

NEWSFLASH

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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

Unfortunately the action of the government guaranteeing bank deposits has had an unintended side affect - a run on mortgage trusts has forced them to freeze redemptions for an unspecified period.

Now I appreciate there is a lot of worry among investors who have just had their funds frozen so in the hope of alleviating some of that worry I'll take you through the way mortgage trusts work. Just bear in mind in this context I am talking about the leading ones such as Perpetual, Challenger Howard, AXA, ING, Colonial First State and Australian Unity and not riskier products that have been frozen for months.

A simple analogy is that they are like a one product bank, they accept money from depositors in which they pay interest, and lend that money on first mortgages to borrowers. Those loans are typically for a three to five year term, which means that your money may be safe but it is certainly not repayable on demand because it is mostly lent out. The trusts receive interest on these mortgages which is why they can continue to make the normal monthly interest payments - however they are unable to repay the principal until their loans mature or they sell them off. It will take some time for all the loans to mature, even though the depositors in those trusts will eventually get their capital back, and will also receive interest while they are waiting.

Last Friday, ASIC announced that a deal had been struck to unlock some money from frozen accounts. It will be done only on a case by case basis where investors can show genuine need - there are limits on the amount that can be withdrawn.

The good news for these investors is that mortgage trusts perform better when interest rates are dropping. This is because the loans with them were taken out when rates were higher and a proportion of the rates are now locked in for three to five years so investors should receive better than bank interest rates while they are waiting for their money to become available.

Let's all hope that a reasonable solution is reached because the leading mortgage trusts have treated investors well for many years. If they go out of business, Australia will lose more than \$30 billion of much needed loan money, retirees will lose access to a valuable investment product, and the banks will have one less area of competition to keep them honest. That's the last thing we need.

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.

Regularity of Newsflash

Of late the Newsflash has been less than reliable due to a combination of moving our web site, the tax season and not being able to access our mailing list. All these problems have now been solved but as the Newsflash posted on the web site in mid October was not notified to readers until November we decided to leave it up there for another couple of weeks.

We apologise for this and hope you didn't miss us too much.

Cash Economy Benchmarks

The ATO has release 5 detailed benchmarks in industries where it considers there is a great risk of undeclared income, Concreting, Floor Sanding and Polishing, Metal Roofing and Guttering, Painting, Tile Roofing and Taxis. There is much more detail on the ATO web site but here is an example, the sort of information available:

Taxis – earn \$1.14 per kilometre (including GST) and travel an average of 150,000 kms per year

Concreters – 50 to 60% of sales should be materials, charge per square metre \$50 for plain concrete to \$55 for coloured, stamped or stencilled. Up to \$70 per square metre. The ATO expects 2 tradesmen to be able to lay 5,110 square metres per year and 3 tradesmen 7,700. The average labour charge is a bit more flexible at between \$200 to \$300 per person per day.

Painters – On repaints 15% to 25% of the price charged goes in paint. New work 30%. 8 to 10 litres used per day. Price charged \$25 to \$50 per hour.

Benchmarks for more industries are due to be released soon. You can keep an eye on them by going to www.ato.gov.au and select the business option on the left of the screen. This will give you a menu for business tax, right down the bottom are the ATO industry benchmarks.

If you are in these industries please ask your accountant to review your tax return and discuss any variations with you.

The ATO has already won a case, in relation to GST, where they increased a taxpayer's income based on benchmarks. The taxpayers' expenses were also reduced because they did not have any tax invoices for their fuel. In Huynh's case 2008 ATC 10-020 the AAT accepted the ATO's estimates of the taxpayers' income because the taxpayers' records did not appear to be authentic. The way these cases work is that the ATO can estimate whatever they like. The burden of proving the ATO wrong rests with the taxpayer, this is where proper record keeping is required. What is worse is that the ATO estimated the income without having to estimate the expenses so the taxpayers were taxed on the estimated income without the benefit of a corresponding deduction for the fuel that would have been necessary for the taxi to travel those kilometres.

Huynh's case also emphasised a frequent misunderstanding in the taxi industry between drivers and owners. The correct position for GST is that the driver pays GST on all of the fares received and the owner gives the driver a tax invoice for the bailment fee. So the owner pays GST on the share of the takings they receive and the driver gets an input credit for 1/11th of the amount paid to the owner. This has the net affect of the driver only paying GST on the share of the takings he or she receives but the figure at G1 on his or her BAS is the total takings.

First Home Owners Grant Increased

The first home owners grant has been increase to \$14,000 for established properties and \$21,000 for the construction of new properties. But it is only available until 30th June, 2009. Bad luck if you have opened one of those first home savers accounts because you can't withdraw your deposit for 4 years. And if you acquire a home within those 4 years you can never access the account, not even to reduce the debt on the home after the 4 years is up. It must be rolled into your superannuation fund.

Mirror (Clone) Trusts No More

Mirror or Cloned trusts could be used to transfer assets from one trust to another without a CGT event being triggered. Though, in reality this was very difficult to do because the ATO were taking a very strict interpretation of the law. As of the end of October 2008 this concession has been removed

Details on the Education Tax Refund

If you are considering buying a computer for your children for Christmas, don't forget to keep the receipt. The Education tax refund will apply to your 2009 income tax return so it covers any qualifying expenditure since 1st July, 2008. It also covers text books so keep those receipts in January when you send them back to school. The details are as follows:

- The refund is 50% of the amount spent
- The maximum refund for each primary school child is \$375 (\$750 expended)
- The maximum refund for each secondary school student is \$750 (\$1,500 expended)
- If you do not have to lodge a tax return the tax refund can be claimed by lodging a form with the ATO
- Only Parents who qualify for Centrelink's Family Tax Benefit or who's children received Youth Allowance, a Disability Support pension or ABSTUDY Living Allowance will qualify.
- Expenditure on computers, internet connection, printers, educational software, school related trade tools, text books and stationery qualifies.

