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BAN TACS Accountants Pty Ltd

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

Just A Bit About Newsflash

Our Newsflash header is now alive, that is if you are reading this online. To obtain more details for any of our offices just click on the location name and the web page for that particular office will appear with all the contact details you need as well as practitioner profiles.

Enough of the flashy stuff, back to the grass roots of why you and all your friends should be reading Newsflash. Here is just one example, we will remind you in a few months that if you don't lodge your 2015 tax return by 30th June 2016 you will have to pay back every cent that you have received from Centrelink for that year. Even if you do lodge by 1st July 2016 it won't make any difference, once the date has past the money is lost.

There are many, many, enough to fill 12 editions a year, of these money saving must know to help you manage today's bureaucrat dominated lifestyle. Everyone needs to be alert to taxation issues; even the CGT main residence exemption is not an automatic right.

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Column by Noel Whittaker – Share Market Turbulence

It's been a turbulent start to 2016 with share markets crashing all over the world. It was a major topic of conversation at a dinner party I was recently with one participant summing up the mood of many people there by declaring “We like to sleep at night – that’s why we don’t have any shares”.

On the face of it, it’s a reasonable attitude given the present parlous state of the markets, but the reaction from some of us was that we couldn’t sleep at night if we didn’t own shares.

Now it can be a good feeling to have cash in the bank, especially when you can get a safe 2.5% as you can right now, but the problem with cash is that it has no tax benefits, gives you no chance of any capital gain and is eroded by inflation. A return of $2500 on a deposit of $100,000 may sound risk free, but take off 3.0% for inflation and you are left with a negative return.

This leaves us with the good old faithfuls – property and shares. It’s important to have an interest in both these camps, but it’s just as important to understand that they behave in very different ways. It’s highly unlikely that your property will lose 30 % of its value in a downturn, but there are ongoing costs it can be a long drawn out process if you ever try to sell it.

Shares will give you a much more exciting ride because their values will bounce around, but the big advantage of them is that you can buy and sell in small parcels, they provide tax advantaged income by way of franked dividends and over the long term, have been the best performing asset class of all – an average of 8.3% per annum over the last 15 years even after taking the present slump into account

Now let’s get back to the “sleeping at night” bit. Think about a person who is aged 65, who has $800,000 in super and wants to draw $55,000 a year. If their fund is diversified enough to earn 8% per annum, their money will last to age 90 if inflation averages three percent per annum. However, if they are scared of shares and opt for a “safe” 2.5% return, their money will be gone at 78. In an age where many retirees can expect to live to 90, that’s a thought to keep anyone awake at night.

Capital Gains Tax and Airbnb

If you are considering renting out rooms in your home and it was acquired after 19th September 1985, then you have to consider whether it is worth the CGT consequences, which are unavoidable.

Now if up to the time you first use it to produce income it has been 100% covered by the main residence exemption, then the cost base is reset market value at that date (section 118-192 ITAA 1997). From that point forward there will be a pro rata CGT liability and lots of record-keeping. The 6-year rule (section 118-145) cannot apply because the owner is not absent from the property.

If it wasn't 100% covered by your main residence exemption, you were always going to have a CGT record keeping nightmare anyway.

Basically the CGT applies to a percentage of the capital gain, the percentage that the property was used to produce income multiplied by the days not fully covered by the main residence exemption. So for example if half the time the property is used to accommodate guests and half of the property is used by the guests then 25% of the capital gain is taxable. In most cases then the 50% CGT discount would then bring it down to 12.5%

This means you will need to start keeping receipts for everything relating to the house for the rest of the time you own it, so you can calculate the CGT. Section 110-25(4) even allows you to include in the cost base interest, rates, insurance, light globes, lawn mowing fuel anything associated with the house. That is providing you purchased the property after 20th August, 1991 or the reset to market value, as discusses above, occurred after 20th August, 1991.

All in all, the ATO will be rubbing their hands together. CGT is a tax on inflation not just real profits.

ATO Quote of the Month

When an ATO officer was asked to quote a section number to support his argument, considering we were reading to him loud and clear from the 1936 ITAA, he responded. “I Googled it and it said ….. here I will read it to you…… Google says, generally ……” Apparently generalised statements in Google trump the laws of this land when it suites the ATO! Not on our watch! I wonder if this sets a precedent that when a taxpayer relies on Google there is no penalty for being wrong?

Borrowing in Joint Names but Property in One name

It is a generally accepted convention that the ATO will allow a full tax deduction for all the interest on a loan that is used to buy an investment property in one of the borrower's names even though the loan is in the name of both spouses. The banks usually require both names to be on the loan to protect them from divorce or because the family home, owned jointly, is used as part of the security.

The trouble starts when you are just one little taxpayer on your own and the auditor is looking for something to justify ticking that box…. Audit resulted in an adjustment. They will argue that only half of the interest is deductible in your tax return and the other half is not deductible to your spouse because it is not a cost of them earning income.

There is not a clear ruling to back this, may be because there would be an outcry and the ATO would then be forced to agree to a more reasonable approach. It is better just to pick taxpayers off one at a time. I have read of the ATO arguing this as an ancillary (not relevant to the ultimate decision) argument in the courts and private ruling requests. So it is something to avoid if possible though if you don't mind taking on the ATO and its unlimited taxpayer funded fighting fund then please do because this matter needs to be resolved once and for all. Loans set up this way are just so common.

