NEWSFLASH

Visit us at www.bantacs.com.au

For website technical support email technicalservices@bantacs.com.au

For all accounting & tax support contact one of our offices or just go to Ask BAN TACS

BAN TACS Accountants Pty Ltd

BAN TACS Accountants Pty Ltd is a CPA Practice

CPA

Issue Number: 282 Pages: 4 Date: 1st February, 2014

Queensland

Gold Coast ***PNA***
Phone : (02) 6736 5383
E-mail: goldcoast@bantacs.com.au

Mackay ***CA***
Phone: (07) 4957 8340
E-mail: mackay@bantacs.com.au

Ningi ***CPA***
Phone: (07) 5497 6777
E-mail: ningi@bantacs.com.au

Stanthorpe ***PNA***
Phone: (07) 4681 4288
E-mail: stanthorpe@bantacs.com.au

Toowoomba ***CPA***
Phone: (07) 4638 2022
E-mail: toowoomba@bantacs.com.au

New South Wales

Burwood ***CPA***
Phone: 1300 367 688
E-mail: burwood@bantacs.com.au

Central Coast ***MNIA***
Phone: (02) 4390 8512
E-mail: centralcoast@bantacs.com.au

Tenterfield ***PNA***
Phone: (02) 6736 5383
E-mail: tenterfield@bantacs.com.au

Victoria

Geelong ***CPA***
Phone: (03) 5222 6962
E-mail: geelong@bantacs.com.au

Melbourne ***CPA***
Phone: (03) 5222 6962
E-mail: melbourne@bantacs.com.au

South Australia

Adelaide ***CPA***
Phone: (08) 8352 7588
E-mail: adelaide@bantacs.com.au

*Visit **Bantacs.com.au** About Us section to view office location details and information about BAN TACS practitioners.*

Liability limited by a scheme approved under Professional Standards Legislation

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

Column by Noel Whittaker

One of the most exciting changes to superannuation happened seven years ago when they introduced superannuation spouse splitting.

Once a year you can instruct your fund to transfer, to your spouse, your concessional contributions made in that year. Because the 15% contributions tax on the concessional contributions has to be taken into account the amount of concessional contributions that can be split is limited to 85%.

Think about Jack, aged 52. He earns $125,000 a year and is contributing $25,000 a year to superannuation due to a combination of the compulsory employer superannuation and his own voluntary sacrificed contributions.

He already has over $600,000 in superannuation but his wife Katherine, who does not work, has none. His deductible contribution of $25,000 will still be liable for the 15 per cent contributions tax but he can ask his fund to put $21,250 of it into her superannuation account. If he keeps up this strategy until he is 65 she may end up with over $520,000 in her own superannuation account if her fund earned 9% per annum.

Super splitting doesn't get Jack out of the 15% contributions tax but it still has advantages. First it enables them to maximise the amount that can be withdrawn tax free if Katherine wants to make withdrawals before age 60 – remember withdrawals are only tax free for those aged 60 or more. Those aged between 55 and 60 can withdraw only the first $180,000 of the taxable component tax free but, for them, the exit tax of 16.5% remains on the balance.

If they decided it was appropriate, he could even work until age 75 and keep up the salary sacrifice/spouse split strategy going. This would keep him in a lower marginal tax bracket while funding a major part of the household expenses through tax free withdrawals from her super.

As always, the key to good investment is the flexibility.

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 - Reviewing the Contract

I have seen contracts that state that if the ATO decides that the sale should be subject to GST then the purchaser must pay an extra 10% of the purchase price. This is not even good if your client is the seller because of the difficulties in actually recovering the money. Better to get it right from the start.

A margin scheme clause means that the buyer is not entitled to claim back the GST on the purchase. That is fine if the purchaser is simply purchasing the property as a residential rental or own home. Anything other than that then the purchaser is likely to be better off if the margin scheme did not apply. This should be taken into account when negotiating the price.

