NEWSFLASH

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For all accounting & tax support contact one of our offices or just go to Ask BAN TACS

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BAN TACS Accountants Pty Ltd is a CPA Practice

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*Visit **Bantacs.com.au** About Us section to view office location details and information about BAN TACS practitioners.*

Welcome to the BAN TACS News Flash. Our aim is to provide short but succinct updates on all tax issues

Christmas New Year Trading Hours

It is already that time of year again! Next year we will be halfway through this decade. It has been an extremely busy year for BAN TACS. There never seems to be a slowdown in taxation.

We certainly hope you have a lovely break and that the new year brings lots of fresh new opportunities.

Over the Christmas break our offices will be closed on the following dates:

Adelaide closing at 4pm Friday 19th December, re-open 9am Monday 5th January
Burwood
Central Coast NSW closing noon Wednesday 24th December, reopen Monday 5th January
Geelong closing noon Tuesday 23rd December, re-open at 8.30am Monday 5th January
Gold Coast closing at 5pm Friday 19th December, re-open 9am Monday 5th January
Mackay closing at 5pm Friday 19th December, re-open 8.30am Monday 12th January
Melbourne closing noon Tuesday 23rd December, re-open at 8.30am Monday 5th January
Ningi closing at 5pm Tuesday 23rd December, re-open 8.30am Wednesday 7th January
Stanthorpe closing at 5pm Wednesday 17th December, re-open 9am Wednesday, 7th January
Tenterfield closing at 5pm Friday 19th December, re-open 9am Monday 5th January
Toowoomba closing at 11.30am Wednesday 24th December, reopen on Monday 5th January

Check Sea Level Before You Buy

Here is a link to a fantastic web site that will give you the metres above sea level for any area you point to on a google map http://www.daftlogic.com/sandbox-google-maps-find-altitude.htm Certainly a must do considering global warming and local councils starting to increase minimum building requirements. Just remember that sea level is very different to flood level which is more reliant on whether water can get away.

Noel Whittaker's Column

Australia is facing challenging times. Household debt levels are a record high and still rising, and inflation is running at the top of the Reserve Bank's target range. Yet, interest rates are at historic lows with no increase in sight.

It's all a hangover from the Global Financial Crisis. In a way, the GFC was as much an economic catastrophe as World War II was– the main difference is the building boom that followed the end of hostilities in 1945. Now, there are no buildings to repair, just balance sheets.

This does highlight the challenges facing our Reserve Bank now, as they try to cool off an overheated property market. Governor Glenn Stevens has already pointed out that there is no point in making any further rate cuts as rates have become so low that any further reductions are now ineffective as a stimulatory tool.

The Australian housing market is one of the most overvalued in the world, but you can't put a brake on it by raising rates by a small amount. Think about it – if you came across an undervalued asset now, even an extra one percent interest wouldn't stop you buying it. You could stop the property market dead in its tracks with a large rate rise, but the outcome would be unthinkable. There would be a string of repossessions as first home buyers lost their homes.

Even though the Reserve Bank is concerned about the number of low deposit loans written, it is not practicable to insist that property buyers have a larger equity. It would simply force first home buyers out of the market, leaving the space to investors who would simply increase their equity by mortgaging other investment properties they own.

So our Reserve Bank remains stuck between a rock and a hard place. They could go back to the old days and restrict the amount of money the banks could lend for housing, but this could be easily circumvented by the use of non bank lenders and offshore borrowings. At the end of the day, it's buyer beware - anyone who buys into a boom must have an exit strategy when the music stops.

Noel Whittaker is the author of Making Money Made Simple and numerous other books on personal finance. His advice is general in nature and readers should seek their own professional advice before making any financial decisions. Email: noelwhit@gmail.com.

No 50% CGT Discount For Trust Developing Units To Sell

In Taxpayer Alert TA 2014/1 http://law.ato.gov.au/atolaw/view.htm?DocID=TPA/TA20141/NAT/ATO/00001 the ATO point out that it does not matter what your trust deed states or how the trustee classifies the profits made from building town houses or units, if the trust entered into the development with the intention of selling them then the 50% CGT discount cannot apply.

To qualify for the 50% CGT discount the item sold must not be part of a plan to make a profit from its sale. In the case of property the alternative would be that it was held as a home or investment property. Sales of properties held for the alternative reason are merely realising an asset. Even if they are considered to be a business that business is only one of making income from the rent. When the purpose of the business is to make income from the sale of the property then the sale proceeds are business income so the profit will be tax as normal income, capital gains tax will not apply so the 50% CGT discount cannot apply.

This issue also applies to any other entity or person, the ATO has concentrated on trusts in the TA, presumably because someone has been promoting that the right of a trustee to classify whether income is of a capital nature or not can be used as a method of changing the tax implications. This is not possible the wording of a trust deed cannot change or disguise the true purpose of the development or override tax law.

Our How Not To Be A Developer Booklet goes into the matter in great detail for all tax entities http://www.bantacs.com.au/booklets/How_Not_To_Be_A_Developer_Booklet.pdf This is a particular area of expertise for BAN TACS Accountants so please contact one of our offices if you are at all concerned. If you are not quite ready to show your hand by turning up in person you may prefer to use our askbantacs service http://www.bantacs.com.au/QandA/index.php or skype Julia.

Underpinning and Restumping, Tax Deductible?

Good question. Ask two people and you will get two different answers but there are reasons for these contradictions.

The first issue to consider is whether the restumping is an improvement. This is a question of whether the restumping was necessary when you purchased the property regardless of whether you knew about it or not. The ATO guideline on this is TR 97/23 http://law.ato.gov.au/atolaw/view.htm?DocID=TXR/TR9723/NAT/ATO/00001 . If the restumping improves the property beyond the condition it was in when you purchased it then it is an improvement, no tax deduction but the cost can be depreciation at 2.5% over 40 years.

