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

Centrelink Payments Deadline
Absolute Last Chance You Must Act Now

For the 2014 financial year and future years families will lose their Centrelink entitlements if they do not lodge their income tax returns within 12 months of the following financial year. This means that if you do not lodge your 2014 tax return before 30th June, 2015 then you will be asked to pay back the Centrelink payments you received during 2013/2014. You must also lodge your claim with Centrelink before 30th June, 2015. The payments it applies to are: Family Tax Benefit, Child Care Benefit, Single Income Family Supplement

Even if you do not need to lodge a tax return, you must notify the ATO and Centrelink before 30th June, 2015.

Please understand that around this time of year a lot of Accountants take holidays and the remaining staff may have many clients in this situation so you cannot leave it till the last minute, it just won't happen in time. In short, unless we have received all the necessary information by 20th April, 2015 and all our fees have been paid we will not be responsible for the consequences of missing this deadline.

The ATO also require all tax returns to be lodged by 15th May, 2015 anyway.

The Selling Process

Our new rental property booklet containing articles specific for readers looking to sell their property, is now available on the web site at http://www.bantacs.com.au/booklets/Selling_A_Rental_Property.pdf

Column by Noel Whittaker

I am amazed at the latest idea that has been floated by the Prime Minister. That is to give small business a much-needed boost by cutting their company tax by 1.5 per cent to 28.5 per cent.

For starters, most small business operators don't work through a company structure: they use a family trust or a partnership.

The big issues for small business are excessive red tape, penalty rates, rising rents and utility costs, and the worst one of all, payroll tax. Given it's a state tax, and the states are all strapped for cash, there is no way it's going to be repealed – especially not by Tony Abbott.

In any event, let's suppose a small business was particularly successful and made a taxable profit of $400,000 a year. At the current tax rate of 30 per cent, the tax would be $120,000.At the proposed rate of 28.5 per cent, the tax would be $114,000 –this is a saving of just $6,000 on profits of $400,000.

Then there is the issue of franking credits. Our dividend imputation system is the envy of the world, giving shareholders in a company credit for the tax paid by the company. If a small business works through a company, the net profits can only be taken out by the owners as salary or dividends.

Reducing the rate of company tax would increase the amount available to be distributed to shareholders by way of dividends, but would also reduce the rate of the franking credit they could claim. So they would pay more tax on a dividend, which would wipe out any benefit from a company tax cut. The net result is no change in their after-tax dividend.

Above all, a cut to the company tax rate sends the wrong message. For 18 months, the federal government has been highlighting the parlous state of the country's finances, and proposing a wide range of cost-cutting measures to get us back in the black. These have included co-contributions for doctor's visits, and a reduction in the rate of increase in the age pension. How can they possibly change course and single out small business for special treatment?

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.

For New Zealanders

While this article is written for New Zealanders the situation is similar for immigrants from other counties, whether temporary or permanent.

The first question is what sort of residency you have in Australia. Temporary residents, for example those on a 444 or 457 visa are treated very differently to New Zealanders who have became permanent residents of Australia for tax purposes.

Australia is entitled to tax the world wide income of its residents, even in relation to the overseas companies they control. In fact if they are the controllers of the company then the place of management of the company has moved to Australia.   If it is also trading in Australia then according to TR 2004/15 the company is a resident of Australia http://law.ato.gov.au/atolaw/view.htm?docid=TXR/TR200415/NAT/ATO/00001 there is an interesting point made in TR 2004/15 with regard to companies used for investment purposes. As there is very little activity in such companies it would be considered to be trading in Australia. To quote TR 2004/15 (note CM&C stands for central management and control i.e. where the directors are residents):

> 7. However, there are situations where the nature of the business or the level of control over the business requires the exercise of CM&C at the place where the business is carried on. Where a company's business is management of it's investment assets and it undertakes only minor operational activities, the factors determining where a company is carrying on a business may be similar to those determining where it is exercising CM&C. In these situations the location of CM&C is indicative of where the company carries on it's business and vice versa.
>
> 11. On the other hand, a company whose income earning outcomes are largely dependent on the investment decisions made in respect of it's assets carries on its business where these decisions are made. This is often where it's CM&C is located.

New Zealanders on a temporary residence visa are not taxed in Australia on their overseas income (providing it is not wages) nor does Australia have any rights to any companies they control. On the other hand if you are a full resident of Australia for tax purposes Australia will be looking to tax income and assets you have in New Zealand.

Owners of Rental Properties Can Amend Back 4 Years

This bit of information may come in handy if you want to amend previous tax returns to claim depreciation because in previous years you did not have a depreciation schedule. If you own a property with someone else then according to section 995 ITAA 1997 you are in partnership with them:

> "Partnership means:
> (a) an association of persons (other than a company or a *limited partnership) carrying on business as partners or in receipt of *ordinary income or *statutory income jointly; or "

Now the section on the period of time within which you are allowed to amend a tax return is in the 1936 ITAA section 170(1) which allows a 2 year amendment period for individuals unless they are:

A beneficiary of a trust that is not a small business
A partner in a partnership that is not a small business or
In business as a sole trader but does not qualify as a small business

Owning a rental property is generally not considered a business unless you have a lot and pro actively manage them. Accordingly, a rental property partnership (that is more than one person owning the property) would not be considered a small business and as a result not qualify for the 2 year amendment period.

