

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

It Is Now Safe To Sell Your Re Built House

Without actually admitting it, the Government has been making a tidy profit out of victims of natural disasters, and others who have had their home destroyed, since the advent of CGT; the Government has announced it will change the law as it applies from 1st July, 2011.

The press release seems pretty straight forward, the only trap is if you have signed a contract to sell the property before 1st July, 2011.

Until these proposed changes, if you rebuilt your house after it was destroyed you would have to move back into the property as soon as the certificate of completion was issued or lose your main residence exemption for the whole time you had owned the property. This was not very practical for families who had settled elsewhere or lost members in the floods.

Strangely enough if you sold the vacant land without rebuilding or you were covering the house under the absence rule (6 year rule) at the time of the disaster (ie not living there) you could still cover the sale with your main residence exemption without having to move back into the property. It was only people who were living in their house at the time it was destroyed that were caught and still will be if they signed a contract before 1st July, 2011. It also means people who lost their homes in the Victorian bush fires will miss out on this concession and lose their main residence exemption, right back to day one unless they moved into the property as soon as the completion certificate is issued.

We would like to think our articles in the press had a lot to do with this change and would like to thank Alex Tilbury and Noel Whittaker for asking the right questions of the ATO media unit.

Geelong and Melbourne Office

Renee Jovic will be on leave from Monday 21st November until Tuesday 23rd January. In her absence please contact Ashley Bunn on accounting and tax matters or Jane Angleton for administration matters.

A significant advantage of the BAN TACS group is that while the principal of a practice is on holidays the principals of the other practices in the group are available to support the remaining staff. This means at worse there may be a short delay in solving more complex questions but you will still get an answer in Renee's absence.

Column by Noel Whittaker

Much has been written about the importance of having a valid will, but getting the will right is just as important as getting it signed.

Usually older couples make out what we call "I love you" wills whereby they each leave all their assets to the survivor in the event of a death of one of them. This might be fine in some circumstances, but it can have devastating consequences if they are receiving the aged pension.

This is because the asset test for a homeowner pensioner couple is much harsher than for a pensioner single. Couples can own up to \$1,018,000 of assets, plus the family home before losing eligibility for the pension – for a single the cut off point is just \$686,000.

Think about a couple with assessable assets of \$600,000 and who are receiving a combined pension of \$626.50 per fortnight. If one died and all the assets went to the survivor, they would be assessed as a single pensioner and the pension would drop to just \$128.93 a fortnight. That is a reduction in income of almost \$500 a fortnight or \$13,000 a year.

The problem is that a one person household has almost as much household expenditure as a two person household. The surviving spouse could find themselves with severe cash flow problems at the same time as they are trying to cope with the death of their life partner.

A better option may be to leave part of the assets to a relative such as a child. Of course this does not work in all circumstances - advice also needs to be taken about whether this would have any effect on the entitlements of the recipient, and whether the money is likely to be lost if that relative has a relationship breakdown.

Noel Whittaker is a co-founder of Whittaker Macnaught Pty Ltd. His advice is general in nature and readers should seek their own professional advice before making any financial decisions. Noels email is noelwhit@gmail.com

Deducting Franchise Fees

Inglewood v Commissioner of Taxation 2011 AATA 607 provides some interesting insight on the deductibility of Franchise Fees. The case involved a Bendigo Bank Franchisee.

Two franchise fees were payable, one was an establishment fee. The taxpayer agreed this was not an outright deduction but argued that it should be able to be written off over 5 years as black hole expenditure. The court found that it did not qualify as black hole expenditure because the fee was payable for the acquisition of a legal asset, the right to operate the branch, thus it was an asset for CGT purposes. Black hole expenditure is only a residual provision for expenditure not covered elsewhere in the act.

The other Franchise Fee was a renewal fee which is paid in advance to cover a period of 5 years. It entitles the Franchisee to continue in the business. At the end of the 5 years, unless they renew, they would not be allowed to continue to operate. The AAT found that as it was a re occurring payment and gave the franchisee no rights or asset at the end of the 5 years, then it was an expense of the business and could be claimed as a deduction but must be amortised over the 5 year period.

