

# Client Information Bulletin



Autumn 2012

## Contents

- 1
  - Superannuation contributions and managing caps
  - Super contributions on payslips

---

- 2
  - Transferring property into a SMSF
  - 2012 changes to small business depreciation rules
  - Potential GST refund and four year time limit

---

- 3
  - Personal liability for misleading or deceptive conduct

---

- 4
  - Change management perspectives
  - Trade mark check website
  - Audit Insurance
  - Productivity in Australia



**Chartered Accountants**

## Superannuation contributions and managing caps

With the superannuation contribution limits being so low and the penalty tax payable for exceeding them so high, you should review your contributions now to ensure you manage the caps this financial year.

### Concessional Contributions

The limit for Employer contributions (including contributions made under a salary sacrifice arrangement) and Personal Contributions claimed as a tax deduction by a self-employed person is \$25,000 for the 2011/12 financial year.

If you are 50 years old or over, the annual cap is currently \$50,000. This increased cap was to cease in June 2012 but there have been some changes announced to leave the cap at \$50,000 for balances under \$500,000 however they are yet to become law.

The cap amounts are calculated when the money is received by the superannuation fund. If your June superannuation is not paid to the Fund until July then it will be included in the cap for the following year. If you are therefore close to the cap limit, it is important to check with the Fund what payments have been allocated to you for this financial year.

### Non-Concessional Contributions

You may also contribute Non-Concessional contributions – these are personal contributions for which you do not claim an income tax deduction. The 2011/12 limit is \$150,000. People under 65 years of age however may be able to bring forward their non-concessional contributions up to three times their non-concessional cap over a

three-year period bringing it to \$450,000.

For more information about superannuation contributions please contact us.

## Super contributions on pay slips

From 1 July 2012 all employers will be required to report on their employees pay slips an 'expected payment on or before date' for superannuation contributions accrued during the pay period for that employee.

The regulatory reporting requirements for pay slips have not yet been finalised. In order to simply satisfy this requirement include the date by which the superannuation contributions are required to be paid without being subject to the Superannuation Guarantee Charge; for example 28 January, 28 April, 28 July and 28 October.

Some questions employers will need to consider include:

- 'How am I going to comply with this requirement – do I use a payroll package or do I do this manually by using a stamp?'
- 'Does my current payroll package allow me to include this type of information on an employee's pay slip?'
- 'Will you be able to make any required changes to your payroll system by 1 July 2012?'

The ATO is already in discussions with software providers such as Quicken and MYOB to ensure these rules are satisfied. Those using these commercial products should have no issues with relation to satisfying these new reporting requirements.

Also note that from 1 July 2013 employers will be required to report the actual payment date rather than the anticipated date.

## Transferring property into a SMSF

You can currently transfer the ownership of some types of property directly into your Self Managed Superannuation Fund (SMSF). They are:

- Business real property (used exclusively for the running of a business), for example a warehouse you conduct your business from;
- Listed securities (such as shares in companies listed on the stock exchange);
- In-house assets, for example an investment in a related party – provided that the market value of the in-house assets will not exceed 5 per cent of the total market value of assets held by the fund; and
- Investments in managed funds, provided the managed fund held is a unit trust (we can check this for you).

This is known as an 'off-market transfer' and 'in specie contribution', and the value of the property transferred will be counted as a contribution into your SMSF. No actual cash payments will need to be made.

The Government believes that 'off-market transfers' are open to abuse by manipulation of the asset value and/or transaction dates, and has committed to the implementation of new rules to apply from 1 July 2012. They include:

- Listed securities and investments in widely held unit trusts will need to be sold on the open market, attracting brokerage and any other transaction costs.

You can then either:

- repurchase the listed securities before contributing them in specie into the fund; or
- contribute the cash proceeds into your

SMSF and the SMSF can then use the proceeds to re-purchase the equivalent listed securities on the open market, or any alternative investments in line with your SMSF investment strategy.

In either case, you or your fund will have to pay brokerage, or any other transaction costs, on the purchase.

- Business real property and unlisted shares, which do not have an underlying market will need to be supported by a valuation from a qualified independent valuer. Such valuations can be significantly more expensive than a real estate appraisal from your local real estate agent. Again, this could mean additional costs for your fund from 1 July 2012.

