NEWSFLASH

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BAN TACS Accountants Pty Ltd

BAN TACS Accountants 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

Column by Noel Whittaker

June 30th is fast approaching which means the focus will be on saving tax by making contributions to super.

There are two types of contributions - those for which somebody claims a tax deduction, and those for which nobody claims a tax deduction. The latter were originally called "undeducted contributions" but are now known as "non concessional contributions".

There are limits to the amount of concessional contributions that can be contributed each financial year - they depend on your age.

Suppose you work for XYZ Limited and they pay $4,000 a year in superannuation for you. This is a tax deduction for them. You voluntarily add $2,000 to their contribution so the total contribution made on your behalf for the year is $6,000. Unfortunately, the regulations prohibit you from claiming a tax deduction for your own superannuation contributions if your employer is contributing for you, so your $2,000 becomes a non concessional contribution.

You cannot claim a tax deduction for your own super contributions if an employer is making contributions for you, but there are many people, such as the self-employed or retired, who do not have employers paying superannuation for them and are allowed to claim a tax deduction for their own contributions. The amount of the deductible contribution (concessional) is limited to $25,000 a year per person, but those aged 50 and over can make total concessional contributions of $50,000 until June 2012.

There is a limit of $150,000 on the amount that can be contributed in any year but a person aged less than 65 can bring forward three years contributions and contribute $450,000 in one contribution. Of course, having done that, they cannot make any further non concessional contributions for three years.

Keep in mind there are severe penalties for exceeding the contributions limits and they may be reduced after 30 June. .

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.

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Deductibility of Property Courses and Coaching

It is rare that any tax deduction will be available for these courses, even at best only a small portion. So before you go spending up big in the expectation of getting a tax deduction before the 30th June, first find out just how much is tax deductible.

In fact, questioning the tax deductibility of a course may be a way to test the credibility of the provider. Do not even accept a letter they may have from an accountant. I have seen one that is very vague and ignores precedents that do not support their case. A product ruling is really the only way you can be absolutely sure the ATO will allow the deduction. Nevertheless here are some references to help you understand the issue.

Petrovic v FC of T 2005 ATC 2169 – Had at various times a commercial property, a residential property, vacant land, provided working capital to developers and had a managed fund investment. Mr Petrovic attended a Henry Kaye seminar to learn how to extend his property investments and increase his rental income and paid various other fees for property information.

The court found that the expenditure was not tax deductible because it was not "incidental and relevant or sufficiently linked to the derivation of rental income". Further, expenditure relating to purchasing a property is capital, so not deductible against income.

This case is so relevant to many of the property courses currently available a copy of it and ID 2003/324 has been posted on our blog in the beyond newsflash section. http://bantacs.com.au/Jblog/petrovics-case-claiming-property-investment-course-fees/

ID 2003/324 – The taxpayers were allowed to claim 20% of the seminar costs because it was only that portion of the seminar that related to rent and expenses associated with their existing rental properties (implying no deduction at all if you do not have a rental property before you attend the course). The remaining 80% covered how to "establish a strategy or structure for investing in rental properties" which was incurred at a point too soon to be deductible (implying that it cannot even increase the cost base).

TD 95/60 – A fee for initially drawing up an investment plan is not deductible even if it includes existing investments, though it can be included in the cost base. Advice on changing the mix of investments is deductible.

So you need them to give you a detailed apportionment on a time basis of the percentage of time the course will spend on issues relating to tenants and rent as opposed to finding a property, renovating etc. Do not hand over any money until you have this information because it will be harder to get it later.

And here is a tip, when you know their prices and what the course covers check out how that compares with a destiny course, www.bantacs.com.au/property.php see middle of right hand column.

