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# Client Information Bulletin

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## Superannuation funds, death benefits & wills

Superannuation is held in Trust on your behalf by your nominated Superannuation Fund. Given that, it cannot be dealt with effectively through your will. As a result you must specifically advise your Superannuation Fund if you wish to nominate a person to receive any benefits upon your death.

Where no direction is given to your Superannuation Fund, your Benefit will be dealt with in your best interest, giving consideration to your family circumstances.

You are able to both give a binding and a non-binding death nomination to your Superannuation Fund.

A non-binding nomination will provide your Superannuation Fund with guidance regarding distribution of your benefit.

A binding nomination will direct your Superannuation Fund to distribute your benefit to a particular person.

Many clients have made significant contributions to their Superannuation Funds particularly up to 30 June 2007. In doing so, they have shifted assets that were originally outside of their Superannuation Funds into Superannuation Funds.

Many clients have Wills that were prepared taking into consideration the asset structures which now have been transferred to their Superannuation Funds.

It is strongly recommend that you consult your Chartered Accountant to review your

position with relation to your Will and your Superannuation Funds so that your wishes are best catered for. Estate Planning is important and needs to be considered.

## Transition to Retirement and Salary Sacrificing

A person can access their superannuation benefits as a non-commutable income stream provided they have reached preservation age (currently 55). This transition to retirement measure is an initiative by the government that allows people to supplement their perhaps part-time income with monies accumulated in their superannuation fund. It is aimed at attempting to retain experienced workers in the workforce at a time of skill shortage.

The strategy is very suitable for the owners of small and medium size enterprises, even though they may be working full time and perhaps not considering retirement for sometime yet.

The strategy can also be used by employees where they are not owners of businesses.

The key restriction for accessing a retirement income stream after reaching age 55 is that the pension is non-commutable. This will be an account based pension (formerly referred to as an allocated pension), however a lump sum benefit cannot be accessed during the transition period.

The main benefits of this measure are:

- If a non-commutable allocated pension is taken,

the income stream can be stopped at any time and rolled back to accumulation phase retaining its preserved status, thus providing clients a great deal of flexibility;

- Once a person receiving an allocated pension reaches 60 years of age, the pension becomes tax free
- Once a person retires or reaches age 65 (or meets another condition of release), they will have the option to commute a non-commutable allocated pension, and access their full benefits;
- There is no work test rule applied; and
- There are no limits to the amount of benefits able to be accessed as a non-commutable income stream.

The advantage for business owners is that a salary can continue to be taken from the business entity and sacrificed into a superannuation fund. The tax on the salary can be therefore reduced and the salary sacrifice into the superannuation fund is taxed at 15%. This can provide a significant tax saving at the same time as increasing the nest egg in superannuation.

If you can see relevance in this strategy to yourself you should discuss it with your Chartered Accountant.

## Fringe benefits tax

The Australian Taxation Office (ATO) has advised that they will undertake two major projects to ensure employers are meeting their fringe benefits tax (FBT) obligations in relation to employee car benefits. A letter will be forwarded to clients where it is applicable in this matter and a courtesy copy will

also be given to their Tax Agent(s).

The ATO often finds that clients fail to recognise home to work travel as private and the GST implications in relation to employee contributions for FBT liability are overlooked.

The first project will focus on employers claiming a high level of business use for luxury cars.

The second project relates to all business owned cars and it will form a questionnaire requesting information for business-owned cars over the last two years.

The next financial year for Fringe Benefits Tax ends on 31 March 2008 and it is strongly recommended that if you have a deficiency in your logbooks – particularly in relation to the calculation of home to work travel and the like – it is time to recommence keeping a logbook so as to make certain of accurate calculations for your business and private travels.

Please feel free to contact your Chartered Accountant to discuss your requirements, or if there is a problem with the past, there are special provisions for voluntary disclosure for Fringe Benefits Tax discrepancies providing it occurs before the ATO contacts you (although the general interest charge will normally apply).

## Christmas fringe benefits

With Christmas looming it is timely to note Christmas parties are exempt from FBT as minor benefits if the total value of the benefit to the employee, including any family member attending, is under \$300. This increased from \$100 on 1 April 2007.

A minor benefit is defined as one that is provided infrequently and

irregularly, and is valued less than \$300.

If gifts are distributed at the Christmas party this is included in the \$300 minor benefit limit. However if gifts are distributed on another occasion they are not included in the \$300 benefit. For this reason it may be more tax effective to give gifts on another occasion.

### FBT exempt benefits

If you do decide to distribute gifts at Christmas consider giving one that is tax deductible and exempt from FBT. Some examples include:

- Tools of trade (eg hand tools)
- Briefcase
- Calculator
- Electronic Diary
- Notebook or laptop computer
- Subscription to a trade journal

Note - there is a limit of one laptop per employee per FBT year.

### In-house fringe benefits

From 1 April 2007 the 'in-house' fringe benefits exemption threshold was doubled to \$1,000. This means that you can provide more goods to your employees at a discount.

## Keeping records – employer obligations

Are you fulfilling your obligations as an employer regarding record keeping? The following is a short checklist of the Tax Office requirements relating to record keeping.

### Records relating to payments to employees:

- Tax file number declarations and withholding declarations
- Withholding variation notices
- Worker payment records
- PAYG payment summaries
- Annual reports
- Superannuation records, and
- Records of any fringe benefits provided.

