

CONSOLIDATING SUPER. WHY GET IT SORTED?

If your super is lost, tracking it down may give you certainty about how much you have and how it is performing. If your super is spread across several funds, consolidating it into one fund can reduce your paperwork, unnecessary fees and insurance premiums on those funds. Combing all your super into one fund can make it easier to track, easier to manage and review whether your savings are working hard for you. Additionally it gives you peace of mind that you can then plan your retirement effectively by talking to us about how best to use and invest your super. Should you be putting extra in? Is your insurance structured to suit your individual circumstances? There a lot of considerations that need to be made to ensure your super fund suits you, therefore it is important to talk to someone (like us) to guide you along the process.

Where can you find your old super?

Over the last few months you would have received super statements from your super funds. Collect these (possibly take them out of the envelope they are still in). If you cannot find these, get in touch with your past employers and ask them where your super was invested when you left.

If you still cannot trace your super it may be classified as 'lost', but don't panic as there is an estimated \$11.9 billion of Australian 'lost' super. You can locate your lost super through the Australian Tax Office's free Super Seeker tracing service by phoning them on 13 2865 or online at ato.gov.au/super. You will need to provide your name, date of birth and Tax File Number. They will let you know if you have any lost super on their register.

Now you have found all your super – What is best for you?

Each individual's circumstances is different. Before consolidating super you need to compare the costs, risks and benefits of your current funds. Check whether there is any withdrawal or termination fees to apply from your past funds and be aware of any investment or taxation implications. One of the most important aspects of consolidating super is the insurance cover within your existing funds. Make sure you have sufficient insurance in place BEFORE your consolidate an old fund that has insurance in it. How long has it been since you have checked your insurance cover levels. Please, give us a call so we can provide you with the levels of cover most appropriate for you and your family.

It all looks to hard.

Yes, I can guarantee there is plenty of paperwork involved in this and it may seem daunting but it does not have to be. If you have your super fund information we can provide you with a comparison of funds, and after talking to you about your individual needs can recommend to you an appropriate superannuation fund with appropriate insurance cover (if required) that will suit you. Give us a call to save you hours of your own valuable time researching your super fund alternatives. Remember, it's your hard-earned money and your future that is at stake, and decisions you make today can make a big difference years from now.

THE STORY OF CREATING WEALTH

The earlier you start saving and investing the better. This is because of the impact that time and compounding have on your money. The sooner you begin to save the sooner the effect of compounding returns has, also the more experienced and attuned you will become to saving and investing. Even a little money invested regularly can grow into a tidy sum over time.

Savings plans, superannuation, property, direct shares and managed funds are all tools that help create wealth and achieve financial goals (kids education, retirement, debt reduction). It is very important that you protect your wealth and your family both now and in the future. This is usually achieved through various life insurance products.

TIPS

- Define your goals and financial needs on a regular basis – things change and so can your priorities.
- Know and understand your risk tolerance
- Set a time frame for each of your goals
- Seek advice
- Be realistic

THE LENDERS CORNER – BY ANDREW FORSYTH.

Andrew Forsyth is a director of PRL Finance Pty Ltd. He runs our lending division to cater for our clients' residential, commercial, leasing, chattel mortgage finance needs.

With Interest Rates increasing over recent months we have set out 10 ways to Save on your mortgage.

- 1) Review the type of loan you currently have to ensure you are not paying extra fees for features and benefits you are not using.
- 2) Do all the sums before you switch lenders as often there may be fees associated with switching and they may negate any savings made. Consult your Mortgage Broker (me) for advice.
- 3) Set your repayment on the loan over a 25 year loan term.
- 4) Breaking your fixed rate when rates fall can be very expensive. You could hedge your bets and lock in only half of your mortgage and keep the rest at the variable rate.
- 5) Make sure you look at the comparison rate not just the advertised rate to assess loans side by side.
- 6) By paying weekly or fortnightly you can reduce the length of your loan and/or the amount you pay. On average people would reduce their loan term by 7 years.
- 7) Make extra repayments/ additional lump sums when possible. This will also give you flexibility to access these funds in the future.
- 8) Using redraw facility or 100% offset account means you can use your mortgage as a savings account putting all your spare money into the account and redraw as your bills fall due.
- 9) Cut back on your overall expenditure and review your household cost of living.
- 10) Use a mortgage broker who can access over 20 lenders to assist you to find a suitable loan to meet your current and future requirements (me).

