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How Time Flies

The 4th July is our 25th birthday though originally we traded under the name of Julia Hartman, sharing a local Beachmere shop front with a solicitor. When we moved to Ningi in 2000 BAN TACS was born, Beachmere And Ningi Taxation, Accounting & Computer Services.

This newsflash started in 2000 to help our clients prepare for the GST so it has been going for over 17 years.

When You Demolish Your Home And Rebuild

The ATO has withdrawn ID 2003/232 on the basis that the issue is now covered on page 74 of the ATO's 2016 guide to capital gains tax https://www.ato.gov.au/forms/guide-to-capital-gains-tax-2016/?page=74#Constructing_renovating_or_repairing_a_dwelling_on_land_you_already_own

The problem with demolishing your home and building a new one is that once the dwelling is destroyed, at law the main residence exemption is lost forever. It is a concession from the ATO to allow you to pretend that the old home and the new home are the same home for CGT purposes. This ruling has always been limited to homes that were completely covered with your main residence exemption. But, remember that you can continue to cover a property with your main residence exemption for up to 6 years at a time while you rent it out, under section 118-145 1997 ITAA. Under this new guideline homes covered by section 118-145 do not appear to qualify because it specifically says 'you did not use it to produce assessable income'. This would also be the case if you ran a business from home while you were living there. The old ID 2003/232 did not include these words. Further, the old ID 2003/232, unlike the new guide did not require that you continue to live in the new home right up until the time you sell it.

All in all this change means that a demolish and rebuild puts your main residence exemption in a very tenuous position. One simple slip up of life not going according to plan and you could lose your main residence exemption for the whole time you owned the old house and be required to keep records for the whole time you own the property.

Small Business Trading In A Trust

If you operate your small business through a trust you have the option of paying yourself wages or taking your income as a profit distribution. Which one you choose or how you split your income between the two is part of your year end tax strategy meeting with your Accountant. There are lots of variables depending on your particular circumstances. The small business tax offset is a new addition to this discussion.

For the 2017 financial year the tax offset is 8% of the tax you pay on your small business income. It is based on your average tax rate, so for example, the tax on \$150,000 is \$43,132. Your average tax rate is $43,132/150,000 = 28.75\%$. Now let's say \$75,000 of your taxable income is net profit from small business. The tax you are paying on that \$75,000 is $\$75,000 \times 28.75\% = \$21,563$. You get a tax offset (a credit that you can use to pay your tax but is not refundable) of 8% or \$1,000 whichever is the lesser. $\$21,563 \times 8\%$ is \$1,725 so your offset would be the maximum of \$1,000. You would not have got that offset if you had taken that \$75,000 as wages.

How much you need to take as profit rather than wages depends on your tax bracket so this takes some planning and depends a lot on what other income you have. If, as a rule of thumb, your average tax rate is 25% then you would need to receive a profit distribution from your trust of at least \$50,000 to make sure you get your full \$1,000. For example, $\$50,000 \times 25\%$ is \$12,500 in tax, 8% of that is \$1,000 as a tax offset.

It is not your marginal rate but your average tax rate that applies so this includes income under the tax free threshold ie where the tax rate is zero, this brings down the average rate compared with the marginal rate.

Yes, this is complicated but something you need to consider before you send your PAYG summaries to the ATO so you need to discuss this with your Accountant before the end of the financial year or risk losing \$1,000 in tax. This tax offset is per taxpayer, over 18, in most cases. If you have a trust that is distributing its profits around your family this could mean several thousand dollars. So don't miss out, get along to your Accountant.

The offset also applies to sole traders and partnerships but as they can't pay themselves wages there is no risk of the wages you pay depriving you of this offset.

Valuing Your SMSF's Assets Is More Important Than Ever

Wide-ranging superannuation reforms come into effect on 1 July 2017 in particular for people with a total superannuation balance of \$1.6 million or more. This is not just the superannuation you have in your SMSF but all of your superannuation. If your balance is close to \$1.6 million it is important to be relying on an irrefutable valuation of the assets held in your SMSF. If there is some uniqueness about the assets it may be better to pay a qualified valuer.

At 30 June 2017, SMSF Trustees will need to know the total superannuation balance held by members whose balances are close to or exceeding \$1.6 million.

Your total superannuation balance is the total value of your accumulation interests, retirement phase interests, any rollover amounts not included in those interests and any money you have lent to your SMSF. The balance is valued at 30 June each year and it is this value that may determine what you can and can't do during the following year. For example, if your total super balance is \$1.6m or more at 30 June, you are restricted from making further non-concessional contributions in the next year as these contributions may create an excess contribution. And, if your balance is close to the \$1.6m cap, then the fund can only accept limited non-concessional contributions.

If you are receiving a pension or annuity, a \$1.6m "transfer balance cap" applies to amounts in your tax-free pension accounts. The cap is essentially a limit on how much money a member can transfer into or hold in a tax-free account. If you have \$1.6m or more in a pension phase account, you will need to reduce the pension value level back below the cap before 30 June 2017. If the excess amount is not removed from the pension phase account, the amount will be subject to a transfer balance tax. In some SMSFs moving funds out of pension phase may only mean a book entry.

If you opt to sell fund assets to manage the cap, transitional capital gains tax relief may be available to manage any adverse tax outcomes.

The bottom line is if you have anywhere near \$1.6 million in total in superannuation, not just in your SMSF then you must see your Accountant or financial planner asap.

