

January 2012

Client Newsletter

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Tax file number declarations

A tax file number (TFN) declaration must be completed when an employee commences employment. The form must be lodged with the ATO and a copy retained. If an employer has not received the employee's TFN within 28 days, then the employer must withhold the top rate of tax plus medicare levy. Penalties may be incurred if the declaration is not lodged. It is recommended that a review take place of existing employees to ensure a TFN declaration has been lodged.



Death benefit nominations

A 'binding death benefit nomination' is the equivalent to a will for members' superannuation entitlements.

Although the Trustee of a super fund would traditionally take into consideration the wishes of the member in the event of their death, they were not bound to comply with them. With the introduction of binding death benefit nominations, members can be certain that their superannuation will be distributed in accordance with their wishes.

Either a dependent or a legal personal representative (e.g. executor of your will) can be nominated.

Dependents include a spouse (married or defacto) a child (of any age) or a person with whom you have an interdependency relationship.

The nomination form must be witnessed by two people (over 18) and they must not be any of the individuals nominated on the form to receive a benefit.

Different rules apply for lump sums and pensions so you should seek taxation and/or legal advice when considering these issues.

Trust streaming

On 29 June 2011 *Tax Laws Amendment (2011 Measures No. 5) Act 2011* received royal assent. This enables trusts the ability to stream franked dividends and capital gains for tax purposes to nominated beneficiaries.

The trust deed must allow the trustee to stream to specific beneficiaries. We have been reviewing your trust deeds to ensure this is the case.

An important requisite to allow streaming is the distribution entitlement must be recorded by 30 June each year for dividends and by 31 August for capital gains. However these dates do not change or provide an extension for the date that the trust deed requires the trustee to make beneficiaries presently entitled to income of the trust (usually 30 June).

If the above conditions are not met, and the income of the trust is not successfully streamed, the income could be distributed to other beneficiaries resulting in a higher tax rate or tax could be paid by the trustee at the top marginal rate.

Liquidate or de-register a company

Deregistering a company can be a cheap, effective way of winding up a business. When deregistering a company, there are several income tax issues to consider.

Firstly, ensure that there are cash funds available to pay all dividend payments and secondly, ensure there are sufficient franking credits available to avoid the dividends becoming unfranked. Alternatively the company can elect to pay a franking deficit tax.

The Capital Gains Tax (CGT) implication of deregistering a company is another key issue to consider. On cancellation of shares, shareholder interest in the company does provide a CGT Event C2. Various

actions can 'trigger' various CGT provisions. Event C2 is one such provision. This effectively enables a capital gain or loss to be calculated. Other issues can also arise when shareholders receive dividends but then realise a capital loss as a consequence of the cancellation of the shares.

Alternatively, when winding up a solvent company you can consider a Members Voluntary Liquidation. Significantly, this provides an alternative scenario in relation to distributions as they are treated as the liquidator's distributions. In broad terms it allows certain amounts to be distributed as capital instead of dividends for tax purposes and this can deal with pre CGT items or capital gains concessionaly treated under Small Business Capital Gains Tax Concessions.

Similar to deregistration, the end result of a liquidation process after any distributions have been made is for the shares to be cancelled. This triggers a CGT Event G1 and/or C1 and these arrangements are concessional and can adjust the cost base of the share.

In conclusion where there are significant CGT issues arising from exempt capital profit reserves, or CGT Concessions available to shareholders, the Members Voluntarily Liquidation is often preferable.

It is most important to have adequate planning to determine the optimum path to follow.

For further information please contact a principal at our firm.

Low income tax offset changes for minors

From 1 July 2011, the ability of minors (under 18) to claim the low income tax offset to reduce tax payable on unearned income such as distributions from discretionary family trusts ceased. This effectively reduces tax free distributions to minors down from \$3,300 to \$416!

Superannuation guarantee charge and contractors

In essence the Superannuation Guarantee Act 1992 defines a person as an employee if they are an employee under Common Law.

The meaning of ‘employees’ is, however, expanded if the contract is wholly or principally for ‘labour’. In that case the person is ‘deemed an employee’.

The Australian Taxation Office had been involved in a number of cases arguing those deemed ‘employees’ and those deemed ‘contractors’.

The case of Roy Morgan Research Pty Ltd v Commissioner of Taxation & Anor went before the full Federal Court to make a determination. In that case, the full Federal Court decided that certain individuals engaged by the taxpayer were in fact employees for the purposes of the Superannuation Guarantee Act 1992 (Cwlth).

