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Client Information Bulletin

PREPARE FOR A FRINGE BENEFITS TAX AUDIT

The Australian Taxation Office (ATO) has shifted its focus from an education role towards a more active role in compliance and accordingly has stepped up F.B.T. audit activity. Consequently, employers will need to be prepared for an F.B.T. audit.

The following areas will be the subjects of the ATO's main concentration: -

- Employers with F.B.T. attributes who fail to lodge F.B.T. returns. Those employers who have recorded a reportable Fringe Benefits Amount on the payment summaries of their employees, but have not lodged a F.B.T. return will receive the initial focus. Those with a total Reportable Fringe Benefits amount exceeding \$3,000 will be selected for review. Also, those employers with substantial PAYG withholding amounts (as recorded on the BAS), where no F.B.T. return has been lodged will also be reviewed.

- Referrals from other Australian Taxation Office areas. Other areas of the Australian Taxation Office (especially the GST area) will consider F.B.T. issues when conducting their own business audits. That is Field Officers from non-business audits will be using F.B.T. questionnaires to identify whether businesses are complying with their F.B.T. obligations and particularly in relation to car benefits and expense payment benefits.

- Employee Contributions will be reviewed to ensure that employers are correctly recording these amounts for income tax and

GST purposes. An employee contribution is an after tax contribution made by an employee to their employer in relation to a fringe benefit, which reduces the taxable value of the benefit for F.B.T. purposes. From an income tax perspective, the GST exclusive amount (where appropriate) of an employee contribution is assessable income to the employer.

SUPERANNUATION GUARANTEE CONTRIBUTIONS DUE SOON

The Tax Office has issued a reminder that superannuation guarantee contributions for the quarter ending 31 March 2004 are due by 28 April 2004.

MANAGE YOUR OWN SUPER?

Many Australians are looking to gain greater control and understanding of their superannuation assets. For these reasons there has been substantial growth in the number of Self Managed Superannuation Funds.

These funds provide members with benefits, which can significantly increase retirement wealth whilst giving greater control and peace of mind. Some of the advantages are: -

- By acting as fund trustee the investment decisions are controlled directly;

- Administration and management costs can be lower than charges made by superannuation fund providers;
- Further cost reductions are achievable by amalgamating family members' superannuation funds together;
- Creating an investment portfolio that meets your specific needs, objectives and investment profile rather than your fund being managed by managers who do not know you and do not understand what investments are suitable to you;
- Being able to obtain death and disability cover through your fund giving continuity of protection irrespective of changing work arrangements or changing public offer super funds.

There is no definite threshold as to the amount required to establish a self-managed fund, however, to be cost effective an amount in excess of \$100,000 is a guide.

There are fixed costs and transaction costs such as audit costs which is why you need a substantial amount to make setting up a self managed superannuation fund worthwhile.

CONTRACTS OF EMPLOYMENT ARE ESSENTIAL

Employers engaging senior level employees should arrange for carefully drafted written employment contracts.

The financial cost of not having a contract can be significant. A recent court case involved an employer enticing an employee from South Australia to Victoria to commence employment. No

formal contract was entered into. After five years the employer sought to terminate the employment. The court action revolved around "reasonable notice". The judge found, in the circumstances, that an appropriate period of notice would be 12 months or payment in lieu of notice.

The factors taken into account in coming to the decision were: -

- That the employee had been enticed to move to Victoria,
- The employee had improved the employer's business,
- The relative lack of alternative positions with other employers,
- That the employment would be long term, and
- The age and seniority of position of the person.

If the parties had entered into a contract of employment, which indicated the period of notice upon termination, no argument would have been obliged to pay according to the notice required by the contract.

For senior positions, this period would generally be approximately three months.

The result was a termination payment well in excess of what would have been payable if a contract had been in place.

WILLS – ARE YOU COVERED?

Did you know: -

- If you do not have a Will your estate is distributed according to the legislated intestacy rules to your spouse, children and/or next of kin in differing proportions. A properly drawn Will ensures your wishes and intentions are implemented.

▪ Marriage voids all prior Wills. A Will can be made "in contemplation of marriage" or should be made as soon as practicable after marriage.

▪ You should review your assets and identify jointly owned property – which is outside the ambit of your Will. Property, e.g. shares, debentures, bank accounts, land and buildings, etc., owned as joint tenants, pass to the surviving joint tenant automatically regardless of what you direct in your Will.

▪ In certain circumstances, e.g. remarriage, in order to protect your assets for the benefit of your children it may be advisable to acquire and hold property as tenants in common (either in equal or unequal shares). One option available under a Will is a life interest be created to ensure your spouse has security of tenure.

▪ Property held in a Family Discretionary Trust or other Trust Entity, cannot be disposed of by your Will. Control of the Trust must be addressed and may be able to be done via your Will. You should check to see who is the "Appointor" or "Principal" of the Trust. This person usually controls the appointment and/or removal of the trustee. Unless care is exercised to ensure "control" of the Trust is maintained, unforeseen and unwanted consequences may occur.