I would be happy to review your Lending to ensure you have the best loans for your circumstances. This is a free service available to Perrier Ryan clients, but feel free to pass on my details if you have a friend or family member that would benefit from this service.

Please call Andrew Forsyth on 3391 7566

PRL Solutions Pty Ltd can assist you with superannuation, investments, insurance, home loans, commercial lending, car leasing and equipment finance. Ring Ben today on 07 3391 7566

Summer 2010

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As 2010 draws to a close all of us at Perrier Ryan would like to take this opportunity to wish you all the best for the up coming Christmas period. We hope you all get a chance to spend some time with family and friends and relax after another rather chaotic year on the business, employment, housing and financial markets front. It definitely seemed to be a year of not much direction, but consolidation whilst we wait to see what transpires around the world. Lets just hope 2011 brings with it a spring in its step and more business confidence. Once again we wish you have a safe and Merry Christmas and a Happy New Year, and all the best to you and your families for 2011.

On the Perrier Ryan front we note that 2010 brought with it our 10th year in business in August which is something we were quite proud of. It seems like a lifetime ago when Paul & I wandered into the offices at Lewis Street with both of our wives still at home recovering from childbirth. As our wives, Bernadette and Natalie, reminded us on the day we celebrated the 10 year anniversary, Paul and I both walked out the door one morning and came home 18 months later !!! Well all and sundry agree it was all worth it in the long run. We now have a great business, operating with two new partners Ben and Rob and a lot of really hard working dedicated staff. Throughout this time we have been lucky enough not only to grow a business but the best part is getting to know and assist so many different and interesting people...you our clients. So from all of us here especially the partners Paul, Ben, Rob and myself thanks for the support over the past 10 years, and we look forward to helping you or your business grow for many years to come.

Finally 2011 brings an end to our lease here at 221 Logan Road after seven years and we will be moving to new larger premises in June on the corner of Stanley and Lisburn St, the Gabba. As it gets closer we will provide more details on how to get there, parking etc.

Thanks again for your continued support

Dan Perrier

Our office will be closed over the Christmas and New Year period from 12:00pm Friday 24th December until Monday 10th January 2011.

UNPAID PRESENT ENTITLEMENTS – FINAL PRACTICE STATEMENT RELEASED

The ATO has recently released its final practice statement on the application of its ruling on unpaid present entitlements (TR 2010/3).

The ATO's ruling and practice statement are concerned with setting out the ATO's view on when a private company will be taken to have made a "loan" to a shareholder or their associate for the purposes of Division 7A.

Background – Division 7A

Division 7A generally applies where a payment or loan is made by a company to either its shareholder or to a shareholder's associate.

Division 7A is designed to ensure that private companies are not able to distribute profits to shareholders by way of non-arm's length payments or loans rather than as taxable dividends.

Where Division 7A applies, such payments and loans are treated as unfranked dividends in the hands of the shareholders or their associates, provided the private company in question has sufficient distributable surplus at the time at which the loan is made.

Where a shareholder benefits under a trust, that trust will generally be an associate of the shareholder, so that any loans made to the trust by the company will be a "loan" for Division 7A purposes.

The ruling and the practice statement outline when the ATO considers that an unpaid present entitlement under the trust in favour of the private company beneficiary should be treated as a loan from the company to the trust for the purposes of Division 7A.

A consequence of treating an unpaid present entitlement as a loan under Division 7A is that, unless the loan satisfies certain requirements, the loan will be treated as a deemed dividend for tax purposes in the hands of the trust.

Broadly, under the ATO's ruling on unpaid present entitlements:

A "section two loan" will come into existence if an unpaid present entitlement (UPE) is "converted" into a loan by either being classified as a loan in the accounts of the company and trust, or where the trustee has exercised a power under the trust deed to loan the amount to the trust for the benefit of the private company.

Where an unpaid present entitlement has been so converted, the loan will be subject to Division 7A regardless of when it arose. The Commissioner will only be able to amend a taxpayer's return to reflect the making of such a loan within the standard amendment period except in the case of fraud or evasion.

