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BDH & CO
Suite 3, Level 1
3 Carlingford Road
Epping NSW 2121
AUSTRALIA

Tel: (02) 9869 3300
Fax: (02) 9869 3200

www.bdhco.com.au

Partners: Gede Barone
Tas Demos
Brad Hodge

Consultant: Harry Brigden

Client Information Bulletin

Spotlight on Self Managed

Superannuation Funds (SMSF)

2004-05 will see the Tax Office increase audit activity on high-risk SMSF to ensure all tax obligations are met.

For those managing their own super through an SMSF, the Tax Office has released an advice booklet titled 'DIY Super: It's Your Money...But Not Yet!' which outlines what you can and cannot do within an SMSF.

The Tax Commissioner has indicated that the ATO will be "taking a firm approach with trustees who fail to make a genuine effort to comply, or who set out to deliberately avoid meeting their legal obligations".

What would be considered a breach of the SIS Act?

- Running a business within your fund;
- Lending money or providing financial assistance to a member or a member's relative. An example, includes lending money from the fund's assets to a relative to start a business;
- Purchasing an investment that gives an immediate benefit to a member or associate (examples includes buying art as a fund investment and hanging it on your wall, or buying wine and drinking it); and
- Not keeping the assets of the fund separate from personal assets and the assets of employers who contribute to the fund. It is recommended that you have a separate bank account and expenses of the fund are only paid from that bank account. All assets should be in the fund's name.

How Trauma Insurance Works

Almost all of us know someone who's had a heart attack, stroke or cancer. In fact the statistics are quite frightening.

For example, the lifetime risk for developing cancer by age 74 is 1 in 3 for males and 1 in 4 for females.

The good news, however, is that modern medicine gets better every day and 5 out of 6 of those males, and 9 out of 10 of those females, will survive until age 75.

Trauma insurance pays a lump sum on the diagnosis or occurrence of one of a list of specified injuries and illnesses such as heart attack, cancer or paraplegia.

In doing so, trauma insurance fills the gap left by other insurance covers. Income replacement and Total and Permanent Disability insurances only pay when you can't work...not when you don't want to.

With trauma cover you need only meet the policy definition of the specified condition (subject to waiting period).

For serious illness and injuries, trauma insurance provides an immediate lump sum without the waiting period for total and permanent disablement benefits.

Contact our Mr Brad Hodge for quote on trauma cover.

Tax Implications of "Partnership Salary" Agreements

The ATO has issued a Draft Taxation Ruling which has been in the pipeworks since an earlier ruling on 'Partners' Salaries' was withdrawn in May 2002. The conclusions are as expected from a revenue perspective, but note this is only draft at this stage.

This draft ruling considers the accessibility to a partner and the deductibility to a partnership of what is known as a 'partnership salary'. Partnership salary describes any form of additional remuneration paid to a partner from the partnership funds for acting in the partnership business.

Partnership salary not deductible

The Commissioner considers that a partnership salary is not truly a salary, nor an expense of the partnership, but rather it is an additional distribution of partnership profits to the recipient partner. Thus, the payment of a partnership salary to a partner, whether or not for personal services provided by the partner, is not deductible and is not taken into account in calculating the net income or partnership loss of the partnership. Therefore, the payment of a partnership salary cannot result in or increase a partnership loss.

Individual interests of partners

An agreement by the partners of a partnership to pay a partnership salary to a partner is a contractual agreement among the partners to vary the interests of the partners in the partnership (and thus the partnership net income) between the partners. For such an agreement to be effective for tax purposes in an income year, the agreement must be entered into early in the income year.

4 Year Limit for GST Refunds

A claim must be made within 4 years of the end of the tax period to which an entitlement relates to be eligible for refunds. Therefore, a taxpayer who lodged a quarterly activity statement for the September quarter 2000 would have until 30 September 2004 to claim a GST refund (and also luxury car tax or wine tax credits and indirect tax overpaid on importations). There are some circumstances whereby the 4 year limit does not apply, for example where a

valid tax invoice is held and a GST input tax credit has not been claimed. This claim could be made in the current BAS, rather than revising a previous activity statement. This time limit can be extended where fraud or tax evasion is present, to allow for any debt to be recovered.

