BAN TACS
National Accountants Group

NEWSFLASH
BOOKLET
Visit us at www.bantacs.com.au

2016/17 Finanical Year End Tax Strategies

Phone 13000 22682

For website technical support, email technicalservices@bantacs.com.au
For all accounting & tax support contact one of our offices or just go to www.taxquestions.com.au

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

Visit 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.

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 you are a high income earner, around the $180,000 tax bracket your tax rate will drop by 2% in the 2017-2018 financial year because the temporary deficit levy will be removed.

Generally, the aim of year end tax planning is to minimise your tax over the years by staying in the same lowest possible tax bracket every year. There is little to gain by dragging your income down this financial year by manipulating deductions out of the 2018 financial year or delaying income into the 2018 financial year if that then pushes you over $180,000 and into the higher tax bracket in the 2018 financial year. Having said that,

unique to this financial year is that if your income is going to be above $180,000 both this year and next year then shifting income into next year will reduce the tax payable on it by 2%.

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 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.

Also consider your position with Centrelink, is it worth dragging your income down this year to qualify for more because next year your youngest child will be too old for you to qualify for any payments? Centrelink recipients should consider that increasing investment losses will not help because these are added back.

Personal Income Tax Rates –

2016-2017		2017-2018	
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
$18,201 to $37,000	19%	$18,201 to $37,000	19%
$37,001 to $87,000	32.5%*	$37,001 to $87,000	32.5%*
$87,001 to $180,000	37%	$87,001 to $180,000	37%
Over $180,000	47%	Over $180,000	45%

Note amounts do not include Medicare Levy – generally 2% but will be 2.5% in the 2018-2019 financial year
*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 $87,000. Once it exceeds $87,000 the rate is the same as it is for residents once they reach $87,000 but no Medicare Levy

Superannuation

Here are some of the issues you should consider before the end of the financial year. Ideally see your Accountant to consider your particular circumstances.

The 2016 budget announced sweeping changes to superannuation contributions that will start in the 2017-2018 financial year. This financial year maybe the last chance you will get to make significant contributions to your superannuation fund. If you have more than $1.6 million in superannuation already you will not be permitted to make any further non deductible (non concessional) contributions to super. Next year the maximum amount of deductible contributions you can make to superannuation will be $25,000. If your superannuation fund is relying on contributions to support property investments it is very important that you make sure your fund is not heading for a liquidity trap as you might need to inject extra funds before the 30th June, 2017.

If you are salary sacrificing as much as you can into superannuation now is the time to check how close you have come to your cap. Note your employer contributions are included in that cap. Also take care to check when your employer is going to put those contributions into your fund and when they did last year. They have until 28th July, the superannuation caps work on when the money is actually received from the fund, not when you make the salary sacrifice. 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.

In Peaker 2012 AATA 140, the employer posted the contribution on 28th June but it was not recorded as income of the fund until 5th 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 28th June and the SMSF trustee (the member in another hat) put it into an unallocated account until the 4th 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.

The limits or caps on deductible (concessional) superannuation contributions for the 2016/2017 financial year are:

Under 50 years of age $30,000
50 to 74 $35,000

If your spouse has a low income you can make a contribution for him or her which will not be taxed going into the fund and you will receive a tax offset of up to $540. If you have a low income you might want to consider making a contribution for yourself to qualify for the co contribution from the government. Note the income thresholds are based on your assessable income (gross or total income before deductions) plus reportable fringe benefits and salary sacrificed superannuation contributions. When it comes to rental properties, if you own them with someone else then it is the net income from the rental property ie after deductions but if you own the property in your name only the deductions are ignored, the rent is added to your assessable income. 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.

Spouse Tax Offset:
Income Under $10,800 up to $3,000 in contribution offset 18% maximum of $540
The $3,000 reduces by a dollar for every dollar over $10,800 to nothing by $13,800
Work test (40 hours in 30 days) applies between 65 and 69 and does not apply70+

Low Income Contribution for Self – Co Contribution
Income needs to be Under $36,021 for the full contribution
Shades out at the rate of 3.33% until income reaches $51,021
Co Contribution is up to 50% of your contribution
Maximum Co Contribution $500

In the case of self-employed considering qualifying for a co contribution their assessable income, for the above thresholds, 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.