Now, onto ways to avoid it:

1) Ask your bank if the sole owner of the investment property can be the only name on the loan account, offering your spouse's personal guarantee rather than being a co borrower
2) If the borrowing must be done jointly, draw up formal documents borrowing your spouse's share from them at the same interest rate as the bank is charging.
3) Consider 1% and 99% ownership then even though the interest is charged to you jointly there is ample ATO material (ie TR 93/32) saying that the expense must be apportioned on the basis of ownership.

If this article has come too late and you are stuck trying to defend your loan arrangement here is your defence. As mentioned above better to avoid the situation in the first place.

In PBR 1011299816055 the ATO agrees that one borrower can claim 100% of the interest on a joint borrowing because the PBR claims that TR 93/32 says:

> "where the title deed of a rental property indicates sole ownership of the property, and the mortgage is held in joint names; the legal owner can claim the full amount of the interest paid."

Now the trouble is that sentence is not actually in TR 93/32 it is merely an interpretation of what is written there. Further, PBR 101129981605 is a private binding ruling so can only be relied upon by the person who applied for the ruling. So you are left with a persuasive argument at best, plus the fact there is actually no public ATO statements saying half the interest would not be deductible. The only really useful statement TR 93/32 makes is that expenses associated with the property are to be apportioned on the basis of ownership.

Of further concern is that PBR 1011299816055 goes on quite a bit about the fact that the repayments are only ever made by the owner of the property so it is also worth opening up a bank account solely in the name of the owner of the property where his or her pay is deposited and maybe together with rental income used to make the interest payments on the loan.

Want more detail? There is a minor point argued in Tabone and FCT 2006 AATA 466, by the ATO that the interest is not deductible because it wasn't solely paid by the taxpayer and the loan was in joint names. In PBR 61949 no deduction was allowed to the owner of the income producing asset because his spouse earned more than him so the loan had to be in her name and the ATO decided she was making the repayments. Of course the interest was not a cost of producing income for his spouse, so no deduction for her either.

The Difference Between Tax Agents and Tax Preparers

In order to claim a tax deduction for any fees you pay for tax advice or to prepare your tax return the fee must be paid to a registered tax agent. The ATO licences registered tax agents, to qualify for registration the agent must meet the following qualifications:

1) A fit and proper person
2) Have completed an approved course that includes Taxation Law
3) Have professional indemnity insurance
4) Keep up to date with changes to tax law and
5) Have at least 12 month's recent experience preparing tax returns in a supervised environment

So it is a no brainer really here we have a system where the skills, education and character are monitored by the ATO for you, why wouldn't you use a registered tax agent? It only costs $500 for a licence to operate for 3 years so if you are preparing tax returns why wouldn't you register, unless you didn't meet one or more of the above qualifications.

Generally there is only one registered tax agent in an Accountant's office, one PI policy, one agent number on the tax return software etc. The registered tax agent has an obligation to review all tax returns and supervise the preparation. The law does not actually require that the supervision be done through a physical presence, tax returns can be sent to a head office for review but of course that is not the most efficient way to operate and means that clients cannot actually see the registered tax agent when they visit the shop front. Instead the shopfront is manned by tax preparers. These people have been trained and usually follow guidelines set by the tax agent. The tax agent is not present to see clients, asks the pertinent questions or give advice to clients about tax matter. In these organisation it is the non tax agent at the shop front who you have to rely on to ask the right questions to make sure you get every deduction you are entitled to. Further, there is generally not a broad range of tax knowledge to answer ancillary questions that aren't on the script.

Obviously, to put up with the inconvenience and costs associated with sending work to head office for review the tax preparers at the local shop front must not have the necessary skills, education or character listed above to gain tax agent registration.

So if you are using the service of one of these tax preparer local shop fronts you have got to ask yourself just which one of these 5 points above you are prepared to go without and ask them why they do not qualify to be registered as a tax agent. The business model is inefficient so don't expect a reduced fee either.

How to Make Sure Your Next Property Is a Good Investment

- Do you really know how much the property is going to cost you to hold?
- What name should the property be purchased in?
- Will this property fit your investment strategy and goals?
- What does the contract say about GST?
- How does the price compare with similar sales in the area?
- If it is negatively geared, how much capital growth is required before you breakeven?
- Do you know what records you need to keep and how?
- Are your financing arrangements maximising your tax deductions?
- What happens if interest rates rise?

......and the list goes on!
To ensure you don't make a costly mistake with your next purchase, contact us today
http://bantacs.com.au/Bantacs_pipkit.php

Askbantacs Free 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. They will include ATO references and are around 500 words.

Two very generous askbantacsers have allowed their questions and answers to be posted on the notice board.
http://www.bantacs.com.au/QandA/index.php?xq=705 An excellent example of what to do when you are stuck with properties in a company, right down to explaining how the franking credits work.
http://www.bantacs.com.au/QandA/index.php?xq=708 A follow-on from the above discussing whether CGT liabilities should be taken into account when valuing the shares.
http://www.bantacs.com.au/QandA/index.php?xq=707 Husband gets the cash; wife gets the CGT bill!