We recommend that you keep a diary on the computer and internet use for one month. The diary should show the percentage of education related use compared to the total use. There is nothing yet specifying a diary must be kept but we would be very surprised if the eventual application forms don't require some sort of apportionment.

If your expenditure in a given year exceeds the maximum amount then the balance can be carried over to the next financial year.

Renting Out A House You Built To Sell

There has been much written about this in Newsflash and our How Not To Be A Developer booklet. Basically if you are registered for GST and build a house for resale but then change the purpose by renting the house out you have to pay back the input tax credits on the property. You see a property held for rental is input taxed so no GST credits are available on the cost of building it. If you have been claiming them because you intended to sell the property so will have to charge GST on the sale, then later change your mind or can't sell it. Then using it as a rental property will mean quite a large amount of GST has to be paid back.

Now I imagine you are starting to think that it is not as black and white as that. You may not have changed the purpose at all it is just logical to collect rent for the property while the market is slow. I imagine there were some developers caught between a rock and a hard place. They can't possibly afford to pay back the GST but could really benefit by receiving some rent to help meet the overdraft.

ID 2008/114 examines purpose beyond the current use and recognises a property can still be held for resale while it is rented. The following paragraph from the ID gives a clear guideline as to what would be considered holding a property for resale:

Determining whether or not new residential premises have been actively marketed for sale will require consideration of all the relevant facts and circumstances. Although no single factor by itself is conclusive, the active marketing of new residential premises for sale may encompass activities such as listing the property for sale with a real estate agent or agents, advertising the premises for sale in relevant publications or via Internet advertising websites for real property, arranging 'open for inspection' times and/or showing prospective buyers through the premises. In the case of stratum units, actual arm's length sales of some of the listed units would be further evidence of active marketing. Listing premises for sale at a price that is significantly above market value may be an indicator that the premises are not being actively marketed for sale.

ID 2008/114 is only an interpretive decision so you cannot hold the ATO to its content unless you are the applicant. Accordingly, if you want to use this interpretation to your advantage you should apply to the ATO for your own ruling quoting ID 2008/114 as a precedent.

By the way you do not have to pay the GST back immediately, even if you are caught. You are only required to consider this issue once a year, when preparing your BAS for 30th June. You do not even have to consider an adjustment to the GST at the first 30th June after the original input credit has been claimed it is not until a full 12 months after the first 30th June that an adjustment must be made. Now if the property has at anytime been used for a rental then some adjustment needs to be made. But it may only be minor. Certainly if the property has now become a rental and it does not meet the available for sale status discussed above then you need to pay back all the GST. On the other hand with a property still available

for sale, you only need to pay back a small portion of the GST. This portion is calculated by adding the estimated rent you expect to receive to the expected sale price then look at what percentage the rent is of this. This is the percentage of the GST credits you have to pay back. Yes, very vague but each 30th June you will have to re work this calculation until you sell it (assuming it is sold within 5 years) so eventually the right amount will filter through.

Interestingly the ATO has recently issued a warning to property owners or developers who are registered for GST that their June BAS should have included an adjustment if they are now renting the property out. The warning goes on to encourage readers to fess up and correct their BAS now before they are found out in an audit were the penalty could be as much as 90% of the tax not paid.

Tek Tip

If you already have Microsoft Office 2007 on your system you may have people complaining to you that they are unable to open the documents you are sending them – and some workplaces may not let staff install the Microsoft Office Compatibility Pack in order to let them open and read your documents. What you can do from your end is to save your MS Word, MS Excel, etc documents in the older format. You can do this on individual documents when you save them or you change the default setting that the document is saved in; this can easily be reversed in the future.

For individual documents, instead of simply saving the document in the usual way, you need to:

- With the document open, Select 'File' → 'Save as'
- In the Save Browser, have a look at the bottom and you will see 'Save as type:'
- Use the little drop-down arrow to the right to show all of the document type options
- Scroll until you find '*.doc' for the MS Word documents and '*.xls' for your MS Excel documents
- Then name your document, select a location to save it, and select 'Save' – in the usual way.

To change the default setting that your documents are saved requires instructions with pictures and I don't have room for that here. Go to www.vista4beginners.com/Office-2007-save-using-the-Office-97-2003-format for some very good instructions.

Where is Julia?

Between Blaney, Sydney and our Nowra office. On the 1st December she may be on Your Money Your Call with Margaret Lomas on Sky TV.

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.

<i>Alienation of Personal Services Income</i>	<i>Buying a Business</i>	<i>Capital Gains Tax</i>
<i>Claim Your Trip Around Australia</i>	<i>Claimable Loans</i>	<i>Claiming a Motor Vehicle</i>
<i>Defence Forces [Military]</i>	<i>Death and Taxes</i>	<i>Division 35</i>
<i>How Not To Be A Developer</i>	<i>Divorce</i>	<i>FBT for PBIs</i>
<i>Fringe Benefits Tax</i>	<i>Investors</i>	<i>Miners</i>
<i>Goods and Services Tax</i>	<i>Overseas</i>	<i>Real Estate Agent</i>
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<i>Self Managed Superannuation Funds</i>	<i>Year End Tax Strategies</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.