

# NEWSFLASH

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**BAN TACS**  
Accountants Pty Ltd

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Pty Ltd is a  
CPA Practice



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Issue Number: 301

Pages: 4

Date: 15<sup>th</sup> September, 2015

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

## Reporting Payments in the Construction Industry

On the 28<sup>th</sup> August all businesses in the construction industry were supposed to have lodged a report to the ATO of all the payments they made to contractors in the 2014/2015 financial year. Have you lodged yours?

Construction industry has a very wide definition, to see if it applies to you check here

[https://www.ato.gov.au/Business/Building-and-construction/In-detail/Taxable-payments-reporting/Taxable-payments-reporting---building-and-construction-industry/?anchor=building\\_and\\_construction\\_services#building\\_and\\_construction\\_services](https://www.ato.gov.au/Business/Building-and-construction/In-detail/Taxable-payments-reporting/Taxable-payments-reporting---building-and-construction-industry/?anchor=building_and_construction_services#building_and_construction_services) and here

[https://www.ato.gov.au/Business/Building-and-construction/In-detail/Taxable-payments-reporting/Taxable-payments-reporting---building-and-construction-industry/?anchor=Appendix\\_2#Appendix\\_2](https://www.ato.gov.au/Business/Building-and-construction/In-detail/Taxable-payments-reporting/Taxable-payments-reporting---building-and-construction-industry/?anchor=Appendix_2#Appendix_2) There is no de-minim-us rule, no matter how small your business is it must report. To order the appropriate form click here

<https://www.ato.gov.au/Business/Building-and-construction/In-detail/Taxable-payments-reporting/Taxable-payments-reporting---building-and-construction-industry/?page=11>

More details in Newsflash 248 [http://www.bantacs.com.au/newsflash/Newsflash\\_248\\_1st-June-2012.pdf](http://www.bantacs.com.au/newsflash/Newsflash_248_1st-June-2012.pdf)

## Telstra Buy Back

A must know CGT fact for your 2015 tax return. The disposal date is deemed to be 6<sup>th</sup> October, 2014. The \$4.60 received per share is \$2.27 in a fully franked dividend and \$2.77 is the actual price paid for the share. Yes, I realise this adds up to more than \$4.60, it is all explained in CR 2014/90

<http://law.ato.gov.au/atolaw/view.htm?DocID=CLR/CR201490/NAT/ATO/00001&PiT=99991231235958>

So if you purchased the share for less than \$2.77 you have a capital gain to consider, if you paid more than \$2.77 per share then you will have a capital loss that you can offset against 2015 and future capital gains.

## Column by Noel Whittaker

The stock market is having one of its regular down periods and, of course, all sections of the media are having a field day. There is nothing like a sensational headline to attract an audience, and while the latest gyrations in the market may make for good conversation, investment veterans know that the present behaviour of the market is as predictable as traffic jams in peak-hour.

I believe the best option is to agree on a diversified portfolio and decide how much you wish to keep in each of the three asset classes – cash, property and shares. When you do this, you should keep in mind that property and shares should never be bought unless you have at least a seven to ten year time frame in mind. This will give you time to ride out the inevitable downturns.

I understand the gloomy headlines are depressing, but history shows that it is common for the stock market to have up to four negative years in every ten – this means there are at least six good ones every decade. Unfortunately the average Aussie has a strange approach to investment. When a stock market boom has become well established they love to jump in and buy up big because they believe the boom is never going to end. When the market has one of its inevitable downturns (as it is doing now) they stay away in droves, or worse still, sell out at the worst possible time. All this does is turn a paper loss into a real one.

So don't be concerned about the current turbulence; hang in there and think of adding to your portfolio if you can. Don't forget there is now over a trillion dollars in superannuation and employers are contributing 9.5% of payroll all the time. Most of this money will find its way into the share market and this will provide tremendous buying pressure year in year out.

Let's finish with the words of investment guru, Warren Buffet: "The share market is the transfer of wealth from the impatient to the patient". Inexperienced investors regard a market fall as a time to sell; experienced investors see it as a time to buy.

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](mailto:noelwhit@gmail.com).

## Granting an Option over Your Property

For years I have been warning about the perils of developing a property yourself. The tax consequences are outlined in our How Not to Be a Developer Booklet

[http://www.bantacs.com.au/booklets/How\\_Not\\_To\\_Be\\_A\\_Developer\\_Booklet.pdf](http://www.bantacs.com.au/booklets/How_Not_To_Be_A_Developer_Booklet.pdf)

A way of avoiding the risks, possible GST problems and losing the 50% CGT discount or main residence exemption is to sell the property to a developer. The more certainty that the property can be developed the higher the price. You may consider obtaining your own DA, after all you can be using the house productively while you go through the drawn out process. Alternatively you could offer a developer an option over the property so they can obtain a DA to suit their specific needs without the costs and uncertainty of holding the property during that time. An option in this case would be a contract where you agree to sell the property within a specific period of time. They have the option to exercise this option or let it lapse thus limiting their exposure but allowing you to ask the maximum price of a prime development block.

So now I have your interest here is how it works for CGT purposes. The granting of an option is CGT event D2. The asset being the option itself so it only comes into existence on the day you sell/grant it. Accordingly, you have no chance of holding that asset for more than 12 month to qualify for the 50% CGT discount. Further as an option is not a dwelling itself the main residence exemption cannot apply. Section 118-110(2) specifically excludes from the main residence exemption a CGT event D2, which is what options are.

