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Super Fund Choice

From 1 July 2005, many Australian employees will be able to choose a superannuation fund into which their employer's superannuation guarantee contributions are paid. These new 'super choice' rules have important consequences, both for employers and employees.

Employers will be required to pay compulsory superannuation guarantee contributions into a complying superannuation fund for each of their eligible employees, and from 1 July 2005 certain employees will have the right to choose the fund their contributions are paid into.

The changes will provide employees with a choice as to who manages their investments for retirement. If an employee does not wish to change fund, their superannuation contributions will continue to be paid into the fund chosen by the employer. An employee may choose to change funds at any time. However, an employer can only accept one choice from an employee in a 12-month period.

Tax Consequences

The introduction of super fund choice does not directly modify the tax treatment of superannuation contributions or payments; however, the proposed abolition of the superannuation surcharge means that contributions will be taxed at a maximum tax rate of 15% (currently

30%) instead of the top marginal tax rate of 48.5%.

- **TIP:** Seek financial advice to determine the best fund to suit your needs. Also, consider maximising your superannuation contributions in this new environment of choice and lower tax.

Assessable Income from Sporting Activities

In a recent High Court decision, it was unanimously held that prize money, grants, sponsorship and appearance fees received by an elite sportsperson were assessable income.

The taxpayer was a police officer and trained as an Olympic javelin thrower.

In the 1998/99 income year, she received prize money (\$93,429), government sporting grants (\$27,900), sponsorships (\$12,419) and appearance fees (\$2,700) in addition to her salary. The Tax Office deemed each of these additional amounts to be assessable income. The taxpayer objected.

The matter was heard before both the Federal and Full Federal Courts until it ultimately reached the High Court as a test case.

The Tax Office argued that the additional amounts were assessable on the basis that the taxpayer derived them in the business of being an elite sportsperson.

The taxpayer argued that she was not carrying on a business and that such amounts were mere consequences of her participation in the sport.

The High Court upheld the Tax Office's appeal and declared that all of the additional amounts were assessable income on the basis that they were rewards from the conduct of her business of competing and winning in the athletics arena.

Service Trusts

The Tax Office has recently released a draft tax ruling regarding the deductibility of service fees paid to associated service entities (e.g. service trusts).

It is common for professional firms to use service trusts to provide office space, administrative staff and equipment. The service trust charges the firm a fee, which is intended to be deductible.

The draft ruling is designed to supplement Taxation Ruling IT 276, which was issued in response to the Federal Court's 1977 decision in *Phillips v. FCT*. The draft ruling states that taxpayers cannot automatically rely on the service fee mark-ups used in the *Phillips* case. In order for service fees to be deductible, the amounts are required to be commercially realistic.

The Tax Office will investigate instances where, for example:

- the fees are excessive in relation to the benefits provided;
- the fees are calculated using fixed mark-ups; or
- the fees generate profits in the service entity and there is no clear separation of business activities.

The draft ruling includes many varied examples analysing different structures. It would be prudent to seek professional tax advice to confirm whether your service entity arrangement satisfies the Tax Office's requirements.

- **STOP PRESS:** The Tax Office has recently announced that it will typically confine its review of service trust agreements over the next 12 months to those involving large balances. Smaller businesses will have some time to review their existing agreements.

Capital Allowances

The Tax Office has recently released three Interpretative Decisions regarding the deductibility of business-related costs under the capital allowances regime.

Tax law allows taxpayers a deduction for certain capital costs incurred in establishing or ceasing a business or raising capital. The costs are deductible over five consecutive years.

The decisions clarify the period of deductibility for capital payments, winding up costs and undeducted expenditure in the year of ceasing business.

Tax Losses Deduction Denied

In a recent decision, the High Court unanimously ruled in favour of the Tax Office and held that a taxpayer was unable to deduct prior year and transferred losses as a result of the appointment of a liquidator to the taxpayer's parent company. It was held that this caused a failure in the continuity of ownership test.

The High Court disallowed the loss deduction on the basis that the appointment of a liquidator at the parent company level caused the ultimate shareholders to lose control of voting power. As a result, continuity of ownership had not been strictly maintained by the ultimate owners.

- **TIP:** This case highlights the need to trace ownership through to the ultimate owners (natural persons) in determining continuity of ownership in relation to tax losses.

GST: Repairs under Warranty for Non-resident Entities

The Tax Office has released two draft GST determinations dealing with the GST consequences of repair arrangements for non-resident warranty providers.

The first draft determination, GSTD 2005/D3, discusses repair services supplied to Australian customers by Australian GST-registered repairers on behalf of a non-resident manufacturer.

The approach taken by the Tax Office in this draft determination is somewhat controversial given that

the resident repairer is making good a warranty provided by a non-resident. If the ruling is adopted as per the draft, a number of businesses that have entered into arrangements to provide warranty repair services for non-resident companies may have to increase their prices by 10% to cover their GST obligations.

The second draft determination, GSTD 2005/D2, provides that a payment received by an Australian car dealer from a non-resident manufacturer under an offshore warranty is not subject to GST. The determination considers that there is no taxable supply made by the non-resident manufacturer to the Australian dealer.

- **TIP:** Taxpayers involved in the repair of imported goods should carefully consider their GST obligations.

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