

# 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**

## Column by Noel Whittaker

Despite all the rumours about potential changes to superannuation, it remains a great tax saving tool in the right circumstances. However, it's important to understand the importance of putting it in the name of the most appropriate partner – you cannot have a joint superannuation account.

The first issue is access because you can't withdraw your superannuation in most cases until you reach your preservation age. This is a 55 for people born before 1 July 1960, and then moves up on a progressive basis until it becomes age 60 for people born after 1 July 1964.

If one partner was considerably younger than the other it may be appropriate to favour building up the superannuation in the name of the older person as a couple could gain access earlier.

The next issue is assessment by Centrelink. As a general rule money in superannuation is not assessed by Centrelink until the holder reaches pensionable age. This is currently 65 for men and 64.5 for women born between 1 July 1947 and 31 December 1948 and 65 for women born between 1 January 1949 and 30 June 1952.

Pensionable age is 67 for anybody born after 1 January 1957.

If a person had a much younger partner and getting a part age pension was more important than gaining access to the money it may be best to hold the money in the younger person's name where it would not be assessed by Centrelink until they reached pensionable age.

The rules are a little complex, and it can be costly if you get it wrong. This is why good advice is essential. **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](mailto:noelwhit@gmail.com)**

## More On Personal Property Security Act

The Personal Property Security Act (PPSA) will affect most of our business clients, possibly in many ways but the two primary areas of concern are:

- 1) Protecting from your business' creditors the assets you use in your business, but for asset protection purposes hold in a different entity ie a holding trust.
- 2) Retaining title to goods you supply on account, until you have received payment.

You can pretty safely assume that if you have not reviewed your asset protection strategy since the introduction of the PPSA, early last year, that you no longer have the protection you thought you had. For our initial discussions on the PPSA refer Newsflash 250. Since then we have had difficulty finding a firm of solicitors that can provide our clients with a stream lined approach. Stephen Harvey from Redchip Lawyers [www.redchip.com.au](http://www.redchip.com.au) is very much on top of this issue and has given us some advice on what clients need to do and the cost. Here is the minimum:

**Protecting Assets You Use In Your Business But Hold In A Separate Entity** – The separate entity that technically owns these assets will now need to create a formal lease agreement and register this agreement. Redchip can review your agreement and make recommendations for \$495. It should cost a further \$1,320 to draw up a lease agreement. If you currently have no agreement in place and fill out their questionnaire correctly you can skip the \$495 and just pay the \$1,320. It will also cost \$150 to register your lease agreement.

**Retaining Rights To Goods You Have Supplied** – This will involve Redchip reviewing your terms of trade agreements to ensure they are suitable. They will do this and make recommendations for \$495. It will then probably cost you a further \$2,145 to have your trade agreement updated and \$150 to register your agreement over each of your customers.

This is not your standard newsflash article of tips. This is a deadly serious must act now issue!

## Going Concern Clauses In Real Estate Contracts

Interesting, fresh after our discussion on the horrors of a going concern clause in a real estate contract in the 1<sup>st</sup> February edition of Newsflash, the decision in MBI Properties Pty Ltd v FC of T 2013 ATC 20-372 was handed down on the 12<sup>th</sup> February. MBI had to pay back \$215,000 in GST even though they had paid full market price for the property. So please don't read the article on clauses and think it couldn't possibly be that bad.

In the MBI case they should not have agreed to the contract being one for a going concern because they intended to lease the apartments back to a hotel group. As it was the hotel group operating the business not MBI all MBI were doing was renting residential property to the hotel group. Residential property rents are not subject to GST. To qualify for the going concern concession you need to be making supplies that are subject to GST.

Please note that despite market price being paid for the property the purchaser had to then pay the ATO another 1/10<sup>th</sup> of the purchase price because they didn't use the property for the correct purposes. The ATO still considers them to have benefitted from a discount by not paying the GST. The unfortunately reality in most of these cases is that it is really the seller who has benefited by not having to send of 1/11<sup>th</sup> of the selling price to the ATO yet still managing to sell for full market value.

If you must enter into a contract to buy a property as a going concern make sure you pay at least 1/11<sup>th</sup> below the market value because if you ever stop using that property to make GST supplies you are going to have to pay the ATO back the GST discount that you supposedly received.

Don't be misled into thinking that a going concern sale avoids GST. All it does is remove the obligation from the seller to send 1/11<sup>th</sup> to the ATO and the ATO to send that 1/11<sup>th</sup> back to the buyer. This helps with cash flow at settlement that is all. The buyer is still considered to have received the GST input credit so must charge GST when they sell (or sell 1/11<sup>th</sup> below market value) and they must pay the GST back if they de register or stop using the property for GST purposes, for example change of use to a residential rental property.

In MBIs case they acquired apartments that would be leased to an entity that provided serviced apartments. Sure this is a commercial use of the apartments by the other entity but MBI was doing nothing more than renting residential property to that entity.

Fortunately, MBI is a related party to the seller so it will all come out in the wash but there are Mum and Dad investors also caught up in this. Their cases are yet to be heard by the courts.