The good news is if the option is exercised CGT event D2 is completely ignored, the amount you received for the option becomes part of the sale proceeds for the property. This means that the 50% CGT discount or the main residence exemption can be utilised on the amount you receive for giving the option. If the option isn't exercised then you still get to keep the property and hopefully still get your asking price one day but the amount you received for the option is a capital gain with no 50% CGT discount or main residence exemption and the cost base will probably only be legal and agent's fees.

When drawing up an option agreement it is worth clearly stating that the price paid for the option reduces the price of the property if the option is exercised.

Note section 118-110(2) does allow the main residence exemption to apply to forfeited deposits providing you continue on and sell the property to someone else. That is assuming of course that the main residence exemption actually applied to the property you are selling. So if you can achieve everything you and the purchaser want by asking for a deposit which the developer simply loses if they decide not to buy then you will get a better tax outcome.

References CGT event D2 sections 104-40 and 134-1 ITAA 1997. Section 118-110(2) ITAA 1997 regarding the main residence exemption.

## Travelling Workers Update

For over a decade now we have been claiming travelling expenses such as motor vehicle costs, food, van park fees and caravan depreciation as a cost of earning income because travelling workers have more than one place of employment before they return home so they are itinerant. This is based very soundly on the ATO ruling TR 95/34 and the shearers case S29.

Naturally enough when we open a new office under a new tax agent number and start making work related claims in the tens of thousands it rattles the ATO's chain and they pay the new office a visit. The standard procedure is to give them our booklet on the topic

[http://www.bantacs.com.au/booklets/Claim\\_Your\\_Trip\\_Around\\_Australia.pdf](http://www.bantacs.com.au/booklets/Claim_Your_Trip_Around_Australia.pdf) to read. Never once have the statements in the booklet been challenged by an auditor, they have even been accepted by a deputy **commissioner** of taxation. So familiar has the ATO become with this that one auditor said, to a new office, why didn't you just tell us you are part of the BAN TACS group?

Now out of the blue an auditor has decided that the definition of itinerancy is more than one work place in the same day. This is not what it says in IT 95/34 and certainly contradicts S29, where it is accepted that itinerancy means more than one workplace before returning home. The ATO cannot change its mind and contradict its own ruling let alone case law, retrospectively. The NTAA agrees that the current meaning of itinerant is more than one workplace before returning home. Thus people who travel from job to job but maintain a home base can claim all their travel costs as an expense of earning income.

The process from here is simple, object to the assessments denying these deductions so that the issue has to go to a more qualified ATO officer forcing the ATO to support its position with legal precedents. We have lodged an objection and should receive a response in 60 days, though experience has taught us that they can drag this process on for years. Fortunately the taxation ombudsman takes a very dim view of such delays and we will certainly jump at the opportunity to invite the ombudsman to get involved. In the meantime the ATO is throwing out every substantial itinerancy claim made in 2014. Not just our clients, other accounting firms have contacted us asking if we would prepare an objection for their clients.

Certainly, if clients want to object to their assessment we are happy to oblige and it is appropriate that each individual take the matter up with the ATO. A bucket load of objections is the perfect response to a bucket load of audits. Hopefully, this will get us the most attention and attention is what we want, it is not a matter of ducking under the radar, we have case law and ATO rulings on our side. We need to attract enough attention at a higher level to put a stop to this as quickly as possible. Yes I know the flood gates have opened as the claims are so good but they are within the law so the law has to change not bullying and the law can't change retrospectively before the ATO makes a public announcement that they intend to change it.

Unfortunately, individual objections are going to be costly and we understand that this is all a bit scary. I am sure the ATO are hoping for that result. We have already lodged an objection for one client. If the ATO accept that the auditor's position is not correct then we will ask the ATO to apply an Administrative Reversal to all the other amended assessments. This is a very cost effective outcome but not ideal as it does not show the strength of numbers.

Newsflash will keep readers up to date on this issue so whether you are an Accounting Firm or a Travelling Worker make sure you check each newsflash for the latest.

## Skyping Julia Has Just Got So Much Better

The next best thing to consulting with me face to face is on a video link over your computer. I like to see your face to make sure you are following what I am saying. I think I have now perfected this method of getting the answers damn straight.

I now use [www.zoom.us](http://www.zoom.us) as it has a much clearer reception and connecting is as simple as sending you an email with a link. The whole interview can be recorded so you can go back over it, takes the pressure off trying to take everything in and you can play it back to your spouse or Accountant.

Quite often these interviews are followed up with references and further reading to make sure you get an answer you can have total confidence in. Now if you were going to the office of a professional to ask for advice it is very likely to cost you more than \$250 an hour, it will not be recorded and you lose much of your precious time travelling to their office and waiting your turn. Zoom has allowed us to revolutionise how taxpayers can now access specialist taxation advice regarding property.

Most people, who use 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 from investing to developing or just a second opinion. Here is what a client recently said about the service:

“Wonderful, thanks so much. Julia. Great result. You are amazing.”

Julia’s time can be purchased in half hour segments at <http://www.bantacs.com.au/shopping.php>

Combine this service with askbantacs, see below, and we have your advice needs covered in the most efficient and accountable way possible. I am happy to give advice in writing or be recorded because I know what I say is based on law and ATO rulings, I can back everything I say so I have no hesitation in being held accountable, what better guarantee can you have?

## 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 my 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](http://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!

## Askbantacs Notice Board

One very generous askbantacser has allowed their question and answer to be posted on the notice board. <http://www.bantacs.com.au/QandA/index.php?q=684> Discusses GST and other issues associated with buying a residential property now that is in a commercial area, with an eye to one day selling as a commercial property.

<http://www.bantacs.com.au/QandA/index.php?q=686> Treatment of loans for a 3 unit development where one of the units will be used as the owners home and the owner wants to reduce the mortgage on that unit.

**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.