

2017/18 Financial Year End Tax Strategies

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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?

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 2019 financial year or delaying income into the 2019 financial year if that then pushes you over \$180,000 and into the higher tax bracket in the 2019 financial year.

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. For example if you are about to travel or take time off for children.

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 (such as investment property interest in advance) will not help because these are added back.

The tax rates for the 2017-2018 financial year and the 2018-2019 financial year are the same the only difference is when they kick in. The \$87,000 threshold has been lifted to \$90,000. So if your income is expected to be say \$88,000 for both years, it would be worth dragging \$1,000 from 2019 to 2018.

Personal Income Tax Rates –

2017-2018		2018-2019	
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 \$90,000	32.5%*
\$87,001 to \$180,000	37%	\$90,001 to \$180,000	37%
Over \$180,000	45%	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.

For Foreign Residents their tax rate starts from the first dollar at the tax rate for income under \$87,000 (\$90,000 for 2019) Once it exceeds \$87,000 (\$90,000) the rate is the same as it is for residents once they reach \$87,000 (\$90,000) but no Medicare Levy.

Act Quickly Before 30th June

Donations - If you are going to donate to charity, now is the time. Any donations you make to deductible gift recipients can be deducted this year. Remember, if you received something in return for the money, like goods purchased at a charity auction or a raffle ticket or pen you will not be able to claim a deduction. 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"

Clothing – you can claim a deduction for business expenses you have incurred that have not been paid by your employer but these days the ATO auditors are asking for a letter from your employer saying you need the item for your job. To claim for work wear it needs to be protective clothing, a uniform required by the business, of not compulsory it needs to have a registered design or occupation specific clothing including Hi Vis.

Start A Diary for Home Office, Phone, Car, Internet, Computers - Keep a diary for one month if you want to claim a deduction for using your home study, home internet, a phone you do not get a detailed statement for, regular trips in your motor vehicle, a computer or laptop that has both private and work use. June is your last chance. To make this as easy as possible for you, for June we have reduced the price of our diary spreadsheet to zero! Just click here <http://www.bantacs.com.au/shop-2/diary-template/> to download and start keep those records please. We take great joy in claiming nice fat refunds but they have got to be legitimate.

The free diary covers items like home office, home phone, claiming a car under the 5,000km method, ratio of private to business use of computers and internet. It includes instructions. All these items need a full one month diary so start now!

Mobile Phone Statement - To claim your mobile phone you need a full representative month of all your calls appointed between private and work use. So go through the next statement you get and highlight the work calls. If you don't receive detailed statements from your mobile provider work out how to download your recent calls

off your phone for the last month. Print them and then write beside each one whether it is private or work related.

Car Claims - Without a log book you can only claim up to 5,000kms per car at 66 cents a kilometre. You are required to have a detailed reasonable estimate of the deductible kilometres travelled. If the journeys are repetitive just keep a one month diary and multiply the kilometres by the relevant number of months (don't forget holidays). For one offs it is better to list each one of them with a date, where and why. If you forgot to set the trip meter www.whereis.com is a great help.

If you want to claim more than 5,000kms you need to base your claim on a percentage of the actual expense incurred which means you need to keep receipts (fuel can be calculated) all year, each year and a log book for 3 months every 5 years to work out the portion that will be tax deductible. It is sufficient to start the log book before the end of the financial year in which you are making the claim. More on this in our booklet http://www.bantacs.com.au/booklets/Claiming_A_Motor_Vehicle_Booklet.pdf

If you are a property investor, you can generally no longer claim the cost of travelling to and from your investment property

Self-education expenses - Yes you can claim a deduction for course fees you pay now even though you won't undertake the study until next year. Any study you claim as self-education must be connected to the income you are currently earning (either to maintain or improve your specific skills or knowledge) or is likely to result in increased income from existing income earning activities. Merely doing a course while working full time does not make the course deductible. Be careful of excessive claims for travel overseas and luxury courses. You need to prove that these expenses are essential to your current work. It is best for all courses that you get a letter from your employer saying they are relevant.

Superannuation

This year you can claim an outright deduction for superannuation contributions you make for yourself as long as all your deductible (non concessional) contributions do not exceed \$25,000. This includes contributions made by your employer.

Reservist Strategy - If you are desperate to claim more than your \$25,000 in a one off high income year then you could consider utilising a reservist strategy but you will need your own SMSF. A reservist strategy allows you to make a contribution to the fund less than 28 days before the end of the financial year. The fund can hold it in reserves for that period and not declare it as your contribution until July, yet you still get a tax deduction in June. Needless to say this requires professional advice. Reference TD 2013/22 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.

Example

3. Harry's concessional contributions cap for the 2013-14 financial year is \$25,000. Harry is a member of a complying superannuation fund which is not a constitutionally protected fund. Harry makes a personal contribution of \$25,000 which is received by his fund on 30 June 2014. The Trustees apply this amount to an unallocated contributions account established in accordance with the governing rules of the fund. On 2 July 2014, the trustees allocate the amount of \$25,000 to Harry's member account in the fund with effect from 2 July 2014.