If you think you might be affected, you should contact us now, before 1 July 2012 for advice about your general financial position, tax implications and investment strategy.

## 2012 changes to small business depreciation rules

From 1 July 2012 there will be significant changes to the small business depreciation rules. The amendments will apply to small business entities as defined in Section 328-110 of the *Income Tax Assessment Act 1997* (Cwlth) that have an aggregated turnover of less than \$2m for an income year. They are:

- **Instant Write Off Threshold**  
The instant asset write off for small businesses will increase from \$1,000 to \$6,500. Allowable items may include photocopiers, laptops, fridges and desks.

- **Other Depreciation Assets**

Small businesses will be able to write off all other depreciation assets in a single depreciation pool at the rate of 30 per cent. This means they can consolidate the long life small business pool and the general small business pool into a single depreciation pool to be written off at one rate.

- **Motor Vehicle Write Off**

Small businesses will be able to claim an accelerated initial deduction up to \$5,000 for vehicles costing \$6,500 or more acquired during the 2012/2013 income tax year (motor vehicles costing less than \$6,500 can be claimed in full under the Instant Write Off Threshold).

These changes will provide significant opportunities to small businesses in terms of initial depreciation write offs.

## Potential GST refund and four year time limit

On 1 September 2011, the full Federal Court handed down its decision in Qantas Airways Limited V Commissioner of Taxation, in favour of Qantas.

The disputation centred on whether Qantas was eligible to claim GST refunds in relation to the pre-paid fares received from passengers who cancelled their reservation or failed to take the flight and no refund was available or claimed.

The full Federal Court confirmed there is no taxable supply for GST purposes when the relevant supply does not occur; the essence, purpose, substance and reality of the transaction must be identified rather than artificially dissecting the arrangement.

This decision has implications for taxpayers in a variety of

industries who receive payments for services.

It is important to note that there is a four year limit on claiming GST refunds due to section 105.55 from schedule 1 of the Taxation Administration Act 1953 (Cwlth).

Under this section you are not entitled to a refund unless you notify the commissioner within four years after the end of the relevant year.

This can be done either by lodging a revised activity statement or by lodging a 'Notification of Entitlement' to the GST refund.

Please contact us if you feel you may be entitled to any potential GST credit status in light of the Federal Court decision.

## Personal liability for misleading or deceptive conduct

The *Corporations Act 2011* (Cwlth) provides that, where a company is in liquidation, directors and shadow directors are the only individuals who may be held personally liable for debts incurred by the company while it was insolvent. While individual creditors are able to commence insolvent trading proceedings in certain circumstances, it is more common for liquidators to do so. In that situation any funds recovered are shared among all creditors.

As an alternative, creditors may be able to rely on the provisions of their respective State's *Fair Trading Act* (State) or the *Trade Practices Act 1974* (Cwlth), to pursue directors and others for company debts. Under these provisions, any person involved in misleading or deceptive conduct, which results in a creditor suffering financial detriment, may be liable. Furthermore, a company does not have to be in liquidation for a claim to be made.

The key section of the *Fair Trading Act 1999* (Vic), is as follows:

- A person must not, in trade or commerce, engage in conduct that is misleading and deceptive, or likely to mislead or deceive
- Where a representation is made as to a future matter, then that representation is deemed to be misleading unless the maker of the representation can establish that the person had reasonable grounds for making the representation
- A person may recover the amount of loss or damage resulting from a contravention of the Act from the person who contravened a provision of the Act, or a person who was involved in the contravention.

The key section of the *Trade Practices Act* (TPA) is as follows:

- A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive;
- A representation is taken to be misleading if it is a representation with respect to any future matter and the maker of the representation does not have reasonable grounds for making the representation. Further, the maker of the representation with respect to any future matter is deemed not to have had reasonable grounds for making the representation unless it adduces evidence to the contrary;
- A plaintiff who is able to establish a breach is able to seek recovery of its resulting loss or damage against any person involved in the contravention;
- The Court may make such orders as it deems appropriate against any

person involved in the contravention; and

- The person involved in the contravention is someone who aided and abetted, directly or indirectly, or was knowingly concerned in the breach. This certainly applies to directors, and most likely to any other officer, who made the representation.

