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

It's less than eight weeks to the end of the financial year - a signal that you should be taking action now to optimise your tax position.

I would certainly be maximising super contributions if that is appropriate for your situation, but keep in mind they must be in the bank by June 30 which this year falls on a Sunday. This makes the effective date Friday June 28.

If you're a high income earner, remember the government plans to tax contributions at 30% for people earning more than $300,000 a year, so if you're on the border of that figure, you may wish to take steps to stay under it. For example, if you are entitled to a bonus it may be possible to take it in the next financial year.

The figure is based on your ATI "adjustable taxable income" and when this is being worked out the tax office adds back any losses you have claimed on investment properties. Therefore, you can't reduce your ATI through negative gearing.

Account based pensions are only tax free once you reach your 60th birthday. If you're turning 60 between now and June 30, 2014, you may wish to take advice about deferring the start of your pension until your 60th birthday.

And if you're into real estate, you should certainly go to my website www.noelwhittaker.com.au and buy *Winning Property Tax Strategies* written by Julia Hartman and myself – it will certainly save you more than the tiny $29.95 it costs.

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.

Budget Update

The most important figure, that you may well have missed because Mr Swan, or Swannie as Julia Gillard calls him, didn't actually mention it in his speech, was that the deficit will be $18 billion with a forecast return to surplus in 2016/2017. Nevertheless, we are way ahead of our peers.

The following are details from the budget on areas most likely to be of interest to our readers. Of course the details in the budget paper are one thing. What the final legislation says is another. Even if you have heard the budget speech or read the papers, please still read this article all the way through because there are items that were not included in the speech or receive any publicity, such as the reduction of the time to claim family and child care payments. A little cash grab that they would rather sneak up on you.

Fortunately, all of the tightening of taxation policy in regard to businesses was directed at the big end of town, particularly multinationals.

For individuals and families the points that are most likely to interest you are:

The 2015/2016 tax cuts will not happen, they were only minor amounts. For example in 2015/16 under the old regime you could have earned $20,979 and paid no tax. Instead now that will remain at $20,542. The tax free threshold will also remain at $18,200 instead of moving to $19,400. Note that in the 2015/2016 financial year the tax rate for the $37,001 to $80,000 tax bracket will increase by half a per cent to 33%.

Medicare Levy – As previously announced the Medicare Levy will increase from 1.5% to 2% to cover the National Disability Scheme.

Medical Expenses Tax Offset – It is intended to eventually phase this out completely. For the 2012-13 financial year, providing your income as an individual is under $84,000 or $168,000 for families (add an extra $1,500 for each child after the first) you would be able to claim 20% of unreimbursed medical expenses exceeding $2,120. But if your income exceeds these thresholds then you will only be entitled to claim 10% and then only if you're medical expenses exceed $5,000.

Now the changes in this budget are firstly that if you don't qualify for the Medical expenses tax offset in the 2012/13 financial year, that is it, you are out of the pool, and can never qualify in the future. But if you did qualify in 2013 you can continue to qualify up until and including the 2014/15 financial year providing each time you have qualified in the previous year.

Separate from all this is medical expenses relating to disability aids, disability care and aged care. These expenses will always qualify for the medical expenses tax offset up until and including the 2018/2019 financial year, providing they exceed the threshold.

Payments for Newborns – The Baby Bonus will be removed for babies born after 1st March 2014. In its place an additional $2,000 will be paid in Family Tax Benefit Part A after the birth or adoption of a family's first child. In the case of multiple births $2,000 will be received for each child even when it is not the first child for the family. $500 will be received up front the balance over the next 7 fortnights. Only $1,000 will be received if it is a single birth and the family's second and subsequent children. Should be interesting to see how they define family. Of course if the family does not qualify for Part A they will not qualify for this payment either. Part A tends to cut out at around $113,000 in family income a year. It varies depending on the number and age of the children. As was the case with the baby bonus this payment cannot apply if the Paid Parental Leave scheme is utilised.

Losing Family and Childcare Payments – Not much publicity for this one, basically it is a bit of trickery to try and save some money on family payments. For the 2012/2013 financial year and all future years families will only have 12 months after the end of the financial year to lodge their tax returns and claim lump sum payments. Miss the deadline and the entitlement will be lost. Previously families had 2 years.

Self-Education Expenses – From next financial year 2013/14 the maximum deduction you can claim for self-education expenses will be limited to $2,000. It will be interesting to see how this threshold is avoided. It will now be better to class any expenses you can, as simply work related expenses so a clear definition will be needed. For example members of professional organisations may include an educational component such as a magazine. Will their membership fee contribute wholly or in part to the $2,000 threshold? Another option is for employers to pay for the expenses as the government has said it won't affect training and education provided by employers, that will continue to remain exempt from FBT providing the expenses have not been agreed to as part of a salary sacrifice arrangement.

Property Investors and Home Purchasers – Starting on the 1st July 2016 purchasers of properties from non-residents will be required to withhold 10% of the purchase price and remit it to the government. So it is important that before you purchase a property you make sure that the seller is a resident of Australia for tax purposes. Take care, if you get it wrong you will be up for another 10% of the purchase price. The seller could be right here in front of you with an Australian passport and still not be considered a resident of Australia for tax purposes. This will apply to all commercial property transactions but it will only apply to residential property transactions exceeding $2.5million. The seller can claim the 10% back from the ATO when they lodge their tax return.

