NEWSFLASH

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BAN TACS Accountants Pty Ltd is a CPA Practice

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

Stop Press - Julia's and Noel's Next Book Is At The Printers

Yes, the type setters, editors and proof readers have all finished and it will be available before the end of November! Go to www.bantacs.com.au/book_winning-property-tax-strategies.php to order your copy. Only $29.95 plus $5.95 postage.

Winning Property Tax Strategies is a whole new book not just an update of Saving Tax On Your Investment Property, which was a best seller. This book blows away the spruikers' concept of one size fits all mass marketed property investment. There are chapters for every type of investor for example the strategies that work for a young person are almost the opposite of a middle aged investor, plus lots of important CGT information for every house owner.

Over 300 pages so that the basics can still be covered for the first time reader but readers of our first book get the value of a full book worth of new information.

Are Any Of Your Heirs Living Overseas?

When your heirs are given specific assets from your estate section 128-10 states that this transfer is free of CGT except when the asset is transferred to a super fund, exempt taxpayer (unless they are a tax deductible gift recipient) or a foreign resident for example your heir lives overseas. This means if you transfer a rental property in specie (direct transfer not the sale proceeds) the estate will have to come up with the funds to pay the CGT accumulated on the property at death, which will considerably reduce the amount available to pay your residual beneficiary. This even applies if the property is located overseas.

So if one of your heirs is likely to be living overseas when you die it may be worth planning to leave them cash, Pre 20th September, 1985 assets or the home you are living in as theses will not be subject to CGT. Leave your heirs who are residents of Australia your rental properties and other investments purchased after 19th September, 1985.

To be fair in the dissection of your estate you need to take into account the CGT liability attached to any post 19th September, 1985 assets because when your heirs eventually sell them they will have to pay CGT not only for the gain during the period they owned them but also for the gain accumulated in your life time.

Column by Noel Whittaker

The collapse of Banksia Securities will not have a big effect in Queensland because it was a relatively small institution and was based in the north of Victoria. However, the lessons are a warning to all.

Banksia was not a bank – it was an unlisted non-bank lender that became heavily involved in lending to development projects. It was able to offer a higher rate of interest to its depositors because it was charging high rates to its borrowers, but anybody chasing high rates needs to remember the adage "the higher the return the higher the risk".

It now appears that bad debts will bring it down, and depositors will not get all their money back.

There is a difference between credit risk and market risk. Credit risk means the chance that you won't get all your money back, market risk means the risk that the value of your investment can fluctuate. The first is relevant to interest-bearing investments such as mortgage trusts and bank deposits - the second is relevant to property and shares.

Even though cash type investments are traditionally regarded as less risky than shares, my preference is for shares. For example, if I buy an index fund I will get a running yield no matter what happens, and I know that at some stage in the future my asset will recover in value if it falls. However, if I place money in a debenture, and the company fails I may get nothing back at all. To make matters worse, the funds may be frozen for years while the receivers sort things out.

Noel Whittaker is the author of Making Money Made Simple and numerous other books on personal finance. His advice is general in nature and readers should seek their own professional advice before making any financial decisions. Email: noelwhit@gmail.com

Borrowing To Pay Rental Property Expenses

Recently I was invited to appear before the General Anti Avoidance Rules Panel regarding a client's ruling application to capitalise interest. This panel consists mainly of ATO officers with a few independent members of the legal profession. We do not have a full answer regarding capitalizing interest yet but I would like to inform readers of what the ATO is thinking.

The ATO officer presenting the ATO's argument was called Robert. He gave very little away but one point he made perfectly clear was that it is not just capitalizing interest they are chasing but any interest on borrowings incurred for rental property expenses. He would not be drawn into borrowings for repairs or renovations but he clearly stated that if you borrow to pay the rates or insurance on your rental property and have other non deductible debt with an offset account attached (or for that matter a redraw facility or LOC) then it may be considered a scheme with the dominant purpose of a tax benefit to not use your savings or income including wages to pay the rental property expenses. This is the case even if the rental property expenses exceed the rent received. Robert also point blank refused to be drawn on where the money was to come from considering the amount of the rates may well exceed the person's wages and whether other personal expenses such as food or money set aside for an emergency are required to be used to make this payment.

It appears that the ability or inability to make the rates payment is not relevant it is simply the action of choosing to borrow to pay expenses that is a scheme with a dominant purpose of a tax benefit. What the ATO are saying is that interest incurred on borrowings for rental property expenses (if you have non deductible debt) is no longer deductible by virtue of threats to apply Part IVA, not by any legal precedent or legislation. But it is still ok to capitalise the interest on a margin loan for shares or run or claim interest on an overdraft for a small business.

Death of SMSF Member During Pension Phase

Effective from the 1st July, 2012 a superannuation fund will not automatically be pushed back into accumulation stage immediately upon the death of the last member to take a pension. This is an important change for SMSFs with their assets tied up in property or long term share investments.

Until now there has always been the worry that if the assets are sold while the member is alive the capital gain will be tax free but when the remaining pension member dies the fund is immediately pushed out of pension phase so when assets need to be sold to pay out the death benefits their gain will be taxed at 10%.

Now the fund is allowed to remain in pension stage until the pensioner's death benefit is paid out of the fund. No delay tactics though, there is still the requirement that the death benefit be paid as soon as practicable after the member's death.