Land Swaps As A Result Of The Floods

This article looks at the tax effect of the land swap programs that encourage owners of property affected by the floods to swap with them for a block on higher ground. This includes rental property owners.

The government has announced CGT relief measures for the land swaps. The basic intention is to remove any CGT consequence on the swap but it gets a bit better than that, with a new cost base that will eliminate the need to reconstruct records probably lost in the floods. Normally CGT would apply because the old block is technically being disposed of and the payment received is the value of the new block.

If the block you surrender is a pre CGT asset then, under the proposed concessions, your replacement block is also considered a pre CGT asset. Further, if the house on the land that is being replaced was a pre CGT asset then the new house you build on the new land will still be considered a pre CGT asset.

For Pre CGT assets accepting the CGT concessions is a no brainer as there is nothing to lose. The situation for post CGT assets is a little different and you do have the option of not applying the concessions to your situation but it is only in the rare circumstances of where the market value of the new land is less than the market value of the flood affected land, that you may be better off under the old law.

The exposure document says very little about how the main residence exemption will apply, just enough to show that these concessions are available on a main residence. The unanswered question is how the

apportionment rules will apply if the property has also been used to produce income, ie a rental, so only some of the gain is exempt as the main residence and the apportionment is made on a day by day basis. There is no mention of whether the new land will be deemed to be acquired at the date the old land was or at the date of the swap and this will have an effect on the apportionment calculation.

As the law currently stands if you swap your flood affect block for a higher block then your capital gain (if not covered by your main residence exemption) would be the difference between your cost base (ie purchase cost, improvements etc) and the value of the new block of land. On the other hand the cost base of your new block of land would only be the market value of your old flood affected block. This is because the law applies to each transaction the value of the asset given or received in exchange. The effect would be that the government could tax you twice on the difference in the values of the blocks. And this will be the case if you do not elect to apply these concessions to the transactions.

The concessions for post CGT land will exempt the whole transaction from CGT and the new asset will start off with a cost base of its market value. The situation is best explained by examples:

Example 1: Assume the flood affected land has a cost base of \$50,000, probably because it was bought a long time ago but due to now being considered flood prone its market value is only \$70,000 and the market value of the new block is \$100,000

<i>Calculation with the Concessions</i>	<i>Calculation without the Concessions</i>
No CGT at all and the cost base for the new property is \$100,000	Capital Gain of \$50,000 (before CGT discount) cost base for new land \$70,000

Example 2: If the property was bought more recently then it is quite possible its cost base is more than its current market value. So with the same circumstances above except that the cost base is now \$80,000. Technically you made a capital loss on the original property but the way the law works you are liable for tax on a capital gain because it is the market value of the new block that is your deemed selling price not the market value of the old block.

<i>Calculation with the Concessions</i>	<i>Calculation without the Concessions</i>
No CGT at all and the cost base for the new property is \$100,000	Capital Gain of \$20,000 (before CGT discount) Cost base of new property \$70,000

Example 3: If you did not receive an insurance payout for the house, then your cost base could be larger than the market value of the old and new land. This is because it still includes the value of the house. It would only be in exceptional circumstances that the market value of the new land is less than the market value of the old land. The old land would need some very special attributes to rise above its flood affected status. In these circumstances you may want to consider not applying the concessions. For example: Original cost base \$150,000 and the flood affected land is still worth \$120,000 where as the new land is only worth \$100,000.

<i>Calculation with the concessions</i>	<i>Calculation without the concessions</i>
No CGT at all and the cost base for the new property is \$100,000	Capital loss of \$30,000 (towards future gains) cost base of new property \$120,000

Possibly the government has not yet realised that this concessions will be less advantageous to people whose insurance company did not cover them than those that were paid, and the final law maybe different.

