

# BDJ NEWS

Barnes Dowell James

Chartered Accountants and Business Advisers

MARCH 2004

## TAX NEWS, VIEWS & CLUES

### TAX PLANNING

With the end of the financial year fast approaching, it is vital that clients give themselves sufficient time to plan their tax affairs. Of particular concern are clients facing the following situations:

- Increased profitability of business means that exposure to tax is increased.
- The sale of a property, shares or other assets that generate Capital Gains Tax.
- Larger than normal distributions that need to be made from Medical Practice Companies for the year ending 30 June, 2004.
- Large superannuation contribution made to Self Managed Superannuation Funds. These will generate large Contributions Tax Liabilities.
- Retirement, redundancy or resignation from an employer may also generate unexpected taxation liabilities, such as ETP Surcharge.
- Drawing large dividends from your company

If any of the situations described above apply to you, we encourage you to contact the relevant partner or manager for advice.

Most, importantly, do not leave tax planning to the last minute!

### NEW POWERS OF ATTORNEY LAW

The Powers of Attorney Act 2003 came into force in New South Wales in February.

Everyone should make an enduring power of attorney, otherwise serious difficulties can arise if you

become incapable of handling your own affairs through accident, illness or infirmity, resulting in a 'rudderless ship' situation with management passing to the Protective Commissioner instead of to those you would have selected to perform this essential role. This could prove expensive as well as distressing to your family and/or business affiliates.

It is important to remember that your Will can only operate upon your death and has no significance during any period of incapacity.

Now powers of attorney can be tailored more specifically to suit the circumstances of each person, whereas the previous form usually gave the persons(s) appointed largely 'carte blanche'. The new form prompts you to specify when the power of attorney is to take effect and to place limitations on how much attorneys can benefit themselves and to spell out more clearly what they can and can't do. With proper advice and due consideration of the variety of options, both you and your attorneys will be able to better plan for and manage an important time of life.

The Law Society of New South Wales has issued Guidelines to solicitors to assist in advising clients following the new legislation.

While previous powers of attorney remain valid, all clients are urged to contact their solicitor to make an enduring power of attorney or to review their current arrangements if appropriate. If you need a referral to a law firm that practises in this area of law, please contact us.

### PAYROLL TAX CAUTION

Employers are cautioned to closely monitor their liability for Payroll Tax. This is a State Government Tax that is levied on Payroll.

Where an employer's wages cost exceeds \$50,000 per month, payroll tax is levied at the rate of 6% on the amount in excess of the threshold.

What is actually included in the definition of "wages" is critical and may often be overlooked by employers. Wages includes:

- Salaries paid, including penalty rates, overtime, leave payments
- Director's fees
- Grossed up value of Fringe Benefits
- Eligible Termination Payments
- Payments under certain contracts
- Payments under an employment agency contract to a worker
- Superannuation contributions
- Trust distributions to beneficiaries who provide services (from 1/7/2003).

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## **COMMISSIONER'S DISCRETION ON LOGBOOK REQUIREMENTS FOR CAR FRINGE BENEFITS**

The Commissioner has the authority under the Fringe Benefits Tax legislation to exercise his discretion and not enforce the substantiation requirements in special circumstances.

The Tax Office recently announced that this discretion would be employed in relation to the substantiation requirements for logbook records for car use.

Legislation requires various entries to be made in a logbook in respect of each business journey. If a taxpayer fails to comply with a requirement, the Commissioner will base his decision on the impact the omission has had on the integrity of the logbook.

Accordingly, where no or minimal impact is present, the Commissioner is likely to overlook the taxpayer's omission.

**Tip:** Such a logbook must record only business journeys and be kept for a minimum of 12 consecutive weeks.

## **CGT ROLLOVERS ON ASSET TRANSFERS TO A COMPANY**

The Tax Office has released two Interpretative Decisions in regard to the availability of CGT rollover relief on asset transfers from an individual or trust to a company.

Rollover relief disregards any capital gain or capital loss made by an individual or trust as a result of the disposal.

