

# Beancounter's Bulletin

Baumgartner Partners Quarterly Newsletter

4th Quarter 2009/10

**STOP PRESS!**

**- IMPORTANT YEAR  
END TAX PLANNING  
ISSUES**

## Introduction

Welcome to this quarter's edition of Beancounter's Bulletin. We hope that you find the contents informative and useful and as usual we welcome any suggestions for future editions. Please refer to our website for regular updates on new and relevant information that may affect you.

### **Private Trusts – Directors pre year end trust income distribution needs**

**Graeme Richardson – Consultant**

The taxation responsibilities of directors of private companies who act as trustee of private trusts, have been highlighted recently. This has arisen from the High Court recent decision in the Bamford case, together with the Commissioner of Taxation's draft determination regarding distributions of trust income to corporate beneficiaries not paid out (referred to as an Unpaid Present Entitlement "UPE" balance).

#### **Bamford Decision**

Directors need to be aware when estimating the trust net income for accounting purposes for the year ending 30 June 2010, and in determining the beneficiary(ies) and the distribution to be made therein by that date, that Bamford's decision has clarified:

- The trust deed defines what is included in the trust's accounting net income; that is, capital gains can be "defined" as forming part of trust accounting net income.
- The amount of trust net income for tax purposes assessable to a beneficiary is based on the proportion of trust net income for accounting purposes to which the beneficiary is entitled, as established by the trustee's distribution resolution passed **before balance date**.

This decision has emphasised the need for directors to ensure the definition of trust net income for accounting purposes, is worded in a way which provides directors with the flexibility usually needed to deal with capital gains arising within a trust.

Further, directors need to ensure that their estimates of trust net income for both accounting and income tax purposes for the year ending 30 June 2010 are reasonably accurate before they resolve on the distribution to respective beneficiaries **before balance date**.

#### **Unpaid Present Entitlement "UPE" Balances**

The Commissioner of Taxation issued a draft determination (TR 2009/D8) during the current financial year, outlining his views in relation to UPE balances owing by trusts to corporate beneficiaries. Professional views are that the Commissioner's draft views will be his final views, despite professional submissions to the contrary.

This will mean that in practical terms:

- "Genuine" UPE balances to 30 June 2009, will be let stand, but
- "Genuine" UPE amounts arising after 30 June 2009, will be treated as Division 7A loans, with a requirement to be repaid by the due date for lodgement of the corporate beneficiary's next income tax return, or covered by a Division 7A loan agreement by that date, with annual statutory interest and principal repayment requirements.

However, trusts with accurate interim accounts who are able to make an interim distribution of trust income, may have a cutoff date of 16 December 2009, rather than 30 June 2009.

UPE balances will require directors added attention because of the potential for such balances to be treated as deemed unfranked dividends to the corporate beneficiary, unless appropriately dealt with.

Further, directors will need to weigh up in each case the future commercial uses and economic advantages and disadvantages of a corporate beneficiary, before deciding their policy in relation to such entities.

## SUPERANNUATION UPDATE

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### Conclusion

These events are placing additional issues on directors' reviews of pre-year end governance and tax planning matters, requiring consideration before the 30 June 2010.

If you wish to discuss these matters on reading this edition of Beancounter Bulletin, please contact your client partner or client relationship manager immediately. Alternatively, the firm is planning for your client partner to contact you before the 30 June 2010, to discuss and deal with your tax planning needs for this year.

### Super System Review – preliminary report on SMSFs

#### David Burrows – Partner

The Super System Review ("Cooper Review") released its phase three preliminary report covering the SMSF sector on the 29 April 2010. This report was released with a press release titled, "SMSFs should focus on the main game: retirement savings". The good news for those with an interest in SMSFs is that the review panel has declared SMSFs are here to stay, due to their size within the total superannuation industry and their effectiveness in engaging members.

The main recommendations within the report include:

- The panel wants SMSFs to focus on the retirement savings of their members, rather than related party transactions, collectables and leverage. Therefore the panel proposes a tightening of the related party transaction rules, legislating against the acquisition of collectables by SMSFs and a review of the borrowing exemption in two years time. It is recommended that SMSFs that currently have investments in collectables be given until the 30 June 2020, to dispose of these assets.
- The ability of a SMSF to invest up to 5% of its assets in in-house assets is to be removed, however the business real property exemption will remain so business owners and farmers are not disadvantaged.
- Ultimate control for SMSFs is to remain with trustees. The panel will not be recommending the appointment of asset custodians, external trustees, mandated service providers, or mandated asset allocation and investment restrictions.
- There is no requirement for SMSF trustees to undergo mandatory initial or ongoing training. However, it is recommended that a superannuation information website be established for use by trustees of SMSFs, to compare the different superannuation sectors, gain information on the investment rules and find registered service providers.
- No minimum asset size is to be legislated for SMSFs.
- The Australian Taxation Office is to be given greater flexibility in its regulation of SMSFs, to overcome the current "all or nothing" penalty regime.
- The requirement for an annual audit is to remain, and auditors are to be registered as SMSF auditors with audit independence being legislated.

Whilst the report contains only the preliminary recommendations of the panel and there is still a long way to go until any final proposals are legislated, the recommendations of the report offer a level of stability for SMSFs into the future. The recommendations should also play a role in enhancing the reputation and integrity of the sector.

If you have any questions about the report or anything else to do with superannuation, please do not hesitate to contact David Burrows.

### Accountant Joke of the Quarter

Accountant after reading nursery rhymes to his young child:

"No, son. If Little Bo Peep lost her sheep that wouldn't be tax deductible, but I like your thinking".

### Around the traps

We congratulate Sarah Collins (nee Sweeney) on her recent marriage to Shayne in Thailand.

We also congratulate David and Cath Burrows on the birth of their lovely daughter, Willow.

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