NEWSFLASH

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BAN TACS Accountants Pty Ltd is a CPA Practice

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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

From 1 January next year, the treatment of account based pensions (ABP) for age pension eligibility will change. The new rules will apply to people starting an ABP after that date, and in some cases to ABP's started before then.

Under the existing rules, ABP's are exempt from the deeming rules, and the income taken from an ABP receives a discount for the purposes of the Centrelink income test. The discount or deductible amount is calculated using a formula that takes into account the purchase price of the income stream divided by the life expectancy of the pension owner at purchase.

From 1 January 2015, the ABP is losing its deductible amount, and the entire balance in the superannuation fund that is paying the ABP will be subject to the deeming rates.

The new rules will apply to those people that become eligible and apply for the Age Pension post 1 January 2015. Those currently in receipt of the Age Pension, and who have ABP's in place, will continue under the existing rules provided they don't at some point in the future become ineligible for pension assistance.

But be careful – the grandfathering rules will not apply if people change products.

There are planning opportunities for income tested pensioners who will be entitled to the Age Pension by 1 January 15. It might be a strategy that maximises their current deductible amount on existing ABP's or it could be to make contributions to superannuation to commence an ABP prior to 1 January 15.

It is essential that expert advice be taken – superannuation in accumulation mode is exempt from Centrelink assessment until the member reaches pensionable age. However, once an account based pension is started, it becomes assessable immediately.

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

Making Superannuation Contributions from Your Investment Trust

If you hold property or shares in a trust you may be considering having the trust make a contribution to a superannuation fund on your behalf. You need to be a common law employee of the trust for this to be possible. Being a director of the trustee company is not enough reference TR 2010/1. This ruling also states that to be a common law employee you must be engaged in producing the assessable income of the trust or its business.

Now just for starters this will mean that the trust will have to pay you wages which you need to declare as income, make sure that the trust deed allows for you to be paid wages and the wages should not be paid for your services as a director of the trustee company. You will need to find something else to justify the wage.

The next hurdle is that you must be engaged in producing the assessable income of the trust or its business. In an investment trust it is the investments that produce the income, the ATO is unlikely to consider that there is anything you can do to produce income for the trust, paperwork is not enough. The next limb is to be engaged in the trust's business. As discussed in Newsflash 282 in the article on YPFD vs Commissioner of Taxation AAT 2014 it is difficult for an investment trust to be considered in business, there would need to be at least nine properties that you manage yourself. Even if you think you qualify you should first obtain a ruling from the ATO. It would be a waste to have your money locked away in a superannuation fund and not have got a tax deduction for it going in there.

There would also need to have the appropriate employment set up i.e. PAYG withholding deducted from wages and workers compensation insurance if applicable (note in QLD directors of trustees cannot be covered by work cover). A contract setting out the terms of employment would be helpful.

If you want to make superannuation contributions for other family members the trust would still have to be able to convince the ATO it is in business but also these family members would have to work in the business and receive all the employment conditions discussed above.

Bucket Donations

The ATO will again, in the 2013-2014 tax return allow a tax deduction for bucket donations to fire victims of up to $10 without a receipt. If you are considering donating to a charity make sure they are a deductible gift recipient, if you want to claim the donation as a tax deduction and make sure you don't receive anything in return. For example buying raffle tickets and red noses do not qualify as a tax deduction. To check out if a charity is a deductible gift recipient go to
http://www.abn.business.gov.au/DgrListing.aspx

Taking Tax Advice from Financial Planners

In Stewart v FCT 2013 AATA 845 the taxpayer was fined 25% of the tax avoided because he failed to take reasonable care even though he consulted a financial planner as to the tax ramifications of an employer share acquisition scheme. The financial planner was not a registered tax agent and gave the wrong advice. The lack of reasonable care on the part of the taxpayer was not consulting an appropriately qualified adviser.

Proposal to Give Taxpayers a bill of Rights

Currently the ATO has a taxpayers charter that governs the rights of taxpayers relating to ATO treatment. This is really quite a joke, it is a charter not law so while it might sound good the taxpayer has no right to enforce it on the ATO. Further, it is administered by the ATO so achieves nothing for taxpayers.

A typical example is the requirement that the ATO answer ruling applications within 28 days. I have never known of a response to be received that quickly and in many cases no response is ever received. If the ATO dig their heels in on an issue that is really the end of the matter you can't take them to court and force them to answer.

The Inspector General of Taxation is frustrated with the ATO's administration of the Taxpayers charter that he is calling for a bill of rights for taxpayers that has the enforcement of law.

This is the time to get onto your local federal member and make sure they understand just why this is needed.