Data Matching – Funds in the budget have been allocated to increasing the data matching that the ATO collects, to include, government grants, sales of property, shares and units in managed funds. They will also have access to data on sales through merchant services i.e. Managed investment fund distributions, partnership distributions, company dividends and interest payments.

Superannuation – As already announced from 1st July, 2012 taxpayers with an adjustable taxable income in excess of $300,000 will have their superannuation contributions taxed at 30% instead of 15%

Trusts – The ATO has received extra funding to attack trusts used to "conceal income, mischaracterise transactions, artificially reduce trust income amounts and under pay tax". Further work will be done on reconciling taxable trust income to ordinary trust income, hopefully giving a bit more clarity. One thing is for sure Hybrid Trusts will be under even more scrutiny with threats being made to prosecute promoters of such arrangements.

Farm Management Deposits – From the 1st July, 2014 farmers can have additional income from non primary production up to $100,000 (up from $65,000) and still be entitled to a tax deduction for any funds they place in a farm management deposit for use in future years.

Property Business or Merely Realising an Asset?

In August v FCT 2012 FCA 682 a taxpayer failed to prove that when they purchased a property 9 years ago it was not their intention to sell it for a profit but to hold it as an investment thus qualifying for the 50% CGT discount.

The taxpayer acquired various shops in the same centre from 1997 to 1999, did them up, put tenants in them on long term leases then sold them in 2006. The Federal Court found that Mr August's primary intention in buying the properties was to resell them at a profit so he was not entitled to the 50% CGT discount.

The last shop was put under a long term lease in June 2004 and the biggest mistake Mr August made was that in June 2005 he consulted a Real Estate Agent to find out how much he thought the properties were worth. The court found that this was too soon after the last shop secured a long term lease and was a sign that way back in 1997 he must have purchased the properties with the primary intention of selling them for a profit. Mr August says he was merely interested in gauging what they were worth but the Real Estate agent hounded him and having obtained a very good offer for the shops Mr August was persuaded to sell, even though his original intention was to keep the shops until he died.

The courts did not believe that he merely consulted the Real Estate agent to obtain a valuation as the bank had valued the property just less than 6 months before hand. It seems considering that a bank valuation may not be realistic so wanting to get another opinion 6 months was a big mistake. The court said this suggested that several years earlier Mr August's thoughts when buying the properties were to sell them as soon as they had been renovated and leased out.

By the way the selling price was $2.33 million yet the bank valuation was $1.83 million. Now despite the court claiming he had no reason to require another valuation as he had one from the bank they would not accept Mr August's explanation that he only sold because of the extremely high price offered. Otherwise, he would have continued to hold the shops until he died. The courts found that the selling price was not a "mad price" so was not the motive for selling. This seems a contradiction to me. Which is it? It was either a "mad price" or bank valuation was unrealistic so the taxpayer was justified in seeking another opinion?

The courts found that another sign of Mr August's plan, right from the start, was to resell at a profit was because he had consulted a family friend on where to buy a property and this family friend was in the business of buying shops doing them up and selling them for a profit. The family friend testified that he advised that the purchase was unlikely to be a bad move because it was so undervalued that he would always be able to sell for more than he paid.

The courts also said that there was no change in Mr August's circumstances to justify selling so it must have been his intention from the start.

Against Mr August's argument, was the fact he had bought and sold other properties holding them for around a year. Nevertheless, this is not to say his intention was different with the property in question, it certainly seemed to be considering the length of time he kept it.

This case seems to add a whole new set of rules to make sure you are considered a property investor not a developer. Basically they can be summed up as avoiding making any good decisions in regard to your property investing. For example do not consult a Real Estate agent on what your properties maybe worth, no matter how curious you are. Do not seek advice from successful property developers even if they are family. Don't sell just because it is a great time in the market to do so, you need to have a change of circumstances that motivated you. Do not buy undervalued properties!

Note to Accountants Using Askbantacs

Please feel free to let me know you are an Accountant, we don't mind you using the service. The benefit being that the answer will be more relevant. Generally askbantacs questions are answered in between 300 and 500 words. If I know I am dealing with an Accountant I can speak jargon and have room to make extra suggestions so that you get the most out of every word.

Where is Julia?

Still at home in SEQ until it gets colder. She will be on the API stand at the Brisbane Property Expo on the first weekend in June.

Ask BAN TACS

For $59.95 at Ask BAN TACS, www.bantacs.com.au/ask-bantacs.php, you can have your questions regarding Capital Gains Tax, Rental Properties and Work Related Expenses answered by Julia, who will include references to support her 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 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!

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On the Ask BAN TACS notice board, www.bantacs.com.au/ask-browse.php, two very generous askbantacsers have allowed their question & answer to be placed:

For the tax consequences of developing vacant land held for a long time go to www.bantacs.com.au/QandA/index.php?xq=456

For information on organising income between husband and wife for the best tax and family payment outcome include paying a spouse to manage rental properties go to www.bantacs.com.au/QandA/index.php?xq=457