

# 2015/16 Financial Year End Tax Strategies

**Phone 13000 22682**

For website technical support, email [technicalservices@bantacs.com.au](mailto:technicalservices@bantacs.com.au)

For all accounting & tax support contact one of our offices or just go to [www.taxquestions.com.au](http://www.taxquestions.com.au)

<b>NEW SOUTH WALES</b>  Sydney 1300 367 688 <a href="mailto:svdnev@bantacs.com.au">svdnev@bantacs.com.au</a>  Burwood 1300 367 688 <a href="mailto:burwood@bantacs.com.au">burwood@bantacs.com.au</a>  Central Coast 02 4390 8512 <a href="mailto:centralcoast@bantacs.com.au">centralcoast@bantacs.com.au</a>  Hornsby 1300 241 248 <a href="mailto:hornsbys@bantacs.com.au">hornsbys@bantacs.com.au</a>	<b>QUEENSLAND</b>  Brisbane 1300 911 227 <a href="mailto:brisbane@bantacs.com.au">brisbane@bantacs.com.au</a>  Caboolture 07 5497 6777 <a href="mailto:admin@bantacsningi.com.au">admin@bantacsningi.com.au</a>  Gold Coast 0435 437 586 <a href="mailto:goldcoast@bantacs.com.au">goldcoast@bantacs.com.au</a>  Mackay & Whitsundays 07 4951 1848 <a href="mailto:mackay@bantacs.com.au">mackay@bantacs.com.au</a>  Ningi 07 5497 6777 <a href="mailto:admin@bantacsningi.com.au">admin@bantacsningi.com.au</a>  Toowoomba 07 4638 2022 <a href="mailto:toowoomba@bantacs.com.au">toowoomba@bantacs.com.au</a>	<b>VICTORIA</b>  Melbourne 03 9111 5150 <a href="mailto:melbourne@bantacs.com.au">melbourne@bantacs.com.au</a>  North Melbourne 1300 123 842 <a href="mailto:northmelbourne@bantacs.com.au">northmelbourne@bantacs.com.au</a>  <b>SOUTH AUSTRALIA</b>  Adelaide 08 8352 7588 <a href="mailto:adelaide@bantacs.com.au">adelaide@bantacs.com.au</a>  <b>FIND OUT MORE</b> <a href="http://bantacs.com.au/aboutus/">http://bantacs.com.au/aboutus/</a>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

*Visit [Bantacs.com.au](http://Bantacs.com.au) [About Us](#) section to view office location details and information about BAN TACS practitioners*

**Liability limited by a scheme approved under Professional Standards Legislation**

Please note this booklet is updated in May each year. Until the budget is released our strategies for the year are not certain. This booklet is provided to give you some guidelines in planning but please check again in June before you commit.

## Facebook

For daily tax tips, warnings, updates and a bit of fun make sure you like your facebook property page <https://www.facebook.com/BANTACSpropertypage/>

## Introduction

Before embarking on any year-end tax strategy it is first important to consider whether you are going to be in a higher tax bracket next financial year. Examples of how this could happen would be a capital gain because you are going to sell an asset or your pay may go up next year. If your tax bracket is going to be higher next year, then it may be better not to drag deductions from next year into this year or delay income from this year to next year. Sure you will have the advantage of the tax refund sooner but is it worth the extra tax rate that will apply to the income you can't offset with those deductions next year?

If your taxable income exceeds \$80,000 you will get an extra \$7,000 in the 32.5% marginal rate in the 2017 financial year that you won't get in the 2016 financial year. But if you are sure that your 2017 income will be above \$87,000 then you do not need to do anything. If you think there is a bit of give around the \$80,000 to \$87,000 area over the two years and you are unlikely to go over that amount in taxable income, then it may well be worth manipulating your income to make sure that in the 2016 financial year your income just gets over the \$80,000 mark and in the 2017 financial year your income just gets over the \$87,000 mark.

If you are a high income earner, around the \$180,000 tax bracket just try and keep both years on the same side of this threshold. The aim is to minimise your tax over the years by staying in the same lowest possible tax bracket, there is little to gain by dragging your income down this financial year by manipulating deductions out of the 2017 financial year or delaying income into the 2017 financial year if that then pushes you over \$180,000 and into the higher tax bracket in the 2017 financial year.

On the other end of the income scale, many parents, who are entitled to part B from Centrelink this year who will not be entitled to it next year because their child is over 6 years of age may as well draw deductions into this year to make sure they get the maximum they can. Centrelink recipients should consider that increasing investment losses will not help because these are added back.

