

Winter 2005

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Choice of Superannuation Fund

As of 1 July the 'Choice of Super Fund' will commence for eligible employees.

Employers will be required to provide a 'standard choice form' to eligible existing employees before 29 July 2005. A copy of this form can be found on www.superchoice.gov.au. Some super funds have also produced a standard choice form – check with your fund for details.

With this introduction employers will need to choose default 'employer funds' for their employees' superannuation contributions. Employers however do not have to nominate the same employer fund for all their employees – they can nominate different default funds for different employees. Should the employee elect not to choose a fund, or not return the standard choice form their default employer fund will apply.

When choosing an employer fund, it is important to note that the fund must comply with insurance requirements. These are outlined further in this article. If a federal award applies to the employee, the default fund is specified by that award.

The employer fund can be the fund that you currently pay into.

If an employee does choose a complying super fund or retirement savings account (RSA) employers have two months to make contributions to that fund.

There is no obligation on the employer to comply with the

insurance requirements for an employee's choice of fund.

Employers need only provide factual information to their employees about each other's obligations under that choice.

Insurance Requirements

The employer fund must offer life insurance at a premium of at least \$0.50 per week to individuals under the age of 56 years or;

With at least the level of cover below:

Age Range	Level of Insurance
20 to 34	\$50,000
35 to 39	\$35,000
40 to 44	\$20,000
45 to 49	\$14,000
50 to 55	\$7,000

Employers can continue to contribute to their existing fund, even if it does not meet the insurance requirements until 30 June 2008.

Employers can also arrange for separate cover outside of the employer fund with an insurance provider. The fund will not need to meet the above requirements if the employer is contributing to a fund under a federal award or into a RSA.

Employers can contribute to a fund that does not meet the insurance requirements for all their employees. There will be instances where an employee will be refused cover because of their health status or occupation.

Eligible Employees

Choice must be offered to all employees unless they are covered by:

- > An Australian Workplace Agreement (AWA)
- > A Certified Agreement under the Workplace Relations Act 1996
- > The Industrial relations Act 1988 which designates a fund(s)
- > A State Industrial Award
- > A State Industrial Agreement that designates a fund(s).

Existing employees, who have previously been offered choice, do not need to be offered choice again. Employers are however required to offer new employees choice by providing them with the standard choice form within 28 days of commencement of employment unless they choose a fund and provide the required information to their employer.

This includes:

- > The full name and contact details of the fund
- > The employees account name in the fund
- > Any membership/identifier number for the employee in the fund
- > The fund's business number if it has one
- > What method employers can use to make the contributions to the fund and any necessary details to enable payment to be made
- > The super product identifier if it has one
- > The unique identifier that employers may use to refer to the employee
- > A written statement provided by or on behalf of the trustee of the fund that the fund is a resident regulated fund and can accept contributions.

If the fund is a self-managed super fund, evidence must be provided that it is a regulated super fund.

Participating Employer

Some super funds require employers to become a participating employer before contributions can be paid. This may include paying monthly, rather than quarterly contributions. Employers do not have to agree to this choice of fund if they do not wish to become a participating employer.

Employees covered under common rule awards in Victoria are considered 'eligible' employees for super choice.

Record Keeping

Employers need to ensure that records are maintained to meet the super choice obligations. They include details of those employees who do not have to be offered choice, confirmation that the employer fund meets the insurance requirements and copies of standard choice forms provided to eligible employees.

Superannuation record should be in English and kept for five years.

IMPORTANT: For more information about 'Choice of Super' please contact Brad Hodge. If you make contributions to 'Defined Benefit' funds you may not need to offer choice.

Property Investment

Property investors are in for a rude shock, as changes to tax depreciation laws will be enforced when they lodge their next tax return, according to the quantity-surveying firm Urban Consulting.

The changes relate to depreciation schedules, which report on all the items in an

investment property that are decreasing in value and can be claimed on tax.

While the Australian Taxation Office (ATO) has increased the list to include more than 150 depreciable assets, the ATO now excludes items such as light fittings, counter fittings and joinery. The ATO has become aware of the growing number of astute property investors claiming tax depreciation incorrectly on property. The ATO will not revisit previous incorrect claims, but will enforce the new legislation if blatant cases of incorrect claiming are identified.

Cents per Kilometre Rates for 2004-2005

The Income Tax Assessment Regulations have been amended to insert the 'cents per kilometre' rates for the 2004-2005 year. This is for taxpayers who use the cents per kilometre method of claiming deductions for car expenses. Those rates are 52 cents, 62 cents and 63 cents for 'small', 'medium' and 'large' cars respectively. The maximum claim allowance is 5,000 business kilometres.

Plan and Prepare for FBT and Christmas Parties

The Australian Taxation Office (ATO) has released a fact sheet containing information for employers about the possible fringe benefit tax (FBT) implications of providing Christmas parties for their employees and associates.

