



## BAN TACS OFFICES

### QUEENSLAND

Brisbane 1300 911 227  
[brisbane@bantacs.com.au](mailto:brisbane@bantacs.com.au)

Caboolture 07 5497 6777  
[admin@bantacsningi.com.au](mailto:admin@bantacsningi.com.au)

Gold Coast 07 4681 4288  
[goldcoast@bantacs.com.au](mailto:goldcoast@bantacs.com.au)

Mackay 07 4951 1848  
[mackay@bantacs.com.au](mailto:mackay@bantacs.com.au)

Ningi 07 5497 6777  
[admin@bantacsningi.com.au](mailto:admin@bantacsningi.com.au)

Toowoomba 07 4638 2022  
[toowoomba@bantacs.com.au](mailto:toowoomba@bantacs.com.au)

### NEW SOUTH WALES

Tenterfield 02 6736 5383  
[tenterfield@bantacs.com.au](mailto:tenterfield@bantacs.com.au)

Sydney 1300 367 688  
[sydney@bantacs.com.au](mailto:sydney@bantacs.com.au)

Burwood 1300 367 688  
[burwood@bantacs.com.au](mailto:burwood@bantacs.com.au)

Crows Nest 1300 790 535  
[crowsnest@bantacs.com.au](mailto:crowsnest@bantacs.com.au)

Central Coast 02 4390 8512  
[centralcoast@bantacs.com.au](mailto:centralcoast@bantacs.com.au)

### SOUTH AUSTRALIA

Adelaide 08 8352 7588  
[adelaide@bantacs.com.au](mailto:adelaide@bantacs.com.au)

### VICTORIA

Melbourne 03 9111 5150  
[melbourne@bantacs.com.au](mailto:melbourne@bantacs.com.au)

### FIND OUT MORE

<http://bantacs.com.au/aboutus/>

Welcome to the new look Newsflash, the most radical change that we have made over the more than 18 years that it has been running. Hopefully this shorter more frequent format will make it easier for you to find the time to read.

### Transferring Residential Property To Your SMSF

If you own a property that you want to transfer to your SMSF the transaction must take place at market value but it must also be a property that is used “wholly and exclusively” in a business, though not necessarily your business.

Commercial property is fine of course as is residential property that is used in a business such as a house converted to a doctor’s surgery. The ATO ruling on this is SMSFR 2009/1 <http://law.ato.gov.au/atolaw/view.htm?locid=%27SFR/SMSFR20091/NAT/ATO%27&PiT=99991231235958> here are a couple of interesting quotes from the ruling that suggest the business can be the business of renting out residential properties:

35..... Similarly, the use of property by a residential tenant is incidental and relevant to any property investment business carried on by the landlord.

38.... In these cases, the business to which the use of the land is connected is a property investment business under which rights to use the land are granted to others (often by way of lease). The views expressed in Taxation Ruling IT 2423 <sup>13</sup> are relevant in determining whether this type of property investment business is being carried on.

Now IT 2423 is a very old ruling and not directly relevant to income tax or SMSF law. IT 2423 <http://law.ato.gov.au/atolaw/view.htm?docid=ITR/IT2423/NAT/ATO/00001> states at:

5. A conclusion that an individual is carrying on a business of letting property would depend largely upon the scale of operations. An individual who derives income from the rent of one or two residential properties would not normally be thought of as carrying on a business. On the other hand if rent was derived from a number of properties or from a block of apartments, that may indicate the existence of a business.

The ATO guide on when you are in business is, in my opinion, intentionally useless. It gives as an example of when you are not in the business of property investment as owning only 3 properties and an example of when you are in the business of property investing as owning 26 properties with no guidance in between.

Cases since then have also taken into account the amount of involvement you have in the management of the property. For example in case YPFD AAT 2014 the taxpayer had 9 properties that were managed by a real estate agent but she convinced the tribunal

that the real estate was so incompetent that she had to do a lot of the management herself. She was considered to be in the business of property investing.

PBR 1011342041791 is a private ruling (can't rely on it) regarding 7 properties that were not considered to be a business. Nevertheless, it is worth reading for more detail on the factors considered, for example have a business plan to show how the properties will eventually become profitable. Rumour has it that this PBR was overturned on appeal so it may well be the fine line.

There should be lots more discussion, and hopefully a more specific ruling, on when a property owner is considered to be in the business of property investing, very soon. As this is the same definition that will now decide who can claim travel to their rental property and depreciation on plant and equipment that has previously been used. We will keep you posted.

If you think you might qualify to transfer a residential property into your SMSF make sure you first apply to the ATO for a ruling as the cost involved in the transfer will be far too high to risk the cost of having to reverse it all back out again.

Want to know more about SMSFs? Here is a link to our free booklet

[http://www.bantacs.com.au/booklets/SMSFs\\_Booklet.pdf](http://www.bantacs.com.au/booklets/SMSFs_Booklet.pdf)

### **What is New from the ATO**

TR 2017/D10 – what happens when a discretionary trust vests (ends)

<https://www.ato.gov.au/law/view/document?docid=DTR/TR2017D10/NAT/ATO/00001> This usually happens once the trust has been around for 80 years. Vesting can cause a CGT event with huge capital gains if the trust is wound up. The trick is to make sure that there are at least two beneficiaries entitled to the trust's assets at time of vesting. As long as the trustee does not actually transfer the trust assets to the beneficiaries, just the income from the assets, then a CGT event is not triggered, the discretionary trust simply becomes a fixed trusts for the capital beneficiaries. If there is only one beneficiary then it would be a bare trust and that beneficiary may well be deemed to have received the property and trigger the CGT event.

### **This Week's Webinar**

A guided tour of our web site

[https://www.youtube.com/watch?time\\_continue=36&v=qgNcnExugHg](https://www.youtube.com/watch?time_continue=36&v=qgNcnExugHg)

### **How To Get Your Questions Answered:**

Visit an offices <http://www.bantacs.com.au/aboutus/locations/>

Skype Julia <http://www.bantacs.com.au/shop-2/consultation-with-julia-hartman/>

Askbantacs <http://www.bantacs.com.au/QandA/index.php> - currently under renovation

### **Learn More:**

Booklets <http://www.bantacs.com.au/media-library/booklets/>

Newsflashes <http://www.bantacs.com.au/category/newsletter/>

Blogs <http://bantacs.com.au/Jblog/>

Webinars <http://www.bantacs.com.au/media-library/webinars/>

### **Fear of Missing Out?**

Please enter you email address on the bottom right of this page

<http://www.bantacs.com.au/media-library/newsflash/> so you will receive an email every time a new Newsflash is posted on our website.

Disclaimer: Please note that 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.