### Personal Income Tax Rates –

2015-2016		2016-2017		2017-2018	
Pay No Tax if Under \$20,542		Pay No Tax if Under \$20,542		Pay No Tax if Under \$20,542	
Up to \$18,200	Zero Tax	Up to \$18,200	Zero Tax	Up to \$18,200	Zero Tax
\$18,201 to \$37,000	19%	\$18,201 to \$37,000	19%	\$18,201 to \$37,000	19%
\$37,001 to \$80,000	32.5%*	\$37,001 to \$87,000	32.5%*	\$37,001 to \$87,000	32.5%*
\$80,001 to \$180,000	37%	\$87,001 to \$180,000	37%	\$87,001 to \$180,000	37%
Over \$180,000	47%	Over \$180,000	47%	Over \$180,000	45% LNP or 47% ALP

Note amounts do not include Medicare Levy – generally 2%

\*Can be as much as 34% while low income tax offset shading out. The maximum offset is \$445 which is reduced by 1.5% of every dollar you earn over \$37,000 so if your income reaches \$66,667 you are not entitled to any tax offset at all. Accordingly, between \$37,001 and \$66,666 your effective tax rate is 34%

For Foreign Residents their tax rate starts from the first dollar at the tax rate for income under \$80,000. Once it exceeds \$80,000 the rate is the same as it is for residents once they reach \$80,000 but no Medicare Levy

The 2% deficit levy imposed on individuals' taxable income in excess of \$180,000 pa will finish on 30<sup>th</sup> June, 2017 if the government is re elected. If instead Labor are elected it will continue until there is no deficit.

The important thing to remember with bringing forward deductions, is that you lose them for the following year so then you will have to bring more forward just to bring yourself into your normal tax position. You will have to bring similar deductions forward every year or have a year you miss out on the deductions and pay more tax. You become locked in, the benefit will only really affect the first year. Accordingly, bringing forward deductions such as paying interest in advance is best saved for an unusually high income year. Or the year before an unusually low income year.

One of the most effective tax planning strategies is to level out your income over each year and each member of your financially dependent family over 18. It does not particularly matter that the amount of income is the same each year and the same for each family member all that matters is that the tax bracket is the same.

## Before You Rush Out and Buy Plant & Equipment

Small business with a turnover of more than \$2mil but less than \$10mil should wait until after the 2<sup>nd</sup> July, 2016 to purchase plant and equipment under \$20,000. If the LNP are returned they will qualify for an immediate write off of the purchase price. But only for that financial year.

\$20,000 immediate write off incentive is due to end at 30<sup>th</sup> June 2017.

If your business has a turnover over of less than \$2million you will be entitled to claim an outright deduction for any plant and equipment you purchase, costing less than \$20,000 in the 2016 and 2017 financial years. Note both these amounts are after deducting GST if you are registered, if you are not registered for GST then then \$20,000 threshold is the GST inclusive price. The total cost installed ready for use must be under

\$20,000. If there is some private use of the asset, then that portion of the purchase price cannot be claimed as a tax deduction but that portion cannot be used to reduce the purchase price down under the \$20,000 threshold.

If your low value pool goes below \$20,000 by the end of the financial year you are entitled to write off any remaining balance. This may already be enough tax deductions for the year, check with your Accountant, you don't want to drag yourself down into a low tax bracket this year and waste part of your claim when delaying the purchase, a month would see you claim it next year when you are in a higher tax bracket. Remember that this immediate write off is only dragging future deductions into this financial year. The ATO is not really contributing anything extra towards the purchase price you are just going to get it sooner. The higher your income in the year that you spend the money, the higher your tax bracket so the more the ATO will contribute towards the purchase.

This concession will not apply to equipment you lease so make sure you use another method of finance. This is a small business concession so will not apply to rental properties.

Now here is a little trap. You may have a small business capital gain and are considering buying a replacement asset so you can roll the gain into that. The small business rollover concession effectively allows you to ignore a capital gain until the replacement asset is sold. Under these circumstances it is better to declare the capital gain, not roll it over. Then buy the replacement asset and offset it against the capital gain. Cancelling it out once and for all rather than having it raise its ugly head again when you sell the replacement asset. In short if the replacement asset is less than \$20,000 it is better not to utilise the CGT replacement asset rollover concession.

## Timing Strategies

### Bringing Forward Expenses

Bearing in mind the reasons why you may not want to do this, that were covered in the introduction, here are some ways that deductions can be pulled into this year from next year.

#### Payments in advance:

You can only pay a maximum of 12 months in advance. In the case of interest payments check if the bank will let you do this and that they do take it as an interest payment not just let it reduce the loan balance.

If you have recently purchased a property, consider organising your quantity surveyors report before the end of the year so that you get a tax deduction for the cost in your 2016 tax return.

If you pay rates, insurance or body corporate fees in advance think carefully about the no more than 12 months in advance rule. For example, if your body corporate fees are already paid up to 31<sup>st</sup> December 2016 then you can't go and pay another 12 months' worth, you need to just pay 6 months extra.

If you are in business and your turnover is more than \$2mil you will not be able to claim payments in advance.

