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

Many investors are attracted by the unique qualities of shares, but don't know where to start. They've probably heard stories of companies like Babcock & Brown or ABC Learning that went under, and are scared that any money they invest may be lost.

A simple way to start is an index fund – this is a fund that simply mirrors the performance of the particular share market it is designed to track, so will fluctuate in line with the movements of that market. By definition, it cannot go broke as it is simply an index which reflects stock market performance. The only way for the index to go broke is for every listed share that is included in the index to become worthless.

When I refer to an index in a column I am usually talking about an index which tracks the top 200 shares in the Australian stock market, but there are many other index funds which enable you to invest in markets in Australia and overseas.

To see for yourself, how an index fund has performed, go to my website www.noelwhittaker.com.au, and click on Stock Market Calculators – Stock Market. You can then enter a notional sum and work out how much you would have now if you had invested in a fund that matched the All Ordinaries Accumulation Index, which includes income and growth.

It's best to consult an adviser to make sure you choose an index that fits your goals and your risk profile. You should also ask the adviser to explain actively managed funds - they may or may not perform better than the index.

Remember – shares offer unique benefits by way of liquidity, tax concessions, and the potential for capital gain. A major benefit is you can start with just $1000, and add to your investment when appropriate.

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.

Interest Free Loans To Your SMSF

Here a private ruling claiming that interest free loans to your SMSF will result in the income earned on the asset purchased to be taxed at the maximum tax rate as non arms length income http://www.ato.gov.au/rba/content/?ffi=/misc/rba/content/1012582301006.htm

This is extremely alarming for people who have lent their SMSF money at zero or lower interest rates but it should be remembered that it is only a private ruling so has not gone through the same rigorous reviews public rulings do. There are other tax office statements approving zero interest loans and a public ruling ID 2010/162 says you can lend to your superannuation fund at below market rates, unfortunately it does not specifically refer to zero interest rates. If this new ruling pointed to a complete change in the ATO's view it would be announced in a much more public way than a private ruling to a particular individual. The only thing in this ruling that I consider would be relevant to typical SMSF related party borrowing arrangements is that 100% LVRs should be avoided as it could be argued this does artificially inflate the gross income of the SMSF because more money can be borrowed.

It is my opinion that this negative ruling is about a very unusual set of circumstances where the money is loaned to the bare (custodial) trust rather than the SMSF. Accordingly, the income the SMSF receives from the trust is artificially inflated by a non arms length loan and therefore caught by section 295-550(5) ITAA 1997. Normally the bare trust would simply hold the security and the SMSF would receive the rent and pay the loan. Section 295-550 looks at the gross income of the SMSF so if this is the rent received from a property rented to a third party then the transaction is at arm's length and section 295-550 cannot apply. Further as it considers gross income the reduced interest is not relevant if the borrower is the SMSF because it is an expense not income. The problem arises when these transactions takes place in the bare trust and the SMSF's gross income is the net income from the bare trust, then it can be argued that this amount is the SMSF's gross income and it is inflated by the fact the bare trust did not have to pay interest on a non arm's-length loan. It is not clear from the ruling but it looks like the ATO has zeroed in on some particular words within the bare trust deed.

Here is a link to another private ruling in very similar circumstances that found the zero interest charge was ok http://www.ato.gov.au/rba/content/?ffi=%2fmisc%2frba%2fcontent%2f1012414213139.htm

And a quote from this ruling

> In this case, the Fund will derive a greater level of taxable income because the rate of interest payable by the fund is reduced to 0%. That is, the level of taxable income derived by the Fund will be inflated as a result of a lower level of deduction amounts than would normally be incurred if the parties were dealing at arm's length. However, subsection 295-550(1) of the ITAA 1997 does not apply in these circumstances as this subsection applies strictly to amounts of ordinary or statutory income, not taxable income.

Here are the minutes of an ATO discussion group on the topic:
http://www.ato.gov.au/Tax-professionals/Consultation--Tax-practitioners/In-detail/Technical-and-special-purpose-working-groups/Super-Technical-Sub-Group/Minutes/Super-Technical-minutes,-June-2012/?page=13

And a quote from the December 2012 meeting

> The ATO position on low rate loan arrangements and LRBA is that that they do not generally invoke a contravention of the SISA, do not give rise to non-arm's length income under section 295-550 of the *Income Tax Assessment Act 1997* (ITAA), do not invoke Part IVA of the *ITAA 1936* and are not considered to give rise to contributions to the SMSF just from that one fact alone.

For those with an interest in this issue there is a more detailed explanation of my opinion available on the forum Beyond Newsflash Section http://bantacs.com.au/Jblog/lending-to-your-smsf-interest-free/

Queensland Land Tax And Working Overseas

If your home is in Queensland and you are living overseas, you may be subject to land tax once you have been away for more than 6 months. You will be treated as an absentee unless you can prove you ordinary live in Australia. This would mean working for the Australian government overseas or an Australian employer who you worked for, for at least a year before leaving Australia. If you are considered an absentee you will not qualify for a land tax exemption on your own home; so if the total unimproved value of your Queensland land holdings is $350,000 or more you will be liable for land tax.

Setting Record Straight On Abbott's Paid Parental Leave

It has been referred to as fully funded or a transfer of tax from big business to small business. It is not that complicated a concept that it needs to be simplified into a slogan. The source of the funding for the paid parental leave scheme is very straight forward. The company tax rate will be reduced by 1.5%, that is from 30% to 28.5% then a 1.5% levy will be imposed of big businesses to pay for the paid parental leave scheme. Simple isn't it? Makes you wonder why they can't use that simple sentence instead.