Holding Insurance Inside Superannuation

Regular readers would be aware that the trustees of SMSFs are now required to consider their insurance cover as part of their regular review of their investment strategy. This article discusses the different personal insurances available and their suitability to being held through a superannuation fund. It is important that you minute your review of your insurance policies so extracts from this article may be useful in completing the minute.

If you do decide you need personal insurance coverage please contact the following advisors whom we trust to not only find you the best policy but provide you with a claim management service where they will deal with the insurance company on your behalf and you can just concentrate on getting better. Here are their web site addresses:

TonyTownsend: http://www.townsendinsuranceservices.com.au
Anthea O'Sullivan-Kovacevic: http://www.aokrisk.com.au

The first thing you need to consider before purchasing an insurance policy through your SMSF is that the proceeds of the policy can only be paid out to you, your spouse or your children. So if you intend someone else to be the beneficiary the policy is better held outside of superannuation.
Now to the various insurance policies available:

Life Insurance – premiums are not tax deductible to individuals but are fully tax deductible to the superannuation fund providing it is not a savings policy ie endowment policy. Most contributions (which indirectly pay the premiums) to a superannuation fund are tax deductible either to you or your employer. This means that by holding your life insurance inside of superannuation you will effectively receive a tax deduction for the premium. The catch is the insurance proceeds will be taxable in the hands of your independent adult children, this would not be the case if you held the policy outside of superannuation. But note proceeds from a life insurance policy held inside a superannuation fund are not taxable in your hands or your dependant children or spouse's hands. Also if you are struggling to obtain life insurance quite often a superannuation fund can obtain coverage for you as part of a bulk cover when you may be subject to conditions on an individual basis. Further, if the premium is a bit of a stretch for your household budget you could instead utilise the superannuation contribution your employer is required to make under the guarantee, to cover the premium.

Trauma Insurance – The proceeds of a Trauma policy held inside a superannuation fund would be taxable to your adult children but not taxable in the hands of your dependant children or spouse. Trauma Insurance premiums are not tax deductible to you as an individual nor are they tax deductible to your superannuation fund. But note terminal medical condition insurance is deductible to your superannuation fund but not you. Just be careful here and consider what exactly you are insuring for. If the trauma does not permanently prevent you from working or you cannot be certified as terminally ill with only 12 months to live then your payout maybe locked in the superannuation fund because you cannot meet a condition of release for example have reached retirement age or be permanently incapacitated. All in all it is better to hold trauma insurance outside of superannuation with maybe just the terminal medical condition insurance inside superannuation if that is feasible.

Income Insurance – Premiums are tax deductible in your personal tax return and any income received from a claim is taxable in your hands. It is not practical to hold income insurance inside your superannuation fund because many of the reasons you would be able to make a claim on your income insurance policy do not satisfy a condition of release from the superannuation fund so even though the insurance company pays up to the superannuation fund you may not be able to access this amount until you are over 55 years of age! There are some insurers who will pay the proceeds of an insurance policy held by a superannuation fund direct to the member who will be taxed on it. It is only in these circumstances that holding your income insurance inside of superannuation stacks up even close to the advantages of holding it outside of superannuation so unless you need to use your employer's superannuation guarantee contribution to be able to afford the premium, it is best to hold income insurance outside of superannuation.

Total and Permanent Disability Insurance – This is much the same as life insurance, the premiums are not deductible to you personally but would be to your superannuation fund. Payments from your superannuation fund to you, your dependant children or your spouse, would not be taxable. Usually any event that would trigger a claim under these policies will also satisfy a condition of release from the superannuation fund. The trap is own occupation policies that will pay up even if you are able to work but just not in your own occupation. In these circumstances the payout would be locked in the fund because just not being able to work in your own occupation is not going to satisfy a condition of release for your superannuation fund. Further, the portion of the premium that represents the own occupation cover will not be tax deductible to the superannuation fund, though absolutely none of the premium would be deductible if held outside of superannuation. Holding a TPD policy inside a superannuation fund needs careful consideration some policies can be split with the own occupation cover being held outside of the superannuation fund and the any occupation cover within. This is just one of the many reasons you should use an insurance broker help you choose the cover that is right for you.

Note if the insurance proceeds are locked in your superannuation fund they may be released under the hardship provisions but if so they will be heavily taxed. Further the hardship provisions generally require you to have been on Centrelink payments for 6 months and have mounting unpaid debts, usually only enough to cover these debts will be released.

Client Quote

When asking me to estimate his refund cheque a client reassured me that it didn't need to be that accurate he really only needed to know "whether it floats".

Where is Julia?

Still in Sydney but will be in Lithgow and Orange before the end of November then home for Christmas.

Buying Glasses And Contact Lenses Over The Internet

The problem with internet shopping is the lack of personal attention and the risk of not knowing exactly who you are dealing with especially if your purchase is overseas. An Australian optometrist has solved this problem by providing a value for money internet shopping experience with the backup of a shop front at Narangba Queensland, there web address is www.eyesat.com.au

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. We will include ATO references to support our conclusion.

What Is New on www.bantacs.com.au

Want more? Please go to 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.

One Askbantacers has very generously agreed to have their question posted on the notice board. It is about the difference between repairs and improvements and how they are treated for tax purposes. http://www.bantacs.com.au/QandA/index.php?xq=418