Income source	Total income	Eligible income for the 10% test
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 *Superannuation Guarantee (Administration) Act 1992*
Director fees as a company director	Yes	Yes, where you are treated as an employee for the purposes of the *Superannuation Guarantee (Administration) Act 1992*
Business income as a sole trader	Yes	Yes
Other income from individually held assets (including interest, rent and dividends)	Yes	No
Business partnership distribution	Yes	Yes

Non-business partnership distribution	Yes	No
Distribution from a trust	Yes	No

Buying Plant & Equipment – Small Business

The most exciting news of the 2017 budget, for small businesses, is that the $20,000 immediate write off for plant and equipment will continue until 30th June 2018. The equipment must be installed and ready for use in the year you claim it. If you have a turnover of under $2 million then you qualify. It is proposed that the turnover threshold will be increased to $10 million. If this passes the senate it will apply to the 2016-2017 financial year and of course to the 2017-2018 financial year. As usual we go into the lead up to the 30th June without certainty as to who will qualify for the write off. Accordingly, when it comes to businesses with a turnover above $2million but below $10million, only people who can afford to do so without the tax deduction will buy plant and equipment anyway so it does not provide the incentive that it was intended to create.

Please note that once you have bought plant and equipment under $20,000 and written it off your responsibility does not finish there. Each year for the next 3 years you have to review whether the ratio of business and private use has remained the same. If it varies by more than 10% you have to make an adjustment to the amount you have written off.

If your low value pool balance has reached less than $20,000 you can write it off if you qualify as a small business. Get advice before you go overboard here. You may already have enough tax deductions for the year, check with your Accountant before you buy, 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 – Small Business and Rental Properties

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 2017 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 31st December 2017 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 less than $2mil you will be able to claim payments in advance. If the government gets its legislation through the senate then this threshold changes to $10mil for the 2017 financial year.

Repairs and maintenance:

If you are a property investor you can claim a tax deduction in the 2016-2017 financial year if you have 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 income production portion of use of an asset that can be written off.

Manipulating Investment 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 commercial 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.

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 30th 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 30th June

4) If you personally contributed to superannuation in 2015/2016 make sure you have notified your fund if any of that contribution has been claimed as a tax deduction, before 30th June, 2017 even if you have still not lodged your tax return
5) Take your car speedo reading at 30th 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.
7) If you receive family payments from Centrelink make sure you lodge your tax return for 2016 before 30th June, 2017 or you will be required to repay all of your Centrelink payments.

Start Diaries Before the End of the Year

For a diary to apply to the 2016/2017 financial year it must be started before 30th June, 2017.

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 2016/17 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 30th June. Also keep receipts for all expenses all year and take the speedo reading each 30th June. More details on the record keeping requirements are in our Claiming a Motor Vehicle Booklet http://www.bantacs.com.au/booklets/Claiming_A_Motor_Vehicle_Booklet.pdf in the library section of our web site.

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 then next as it can only be offset against your capital gain if it is realised in this year. But be careful not to be caught by the wash sale provisions discussed below.

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 then 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 30th 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?

2017 Budget Highlights

The following is as much detail as we have been able to obtain on the issues that are likely to affect our clients. In particular, the tax withholding responsibility placed on all property purchasers, not just investors, is a must know that did not get much press at all so please spread the word.

Property:

Anyone who Purchases a Property – Having failed to manage to collect the tax themselves the government is now shifting the heavy lifting to home buyers. This applies whether you are a property investor or just buying your own home. If you don't get this right you will end up paying the seller's tax for them.

From 1st July, 2017 the seller must provide you with a clearance certificate from the ATO if the property cost $750,000 or more. No exceptions. If you don't obtain a clearance certificate from the seller then you must withhold 12.5% of the purchase price and send it to the ATO. Even if you don't withhold 12.5% at settlement you still have to send that amount to the ATO out of your own pocket. That is a minimum of $93,750 if you don't have the clearance certificate and there is no chance of slipping under the radar because it is so easy for the ATO to data match with the titles office.