#### **Records relating to income tax and GST:**

##### Sales records

- Sales invoices (including tax invoices)
- Sales vouchers or receipts
- Cash register tapes, credit card statements, and
- Bank deposit books and account statements.

##### Purchase/expense records

- Purchase/expense invoices (including tax invoices)
- Purchase/expense receipts (which include an ABN)
- Cheque butts and bank account statements
- Credit card statements, and
- Records showing how you calculated any private use component.

##### Year-end income tax records

- Motor vehicle expenses
- Debtors and creditors lists
- Stock take sheets
- Depreciation schedules and capital gains tax records.

#### **PAYG withholding records relating to business payments:**

- Records of amounts withheld from payments where no ABN was quoted

- A copy of any PAYG withholding voluntary agreements
- Records of voluntary agreement payments
- PAYG payment summaries and ETP payment summaries, and
- Annual reports.

#### **Records relating to fuel tax credits**

- Records of fuel acquired
- Records of eligible and ineligible fuel use
- Records of claim calculations and records of any loss, sale or disposal of fuel.

## **Motor Vehicle logbooks**

If you need to complete a new logbook for a motor vehicle you need to start now so your 12 weeks is finished in time for the end of the FBT year on 31 March 2008.

A new logbook must be completed every five years or if the pattern of use has changed.

Your logbook needs to contain the following information:

- When the logbook period begins and ends
- The car's odometer readings at the start and end of the logbook period
- The total number of kilometres that the car travelled during the logbook period
- The number of kilometres travelled for work activities
- The purpose of the travel
- The business use percentage for the logbook period.

Logbooks can be purchased from your local newsagent.

## **Non commercial loss rules and commissioner's discretion**

The Non Commercial Loss Rules of Division 35 limit the ability of taxpayers to offset business losses against other assessment income unless one or more of the following tests are met.

- Assessable Income Test (Assessable Income of at least \$20,000)
- Profits Test (at least three out of the last five years showed a profit)
- Real Property Test (property or an interest in real property with at least \$500,000 on a continuing basis)
- Other Assets Test (at least \$100,000 on a continuing basis)

However if one or more of these tests are not met the Commissioner still has the discretion, under Section 35-551, to waive the effective deferral of the business loss that would occur under the normal loss rule provisions.

Tax Ruling 2007/6 discusses circumstances where the Commissioner would apply his discretion.

The commissioner has discretion under two separate limbs to waive the application of Non Commercial Losses.

The first limb would be where the discretion would be exercised where it would be unreasonable to apply the Non Commercial Loss Rules as the Business Activity was, or will be, effected in that or those income years by special circumstances outside the control of the operator's Business Activity

including drought, bushfires or other natural disasters.

The second limb is because of the nature of business, the business has not satisfied or will not satisfy one of the tests and based on evidence from independent sources, that within a period that is commercially viable for the industry concerned, the activity will either meet one of the tests or will produce assessable income greater than the deductions attributable for that year.

For those who have got commercial businesses affected by these non commercial non loss provisions this discretion provides an opportunity for you to contact your accountant to discuss making an application to the Commissioner to exercise his discretion.

Particularly in the second limb of the discretion there is evidence that they will need independent consultant reports to support the application.

Given that 30 June 2008 is our next tax year end it would be a good idea to contact your Chartered Accountant to discuss preparing an application to be lodged with the Commissioner for him to exercise his discretion.

Leaving it until after 30 June 2008 will create problems in terms of getting the commissioner's discretion affected and your tax return lodged on time.

## Drought assistance

With the ongoing drought continuing to affect primary producers throughout Australia Chartered Accountants are well placed to provide support and services to people in the rural community.

As the drought drags on it is opportune now to start

considering some options including de-stocking, refinancing, financing for planting crops, sale and purchase of water rights and allocations.

There are tax planning opportunities available in relation to deferring taxable income as a result of sale proceeds from livestock where primary produces are in 'Exceptional Circumstances' defined areas.

This deferral can assist in cash flow management and also help with financing restocking. Capital Gains Tax issues will arise from the sale of permanent water entitlements.

Chartered Accountants are well placed to assist you in preparing business plans and financial models to assist you in planning your way forward.

## Human influenza pandemic

The Victorian State government has recently released a publication entitled 'Human Influenza Pandemic – what your organisation needs to do'.

As part of good business risk management it is recommended that all businesses consider this.

The report indicates there are five things you could do now to reduce the stress and risk should such an epidemic strike. The suggestions include:

- The appointment of a planning co-coordinator within your organisation
- Reviewing business continuity (disaster recovery plans – ask your Chartered Accountant if you do not have such a plan)
- Raise hygiene awareness
- Develop a communication plan and,

- Prepare the development of a communication plan for your employees and clients.

While this is a Victorian initiative, should a pandemic eventuate the repercussions would be felt nationwide.

The Victorian Government is quietly preparing plans behind the scenes to counter this potential threat and it would be wise for you to do likewise as part of good business risk management.

## Errata

The article 'Checklist of superannuation obligations for employers' which appeared in the Spring Issue of *The Client Information Bulletin* stated 'The ATO has reported that they have 80 per cent of TFN's supplied already but are chasing the last 8 per cent.'

The article should have read 'The ATO has reported that 80 per cent of members TFN's have been passed onto them by Superannuation Funds. The ATO have matched a further 12 per cent from their records and are chasing the last 8 per cent of members TFN's.'

**DISCLAIMER: The contents of this publication are general in nature and we accept no responsibility for persons acting on information contained herein.**