

NEWSFLASH

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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

Fair Work Australia – Contractor or Employee

The fair work Australia rules recognise that some employers utilise contractors to keep their labour cost down by avoiding paying award minimums and leave entitlements.

Regardless of the fact they have a contract the following rules define whether they are a contractor or employee, the latter being entitled to be employed under the rules of Fair Work Australia.

Contractor

Controls how they go about their work
Bears the cost of their mistakes
Sets their own working hours
No entitlement to leave or other employee benefits
Pays their own tax and superannuation
Uses Own equipment
Is paid on a per job basis rather than hourly
Presents an invoice for payment
Has insurance

Employee

Works under the direction of the employer
Paid regardless of the result ie hourly basis
Hours set by employer
Paid regularly and receives leave benefits
Employer deducts tax and pays superannuation
Materials and equipment supplied by employer

The ATO has also announced it will be increasing its activities in this area to ensure employers are deducting tax from payments and making superannuation contributions unless there is a genuine contractors arrangement. The ATO guidelines on the issue are similar to those listed above.

Column by Noel Whittaker

“How do we help our children financially?” is a much asked question. It sounds simple enough but can become a challenging task.

In our home we work on two basic tenets. First, a parent’s primary duty is to help their children become the best they are capable of being. Second, it is better to progressively gift them assets when they are young and battling instead of waiting until a time when you are 85 years of age, and they might be nearing retirement.

Of course, these two goals may not be complementary. Every human being needs to learn self reliance, but every time you do things for them which they should be doing for themselves, you decrease their ability to become self reliant. That is why we walk the tightrope of giving a helping hand where it is needed and yet not shielding them from problems which will help them grow.

But achieving that goal need not necessarily mean giving all your children equal amounts of cash. One of your children may be totally fulfilled working as a counsellor for a non profit organisation – the other may have the talent and drive to be a high income earning professional. As like tends to marry like, you could easily find yourself in a situation where one of your children and their partner earns ten times the earnings of the other one and their partner.

Given these circumstances it may be extremely difficult for the lower earning family to give you grandchildren without your help because they may find it impossible to live on one income. Surely, if all other things are equal, this is the child that should be favoured in the early stages if you have spare money which can be used to help out.

Financial incentives for saving work well too. If you are trying to encourage your child to save a deposit for a home you could offer to give them a dollar for every dollar they save, up to a set figure. It’s a win win - they get 100% on their money and you get the joy of watching them become smart savers.

Certainly it’s appropriate to help if your child faces a financial crisis because of an event such as illness that is out of their control. But it’s a different matter entirely if they are in financial strife through financial ineptitude, because as sure as night follows day, they will never learn to manage money properly if you keep bailing them out. As painful as it may be, you are much better off to sit back and watch the power being turned off and the car being repossessed, because these are the lessons they need to get their lives in order. Moral support, yes – money, no.

Yes – it is a challenge, but remember two other basic principles. It is better to teach them how to make money than to give it to them, and what you don’t spend in your lifetime they will. Think about that next time you are scrimping on a holiday.

Noel Whittaker is a director of Whittaker Macnaught, a division of St Andrew’s Australia. This advice is general in nature and readers should seek their own expert advice before making financial decisions. Noel’s e-mail address is noelwhit@gmail.com

David Thompson, Julie Lockeridge & Kim Evetta from Whittaker Macnaught are available to see clients

Who’s Name To Buy An Investment Property In

The question usually revolves around whether you prefer asset protection or tax benefits. Combining both gets more complicated.

If you are not concerned about asset protection you would probably prefer to hold a property in your personal name so that any tax losses from the property can be offset against your personal income. Make sure you crunch the numbers if you have a choice between holding the property in the name of a low income earner or a high income earning spouse. If it is only going to be running at a tax loss for a short period of time you should focus more on the tax situation once it becomes positively geared or the capital gains tax on its sale. A close to positive property should be held in a low income spouse’s name or a discretionary trust.

The trouble with a discretionary trust is that it cannot distribute losses so they sit in the trust until there is income to offset against them. This means you cannot offset the rental property losses against your own income. That is unless you have a source of income in the trust or another trust that can distribute income into the trust that holds the rental property, this income stream cannot be from your personal services. The advantages of a discretionary trust are that each year you can decide who in your family receives the profits or capital gain and a discretionary trust, being a separate entity from yourself gives you a reasonably good level of asset protection, providing it has a corporate trustee.

Companies are not suitable for investment properties because they do not qualify for the 50% CGT discount. Unit or fixed trusts can give you the negative gearing benefits but as they do not offer any real

asset protection or discretion to distribute profits they are no better than owning the property personally but they are more costly to run. Hybrid trusts are a combination of a fixed unit trust and a discretionary trust that depending on the promoter claim to provide all sorts of benefits. These are currently in the ATO spot light.

So in short none of the structures mentioned so far give you all the answers, basically you have to choose either the negative gearing benefits of offset the rental property losses against your own income or asset protection and flexibility to distribute profits. The only exceptions to this are when you can distribute profits from another trust into the discretionary trust that holds the investment property or when you hold the property in a Self Managed Superannuation Fund (SMSF).

