

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

An innovative, yet unethical, trading practice has reared its ugly head at Australian investors - and it's making speculative traders millions, as it scares the living daylights out of investors.

It works like this. Suppose you are a major trader in world markets and want to make a fast buck out of the present uncertainty. First of all you go to an institution and pay a fee to borrow a few million dollars worth of shares in a heavily traded company such as BHP, Rio or the Commonwealth Bank. You then dump these shares on the market and deposit the sale proceeds in an interest bearing account where they can earn you a safe seven percent. This is called short selling because you are effectively selling shares you don't own in the expectation that their price will be cheaper in the future and you can buy them back.

If all goes as planned, the selling pressure you have created will drive the price of the share down and in a week or month or so you can buy them back at a cheaper price and then return them to the institution you borrowed them from in the first place.

The growing popularity of margin lending is another factor that works in favour of the traders. The traders prefer shorting shares that are favourites of investors who use margin lending because they know that the selling pressure and price slumps caused by short selling, will trigger margin calls for those investors who are heavily geared. The borrowers are forced to dump their shares on a falling manipulated market adding further selling pressure and pushing the price down further. Once again, the traders win.

But wait - there's more. If a person takes out a margin loan the lender in many cases has control over the shares it holds as security. During the recent market turmoil it's been discovered that some margin loan lenders were the ones who lent the shares to the speculators who in turn caused the pressure that triggered the margin calls that had such a devastating affect on the portfolios of those who had borrowed. That is a huge conflict of interest.

Of course the by product of this volatility is investor nervousness. Retirees are now glued to their computer screens at night watching the value of their superannuation go up and down and most of them don't understand that their worries are due to the activities of traders not from any inherent problems in our major companies.

The message to all of you who have invested for the long term, is to sit tight and not to worry. Price fluctuations caused by traders don't have a thing to do with the inherent value of the share itself. Get some revenge on the traders by using price dips as a time to buy, not a time to sell.

Noel Whittaker is a proper authority holder for Whittaker Macnaught Pty Ltd - licensed dealer in securities
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David Thompson from Whittaker Macnaught is regularly available to see clients in our office.

Salary Sacrificing Tricks for Share Investors

The ATO has just issued a private ruling agreeing that the high income earner in a family can salary sacrifice all of the interest payments on a share portfolio they own jointly with their low income spouse and their employer does not have to pay FBT because of the otherwise deductible rule. This effectively means that the high income earner gets to deduct all of the interest expenses but gets to split the income with his or her spouse. The private ruling number is PBR 79617. PBRs are only copies of private rulings, not binding on the ATO. To be absolutely sure that your employer is protected it should get its own private ruling from the ATO.

Some Basic Property Questions Answered

Too often the Newsflash builds on knowledge assuming readers have read most of the previous issues. They are available on our web site and that is the best way to come up to speed but for people drawn to this newsletter as a result of Julia's high profile with rental property investors here are some basic questions answered.

What are the tax benefits offered to property investors?

Well with interest rates and properties so high at the moment it would be very difficult for a new investor to find a property that will pay for itself. So each week they will have to contribute, either out of their wages or by further borrowings, to the investment to keep the bills paid. The tax advantage is because the property is running at a loss it creates an overall tax deduction in the investor's tax return. As a result they will get a refund that helps to keep the whole project afloat. This is called negative gearing. With depreciation, which is simply claiming a deduction for the building and equipment wear and tear, the loss on the property can be a lot more than the cash flow short fall. If you are in the 31.5% tax bracket and the property makes an overall loss of \$10,000 the ATO will give you a refund of \$3,150. Now if \$5,000 of that loss was just on paper (depreciation) then the cash flow loss was only \$5,000 less the tax refund of \$3,150 leaving the investor only \$1,850 out of pocket for the whole year. If the investor is in the 41.5% bracket the refund would be \$4,150 so the investor would only be out of pocket by \$850 for the whole year.

What risks are there in property investment?

There are all the risks associated with home ownership and having a loan but with negative gearing there is also the risk that the property will never make enough capital gain to cover what it is costing the investor each year. Even if it does, at that point it has only broken even so you will need to make more than that to actually make the investment worth undertaking in the first place. It is important that investors understand just what the property has to achieve to make the investment worthwhile.

Margin Scheme and Developers

For those that have been following the Brady King Case, concerned that every strata plan and subdivision will no longer be able to use the margin scheme you will be as relieved as the ATO that the taxpayer has decided to appeal. The decision, it is still up to the courts to decide but it seems if the court again goes so far as to say that the margin scheme cannot be used when the title has changed then the ATO may ask the government to change the law to allow developers to use the margin scheme.

FBT Year Draws to a Close

On 31st March the FBT year comes to a close. This unusual date was created to reduce the pressure around the 30th June. That was before reportable fringe benefits were introduced. Now the fringe benefit you calculate as at the 31st March will appear on the employee's PAYG summary for the year ending 30th June. There is no need to add on the next 3 months but the 3 months before the 30th June in the previous year is included. This also means that if an employee leaves your employment between the start of April and the end of June and they were receiving fringe benefits, you will have to provide them with a PAYG summary in the year after they leave your employ. Of course it will not include any income just the reportable fringe benefits. The good news this year is that you do not have to include in the reportable amount the value of pooled cars, saves all that argument over who used what when. Don't forget that even if the benefit is grossed up for FBT purposes at the higher rate, for the purposes of the reportable fringe benefits box on the PAYG summary the gross up rate is 1.8692.