Apparently, it is also all too hard for the ATO to collect it's GST off property developers so again it is putting the onus onto house holders to collect it for them. If you buy a brand new property after 30th June 2018 then you must withhold 1/11th of the purchase price and send that to the ATO. No word yet on how this will work with the margin scheme and we strongly recommend at this stage that you withhold the whole 1/11th because you are not in a position to argue with the ATO if they come along later and say no, the margin scheme didn't apply or the margin is bigger. Confidentiality will prevent you from being provided with any information that you would need to fight the ATO. If you are now entering into an **off the plan purchase** that will settle after 30th June 2018 make sure the contract allows you to pay 1/11th less for the property in recognition that you will be sending the 1/11th to the ATO, non-negotiable. Note that this only applies to residential premises or land, just the properties that mums and dads buy. They are not imposing this on business properties.

Property Investors - Any properties purchased after 9th May 2017 (budget night) will no longer qualify for depreciation on their plant and equipment. It will only be when the owner buys replacement items that depreciation will be allowed to be claimed on that item. The budget papers are not clear on what happens when an investor buys a property brand new. In other words whether they are technically the first owner of the plant and equipment in the house. This is the relevant sentence from the budget papers:

> "From 1 July 2017, the Government will limit plant and equipment depreciation deductions to outlays actually incurred by investors in residential real estate properties"

This suggests that the first owner of the home maybe ok but the first owner could be considered the builder because he or she initially buys the plant and equipment to put in the property.

Travelling costs to your residential rental property will no longer be tax deductible. At this stage we still suggest that you keep track of these expenses as there may be a chance they can be included in the cost base of the property under section 110-25(4). Further, make sure you still keep records of these expenses for commercial properties as they are still tax deductible.

It will also be interesting to see if, when you stay in your rental property while you are repairing it, whether you have to apportion out the costs associated with the property during that period ie interest, rates etc as a private expense. I bet this won't be clear before 1st July, 2017.

If you own an NRAS property that has made a capital gain then don't sell just yet. At least wait until after 1st January 2018 before you sign a contract, so that you will get a 60% CGT discount rather than just 50%. You or previous owners have to have held the property as an NRAS property for at least 3 years. If the property has not always been used for NRAS then the extra 10% CGT discount is apportioned pro rata on the days used for NRAS verses days not. It appears the government intends to widen this concession to other properties that have been made available on similar terms to NRAS, no detail yet.

Foreigners – If you are not a resident of Australia for tax purposes then you will not be able to cover a property with your main residence exemption. This is particularly concerning for expats intending to return to Australia. Foreign residents for tax purposes are also not entitled to the 50% CGT discount. Considering CGT is a tax on inflation I really feel for people working overseas with a home they want to return to, in Australia. If they ever have to sell it, after paying the tax they will have no chance of buying a similar property. This will apply to properties purchased after 9th May, 2017 but by 30th June 2019 all residential properties owned by people who are non-residents for tax purposes will be caught.

If you are in Australia on a temporary resident's visa such as a 457 then you will no longer be entitled to use the main residence exemption on the property you live in whilst in Australia. Not clear yet on the situation for New Zealanders but Kiwis here on a 444 visa should be very concerned. We will keep you posted.

This may lead some to ask whether they should just sell up now? Probably not, a lot depends on where they invest the sale proceeds and whether prices continue to grow. If the CGT is calculated pro rata and you have

had rapid growth to date but then hold on for a few more years during a period of no growth then some of the capital gain that would have been tax free will now become taxable. This would not be the case if there is a market value reset. We will need to wait and see what the final legislation says. If there is a market value reset, so only future growth is taxed then at least you are guaranteed to only lose up to just under 50% of the growth in tax. Probably one of the worst outcomes is, if you are an expat, you now need to keep CGT records on your home for the rest of the time you own it.

Foreign investors will be hit with a $5,000 fee if they leave their investment properties vacant for six months at a time. This will apply annually but only for properties bought after 9th May 2017

Small Business:

Plant and Equipment - The most exciting news is that the $20,000 immediate write off for plant and equipment will continue until 30th June 2018. The equipment must be installed and ready for use in the year you claim it. If you have a turnover of under $2 million then you qualify. It is proposed that the turnover threshold will be increased to $10 million. If this passes the senate it will apply to the 2016-2017 financial year and of course to the 2017-2018 financial year. As usual we go into the lead up to the 30th June without certainty as to who will qualify for the write off. Accordingly, when it comes to businesses with a turnover above $2 million but below $10million, only people who can afford to do so without the tax deduction will buy plant and equipment anyway so it does not provide the incentive that it was intended to create.