Self managed superannuation funds allow you to still, through salary sacrificing, offset the investment property loss against you wages income even though the property is owned by the super fund. Up until age 60 any profits made from rent income are only taxed at 15% and capital gains at 10%. After 60 if you retire and put the fund into pension phase all rental income and capital gains are tax free to the fund and tax free when the proceeds pass from the super fund into your hands. And the asset protection is the best you can get providing you don't deliberately divert income to the fund to defeat your creditors. The down side is your money is locked away and you can only borrow against the property once so leverage is limited. For these reasons it is usually better to consider a SMSF in your forties or later

Warning to Credit Card Merchants

Apparently in a typical merchant contract with their bank there is a clause giving the banks the right to reverse a transaction when an overseas credit card is used.

It takes the banks several days to confirm whether an overseas credit card has been stolen so they deposit the money in your account before it has cleared. If the card turns out to be stolen then they have the right to reverse the entry and you have no recourse. So if you take an order for goods paid by an overseas credit card and dispatch them once you see the funds go into your account you are still vulnerable to not being paid for those goods.

There are people out there that know this and take full advantage of it, so be very suspicious if someone tries to use an overseas credit card.

Storm Financial

If you invested with Storm Financial and lost money, there is a good chance you can recover most of this if you borrowed the money through the Commonwealth bank.

If you had a margin loan that was called on in the September 2008 crash, due to administrative problems with Storm and the Commonwealth bank you would not have been notified of that call and your portfolio would have been sold up at the bottom of the market. In these circumstances the Commonwealth bank will reimburse you for 90% of the funds.

There is also recourse for people who had their homes overvalued, allowing them to borrow more than what the home was worth. There is also hardship protection in the form of reduced interest and a moratorium on repayments.

The bottom line is the Commonwealth bank has assured investors, who borrowed through them, that they will not lose their homes.

Waiting On Your Tax Refund?

The ATO upgraded its computer system in January and is having problems processing tax returns as a result. People who lodged their tax returns as far back as mid December and since are affected. Rumour has it that the delays could mean taxpayers will have to wait as long as April for their refund cheques, though the ATO promises to pay you interest. Just for the record the official line from the ATO is:

“Over the Australia Day long weekend the Tax Office converted over 27 million taxpayer records, 32 million accounts and 282 million forms to the new system. Of the approximately 700,000 stockpiled forms, the Tax Office has processed over 400,000. We are on track to have the remaining 300,000 processed by the end of next week and also resume normal processing”.

Guess they shouldn't have tried to do it manually. Surely if they had used a computer 1 record or 100 million records wouldn't have made any difference.

Tip for Dealing with Telstra

Ever been caught down the line of a long illogical conversation with Telstra's automated voice, desperately needing to speak to a real person but the automated voice keeps on asking the same silly question that you can't answer? Here is a hint, the words operator and help are not recognised at this stage but it appears the geniuses who created this program have set it to react immediately to a swear word starting with F with a pre cursor of "get". This will result in immediate connection to a real person.

Can't wait to see if this works the same way with the ATO.

Seminars

How To Claim Your Trip Around Australia As A Tax Deduction - 4th July, South East Queensland Presented in association with No Boundaries. Speakers Julia Hartman and Kym Lynch. Date claimer at this stage, location will be advised soon. We anticipate starting the presentation around 10am and following with a get together, BBQ lunch, informal discussions, yarns, travel tips etc.

Where is Julia?

Sydney, Nowra and Canberra.

Saving Tax on Your Investment Property – The Book

“Every investment property tax-related question you’ve ever wondered about is answered here and – perhaps more importantly – the ones you didn’t think to ask but should have! For property investors who want to refine their strategy for maximum gain, this resourceful handbook will make a great constant companion.” Eynas Brodie, Editor, Australian Property Investor magazine.

Combining Noel Whittaker's easy reading style with Julia Hartman's mind numbing attention to detail was a major challenge which ran way over schedule but it is finished, printed, and in the book stores. You can also purchase it online by going to: www.bantacs.com.au/property.php. The cost is \$29.95 plus \$5.95 postage – tax deductible of course!

Ask BAN TACS

For \$39.95 you can have your questions regarding Capital Gains Tax, Rental Properties and Work Related Expenses answered. For your Accountant, we will include ATO references to support our conclusion. Just go to www.bantacs.com.au and look for the Ask Bantacs link under 'Most Popular' on the home page.

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<i>Alienation of Personal Services Income</i>	<i>Buying a Business</i>	<i>Capital Gains Tax</i>
<i>Claim Your Trip Around Australia</i>	<i>Claimable Loans</i>	<i>Claiming a Motor Vehicle</i>
<i>Defence Forces [Military]</i>	<i>Death and Taxes</i>	<i>Division 35</i>
<i>How Not To Be A Developer</i>	<i>Divorce</i>	<i>FBT for PBIs</i>
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<i>Self Managed Superannuation Funds</i>	<i>Wage Earners</i>	<i>Year End Tax Strategies</i>

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.