#### Repairs and maintenance:

You need to make sure you at least incurred the expense before the end of this financial year. This means organising for the work to be done even if you have not paid for it yet. This is particularly important if your tenants have moved out and you do not intend re letting the property. If you don't "incur" the repairs now you will not be entitled to a tax deduction next year because the property has not earned any rental income in that year.

So just what is classed as a repair? Initial repairs are not deductible. If the house needed painting when you bought it then painting it would be an improvement. On the other hand, if during the time of your ownership the paint starts to peel and you repaint, these expenses would be a deduction.

A repair can become an improvement, which is not deductible, if it does not restore things to their original state i.e. replacing a metal roof with tiles. But a change is not always an improvement. The ATO says the cost of removing carpets and polishing the existing floorboards is a deductible repair yet underpinning due to subsidence is considered to be an improvement. Pulling up old floor tiles and replacing them with similar tiles would be a repair as long as the tiles were in good condition when you purchased the property.

Tree removal is claimable if the trees have become diseased or infested during the time of ownership. Removal is also claimable if the tree is causing damage such as roots interfering with pipes and the damage was not present when you purchased the property. If a tree is removed because it may cause damage in the future or you are fed up with the leaf litter that has always happened since you bought the property, then you are making an improvement which is not tax deductible, it will only be useful in your CGT calculation.

Take care to perform repairs only when the premises are tenanted or in a period where the property will be tenanted before and after with no private use in the middle. It is better not to make repairs in a financial year during which you may not receive any rental income. If a property is used only as a rental property during the whole year, then a repair would be fully deductible even though some of the damage may have been done in previous years when the property was used for private purposes.

Don't replace something in its entirety. For example, replace a worn fence a bit at a time over a few years rather than all at once. Replacing all the cupboards in a kitchen so they match rather than just the damaged one will mean that none of the expenditure is deductible on the other hand replacing a vanity can be deductible as a repair if the pipes from the old vanity are used.

### **Buying plant and equipment for a Rental Property or for Work:**

As plant and equipment are usually depreciated over many years buying them towards the end of the financial year could mean you only qualify for one month's depreciation which would be a very small fraction of what you have spent.

For rental properties and work related expenses items costing \$300 or less can be written off immediately. Like items must be added together when applying the \$300 test so it may be better to buy one set of curtains this year and wait until July before you buy the next set. Items costing under \$1,000 will qualify for depreciation of 18.75% in the first year, regardless of when you purchase them. Both these thresholds are per owner so a \$1,900 hot water system for a property owned by 2 people would qualify as under \$1,000, likewise if a range hood cost \$500 yet there are two owners of the property then it can be written off immediately. Of course it is only the business use portion of an asset that can be written off.

### **Manipulating Income**

If you place money on term deposit and the interest is not payable until the next financial year there is no requirement to accrual interest earned in this financial year.

Be careful, some tenants for their own tax planning strategy may want to pay rent in advance. Unless you can apply the Arthur Murray principle and claim that there is a risk that you may have to refund that income, then you are stuck with declaring it as income in the year received.

## **Superannuation**

### **Superannuation Concessions for Low Income Earners**

If your income is under \$35,454 the government will make a co contribution of up to \$500 into your superannuation fund if you contribute \$1,000 out of your after tax pay that you don't claim a tax deduction for. Neither yours nor the government's contributions are taxed going into the superannuation fund. The \$500 starts to reduce once your income is over \$35,454 and reaches zero if your income is \$50,454. The income for this test is not your taxable income. It is all your assessable income, less business expenses only. Assessable income includes reportable fringe benefits and reportable (salary sacrificed) superannuation contributions. If you own a rental property in just your name then only the rental income is included, no reduction for expenses but if you own the property with another person then it is the net rental income that is taken into account. In the case of self-employed their assessable income is not reduced by any superannuation contributions for which they claim a tax deduction. Note you also need to have 10% or more of your income from employment or business from a sole trader or partnership. You have to be under 71 years of age and if between 65 and 71 satisfy a work test (40 hours within 30 days). Temporary residents do not qualify. You need to lodge a personal tax return to trigger the contribution into your super fund.

The following table provides some examples of how total income is counted for co-contributions and the test that 10% of income must come from either employment or business in a sole trader or partnership.

<b>Income source</b>	<b>Total income</b>	<b>Eligible income for the 10% test</b>
Salary or wages, including employment income through a company or trust	Yes	Yes, where you are treated as an employee for the purposes of the <i>Superannuation Guarantee (Administration) Act 1992</i>
Director fees as a company director	Yes	Yes, where you are treated as an employee for the purposes of the <i>Superannuation Guarantee (Administration) Act 1992</i>
Business income as a sole trader	Yes	Yes
Other income from individually held assets	Yes	No

(including interest, rent and dividends)		
Business partnership distribution	Yes	Yes
Non-business partnership distribution	Yes	No
Distribution from a trust	Yes	No

### Timing of Superannuation Contributions

Employers have until the 28<sup>th</sup> July to make the superannuation contributions they are obligated to pay for the June period, under the superannuation guarantee. But if the contribution is made after the 30<sup>th</sup> June, 2016 the employer will not be entitled to a tax deduction for it until the 2016/2017 financial year even though the liability fell in the 2015/2016 financial year.

