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: 293 Pages: 4 Date: 15th January, 2015

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

Welcome to 2015. It's bound to be another challenging year, and one of the big questions on everybody's mind is where property is moving.

First, keep in mind there is no such animal as a single property market. There are many property markets that can range from units in Cairns to industrial sheds in Perth, so it's important to decide what specific market you are interested in when thinking about buying a property.

A major driver of property prices is interest rates, so you will need to form a view as to what direction interest rates are likely to go in the coming year. My view is that any movements will be small, and if they occur at all, will be downward. The economy in general is not doing well, and the government has flagged its intention to cut costs while finding ways to increase taxes. Both of these strategies will tend to stifle economic activity – it's hard to imagine any reason for the Reserve Bank to increase rates to slow down the economy if this scenario occurs. The Reserve Bank Governor Glenn Stevens has stated that the bank is keen to see a lower Australian dollar, which is a reason for the bank to lower rates, but he's also said that rates are about as low as they can go.

But don't fall into the trap of thinking that rates cannot go up in the future. The economic cycle will continue and at some stage rates will bottom and start to move up. This is why anyone buying a property should do their sums on interest rates of around 6.5%. Repayments based on this assumption will have your loan paid off much faster if rates stay where they are, but will give you a great safety buffer if rates start to move up. As always, the key to success in real estate is to buy an undervalued property, with potential for improvement, in a top location. These bargains may take time to find, but are well worth the effort.

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.

Welcome Back to another Exciting Year of Explaining and Exploiting Tax Law

Lots of great plans for the BAN TACS group and the website this year. It is time to get into some new projects like expanding our group and a new web site especially for property investors.

BAN TACS is still across everything relevant to the average taxpayer, not just property investors. We have so many property investor clients that we think they can be better served by their own website with contributors from other professions as well.

More offices will mean we can give more personal service to our readers. Nevertheless, the internet will still provide property investors with the ability to consult Julia through either askbantacs or on skype from anywhere.

To give Julia more time to mentor the new offices and develop the new website, it is planned that the newsflash will only be posted once a month now, with the exception of urgent issues.

Lending To Your SMSF

The ATO in December, issued two Interpretive Decisions (ID 2014/39 and ID 2014/40) on lending money to your SMSF on more favourable terms than the banks, for example zero interest loans. It is now time to take this problem seriously even though these Interpretive Decisions contradict other statements made by the ATO, ID 2010/162 and private rulings.

The ATO has now narrowed in on the idea that the income from one of these types of investments is trust income. This means that subsections 295-550(4) and 295-550(5) apply instead of subsection 295-550(1). While the income from the investment actually goes straight into the SMSF tax return and the interest on the loan is claimed directly in the SMSF tax return, this is just an administrative concession not the legal position of the arrangement. The corner stone of the argument is that the trust that is set up to hold the investment and give the security to the lender is not a bare trust. To be a bare trust the SMSF must have absolute right to the asset, which it technically doesn't because the lender has a lien over the asset for the loan. If the arrangement was one of a bare trust, which it will become when the security is released, then the income from the investment would go straight into the SMSF, but if it is not a bare trust then it is the net income of the trust that goes into the SMSF tax return. That is the trust takes the rent or dividend income into account and deducts the interest expense, if any and distributes the remaining profit to the SMSF.

Now the big question here is whether the income of the SMSF is arms-length, has it been increased by some advantage that would not happen in the real world. Previously it was thought no it is the expenses of the SMSF that have been reduced not the income increased. Now with this trust go between netting the interest against the income then the lack of interest does increase the income distributed to the SMSF. Further the ATO argue that such a loan could not come about at all so no asset would be owned so no income would come into existence at all so the income has been artificially increased.

The basis of this change is they now consider the income from the investment to be earned by the bare trust and the borrowings to be undertaken by the bare trust. Something not considered previously and these previous statements have not yet been withdrawn.

One would hope that considering this interpretation is such a change in approach that it will be tested in the courts but in the meantime, now that there has been an ID issued it is important to examine any loans you have made to your SMSF and make sure they will stand up to scrutiny. As for the past, while the ATO are not addressing the contradiction I would doubt they would try to apply this retrospectively.

The ATO is not just taking exception to the low or zero interest rate they are also looking to whether the terms are arms length. For example are repayments made? Is the LVR and type of security offered the same as commercially available? Interestingly ID 2014/40 states that an LVR of 80% would not be arms length yet some lenders do offer 80% LVR. The most practical approach is to obtain information on a loan that the banks are offering to SMSFs and change your loan agreement to mirror that. Then keep the bank's loan offer as proof the loan was on an arms-length basis when it was entered into.

This new idea of the trust not being a bare trust has ramifications for negatively geared properties and franking credits on shares which I will discuss in the next edition of Newsflash so please stay tuned.

Great Website for Body Corporate Members

Michael Teys has created a new website with lots of management tools and practical advice for dealing with or running body corporate. Well worth a look. http://wiki.blockstrata.com.au/

To Our Accountant Readers

BAN TACS is ready to expand, so if you are interested in joining our co op, not franchise, then please contact Julia. A brief summary is available on the web site http://www.bantacs.com.au/opps_practice.php

When the Estate Sells the Deceased's Property

If the property is still in the name of the deceased or the estate when it is sold and it cannot be said that any of the beneficiaries are presently entitled to the sale proceeds at that time then it's the estate that will pay any CGT

Let's look at this presently entitled word:

You see a deceased estate usually pays the tax on any income it earns but if a beneficiary is presently entitled to that income then instead of being tax in the hands of the estate that income will be taxed in the hands of the beneficiary. This usually only happens in the last year when the estate is being wound up. Though the ATO will allow the beneficiary to be taxed on the estate income before the last year if the estate is getting towards the end, it is clear that there is enough money retained to cover the estate's obligations and some of the income has actually been paid out to the beneficiary before the 30th June in the year the income is earned.

