

News Flash

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REMINDER - WSC Audit Protection Service

The Australian Taxation Office (ATO) continues to announce significant increases in their audit activity. Now more than ever individuals, business and Self Managed Superannuation Funds are at risk of being selected for a random audit.

Unfortunately, the instigation of a random audit or investigation by the ATO, or indeed any Federal or State revenue agency, will result in costs to you. Even if there are no adjustments to the return, there would still be costs associated in the preparation of material for the ATO, or the agency involved, and the managing of the response process.

It is for this reason that we continue to hold Audit Insurance to cover the professional fees incurred in preparing all relevant documentation and responses to the ATO, or any other Government Agency, conducting an Audit, Review or Investigation (including workers' compensation audits). This policy, underwritten by Vero Insurance Ltd, covers these costs (up to a prescribed limit) for any audits, reviews or investigations relating to the current year's returns, and all previous years.

This cover does not automatically extend to you, however, we can add your account to the list of clients participating in this service. In the event that you are subsequently subject to an audit or query, we will then seek to claim our fees from the insurance company.

We emphasise there is no compulsion, and it is for each client to decide whether to participate. If you wish to participate, simply complete the payment details on the client acceptance form sent to you recently and return it to us with your payment. If you have not received a client acceptance form in the mail please Julie Busuttil on (02) 8525 4600 or email julie.busuttil@wscgroup.com.au

Should you have any other queries in respect to this offer, please do not hesitate to contact us.

Custodian Cunningham Rise Syndicate

Recently you would have received a copy of the prospectus for the issue of shares in Custodian Cunningham Rise Syndicate Limited. If you have not yet received your copy please email info@wscgroup.com.au

Before investing in the Company it's important that you read through the entire Prospectus and make any decision based on the Prospectus.

The prospectus is appropriate for clients with self-managed super funds or cash. If you would like to discuss the prospectus in detail and learn more about how you can set up a self-managed super fund please call David direct on 0425 288 594 or email david.shaw@wscgroup.com.au

An Important Message

While every effort has been made to provide valuable, useful information in this publication, this firm and any related suppliers or associated companies accept no responsibility or any form of liability from reliance upon or use of its contents. Any suggestions should be considered carefully within your own particular circumstances, as they are intended as general information only. Please contact your WSC account manager for more information.

TAX PLANNING OPPORTUNITY!

Claiming the Tax Break through a sale and leaseback

Editor: One of the problems for taxpayers wanting to acquire business assets and claim the 50% tax break deduction has been that leases aren't eligible. A recent (interpretative) decision by the Tax Office provides a way around this.*

() The tax break is 10% for larger businesses.*

The Tax Office has stated that, where a business taxpayer acquires an asset and then enters into a sale and leaseback arrangement a month later, they will be eligible to claim the tax break provided they satisfy all the other eligibility requirements.

In the factual situation described, the asset concerned was to be purchased by the taxpayer – presumably by way of loan – and owned for one month and used for the sole purpose of carrying on its business.

At the end of this period the taxpayer proposed to sell the asset to a financier and then lease the asset back.

While the taxpayer is the lessee, the asset will continue to be used for the sole purpose of carrying on its business although it will no longer hold the asset for depreciation purposes.

In these circumstances, the taxpayer can claim the tax break of 50% of the cost of the asset.

Editor: Clients wishing to take advantage of this huge opportunity before the tax break expires should contact our office immediately.

Super fund taxed at 45%!

Dividends were 'special income'

In a recent AAT case, the dividends received by a superannuation fund from a private company were held to be "special income", on the basis that the shares in the private company were acquired at a cost significantly less than market value.

Editor: Special income, or non-arm's length income, is taxed at 45% in the hands of the fund.

The Facts

In 1995, a superannuation fund acquired four shares in a related private company for \$51,218.

The private company had a large majority share-holding in a listed company and the four shares that the fund acquired were more realistically valued at nearly \$600,000.

For tax purposes, a private company dividend that is paid to a super fund is treated as 'special income' unless the fund can persuade the Tax Office that it is reasonable *not* to treat the private company dividends as special income.

The Tax Office amended the superannuation fund's assessments for the 2000 to 2003 income years and taxed its income (being the dividends paid from the private company) at 45%.