Taxpaying Bodies

If the employer is not a tax-exempt organisation and does not use either the 50-50 split

method or the 12-week register method for meal entertainment, the fact sheet offers the following explanations:

- > **Exempt property benefits** – the costs (such as food and drink) associated with Christmas parties are exempt from FBT if they are provided on a working day on the employer's business premises and consumed by current employees. A taxable fringe benefit will arise with respect to an associate of an employee who attends the party if not otherwise exempt under the minor benefits exemption.
- > **Exempt minor benefits** – a Christmas party may be a minor benefit and exempt if the cost of the party is less than \$100 per employee and certain conditions are met. The cost per employee includes the cost for any of their associates attending the party.
- > **Christmas gifts** - all benefits associated with the Christmas function should be grouped to determine whether the total value meets or exceeds the \$100 minor benefits threshold. For example the cost of gifts such as bottles of wine and hampers given at the function would be included in the total cost of the party.
- > **Tax deductibility** - the cost of providing a Christmas party is income tax deductible only to the extent that it is subject to FBT. Therefore, any costs that are exempt from FBT (i.e. exempt minor benefits and exempt property benefits) cannot be claimed as an income tax deduction.

Implications for Tax Exempt Bodies

For tax-exempt bodies, the fact sheet offers the following explanations:

- > **Christmas gifts** – a Christmas gift or hamper to an employee that meets the conditions of the minor benefits exemption rule and is less than \$100 will not attract any FBT.
- > **Christmas party held on the business premises** – the exempt property benefits provisions would not apply as the tax-exempt body entertainment provisions would apply. The minor benefits exemption rule is unlikely to apply to any staff Christmas party provided by a tax-exempt body.
- > **Christmas party held off business premises** – the minor benefits exemption rule is unlikely to apply to any staff Christmas party provided by a tax-exempt body.

Taxpayers Hit by ATO Changes on Service Trusts

Retrospective change to rules on deductibility of service entity fees

The long-awaited Draft Taxation Ruling on 'Deductibility of Service Fees Paid to Associated Service Entities' (the Phillips Trust ruling) was recently released by the Australian Taxation Office (ATO).

If finalised in its current form the ruling is likely to impact on thousands of taxpayers across the Professional and Small Business sectors.

The ATO's long-held position has, broadly, been that service fees paid to a related entity for use of assets and employees are deductible as long as the services being provided are connected with the taxpayer's income earning activities and that the service fees charged are not grossly excessive. Most official ATO comments over the

years concentrated on the level of mark-up – the difference between the cost to the service entity and the fees charged – and whether it is reasonable.

The new Draft Ruling focuses extensively on the need to establish the commerciality of the arrangement both in its establishment and in the service fee charged.

Estate Planning

Estate planning involves protecting, distributing and growing your current assets to ensure that your beneficiaries receive them in the best and most protected form.

Undertaking estate planning can involve using tools such as a Will, Power of Attorney, and other business structures such as Companies, Trusts and Superannuation Funds.

Good estate plans ensure for:

- > Control
- > Asset protection
- > Tax effectiveness
- > Access to capital when required.

Planning for your estate is not just for older wealthier clients, it affects all who have superannuation, property, share, savings and the like.

Some issues to consider when making or reviewing a Will:

- > Have I chosen an appropriate executor/trustee?
- > What assets are jointly owned?
- > How should I ensure trust assets are protected and ultimately will benefit my benefactors?

- > Are there any capital gains tax implications relating to my estate and stated bequests in my will?
- > What do I need to do to ensure that trust assets are protected and will reach the right hands?
- > Have I advised those included personally (ie executors/trustees/guardians) of my intentions or requests of them?
- > Most importantly: Has my will been properly witnessed?

Business or Family Trust Considerations

Some additional issues for those who have Business or Family Trusts:

- > Having a plan for business succession
- > Keeping capital and profit within the company
- > Considering implications if property has been transferred to a business or family trust
- > Checking who will control the family trust going forward and identifying if it excludes one family member/sibling over another
- > Considering the impact of a new family trust or business venture
- > Checking if there have been sacrifices made by beneficiaries. For example, were wages drawn while working in the family business?

Generation Y

Do you get the feeling that we are living and working in a world where Generation X'ers, Generation Y'ers and the Baby Boomers are struggling to comprehend where the other is coming from?

Are you finding that different values and expectations are causing inter-generational friction and compromise is hard to achieve as no common ground can be found?

Generation Y are those born between 1978 and 1996 and are described as impatient, over confident, informal and sceptical.

It is well documented that Australians are among some of the hardest workers in the world but which way will the generation Y'ers go?

For business owners it is a question worth pondering and taking time to consider.

The consensus seems to be that Baby Boomer managers who take a hard line against Gen Y workers may have a battle on their hands.

Members of Gen Y are entering the workforce en masse and they are very different from their Gen X and Baby Boomer counterparts.

Here are some tips regarding managing Gen Y:

- > They will leave one job for another to get a pay rise

- > There is not much loyalty to the company but they do have loyalty to brands
- > They are used to being entertained and stimulated and want to take this into the workforce
- > They do not like mundane jobs. If they are treated badly at work they will SMS, email and tell all their friends what a bad employer they have
- > They will have 29 jobs in five industries over their lifetime
- > Their lives do not happen in years – they occur in increments of minutes and seconds between the next text message or email.

As the skills shortage worsens and more Baby Boomers begin to retire, bosses will have no choice but to adapt to Gen Y demands.

Bosses will have to offer training programs, time off to travel and flexible working hours. Those who provide this may stave off a creeping attrition rate and avoid the costs of recruiting and retraining new workers to replace their flighty Gen Y employees.

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