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

Recently the government announced further reforms to our superannuation system. Of course, there was the predictable outcry, but it's fair to say that, on balance, they are reasonable reforms and will have little effect on the majority of Australians.

The proposal to increase the concessional contribution from $25,000 to $35,000 for older Australians is especially welcome - this is the group that is more likely to have the resources available to put money away for a pending retirement.

The other major change was a tax of 15% on the income of superannuation funds in pension mode that exceeded $100,000 a year per member. Initially the figure of $2 million was bandied around because a yield of 5% per annum would produce income of $100,000 a year.

This led to a spate of emails pointing out that most superannuation funds had done better than 15% for the last year and many more retirees would be affected than was first thought.

This shows a lack of understanding of the difference between capital growth and income.

If a fund returned 15% in a year when the share market was doing well the return may well be 11% capital growth and 4% income. Only the income would be taken into account when calculating the taxable income.

The proposals are not yet legislated, and it is unlikely they will be. My advice is to keep buying and holding good quality assets within a tax effective environment.

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.

LAFHA Meal Rates

TD 2013/4 contains the amounts that the ATO considers to be reasonable for the food component of a Living Away From Home Allowance (LAFHA), for the FBT year 1st April 2013 to 31st March 2014.

If the following amounts are paid to employees and their families living away from home but in Australia, then no FBT will be payable providing all the other requirements, discussed in recent editions of newsflash are met, such as maintaining another home elsewhere that is not rented out and that the LAFHA is only paid for the first 12 months at any location.

If more than the following amount is paid then FBT will be payable on the excess unless the employee provides the employer with receipts for food and drink expenditure up to the full amount paid. In other words even the amounts below will need to be covered by receipts, not just the excess.

	Per week
One adult	$233
Two adults	$350
Three adults	$467
One adult and one child	$292
Two adults and one child	$409
Two adults and two children	$468
Two adults and three children	$527
Three adults and one child	$526
Three adults and two children	$585
Four adults	$584

('Adults' for this purpose are persons who had attained the age of 12 years *before* the beginning of the FBT year).

For overseas rates, larger families and more detail please refer to TD 2013/4
http://law.ato.gov.au/atolaw/view.htm?docid=%22TXD%2FTD20134%2FNAT%2FATO%2F00001%22

Note it will be the employer that pays FBT if the amount is exceeded without receipts, not the employee. FBT is effectively a tax at the maximum tax rate so it maybe more cost effective to pay any excess simply as wages.

Tax Deductible Donations

As the tax year comes to an end it is traditionally a time to think of others less fortunate than ourselves and look for tax deductible donations. There are many worthwhile causes vying for your generosity. Most of them will be registered Deductible Gift Recipients (DGR) which means that your donation will be tax deductible.

There are, however, situations where this will not be the case. Some organisations while offering charitable services are not DGR's and as such you cannot claim a deduction. The purchase of raffle tickets, or products is also not considered a deduction as you deemed as receiving a benefit or advantage from your payment.

If you are unsure of an organisations status you can check the DGR status by visiting www.abn.business.gov.au and entering the organisations name or ABN.

This article was provided by Lyn Gower from our Tenterfield office

SMSF Deduction Tax Rate Myth

It is not technically correct to say that tax deductions for a SMSF rental property only benefit from the 15% tax rate whereas if the property was held in the personal name of the taxpayer the rate would be much higher. Further, it ignores all the tax benefits when the property becomes positively geared or is sold, so don't let tax rates discourage you from investing through a SMSF. Of course there is much more to the decision than that. This article just analyses the tax consequences of holding a property in your own name compared with in a SMSF.

It is only the excess of expenses over rental income that is relevant for tax purposes.

Let's keep the example simple by assuming the property is old and has little or no depreciation to claim. Also assume no principal repayments are made so the taxable income/loss is the same as the cash flow in/out.

The rent income is $30,000 a year and the expenses such as rates, insurance and interest total $35,000 a year which means the property makes a $5,000 a year loss for tax purposes. This also means that the property is a cash drain on the SMSF of $5,000. How are you going to finance this $5,000? If the property was owned in your own name the $5,000 would come out of your wages. It would be very counter productive and not comparing apples with apples to say that the $5,000 cash shortfall should come out of other SMSF cash flows such as income from other investments, cash held by the SMSF or contributions by your employer. To truly compare apples the cash flow short fall should still be met from your wages.

Now if the property was held in your name then you would cough up the $5,000 from your take home pay but when you prepare your tax return, as the tax loss on the property equals the cash flow shortfall you would claim a full tax deduction for the $5,000. If your income was $100,000 a year this would be reduced to $95,000. Your rate of tax including Medicare Levy is probably 38.5% so the $5,000 tax deduction will result in a tax refund of $1,925.

If instead the property was held in your SMSF you should still meet the cash flow shortfall from your wages so you ask your employer to reduce your wages by $5,000 and put the money into your SMSF, commonly referred to as salary sacrifice. Assuming this $5,000, combined with the contributions your employer is already paying into the fund, does not exceed the $25,000 cap then the $5,000 will not be taxed in the hands of your SMSF.