If you are contributing salary sacrificed contributions or have employees who are close to their cap you should also take a careful look at their particular circumstances. The amount contributed for the purposes of the cap is also based on the date it is received by the fund, providing the fund allocates the amount immediately to the members account. If an employer delays making the contributions relating to the June quarter until after 30<sup>th</sup> June it could result in the employees missing out on maximising their cap this year and possibly exceeding their cap next year.

On the other hand, if last year you made the June contribution in July but this year you are making it in June your employees will have 5 quarters' worth of contributions in the 2015/2016 financial year. So before you do this make sure you will not be pushing anyone over their cap.

In Peaker 2012 AATA 140, the employer posted the contribution on 28<sup>th</sup> June but it was not recorded as income of the fund until 5<sup>th</sup> July. This meant that the employee exceeded his cap for the following year. The AAT upheld the ATO's assessment of excess contributions tax as there were no special circumstances which would allow the amount to be allocated to another year.

On the other hand, in ID 2012/16 The ATO accept that a member of a SMSF who only qualifies for a \$25,000 cap can claim a tax deduction of \$50,000 by making two \$25,000 contributions in the same financial year. In this case the last contribution was received by the SMSF on 28<sup>th</sup> June and the SMSF trustee (the member in another hat) put it into an unallocated account until the 4<sup>th</sup> July so it counted towards the following years cap yet the tax deduction was allowed on the basis of the time the SMSF received the income. Take care to read the ruling in detail before implementing this strategy, for example the governing rules of the fund must allow contributions to be placed in an unallocated account and there must only be one member's contribution in that account.

Due to data matching the ATO will always be informed should your cap be exceeded.

Employees when negotiating their salary package should consider including a clause requiring their employer to physically make the superannuation contribution in the month that it is sacrificed.

The limits or caps on deductible (concessional) superannuation contributions for the 2015/2016 financial year are:

Under 50 years of age	\$30,000
50 to 59	\$35,000
60 or more	\$35,000

These caps will also probably apply to the 2016-2017 financial year.

### Spouse Contribution

The other low income concession is for taxpayers on any income level who have a low income spouse. If the low income spouse has assessable income plus reportable FBT and reportable superannuation contributions of less than \$10,800 their spouse can make a superannuation contribution for them of up to \$3,000 and receive a tax offset of 18%. A tax offset reduces the amount of tax the higher income spouse has to pay. It can mean that you will receive a refund of any tax you may have paid during the year because the offset is used to pay the tax instead but if the higher income spouse's income is so low that they do not have any tax liability then the offset is wasted. So this arrangement is only beneficial when the spouse making the contribution has a taxable income above \$20,582. As the superannuation contribution for a low income spouse is not actually claimed as a tax deduction it is not taxed in the hands of the superannuation fund. If the low income spouse's assessable income plus reportable fringe benefits and reportable super contributions is more than \$10,800 but less than \$13,800 the higher income spouse will still qualify for some tax offset the shade out rate is 18%.

The work test (40 hours in 30 days) applies between 65 and 69. Once the spouse reaches 70 no spouse contributions can be made. There is a nice little trick if the low income spouse is between 55 and 65 and retired. The contribution can be made and then withdrawn, tax free, a few days later yet the high income spouse will still qualify for the tax offset.

In all cases above make sure the money is actually in the superannuation fund before 30th June, 2016.

## Danger Zones

This section is not so much about how to plan for the best tax outcome at year end. It is more a warning about the simple slip ups that can completely stuff it for you.

- 1) Make sure you do a minute for your Discretionary Trust Profit Distribution before 30<sup>th</sup> June. Note children under 18 are only allowed to earn \$416, in passive income a year before being subject to tax at the top marginal rate. If you intend distributing some of the trust profits into a bucket company, make sure you consult your accountant first.
- 2) If your Discretionary Trust has received franking credits make sure it makes a profit so the franking credits can be distributed. The profit must exist before including the franking credits as income.
- 3) Make sure any super contributions have been deposited into the fund's bank account before 30<sup>th</sup> June
- 4) If you personally contributed to superannuation in 2014/2015 make sure you have notified your fund if any of that contribution has been claimed as a tax deduction, before 30<sup>th</sup> June, 2016 even if you have still not lodged your tax return
- 5) Take your car speedo reading at 30<sup>th</sup> June, just in case.
- 6) If you are in your own business but operating through a trust or company and pay yourself a wage, before the year end you should consider checking whether the business is profitable after it has paid your wages. If your wages push the business into a loss, at best it will be carried forward for next year but you will be stuck with extra taxable income in your tax return. If there is any risk of this happening it may be better for you to stop paying yourself a wage for the rest of the year. If the business does make a profit you can still pay it to yourself as a profit distribution.