Going concern clauses are extremely dangerous. They mean that the purchaser does not qualify to claim back any GST on the purchase price but if they change the use or sell the property they may well have to pay the ATO another 10% of the purchase price even though they paid full market value. Generally a contract with a going concern clause should be for 10/11ths of the actual market value.

If the property is going to be used as a main residence it is important to have a vacant possession clause. If they do not move into the property as soon as practical after settlement they will only be entitled to a partial main residence exemption. If the seller has a tenant in the property under a lease, it is better to delay settlement until the tenant has moved out.

Carried Forward Losses – The Basics

If you have a capital loss it is carried forward until you make a capital gain. Other losses are treated differently. For example if your business or rental property loss pushes your current year income below zero, you are entitled to carry that loss forward into the next financial year, but first you must reduce it by any exempt income you have received, for example Centrelink family payments. Further, you cannot pick and choose when you offset the loss. It must be used up immediately. This can mean it is wasted. For example if you have a $10,000 carried forward loss but only have $15,000 in taxable income in the following year then the loss from the previous year must be used to reduce your taxable income down to $5,000. The loss is wasted because you would not have had to pay tax on the $15,000 anyway.

No Deduction Even When A Travel Allowance Received

In Laurence Fox v Commissioner of Taxation [2013] AATA 471 the taxpayer received a travel allowance and incurred expenses for motels and food but was denied a tax deduction on the basis the travel was really home to work travel.

Just as office workers cannot claim the cost of travelling from their home to the office neither can "fly in fly out" workers who choose to live such a distance from their place of work that it is necessary for them to sleep away from home. If the work is in a remote area and the expenses are paid by the employer then they are tax deductible, to the employer, without any FBT consequences but never deductible to the employee.

In this case Mr Fox drove from Adelaide where he lived to Port Augusta where he worked and stayed in a motel. He did receive a travel allowance from his employer. Nevertheless no expenses were deductible against the allowance because he was not travelling for work purposes, just to work.

Interesting Case on Rental Property Tax Deductions

YPFD vs Commissioner of Taxation AAT 2014 covered claims for property investment seminars, interest deductions, payments to spouses and substantiation of expenses but of particular interest to me was the question of whether the taxpayer was in business or merely an investor. .

YPFD worked full time and owned, with her husband, 9 properties which were managed by a real estate agent yet she was successful in arguing they were in business, not just investors. Part of her argument was that she spent a considerable amount of time managing the properties and due to the inefficiency of the agents she had to do much of their job.

This is only an AAT case but it may help people with nine or more properties distribute the profit or loss differently to the title and allow them to borrow to repay their equity. There may even be the possibility of challenging the SMSF restrictions on acquiring residential property owned by members.

Let's look at each of these issues in turn:

Profit or Loss Distribution:

If you are in business and jointly in receipt of income you can distribute the profit or loss of the business according to your partnership agreement which can, very conveniently change each year. Reference TR 93/32

Borrowing to repay yourself:

In Roberts and Smith's case (1992 ATC 4380) a business was allowed to borrow funds to pay back to the partners some of the original capital they had invested in the firm. The ATO argued, as has been accepted in the past, that the proceeds of the loan were not used to produce income but for the private use of the partners. The Federal Court ruled that such a simple connection is not appropriate – the partners have a right to withdraw their original investment and as a result the business needed to borrow funds to finance the working capital deficit. It was irrelevant that the loaned money was paid directly to the partners, the purpose of the loan was to allow the income producing activity to continue. The tax office issued a ruling on this matter TR95/25. The ruling states the Roberts and Smith case cannot apply to individuals i.e. sole owners of businesses or property because technically they cannot owe money to themselves. The ruling goes on to say:

> "The refinancing principle" in Roberts and Smith has no application to joint owners of investment property, which are not common law partnerships."

If you are in business then you are a common law partnership, this means that joint owners of rental properties may be able to borrow to repay themselves their initial deposit or principle repayments on the loan. Very, very useful if you decide to rent out your old home when you purchase a new one.