A "section three loan" will come into existence where a UPE that has come into existence in a period and has not been converted into a loan (i.e. a subsisting UPE) is permitted to remain on foot and the amount of the UPE is not held on sub-trust for the private company beneficiary. In such circumstances, the funds will generally have been used in conducting the business of the trust but may in some cases have been used to acquire private assets.

Only UPEs that came into existence after 16 December 2009 are capable of becoming "section three" loans.

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The practice statement sets out the manner in which the ATO intends to apply this ruling.

Under the final practice statement:

Where a UPE has been deemed to be a 'loan' for the purposes of Division 7A, two self corrective mechanisms are available to taxpayers to either correct misstatements in the trust or company's accounts, or to self apply the Commissioner's discretion to disregard the deemed loan. These self corrective mechanisms will apply in very specific circumstances, so taxpayers should seek detailed advice on the tax consequences of this new practice statement if they are in this situation.

Where a subsisting UPE may be otherwise deemed to be a loan, the amount can be put on sub-trust for the benefit of the private company beneficiary and either loaned back to the trust at a specified interest rate, invested in a specific asset of the trust or otherwise invested on commercial terms.

The consequences of setting up a sub-trust which does not comply with the requirements set out in the practice statement may be that the subsisting UPE is deemed to be a loan to the trust and therefore potentially an unfranked dividend. As a result, affected taxpayers should seek specific guidance from their tax advisor in order to structure their tax affairs within the scope of the practice statement.

TO DO
Family trusts with unpaid present entitlements in favour of company beneficiaries should consult with us to ensure that their tax affairs comply with the requirements of the ATO's newly released final practice statement

SUPERANNUATION

Research on community attitudes into superannuation

The Minister for Financial Services and Superannuation recently released the results of a national survey conducted by independent market research company Colmar Brunton into community attitudes towards superannuation.

Among other findings, the research established that Australian taxpayers find superannuation complex, and are generally "confused and disenchanting". The frequency of reform in this area has also caused concern.

We understand the community's attitudes towards this particularly difficult area of tax law.

As increasing numbers of taxpayers establish self managed super funds (SMSFs) to obtain the tax advantages that may be gleaned from this form of investment for retirement, the complications and compliance burden faced by taxpayers increases on a yearly basis.

In addition, the potential consequences of breaking the rules in either setting up, maintaining or winding up a SMSF are significant.

If you are considering setting up or changing any of the particulars in relation to your SMSF, please ensure you seek our advice in relation to your plans.

Superannuation Guarantee Surcharge

Employers should consider the impact that an increase in the Superannuation Guarantee Surcharge may have on their business as the current Government has made this issue one of their priorities.

ATO warns of deviant behaviour by SMSFs

The ATO is targeting the provision of financial assistance by an SMSF to its members through an unrelated trust (such as by way of investing funds in a trust which trust will then use the funds to on-lend to a member of the SMSF).

The ATO has warned that such activity may result in the funds being non-compliant and subject to tax at the rate of 45%.

The penalties for such behaviour are also significant:

- Trustees of super funds who provide financial assistance in this way face penalties of up to \$220,000 and/or jail terms of up to 5 years for individuals.
- Corporate trustees face fines of up to \$1.1 million.

NOTE
Superannuation is complex and confusing. Please remember we are here to help with tax advice on dealings with your super fund if you are unsure about the consequences. The ATO is policing the provision of financial assistance by SMSFs to members, either directly or through intermediate entities.

COMPLIANCE ACTIVITIES – CASH ECONOMY AND BENCHMARKING

The ATO has renewed its focus on businesses operating in the cash economy, including in the form of understating income and payment of wages and other remuneration in cash in order to avoid superannuation, PAYG (withholding) and payroll tax obligations.

Benchmarks are used by the ATO to identify businesses that may be operating in the cash economy. The ATO benchmarks are financial indicators, such as the cost of goods sold margin, achieved by other businesses in the same industry.

Businesses that fall outside the benchmark for their industry may receive a letter asking for the relevant taxpayer to provide reasons.

While these benchmarks are drawn over a wide range, it is foreseeable that honest taxpayers who do not engage in fraudulent activities will still be sent such letters, especially where the business does not fall squarely into a specific business category, or the business operates in a geographical area which is not representative of the average population over which the benchmark is drawn.

