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Client Information Bulletin

ATO Register of Private Binding Rulings - Subject Searches

The ATO has enhanced its Register of Private Binding Rulings to enable online searches by subject matter. The Register contains more than 46,500 edited versions of ATO responses to private requests for written binding advice.

For further information visit www.ato.gov.au/taxprofessionals

International Financial Reporting Standards (IFRS)

International Financial Reporting Standards (IFRS) commenced on 1 January 2005. Please contact Gede Barone for further information.

Resolve to make 2005 a great year for your business

According to Victoria's former Minister for Small Business, Marsha Thomson, Australia is experiencing a period of strong growth.

Make a resolution to ensure your business is even more productive, rewarding and successful in 2005 using the following checklist outlined by the Minister for Small Business.

Why not resolve to:

1. Improve your business skills
2. Use your BDH & Co partner as a business mentor or coach
3. Develop new strategies to grow your business

4. Participate in partnering and networking opportunities
5. Develop a business or strategic plan
6. Consider business expansion opportunities
7. Investigate export opportunities
8. Raise the profile of your business by entering a business awards program
9. Consider the benefits of e-commerce
10. Know your legal rights and responsibilities as a business owner.

Keeping it in the Family - Succession Planning

Are you planning to retire from a family business or know someone who is?

One of the most significant challenges to the owner of any family business is planning for the future and how to best transfer share ownership to the next generation, to ensure the business continues and provides family security for surviving family members. Business owners should also consider estate planning issues if there are children who are inactive in the family business.

Without some form of succession plan there is a risk the business can become paralysed when the owner departs, particularly if it is unexpected.

By not planning ahead owners run the risk that their business will not get to the next generation, or will lead to debate and stress to all parties.

Many family business owners do not consider the implication of share ownership or succession planning because they are too busy building their business.

In most instances business owners leave their estate and business for the benefit of their spouse, with provision for it to be distributed equally among the children when their spouse passes on.

This approach however can lead to disaster depending on who participates in the business. A participating family member working in the business could believe it unfair to share equally with a family member employed outside of the business.

Removing yourself from the business - what are some of the options?

To minimise stress and disagreements between siblings the business owner needs to differentiate between active and passive family members.

This may include:

- Leaving a majority of shares to the active members of the business - those who have participated and helped build the business
- Having the business valued and selling the business to their children.

For owners that do not want to risk their retirement security - and are not sure that their children want, or are able to run the business successfully the following options are available:

- A leveraged buy out whereby the business borrows the money to buy out the owner. In order to do this there must be sufficient cash flow to service the new debt, and the owner may be subject to tax on the gain, as though the business were sold to outsiders.

This approach ensures the owner is secure with cash, and the children can continue the business, for better or worse.

For owners that have both active and inactive family members consider:

- Leaving assets to inactive members instead of dividing the business in

equal parts. This could include real estate or security investments.

- Providing life insurance options - small amounts of shares can be gifted to the active children and the company can take out a life insurance policy on the life of the owner. On the owner's death, the proceeds of the life insurance can be used to redeem the remaining shares from the owner's estate.

This then leaves the business in the hands of the active children while also providing enough cash for those who are inactive.

Taking care of yourself

To ensure the business owner is not reliant upon the family business to supplement their income in retirement they need to consider if they and their spouse have significant assets outside of the business to guarantee their own security following their retirement.

This means that their security is not dependent on the future success of the business they have passed on to their children.

Succession planning for a family business is not easy however planning ahead can lead to significantly less stress down the track for everyone.

So get planning NOW!

Proposed changes to the Victorian Long Service Leave Act

The Victorian State Government has announced a proposal to allow all Victorian Workers* to access Long Service Leave after 10 years.

A discussion paper has been issued and is available at www.irv.vic.au/workandfamily

* The Construction Long Service Leave Act 1997 is not included in the proposal

Occupational Health and Safety Act 2004

Most of the provisions of the *Occupational Health and Safety Act 2004* come into effect 1 July 2005.

The Act creates equality between all businesses, no matter what size, by making officers of large businesses, as well as small businesses, accountable. The language of the Act itself is more easily understood and eliminates some of the ambiguities of the old Act. For example, references to "health" in the Act covers psychological health as well as physical health. Paperwork will not increase.

Specifically some of the major changes are:

- New duty on designers of workplaces (01/07/2006)
- Increased duty on employers to consult
- Duty to notify incidents
- Introduction of deputy representatives
- Increased training for OHS representatives and deputies
- Increased protection for representatives against discrimination and "harm"
- Introduction of right of entry to workplaces for "Authorised Representatives of Employee Organisations"
- Introduction of review of decisions
- Alternative sentencing options, increased penalties, and introduction of potential prison sentences when breaches occur.

Under the Act, WorkCover will provide guidance for employers and workers to assist in the transition to the new era of occupational health and safety. WorkSafe's aim is to foster co-operation between all parties, rather than the "big stick" approach.