Transferring Your Residential Rental to a SMSF

This is all about section 66(5) of SISA (Superannuation and Insurance Supervision Act?) where it states that a SMSF can acquire real estate from a member:

> "where the real property is used wholly and exclusively in one or more businesses"

SMSFR 2009/1 in paragraphs 279 to 282 gives an example of a SMSF member being allowed to transfer residential flats into his SMSF because they are considered to be used "wholly and exclusively" in a business. He owns 20 flats in total and his sole occupation is managing them. Perhaps now this bar could be lowered to 9 properties while still working full time. When it comes to SMSFs it is best not to do anything like this without an ATO ruling as the consequences of getting it wrong are just not worth it.

Now this is a lot to conclude from one case in the lowest court and certainly shouldn't be relied upon but it is certainly an area worthy of more test cases and ruling applications.

Other issues YPFD's case addressed,

Courses:

YPFD claimed for many courses in property investment and share trading. The share trading one was disallowed because it was considered she was not a share trader having only made 5 trades in a year. There was a Henry Kaye 10 module course costing $55,000 which was analysed for modules that were relevant to the income producing side of property investing not the buying and selling of properties. Only three modules qualified as deductible because they dealt with the management of current properties, namely:

Advanced Renovations for Established Properties,

Advanced Rental System – Create long term positive gearing through maximised rental

Equity lease Rental System

No deduction was allowed for courses on asset protection and tax minimisation. Note in the latter case that was probably because they were not conducted by a registered tax agent.

Even if the course was tax deductible YPFD was denied a tax deduction for her husband's ticket.

Interest:

The taxpayer was denied a deduction for part of the interest on a loan because she could not prove that all the money drawn from the loan had gone towards the construction of a rental property. In particular there were payments to credit cards which she argued was to cover expenses charged to the card for materials for the property but then refused to produce the credit card statements.

She also had a rather contribed arrangement where a trust borrowed money and on lent it to YPFD who then claimed a tax deduction for the interest on the loan, which was denied because YPFD could not show that this was a direct cost of earning income.

Substantiation

YPFD was also found to be careless with what she put into her tax return, for example claiming all of the expenses for properties she owed together with her husband, double claiming some bills and not having any receipts to prove others.

YPFD claimed tax agent fees that were for the trust and her son's tax return, accordingly, these were denied.

Paying Her Spouse

YPFD claimed a deduction for paying her husband to prepare her tax information which was denied because he was not a registered tax agent, the invoice was date after the year in question and there was no evidence that it was paid. She also claimed for gardening he did, this was denied because there was no evidence that it had been paid but it was also questioned whether this was appropriate considering he owned half the property.

Askbantacs Notice Board

The Askbantacs notice board now has the answers to 400 questions in relation to property or work related expenses. If you have a question you are considering placing on a forum, why not check the notice board first for a reliable answer.

Seminar

Destiny Property Investor Night – Free, Guess Speaker Julia Hartman
Wednesday 19h March, 6.50pm till 9pm
Crows Nest Community Centre, 2 Ernest Place Crows Nest NSW

This is a discussion group style event where we will present independent research material on two property markets in Australia that match our preferred criteria. Julia will be talking about and answering questions on property tax and self managed Superannuation Funds. If you would like to attend, please email Tracy Tracy.Little@Destiny.com.au For more information go to http://www.bantacs.com.au/seminars.php

Where is Julia?

Still at home in SEQ. I will be travelling to Sydney in March for Your Money Your Call live on Foxtel on the 10th March and to appear at a Destiny seminar at Crows Nest on 19th March.

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.

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!

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. There are over 30 topics, for example How Not To Be A Developer, Claiming Your Trip Around Australia As A Tax Deduction, Claimable Loans, Rental Properties, Overseas, Fringe Benefits Tax, Claiming a Motor Vehicle, GST etc.

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.