## Start Diaries Before the End of the Year

For a diary to apply to the 2015/2016 financial year it must be started before 30<sup>th</sup> June, 2016. Like our Facebook page <https://www.facebook.com/BANTACSpropertypage/> then email [facebook@bantacs.com.au](mailto:facebook@bantacs.com.au) so we have your email address and we will email you back an electronic spread sheet to make this job a lot easier.

**Phone** - A detailed phone account statement analysing each phone call will substitute for a diary on a mobile phone and for the STD and mobile calls on the home phone but unless your local calls from home are itemised you will have to keep a diary for them. Just divide a piece of paper into two, one side for business and the other side for private. Tick the relevant column when you make a local call. Do this for 1 month to work out the ratio of business to private calls and apply this percentage to the local calls on your phone statement. Phone rental is apportioned on the total dollar value of the business calls as a percentage of all calls. The ATO is getting very pedantic about diaries as it recently was successful in persuading a court to disallow a taxpayer any claim for mobile phone calls because the taxpayer did not have a diary yet the taxpayer used the phone 95% for business.

**Electricity** - You can claim electricity based on the number of hours you have used a room solely for work related purposes. The rate is 45 cents an hour which also covers the other costs associated with the room such as furniture and carpet wear. You will need to keep a diary for a month to substantiate this claim.

**Cars** - You can use the kilometre rate if you only want to claim 5,000 kms per car you own. The 5,000 kilometres is per car per owner so if you rotate cars with your spouse and you both use your car for work purposes you can claim up to 10,000kms each. The 2015/16 kilometre rates are 66 cents for all cars.

You may be able to claim for your car if you transport bulky equipment to and from work, if there is no secure storage at work. A claim is also allowable for travel to an abnormal workplace if you have a normal workplace. Also consider travel during the day after you have reached work i.e. banking or travel to another job. In order to be able to make these claims you must have a detailed reasonable estimate of the kilometres travelled and which car you used. This is simply a diary of the trips you did and the kilometres travelled. If the

distance is the same every day record the days travelled. A one-month diary is ok if this is reflective of the rest of the year but don't forget those one off trips at other times during the year.

If you are going to travel considerably further than 5,000km per car consider keeping a log book for 3 months that is started before 30<sup>th</sup> June. Also keep receipts for all expenses all year and take the speedo reading each 30<sup>th</sup> June. More details on the record keeping requirements are in our Claiming a Motor Vehicle Booklet.

## Donations

Before you make a donation make sure the charity is tax deductible. This can be done very simply by going to <http://www.abn.business.gov.au/DgrListing.aspx> putting in the charity's name and checking it has "deductible gift recipient status"

## Capital Gains

If you have a capital gain analyse your share portfolio for a capital loss that you intend to realise soon. Better it be realised this financial year than next as it can only be offset against your capital gain if it is realised in this year.

## Tax Minimisation Products

This refers to investments specifically designed to reduce your tax. Firstly, these products generally shift the tax to their pockets as they carefully arrange the investment so it is only marginally better than the tax saving and then only if the forecasts are correct. Secondly do not enter into these arrangements unless you have a product ruling from the ATO and make sure the arrangement is in accordance with that ruling.

## Non Commercial Losses (Div 35)

Division 35 prevents business losses being claimed against other income unless certain conditions are met but there is opportunity in the detail with some of these conditions, for example:

a) If the loss is primary production and your total gross assessable non primary production income is less than \$40,000 the loss may be offset against your other income. This concession also applies to a professional arts business. Note the \$40,000 does not include capital gains. If the other income is from a partnership, it is only your share of the net profit of the partnership that is added to your assessable income if the partners are natural persons. This makes forming a partnership a very attractive option even if APSI requires you to return the net profit as 100% yours because if you were a sole trader your assessable income would be the total sales of the business before deductions.

b) Losses can also be offset against other income if the assessable income from the business activity is at least \$20,000. The assessable income is sales plus the increase in stock i.e. closing stock less opening stock. Therefore, if you purchase more trading stock you will increase the closing stock and therefore increase the assessable income. Note the trading stock has to be on hand for it to be included in closing stock. So you cannot just order it and bring it into account as a creditor. Buying and selling will also increase assessable income so there are plenty of ideas to work with here. There is also a concession for the first year of trading. If a "reasonable estimate" would conclude that had you been trading for the full year you would have made \$20,000 worth of sales plus closing stock (no opening stock in first year) then you are considered to have turned over the \$20,000. This also applies to the last year of trading but in that year there will be opening stock.

Note none of these exceptions will help you if your taxable income exceeds \$250,000

## ACT Stamp Duty - A Big Tax Deduction before End June?

Properties in the ACT are subject to a 99-year lease. This means that the stamp duty you pay on purchasing the property qualifies as a tax deduction because it is a lease expense.