4. Harry's contribution is covered by a valid and acknowledged notice given to his fund under section 290-170 of the ITAA 1997 of his intention to deduct the amount of the contribution.

5. The \$25,000 contribution is included in the amount of Harry's concessional contributions for the 2014-15 financial year as an amount covered under subsection 291-25(3) of the ITAA 1997.

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.

Concessional and Non Concessional Contributions - 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. You are only left with the \$25,000 concessional contribution if you otherwise qualify.

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 \$25,000 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 to make their contributions but the way the superannuation caps work it is a matter of when the money is actually received by 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.

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

The following is an article from **Noel Whittaker** on some traps to watch out for if you are making a tax deductible contribution for yourself.

In recent columns I have extolled the virtues of the change in superannuation rules that allow you to claim a tax deduction for personal concessional contributions even if your employer is contributing for you.

But make sure you take advice before you make the contribution as getting it wrong could mean loss of the tax deduction. You have to submit a "valid notice of intent to claim a deduction for personal superannuation contributions in the approved form, to the superannuation fund trustee before you lodge your tax return or by the following 30th June whichever is the earliest". You then need to receive an acknowledgement from the trustee that a valid notice of intent has been received, before you can claim a tax deduction. The timing of these actions in relation to your contribution and what you do next is important.

CASE STUDY Allen makes a personal contribution to his fund in April 2018, intending to claim it as a deduction when he does his tax. He does not submit a notice of intent at the time. In September, he rolls his three existing super funds into a new fund that offers investment options more suited to his goals. In early October, Allen is ready to do his tax, and he lodges a notice of intent to claim a deduction for personal super contributions with the fund that now holds the rollovers from his three previous funds.

But that notice is invalid as he has not made any personal contributions to the new fund. The notice would also be invalid if he sent it to the old fund (where he made the contribution) for two reasons: first, when he gives the notice in early October, he is no longer a member of the fund and second, the fund no longer holds his contributions.

Allen has lost his entire tax deduction for the contribution.

CASE STUDY Beck makes a \$15,000 contribution to super in June 2018 to save for a house deposit. In the following September she starts looking for a home to buy and applies for release of the \$15,000 under the First Home Super Saver Scheme. She accidentally declares she does not plan to claim a tax deduction on the \$15,000 contribution.

In March 2019 she buys her first home using the FHSS released amount towards the purchase. In June 2019, when catching up on her tax, she submits a notice of intent in order to claim a tax deduction. The notice is invalid because the fund no longer holds her contributions. The tax deduction is denied.

I appreciate that this is complex – but as you have just read, the cost of getting it wrong can be the loss of all or part of your tax deduction. Tread carefully.

Noel Whittaker is the author of Making Money Made Simple and numerous other books on personal finance. His advice is general in nature and readers should seek their own professional advice before making any financial decisions. Email: noel@noelwhittaker.com.au

Low Income Superannuation Contributions - 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.

So now for the numbers:

Spouse Tax Offset:

- Income Under \$37,000 up to \$3,000 in contribution offset 18% maximum of \$540
- The \$3,000 reduces by a dollar for every dollar over \$37,000 to nothing by \$40,000
- Spouse’s superannuation balance must be under \$1.6mil
- Work test (40 hours in 30 days) applies between 65 and 69
- You cannot make a contribution if your spouse is 70 or older
- Must be paid from after tax dollars. There is no tax payable on the way into the fund.

Co Contribution for Self

- 10% or more of your income needs be from working
- You need to be under 71 years of age.
- Income needs to be Under \$36,813 for the full contribution
- Shades out at the rate of 3.33% until income reaches \$51,813
- Co Contribution is up to 50% of your contribution
- Maximum Co Contribution \$500
- Must be paid from after tax dollars. There is no tax payable on the way into the fund.

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

Downsizing Home and Superannuation Contribution – This comes into play in the 2018-2019 financial year so you should not sign any contracts to sell your property before 30th June 2018 if you want to qualify for this concession. You also have to be 65 years of age or older.

Buying Plant & Equipment – Small Business

The small businesses concession of an immediate write off for plant and equipment costing less than \$20,00 (exclusive of GST if you qualify for input credits) will continue until 30th June 2019. The equipment must be installed and ready for use in the year you claim it.

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.

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 2018 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 2018 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 \$10mil you will be able to claim payments in advance.

Repairs and maintenance:

If you are a property investor you can claim a tax deduction in the 2017-2018 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. Reference IT 180.

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 2016/2017 make sure you have notified your fund if any of that contribution has been claimed as a tax deduction, before 30th June, 2018 even if you have still not lodged your tax return. This is not a date typo. You need to act now if you made a contribution for yourself last financial year.
- 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 2017 before 30th June, 2018 or you will be required to repay all of your Centrelink payments.

