whose assessable income for the current financial year is \$31,920 or less. As income rises the co-contribution reduces by \$33 for each \$1,000 of additional income, until it cuts out at \$61,920 a year.

Under the latest changes, the co-contribution matching rate will be reduced from 100% to 50% in July 2012 with a maximum co-contribution of \$500. This means eligibility will cut-out for people on adjusted taxable incomes of \$46,920 or more.

For co-contribution purposes income is assessable income plus reportable fringe benefits. To be eligible for the co-contribution, you must have received at least 10 percent of your income from what is called "eligible employment" - usually income from salary or wages or from self employment.

One of the greatest problems facing the country is financial literacy. The co-contribution scheme was a big step towards helping people to invest for themselves because it encouraged them to contribute to their own super, in addition to that being paid by their employer. It is sad that budgetary constraints have watered down the scheme to such a high degree.

Noel Whittaker is a co-founder of Whittaker Macnaught Pty Ltd. His advice is general in nature and readers should seek their own professional advice before making any financial decisions. Noels email is [noelwhit@gmail.com](mailto:noelwhit@gmail.com)

## Interest on Mixed Purpose Loans

What the borrowed money is used to buy determines the deductibility of interest on a loan. So what do you do if it has been used for a few different purposes? This is a messy business you have to track the changes in the percentage used for deductible purposes and non deductible purposes. There is a calculator on our shopping page for only \$9.99 that will help you do this

[www.bantacs.com.au/shopping\\_property\\_apportionment.php](http://www.bantacs.com.au/shopping_property_apportionment.php)

Paragraph 18 of TR 2000/2 state that you can refinance a mixed purpose loan with two loans, one for the amount of deductible debt, and the other for the amount of the non deductible debt. Providing these two new loans pay out the old mixed loan at the same time the ATO will accept the split. Once they are separate loans you can concentrate on paying off the non deductible debt. Something that is not possible while ever the loans remain mixed because all repayments must be apportioned on a pro rata basis between the deductible and non deductible portions of the loan even though the payment may come from your wages.

I wonder how the ATO would feel about imposing these pro rata rules when a small amount of the borrowing was for a rental property expense, the rest was for private purposes and the rent was used to pay off the loan?

## Seasonal Workers From Overseas (Backpackers)

Possible due to our labour shortage the government has introduced some tax concessions for backpackers from the Pacific region to pick fruit and other seasonal work. These people would normally not qualify as residence of Australia for tax purposes and as a result be subject to a minimum tax rate of 29 cents in the dollar, with no tax free threshold.

Holders of a Special Program Visa (subclass 416) who are employed by “Approved Employers” will only be subject to a 15% tax rate until their income exceeds \$30,000 in 2011/12, \$20,542 in 2012/13 or \$20,979 in 2015/2016

For more details on the tax situation for overseas backpackers refer to our free booklet [www.bantacs.com.au/booklets/Overseas Backpacker Fruit Pickers Booklet.pdf](http://www.bantacs.com.au/booklets/Overseas_Backpacker_Fruit_Pickers_Booklet.pdf)

## Christmas parties

To minimise their Fringe Benefits Tax liability many employers are trying to keep down the cost of their staff Christmas Party. If the party costs more than \$300 per head the cost will be subject to FBT, less than \$300 and it is an exempt fringe benefit. But the exempt benefit is not the most tax effective option if the employer is in the maximum tax bracket.

FBT is calculated at the maximum tax rate of 46.5% so on the surface it would seem well worth avoiding. Christmas parties are entertainment and entertainment is not tax deductible. But a Christmas party is not entertainment if it is a fringe benefit. If the party qualifies as a fringe benefit ie cost more than \$300 per employee it is tax deductible and so is the FBT that has to be paid. If the party qualifies as an exempt fringe benefit because it cost less than \$300 per employee, then the party is not tax deductible to the employer because it is entertainment. By the same argument a GST input credit can only be claimed for a Christmas Party to which FBT applies. That is a GST credit can only be claimed if the party cost more than \$300 per employee. By the way the \$300 threshold is the GST inclusive amount.

Most taxpayers are in the 31.5 tax bracket so it is worth considering giving employees a Christmas bonus instead. This would be taxed at their normal rates and tax deductible to their employer. They can then pay for their own Christmas party.

Be warned, there are many other twists and turns regarding Christmas Parties and FBT, this is just one trap. There are also issues with where it is held. It really is worth discussing your Christmas plans with your accountant first.

## SMSF Booklet

Our Self Managed Superannuation Fund (SMSF) booklet has been up dated to include all recent changes and is back up in the booklets section of our web site. Only 20 pages long, free and an absolute must read if you are considering running your own SMSF. Go to [www.bantacs.com.au/booklets/SMSFs\\_Booklet.pdf](http://www.bantacs.com.au/booklets/SMSFs_Booklet.pdf)

## Hybrid Product Ruling

The ATO has issued a product ruling to Chan & Naylor Australia Pty Ltd, it is PR 2011/15. Before I launch into the details of this ruling the most important factor is that it only applies to trusts where units are issued between the 27<sup>th</sup> July, 2011 and 30<sup>th</sup> June 2014, so there is a very good chance it won't apply to your particular circumstances.