This was a significant amount of tax as the dividends paid to the fund were as follows:

2000.....	\$143,720
2001.....	\$86,320
2002.....	\$86,320
2003.....	\$76,640

A Tax Office ruling states that "Dividends are only derived on an arm's length basis when the shares are acquired, the investment is maintained, and the dividends are paid on an arm's length basis."

The Decision

The AAT agreed with the Tax Office that, as the acquisition of shares at less than market value gave rise to the relevant dividends, the income should be treated as special income.

Word of Warning

One of the problems for the fund is that, as the initial acquisition of the shares was not at market value, this would seem to be an ongoing problem for the fund unless it can, in some way, reverse the original transaction.

Editor: This case demonstrates the difficulties that can occur where trustees of super funds enter into transactions with related parties.

Any clients considering major transactions with superannuation funds may wish to call and discuss the income tax and other ramifications with us.

SMSF lends money to related company, pays 45% tax

The Administrative Appeals Tribunal has upheld the decision of the Tax Office (ATO) to make a self-managed superannuation fund (or 'SMSF') 'non-complying' when it breached the investment rules applying to SMSFs.

Editor: For SMSFs to access the concessional tax treatment that superannuation offers (such as the 15% tax rate), funds must be 'complying' funds. That is, the funds must comply with the superannuation law, including the restrictions on what they can invest in.

*If a previously complying fund is made 'non-complying' by the ATO, it may need to include the **full market value** of its assets in its income that year and it is all taxed at 45% (in that year and all future years the fund remains non-complying).*

Facts

In the 2004/05 income year, the SMSF (the 'Fund') made loans to a company which was a related party of the Fund.

Editor: Under the investment restrictions in the superannuation law, a loan to a related party is considered an 'in-house asset', and an SMSF is limited to basically having no more than 5% of its assets as in-house assets.

The trustee's actions resulted in the fund lending almost all of its assets to the related party, above 95% – well beyond the allowed 5%.

On 23 July 2007, the Fund's auditor lodged a contravention report with the ATO advising the Fund had contravened the in-house asset rules.

The ATO consequently issued a non-compliance notice in respect of the Fund, and the trustees appealed the decision to the Tribunal.

They argued that the Fund should still be treated as complying despite the contravention of the in-house asset rules, due to other factors, such as the declining fortunes of their business operations at the time, the chronic illness of one of the trustees (who was also the company manager), and the Queensland cyclones in 2004 and 2005.

Reasons for Decision

The Tribunal considered:

- the taxation consequences arising from treating the Fund as non-complying;
- the seriousness of the contravention (the Tribunal member considered the contravention very serious, and stated "I doubt that the (trustees) even now appreciate its seriousness"); and
- all other relevant circumstances.

However, the Tribunal held that "it was the correct decision to issue the notice of non-compliance."

The seriousness of the contravention, and the length of time taken to redress it, "weighed most heavily" against treating the Fund as complying despite the contravention of the Act.

Editor: Before issuing the non-compliance notice, the ATO rejected two repayment arrangements the trustees put forward because the timeframes were too long. Had they been able to rectify the breach in a more timely fashion, the Fund may not have been made non-complying.

Draft legislation to abolish the CGT 'Trust Cloning' exception

The Assistant Treasurer has released draft legislation leading to the abolition of what is known as the capital gains tax (CGT) "trust cloning exception".

Background

Normally, CGT is triggered when an asset is transferred into a trust.

However, under the current law, CGT is not triggered if an asset is transferred between trusts and the beneficiaries and terms of both trusts are the same.

This arrangement is known as the "trust cloning exception" and, according to the Government, was used primarily by high wealth individuals as a succession-planning tool, allowing effective control of assets to be passed between trusts, frequently within a family group, without triggering CGT.

The Government announced in late 2008 that it would remove this exception with effect from 1 November 2008.

Although the legislation contains the removal of the trust cloning exception, it also contains an important new provision that will allow for a limited CGT roll-over for the transfer of assets between **fixed** trusts.

The legislation will still allow these types of eligible trusts to restructure businesses or investment funds when they need to without immediate CGT consequences.