In order to obtain rollover relief, the asset transfer must satisfy a series of conditions including:

- the transferor must own all the shares in the company after the disposal of the asset;
- the company must not be a tax-exempt entity; and
- if neither the trust (transferor) or the company (transferee) is a resident, the asset must have the necessary connection with Australia.

In addition, any consideration received by the transferee for the disposal of the asset to the company must be limited to shares in the company and/or the assumption of liabilities in relation to the asset.

In the situation where the transferor receives no consideration for the assets disposed of, the ATO states that rollover relief may still be granted, as the law does not specifically require that consideration be received for the asset transferred.

## **ATO TARGETS PROPERTY SCHEMES**

The ATO is looking into alleged GST avoidance schemes involving the use of a joint venture as an interposed entity when supplying new residential premises. The ATO has recently issued a media release warning against the abuse of such arrangements.

The particular scheme targeted by the ATO involves the use of a GST joint venture to create an 'artificial' first sale of new residential premises by a joint venture operator to a joint venture participant.

Supplies by a joint venture operator to a joint venture participant are not generally subject to GST (conditions involving the use of the acquisition by the joint venture participant exist).

On subsequent supply to a customer by the joint venture participant, the supply is claimed to be input taxed as the premises are no longer new, i.e. they have previously been sold as residential premises.

The ATO has indicated that it will be targeting such schemes on the basis that either they do not involve a true joint venture, do not amount to a sale of the premises or the anti-avoidance provisions of the GST Act apply.

**Caution:** If you are thinking of entering this type of arrangement, be aware that the ATO may deem the subsequent sale to the end user to be subject to GST.



**FINANCIAL  
PLANNING**

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## TRUST DISTRIBUTIONS AND CAPITAL GAINS

The Tax Office has issued a Practice Statement concerning the tax issues arising when there are distributions of trust income and capital gains to separate beneficiaries.

Based on the technical application of the law, a beneficiary entitled to a share of trust 'income' pays tax on that share of the trust's net (taxable) income. As a capital gain is not 'income', beneficiaries entitled to income may be taxed on capital gains distributed to other beneficiaries, although they have no entitlement to the cash.

The Practice Statement outlines two practical approaches that will be accepted by the Tax Office in certain circumstances.

The first enables the beneficiary who receives the benefit of the capital gain to bear the tax.

Alternatively, in certain cases, the trustee can be chosen to recognise the tax liability. A written agreement may be required between the trustee and the beneficiaries.

The Practice Statement focuses on trusts that have separate 'income' and 'capital' beneficiaries. However, its application to ordinary discretionary trusts is also acknowledged.

## FAMILY TRUST ELECTIONS OF NON-FIXED TRUSTS

The Tax Office has issued a series of three interpretative decisions explaining the availability of tax offsets (franking credits) for beneficiaries of non-fixed trusts that derive franked dividends as a distribution of trust income.

Readers may be aware that, broadly, shares must be owned at risk for a period of at least 45 days in order to qualify the shareholder for tax offsets. Owning shares at risk refers to, for example, owning shares without reducing the risk of loss, or opportunity for gain, by entering into transactions such as options or futures.

In relation to shares held within a non-fixed trust, the Tax Office first restates the position that a beneficiary of a non-fixed trust will not be a qualified person in relation to a dividend on shares held at risk for at least 45 days unless the trustee has made a family trust election. Consequently, the franking credits will be lost.

A beneficiary's interest in a non-fixed trust is determined by their entitlement to dividend income of the trust. A discretionary beneficiary of a trust is considered not to have an 'interest' in the trust income. However, the tax offsets will still be available where the family trust election is made.

The Tax Office then states that the same position applies even where a beneficiary has an interest in the corpus of the trust. Unless the trustee makes a family trust election, a beneficiary will not be entitled to receive tax offsets (franking credits) on any dividend distributions flowing through the trust.

## **MORTGAGEPORT**

We would like to remind clients that we are able to provide competitive residential mortgages via our alliance with Mortgageport.

Our firm works with Mortgageport in providing fully featured mortgage products, that are structured to reduce the after tax cost of debt. We are in many cases able to process your application from our office ensuring quick responses to all inquiries.

This service has been a great benefit to many of our clients already and we encourage all clients to call for more information.

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