



# CAUNT AND LOWBEER

Chartered Accountants

NEWSLETTER - WINTER/SPRING 2010

## TAX AND BUSINESS NEWS

Well The World Cup came and now it is well gone.

A tiring month for lots of us with early mornings (and late nights) watching the delights of world soccer.

Also the new financial year is also well under way and we are well into our schedule of 2010 accounts and tax preparation.

As mentioned in our last newsletter we sent out a questionnaire to all clients.

We received a 25% response—which we understand is a very good response rate. The feedback was useful both on an overall practice level and an individual client level in some cases.

We spent time with all the staff reviewing and discussing the feedback and taking on board any change recommendations—although we haven't

bought a cappuccino machine yet as suggested in one feedback form !!

So thank you to all who responded and helping to make it a very worthwhile effort.

Inside is an article relevant to clients with discretionary trusts in their structure.

The High Court handed down a decision in Bamford vs The Commissioner of Taxation. This decision emphasized the critical importance of the wording in trust deeds in respect of income and distribution clauses.

We will be contacting all clients with trust deeds to suggest a review of these clauses to see whether it complies or in fact requires amendment.

In our last newsletter we had an article about an important draft ruling con-

cerning trusts and unpaid present entitlements ("UPE").

This ruling has been made final and impacts all those with corporate beneficiaries. Importantly such distributions and UPE's made prior to December 2009 are quarantined away from the new provisions.

Inside is an article explaining the practical implications of this important tax office ruling.

No wine article this month. Our resident wine guru has just finished a month of abstinence for the "Dry July" charity.

Rather enjoying the start of the soccer season with Sydney FC. So not too big a gap between The World Cup and our domestic soccer season—phew!!!

and we will refer you to one).

You will get advice not only on your will but other estate planning matters, like power of attorney.

Contact us for further information on this.

### Dates to note:

- Clients with early lodgement dates (31 October) for their 2010 returns. We will be writing to these clients. If this affects you please ensure we receive your books and records as soon as possible.
- Ensure where relevant you have noted your odometer reading at 30 June 2010.
- Employers PAYG annual reconciliations are due (overdue) for lodgement with ATO—unless extension for lodgement applies. Due date is 14 August.

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## MAKE SURE YOUR WILL IS UP TO DATE

You may notice that this article is a repeat from our last newsletter.

We had a few clients contact us about this and feel it is so important that it is worth repeating.

How long is it since you looked at your will and made sure it is up to date?

Or maybe you have never done a will.

If you don't have a will or your will is over 5 years old or circumstances have changed for you (marriage, death etc etc) then make it an absolute priority to see your solicitor and get one organized. (If you don't know a solicitor contact us

# TRUSTS: The “Bamford” decision. Unpaid Present Entitlements.

## THE BAMFORD DECISION.

On 30 March 2010 the High Court of Australia handed down its decision in Bamford vs The Commissioner of Taxation.

The decision clarified the method of making trust distributions. As a result:

- It may not be possible to distribute all income of the trust to beneficiaries—hence the trustee may be taxed at 46.5%.
- It may not be possible to recoup prior year trust losses against current year income or capital.
- It may not be possible to distribute different classes of income to different beneficiaries (income streaming), resulting in an increase of overall tax payable.

Not all deeds, especially older deeds, will necessarily comply with the Bamford decision.

We will be writing to all clients with trust deeds drafted prior to the Bamford case decision (virtually all deeds) to suggest a review of their deed and, if necessary, an amendment to ensure compliance.

Obviously this is a legal review and we are organizing this on a set fee per deed basis with a legal firm specializing in this work.

Please contact us if you need any more information on this.

## UNPAID PRESENT ENTITLEMENTS.

The ATO has finalized its ruling TR 2010/3 which gives The Commissioner's view on when an unpaid present entitlement (UPE) will be a loan under Division 7A.

The ruling largely confirms the ATO's views previously released as Draft Taxation Ruling TR 2009/D8.

The ruling applies only to UPEs after 16 December 2009 and is substantially not retrospective. The ATO considers there are certain instances where UPEs prior to 16 December 2009 could be converted to a loan.

All distributions post 16 December 2009 to corporate beneficiaries should either be paid across in cash to the corporate beneficiary, or converted formally to a Division 7A complying loan prior to the lodgement date of the 2010 tax return.

We feel that it will be necessary to open a bank account in the name of the corporate beneficiary to enable cash distributions to be received and banked.

We suggest this bank account be opened as soon as possible.

Please contact us for further information. We will be dealing with the UPE issues when we prepare your 2010 tax returns—both quarantining the pre 16 December 2009 UPEs and correctly dealing with new distributions.

## MAIN RESIDENCE: Capital Gains Tax—Temporary Absence

Prima facie, when a taxpayer moves out of their main residence and commences to rent it out, only a partial main residence exemption will be available on the eventual sale of the dwelling.

This is because the dwelling is not generally considered to be the taxpayer's main residence during the period it is tenanted.

However one way this can be modified (there are others) is where the requirements of the “temporary absence rule” are satisfied. In this case the main residence exemption can be extended by allowing the taxpayer to treat the dwelling as their main residence for all or part of the period that they are not living in the property.

Where a dwelling ceases to be used as a taxpayer's main residence the “temporary absence rule” allows the taxpayer to *choose* to continue to treat the dwelling as their main residence for all or part of the period that they are not living in the property

The period the temporary absence rule applies is:

- If the dwelling is not used for income producing purposes when the taxpayer moves out—*indefinitely*.
- If the dwelling is used for income producing purposes—a maximum period of 6 years.

We are often asked the question “how long does it have to be my residence before I can claim these exemptions.”