The original property probably had a house on it before the flood. If insurance proceeds were received then it is a separate CGT event. This means that the cost base of your original property has already been apportioned between the house and land in accordance with Section 112-30. If you choose to apply the CGT concessions to the land swap any capital gain or loss you make on the insurance proceeds is also ignored. This is the case even though the insurance proceeds may have been received before 1st July, 2011.

People who rebuild on their land with the insurance proceeds would not trigger a CGT event so this concession puts people who swap first then rebuild, in the same position. The difference is people who rebuild on the original land are left with their old cost base. The big advantage for the land swap is, it appears, that your cost base will be the cost of the new house.

Note you need to consider the above even if your property is fully covered by your main residence exemption. It is important to still know the CGT cost base of your property because it is possible to lose your main residence exemption retrospectively, for example demolishing the house and selling vacant land. There is only one catch, that you must not have accepted the land swap until after 30th June, 2011.

Please remember this is only a draft of what is intended, unfortunately you will probably have to make decisions before the law is finalised, which is why we have gone into such detail. Nevertheless, we cannot guarantee that is how the law will work in the end.

How To Sell Your Property For Top Price

By RUN Property CEO Rob Farmer

Home sweet home has reached its use-by date, so how do you trade up in the property market and get the best financial result with the least stress?

The obvious suggestions of removing clutter and doing basic repairs are vital because you want buyers to make the emotional decision that your property is worth more than they want to pay for it. And they won't jump the gap from practical decision to emotional desire unless the property shines for them.

Choose an agent best suited to sell your property based on their knowledge and experience in your local area, their professionalism, ability to negotiate and communicate, and their personal qualities you trust. Don't choose an agent because they promise the highest price or offer the lowest selling commission. An agent who cannot secure a rewarding commission for themselves is unlikely to negotiate top price for you.

Set an achievable selling price based on comparable sales of similar properties recently in your neighbourhood, not on your dream result. Pricing the property correctly, in liaison with your estate agent, will generate maximum interest in the property during the peak of buyer demand. Research shows that up to 80 per cent of buyers become aware of a property during the first two weeks of advertising and early interest in a property is often the strongest.

Choose a selling method, again leveraging your agent's knowledge, best suited to your property in your area. Unusual or in-demand properties such as art deco apartments will be suited to auction or expressions of interest campaigns and outer suburban houses surrounded by similar properties for sale are likely to sell best by negotiation.

Ask your agent what they would do if they owned your home. How would they present it? What would they change or fix? What do they see as its best selling features? Ask your friends what they notice (good and bad) when they arrive.

Professional real estate agents know that if a property is presented to highlight its features, promoted to create awareness in the market and priced so that buyers see value, and if vendors use an agent and agency which is committed to marketing excellence, the result will be a premium price.

RUN Property is Australia's largest metropolitan real estate agency which manages property valued at more than \$10 billion and has a dedicated team of sales specialists in Victoria, NSW and Queensland. RUN Property – sales, leasing and management. For information visit www.run.com.au

Where is Julia?

On the road and dawdling! Heading home from NQ for the Christmas break.

Ask BAN TACS

For \$59.95 at [Ask BAN TACS](http://www.bantacs.com.au) you can have your questions regarding Capital Gains Tax, Rental Properties and Work Related Expenses answered. We will include ATO references to support our conclusion.

CGT Calculator

There has been an addition to our collection of simple spreadsheets to help taxpayers crunch the numbers before they go to their accountant. Obviously with the complexity of tax law we cannot replace the advice of an Accountant and our spreadsheets are just intended to prepare you for the most efficient interview with your accountant possible.

The latest addition is an Excel spreadsheet that will, in most circumstances, estimate the capital gain on the sale of a property. It includes and example with notes. Available in the shopping section of our web site www.bantacs.com.au/shopping_property_cgt.php for a very uncomplicated \$35.00. This calculator would also be a handy tool for accountants who haven't already created their own spreadsheet.

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.