Please note that once you have bought plant and equipment under $20,000 and written it off your responsibility does not finish there. Each year for the next 3 years you have to review whether the ratio of business and private use has remained the same. If it varies by more than 10% you have to make an adjustment to the amount you have written off.

If your low value pool balance has reached less than $20,000 you can write it off if you qualify as a small business.

New Small Business Definitions - The definition of small business varies depending on what tax concession you are after. The small business page on our web site has all these thresholds in one place so you can check which applies to you. It is down the bottom of this page http://www.bantacs.com.au/topics/small-business/ One thing is for sure, if your turnover is under $2 million you qualify for all the small business concessions. If your turnover is less than $10 million and you operate as a company you will be entitled to a tax rate of 27.5% on the company profits starting from the 2017 financial year. For businesses that are not incorporated refer the section on Individual Taxpayers.

Cleaners and Couriers – For the 2017 – 2018 year, cleaners and couriers will be included in the reportable payments regime. If it is anything like the construction industry the definition will be very wide so expect it to apply to you if you are in a business that is in anyway associated with courier or cleaning services. You will not have to complete the form until 28th August 2018 but it will need to cover the period starting 1st July 2017. The form requires you to include the GST inclusive amount you have paid but normal record keeping may not easily provide you with this amount. For tax purposes you are only interested in the net of GST amount if you are registered for GST. It is important that you are aware of your responsibilities so you can keep the right information from the start. Also make sure you get full details of the person you are paying, right from the start as they may not be around next year. Here is a sample of the form you will be required to complete so you can see the information you need to keep
https://www.ato.gov.au/uploadedFiles/Content/MEI/downloads/BUS00321342n74109.pdf

Individual Taxpayers – Make sure you read the property section above if you are ever likely to buy a home. There are a couple of new traps.

All taxpayers whose income is high enough to pay the Medicare Levy will be required to pay an extra half a percent in tax to further fund the NDIS. Note this does not come into effect until 1st July, 2019 and the ALP have said they will only support it if it only applies to people earning more than $87,000 a year.

If you have small business income (sole trader, trust or partnership) that is not from a company and the turnover is less than $5million then you are entitled to an 8% tax offset on that income when it appears in your personal tax return, up to a maximum of $1,000. The government is boasting how in 2025 this will increase to 10% then 13% then 16% by 2027 but the turnover threshold does not increase and the $1,000 cap does not increase so the increase in the offset percentage is really just smoke and mirrors.

Superannuation – To encourage retirees to downsize there was a budget announcement that they can put $300,000 each, of the sale proceeds into super even if they are over the age to contribute to super. Don't get too excited about this. The money sitting in super will still be counted in your asset test and reduce your age pension. This is just a boon for the government who will charge you a motza in stamp duty to buy another house then reduce your pension because you have this money sitting in super. In the meantime you have had the cost of selling and relocating and now have an asset likely to experience less capital growth. Further, how can this policy increase the homes available for first home owners when retirees will be downsizing into the types of homes that first home owners can only afford. This sort of rubbish used to be disregarded as thought bubbles but now apparently they don't even go through the thought process.

First Home Owners will be able to use voluntary contributions to their superannuation to save for a house deposit. Withdrawals will be taxed at a lower rate. The maximum they can contribute is capped at $15,000 a year and $30,000 all up, per individual. If they do not end up buying a house or become the spouse of someone who is not a first home buyer then the money is locked into the super fund until they retire.

From 1 July 2017, the Government will include the amount that you lend your SMSF as part of your total superannuation balance for the purposes of the $1.6 million cap.

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/

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.

. 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, contact us today https://www.bantacs.com.au/topics/property-investors/pipkit/

Disclaimer: Please make sure you check with your Accountant first. In some cases the legislation referred to above has not passed or 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.