This reinforces the need for employers to reconsider their position where they have engaged contractors. Please ask us if you need help to determine your position.

Over 50’s can save more super

The government passed changes in Parliament (effective from 1 July 2012) to allow individuals aged 50 and over, with total superannuation balances below \$500,000 to make up to \$50,000 in concessional superannuation contributions.

This doubles the originally stated cap of \$25,000 that was scheduled to apply. This change aims to give people aged 50 and over more flexibility to increase their superannuation. This is a worthwhile planning opportunity, so please speak to a principal for more information.

Succession planning

In this new year economic, technological, environmental and political changes abound. For those in small businesses, including farming, it’s time to consider succession planning.

Never has it been more challenging. With businesses changing so rapidly over time those who will succeed the existing owner(s) will inevitably take a new approach to the business. This means that business owners cannot be complacent and make assumptions about who will succeed them in business and what they will do to the company.

Discussions, meetings and plans need to be had from an early stage if succession planning is to be successful. It might also be beneficial to run one business in two divisions – one for yourself and one for your successor so that they can truly gain a ‘feel for the ropes’ and still benefit from having you around.

For further information please contact a principal at our firm who can assist in those discussions, meetings and planning.

Self managed super fund audits

As members of Australia’s professional accounting bodies we are subject to minimum competency requirements when undertaking audits of SMSF’s. Some of the key competency requirements include undertaking SMSF audit courses, holding a certificate of public practice, holding appropriate professional indemnity insurance, undertaking minimum ongoing training and education on superannuation and audit, and adhering to auditing standards and professional and ethical standards.

The benefits of an enduring power of attorney

In the unfortunate event of an accident or the premature onset of dementia or Alzheimer's disease, business owners may no longer be able to make any reasonable decisions.

On a short term basis, this can lead to the business' shutdown as the business owner may have no ability to access the entity's bank accounts, pay staff wages and contract new orders – in effect keep the business going.

Many business owners and company directors do not have in place an effective Enduring Power of Attorney (EPA), whereby another nominated person has the immediate ability to make informed and reasonable decisions and act on their behalf.

Using a legal practitioner to implement an Enduring Power of Attorney is a simple process. It can also eliminate the need for the family of the business owner or company director to make an application to the Victorian Civil and Administrative Tribunal (VCAT) Guardianship List.

Even though the VCAT application and hearing can be held within a short number of weeks, appointing an administrator to manage the financial affairs for the business does mean it will lose valuable time. Losing a few short weeks can be detrimental if access to bank funds and normal weekly commitments cannot be made. In most instances the business has just a short number of weeks before customers and staff find alternate suppliers and employment.

Every business owner and company director is advised to establish an effective Enduring Power of Attorney.

How best to handle redundancies

With talk of another economic downturn, 2012 may be a year when businesses shed staff. To avoid this becoming a more harrowing experience for the staff being made redundant employers should:

- Plan and execute the redundancies with precision
- Avoid making decisions at sensitive times such as holiday periods
- Consider the time it will take employees to start receiving government assistance
- Carefully script the announcement and deliver the news quickly and succinctly
- Give employees an opportunity to discuss the situation after the initial panic has gone
- Discuss the exit process
- Avoid saying 'I know how you feel'
- Avoid saying 'I'll see what I can do'
- Engage a Career Outplacement Consultant who will be able to advise the employee on how to tell their family and how to put together their resume in order to find their next job. This helps turn the situation into a positive opportunity.

Making staff redundant is rarely easy for a manager. By putting proper processes in place, you can reduce the consequences of the negative situation.

Source: BRW

ATO cracking down on clients who fail to make repayments or lodge returns

The ATO have toughened up their stance on individuals and small businesses that fail to make repayments or lodge returns.

They have been issuing garnishee orders which enable the ATO to directly access funds held in a client's bank account. Another tactic is to issue default assessment notices where returns are not lodged.

If you have made a payment arrangement with the ATO, ensure you make your repayments on time. If you are having trouble paying or have outstanding returns, please contact us.

FBT and the new car fringe benefits legislation

Since the introduction of the new car fringe benefits legislation on 1 May 2011, it is worth revisiting the method chosen for calculating the car fringe benefits tax.

Previously, if you used the 'statutory formula method' for calculating FBT then a sliding scale percentage was used. In this instance, the more kilometres the car travelled, the lower the percentage applied.

