NEWSFLASH

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

Deceased Estate with Non Resident Beneficiary

This is not just for immigrants; all Australians should be concerned that their heir's maybe working overseas when they die. There is a rollover relief under section 128-10 ITAA 1997 that means there is no CGT event when an asset passes from the deceased to a beneficiary of their estate. CGT does not apply unless the beneficiary or the estate sells the asset. This concession does not apply if the beneficiary is living overseas at the time of death, unless they inherit Australian real estate.

If your child is working overseas when you die section 104-215 ITAA 1997 (CGT event K3) may apply to any asset you leave to that child. K3 deems you to have transferred that asset to your child just before you died for the market value just before you died. This means that your last personal tax return will have to pay CGT on any increase in that asset's value. As it is the estate that is responsible for paying the deceased's bills it will be the estate that will pay this CGT, not the child that receives the asset. This means that the residual beneficiaries of the estate, those that receive whatever is left after specific bequests are made, will effectively pay the tax on an asset received by the non resident beneficiary, because there will be less available to distribute to them when it is all finalised.

CGT event K3 is all about the ATO grabbing whatever tax it is owed now before the asset moves out of the Australian tax net. If the deceased purchased the asset before 20th September, 1985 or if the asset is Australian real property K3 does not apply. This is because Australia continues to have the right to tax Australian real estate even when it is owned by a foreign resident. The foreign resident's cost base, if it was the deceased's home at date of death, will be the market value at date of death. If it was not covered by the deceased's main residence exemption at date of death then the foreign resident's cost base is whatever the deceased's cost base was at time of death.

In most cases K3 would apply to shares in widely held companies and managed investments.

Column by Noel Whittaker

Accumulating enough money to retire on is one issue – trying to protect it for our beneficiaries in another.

In many cases the best option is to include a testamentary trust clause in your will. Don't let the term scare you; it's worth taking the time to get a grip on it.

Think about a couple who have three children and several grandchildren. The eldest child is a well-paid professional with a high net worth and a stable marriage, the second is in a rocky domestic relationship, and the third is battling along in a business whose profitability is doubtful and which might go belly-up at any time.

The retirees have substantial assets that include three rental properties and a large amount of money in superannuation. Naturally they wish to leave these assets to their children, but they are savvy enough to realise that simply leaving a third of the estate to each child could create a mine field. The eldest child has more than enough income now and any extra would be taxed at 49%, money inherited by the second one could be up for grabs in a divorce settlement, while creditors could seize any money left to the third child if his business went bankrupt after their death.

The solution is to leave the money to three testamentary trusts – one for each child. Then, when the parent dies, one third of the assets will go to a testamentary trust for each of the three children and will not be held by them personally. This keeps the assets separate in the event of divorce or bankruptcy but also has taxation advantages if everything goes well.

In short, testamentary trusts are simple in operation, and highly effective in saving tax and protecting your assets. Just make sure you take advice from your solicitor, financial adviser and accountant before you change your will.

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

Exempt Income for Defence Forces

On 12th June 2015 Treasury announced that members of the defence serving in non warlike operations will also qualify to receive their income tax free if they served in Manitou, Accordion, Okra (Zone B) and Augury in the Middle East. This will apply retrospectively dating back to the time any member commenced duty in these areas. It may be possible to amend tax returns back 4 years since the date of receiving the assessment notice.

Private Health Insurance Rebate

If your income for the 2015-2016 financial years is going to be more than $90,000 for singles and $180,000 combined for families then you are not entitled to the full health insurance tax offset/discount. If your income is going to be more than $140,000 for singles and $180,000 for families you will not be entitled to any private health discount at all. Nevertheless your health insurance company may give you the offset as a discount on your premiums. This will have to be paid back when you do your tax return. Which is fine, just a warning. For full details of how this offset works refer newsflash 295
http://www.bantacs.com.au/newsflash/Newsflash_295_15th-March-2015.pdf

If you do have to pay back some of health insurance discount and you have a spouse, the debt is split equally between you. You see even though your spouse does not have enough income to have to pay the Medicare levy or income tax, they, because of your income will still not qualify to receive the discount. This has a very interesting outcome if your spouse does not lodge a tax return. Technically they are required to lodge a tax return to repay the discount, if they don't by the 30th June then the debt (repayment of the discount) becomes payable by you, their spouse. You might see some of these debts appearing this year. An alternative in this situation is to elect to pay your spouse's discount back in your tax return.

On Line Check Lists and Mail in Tax Returns

The checklists have been updated for 2015. If you would like to use these to help you collate the information for your 2015 tax return go to http://www.bantacs.com.au/tools.php

If you are mailing in your tax return information there is a much more detailed check list on http://www.bantacs.com.au/mail-in_tax_returns.php

Renting Out a House You Built to Sell

There has been much written about this in Newsflash and our How Not to Be a Developer booklet. Basically if you are registered for GST and build a house for resale but then change the purpose by renting the house out you have to pay back the input tax credits on the property. You see a property held for rental is input taxed so no GST credits are available on the cost of building it. If you have been claiming them because you intended to sell the property so will have to charge GST on the sale, then later change your mind or can't sell it. Then using it as a rental property will mean quite a large amount of GST has to be paid back.