The trap is that the ATO will not accept your amendment after two years has passed since the date of your assessment notice. They will try to very intentionally bluff you by sending you a letter saying you are out of time. I say very intentionally because this is a standard letter that would no doubt have been approved by those in the know. It mentions nothing of the loop hole for jointly owned rental properties. You will need to reply quoting the above and stand your ground, even object to the assessment notice if necessary; you will eventually win because the law is very clear.

Yet when it suites the ATO you can rest assured they will apply the 4 year amendment period. For example in Yazbek v Commissioner of Taxation 2013 AAT the ATO wanted to extend the amendment period to 4 years because the taxpayer would owe money to the ATO. The ATO successfully argued that, to be a beneficiary of a trust you did not need to have received income from a trust, it was sufficient that the trustee had the ability to distribute to you if it decided to do so. This means just about everyone is a potential beneficiary because discretionary trusts have very wide beneficiary clauses such as the siblings, children, spouses etc of the named beneficiary. Most of us are linked to a trust somewhere. Effectively the ATO went behind the intent of the legislation to destroy the 2 year amendment period and they only use it when it suites them.

If you do not own a rental property with someone else, so can not apply the partnership loop hole, then Yazbek's case may provide you with a way of extending your amendment period to 4 years.

Holding Property in A SMSF When a Member Dies

ID 2015/2 makes it very clear that the death benefit has to actually be paid out to the deceased's beneficiaries even if they intend putting it straight back into the SMSF. This creates a major problem for SMSFs that have all their assets tied up in property. Properties will have to be sold in order to pay out the death benefit.

Abandoning a Property Development

In WWXY and Commissioner of Taxation 2015 AATA 130 the Administrative Appeals Tribunal found that the ATO was correct in taxing the sale of two adjoining properties as normal income not capital gain (so no 50% CGT discount) even though all WWXY did was obtain a DA after holding them for 6 years.

The catch seems to be that the two properties were purchased in 2006 and 2007 with the intention of developing them but this was abandoned in 2010 and the properties where held as rentals. In 2012 a DA was applied for so that the properties could be sold in 2014 for their best price without undertaking the development.

It is all about your thoughts and the onus of proving your thoughts rests with you. The owner of the property was a discretionary trust that had not previously undertaken any property development but the directors of the trustees were experienced builders.

You are allowed to change your mind, for example buy a property with a profit making motive then decide to keep it as an investment. Under section 70-110 ITAA 1997 it is transferred from trading stock to a capital asset and CGT applies to the sale. This section was not mentioned in the case but the general conclusion was that the trust had not changed its mind. It didn't need to be a business for CGT not to apply, it was enough that there was a profit making motive at the start and while the outcome was different, even to the extent that a business never began. The profit making motive from the sale of the property continued with the application for the DA shortly before sale. To quote the findings, "had a profit making purpose from the outset"; that is to profit from the sale of the property rather than a primary purpose of being held to earn rental income. I think this might have been reinforced by the lack of attractiveness of the properties as rental investments.

Yet in Kratzmann v FCT 1970 ATR 827 the High Court found in very similar circumstances that the eventual sale of land after abandoning a project to build a block of flats was not a profit making purpose.

Now here is another trap to watch out for, unfortunately the AAT did not address this. One of the properties was a commercial property so that sale was probably subject to GST and handled correctly but I wonder about the other one that was a tenanted house. It could be considered that the old house on the land was insignificant and the property, after all being sold for development was really the sale of vacant land, which would be subject to GST. This means that 1/11th of the sale price goes to the ATO unless the margin scheme is used. Under the margin scheme it would only be 1/11th of the difference between the purchase price and the sale price. For the sale to be made under the margin scheme the purchaser must agree in writing at the time of sale. Even if they are successful in asking the ATO for an extension of time to apply the margin scheme, assuming the purchaser is a developer I doubt they would agree because this would mean they cannot claim back any input credits on the purchase. The purchaser gains an advantage if the ATO comes along and applies GST to the sale because unless there is a specific clause in the contract they don't have to pay any more for the land but can claim back 1/11th of the purchase price.

We Need Capital City Offices

In a couple of month's time we will be launching a new service for property investors. Until now BAN TACS has worked particularly well for rural practices which benefit from the network of experts we are building. With this new property investor service being advertised nationally we need offices in capital cities so more people can receive this property investor service in person.

If you are reading Newsflash then you are the type of office we want. Please contact julia@bantacs.com.au and discuss this opportunity. The joining fee would be $3,000 to $3,500 and entitle you to a territory spanning 3 federal electorates. Much of the joining fee will be spent on promoting your profile. To find out more about how the group (not franchise) operates go to http://www.bantacs.com.au/opps_practice.php

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.

What Is New on Askbantacs

Four generous askbantacsers have allowed their questions to be placed on the Ask BAN TACS Notice Board
http://www.bantacs.com.au/QandA/index.php?xq=644 Demolishing a rental, scrapping, building town houses, claiming interest and CGT.
http://www.bantacs.com.au/QandA/index.php?xq=645 Australian resident with rental property in NZ company
http://www.bantacs.com.au/QandA/index.php?xq=646 Demolish main residence subdivide build 2 new homes one to live in other rental or sale.
http://www.bantacs.com.au/QandA/index.php?xq=650 CGT on renovated inherited property