If you buy a rental property in the ACT before the 30<sup>th</sup> June you would qualify to deduct, this year, all the stamp duty paid on the sale providing you intend to use it as a rental property all the time you own it. Once again it is all about proving your thoughts. It is your intention for the property; over the whole time you will own it, which will determine how much of the stamp duty is tax deductible. If later you do change your mind that is ok, you do not have to pay back the deduction but best have a change of circumstances or the ATO will claim it had always been your intention not to use it 100% as a rental property. If you do apportion the stamp



duty and not claim a percentage of the stamp duty costs for the time that you don't expect the property to be earning rental income, then the amount you don't claim can be included in the cost base when you sell.

References 25-20 ITAA 1997, PBRs 1012017306675 and 22429. Note this is not a recommendation to buy property in the ACT.

## Wash Sales

TR 2008/1 is the relevant ruling on when the ATO will apply Part IVA (scheme with the dominant purpose of a tax benefit) to a share transaction that creates a capital loss in a year that loss would be very handy in offsetting a capital gain. Not a problem unless you somehow retain the benefit of the shares. So effectively all you have done is triggered a capital loss but still hold the shares in the hope of making a future capital gain.

A key quote from the ruling:

“The term *wash sale* does not have any precise meaning. In commerce the term wash sale is used to describe the sale and purchase of the same, or substantially the same, asset within a short period of time of each other. The sale and purchase cancel each other out with the result that there is effectively no change in the economic exposure of the owner to the asset. More generally, the expression wash sale is used to describe arrangements where a disposition of an asset occurs without an intention of ceasing to hold an economic exposure to the asset.”

Examples in the ruling are:

- (a) The taxpayer disposes of, or deals with, the asset and at the same time, or within a short period after, acquires the same or substantially the same asset,
- (b) Shortly prior to, or at the time of disposing of, or dealing with, the asset the taxpayer acquires the same, or substantially the same, asset;
- (c) Shortly prior to, at the time of, or shortly after disposing of or dealing with the asset the taxpayer enters into an arrangement to acquire the same, or substantially the same, as asset at a future point in time at a price that is substantially the same as the sale proceeds received on disposal of the original asset and acquires that asset under the arrangement
- (d) Shortly prior to, at the time of, or shortly after disposing of, or dealing with, the asset the taxpayer enters into derivatives or financial instruments that substantially provide continued exposure to the risks and opportunities of the asset, as if the taxpayer had continued to hold the asset,
- (e) Shortly prior to, at the time of, or shortly after disposing of, or dealing with, the asset the taxpayer enters into arrangements under which the taxpayer is entitled to, relative to the taxpayer's prior interest, the future income produced by the asset and/or any capital appreciation in the asset, or to a reimbursement for any future income produced by, or capital appreciation in the asset,
- (f) The taxpayer disposes of or deals with the asset to a company which the taxpayer is a member of, or to a trustee of a trust the taxpayer is a beneficiary or an object of, and the taxpayer controls or influences the company or trustee, or is the trustee or appointor,
- (g) The taxpayer disposes of or deals with the asset to a company which the taxpayer controls or has influence over but is not a member of, or to a trustee of a trust which the taxpayer controls or has influence over or is the trustee, or appointor or, but is not a beneficiary or an object of. The financial benefits of the asset are not distributed to the members or beneficiaries/objects but rather the company or trustee disposes of the asset to the taxpayer or enters into arrangements to provide the financial benefits of the asset to the taxpayer,
- (h) The taxpayer disposes of the asset or otherwise deals with the asset in circumstances where there is a significant overlap in the individuals who had direct or indirect interest in the asset before and after the disposal or dealing. For example, the asset is transferred from one wholly owned company to another, or between two trusts with the same trustee and class of beneficiaries or objects, or
- (i) The taxpayer disposes of the asset to family members and an arrangement or understanding exists between the parties to the effect that the asset will be reacquired by the taxpayer, the future income produced by the asset and or any capital appreciation in the asset will be provide to the taxpayer or applied for the benefit of the taxpayer or there is otherwise no change in how the financial benefits produced by the asset are utilised by the taxpayer when compared to what occurred prior to the disposal.

In paragraph 6 it states “Where a taxpayer disposes of shares in one company, and purchases shares in a competitor company that carries on a similar business, the shares in the two companies do not constitute substantially the same assets”. So at least you can still stay in the same industry and recognise a capital loss.



The ruling also targets sales to associates, so selling the shares to your spouse or selling your shares and your spouse buying the same may be caught

Of course you do not have to worry if the sale does not result in a loss. I have particular trouble with this attitude because the taxpayer is making a simple choice and Part IVA is not supposed to interfere with taxpayers simply choosing a course of action that is readily open to them. The ATO uses its usually elusive naughty thoughts argument. The scheme is supposed to be, thinking about, maybe even discussing future purchase prices with a broker, selling the shares to trigger the capital loss, with thoughts of buying them back. This sounds like, to borrow a concept from Hart's case, how can any rational person not consider this benefit?