Share Investing with a Mix of Borrowings and Cash

As Noel Whittaker will tell you Australians are very good at paying their debts but not so good at saving. This is why borrowing to invest, works so well, it is a form of compulsory saving. It also allows you to get more money working for you in the share market sooner. Which accelerates wealth creation if your shares do better than the interest rate you are paying, on the other hand if the shares go down in value you could end up owing the bank more than your shares are worth and still have to pay interest on the loan.

Now if you have a home loan but some available equity you should borrow the full amount that you are investing in shares as that loan will be tax deductible, if you have spare cash you were going to invest, pay it off your home loan instead, minimising your non deductible interest.

Young people in the mining industry or working overseas might not be ready to buy their own home, This is not a bad idea considering the cost of buying and selling a home if you are only going to live in an area for a short while. They may want to invest in the share market instead because it is so cheap to get their money back, or they may want to use the share market to help them save a deposit for their home. Note Noel Whittaker would suggest that before you invest in the share market you should be comfortable with the idea of sticking with that investment for 5 years.

If you don't have a home you will no doubt start you investing by putting cash into the market. Then a financial advisor will probably suggest that you take the shares you have and use them as security to borrow more money to invest in more shares. This is a reasonable strategy. The problem arises when you are ready to sell the shares to buy a home.

The rule is interest is deductible on a loan when the money borrowed is used to buy an income producing asset. So the interest on the loan for the additional shares will be tax deductible. Let's say you used $20,000 of your own money and borrowed another $40,000. You now have a portfolio of $60,000 hopefully the first $20,000 was invested and then the borrowings arranged and the next $40,000 invested separately. 7 years later, the shares have doubled in value and you are ready to buy a house. Ideally you sell off all your shares and use the sale proceeds to pay off the loan and cover the deposit for your house. But any financial planner worth their salt will not let go of you that easily. They will suggest that you sell off enough to get back your original cash, the gains and reinvested dividends but keep the borrowings invested in the market, just secure them against your home instead.

This is where the big question of what the borrowed money was used to buy kicks in. The ATO could say well you invested $60,000 all in the same managed fund and you can't tell the difference between the units purchased with your cash and the ones purchased with the loaned funds so when you sell some off 2/3rds of the sale proceeds must pay off the $40,000 debt or part of the debt will no longer be tax deductible. Alternatively the ATO could say that originally you paid $1 per unit so for each unit you sell you have to pay $0.67 off the loan because 2/3rds of the purchase price came from borrowed funds. This works a lot better if the units have gone up in value, you get to keep the profit on the units you borrowed for and still keep the remaining portion of the loan tax deductible.

Of course many people will use the sale proceeds for their deposit and not know about this problem until they visit their accountant at the end of the year. By this time they no longer have the sale proceeds and the original loan is still outstanding. In this case the ATO would consider a portion of the interest on the loan not tax deductible.

So continuing with our example, let's assume the original 60,000 $1 units are now worth $2 each but also that you have been reinvesting the dividends so you now have 70,000 units or $140,000 with the $40,000 still owing on the loan because you have been paying interest only. Unfortunately, you cannot distinguish which units were bought with your original $20,000 and which with the borrowed funds. This is a shame because if you could sell off your 20,000 units and the units bought with the dividends that were reinvested and leave the other 40,000 units untouched with the loan still being 100% tax deductible, Reference IT 2661. Instead you will have to work on the basis that 2/3rds ($20,000/$40,000) of the units sold will be units purchased with the borrowed funds so the original dollar borrowed for those units will have to be repaid. This means that you can never get all your cash out unless all of the loan is repaid.

If caught in this situation it is probably better just to sell up all the investment, if the CGT is not too painful, pay out the loan, buy your home then borrow against it to invest again. It is a shame CGT could

have been minimised if the units purchased with the borrowed funds could have been clearly identified from those purchased with cash and those reinvested.

Seminars

Aged Care Changes From 1st July, 2014 – Free, Tuesday 11th March 2014 at 6pm Newton Event Centre 40 Reed Street, Newtown, Geelong Vic

If you are 50 or over these changes could affect you, our speaker will discuss the following:

- The current aged care market
- The process to enter a facility
- Explanation of the accommodation costs and care fees
- Overview of post July 2014 and what the changes are, their affects
- Example case study

Please call Cathy Korbut at our Geelong & Melbourne office on 03 5222 6962 to reserve your place

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?

Sydney, Vincentia, Canberra and Lithgow! Ask me a tax question on Margaret Lomas' Your Money Your Call on Foxtel on the 10th March or the Destiny seminar at Crows Nest on 19th March, see above.

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!

What Is New on 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.

With the forum and the Ask BAN TACS Notice Board the information on the site regularly change. One very generous askbantacser has allowed their question and answer to be placed on the notice board. Askbantacs is becoming quite popular, it is a shame so few allow their questions to be placed on the notice board.
http://www.bantacs.com.au/QandA/index.php?xq=528 is a classic demolish old house subdivide and build 3 units question about GST, margin scheme and the 50% CGT discount.

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.