So, no, it is not fully funded, but by slight of hand the scheme will be paid from tax recovered from big business after reducing their tax rates by exactly the same amount. The bottom line is the company tax rate will be reduced which means individuals will have to increase their share of the tax burden to compensate. Dare I suggest that this really means the average individual taxpayer will really be the one paying for Abbott's new paid parental leave scheme. As for small businesses well, if they operate as a company they will be paying 1.5% less tax but a company is not the ideal structure for the operation of a small business.

Super Tax Concessions Cost More Than Age Pension

There is much talk in the press about saving for retirement and extending the retirement age to 70. Personally I don't mind the idea of working until 70 but it seems to ignore workers in physically demanding jobs. Again just like every other area of our retirement saving incentives it discriminates against the average worker. While the LNP talk about the end of the age of entitlement they have stopped the Gillard Government's plan to tax superannuation income exceeding $100,000 and say we can afford an extravagant paid parental leave scheme. Yet we apparently can no longer afford a co contribution to the superannuation of low income workers.

The age pension is $19,916 per year if you are single. A single person earning $86,400 a year would pay this much in tax. When a wealthy person over 60 has their assets in a superannuation fund, in retirement phase, the fund pays no tax on its earnings and the member pays no tax on the income he or she receives from the fund. Accordingly, a person earning $100,000 in their superannuation fund is costing the government more to support, every year, than an aged pensioner.

This is why there are all these caps and limits on how much you can contribute to superannuation. This is to supposedly stop the wealthy from locking too much away in this tax free area. Do you remember Kerry Packer's comment about a person who pays more tax than he should is a fool? Well the people out there with money to spend on tax planning laugh at these caps. There is one very simple way around it, just lend your money to your superannuation fund interest free. That's it! A simple arrangement that means the wealthy, upon reaching 60 will never have to pay another cent of tax in their life and before that pay a maximum of 15%. Further, these loans, unlike workers contributions, are not locked into the superannuation fund until you reach retirement age; they are as good as money in the bank as they can be withdrawn at any time. You need to have your own self managed superannuation fund (SMSF) to do this, is it any wonder that the use of SMSFs are increasing at such an alarming rate.

Mr Hockey please spare us this rot about the end of the age of entitlement and treating social security recipients like they are a burden to taxpayers. It is the fact that you allow the rich to pay only nominal tax that is the real burden on the average taxpayer!

I don't believe we need tax concessions to encourage people to save for retirement, generally, most, if they can they will and more workers would be able to afford to if they didn't have to pay an unfair portion of the country's tax burden due to these incentives. It costs the country less to pay the age pension then tax forgone in these incentives and it would be a huge boost to our current economic woes if all the tax incentives were removed immediately.

Capitalising Interest Update

This heading is probably not quite the correct term because if you drill down into this ruling you will see there is no opportunity to capitalise interest. Nevertheless, I feel it is important to bring this ruling to your attention as there is a risk that it could be promoted as such.

PR 2013/22 is a product ruling obtained by a lending institution for a loan arrangement that did not involve capitalising interest but highlights the paranoia that the ATO's over-zealous use of the Part IVA anti avoidance provisions, has created.

All that the arrangement offers is a home loan with and offset account attached and an investment property loan. Wages, rent and any other income are deposited into the offset account and living expenses paid from it as well as the interest repayments on the home loan. The home loan is principal and interest while the investment loan is interest only for the first 10 years. The ATO still draw the conclusion that a tax benefit is created by this arrangement but graciously concede that the dominant purpose is not a tax benefit!

This ruling is more of a sign of just how far the ATO has pushed (without sufficient test cases) Part IVA into a perfectly normal rational choice, a concept that is supported by all of the Harts Cases. This is an attempt to catch just about any choice that does not involve the worst possible tax outcome for taxpayers.

Seminar

Beat the Banks & Discover Winning Property Tax Strategies – Southport Yacht Club 6pm to 8pm Wednesday 14th May, 2014. Speakers Paul Wilson from We Find Houses and Julia Hartman from BAN TACS. Paul has some fantastic positive cash flow properties that will give you money back in your hand; this and other tips will help you to reduce your non deductible debt on your home loan. No cost but for seating purposes please RSVP by 11th May, 2014. To find out more go to http://www.wefindhouses.com.au/free-event/

Skype Julia

Skype has become a very effective way of consulting. Skype allows me to see the client's face so that I know they are following what I am saying. Most of the people who have used this service to date, just want to talk about their overall strategy or get a straight answer to a difficult question. It is not intended to replace your current Accountant but it is an excellent method of getting specialist advice on property from investing to developing or just a second opinion. http://www.bantacs.com.au/shopping.php

Where is Julia?

Still at home in SEQ. Travelling to Sydney in May for Your Money Your Call live on Foxtel on the 19th.

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 by Julia. I will include ATO references to support our conclusion, answer are generally 300 to 700 words long depending on the complexity.

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. There is 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.

With the forum and the Ask BAN TACS Notice Board the information on the site regularly change, 3 very generous askbantacsers have allowed their question and answers to be placed on the notice board. **http://www.bantacs.com.au/QandA/index.php?xq=537** is an excellent example of the CGT calculation when a house is only partly covered by the main residence exemption.
http://www.bantacs.com.au/QandA/index.php?xq=538 Is about GST and invoicing overseas clients.
http://www.bantacs.com.au/QandA/index.php?xq=542 Gives a good practical example of managing your loans to keep the interest tax deductible.