## Medical Expenses Tax Offset

Before you go digging up all your medical expenses for the 2015/2016 financial year consider that the only expenses that now qualify are disabilities aids, aged care and attendant care.

## 2016 – 2017 Budget

This year is a bit different to most in that we really don't know what we will be getting until after the election on 2<sup>nd</sup> July, 2016. This creates many problems for taxpayers simply because Malcolm Turnbull chose to call an election just after the end of the financial year, dissolving parliament just after the budget so nothing could be debated. I wonder if he gave any thought at all to the timing. It couldn't be worse in my opinion. Taxpayers don't know what to do with their superannuation or business investment before the end of the financial year. Policies are also expected to change as the campaign moves along with amounts earmarked in the budget for pork barrelling but no detail.

I start with the changes that we can have reasonable confidence in as they are part of both Liberal and Labor's policies even though they may be dressed differently. For example, you can be sure the price of cigarettes will increase. Other policies that are similar between the parties are:

Retirees can only expect to receive a maximum of around \$75,000 in tax free superannuation each per year. Any amount over this will be taxed at 15%. This will begin on the 1<sup>st</sup> July 2017. The way the two parties implement their version of this differs but the result is very similar.

People earning income of less than \$37,000 (shading up to \$40,000) who are working and contribute \$1,000 into superannuation out of their after tax pay receive a \$500 co contribution from the government, at the moment it appears Labor will keep this. The LNP intend to change this to a tax offset of up to \$500 payable to the superannuation fund. This will come into effect on 1<sup>st</sup> July, 2017 and will not require an after tax contribution by the taxpayer. It is designed to offset any tax payable on their employer's superannuation contributions or any contributions they make for themselves that they claim a tax deduction for. If the offset is not used up for this purpose, then it is lost. Just a word of warning to taxpayers with a SMSF containing a negatively geared rental property. The tax offset is no use to you if the SMSF does not pay tax.

From 1<sup>st</sup> July, 2017 taxpayers with a "total income" of \$250,000 or more will have their deductible, non-concessional or salary sacrificed contributions tax at 30% instead of 15%.

From 1<sup>st</sup> July, 2016 the upper threshold for the 32.5% tax rate will move from \$80,000 to \$87,000. This means a reduction in income tax for all taxpayers whose taxable income exceeds \$80,000.

Now the rest of this boils down to who you think is going to win and of course there is still the question of whether the policies will make it all the way through parliament.

If the LNP wins:

Anti-detriment payments will be abolished from 1<sup>st</sup> July, 2017. This effectively means that families who lose the breadwinner before he or she retires will not receive the benefit of the 15% tax offset that would have applied if the member reached retirement. Yep a death tax. For more on this see my facebook rant for 8-5-16.

Taxpayers will only be entitled to put a maximum of \$500,000 in non-concessional, undeducted contributions into their superannuation in their life time. Anyone who has already put this amount in will no longer be able to make these sorts of contributions. Effective budget night 3<sup>rd</sup> May, 2016. Any excess contributions after this date will be returned but if you have more than \$500,000 that you contributed before budget night that pre budget night balance can stay in the fund. This could spell disaster for taxpayers who have signed to buy a property in their SMSF and were about to contribute the funds to their SMSF to buy it. They will have to default and lose their deposit.

From 1<sup>st</sup> July, 2017 the maximum annual concessional deductible contribution that you can make into superannuation will be \$25,000. The good news is that from that date the cut off age for superannuation contributions will be lifted to 75 years of age, the age limit is also increased for non-deductible non concessional contributions.

Taxpayers with employer superannuation support ie wage earners will no longer be prevented from making deductible concessional contributions for themselves. This will see the end of the need to utilise salary sacrifice to make additional superannuation contributions. Also there will no longer be a work test for taxpayers over 65 and under 75 to contribute to superannuation. Basically, from 1<sup>st</sup> July, 2017, you will no longer have to jump through a complex set of hoops to contribute deductible concessional contributions into superannuation. All you really have to worry about is the \$25,000 cap which includes contributions made by your employer.

If you have less than \$500,000 in superannuation and you have not used up your \$25,000 cap for deductible concessional superannuation contributions in a previous year you can roll the unused cap over into the current year to make a larger contribution. This rollover can only draw on unused caps dating back 5 years. This takes effect from 1<sup>st</sup> July, 2017.

The spouse contribution tax offset allows the high earning member of a couple to contribute up to \$3,000 into the superannuation fund of their spouse. The contribution is not taxed going in to the fund and the contributing spouse gets a tax offset of 18% of the amount contributed up to a maximum of \$540. Currently this starts to cut out when the low income spouse's income exceeds \$10,800. From 1<sup>st</sup> July 2017 the shade out threshold increases to \$37,000 with no offset available once income exceeds \$40,000. Before you rely on this check the fine print it is not based on taxable income, there are all sorts of add backs and the spouse must be under 75 years of age.

