BAN TACS NEWSFLASH

National Accountants Group

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With the election now over, it is time for some year-end tax planning. We have lots of freshly updated information for you!

Year End Tax Strategies

For our latest 2019 edition of BAN TACS Year End Tax Strategies https://www.bantacs.com.au/booklets/Year%20End%20Tax%20Strategies%20Booklet%202019.pdf We waited until after the election to give you as much certainty as possible.

How to get your $25,000 Cap Just Right

Careful timing is absolutely necessary. This blog shows you how to get it down to the wire https://bantacs.com.au/Jblog/how-to-make-your-own-super-contributions/#more-309

Bucket Companies – Year End Strategies

In many ways it is back to business as usual, we were so scared of the ramifications of Labor's intention to tax trusts at a minimum rate of 30% and not refund franking credits that we have been overlooking many strategies recently. For example, avoiding trusts for properties clients might consider taking into retirement.

Probably the most immediate rethink is the use of bucket companies looking towards retirement. Given the right circumstances, a bucket company can receive a distribution from your trust and only pay 30% (27.5% if it is a trading trust) tax on that profit and tuck it away for future use. When the shareholders of the bucket company retire and have very little other income, they can distribute franked dividends to themselves and get a refund of the tax the company paid. This is a great way of putting money aside for a lower tax year but you have to be very careful not to be caught by Div 7A. The funds are best left in the company and invested in the company's name until distributed as a dividend.

Now if you already have a bucket company with franking credits awaiting distribution AND this bucket company is not eligible for the 27.5% tax rate, then it may be time to set up a new one. As once a company qualifies to have its profits taxed at 27.5% then it must frank all its dividends at that rate. If the company has profits that were taxed at 30% it is not going to be able to pass on the full credit for the tax paid when it pays its dividends to shareholders.

The way around this is to prevent the old bucket company from ever qualifying for the 27.5% tax rate. Assuming your turnover is not going to go above $50mil the only way to avoid the 27.5% rates is to have more than 80% of the company's income passive income. Passive income *cannot* include a distribution from a trading trust. Hence necessitating the set up of a new bucket company to continue to receive trust distributions keeping the old one outside of these concessions because the only income it is receiving will be passive i.e. investment earnings on previous distributions.

For more information on when income is passive refer *LCR2018/D7* https://www.ato.gov.au/law/view/document?DocID=COD/LCR2018D7/NAT/ATO/00001&PiT=99991231235958

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Trustees Time to Do Your Distribution Minute

In Newsflash 331 we covered Lewski case *2017 FCAFC 145* which showed that the trickier the distribution minute was the more likely it was to be found to be contingent. Therefore, no beneficiary can be found to be presently entitled and as a result the trust is taxed on all its net income at the maximum tax rate. According to the ATO decision impact statement you can't even distribute the income to the default beneficiary under these circumstances.

Just stick to splitting the trust's income on set amount and/or a percentage of profit basis and settle for maybe not a perfect tax strategy but a lot closer than the maximum tax rate. The trouble with using a set amount or percentage is you have to decide what this is to be before 30th June. In many cases you may not have a very good idea of the trust's income. Doing interim accounts in June and talking with your Accountant will help with this.

Employees and Employers – Payroll, Allowances and PAYG Summaries

With the ATO being particularly tough on substantiating allowances it is best that these don't appear on PAYG summaries at all whenever possible. This link takes you to a table listing all the various allowances and whether they need to appear on the PAYG summary:
https://www.ato.gov.au/Business/PAYG-withholding/Payments-you-need-to-withhold-from/Payments-to-employees/Allowances-and-reimbursements/Withholding-for-allowances/

Employers, do your employees a favour and don't list allowances unless necessary. While employees it is worth ensuring your, employer is aware of this table. This is explained in more detail in our blog: https://bantacs.com.au/Jblog/allowances-on-payg-summaries/

Living Away from Home Allowance (LAFHA) should never appear on a PAYG summary, any tax liability arising from this payment is payable by the employer as FBT. It is important for employees to keep proof the allowance negotiated was a LAFHA to make sure they don't get lumbered with the tax. Employees should also get advice before they sign any declaration saying they have kept receipts for food. For further information regarding this:
https://bantacs.com.au/Jblog/lafha-living-away-from-home-allowance/#more-296

Single touch payroll will apply to every employer from 1st July, 2019 (unless all your employees are family members) If you are not currently up to date with this please contact your Accountant ASAP

Employees, if you are receiving CASH payments net of tax please ensure that you have evidence of this from your employer. Otherwise you will pay this tax twice. In the following case the ATO successfully argued that the onus of proof rested with the taxpayer to prove that the cash wages they received were net of tax. As the employee couldn't, they did not get a credit for the tax withheld from their wages and they had to pay income tax on the amount they received in cash.
http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2019/2019fca0543

Ask BAN TACS Notice Board

We have had a great response of askbantacers allowing their questions to be made public, thank you very much. If you would like your tax question answered for just $79.95 go to
https://taxquestions.com.au/

Here are, the last couple of weeks', the web addresses give the topic heading:
https://taxquestions.com.au/transferring-property-out-of-your-smsf/
https://taxquestions.com.au/borrowing-from-the-bank-and-on-lending-to-your-company-or-trust/
https://taxquestions.com.au/caught-by-div-7a/
https://taxquestions.com.au/apportioning-cgt-between-granny-flat-and-house/
https://taxquestions.com.au/cgt-on-inherited-rental-main-residence/