Travelling Workers

With the new financial year about to begin here is a bit of a summary of where we stand with travelling workers. Refer newsflash 318 <http://www.bantacs.com.au/newsflash-318/> for a review of our AAT case. We are pursuing this further if we can find support as there are a lot of problems with the outcome and it certainly doesn't give us any clear guidelines because it totally ignored all the shearers cases which are in-line with the sort of work travellers do. But what to do now?

No guarantees you will be able to claim your travel, food and accommodation but it would be a shame if you hadn't kept the records if we are successful. So please still keep all the records as per <http://www.bantacs.com.au/topics/travelling-workers/>

What we have learned from the case is it is not enough to have what has previously been accepted so we would like you to also do the following:

- 1) Move from one place of work to another as frequently as you can but of course don't just quit your job to move. Moving with the season is ideal, for example the short cherry season in Young.
- 2) In the travel record for your vehicle we also recommend you do over and above that required by the law. Explain every single trip in your vehicle not just a total for the day. Dissect the day into every trip, for example from your van to the first place on the farm you work, then when you move to another place on the farm each and every time then when you go back to the van, also when you go to town and what you go there for. Don't give them any opportunity to imply there is something in the day that is private because in our AAT case, even though there was plenty of work related travel in a day they would not allow one cent to be claimed because the taxpayer had not dissected out the odd occasion that he travelled for purposes that may have had some private element.

When You Can't Manage To Sell The Deceased's Home Within The Two Year Deadline

Section 118-195 allows a deceased's person's home or a dwelling they purchased before 19th September, 1985 to not be subject to CGT if it is sold by the estate or heirs within two years of death. A few years ago, due to lobbying by the Australian Law Society, this section was modified to allow the ATO to have discretion to extend this period of time. There are no specific guidelines in the law as to when this discretion should be exercised but through various private rulings the ATO has given some examples of when they would consider the exercise of discretion to be appropriate. Note they do point out that it is not an exhaustive list. Four of the possible grounds for discretion are listed below with a link to a private ruling that gives a practical application.

- 1) Ownership of a dwelling or will is challenged – In <https://www.ato.gov.au/rba/content/?ffi=/static/rba/content/1012817431584.htm> there was a family provision claim made against the will.
- 2) The complexity of the estate delays its completion – In <https://www.ato.gov.au/rba/content/?ffi=/static/rba/content/1012914816392.htm> the deceased died without a will and the public trustee was appointed to administer the estate, very little happened for years and eventually the beneficiaries managed to gain control of the estate and promptly sold the property but outside the 2 year period.
- 3) Unforeseen or serious personal circumstances of a trustee or beneficiary arose during the two year period – In <https://www.ato.gov.au/rba/content/?ffi=/static/rba/content/1012924318507.htm> the executor was unable to act and had to be replaced, then the replacement executor's child got critically ill. Then the executor had to have an operation.
- 4) There were unexpected delays in the sale being settled or the contract falls through due to circumstances outside of the control of the estate or beneficiary – In <https://www.ato.gov.au/rba/content/?ffi=/static/rba/content/1012817790102.htm> there was a contract that would have settled in time but the purchaser kept on delaying and eventually the contract fell through.

There also seems to be an underlying influence that your circumstances will be viewed more favourably if the property has not been used to produce income since the deceased died. On the other end of the scale in

<https://www.ato.gov.au/rba/content/?ffi=/static/rba/content/1012467375997.htm> the ATO did not exercise its discretion simply because the estate was waiting until the heritage listing was lifted before it sold the property.

If the property is not sold within 2 years of death or within the longer period allowed by various concessions in section 118-195 then the cost base goes back to the market value at the date of death, plus holding costs following that date, selling costs and even a portion of probate costs. Note the date of sale for the purposes of this section is the date of settlement, not the date that the contract to sell was signed.

We Are Very Serious About Facebook

Sure, there are times when we have a bit of fun and even the serious stuff has great funny pictures a lot of the time. Nevertheless, we have found facebook to be an excellent way to keep our clients up to date on the important issues that come up from time to time. In between we use it to educate our clients in small bite size bits on how to minimise their tax. Newsflash will of course give you the detail you need to know but facebook allows us to be in your face as soon as it happens and inform you in a more enjoyable fashion, less bogged down with detail.

BAN TACS is passionate about making sure our clients take every tax advantage and avoid every tax trap. There is no Accounting firm that provides as much free, relevant information as we do. We love doing it and it shows. Please make sure you make the most of this by following us on facebook. To keep the posts that appear on your timeline as relevant as possible we have two pages we post to. BAN TACS Accountants Pty. Ltd. <https://www.facebook.com/bantacs/> is the page for everything that is not property related and BAN TACS Property Accountants for Investors and Developers <https://www.facebook.com/BANTACSpropertypage/> has all the property related information. So, if you are not interested in property you can just like the first page but if you are into property make sure you like and follow both.

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 of the 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?

Heading north for the winter of course.

Askbantacs Free Notice Board

For \$79.95 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 to support the conclusion, answers are generally 300 to 700 words long depending on the complexity.

First check the Notice Board, your question may have already been answered at someone else's expense.

One very generous askbantacsers has allowed their question and answer to be posted on the notice board. <http://www.bantacs.com.au/QandA/index.php?q=823> Selling an inherited property more than 2 years after date of death, when one of the 3 beneficiaries has been living in it.

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.