

# NEWSFLASH

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## **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 tax issues that maybe of interest to our clients

## Column By Noel Whittaker

Buying that first home has always been tough, and over many years governments of all persuasions have introduced, and then abandoned schemes, to help low income people get a foot in the door.

The latest one, to be introduced in July, is the First Home Saver Account which is modelled on the superannuation system and is designed to work similarly to salary sacrificed contributions where the investment is made from pre tax dollars less a 15 percent contributions tax.

The deposits will be made from after tax dollars, but will be boosted by a government contribution that will reduce the effective tax rate to 15 percent. There is a limit of \$10,000 on deposits to the account in any financial year and only \$5000 of the deposit will qualify for the government contribution. A couple are allowed \$10,000 each so will obviously have a much better capacity to save.

Think about a couple who earn \$50,000 each and are in the 30 percent tax bracket. If they contribute \$10,000 into the account the first \$5000 will qualify for a contribution of \$750 being 15 percent of the first \$5000 deposit - this 15 percent is the difference between their 30 percent marginal rate and the 15 percent concessional rate. If they are in a low tax bracket, the rebate would still be 15 percent or \$750, and if they are in the 45 percent bracket, the rebate would be \$1500.

Income tax within the fund will be just 15 percent a year, just like superannuation, so the scheme allows first home owners to grow their savings in a low tax environment.

The scheme is not means tested but the government makes no secret of the fact that it is designed for people who are struggling to save a deposit. This is why money in the fund cannot be withdrawn for four years even if the would-be borrowers receive a financial boost such as a big increase in pay or a legacy. Withdrawals during those four years will only be allowed in cases of extreme hardship.

The scheme may help a small number of people, but first home buyers still face the risk that increases in home prices over four years may negate the benefits of saving a larger deposit. After all, a couple who can pay \$400 a week rent and also save \$10,000 a year, would be able to make the payments on a mortgage of \$352,000. This, together with the First Home Owners Grant and a small deposit, might be enough to get them started provided they had a secure income and were satisfied they could handle the higher payments due to the smaller deposit. Alternatively, they could ask their parents to go guarantor, or else consider one of the new types of loans where lenders offer an interest free portion in return for a share of the capital gain in the home.

Noel Whittaker is a proper authority holder for Whittaker Macnaught Pty Ltd - licensed dealer in securities ABN 96 009 793 971. Reg office address is L22, 215 Adelaide Street, Brisbane 4000 David Thompson from Whittaker Macnaught is regularly available to see clients in our office.

## Budget GST Measure for Developers

The budget included a warning that GST law would be tightened to reduce the tax benefits of combining the going concern or non taxable supply exemptions with the margin scheme. This should not take affect until the new law receives royal accent, so there is a bit of time yet. But when it does become law it is important that developers realise if they purchase land from someone who is registered for GST but the sale is not subject to GST they need to find out the original price paid by the vendor because this will be the new purchaser's base for the purposes of the margin scheme.

For those not familiar with the workings of the margin scheme, it is intended to prevent the ATO from collecting tax on a profit that was exempt from GST in the hands of the previous owner. So if for example a developer purchased a property from someone not registered for GST for \$100,000 and then sold it for \$150,000 GST would only be payable on the margin of \$50,000.

This will limit the use of the margin scheme where the developer purchased the property from someone who was registered for GST but GST did not apply to the contract either because it was a non taxable supply or the supply of a going concern. In these cases the base figure for the margin scheme would not actually be the developer's purchase price but the purchase price of the owner before that. That is the developer would have to pay the GST on the profit made by the person selling them the property but strangest of all this would require the vendor to inform the purchaser of the price they originally paid for the property. This means that the margin ie the portion of the developers selling price that would be subject to GST, is the difference between the developer's selling price and the cost price of the property to the person the developer purchased the property from.

## CGT Cap Amount

Readers are probably aware that they can only contribute \$150,000 per year into super as an undeducted contribution (ie a contribution they or their employer have not claimed a tax deduction for), though there is a concession that \$450,000 can be contributed in 1 year providing nothing is contributed for the next 2 years. This \$150,000 limit does not apply to CGT concessional amounts. That is the 15 year CGT exemption and the retirement exemption amounts. These amounts are tax free to the business owner and are not taxed in the hands of the super fund. The retirement exemption is limited to \$500,000 in a life time. The total amount of CGT concessional amounts that can be exempted in a life time has just been increased, for 2008/09 to \$1,045,000. This means with careful planning you could transfer another \$545,000 into super via the 15 year concession on top of the \$500,000 allowed under the retirement exemption. The 15 year exemption applies to assets that have been active in a business and owned for 15 years or more.

To maximize this strategy it is important that the 15 year exemption is used whenever possible. Certainly the law requires the 15 year exemption to be used rather than any other exemption whenever it is applicable. What we are suggesting is if the 15 years is getting close don't think it doesn't matter I will use the retirement exemption instead. It may be worth waiting to utilize the 15 years as you may need to use the \$500,000 exemption later. Note the \$500,000 life time retirement exemption limit is not indexed each year but the \$1,045,000 total life time CGT concession for deposits to super is so the amount you can transfer into super from the 15 year exemption will continue to grow.

Another tactic, if you are not required to put the CGT concessional amount into super, is take \$150,000 of it as a tax free payment and then contribute it to super fund as a normal undeducted contribution, using up that years threshold without affecting your life time limits. You can even take this one step further and call forward your undeducted contribution limit the following two years as discussed above.

Note if an active asset in a business is pre CGT it also qualifies to be put into a super fund without affecting the \$150,000 annual cap but will count towards the \$1,045,000 life time cap.