The following is an extract from seminar notes on this issue:

“The ITAA 1936 and ITAA 1997 provide no guidance as to when a dwelling is considered to be a taxpayer's main residence.

However at paragraph 2 of TD 51 the ATO has provided a non-exhaustive list of factors that should be taken into account:

1. The length of time the taxpayer has lived in the dwelling.
2. The place of residence of the taxpayer's family.
3. Whether the taxpayer has moved his or her personal belongings into the dwelling.
4. The address to which the taxpayer has his or her mail delivered.
5. The taxpayer's address on the electoral role.
6. The connection of services such as telephone, gas and electricity.
7. The taxpayer's intention in occupying the dwelling.”

This rule can be extremely useful if the circumstances apply to you.

For more information on your personal situation contact us.

We at Caunt and Lowbeer will monitor the situation and once a final ruling from the ATO is in place contact affected clients to discuss the options and actions required.

# WORK RELATED EXPENSES GUIDES.

The ATO has developed three new work related expenses guides for employees in specific occupations, in consultation with employees from the identified occupations and tax practitioners as part of their education campaign to help clients claim their work related expenses correctly.

The new publications are called “claiming work related expenses” for:

- Engineers.
- Mechanics.
- Teachers.

These complement the suite of existing products available for the following employees:

- Concreters.
- Construction workers.
- Electricians.
- Sales representatives.
- Sales and marketing managers.
- Truck drivers.
- Education professionals.
- Nurses, midwives and direct carers; and
- Police officers.

To access the guides, visit the ATO website at [www.ato.gov.au/](http://www.ato.gov.au/) occupations

Or contact us for advice.



## SELF MANAGED SUPERANNUATION FUNDS (SMSFs)

### Borrowing to acquire assets

Superannuation Funds (including SMSFs) operate within an extremely rigid regulatory regime.

A key aspect of the regime is the general prohibition against a superannuation fund borrowing.

Whilst this general prohibition remains in force, the legislation now provides an *express exception* to the borrowing prohibition which now means that trustees can borrow to purchase investment assets.

*Have you made a “binding death nomination” in your SMSF. If the answer is “no” or “what are they talking about?” contact us to discuss.*

It is possible to use the borrowing exception with a related party lender.

The borrowing exception sets out a number of conditions that must be satisfied. New legislation has been passed to clarify the conditions that must be met.

One of the main conditions is that security offered must be limited to the asset being acquired—with no guarantees being offered—particularly no guarantees from members.

This can be an extremely good way to structure asset purchases— contact us to discuss it further.

## DISCLAIMER

Important: This newsletter is not advice. Clients should not act solely on the basis of the material contained in this newsletter.

Items contained herein are general comments only and do not constitute or convey advice per se.

We therefore recommend that our formal advice be sought before

acting in any of the areas.

The newsletter is issued as a helpful guide to clients and for their private information.

Therefore it should be regarded as confidential.

## TAX RATES FOR RESIDENT INDIVIDUALS FOR 2010-2011

Taxable income under \$6,000—tax payable NIL.

Taxable income \$6,001 to \$37,000—tax payable 15% of excess over \$6,000.

Taxable income \$37,001 to \$80,000—tax payable \$4,650 + 30% of excess over \$37,000.

Taxable income \$80,001 to \$180,000—tax payable \$17,550 + 37% of excess over \$80,000.

Taxable income \$180,001 and over—tax payable \$54,550 + 45% of excess over \$180,000.

Medicare levy applies in addition to these rates.

# ATO COMPLIANCE FOCUS FOR 2010/11

The ATO has issued its compliance program for 2010/11, which outlines the areas that are concerning it, including the following in the micro business market (businesses with a turnover of less than \$2 million per annum).

## The cash economy

The ATO is concerned about the deliberate under reporting or non-reporting of income that results from businesses using cash transactions to hide income and evade taxation obligations, including:

- Skimming some or all of the cash transactions;
- Running some business activities off the books;
- Paying cash in hand wages (which are then not reported);
- Avoiding obligations by not registering or lodging BAS and income tax returns; or
- Not reporting exchange of goods or services.

The government recently allocated \$107.9 million over four years to support additional work in relation to the cash economy, which is expected to result in an additional \$491.8 million revenue over four years.

This funding will be used to:

- Increase the use of data matching and benchmarking to identify those businesses operating outside the tax system or under reporting their income; and
- Undertaking an additional 31,500 audits and reviews over four years.

Where they find businesses deliberately using cash transactions to hide income they will take action, including:

- Applying penalties and sanctions and raising default assessments where appropriate;

- Referring cases of serious evasion for prosecution; and
- Reporting tax agents deliberately doing the wrong thing to the Tax Practitioners Board.

The ATO's cash economy activities this year will see the affairs of more than 26,000 micro businesses reviewed or audited.

Other compliance activity measures include:

- BAS refund integrity
- Employer obligations
- Property assets and investments
- Losses
- International dealings
- Self managed superannuation funds.



## Caunt and Lowbeer Pty Ltd

Suite 10  
871 Pacific Highway  
Chatswood  
NSW 2067

**Phone:** 02 9884 7100  
**Fax:** 02 9884 8700  
**Email:** [admin@cauntandlowbeer.com.au](mailto:admin@cauntandlowbeer.com.au)  
**Web:** [www.cauntandlowbeer.com.au](http://www.cauntandlowbeer.com.au)

**Directors:** Peter Caunt, John Lowbeer, Paul Hareb and Mark Williams.

**Senior Accountants:** Dev Govender, Ingrid Jackson, Marius Hiu and Albert Chen.

**Trainee Accountants:** Josh Navarro and Daniel Hareb.

**Administrative Staff:** Nicolle Hunter and Sue Chatters.

**IT Support:** Sue McMahon

We suggest you look at our website for useful information and links to the ATO website.