## 15 Points You Should Know About Depreciation

- 1) Items that are plant and equipment and have a value of less than \$300 can be written off immediately when you first buy the property. This is \$300 per owner so if the item is worth \$500 and two people own the property it can be written off immediately.  
But like items must be added together to pass the \$300 test so 5 sets of curtains valued at \$200 each will not qualify unless that are at least 4 owners of the property.
- 2) The ATO's rental property guide has a detailed list on its back pages that will tell you what is plant and equipment, and what is part of the building. You are only required to use a quantity surveyor if you do not know the original cost of constructing the building, in fact if you know the cost, then you are not allowed to use a quantity surveyor's report.
- 3) You are allowed to estimate the value of the plant and equipment yourself. All accountant's tax return software has a schedule that can easily calculate the depreciation each year from your first estimate.
- 4) If you buy a property to renovate before you rent it out there is no point in getting a quantity surveyor to do a depreciation schedule before you renovate because you will not be entitled to scrap anything. The property must first be used as a rental and immediately before the item is destroyed or removed. Note that until that property becomes a rental you will not be entitled to claim any depreciation, even during the renovation period.
- 5) You cannot utilise a quantity surveyor to claim a higher amount than the actual cost of the item, you must use the price you paid. When you know the price you paid you do not need a quantity surveyor's report to make a claim.
- 6) If the item qualifies as plant and equipment and its original value is less than \$1,000 (per owner of the property) then it qualifies to go into a low value pool. In the first year you effectively claim half the depreciation you would have been entitled to had you owned the item for the full year. This is the case whether you buy the item at the start or end of the financial year. You do not need a quantity surveyors report to do this.
- 7) Review your depreciation schedule for any items of plant and equipment that originally cost more than \$1,000 but are now written down, using the diminishing value method, to \$1,000 these can now be placed into the low value pool which will probably result in a faster rate of depreciation.
- 8) If you do not know the original building cost of a house you will need a quantity surveyors report to claim building depreciation but if the house was constructed before 16<sup>th</sup> Sept 1987 and has not since been renovate, there will be no depreciation left to claim.
- 9) Initial repairs (things that needed doing when you purchased the property) are not tax deductible but can be depreciated under building depreciation at 2.5% a year, even if they are not structural.
- 10) Fixtures to the building are not considered plant and equipment. For example bathroom fittings attached to the wall. The \$1,000 and \$300 concessions only apply to plant and equipment not fixtures to a building. Fixtures can only be claimed as part of the building depreciation at 2.5%.
- 11) Garbage bins are generally owned by the council so you can't depreciate them.
- 12) If the property is in a block of units you may be entitled to depreciate some of the common property. The body corporate may be able to give you a list of the items and their original cost and for that matter the relevant information for your unit. Not only will this save you the cost of a quantity surveyors report but if this list is available then you are not entitled to use a quantity surveyors report for anything on the list.
- 13) If the property you are buying has been used as a rental the seller is required by law to provide you with their depreciation schedule and supporting material. When this is available you must use these amounts not a quantity surveyors' report.
- 14) When it comes to building depreciation it is the original cost to build that is relevant not the price you paid. In the case of plant and equipment in an established house it is the second hand value.
- 15) On the other hand if you buy a house and land package from a builder then this original cost cannot include the builders profit because he or she is also the first owner of the property.

## Questions For Readers

I might be able to find the answer to complex tax questions but this question has me beat, maybe readers can help. Why are property investors prepared to spend thousands of dollars on advice from unlicensed property advisors but not get their Accountant (who will charge a fraction of that) to review their choice before signing a contract for hundreds of thousands of dollars? Maybe readers who are a member of our forum would like to post an answer in the Beyond Newsflash section.

<http://www.bantacs.com.au/forum/viewtopic.php?f=25&t=88&sid=daf41d57ff49150a04086a99110626f1>

It just goes to show what poor marketers accountants are when people happily pay twice as much to get a depreciation report to include in their tax return than they pay for the preparation of their whole tax return.

## Where is Julia?

Still at home, she will be heading to Sydney Mid March for two weeks then back home again.

## Breakeven Calculator

Before you buy a negatively geared rental property make sure you have a very good idea of just how much capital growth is required, after tax, for you to recover the losses associated with holding it. Our Breakeven Calculator can very easily tell you that for a one off cost of \$27.95, you can use it over and over again to compare properties and consider the effect of rental and interest rate increases etc.

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

## Ask BAN TACS

For \$59.95 at [www.bantacs.com.au/QandA/index.php](http://www.bantacs.com.au/QandA/index.php) 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.

## Winning Property Tax Strategies – The Book

Once again a brilliant combination of Noel Whittaker's easy reading style with Julia Hartman's mind numbing attention to detail. Lots and lots of new stuff, plus updated basics for the first time reader so it is much bigger, 300 pages but still the same price.

New chapters including young investors, SMSFs, renovators, granny flats, investment and budgeting strategies, fires and floods, mass marketing spruikers, commercial properties, subdividing and development.

You can purchase it online by going to [www.bantacs.com.au/book\\_winning-property-tax-strategies.php](http://www.bantacs.com.au/book_winning-property-tax-strategies.php). The cost is still a low low \$29.95 plus \$5.95 postage – tax deductible of course!

## 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, [www.bantacs.com.au/forum](http://www.bantacs.com.au/forum), and the Ask BAN TACS Notice Board, [www.bantacs.com.au/QandA/index.php?section=browse](http://www.bantacs.com.au/QandA/index.php?section=browse), the information on the site changes daily but here is a list of significant changes in the past couple of weeks:

**Askbantacs** – Two Askbantacsers have very generously allowed their questions to be posted on our notice board. One is on the CBA Misa offset account <http://www.bantacs.com.au/QandA/index.php?xq=437> and the other is about buying a home with a sitting tenant <http://www.bantacs.com.au/QandA/index.php?xq=438>

**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.