The following cases are examples where these provisions have been applied successfully to claim damages from a director of a company for unpaid debts.

In *Con-Pac Systems (Aust) Pty Ltd v Wijeyewardene* [2006] FMCA 985, the plaintiff received a purchase order from Nature's Own Brands Pty Ltd (NOB) for plant and equipment. The defendant, who was the director of NOB, made representations to the plaintiff in relation to the future payment for the plant and equipment, in the form of statements such as 'you deliver it and I will have the cheque there' and 'you get it finished and I'll pay'.

These representations were deemed to be misleading and deceptive pursuant to the TPA, and the plaintiff was successful in its claim.

In *Ventouris Enterprises Pty Ltd v Dib Group Pty Ltd* [2010] NSWSC 963, the plaintiff claimed that the defendant made representations which were misleading and deceptive through statements such as 'It will be okay, trust me' and 'We won't let anything go wrong [with respect to obtaining finance]'. As the defendant did not have any reasonable grounds for making these assertions, it was held that the plaintiff was entitled to damages from the defendant and its Chief Executive Officer.

Directors and other officers of companies need to exercise care when making statements about future payments being made to creditors. Should these creditors subsequently not be

paid, the Courts may take the view that such statements were misleading and deceptive, resulting in directors and others being held personally liable for company debts.

## Change management perspectives

Change Management is often misunderstood due to the complexity of what is involved in managing process related behavioural change.

The main reasons for organisational change include:

- A need for organisational change or functional redefinition;
- A change enabled by some form of Information & Communication Technology (ICT) automation or upgrade; and/or
- Workforce transformation aimed at extracting efficiencies.

By its very nature, change impacts people lives and each will react differently. Some may adopt it, some may embrace it and others will reject it.

Key challenges for those seeking to implement change include:

- Having personnel buy into the change vision;
- Securing leadership and support; and
- Being able to switch leadership styles to maximise the effect of intended changes.

In order to achieve success, the underlying need and value of change needs to be clear and visible.

If your business is going through a significant change event and you are in need of assistance managing the process, please contact us.

## Trade mark check website

The Australian Government have set up a website called 'Trade Mark Check' to make it easier for businesses to check if the business name they are using may be inadvertently infringing on someone else's trade mark.

A registered Trade Mark gives the owner exclusive rights for the goods and/or services for the whole of Australia. If your business name infringes an existing trade mark it can mean legal bills, drawn out disputes and even the closure of your business.

You can access Trade Mark Check at <http://pericles.ipaustralia.gov.au/ols/tmcheck/>

## Audit Insurance

The ATO has increased the level of audit activity by implementing sophisticated systems, including data matching and industry benchmarks.

The likelihood of a small business being selected for an ATO or State Revenue Office (SRO) audit has significantly increased.

Tax payers can now take out Audit Insurance, which will cover the cost of an external accountant having to deal with the regulator, including extracting and forwarding all the requested information and then dealing with, and resolving the issues that arise. This may include meeting representatives of the ATO or SRO.

Please contact us should you wish to discuss Audit Insurance.

## Productivity in Australia

Toyota recently announced the redundancy of 350 jobs at its plant in Melbourne due to a decline in its competitiveness.

Other well known companies, such as Heinz, are also relocating manufacturing plants overseas due to poor productivity.

To avoid a similar fate, small businesses can improve productivity by:

- Getting employees to become more creative and generate new ideas;
- Reviewing systems to eliminate unnecessary processes;
- Improving skills and focusing on management;
- Using more technological processes;
- Retraining older skilled workers;
- Rotating job tasks so employees do not become bored; and
- Providing incentives for the best performers.

If you are trying to explore ways to improve the productivity levels within your business please contact us.

Source: BRW



**Peter Whelan**  
Partner

T 03 9694 3035

F 03 9694 3010

E [pwhelan@blazecumen.com.au](mailto:pwhelan@blazecumen.com.au)

W [www.blazecumen.com.au](http://www.blazecumen.com.au)

*"Leading the way in financial knowledge"*

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