From 1<sup>st</sup> July 2017 transition to retirement pensioners will no longer qualify to hold their assets in pension phase. This means the earnings from these assets will no longer be tax free, they will be taxed at 15%. Rushing into a transition to retirement pension now won't help.

Removing paid parental leave entitlements for parents whose employer offers maternity leave but offering a \$1,000 baby bonus.

From 1<sup>st</sup> July, 2017 all businesses selling more than \$75,000 worth goods to Australians per year will be required to pay GST.

In the current financial year unincorporated small business income received by individuals will qualify for a tax discount of 5% up to a total discount of \$1,000 for the year. From 1<sup>st</sup> July, 2016 this will increase to 8% for businesses with a turnover of less than \$5million.

Small business with a turnover of more than \$2mil but less than \$10mil should wait until after the 2<sup>nd</sup> July, 2016 to purchase plant and equipment under \$20,000. If the LNP are returned they will qualify for an immediate write off of the purchase price. But only for that financial year.

The definition of small business will vary depending on the concession that is being applied. Here they are all in the one place

Small Business CGT concessions*	\$2mil turnover or \$6mil in business assets
Unincorporated Small Business Tax Discount in 2015-2016 *	\$2mil turnover
Unincorporated Small Business Tax Discount from 1 <sup>st</sup> July, 2016	\$5mil turnover
Ability to immediately write off assets under \$20k for 2016-2017	\$10mil turnover
No need for stocktake if change less than \$5,000 from 1-7-16	\$10mil turnover
Can Calculate GST on a cash basis and pay instalments	\$10mil turnover
Reduced Company Tax to 27.5% 2016 to 2017 financial year	\$10mil turnover
Reduced Company Tax to 27.5% 2017 to 2018 financial year	\$25mil turnover
Reduced Company Tax to 27.5% 2018 to 2019 financial year	\$50mil turnover
Reduced Company Tax to 27.5% 2019 to 2020 financial year	\$100mil turnover
Reduced Company Tax to 27.5% 2020 to 2021 financial year	\$250mil turnover
Reduced Company Tax to 27.5% 2021 to 2022 financial year	\$500mil turnover
Reduced Company Tax to 27.5% 2022 to 2023 financial year	\$1bil turnover

\*Already law

By 2024/25 the company tax rate will reduce to 25%

120,000 internships over 4 years offering employers an upfront payment of \$1,000 and a youth bonus wage subsidy of between \$6,500 and \$10,000.

If Labor win then probably the above won't happen, Labor are offering:

A reduction in the company tax rate to 25% but only for businesses with a turnover of less than \$2mil.

Limiting the amount of money private vocational education students can borrow under HECS to \$8,000 per student per year. Note this is not about University and TAFE courses it is about the private providers recently criticised in the press.

Not remove the 2% deficit repair levy on taxable incomes over \$180,000 until the deficit is repaired

Maintaining the current paid parental leave scheme where eligible parents receive 18 weeks of the minimum wage, regardless of employer support but not paid at the same time as employer support is received. More about this in our facebook Sunday soapbox on 15<sup>th</sup> May, 2016.

Removal of negative gearing for properties purchased after 1<sup>st</sup> July 2017 unless they are new builds. Chris Bowen explained new builds as completed within the last 12 months and the investor is the first owner after the developer. See Newsflash 306 [http://www.bantacs.com.au/newsflash/Newsflash\\_306\\_15th-February-2016.pdf](http://www.bantacs.com.au/newsflash/Newsflash_306_15th-February-2016.pdf)

Reduction of the CGT Discount to 25% on properties purchased after 1<sup>st</sup> July, 2017. More on this in Newsflash 306 [http://www.bantacs.com.au/newsflash/Newsflash\\_306\\_15th-February-2016.pdf](http://www.bantacs.com.au/newsflash/Newsflash_306_15th-February-2016.pdf)

Put a price on carbon and abolish the LNP scheme of paying polluters not to pollute.

No doubt there will be plenty more to add to this over the next two months. Please join us on Facebook <https://www.facebook.com/BANTACSpropertypage> for all the latest.

## Ask BAN TACS

For \$79.95 at Ask BAN TACS, <https://taxquestions.com.au/> you can have your questions regarding Capital Gains Tax, Rental Properties and Work Related Expenses answered. We will include ATO references to support our conclusion. There is also a notice board where some askbantac users have generously allowed their question and answer to be published. Lots of good real life information.

## More Information

Please make sure you continue to keep your knowledge up to date by [subscribe to our Newsflash reminder](#). There are many other booklets available on our web site <https://www.bantacs.com.au/media-library/booklets/> in fact the whole web site is full of useful information so also have a look around under topics.

## 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 make sure you see a BAN TACS Accountant before you sign



**Disclaimer:** The information is presented in summary form and could be out of date before you read it. It is only 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.