2012 Budget

The following are extracts from the budget that we expect would be of interest to our readers. If you would like to view a more detailed version of the budget there are many available such as: www.budget.gov.au/2012-13/content/overview/html/index.htm There is also a nice little video summary on www.ntaa.com.au

Non Residents for Tax Purposes

This will include Australian citizens living overseas temporarily. If you set up a home overseas. then even if you are only there for a year, you could be considered a non resident of Australia for tax purposes. As a result, just like all other overseas residents who invest in property in Australia you will be caught by two changes announced in the budget.

New tax rates that will apply to non residents from 1st July, 2012. There is no tax free component. The first $80,000 will be taxed at 32.5% (33% from 1st July 2015), between $80,001 and $180,000 will be taxed at 37% and over $180,000 at 45%.

The next and probably most important consideration is that any capital gain on a property made after 8th May 2012 by a non resident will not be entitled to the 50% CGT discount. There is just not enough detail available on this yet. One would hope it is simply a test of whether you are a resident for tax purposes or not when you sell the property.

From the overseas investors point of view it is just a matter of knowing the market value of the property at 8th May, 2012 so that the gain can be apportioned between the period subject to the 50% CGT discount and the period it is not. Do not panic, valuers can give you a valuation, in the future, from historical data. Nevertheless, it is probably best to have one done soon before the property deteriorates or you make

changes that will make it difficult for the valuer to determine what the property was like on 8th May, 2012. At the very least get some photos with a date stamp.

Expats, working overseas with the intention of returning to Australia, possibly into a home they already have or selling that home to upgrade, need to think carefully before they leave the country. If the house was your home before you went overseas then section 118-145 ITAA (6 year rule) will allow it to continue to be protected by your main residence exemption for up to 6 years if it is earning income and indefinitely if it is not. There is nothing in the budget statement that interferes with this. So if your home is totally CGT free at the moment at least you can go overseas knowing that you have a least 6 years to decide whether to sell it or not.

Note you cannot come back to Australia on a holiday and live in the house to reset the 6 year rule. You must be a resident of Australia for tax purposes to reset. This means re- establishing yourself here ie giving up your job and home overseas.

If you have any exposure to CGT, either before you leave Australia or afterwards plan to not have to sell the property while you are overseas. For many taxpayers leaving Australia it may be worth considering selling before you go. There is a risk that when implemented the law will simply tax, without the 50% CGT discount, any gain made after 8th May, 2012, that is not protected by the main residence exemption. This would mean that if you move overseas after that date and sell while you are there you may lose the discount for the gain made while you were a resident. Watch Newsflash for more details as they become available.

The proposed changes affect all assets not just houses but Australia cannot tax the other assets of non Australian residents unless they are connected with Australia, such as houses. Shares in publicly listed companies are not considered connected with Australia.

Seasonal workers participating in the Seasonal Labour Mobility Program, who are not considered to be a resident of Australia for tax purposes received a bonus in the budget. They will no longer have to lodge tax returns. Instead, from 1st July, 2012 employers will simply deduct a 15% withholding tax from their pay and that is the end of the matter. No matter how much they earn they will only be subject to a flat rate of 15%, no tax deductions, no Medicare, no tax free threshold.

Companies

The proposal to reduce the company tax rate to 29 and then 28% has been scrapped.

Companies who make a loss will be able to claw back tax paid in previous years by offsetting the loss against profits of the past year. There is a limit of $1mil in losses ($300,000 in tax) any one year. Losses made in the 2012/2013 financial year can be carried back 1 year to be offset against profits made in 2011/2012. Losses made in the 2013/2014 and following financial years can be offset against profits in the two previous years. This is a great outcome for businesses that close down or sell off their business operations as the order of events tends to leave the company with a loss in the last year. Note there is a restriction that tax can only be clawed back if there is still a sufficient balance in the franking account. If the tax paid by the company has already been used up in franking dividends then it cannot be clawed back.

I wish the government would wake up to the fact that most small businesses do not operate through companies, or maybe they have!