▪ Testamentary Trusts (i.e. a Discretionary Trust within your Will) can provide flexibility in the administration of your estate and can provide protection where prospective beneficiaries are or may be bankrupt, divorced, spendthrifts or suffer legal, physical or mental handicaps. Tax

advantages may be available to beneficiaries, especially minors.

- Care must be taken with respect to Insurance Policies and Superannuation Policies firstly to ensure that they reach your estate (if this is your intention) and not a nominated beneficiary. Special care is needed where superannuation proceeds may enter the hands of infant beneficiaries. Attention is also required where superannuation benefits exceed the pension Reasonable Benefit Limits and to consider planning to ensure tax-free funds pass to the beneficiaries where possible.

There are specific issues to keep in mind when reviewing or making a Will: -

- Have I appraised my executors/trustees, the guardians of my infant children of my wishes regarding my estate and the upbringing of my children etc.?
- What assets are jointly owned?
- What capital gains tax implications are there with respect to my estate and the bequests contemplated in my Will?
- What steps should I take to ensure Trust Assets are protected and ultimately benefit my family?
- What questions should I ask regarding insurance and superannuation assets to ensure they benefit my family?

- Should I own property as a joint tenant or as a tenant in common?

DISCRIMINATION AFTER MATERNITY LEAVE

Employers often receive requests from employees, returning from maternity leave, for part-time work, whereas they were a full-time employee prior to taking the maternity leave. Employers often refuse such requests. Policies should be reviewed in light of a recent case whereby an employee was awarded a substantial sum for refusing to allow a change to part-time basis.

The employee was employed as a manager under a three year fixed term contract. The contract was to expire whilst the employee was on maternity leave. The employee negotiated an extension of the contract for a further year prior to going on leave. When she was due to return to work she requested that she be allowed to return on a part-time basis.

Upon refusal the employee lodged a claim of unlawful discrimination on the basis of sex and pregnancy. The employee accused the employer of engaging in discriminatory conduct against her by:-

- Denying her part-time employment;
- Renewing her contract for only one year when other employees were offered at least two years renewal.

She also alleged she had been constructively dismissed because of her employer's insistence that she return to work on a full-time basis. It was held that she had been discriminated against regarding the extension of the contract.

It was also held that the employer's refusal to allow the employee to return to work part-time was indirect discrimination. The court's view was that women per se are disadvantaged by a requirement to work full-time as they are more likely than men to require some periods of part-time work during their working life, particularly after maternity leave.

The court held that the employee had been constructively dismissed as she had abandoned her employment under duress. She was awarded \$30,695 for economic loss and \$5,000 to compensate for depression caused by her employer's refusal to provide her with part-time work.

TAX HAVENS UNDER THE MICROSCOPE

The Tax Office has released a booklet "Tax Havens and Tax Administration" to 'help people avoid being enticed into tax abusive arrangements'.

A special taskforce has been established to enhance the Australian Taxation Office's ability to tackle abusive tax haven arrangements. It is looking at financial dealings between Australian taxpayers and 38 tax havens doing business around the world.

While many dealings with tax havens are above board and provide international businesses with a genuine range of services the Australian Taxation Office is mainly focusing on schemes where people use a tax haven's secrecy laws to hide assets and income that should have Australian taxes paid on them.

The types of schemes coming in for special attention are those, which try to:-

- Create deductions in Australia;
- Avoid tax on tax haven income;
- Provide access to tax haven funds on which no Australian tax has been paid.

There are serious consequences for underpaying tax including a penalty as high as 75% of the tax being avoided.

The Australian Taxation Office is not generally concerned with ordinary trade, tourism and financial business or private transactions with entities or individuals located in tax havens. For example they are not concerned with:-

- Money inherited from an overseas relative;
- Earnings from overseas employment that are exempt from tax in Australia.
- Non-residents sending money to Australia to buy a residence for their parent or relative living in Australia; or
- Former non-residents bringing back to Australia savings accumulated overseas.

REDUNCANCY PAYMENT LIMITS

The Tax-free portion (which cannot be rolled over) of certain redundancy payments is calculated as follows:-

For the 2003 / 2004 year \$5,882 plus \$2,941 for every year of service.

Generally, the amount in excess of the tax-free component is treated as an employer-financed ETP and can be rolled over. The components are split between the pre and post 1983 components according to the eligible service period.

SUPERANNUATION GUARANTEE INFORMATION

2003/04 Financial Year
Contribution Rate:-
9% of notional earnings base.

Due Date for quarterly payments
*28 October *28 January
*28 April *28 July

No SG liability for:-
*Employee service from age 70,
*Employee service part-time below age 18,
*Monthly salary or wages <\$450,
*Salary>\$30,560 per quarter (\$122,240 p.a.)

Disclaimer: The contents of this publication are general in nature and we accept no responsibility for persons acting on information contained herein without first consulting us.