Tax and the Home Based Business

As a general rule, expenses associated with your home are private and you can't claim a deduction for them. However, in circumstances where you do business-related work at home you may be able to claim deductions for some of the expenses relating to the area you're using for business purposes. The expenses cover two broad categories:

Occupancy expenses and Running expenses

Occupancy expenses are related to ownership or rental of the home and are not affected by income earning activities, these expenses would be incurred regardless of whether or not you were carrying on a home-based business. Occupancy expenses include rent, mortgage interest, land and water rates and house insurance premiums.

Running expenses relate to using facilities within the home, for example, electricity, cleaning, depreciation, leasing and repairs relating to furniture, etc in the office. These expenses would be higher than if you were not running a business from home.

What is required?

Where you have an area set aside exclusively for business activities, it must have the character of a 'place of business', including being:

- clearly identifiable as a place of business (eg a sign at the front of the home);
- unsuitable to be used for private purposes in association with the home (eg not suitable for someone to sleep in);

- used almost exclusively for carrying on a business; or
- regularly visited by clients.

Common examples are:

- small business operators' main office;
- tradesperson or craft person's home workshop;
- a Doctor or Dentist's surgery or consulting rooms.

How much can you claim?

When claiming a deduction you must be careful to claim only for the expenses related to producing income for your business. This means that expenses will often be separated between business and private use. With regard to occupancy expenses, a percentage of expenses (rent, interest, rates, insurance) that relate to the area you use for business. Commonly a claim is made relating to the floor area used for business, as a percentage of the total floor area of your home. Utilities expenses must also be apportioned. If this apportionment is not based on floor area you will need to clearly document the basis of calculation.

A telephone used exclusively for business can be claimed (ie rental and calls) but not including installation costs. If this phone is used for business and private use then the business portion is deductible, based on an itemised account. If an itemised account is not available you would need to keep a record for a 'representative' four-week period to establish a pattern of use for the whole year.

Travel expenses

Generally, the cost of travel between your home and work is considered a private expense. The cost of travel for any reason associated with a business is deductible. This means that if your home is your principal place of business you can claim the cost of trips between home and other places as a cost of running your business.

Tax consequences of using your home as your principal place of business

You generally don't have to pay capital gains tax (CGT) on any capital gain you make on the sale of your main residence (home). However, where you use your home as a place of business and are entitled to a tax deduction for some of your mortgage interest, or would be entitled to a deduction if you had a mortgage, you do have to pay CGT if you make a capital gain on the sale of your home. The amount of CGT relates to the proportion of your home used for business.

Conversely, if you were not entitled to claim a deduction for mortgage interest, you wouldn't have to pay CGT if you sold your home.

Long Service Leave for Casuals

A recent Victorian based decision to award a casual employee long-service leave has been hailed a 'landmark legal case'. The employee had worked for the Melbourne Cricket Club on a casual basis for 15 years. The club had denied the employee's claim on the basis that he was a casual employee and therefore did not qualify for the benefit.

The case is perhaps unusual in that most casual employees work for short periods with an employer and do not qualify for long service leave because they do not work with the same employer for the required period. The relevant Act (the Victorian Long Service Leave Act) does not exclude casual employees and as such, casuals are prima facie entitled to long service leave if they remain in continuous employment for the required period.

There are certain events which would normally be considered a break in service, which are deemed by this Act to not have the effect of interrupting employment, for example illness or injury, leave approved by the employer, pregnancy etc.

Implications to your Estate if you die without a valid Will

If you die without a Will, or your Will is not valid, the law dictates who will receive your assets. (Note: The law varies from state to state.)

The following summary shows how these rules work depending on your circumstances.

If you die leaving.....

- A Spouse but no children
 - Your spouse receives all.
- A defacto Spouse
 - There is a 2 year test. No qualifying period applies if there is a child of the couple.
- A spouse and children
 - Your spouse receives
 - * Your personal belongings;
 - * The first \$50,000 plus interest at prescribed rate; and
 - * One half of the balance.
 - Your children share the remainder of the balance between them.
- Children but no spouse
 - Your children share your estate between them in equal shares for each child (or the child's issue).
- No spouse or children
 - Your parents share your estate.
- No spouse, no children and no parents
 - Firstly, your brothers and sisters share equally (and the children of any deceased brother/sister receive their parents' share).