If your units were issued before 27<sup>th</sup> July, 2011 the ruling is still a good premise from which to launch your own private ruling application but first read on. You may well find that the arrangement that the ATO approved in PR 2011/15 does not fit your circumstances at all.

The product ruling describes the important features of the deed in detail so you will be able to compare it with the deed you already have. The areas where I think you will find a difference in are:

- 1) At the time of entering into the arrangement you must have a genuine intention of holding onto your units until they derive assessable income from the investment that exceeds the deductible expenditure you have incurred (paragraph 5 and 21)
- 2) In order for the interest on the money borrowed to buy units in the trust, to be tax deductible to the unit holder, the units must give fixed rights to all of both capital gains and income from the assets that are purchased from all of the funds paid for the units (paragraph 21).
- 3) If the trust redeems the units this must be done at market value (paragraph 20). Accordingly, the unit holder will be up for CGT on any increase in the underlying asset.
- 4) The units must be issued at market value (paragraph 21)

Next ask yourself what do you intend gaining from incurring the cost of running a hybrid trust? Maybe it is ease of transferring the asset because the units are transferred instead so no stamp duty costs. All other trusts will give you the same benefit. If you think it is a better way to manage your estate, you have not considered the fact that a property passed from a real person on death does not attract CGT and this can go on for as many generations as you like. In most cases a trust can only last 80 years and then a CGT event is triggered.

For readers who are thinking; great, here is a hybrid trust that the ATO approve of, ask yourself first why do you want to use a hybrid trust? I fail to see any advantage in the trust deed approved by the ruling.

Other promoters of hybrid trusts have received private rulings along similar lines. At least Chan and Naylor obtained a product ruling so their future clients can rely on it. Anything less than a product ruling and you will need to get your own personal ruling from the ATO.

The private rulings the others have received are along similar lines to the above, in other words they only approve hybrids that provide no real tax benefits over and above other trust deeds. So when you are approached by someone offering to amend your hybrid trust deed to comply with the ATO requirements, consider that it is going to neuter all the tax benefits that you originally thought a hybrid could offer. As a result you are back to the old question of whether you are better off with a fixed or discretionary trust and ask for the amendments to accommodate this rather than a stock standard removal of the offending clauses. If you opt for a discretionary trust you need to look into how you can organize for the trust to be able to claim a tax deduction for your loan, this will probably mean triggering a CGT event but better now than when the property market recovers.

## BAN TACS Forum

During the busy year we have neglected this forum badly. Over the Christmas break Julia will be spending some time on it and her new year's resolution is to try and keep this up. Hopefully, readers will find some time to get involved too.

In particular the ATO is due to release its final ruling on capitalising interest on the 11<sup>th</sup> December so the Forum is going to be the only place that time of year, that you will be able to discuss it. That is of course if it is released on time.

## Christmas Holiday Dates

Our offices will be closed over the Christmas period, as follows:

Victoria – Both **Geelong** and **Melbourne** offices will be close at 5pm on Thursday 22<sup>nd</sup> December 2011 and re-open at 9am on Monday 9<sup>th</sup> January.

NSW – **Burwood** will close at 5pm on Tuesday 20<sup>th</sup> December and re-open on Monday 16<sup>th</sup> January, 2012.

**Central Coast** will be closed from 23<sup>rd</sup> December re-opening on Monday 9<sup>th</sup> January 2012.

**Tenterfield** will close at 1pm on Thursday 22<sup>nd</sup> December re-opening on Wednesday 4<sup>th</sup> January, 2012.

Queensland – **Ningi** will close at 3pm on Thursday 22<sup>nd</sup> December and re-open Monday 9<sup>th</sup> January 2012.

**Stanthorpe** will close at 5pm on Wednesday 21<sup>st</sup> December re-opening Monday 9<sup>th</sup> January, 2012.

**Mackay** will close at 5pm on Tuesday 20<sup>th</sup> December, re-opening Monday 9<sup>th</sup> January, 2012.

**Gold Coast** by appointment during February

South Australia - **Adelaide** – will close at 5pm on Friday 16<sup>th</sup> December, and re-open on Monday 16<sup>th</sup> January, 2012.

The next newsflash will be available mid January.

I hope you all have a wonderful holiday and 2012 is a boomer for you. I certainly have high hopes that it will be for Australia.

## Where is Julia?

At home for Christmas, probably until February.

## 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.

## 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:

**SMSF Booklet** – This has been updated right up to the latest ATO ruling on SMSF borrowings it can be viewed at [http://www.bantacs.com.au/booklets/SMSFs\\_Booklet.pdf](http://www.bantacs.com.au/booklets/SMSFs_Booklet.pdf)

**The Forum** – Well not yet but there will be some activity over the Christmas break, please join in. <http://www.bantacs.com.au/forum/>

**Notice Board** – One askbantacser has kindly agreed to have their question made public on the notice board. It is about cars and the salary sacrificing benefits of working for a public hospital or public benevolent institution <http://www.bantacs.com.au/QandA/index.php?xq=340>

**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.