

**TAX SPLIT** MICHAEL LAURENCE

## Two can pay

**If it's any consolation, there are tax breaks for divorcing couples – including redundancy payments.**

**D**IVORCE IS PERHAPS the greatest destroyer of personal wealth. Nevertheless, accountant Nick Gaudion estimates that many couples can potentially save thousands of dollars by maximising tax breaks when splitting marital property. "Couples can also make big tax savings by avoiding costly tax traps that particularly arise when assets of a family company are part of a property settlement," says Gaudion, a director of NSW accountants Cutcher & Neale.

Any means to shave the cost of a marriage breakdown is becoming a much more crucial concern for Australians. More than 52,000 couples divorced in 2005, say the latest ABS

figures. The National Centre for Social and Economic Modelling forecasts that the rising divorce rate means that more than half of all new marriages will end in divorce by 2015.

In what may be the most-overlooked tax break, deductions usually can be claimed when one spouse has to borrow to buy out the former partner's share of an investment property. Gaudion says the interest should be deductible because an income-producing asset is being acquired.

Another tax break often arises for couples who work together in the family business. One of them might be forced to find a new job if the busi-



ness is restructured after the break-up. Gaudion says the spouse leaving the business may be eligible for a concessionally-taxed payment, provided the redundancy is bona fide.

A costly tax pitfall can arise when an asset of a family company is transferred to a spouse as part of a property settlement. Gaudion warns that the transfer may represent a dreaded deemed dividend under the tax act. Deemed dividends are personally taxable without the benefit of franking credits.

Gaudion says a way to prevent deemed dividends is for the family company to declare a dividend to the spouse of the same value as the asset being transferred out of the company. The dividend amount would still be taxable but would include any franking credits.

Even child maintenance can be reduced. A child-maintenance trust established under a court order upon the breakdown of a marriage can provide a tax-efficient way for wealthier parents to pay maintenance, explains Lauren Cusack, a senior manager for valuation services with Ernst & Young.

A parent puts enough into the trust, which must meet strict tax act requirements, to generate income to pay maintenance. Payments from the trust are taxed in the children's hands at standard adult rates instead of the punitive rates usually applied to child trust income. Apart from paying maintenance in pre-tax terms, amounts of up to \$10,000 a year for each child are effectively tax-free because of the tax-free threshold and low-income taxpayer rebate.

The most-common tax break is the CGT rollover relief available when assets are transferred between couples under a court-approved property settlement or Family Court order and, since December, under a binding pre-nuptial. Rollover relief means any CGT is not triggered on the transfer between spouses but payable when assets are eventually sold.

Sometimes, Cusack says, a spouse may be better not to claim CGT rollover relief but to intentionally crystallise any losses to date. Depending upon the circumstances, the losses may be useful to offset other capital gains.

Unfortunately, the fees charged by family lawyers are non-deductible expenses.

## HOT STOCKS

JB Hi-Fi finds cyberspace a good source of profits.

WITH WIDE-SCREEN TVs, iPods and computer games walking out the door in pre-Christmas trading, home entertainment retailer JB Hi-Fi has reported a 37% jump in December half-year profit. Though they are threatened by computer downloads, CD sales were also strong and JB Hi-Fi chief executive Richard Uechtritz says there is life left in this product. Though it entered the computer market only six months ago, sales got away to a good start and Uechtritz hopes to match the company's success in other categories by winning a significant market share. — PHILIP RENNIE

### JB HI-FI (JBH)



## BEST BETS PETER FREEMAN

# Dice little earners

A new financial product falls between gambling and income, but beware – the tax office is watching.

AUSTRALIANS KEEN to take a punt on one of the more aggressive financial products – spread betting – are in limbo due to an unresolved legal battle over the tax treatment of gains and losses. Leading issuer IG Australia argues that spread betting is gambling and so gains should be tax-free. This is the situation in Britain. The tax office disagreed. “The issue is still before the courts,” says Peter Richards, a director with IG Australia, the local offshoot of one of Britain's biggest spread betting firms.

One upshot has been the big growth of a related speculative opportunity – contracts for difference. A CFD is a contract between you and the issuer that involves paying a small deposit for highly leveraged exposure to any one of a range of assets, from shares to commodities and currencies. They provide the opportunity to use aggressive gearing in an attempt to maximise gains from relatively small price movements. Spread betting, while similar to CFDs, involves a more straightfor-

ward bet about likely future price directions. “The tax treatment of CFDs is now certain and quite beyond doubt,” says Richards, adding this is one reason for their growth.

He acknowledges, however, that there is some residual tax confusion among CFD traders due to references in the tax office ruling to situations where a trade may be classified as gaming or wagering and therefore is tax-free. To have any hope of avoiding tax on a CFD trade, he or she needs to trade only once or very occasionally, have no expertise in the structure underlying CFDs, and to trade specifically for recreational gambling.

In general, says Richards, the gains from a profitable CFD trade are treated as income and don't qualify for the 50% CGT discount. But there is the benefit of an immediate deduction for any commissions, interest and other fees paid to the CFD provider. You can also get a full deduction for any losses. Given the highly speculative nature of CFD trading, this concession is likely to be very important.