The term contributions tax is a very poor choice of words. There is not actually a tax on the contributions you make to a SMSF only on the SMSF profit. The contributions that are made to the fund and claimed as a tax deduction by the contributor are considered taxable income to the SMSF. So if the SMSF has a $5,000 loss from the rental property your contributions will bring it to breakeven, not a profit so no tax will be payable by the SMSF, which means no contributions tax on the $5,000 because it has been offset. The only tax consequence of you making a salary sacrifice of $5,000 of your pre tax wages into the SMSF is that your taxable income has been reduced to $95,000. Your tax rate is 38.5% reducing your income from $100,000 to $95,000 has reduced the tax you pay on your wages by $1,925.

This is exactly the same tax result as if you had held the property in your own name which means that the $5,000 loss of the rental property was transferred to your 38.5% tax rate not the SMSF 15% tax rate.

But wait there is more, much more to this. Because the property is held in a SMSF you have the best form of asset protection available and when it produces a profit for tax purposes the SMSF 15% tax rate will apply or zero tax if the SMSF is in pension phase.

Further any capital gain on the sale will be taxed at 10% or zero if in pension phase.

Best of all if you want to make more than the $5,000 in contributions these can be used to pay down the principal of the loan. Sure the contribution will be taxed at 15% because the SMSF has no more losses to offset but if the property was owned outside of superannuation you would have to pay your marginal tax rate of 38.5% on the money before you could pay it off the loan. Making the principal payment through salary sacrificing into a SMSF moves the non tax deductible dollars spent on principal repayments, from the 38.5% tax bracket into the 15% bracket.

Generally all the up side is taxed at concessional SMSF rates, the maximum being 15%. Yet the down side, the cash flow short fall at the start of the investment is deducted at your marginal rate through salary sacrificing.

Now that is sorted let's take this one step further to consider the depreciation deductions. All other things remaining the same the depreciation would only qualify for the 15% tax rate. This is because you actually have to come up with the cash to get a tax deduction for a superannuation contribution but you don't have to for a depreciation contribution.

Let's assume the figures are the same as above but with an extra deduction of $6,000 for depreciation. If the property was in your name you would get a tax deduction for this at your marginal rate ie $6,000 x 38.5% = $2,310 refund.

If instead the property is held in a SMSF this $6,000 in depreciation applied to the example property above would make an $11,000 loss for tax purpose but as it is only suffering a $5,000 cash flow short fall you don't need to put a further $6,000 into the fund to keep it liquid. This will mean the SMSF will have a $6,000 loss to carry forward as a deduction in future years or offset against other income, which would only realise a 15% tax rate.

Remember that building depreciation has to be added back, increasing your capital gains tax when you sell, the capital gains tax rate of the SMSF is most likely to be less than your personal one so it is not all bad. Further, if you are still under your $25,000 cap you could make a salary sacrificed contribution of $6,000 to

the SMSF, to pay off principal. This would reduce your personal taxable income down to $89,000 and still not be taxable in the hands of the fund because the increased losses would still offset it. Sure it has cost you $3,690 ($6,000 – ($6,000x 38.5%)) out of your take home pay but it has reduced your debt by $6,000.

So, to try and get back to comparing apples with apples, if you owned the property in your own name the $6,000 depreciation would provide you with a $2,310 tax refund that you could pay off the principal. Alternatively, you could hold the property in a SMSF and salary sacrifice $1,660 into the SMSF. As the salary sacrifice is tax deductible it would take $1,660 from your gross pay so only cost you $1021 ($1,660 – ($1,660x 38.5%)) out of your take home pay. The SMSF will use up $1,660 of its $6,000 loss, created by the depreciation, to make sure no tax was payable on this contribution and still have $4,340 ($6,000 - $1,660) in losses to offset against its other income, saving it $651 ($4,340 x 15%) in tax which it can also use to pay off the principal. That is $2,311 ($1,660 + $ 651) paid off the principal but unlike the circumstances when the property was held in your name you are out of pocket by $1,021 to achieve this (the difference between these figure will vary with your tax rate). This is an investment in obtaining the future tax benefits when it is positively geared or you sell and make a capital gain.

The numbers will work out better for SMSFs the lower the depreciation on the property. Nevertheless, it would be an extremely unusual set of circumstances where the choice to not use a SMSF gives a better tax outcome, especially once you take into account principal repayments (in addition to those discussed above) that will be taxed at 15% instead of your marginal tax rate.

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We would also appreciate you posting your ideas on articles you would like to see in newsflash. Those of you who are more Facebook literate than us might like to suggest other ways we can use Facebook to provide all our free information to more people. Please also let us know if you see a community page or blog that could benefit from our participation or where we should be posting a newsflash article.

Where is Julia?

At home in SEQ until July when she will go to Sydney for the property expo then north for the winter.

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 also purchase it online by going to 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!

Ask BAN TACS

For $59.95 at Ask Bantacs, 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.

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