

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

Utes, Panel Vans And Claiming a 100% Tax Deduction

If a vehicle is designed primarily to carry goods then its use for home to work travel is not considered private use. Basically you can claim 100% of its expenses as a cost of earning income providing the private use is incidental to earning income ie getting lunch and any real private use is only minor, infrequent and irregular.

Readers who travel long distances to work might think it is worth buying a ute just to drive to and from work. Nice thought but there is devil in the detail, the wording of the Act is:

“to go between your residence and a place where you use the car in the course of producing your assessable income”

This means that if all you do once you get to work is park it and walk into your office for the day you will not qualify for this concession.

Regarding the minor, infrequent and irregular private use notice the word “and”. So it might only be a few kilometres off the track to pick your children up from school on the way home but if that is something you do regularly it will disqualify you from this concession.

The onus of proof that the vehicle is used almost exclusively for work use or travel between home and work rests with you. So it is worth keeping a log book anyway to make sure this can never be challenged.

An ATO auditor once told me of travelling to northern Queensland to audit some tradies. Before starting the audits and making himself known in the community he spent an anonymous Saturday at the local pub jotting down all the number plates for the utes going past with groceries in the back.

Travelling, Itinerant Workers Case From AAT

A travelling worker represented himself before the AAT claiming that his travel was itinerant and therefore his travel costs including meals and accommodation were tax deductible. *Edward Hill v Commission of Tax* 21st July 2016 AATA 514 2015/2604 https://www.ato.gov.au/law/view/pdf/misc-case/rdr_2016aata514.pdf

Mr Hill lost his case primarily because he went home between each place of work and secondly because his testimony was fraught with inconsistencies.

Quotes from the case:

“Accordingly, I find that Mr Hill had returned home to Springfield for short periods between each of his different jobs.”

“At the end of each discrete employment arrangement, he returned to his home at Springfield for a couple of weeks.”

To be classed as itinerant you need to have more than one place of work before you return to your home. Hill’s case does not change anything in our Travelling Worker’s booklet. We have a whole section on our web site devoted to travelling workers <http://www.bantacs.com.au/topics/travelling-workers/>

Some travelling workers are lucky enough to work on a farm where they have another farm down the road. If they have to travel from one farm to the other they are already itinerant without having to have another place of employment.

Vehicles Designed To Carry A Load Of More Than 1 Tonne

The kilometre method of substantiation allows car owners to claim a deduction for their income producing travel at the rate of 66 cents a kilometre up to a maximum of 5,000 kilometres per car. The 1997 ITAA defines a car as follows:

car - means a ‘motor vehicle (except a motor cycle or similar vehicle) designed to carry a load of less than 1 tonne and fewer than 9 passengers.

So if your ute is a 1 tonner it is not a car. Nevertheless, you can still use the kilometre method to claim your vehicle but only if it is predominately used for work purposes which can include home to work travel. Any private use must be incidental to the work use ie getting your lunch. Though minor, infrequent and irregular private use is also permitted. Reference section 28-170 1997 ITAA.

If you have more private use of the one tonner then, while you are not strictly required to do so it is recommended that you keep a log book for 3 months, take a speedo reading each 30th June and keep receipts for all expenses to make sure you qualify for a claim.

If owning a one tonner as opposed to a “car” is a problem for you then look into the fine print. It might be called a one tonner but its legal pay load may be a fraction less.

Where Is Noel’s Column?

Noel Whittaker’s column now appears every Monday on our facebook page <https://www.facebook.com/BANTACSpropertypage/>

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Would you like an email Newsflash Notification?

After reading the above I wouldn’t blame you for not wanting to click on the link in the notification but at least you will know when it is up on the web site especially at this busy time when it doesn’t always get there by the 15th of the month. You can register for the notification or get direct access to Newsflash by going to the first option under the library heading on our home page <http://www.bantacs.com.au/media-library/newsflash/>

Developing Your Parents' Home Block

There is now, on our webinar page, for small developers, <http://www.bantacs.com.au/media-library/webinars/small-subdivisions/> a series of webinars for people considering developing their parents' block. In some cases there is a considerable tax benefit in not doing this until after they have died. Not to mention the financing benefit of not having to try to get the bank to lend you the money for the development when the property is still in your parents' name. But there is much more than just this to consider.

If you demolish the home to undertake the development then you demolish the main residence exemption so CGT will apply right back to the day your parents purchased the property. Even if the cost base has been reset to market value because they used it to produce income at some time. This reset only applies if the house is still there when the property is sold.

There is no CGT to worry about if your parents purchased the house and land before 19th September 1985 but be careful here, if you only have one parent left. The surviving parent probably inherited half the property from the other parent after 19th September 1985 so it is really two separate assets and one is a post CGT asset, refer above.

If your parents do the bare minimum required by council to obtain separate titles to the subdivided blocks and do not build on these block then, unless they are already in the business of property development, they are unlikely to be considered in the business of developing land. Instead they would be considered to be merely realising an asset. Merely realising an asset means that the sale proceeds are not business turnover so are not counted towards the \$75,000 GST threshold that forces them to register for GST. Even though the sale of vacant land is subject to GST, because the owner is not registered and not required to be registered they do not have to charge GST. This concept of merely realising an asset could save you heaps in tax. Not only will it prevent your parents from having to charge GST but it ensures that the 50% CGT discount applies to the property rather than being taxed on the full profit because it is business income.

Taking the development one step further by building on the land changes the activities to a business. You are also exposing yourself to much more risk when you start the building process, not to mention the problems of borrowing money, when the property is in your parent's name and they are retired. All this needs to be weighed up against the extra profit potential of a strata development. Do the numbers it may even be better and more peaceful for the family to just get the DA and sell to a developer so the profit is still fully covered by your parent's main residence exemption.

If you buy the property from your parents, it can retain the main residence exemption on the value up until the time you buy it; you are deemed to have purchased it at market value at that time. The problem here is that you purchased the property with the intention of developing it and selling it so no 50% CGT discount when you sell because it is business income and you will have to charge GST even if you just sell vacant land. Though these taxes would apply anyway if you are going to actually build on the land so it may be worth the stamp duty if you are thinking of a strata development, crunch the numbers.

Now if you decide to wait until your parents die, your cost base is the market value at the time of their death. When setting the market value on death of a parent (or if you buy the property off your parent) the valuer is entitled to take the subdivision potential into account when valuing the property. So if you obtain a DA before the market value trigger event (your parent's death or buying the property from them) you will maximise the amount that can be covered by your parent's main residence exemption. The reset to market value upon death remains even if you demolish the property.

Obviously, this is a complex issue requiring much careful planning and professional advice. This article is not the answer; it is intended to help you understand why you need to get advice before you do anything. It could save you tens of thousands in tax and GST.

Latest Webinars

There are a whole lot of new short webinars on CGT and your home. From developing your parent's home through to protecting your home with your main residence exemption. Just click here <http://www.bantacs.com.au/media-library/webinars/cgt-and-your-own-home/> or from the home page click on *library* on the menu along the top, then *webinars*.

<http://www.bantacs.com.au/QandA/index.php?xq=755> Choosing between two possible main residences.

For \$79.95 at [Ask BAN TACS](#) you can have your questions regarding Capital Gains Tax, Rental Properties and Work Related Expenses answered by Julia. They will include ATO references to support the conclusion, answers are generally 300 to 700 words long depending on the complexity.

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Where is Julia?

How to Make Sure Your Next Property Is a Good Investment

-and the list goes on!

Note: If you are an experienced property investor we understand you might not need all of these services, please feel free to discuss exactly what you need with your local BAN TACS Accountant.



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