Under the May 1 changes, a flat 20 per cent applies to all new car fringe benefits provided after 7:30pm on that date. The rate is phased in gradually from 2011 to 2014. This is outlined in the table below:

Total kms travelled in FBT year	Old Rate	From 1 May 2011	From 1 April 2012	From 1 April 2013	From 1 April 2014
Less than 15,000	26%	20%	20%	20%	20%
15,000 to 24,999	20%	20%	20%	20%	20%
25,000 to 40,000	11%	14%	17%	20%	20%
Over 40,000	7%	10%	13%	17%	20%

There are some circumstances, however, where the old rates will still apply. One such example would be where there is a pre-existing commitment (e.g. a lease entered into prior to 1 May 2011).

Should the terms of the agreement be varied or changed after that date it may be considered a new agreement. If so, the new rules would apply.

For cars travelling less than 15,000kms per year the FBT rate has actually been reduced and for those travelling between 15,000km to 24,999km there is no difference.

The rate has increased, however, for those travelling more than 25,000km. For drivers using their cars for business purposes that fall into this category, it may be worth moving from the 'statutory formula method' to the 'operating cost method' to calculate FBT.

In order to rely upon the 'operating cost method' a log book must be prepared and kept.

A logbook must be maintained for a continuous period of 12 weeks and contain the following information:

- The date the journey began and ended (multiple journeys are treated as a single entry)
- The odometer reading of the car at the start and end of the journey
- The number of kilometres travelled by the car, and
- The purpose of the travel

The odometer readings of the car must be recorded at the start and end of the FBT year. If you complete a logbook within 12 weeks of the end of the FBT year it can be used for the preceding year, thereby, giving you the option to choose your FBT method for the FBT year ending 31 March 2012.

Moving house?

We all know it is compulsory to vote in federal, state or territory elections, but did you know that it is compulsory to enrol?

Did you also know that every time you move, you need to update your enrolment details? If you do not, you may be removed from the electoral roll and miss out on your vote in upcoming elections.

You can update your enrolment online at: www.aec.gov.au/change-address

Paper enrolment forms are available from any Australian Electoral Commission Office or Australia Post outlets.

Reminders

Fringe Benefits

Be on the lookout for fringe benefit proforma's posted out towards the end of March. Please do not hold onto these. If you have any queries, contact Ashley Williams at our office.

Appointments after 5 pm

For all appointments after 5 pm please park at the back of the premises and use the back door in the car park.



Peninsula Financial Group

The Miracle of Trauma Insurance *(Extracted from an article by The Risk Store)*

Until 10 years ago trauma insurance did not exist. The credit for its invention goes to Dr Marius Barnard, a South African surgeon who took part along with his brother, Christiaan Barnard, in the world's first heart transplant in 1967. Having done many surgical operations since then, Dr Marius Barnard says he has seen medical success stories as surgical techniques have improved, "But when I went into private practice I could not help to notice that while many patients eventually fully recovered medically, they suffered severe financial problems. This was not because of the cost of the operation but because of the disruption to their lives and their loss of income. I have had patients come to see me and reject the bypass operations because of the long-term financial implications."

In an article in 1994 Dr Barnard noted the following:

DISCLAIMER

We remind you that this Newsletter is prepared exclusively for our clients, and whilst every care is taken in its production, we cannot be held responsible for errors. We particularly do not recommend that any decisions be made on the basis of this Newsletter without further consultation with a Principal of this firm. In relation to investments, only general information is provided and this does not take into account investor's specific needs or objectives, so clients should seek individual investment advice.

- 1) We have an 80% chance of suffering from cancer, heart attack or stroke during our lifetime – insurance is therefore needed for this PROBABILITY, not POSSIBILITY.
- 2) We have a 70% chance of recovering from cancer, heart attack or stroke. The chances are we will be around to BENEFIT from the insurance claim.
- 3) If you combine an 80% likelihood of incidence with a 70% chance of recovery, then this becomes a pretty IRRESISTABLE COMBINATION, doesn't it?

Temporary or Permanent cover, which would you prefer?

The key to you reaping the MAXIMUM POTENTIAL BENEFIT from your Trauma Cover is to ensure that you can continue the cover for the maximum possible period. The tragedy with Trauma Cover at the moment is that, statistically, it is at the very time that people are getting to the time of their life when they're MOST LIKELY to claim on their Trauma policy that they typically discontinue the cover because it has become too expensive. Securing 'level' premiums helps to circumvent this problem as the costs do not rise markedly over time.

Term Life Insurance pays a lump sum on death and is often considered a safeguard for your family's financial wellbeing.

Income Replacement Insurance can provide you with a monthly payment to replace lost income.

Make an appointment with Peninsula Financial Group now to discuss your cover requirements.