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

A recent email highlights the challenges facing somebody who is within 10 years of retirement.

The enquirer, who I will call Mary, wrote that she is 54 single, with a house worth $800,000, super of $300,000 and $120,000 in term deposits.

To boost her assets she saw her options as using the $120,000 as a deposit on an investment unit or topping up her super via salary sacrifice. She claimed that she found shares “unpredictable, risky and turbulent”.

Unfortunately, she did not advise her income, or the amount, if any, of any bequests she might expect to receive in the future.

It’s a fundamental principle that you only borrow if you need to, and on the face of it Mary is well placed for retirement without resorting to borrowing. Therefore, I replied, that her best option would be to salary sacrifice to the maximum to boost your superannuation. She could also contribute most of the money currently held in term deposits into superannuation as a non-concessional contribution.

This would move the money to a low tax area - there would be no entry tax on the contribution. There would also be no problems regarding access, because she could withdraw the money tax free after age 55 when she retired.

I also recommended she think more about shares. In my opinion they are the best investment of all because you can start small, and make withdrawals in part if required. And you don’t need to pick a winner to succeed – anybody can buy a low cost index fund which by definition cannot go broke. It will simply match the All Ordinaries accumulation index which has averaged 9% per annum for the last 20 years. Of course, anybody buying shares should prepare themselves for the inevitable ups and downs that the market always brings.

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.

Solicitors Corner – Deceased Estate Tax Return Issues

Tax Rate – Providing the winding up of the estate is not unduly delayed a deceased estate is taxed as an adult resident ie tax free threshold and brackets, for the first 3 tax returns after death. Even though the estate is taxed as an individual the Medicare levy and surcharge are not applicable. Once the 3 tax returns have passed the estate can still apply to the ATO to be taxed at 19%.
HECS – The date of death return will be subject to HECS in the normal fashion and any tax liability is payable by the estate but no HECS is charged against the deceased estate's tax return so the debt is effectively cancelled on death.
Probate Costs – Can be apportioned amongst the assets of the estate to be claimed against the capital gain made on the sale of any assets, reference ID 2001/729. If the asset is passed to the beneficiary in-specie then the asset's portion of probate costs can increase the beneficiary's cost base, as can any legal fees for sorting out ownership issues, reference ID 2004/425
Bequests – Gifts to a charity made through the will are not tax deductible unless they are made under the cultural bequest program. In the latter case the deduction appears in the deceased's date of death tax return not the estate tax return.
Losses – Both capital and revenue losses accumulated by the deceased at date of death do not transfer to the estate's tax return they are either used against capital gains (in the case of capital losses) or income (in the case of revenue losses) made by the deceased before death or they are lost forever.
Income Received After Death – Even if the income is earned during the time the deceased was alive it still appears in the deceased estate's tax return, not the deceased's date of death return, if it is received after death. For example wages, interest, dividends, termination payments and death benefits. It is all a matter of when the money is received even though the deceased may have been entitled to it before death. Note annual leave and long service leave payments are tax exempt.

GST - The Name On A Tax Invoice

An over-zealous ATO Auditor recently tried to argue that because a car, which was used in the husband's business, was purchased in the name of both husband and wife, the husband could only claim half the input credits. This hardly seems fair if it is used 80% in the husband's business and it was only a requirement of the lender that it be purchased in both names.

If you have a tax invoice for an item that is used in a GST registered business then you can claim the portion of the GST back that relates to the business use of the item, in this case 80%.

The definition of a tax invoice varies depending on the price of the item. Below this article there is a flow chart designed to help you check if a tax invoice is correct. Invoices over $1,000 must show the name of the GST entity but GST legislation accepts that a tax invoice will not always have the name of the GST registered business. The ATO auditor was not aware of the ATO's own ruling GSTR 2013/1 which states

Reimbursements of employees etc

112. Division 111 has special rules covering the situation where an entity reimburses an employee (or associate), an agent, an officer of a company or a partner for an expense they incur for an acquisition directly related to their activities in that role.

113. Providing the requirements of the Division are met, the reimbursement is treated as consideration for an acquisition the entity makes from that person.[83] This acquisition may be a creditable acquisition for the entity notwithstanding that the supply to the entity is not a taxable supply.[84] The input tax credit for a creditable acquisition is attributable to a tax period if the entity holds the tax invoice that was issued to the person who was reimbursed.[85] The tax invoice may identify that person and not the entity as the recipient of the taxable supply.