Now I imagine you are starting to think that it is not as black and white as that. You may not have changed the purpose at all it is just logical to collect rent for the property while the market is slow. I imagine there were some developers caught between a rock and a hard place. They can't possibly afford to pay back the GST but could really benefit by receiving some rent to help meet the overdraft.

GSTR 2009/4 http://law.ato.gov.au/atolaw/view.htm?docid=GST/GSTR20094/NAT/ATO/00001 Examines purpose beyond the current use and recognises a property can still be held for resale while it is rented.

You do not have to pay the GST back immediately, even if you are caught. You are only required to consider this issue once a year, when preparing your BAS for 30th June. You do not even have to consider an adjustment to the GST at the first 30th June after the original input credit has been claimed it is not until a full 12 months after the first 30th June that an adjustment must be made. Now if the property has at anytime been used for a rental then some adjustment needs to be made. But it may only be minor. Certainly if the property has now become a rental and it does not meet the available for sale status discussed above then you need to pay back all the GST. On the other hand with a property still being held with the intention of selling it, you only need to pay back a small portion of the GST. This portion is calculated by adding the estimated rent you expect to receive to the expected sale price then look at what percentage the rent is of this. This is the percentage of the GST credits you have to pay back. Yes, very vague but each 30th June you will have to re work this calculation until you sell it or all the adjustment periods have expired.

You need to look at the amount of each individual invoice or progress payment. If it is under $1,000 no adjustment is necessary otherwise:

GST-exclusive value of the acquisition	Adjustment periods
$5,000 or less	Two
$5,001 to $499,999	Five
$500,000 or more	Ten

So you can see if you hold it for the mixed purpose of rental and sale for over 6 years you will have to pay some of the GST back but not all of it then in theory you could decide to no longer hold it for sale and de register for GST without having to pay all the GST input credits back.

New Ground in Home to Work Travel

Well technically not home to work travel it is more a question of when you are considered to have stared work so any travel after that is tax deductible.

Now that I have your attention, I must apologise for the fact that this is quite complicated. It is a discussion about John Holland Group v Commissioner of Taxation 2015 FCAFC 82. John Holland lost in the lower courts but won on appeal to the Federal Court where 3 Judges unanimously found in their favour though with slightly different reasoning.

The first important point about this case is that John Holland was trying to avoid paying FBT on the air fares for their workers to fly from Perth to Geraldton. The reason this is relevant to our readers who work remotely is because their argument to avoid FBT is that if the employee had paid the air fares themselves they would have been entitled to a tax deduction. So read up if you are a remote worker who has somehow ended up covering your own airfares.

The reason I narrow this case to remote workers is because two of the three judges in the Federal Court made a significant point of the fact Geraldton was remote from Perth. The remaining judge appeared to be more swayed by the fact that he considered the employees to have started work when they arrived at Perth airport. Considering that the FBT laws already allow an FBT exemption for job sites that meet the definition of remote (which Geraldton does not) I consider it more important to concentrate on the question of when you arrive at work. To say Geraldton is remote is a question in the eye of the beholder not within the clearly defined definitions of tax law.

Now let's look at what made Perth airport the place where the employers work commenced, this is relevant because once you start work then any travel required to perform your work duties is tax deductible to the employee. Getting back to the original concept of otherwise deductible, if you pass this test, of having started work at the airport, then if your employer pays the travelling cost they do not have to pay FBT on it and get a tax deduction. Following from this, if you, as an employee pay the travelling costs then you can claim a tax deduction in your tax return, bingo.

The case was a lot about the employment contract which specified Perth airport as the base of operations. It also provided for employees to be paid for the time they were travelling from the airport (but not for travel from their homes to the airport). While on the plane there was a code of conduct they must abide and they could only organise their own transport to the worksite if they sought specific permission from the John Holland Group.

So what does this mean if you are paying your own travel costs to go to work? Don't even bother here if you live in the suburbs and travel to the CBD every day. But if there is something that will separate you from the 9 to 5er such as remote work location, being paid for the time you travel or the necessity of airfares then it maybe worth a ruling request, but do not assume anything from this case the ATO still has room to appeal.

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

Where is Julia?

Mackay ☺ I will be heading to Townsville and Cairns mid September then back to Mackay for a few weeks then returning to SEQ.

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.

Askbantacs Notice Board

One very generous askbantacser has allowed their question and answer to be posted on the notice board. http://www.bantacs.com.au/QandA/index.php?xq=674 A good example of using the 6 year rule between residences.