Additional information is available at:
www.workcover.nsw.gov.au

Tax Rulings and Determinations

TR 2004/16, Income tax: plant in residential rental properties

The final ruling on income tax: plant in residential rental properties differs little to the draft ruling released in mid 2004. The key point to note is that elements that form part of the “setting” of the rent-generating activities are not plant. Further, an item that is a fixture can be neither plant nor articles. The ruling also deals with the meaning of machinery, which affects the scope of plant.

For example:

- Stoves, ovens, cooktops and hot water cisterns are plant
- Kitchen cupboards and built in robes are not plant and not depreciable as plant
- The power unit, hose and brush of a ducted vacuum cleaner is plant however the ducting is not
- Carpets and curtains can be depreciated.

For more information visit www.ato.gov.au

Treasurer’s Tax Reform Package

Taxpayers fearing tax audits years after filing their returns have won a major victory over the Tax Office.

Treasurer Peter Costello has announced a shake-up of Australia’s do-it-yourself tax system.

The overhaul swings the system firmly in favour of taxpayers, slashing interest charges for outstanding debts while forcing the Tax Office to act twice as fast when questioning returns.

Mr Costello said the changes, which would apply retrospectively to the 2004/05 tax year, strike a better balance between protecting the revenue base and providing taxpayers with fairness and certainty, with about eight million individuals and 745,000 small businesses set to benefit.

Under Australia’s do-it-yourself system, introduced by Labor in 1992, taxpayers make their own assessments about claims for deductions and annual earnings. The Tax Office has the right to question or audit the assessment - and charge interest on unpaid tax up to four years later.

Under the shake-up, which will become law before mid year the Tax Office will have two years instead of four to question any claims, with the onus on the Tax Office to justify its claims.

It also will be no longer able to hit people with onerous penalties for mistakes resulting from “uncertainties” in the self-assessment system. Interest charged on tax debts - currently 12.5 per cent, well above market rates - will be reduced to better reflect the “true cost” of funds.

Some Key Points:

- A tax loss or nil position will now automatically start the clock ticking for the audit period.
- More rulings will be binding on the ATO.
- Businesses can demand a response to a private ruling application after 60 days.
- The ATO will be barred from making retrospective changes to its public rulings.

- Taxpayers who relied on draft rulings will be immune from penalties if the ATO’s view changes.
- Penalties for a tax shortfall due to failure to follow a private ruling will be abolished.

Superannuation Record Keeping Requirement

A reminder under the Superannuation Guarantee (Administration) Act 1992 - SECT 79

An employer must retain any superannuation records for five years after those records were prepared or obtained, or the completion of the transactions, this includes copies of applications forms for employees.

Superannuation Guarantee reporting requirements as an Employer

(Extract of Tax Laws Amendment (Superannuation Reporting) Bill 2004 as Act No 142 of 2004)

What are the new changes to super guarantee (SG) reporting requirements?

Employers will no longer have to provide employees with quarterly superannuation statements.

The requirement for employers to report payments under the *Superannuation Guarantee (Administration) Act 1992* has been removed for all employers.

This means that employers will no longer be required to report SG payments including salary sacrifice contributions, to eligible employees under superannuation guarantee laws.

Superannuation funds will continue to issue annual member contribution statements. Many employees will still receive information, in accordance with other Australian workplace legislation that requires reporting on payslips, and annual reporting from superannuation funds.

There is no requirement for employers to cease reporting and existing reporting arrangements may be retained.

There may be advantages in employers continuing to report in terms of employee relationships and minimising employee enquiries particularly where processes are already in place.

When do the new changes take effect?

The requirement for employers to report contributions will cease for all contributions made on or after 1 January 2005.

Does this affect Australian workplace legislation reporting requirements?

If employers are covered under Australian workplace legislation and award agreements that require them to report superannuation contributions on payslips, employers will still be obligated to report to their employees.

For more information visit www.ato.gov.au.

BDH & Co News

Business Health Checklist

As a service to both new and existing clients, BDH & Co has developed a Business Health Checklist. The checklist is a comprehensive review of your business. The checklist is designed to highlight areas of your business where a weakness in, for example, your systems, planning or insurance may exist.

Following the completion of the checklist, we will issue a written report detailing the weakness and the implications of the weakness.

Contact your BDH & Co partner to arrange a review. The questionnaire will take about half an hour.

Beverley Clarke

After seven years with BDH & Co Beverley is leaving 31st March 2005 to move closer to her family in Victoria. Beverley has been a key part of our team for many years and has always acted with the firm's best interests at heart. We will certainly miss having Bev's kiwi accent around. All the best Bev.

We welcome Sue Lavery as Bev's replacement on the team.

Client Profiles

Client: Expert Experts

Industry: Provision of expert witness reports

Profile:

Expert Experts assist lawyers, insurers and individuals to locate and retain experts for use in litigation. They have lawyers and barristers on staff who accept, brief and review expert reports ensuring the report meets the needs of the client.

Contact: For further details contact www.expertexperts.com.au.

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