Note if death benefits from superannuation or termination of employment are received by the estate they cannot be taxed in the hands of a beneficiary. In fact, it is unusual for a beneficiary to be liable for tax on the income of the estate. Don't let this be misinterpreted as a tax on the inheritance. It is about the income the assets of the estate have earned while held in the estate. Unfortunately, the "earning" of a capital gain is considered to happen when it is sold, so the gain over all those years is pulled into one year.

Now if the will states, sell property A and divide the sale proceeds equally between my two children then one could say those children are presently entitled to the capital gain but before the estate can pay that amount out the executor must be confident that all other obligations can be met and if the 30th June passes between the sale and the paying of the sale proceeds to the beneficiaries then it will still be the estate that pays the tax.

IT 2622 http://law.ato.gov.au/atolaw/view.htm?DocID=ITR/IT2622/NAT/ATO/00001

9. Beneficiaries cannot enjoy present entitlement to income derived by a deceased estate during the administration of the estate. Income of a deceased estate in income years before the administration of the estate is complete, is the income of the executors or administrators and is not income of the beneficiaries. During the initial stage of the administration (as described in paragraph 6 above) no beneficiary is presently entitled to the income derived.

14. During the intermediate stage of administration of a deceased estate (as described in paragraph 6 above), the point may be reached where it is apparent to the executor that part of the net income of the estate will not be required to either pay or provide for debts, etc. The executor in this situation might exercise of the executor's discretion, in fact; pay some of the income to, or on behalf of, the beneficiaries. The beneficiaries in this situation will be presently entitled to the income to the extent of the amounts actually paid to them or actually paid on their behalf. The fact that the estate has not been fully administered does not prevent the beneficiaries in this situation from being presently entitled to the income actually paid to, or on behalf of, the beneficiaries.

16. The administration of the estate does not have to reach the stage where the estate is wound up for beneficiaries to enjoy present entitlement to the income of the estate. Once the executor has provided for all debts incurred by the deceased before his or her death and for debts incurred in administering the estate (e.g. funeral expenses) and provided for distributions of specific assets or legacies, it will be possible to ascertain the residue with certainty, even though the executor may not have actually made all the transfers necessary to satisfy these demands on the estate.

23. One exception to this alternative course of apportionment is that, if an executor or administrator does in fact pay part of the income of the estate to a beneficiary before the estate is fully administered (i.e. during the first of the periods mentioned in paragraph 21 above), the beneficiary would be assessed on the basis that he or she was presently entitled to that income. This also accords with paragraph 14 above.

Now a little about how the capital gain is calculated:

If the asset was acquired by the deceased prior to the 19th September, 1985 then the first element of the cost base is its market value at date of death. Note with pre 1985 assets there will be no 50% CGT discount available if they are sold within 12 months of the deceased's death. If the property is a dwelling and it is pre 1985 or was the deceased's home at date of death then you have 2 years in which to sell it with no CGT consequences. If you sell after the 2 years then it is just back to the market value at date of death for the first element of the cost base.

If the deceased acquired the asset after 19th September, 1985 and it was not their home at death then the first element of the cost base is whatever the cost base was in the deceased's hands and you are entitled to the 50% CGT discount if it is more than 12 months since the deceased acquired the property.

The capital gain is reduced by selling costs and any costs associated with the property. Note any capital losses the deceased was carrying forward at date of death are lost on death; they cannot be used by the estate.

About the Tax Rate:

For the first 3 financial years after death the estate is taxed at adult tax rates but without the Medicare levy or low income tax offset. This means that in the year of death the deceased benefits from two tax free thresholds ; one in the individual tax return up to the date of death and the other in the estate tax return. For the 2014/2015 financial year these rates were:

$0 – $18,200	Nil
$18,201 – $37,000	19c for each $1 over $18,200
$37,001 – $80,000	$3,572 plus 32.5c for each $1 over $37,000
$80,001 – $180,000	$17,547 plus 37c for each $1 over $80,000
$180,001 and over	$54,547 plus 45c for each $1 over $180,000

Once the 3 years are up the following tax rates apply:

$0 - $416 Nil
$417 - $670 50% of the excess over $416
$671 - $37,000 $127.30 plus 19% of the excess over $670. If the deceased estate's taxable income exceeds $670, the entire amount from $0 to $37,000 will be taxed at the rate of 19%
$37,001 - $80,000 $7,030 plus 32.5% of the excess over $37,000
$80,001 - $180,000 $21,005 plus 37% of the excess over $80,000
$180,000 plus $58,005 plus 45% of the excess over $180,000

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 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

Ask BAN TACS – Notice Board

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.

Three very generous askbantacsers have allowed their questions and answers to be placed on the notice board.
http://www.bantacs.com.au/QandA/index.php?xq=618 moving main residence exemption between properties.
http://www.bantacs.com.au/QandA/index.php?xq=619 Discusses the difficulty of applying the market value reset rule (section 118-192) on a property you inherit.
http://www.bantacs.com.au/QandA/index.php?xq=624 looks at the problem of jointly holding negatively geared rental properties when one spouse gives up work.

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.