

# NEWSFLASH

**BAN TACS** Accountants Pty Ltd



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Welcome to the BAN TACS News Flash

Our aim is to provide short but succinct updates on all tax issues

## Column By Noel Whittaker

Rising interest rates mean that it's vital that you get that home loan under control as soon as you can, so make sure your repayments are at least \$8 per \$1000 a month – that's \$2000 a month on the average loan of \$250,000. This is based on a 22 year term if interest rates average eight percent per annum.

Next, immediately switch to weekly or fortnightly payments. Because there are 26 fortnights, but only 12 calendar months, in a year, you will be effectively raising your repayments from \$2000 a month to \$2186 a month - this will save you \$61,000 in interest and slash the term to 18 years. And the best news of all is that you won't even feel the extra payments as they are debited direct to your bank account.

School fees are easy to handle with a bit of forethought. Think about a couple with a three year old who wish to start an investment program to pay \$8000 a year school fees when the child reaches 13. The solution is to arrange a regular gearing plan with their financial adviser - they put away a set sum each month, which is boosted with borrowed money. To raise the \$1000 to start, they could scrounge \$350 from the grandparents and that is matched with a loan of \$650 which is invested in a quality share trust.

They contribute \$160 a month by direct debit from their family allowance which is matched by \$340 of borrowed money to make a total monthly investment of \$500. If the fund earns nine percent per annum it will be worth \$99,000 in 10 years when the debt will be \$41,450. At this point they cease contributing but, being aware of the magic of compound interest, leave the investment to grow and simply pay the interest on the loan. Each year they withdraw \$8000 for school fees.

This really is the magic pudding because after five years the fund will still be worth \$105,000 even after they have taken \$40,000 out of it. Then they could cash it in, pay off the loan, and have \$63,550 left over to pay the uni fees - all for just \$40 a week plus the tax deductible interest. And remember, most of the money came from the government either by way of family payments or the tax subsidy.

This is all simple stuff but imagine the feeling of having the school fees taken care of, and the mortgage under control. At last they are in control of their finances and can explore the wide range of other options available.

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**David Thompson from Whittaker Macnaught is regularly available to see clients in our office.**

# Real Estate Development Tax Table

The following table is intended to give the reader, at glance, an idea of the tax consequences of developing Real Estate. For more detail refer to our How Not To Be A Developer booklet which is available under the free publications section of [www.bantacs.com.au](http://www.bantacs.com.au)

Situation	CGT 50% Disc After 12mths	GST Applies Unless Rental For >5years	GST Applies	Normal Income
Buy with the Intention of Selling for Profit (if this applies go no further)			x	x
Buy as a domestic rental and no real changes	x			
Buy as a domestic rental and add 2 rooms	x			
Buy as domestic rental but do substantial reno	x	x		
Buy Land & Build Domestic Rental (Not GST Reg)	x			
Buy Land & Build Domestic Rental (GST Registered)	x	x		
Rental then small Sub & sell blocks (Not GST Reg)	x			
Rental then small Subdivision & sell blocks (GST Reg)	x		x	
Buy as Rental later Subdivide & Build houses to rent	x	x		
Buy as Rental later Subdivide & Build Houses to sell	x		x	x
Rental later large Business like Subdivision sell blocks	x		x	x

Where both CGT 50% discount and normal income apply the CGT discount only applies to the gain up until the time of the change of use.

## Depreciating a Laptop Provided by Your Employer

We used to call it double dipping. You ask your employer to provide you with a laptop as part of your salary package. Your employer gets a full deduction for the laptop in the year it is purchased and no FBT is payable providing you only receive one a year as it is an exempt fringe benefit. Then you can depreciate the laptop in your personal tax return up to the extent it is used for deductible purposes. Then the depreciation law was re written and we were unsure whether this little gap still existed.

In PBR 65239 the ATO has advised that the double dip is still on. All you need to do is buy a laptop and take the receipt to your employer. Ask your employer to reduce your gross wage by 10/11ths of the price of the laptop and reimburse you for the full cost of the laptop. The other 1/11<sup>th</sup> the employer will get back in GST from the ATO. On top of getting 1/11<sup>th</sup> of the purchase price paid by the ATO you do not have to pay any income tax on the money used to buy the laptop. You then keep a diary for 1 month to work out the ratio of deductible to private use of the laptop. You can then depreciate the GST inclusive price of the laptop over 3 years after adjusting for the private use portion.

Let's assume the deductible use is 60% and the laptop cost \$3,300. Using the prime rate you are entitled to claim \$1,100 per full tax year less the private use of 40% so the deduction in your tax return would be \$660. If you use the diminishing rate of depreciation the amount you can claim as a tax deduction in the first full year would be \$2,200 less the private portion. But under the diminishing method the it will take much longer than 3 years to write off the remaining \$1,100.

## What is the Market Value for CGT Purposes

Regular readers will be aware that there are times that Capital Gains Tax legislation requires the cost base or value of a transfer to be the market value. The ATO fact sheet on transferring property to family and friends states that you can obtain the market value of a property by:

- 1) Obtaining a valuation from a professional valuer, or
- 2) Work out the market value yourself using reasonably objective and supportable data – such as the price paid for very similar property that was sold at the same time in the same location.

As you can see this does not mention a real estate's valuation. Though the ATO's opinion here does not have legislation to back it up why rock the boat when you don't have to? To save yourself a valuer's fee you may prefer to ask a Real Estate Agent for their opinion but make sure they give you a list of sales to substantiate their opinion.