This allows GST entities to claim input credits for invoices made out to its/his/her associates if they have reimbursed them. So the argument is simply that the business making the loan repayments is the reimbursement

It is amazing how often I have heard of auditors splitting hairs about the name on a tax invoice so it is worth noting the above paragraphs in GSTR 2013/1
http://law.ato.gov.au/atolaw/view.htm?locid='GST/GSTR20131/NAT/ATO'&PiT=99991231235958

Tax Invoice Checklist

Is the Invoice for more than $82.50 GST inclusive or $75 excluding GST?	No → Pay without question. No need to withhold tax and can claim input credit. ↓ No need to go any further
Yes ↓	
Has the Supplier Provided an Invoice?	No → Withhold 46.5%of the total Invoice price to remit to ATO Ask Supplier for TFN ↓ Move on to the fourth question
Yes ↓	
Does the Invoice have an ABN?	No → Withhold 46.5%of the total Invoice price to remit to ATO Ask Supplier for TFN ↓ Move onto the fourth question
Yes ↓	
Does the Invoice include the words “Tax Invoice or GST Invoice,” the date, name of the supplier, the GST and GST inclusive price and a brief description of the goods supplied?	No → No input credit can be claimed so this supply should be at least $1/11^{th}$ cheaper than a correctly invoiced supply. ↓ No need to go any further
Yes ↓	
Is the Invoice for more than $1,000?	No → Bingo! Pay full amount of invoice & claim input credit. ↓ No need to go any further but refer note below
Yes ↓	
Does the Invoice include in addition to the above – the quantity of the goods or the extent of the services supplied, your name and address or name and ABN?	No → No input credit can be claimed so this supply should be at least $1/11^{th}$ cheaper than a correctly invoiced supply. ↓ No need to go any further
Yes ↓	
Bingo! Pay full amount of invoice and Claim input tax credit but refer note below	

Note - It must be clear that the document is intended to be a “tax or GST invoice” and show how much GST has been charged. It needs to contain the date, supplier’s name and ABN. Details are needed of what is supplied, the quantity and price.

Holding a Rental Property in a Trust

If you are concerned about land tax, depending on which state you are in, a trust might give you another land tax threshold. For example in Queensland a trust does not pay land tax until the unimproved land held by the trust in the state of Queensland exceeds $350,000. NSW gets complicated but certainly discretionary trusts are not entitled to a threshold at all so will pay land tax on any property they own NT has no land tax. Victoria only gives trusts a $25,000 threshold. Another way of avoiding land tax is to buy properties in different states.

Here is a bit of a run down on the two types of trusts you are likely to considers:

Fixed/Unit Trusts:

Generally you would borrow money to purchase units in the trust. This would give you a fixed right to the income of the trust which then gives you a right to deduct the interest on the loan in your personal tax return. The trust may also borrow but because of your contribution the trust makes a profit which is distributed to you and appears in your tax return so that the interest on your loan is a cost of earning income. If the property is overall negatively geared then your interest will exceed the income you receive from the trust.

This may sound good but all it really provides is protection of your personal assets from anyone suing the trust. If anyone is suing you they would gain access to the trust by gaining access to the units you own; so only a little better asset protection than owning in your own name. The tax outcome is about the same just an extra tax return. There is a stamp duty advantage in that once the property is held in the trust you could transfer the units (for market value) amongst family members without paying stamp duty on the transfer but it would trigger CGT, so you are unlikely to do this.

Discretionary Trusts:

A discretionary trust allows you to decide each year who gets the profits and/or capital gain because unlike a unit trust there is no fixed right to profit. The down side of no fixed right to profit is that you cannot effectively negatively gear in your personal tax return. You have no fixed right to profit so the interest on the money you borrow to put into the discretionary trust is not a cost of earning trust income. To make it deductible (a cost of earning income) you need to charge the trust interest at the same or a higher rate. This means the deduction effectively moves into the trust and is locked in there until it makes a profit as trusts cannot distribute losses. The up side of no fixed right to profit is that if you are sued, your creditors cannot demand that the trust pays them anything. If the property is positively geared anyway then the discretionary trust has no down side and putting a positive property into a discretionary trust gives you something to offset against other rental property losses so you may then be able to afford to hold a negatively geared property in a discretionary trust.

Warning – Any trust that claims to give you the benefits of a combination of those above risks being treated by the ATO as a discretionary trust removing your right to claim the interest on the money used to buy the units; or requires the trust to buy back the units which will trigger a CGT event at market value to the unit holders.

Note – Trusts are sometimes marketed as a succession planning tool. A trust can only operate for 80 years, at the end of which the assets must be transferred to the beneficiaries and the trust has to pay CGT. Accordingly, if you must use a trust at all, to control from the grave, it is better to create it in your will so it lasts as long as possible and the tax benefits of distributing income to minors are much better. If you hold a property in your own name you can transfer it to your heirs through your will with no CGT consequences and they can do the same. Keeping a property in the family through personal ownership and wills will completely avoid CGT for an infinite period until someone sells the property.

New Booklet - Solicitor’s Selection

The articles from the solicitors’ corner and a few other articles of interest are now compiled into a new booklet called Solicitors Selection, available in the booklets section of our web site: http://www.bantacs.com.au/booklets/Solicitors%20Selection_Booklet.pdf

Where is Julia?

Heading back from Mackay to SEQ where she will stay until the end of the year.

Ask BAN TACS

For $69.95 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.