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. 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 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 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?

2018 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.

Small Businesses

The \$20,000 immediate write off for plant and equipment has been extended for another year, until 30th June 2019 so no need to rush. Note the amount actually has to be at least 1 cent under \$20,000 for each individual item and that figure is after deducting the GST if you are entitled to claim the GST back. The plant or equipment must be first used or installed ready for use by 30th June 2019. This concession does not include horticultural plants and inhouse software.

An interesting twist on cash payments. As the law currently stands if a business makes payment to someone without getting their ABN or TFN to set them up as an employee then the business has to withhold 47% of the payment and send it to the ATO. From 1st July 2019 if this hasn't been withheld then the payer/employer is not

entitled to a tax deduction for the expenditure. Further, if an employer is behind in their paying the tax they have withheld from employees, to the ATO they will not be entitled to claim a tax deduction for wages! Let's hope this gets a little more sensible because all it seems to achieve is to push an already struggling business over the edge.

From 1st July 2019 businesses will not be allowed to receive cash payments in excess of \$10,000. Amounts over \$10,000 must be paid by electronic transfer or cheque. Further consultation is promised. It is concerning if you like to keep your money under the mattress and quite rightly don't trust banks. Hopefully they will come to their senses and decide the business only has to report the cash not refuse it.

For the year starting 1st July 2019 and following, if you are in the road freight, computer or security industries you will have to report all your payments to contractors to the ATO.

Individual Taxpayers

There is a little tinkering with the low income tax offset so it will apply to more taxpayers from 1st July 2018. Low income taxpayers will get an additional \$200 tax credit and it works through to middle income taxpayers receiving \$530. This is in addition to the existing \$445 low income tax offset. Luckily, we have computers to calculate our tax because there is nothing straight forward about the calculations of this mere \$10 a week concession. The way it works is:

- If your income is \$37,000 a year or less you get a \$200 non refundable tax credit.
- Over \$37,000 you get a 3% tax offset until your income reaches \$48,000 that is another \$330 and you will get that offset even if your income reaches \$90,000.
- Once you go over \$90,000 the offset starts to reduce at the rate of 1.5% which means you will not get any tax offset if your income exceeds \$125,333.

The 32.5% tax bracket will also move from an upper limit of \$87,000 to \$90,000 from 1st July, 2018.

There is also the promise, from 1st July 2022 of moving the upper limit of the 19% tax bracket from \$37,000 to \$41,000. At the same time moving the 32.5% tax bracket upper limit from \$90,000 to \$120,000. There will also be some minor and illogical tampering with the original low income tax offset in that year.

By 2024/25 the maximum tax rate will only apply to incomes above \$200,000 with the maximum rate below that being 32.5%. All of which are so far in the future that it makes life worth living. Got to have something to look forward to.

Property Investors

If you are buying land on which to build an investment property you can claim expenses relating to holding that land, such as interest and rates as long as it was held as part of an ongoing process to build a rental property. But not so from 1st July 2019, you will not be allowed a tax deduction for these expenses until the construction is completed, occupancy certificate received and it is listed as available for rent.

Superannuation

The forecasted increase from 4 to 6 of the maximum number of members a SMSF can have, got through, effective from 1st July, 2019.

From 1st July, 2019 the work test will not apply to contributions to superannuation made by people 65-74 who have less than \$300,000 in their superannuation fund. But this will only apply to the first year after they retire ie the first year they don't meet the work test.

When an employee is on a high income the superannuation guarantee of 9.5% might take them over the \$25,000 threshold. If they have one employer this is simple enough the employer doesn't need to contribute any more but if they have multiple employers they will now be able to advise the employer they choose, not to make the superannuation guarantee contributions which can then be taken as wages instead.

Starting with the 2019/2020 financial year if a SMSF has a good track record for 3 years of unqualified audit reports and timely lodgements, they only need to have an audit performed every 3 years. As yet it is not clear whether the whole 3 years has to be audited in one go or just every third year. Only the latter is likely to reduce costs.

Fees charged by public superannuation funds on small account balances will be capped at 3%. This seems strange as it is about twice as much as normal superannuation fund fees.

Superannuation funds will no longer be allowed to charge exit fees.

Deceased Estates

From the bet you didn't even notice that file is limiting the amount of income a child can receive from a testamentary trust at adult tax rates. Most passive income received by minors is taxed at the maximum tax rate. There are exceptions including money received from a testamentary trust (a trust that is created by a will) which is taxed at normal adult tax rates. Well apparently some unscrupulous wealthy individuals have been transferring other assets into testamentary trusts so that the income earned can be distributed to children. Anyway, time is up according to the budget papers. Only the earnings from assets actually inherited or the re investment of that inheritance can be distributed to minors and tax at the lower adult tax rates.

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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.