This is a complex issue that needs professional advice, the main point for readers to consider is that electing to put a capital gain that was exempted under the 15 year or retirement exemption into a super fund classed as that is a last resort if you have already used up your annual \$150,000 undeducted limit because it will affect your life time limit. Though in most cases you will be forced to deposit as a CGT concessional contribution to qualify for the CGT concession in the first place, for example if you want to use the retirement exemption and you are under 55 years of age. And consider before you sell whether it may be worth holding out for the 15 years.

# ATO Answers Question on Hybrids

The following continues on from the last edition of Newsflash

**3) Q.** *What is the next step for the ATO?*

**A.** Because of the complexity and diversity of the arrangements, and because the manner in which they were implemented may differ from the original trust deeds, it is not possible to issue a single statement which completely covers 'the Tax Office view on hybrid trusts'.

Instead, each arrangement needs to be assessed on its individual merits in the circumstances of the particular taxpayer. To help taxpayers, the Tax Office is currently preparing guidance of a general nature which is intended to assist taxpayers. We will be working with members of the National Tax Liaison Group on this guidance, which we currently plan to cover questions about deductibility, capital gains tax, and the operation of the general anti-avoidance provisions.

**4) Q.** *When do you expect a binding ruling to be issued and do you have any idea how you are going to deal with the wide variety of trust deeds available?*

**A.** As above, we are preparing guidance of a general nature. We may also accompany this with a suite of products that may include Public Rulings, Law Administration Practice Statement and/or a series of ATO Interpretative Decisions (ATOIDs) to address the taxation issues raised in these complex and fact-specific arrangements.

**5) Q.** *What action are you taking with the promoters of hybrids at the moment?*

**A.** We are in the process of collecting information from a number of entities who appear to be marketing such arrangements and entering discussions with them. Depending on the outcome of our enquiries, we may seek to apply a remedy under the promoter penalty laws, if promoters of these arrangements appear to be promoting tax exploitation schemes. These remedies include our accepting an enforceable voluntary undertaking offered by such an entity, or applying to the Federal Court for injunctions or civil penalties in respect of their promotional activities.

**6) Q.** *What action are you taking with taxpayers who have hybrids? Can you give me something to stop them putting their head in the sand and not facing up to getting a ruling?*

**A.** The Tax Office has a range of strategies aimed to assist taxpayers who are currently in this type of trust arrangements to unwind the arrangement. In other cases, we have undertaken work that included:

- Education (e.g. website articles, and/or letters to identified taxpayers, informing taxpayers of the Taxpayer Alert, as well as providing general guidance on the taxation consequences of these arrangements (similar to that currently under development for these arrangements);
- Encouraging taxpayers to apply for a private binding ruling to obtain certainty about the taxation consequences of the arrangement in their particular circumstances;
- Inviting taxpayers, either generally or individually, to make a voluntary disclosure to align their treatment of the tax consequences with the Tax Office's general guidance once it is issued;
- Notifying taxpayers of intended audit activities where they appear not to have determined their tax liabilities in accordance with the Tax Office's guidance.

**7) Q.** *I have seen material on the web site of a promoter of hybrids saying as long as the return is commercially realistic you will be ok. I have seen this argument before in that they argue that in a public company or trust all the income is not distributed to the unit holders so it is commercially realistic not to get all the income from the underlying investment. But the TA is directed at non arms length trusts. I expect your reason for using these words is that there is no value add ie management of the trust etc so there is no justification for retaining and or redirecting profits. So commercially realistic in these small non arms length trusts is what the investment would earn if it wasn't in the trust but held personally by the unit holders. Now is there anything where you make such a statement or would you consider making one to us? Or for that matter any material you have that expands on commercially realistic returns would be appreciated.*

**A.** What we are saying is that before claiming the deductions, people should consider whether the relevant expense can be commercially explained by the income and capital gains that the taxpayer reasonably expects to receive.

Interest expenses on borrowed money may not be commercially explained where the borrowing has been used by the trust to enable other entities to receive the income or capital gains from an asset which the taxpayer would have received if they had borrowed to purchase the asset themselves.

# Seminars

## Claim Your Trip Around Australia As A Tax Deduction

Saturday 12<sup>th</sup> July, 2008 – 9am Cooran Community Hall, King Street, Cooran. Host No Boundaries. Workshop until noon then picnic lunch (BYO) to ask questions and share a few yarns. For more info contact [kymnlyn@noboundaries.com.au](mailto:kymnlyn@noboundaries.com.au)

## Property Seminars:

Tuesday 15<sup>th</sup> July, 2008 – Tax Implications for Small Property Developers. 6pm to 9pm

No cost and food and drinks are provided

RSVP 11<sup>th</sup> July, 2008 [katy@juresicfinance.com.au](mailto:katy@juresicfinance.com.au) 07 3899 8066

Juresic Group Offices, 9 Godwin Street, Bulimba Qld

Tuesday 16<sup>th</sup> September, 2008 – A Forum with Julia Hartman – Have Your Questions Answered

6pm to 9pm 6pm to 9pm No cost and food and drinks are provided

RSVP 12<sup>th</sup> September, 2008 [katy@juresicfinance.com.au](mailto:katy@juresicfinance.com.au) 07 3899 8066

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**YOUR PROPERTY IS OUR REPUTATION**

## Where is Julia?

Back in Beachmere, still trying to finish off her own tax returns!

## 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.

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*Year End Tax Strategies*

*Investors*

*Overseas Backpacker Fruit Pickers*

*Rental Properties*

*Secret Plans and Clever Tricks*

*Teachers*

*Buying a Business*

*Claimable Loans*

*Defence Forces [Military]*

*FBT for PBI's including Hospitals*

*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.