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# Practice Update

Please read this update and contact this office if you have any queries

OCTOBER 2007

## Business Reporting to be slashed

The Treasurer has announced a new initiative, called the Standard Business Reporting (SBR) program, which should help to cut the red tape confronting business when reporting to government.

When SBR financial reporting is fully implemented, businesses will be able to use their accounting/record keeping software to automatically pre-fill government reports.

Businesses and their tax agents will also be able to use a single, secure log on to send financial reports to:

- ◆ the Australian Bureau of Statistics;
- ◆ APRA;
- ◆ ASIC;
- ◆ the ATO; and
- ◆ (potentially) State Revenue Offices.

Businesses will no longer need to log in to separate systems to submit their financial reports to each of these agencies.

Importantly, use of SBR will be voluntary.

Trials will commence in mid-2008 and the program is expected to be fully operational in mid-2010. It will apply to forms such as BASs, Company Income Tax Returns, TFN Declarations and the Quarterly Business Indicators Survey.

Costs to business are expected to include software upgrades, as well as learning about it and seeking professional advice.

## How can you 'deal with' the money in your Super Fund?

*Editor: The Tax Office is becoming increasingly concerned about taxpayers wanting to use the money or assets in their superannuation fund as a sort of pre-retirement benefit. You know that feeling of . . . "I know it's all locked up, but can't I get my hands on some of it now?"*

*So the ATO has issued a draft ruling spelling out one of the main rules that governs super funds. This is the "sole purpose test", which restricts how the assets of the super fund can be used.*

### Sole purpose test

The sole purpose test exists to basically ensure that an SMSF only uses its superannuation savings to provide retirement or death benefits for its members.

The test is breached if those funds are used to provide (pretty much) any kind of pre-retirement benefits to members (or others).

The classic example of a fund breaching the sole purpose test was a case called the *Swiss Chalet case*, where the fund's assets included a holiday house, shares in a golf club and an investment in a chalet in Switzerland which were all available for the use of family and friends.

Clearly that's at one end of the spectrum, but other investments may inadvertently provide very minor or insignificant pre-retirement benefits.

The question for these funds is: do they breach the sole purpose test?

This draft ruling attempts to answer that question by drawing a line in the sand to provide some guidance as to the kind of benefits that a member of a fund may receive which may or may not breach the sole purpose test.

**Example of a breach: Separately negotiated benefit**

The trustee of an SMSF invests in a block of holiday apartments at a popular tourist destination. The members of the SMSF holiday in this area every year, and prior to making the investment, owned a separate holiday house nearby.

The trustee, when undertaking the investment, additionally negotiated for members of the SMSF to be able to stay at the apartments for free. This is not a standard feature of the investment. The members of the SMSF sell their holiday house immediately after the SMSF makes the holiday apartment investment.

The separate negotiation of the benefit, which also has the potential to materially affect the return on the SMSF's investment, demonstrates that the benefit is purposeful and not incidental.

The facts given in this example reveal that the SMSF is being maintained for a purpose of providing benefits to members other than those specifically allowed. Therefore, the trustee contravenes the sole purpose test in these circumstances.

The ATO has the power to make the fund non-complying in this case, and tax the **assets** (not just the income) of the fund at 45%.

*Editor: Clearly the issues contained in this ruling are complex and clients who have superannuation funds would be well advised to contact our office to discuss the tax implications of any investments prior to making them.*

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**Horse flu – ATO offers help**

The Tax Office is offering a helping hand to businesses directly affected by equine influenza and the resulting quarantine measures.

The Tax Commissioner said that the Tax Office understands that equine influenza has directly affected the income of many people involved in the horse and related industries, and wants to reassure people affected that the ATO will work with them to help them meet their tax obligations.

*Editor: Clients who wish to approach the Tax Office should call our office.*

**Horse racing – is it a business?**

Speaking of horse racing, and the risks of turning a profit, the Tax Office has issued a draft Ruling to try and help taxpayers understand their tax obligations where they race horses.

As we all know, many taxpayers have an interest in a horse or in a number of horses which they hope and pray will one day bring home the bacon. Phar Lap may be too much to expect, but . . . you never know.

The Tax Office's view is a little more down to earth. They say "it would be a rare case indeed" where racing horses, as a stand-alone activity, would amount to carrying on a business.

In other words, for most taxpayers, the ones who just have an interest in one or a number of horses, the activity will not be a business, so any receipts (such as prize money) are not assessable, but expenses are not deductible.

The ruling goes through a whole range of scenarios and their tax consequences.

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**Terminally ill will be able to draw superannuation tax-free**

The Assistant Treasurer has announced that, from 12 September 2007, people under the age of 60 with a terminal illness will be able to access their lump sum superannuation benefit tax-free.

Currently, taxpayers under the age of 55 who access a lump sum superannuation benefit from a taxed superannuation fund are subject to a maximum tax rate of 20% (plus Medicare levy).

Until the legislation passes into law, the Commissioner of Taxation has agreed to change the rate at which superannuation funds are required to withhold from payments to people in these situations.

Further details will be determined in consultation with the superannuation industry, the medical profession and support groups.

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**GIC and SIC rates for the 2007 December quarter**

The general interest charge (GIC) and shortfall interest charge (SIC) for the 2007 December quarter are 13.75% and 9.75% respectively.

Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.