Now if you have owned the property (either as a rental or as your home or holiday property etc) for a number of years and it is within this time that the restumping becomes necessary it is a repair. If a repair is undertaken while the property is income producing and the repair became necessary during the period of ownership then the cost is tax deductible. If the property is only used to produce income for part of the year you may have to apportion the cost unless you can argue the restumping is a result of tenant damage (IT 180).

Some may be concerned that if all the stumps need replacing it would be considered a replacement in its entirety so really an improvement. To be a repair something of the old item must remain. The fact is the house is totally reliant on the stumps structurally the same as a roof relies on its walls, this means that the entirety is the whole building not the stumps alone. Reference paragraph 40 of TR 97/23.

There are ATO rulings that class underpinning as a capital improvement such as ID 2001/30 http://law.ato.gov.au/atolaw/view.htm?docid=AID/AID200130/00001 The ID states:

> "In underpinning the entire foundations, the taxpayer inherently changed the nature and character of the income producing property (Case V2 88 ATC 107; AAT Case 4012 (1987) 19 ATR 3038 and ACT Construction Ltd v. Customs & Excise Commissioners [1979] 2 All ER 691). The underpinning goes beyond restoring the property to its original state and alters the character of the property. Accordingly the underpinning work is a capital improvement rather than a repair and therefore is not deductible in the year of income."

Yet case V2 88 ATC 107; AAT Case 4012 (1988); 19 ATR 3038 (referenced in ID 2001/30) it was considered that underpinning was a repair. There was only partial underpinning of a rental property due to excessive drying of the subsoil. It was found that the foundations were restored to their former efficiency in function without the essential character of the foundations being altered. The repairs to the foundations were not capital in nature, as they did not change the nature and character of the building and as such were deductible as repairs.

PBR 1011333688020 https://www.ato.gov.au/rba/content/?ffi=/misc/rba/content/1011333688020.htm states:

> "If you were to simply have the posts re-stumped and restore their efficiency of function, this would constitute a repair."

Re stumping by replacing timber stumps with brick ones may be an improvement not a repair. Having said that the ATO in PBR 17932 https://www.ato.gov.au/rba/content/?ffi=/misc/rba/content/17932.htm accepted replacing timber stumps with concrete stumps was still a repair because concrete was just the modern alternative.

Just for good measure PBR 45255 https://www.ato.gov.au/rba/content/?ffi=/misc/rba/content/45255.htm states:

> "In your case, you have owned the property for approximately eight to ten years and the property has been income producing up until the time restumping was commenced and was only untenanted until the works were completed. The need for repairs was occasioned by factors, which occurred during the period of income production. Only part of the foundation was underpinned which restored it to its original condition. As the essential character of the foundations was not altered, the work is therefore considered to be a repair and not capital in nature and any expenditure incurred is deductible."

Now as far as authority goes the case quoted has the strongest authority followed behind by TR 97/23 then ID 2001/30. The PBRs are just copies of private rulings made by the ATO which, unless you are the rulee, cannot be relied upon.

Super Guarantee Applies to Pizza Delivery Drivers

According to ID 2013/28 even if the driver is required to provide their own vehicle under an independent contractor agreement, where they provided an ABN and invoiced the shop, the drivers were still employees for the purposes of the superannuation guarantee.

It is very important to get your superannuation guarantee obligations right as the fines are just too high.

Skype Julia

Skype has become a very effective way of consulting. Skype allows me to see the client's face so that I know they are following what I am saying. Most of the people who have used this service to date just want to talk about their overall strategy or get a straight answer to a difficult question. It is not intended to replace your current Accountant but it is an excellent method of getting specialist advice on property from investing to developing or just a second opinion. http://www.bantacs.com.au/shopping.php

Where is Julia?

Settled back home for quite a while now.

Ask BAN TACS

For $69.95 at Ask BAN TACS you can have your questions regarding Capital Gains Tax, Rental Properties and Work Related Expenses answered by Julia. I will include ATO references to support our conclusion, answer are generally 300 to 700 words long depending on the complexity.

Winning Property Tax Strategies – The Book

Once again a brilliant combination of Noel Whittaker's easy reading style with Julia Hartman's mind numbing attention to detail. Lots and lots of new stuff plus updated basics for the first time reader so it is much bigger, 300 pages but still the same price. New chapters including young investors, SMSFs, renovators, granny flats, investment and budgeting strategies, fires and floods, mass marketing spruikers, commercial properties, subdividing and development. You can also purchase it online by going to www.bantacs.com.au/book_winning-property-tax-strategies.php The cost is still a low low $29.95 plus $5.95 postage – tax deductible of course!

What Is New on www.bantacs.com.au

Want more? Please go to bantacs.com.au/publications.php for back issues of newsflash or download our free booklets where past newsflash articles are collated according to their topic. There are over 30 topics, for example How Not To Be A Developer, Claiming Your Trip Around Australia As A Tax Deduction, Claimable Loans, Rental Properties, Overseas, Fringe Benefits Tax, Claiming a Motor Vehicle, GST etc.

With the forum and the Ask BAN TACS Notice Board the information on the site regularly change.
Two very generous askbantacsers have allowed their questions and answers to be placed on the notice board.
http://www.bantacs.com.au/QandA/index.php?xq=615 Choosing not to use the 6 year absence rule because of a capital loss and the deductibility of holding costs while a vacant rental is held for sale.
http://www.bantacs.com.au/QandA/index.php?xq=616 Making sure you qualify for the margin scheme and claiming GST input credits during a development.