If this is starting to go over your head please refer our Fringe Benefits Tax booklet which is available under the free publications section of our web site and please remember we don't make the rules.

To Do Before the 31st March, 2008:

- 1) If it is getting close to or more than 5 years since a log book was kept on a vehicle one needs to be started before 31st March so it will cover you for all of that FBT year.
- 2) Make sure you have all the necessary written employee declarations, it may even be worth writing into your employment agreements that the employee is liable for any penalties you incur if these declarations are found to be incorrect. Employee declarations are high on the ATO audit hit list. Examples of some of the types of benefits requiring declarations are:
 - When applying the otherwise deductible rule the employee needs to declare that the expenses are deductible or work related and that there is no private use or what percentage is applicable. Likewise if you pay your employee's mobile phone bill a declaration is necessary stating that the phone is used at least 50% for business.
 - When the fringe benefit of a car is calculated on an actual cost (log book) method the employee needs to declare the period of time they used the vehicle, the total kilometres driven by the vehicle and kilometres used for business.
 - In the year that a log book is actually kept a declaration also needs to be made stating the log book was kept for 12 consecutive weeks and the percentage of business use.
 - If the 12% of cost method or 1/3rd of all expenses method is used the employee must declare that the vehicle travels more than 96 kilometres per week and the weeks the employee used the vehicle.
 - In the case of payment of a living away from home allowance the employer needs to declare the period of time away from home, why they were away from home, where home is, the type of residence, where he or she resided while away from home and the applicable time period.
 - A travel diary detailing each day's itinerary will also be necessary for overseas travel of more than 5 nights.
 - If you are providing your employee with temporary accommodation while they are relocating they need to declare the date they commenced looking for permanent accommodation, their employer's name and the new location. If it takes more than four months to find permanent accommodation a declaration also needs to be made as to whether the employee owned their previous accommodation. If they did not own their previous accommodation they can receive the exempt temporary accommodation for up to 6 months but after 4 months they have to declare that they are unable to find accommodation. If they did own their home previously but have sold it, they get 12 months with the appropriate declaration. In both cases the address of the temporary accommodation needs to be included and a statement that the move was solely for work purposes..
- 3) Make sure you take the speedo reading for all vehicles on 31st March

The basics for this year:

This FBT year has 366 days so don't forget this when working out the portion of days a car was available for private use.

The benchmark interest rate for loans and deemed interest rate for cars under the actual cost method is 8.05%.

The gross up rate for fringe benefits that are subject to GST is 2.0647 and if not 1.8692

Benefits that are not reportable on an employee's PAYG summary include:

Meal Entertainment

Car Parking

Entertainment Facility Leasing expenses ie corporate boxes

Pooled or shared cars – really you only have to let another employee use the car once to not have to report

Remote Area Benefits

Protecting the personal safety of employees

Emergency Overseas Health care

Overseas Living Allowances

The use of emergency vehicles or police cars (including unmarked police cars) to drive to and from work

Defence Force Member's Benefits

A Few Tricks:

If the goods your employee receives are actually part of what your business makes then the gross up rate is only 1.8692.

If the value of the fringe benefit before grossing up is less than \$2,000 it does not need to be reported on the employee's PAYG summary.

If an employee's mobile phone is used more than 50% for business purposes then the whole amount of the mobile bill can be paid with no FBT arising. If the mobile has PDA capabilities this can still apply.

Infrequent (ie less than 20) and irregular fringe benefits are not taxable and not reportable if they cost less than \$300. Note they cannot be part of a salary sacrifice arrangement and are not tax deductible to the employer if they are entertainment.

Seminars

Sydney Property Expo – Julia will be involved in an Australian Property Investor Magazine initiative at their stand. It is called an interactive, apparently just like speed dating. A panel of experts are assembled and visitors to the API stand can spend 5 minutes one on one with each of them asking whatever questions they want. These interactive will be run 3 times during each afternoon at the expo. The times Julia will be on the panel are:

Friday 28th March
3.30pm

Saturday 29th March
12.30pm and 2.30pm

Sunday 30th March
3.30pm

Where is Julia?

In southern NSW trying to get tax returns lodge. At the end of March she will be alternating between the API and Plum Property Stands at the Sydney Property Expo at Darling Harbour. If you are there please come and say hello.

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. You can also subscribe to our Newsflash reminder.

Alienation of Personal Services Income

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Death and Taxes

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Investors

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Buying a Business

Claimable Loans

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How Not to be a Developer

Key Performance Indicators

Wage Earners

Subcontractors

Selling a Business

Capital Gains Tax

Claiming Motor Vehicles

Division 35

Fringe Benefits Tax

GST

Overseas

Real Estate Agents

Miners

Small Business

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.