# **The Latest Salary Sacrifice Rulings**

The ATO is now answering the tough questions regarding the Salary Sacrificing kit. This is where the high income earner salary sacrifices the rental property cash flow expenses. This leaves just the rental income, capital gains and depreciation to be included in the owners' tax returns so the property is running at a profit (no Centrelink add back) but the high income earner effectively received the deductions for the low income earner's expenses. This was explained in detail in our last edition where we reviewed PBR78388 which approved of the high income earner owning as little as 5% of the property.

The latest rulings from the ATO approve of the high income earner owning the property with a discretionary trust and the arrangement being used for shares instead of a rental property. The shares ruling has been approved but not yet listed on the private binding rulings register so we will advise you of that rulings number in a future issue. The ruling number for the property being co owned by a discretionary trust is PBR 77937. The reason the trust was considered an associate of the employee is because the employee was a beneficiary of the trust.

## **ATO Warning About Registering For GST When Buying A Property**

The ATO is concerned about developers selling domestic properties cheap to purchasers as long as they register for GST. This can result in the ATO collecting another 10% of the selling price off the purchaser.

Don't be fooled the developer can sell the property to you cheaply because they will not be liable for GST which may be as much as 10% of the purchase price.

The developer sets the property up as a going concern so it can be sold exempt from GST the trouble is once you use the property as a domestic rental you (not the developer) must pay the ATO 10% (not margin scheme) of the purchase price in GST.

According to ATO's Interpretive Decision 2002/710 because the property is being used for a purpose that is only input taxed the owner must, under section 135-5 repay any GST that has been claimed back in the past on the asset. Even though the sale was exempt from GST you are considered to have received the benefit of that GST so you will have to pay it back.

## **Warning to Developers Using The Margin Scheme**

In Brady King Pty. Ltd. vs Commissioner of Taxation the ATO won more than it wanted to. The question before the court was could a property where the contract to purchase it was entered into before 1<sup>st</sup> July, 2000 (the introduction of GST) but not settled on until after that date utilise the valuation method under the margin scheme. The workings of the margin scheme are fully covered in our How not to be a Developer booklet.

Brady King P/L used the property, an old office building, to construct apartments under a strata plan title. The court found that because the identity of the property had changed since the original purchase (from a normal title to strata title) the margin scheme was not available to the developer.

This could have far reaching affects in that all developers of strata plan units will not be able to use the margin scheme. Of course the developers are not going to absorb these costs so it will be the over stretched first home owner market that will bear the brunt of this little windfall for the ATO.

In fairness to the ATO they didn't want this wide an outcome either and they are hoping Brady King Pty. Ltd. will appeal the decision.

## **Taxes Getting Blood Out of a Stone**

The Danish tax office is giving people a credit that they can use to reduce their tax debt, if they donate blood!

# Debit Loan Accounts, Div 7A & Deemed Dividends Softened

The ATO's softer approach to deemed dividends is outlined in PSLA 2007/20. The law has been changed to allow the ATO to exercise its discretion to waive the deeming of dividends and the penalties associated with being caught by Division 7A when the taxpayer has made an honest mistake or inadvertent error. In the PSLA the ATO allows taxpayers to automatically assume the discretion has been granted and permits them to go back and amend any years where they have paid penalties or declared a deemed dividend. But remember the concessions only apply if you have made an honest mistake or inadvertent error. The statement makes 2 main points:

- 1) The error must be corrected. In most cases this will mean repaying the loan or entering into a division 7A loan agreement and commencing repayments.
- 2) The error must have occurred between the 2002 and 2007 financial years and all of the taxpayers tax returns are lodged.

## Seminars

**Sydney Property Expo 28<sup>th</sup> to 30<sup>th</sup> March** at Darling Harbour. Julia will be either on the Australian Property Investor Magazine and Plum Property stands most of the three days. She will also be participating in some of the panel of experts presentations on the API stand at the following times:

Friday 3.30pm                      Saturday 12.30 pm and 2.30pm                      Sunday 3.30pm and 4pm

Due to the overlap of the Ozinvest seminar with the Property Expo the Ozinvest seminar advertised in the last edition of Newsflash has been cancelled.

## Where is Julia?

Somewhere in Southern NSW, Sydney or the ACT. She apologises once again for being behind in her e-mails. We are working on a question and answer section for the web page. It is hoped that once a fee is charged for her to answer questions the number of people sending in questions will be reduced so become more manageable.

## Back Issues & Booklets

To obtain free back issues of the fortnightly BAN TACS Newsflash or any of the following booklets visit our web site on [www.bantacs.com.au](http://www.bantacs.com.au). You can also subscribe to our Newsflash reminder.

<i>Alienation of Personal Services Income</i>	<i>Buying a Business</i>	<i>Capital Gains Tax</i>
<i>Claiming Your Trip Around Australia</i>	<i>Claimable Loans</i>	<i>Claiming Motor Vehicles</i>
<i>Death and Taxes</i>	<i>Defence Forces [Military]</i>	<i>Division 35</i>
<i>Divorce</i>	<i>FBT for PBI's including Hospitals</i>	<i>Fringe Benefits Tax</i>
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<i>Teachers</i>		

### Disclaimer:

Please note in many cases the legislation referred to above has only just passed through parliament. The full effect is not clear yet but it is already necessary to make you aware of the ramifications despite the limited commentary available. On the other side of the coin by the time you read this information it may be out of date. The information is presented in summary form and intended only to draw your attention to issues you should further discuss with your accountant. Please do not act on this information without further consultation. We disclaim any responsibility for actions taken on the above without further advice as to your particular circumstances.