Superannuation Changes

From the 1st July, 2012 all age groups under 75 years will be limited to only $25,000 in tax deductible superannuation contributions per year and this includes employer contributions under the super guarantee. With the promise that from 1st July, 2014 taxpayers 50 years and over (but under 75) with less than $500,000 in superannuation will be allowed to contribution an additional $25,000. It is expected that by the 2014/15 financial year the standard amount of tax deductible contributions would have increased to $30,000 so that means a $55,000 cap for contributors 50 years or older.

High income earners (over $300,000 after adding back investment losses, super contributions, fringe benefits etc) will have their superannuation contributions taxed at 30% rather than the current 15%. This includes contributions made by their employer under the guarantee. In fact, that is likely to be all it will include as the guarantee is likely to take up all of the $25,000 cap.

Both these measures may make it more attractive to invest outside of superannuation where borrowing is less restrictive and you do not lose access to the funds. On the other hand there is more to the superannuation tax concessions than just the contribution tax rate. Earnings will still be taxed at only 15% and 10% on capital gains and zero tax when you reach 60 and transfer your super to pension stage.

School Kids Bonus

Despite the Opposition voting against it, this policy has already made its way through the house of representatives. Each primary school child will be entitled to $410 and secondary school $820 per year. It will be paid half yearly in January and July. The full amount for the 2011/12 financial year will be paid in June, 2012. This will eliminate the need for parents to keep receipts and wait for their tax refund before they receive payment. The distribution of the funds through the taxation system was not very successful with many parents not claiming their entitlements due to the recording keeping requirements.

Of course it is still only available to families who qualify for Part A from Centrelink.

Retiring?

When your taxable income exceeds $180,000 you will not be entitled to concessional tax rates on your Eligible Termination Payment, so it is better to retire in July to minimise your other income.

Living Away From Home Allowance

The living away from home allowance is a tax free exempt fringe benefit so very lucrative. The budget has added a requirement, that to qualify the employee must still maintain another house in Australia. As a result employees recruited from overseas will be unlikely to qualify.

It will be interesting to see just how they define maintaining a house in Australia, I am sure most people could find a home they could say that applies to. For example, where their parents or adult children live. To require that the home be owned by the employee would create an inequity. There is no detail yet as to whether the other home can be rented out while away for work, after all, insurance companies will not tolerate it being left vacant. The budget also announced that the allowance will only be paid for a maximum of 12 months (per work location) but there is already a lot of noise about extending this to 2 years.

The changes will initially only apply to arrangements entered into after budget night and then only after 1st July, 2012. Arrangements already in place can run under the old rules until 1st July, 2014.

Thinking of Buying a Rental Property?

Make sure you work out just how much it will cost you to hold each year, after tax. For a simple little calculator to help go to http://www.bantacs.com.au/shopping_property_cashflow_calculator.php

Seminar

Preparing for 30th June – Speaker Frances Hesse from Lifetime Advisers Pty. Ltd. 22nd May, 2012
7pm to 8.30pm 10 Pope St, Ryde NSW Free
Bookings www.eofytaxplanning.eventbrite.com or call 02 9809 1777

Ask BAN TACS

For $59.95 at Ask BAN TACS you can have your questions regarding Capital Gains Tax, Rental Properties and Work Related Expenses answered by Julia. We will include ATO references to support our conclusion.

What Is New on www.bantacs.com.au

Want more? Please go to 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, ask bantacs notice board, Newsflash and the booklets, the information on the site constantly changes, here are some of the changes in the past couple of weeks:

The Forum – Positive feedback on Bunnings after sales service:
www.bantacs.com.au/forum/viewtopic.php?f=26&t=82&sid=28d53651fa62c3332a2dcf4072c2a1dd

Notice Board – Two askbantacsers have kindly agreed to have their questions made public on the board.
www.bantacs.com.au/QandA/index.php?xq=376 covers the problems of trying to protect your home in Australia with your main residence exemption while you are living and working overseas.
www.bantacs.com.au/QandA/index.php?xq=377 looks at GST and selling a property built as a rental.

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.