The above summary relates to NSW.

Tax Office's Compliance Program for 2004/05

The Commissioner has outlined details of the Tax Office's Compliance Program for 2004/05.

Individuals Focus

- Dividend, interest and employment income. Last year, the ATO reviewed 125 million transactions (data matching) and found 265,000 discrepancies and detected \$130m of omitted income.
- Rental Income Deductions

The ATO expects to send letters to 138,000 taxpayers, the most common problem being inappropriate apportionment of expenses when property not available for rent (eg holiday homes) and improvement rather than repair expenditure.

Micro Business Focus (under \$2m turnover)

- GST registration and refund claims
- PAYG withholding obligations
- Dividend, interest and employment income
- Cash economy industry focus - tourism, property. ATO will contact 73,000 businesses.
- Personal Services Income, contractor versus employee issues, income splitting and deductions.
- Low documentation loans, matching information from lenders to income tax returns to assist in tightening cash economy.
- Review of 72,000 claims for non-commercial losses.

Small to Medium Business Focus (\$2m to \$100m turnover)

A risk identification strategy will be implemented whereby tax performance will be compared with economic performance, that is, they will examine financials, including industry norms.

Also, entities claiming losses, CGT issues, use of service trusts, property, cash economy, and employer obligations:

- examine companies which have made profits but show little or no taxable income.
- aggressive tax planning (identify key players)
- schemes that promote access to superannuation before retirement through SMSF
- CGT - expanded attention, including developments treated as capital gains, 12 month holding period
- data matching with real estate property data, ASX share registries, managed fund distributions

Centrelink Data Matching

From August 2004, Centrelink will match 3 million of its recipients with Land Titles Offices to identify who owns real estate assets and have not declared the ownership to Centrelink.

Capital Gains Checklist

We enclose with this bulletin a comprehensive two page checklist to assist you in determining whether or not you have a capital gain or loss arising this year. It will also assist in respect of future years and alert the record keeping requirements.

BDH & Co News

Since our last newsletter BDH & Co has been proud to provide sponsorship to the following events and organisations:

- King School Art Show
- Eastwood District Junior Rugby Union
- St Gabriel School for Hearing Impaired Children
- Humour Foundation (Pro Bono services)

If you happen to purchase the Sunday Telegraph you may have noticed one of our Partners, Brad Hodge, writing a column in the financial section titled: *Money Penny* - a financial planning question and answer section. Feel free to send in some curly questions.

Tas Demos is flying to Tweed Heads in October to speak at the First National real estate conference. Tas is presenting a paper on succession planning.

Client Profiles

Client: Marshalls

Industry: Debt Recovery Solicitors

Profile:

Marshalls is a specialist debt collection legal practice. As a specialist practice, Marshalls is able to channel all of its focus and resources into the field of debt collection.

Marshalls understands that what people want is results, meaning debts collected and returned to cash flow. Their approach is proactive and commercial. They believe that taking positive action is the only way to recover moneys quickly. The range of actions they handle extends from the issue of originating processes through to various enforcement proceedings including bankruptcy and winding up proceedings. When debts are referred to them they assume full conduct of all collection action, subject to client instructions.

Contact: Daniel Taylor (02) 8223 3515
www.syd.marshalls-solicitors.com.au

Client: Il Piave Italian
Restaurant, Rozelle



Profile:

We would like to congratulate a client of Gede Barone, the *Il Piavé* Italian Restaurant, who have again won a One Hat Award in the Sydney Morning Herald's 2005 Good Food Guide Awards. The award means *Il Piavé* has been rated "exceptionally good and highly recommended, serving food that either is a great example of its style or attains unusual highs".

Chef, Vanessa Martin's family are from the Veneto region of Italy and she learnt to cook in her Italian grandmother's kitchen. She is a member of the Italian Culinary Association in Australia, teaches classes in pasta making and, together with her brother Robert Martin, runs *Il Piavé*. Vanessa was one of six celebrated chefs at the recently held "Great Women Chefs of Australia Dinner", raising funds to support research into Parkinson's disease.

We strongly recommend that you see for yourself why *Il Piavé* has won a One Hat Award for the last three years by booking your table. So that you are not disappointed please book early.

Contact: Robert or Vanessa
Tel (02) 9810 6204

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