Such letters are in some instances being sent directly to taxpayers rather than tax agents. Taxpayers who receive such a letter are encouraged to contact their tax advisor.

NOTE
Businesses that receive letters in relation to falling outside the ATO's benchmarks for their industry should contact us to assist in formulating their response.

TREATMENT OF GIC FOR DIVISION 7A PURPOSES

The Full Federal Court has dismissed the Commissioner's appeal from the decision of the AAT in Waffles Pty Ltd and Anor and FCT [2010] AATA 78 (3 February 2010).

This case concerned the time at which a taxpayer's primary liability for income tax becomes a 'present legal obligation', for the purposes of calculating a company's distributable surplus for Division 7A purposes.

As above, Division 7A is designed to ensure that private companies are not able to distribute profits to shareholders by way of non-arm's length payments or loans rather than as taxable dividends.

In order to create a proxy for 'profits', Division 7A requires the calculation of the company's "distributable surplus".

A payment or loan may only be a deemed dividend under Division 7A to the extent that the company had sufficient distributable surplus at the end of the income year during which the deemed dividend would otherwise arise.

A company's distributable surplus is broadly equal to its net assets less share capital. In calculating a company's net assets, the company is required to deduct "present legal obligations" from its assets.

In the case at hand, the taxpayer company was disallowed deductions in relation to sham payments made to a Hong Kong company over a number of years.

The issue in question was whether the income tax liability arising in relation to each income tax year in which the taxpayer's deductions were disallowed became a present legal obligation at the end of the relevant income year (as argued by the taxpayer) or at the time that the tax was legally "due" for payment i.e. until an assessment is issued in relation to the year of income (as argued by the Commissioner).

This issue was relevant because if the tax payable was a present legal obligation (for Division 7A purposes) at the end of the year of income, the tax liability would be deducted from assets in calculating the net assets of the taxpayer company which would in turn reduce the amount of the deemed dividend on which the taxpayer company's shareholder was required to pay tax.

On consideration of the legislative context and purpose of Division 7A, the Court agreed with the taxpayer and dismissed the Commissioner's appeal to hold that for Division 7A purposes, income tax constituted a present legal obligation at the end of the year of income in relation to which the deductions were disallowed.

NOTE
When determining whether a loan or payment from a private company to a shareholder has resulted in a deemed dividend, the company's income tax liability in respect of that income year should be taken into account as a "present legal obligation" when calculating the company's distributable surplus.

IT'S 2010-11 TAX RETURN TIME

It has only take us ten years but we have developed a four step guide to tax return preparation which will help ensure you've got everything covered, and hopefully save everyone some time.

Four step guide to return preparation

Step 1: Get your records straight

To confidently ensure your tax return accurately reflects your optimum tax position, start by assembling all your tax records.

Relevant records will include things like evidence of:

- your income (e.g. Payment Summaries for your salary and wages, dividend and interest income statements, rental property income, and any information on the sale of any of your assets during the year like the sale of an investment property or shares); and
- your allowable deductions (e.g. invoices, receipts of expenditure).

You may also be required to provide sufficient details to your employer to allow your employer to accurately calculate their fringe benefits tax liability and your reportable fringe benefits amount in respect of the year ended 31 March.

Your employer may request details such as kilometers traveled in a car that is the subject of a car fringe benefit, details of business travel such as in the form of a log-book and details of entertainment expenses.

While your reportable fringe benefits amount is not "income", this amount may be taken into account when calculating your income for other purposes (such as eligibility for tax offsets, superannuation co-contribution, exemption from the Medicare levy surcharge and eligibility for the \$1,000 exemption in relation to employee share schemes).

Work Related Deductions

If you are going to claim more than \$300 worth of work-related deductions, you will need to be able to substantiate how you calculated the full amount.

If the total amount of your work related expenses is \$300 or less, you don't need written evidence to prove your claim – but the ATO can still ask you how you worked it out!

Step 2: Identify your assessable income

Keep in mind that your total assessable income could well be more than just your salary.

Some of the more common types of assessable income include:

- salary and wages
- tips, bonuses and gratuities
- interest income
- dividends
- allowances provided by your employer
- pensions or annuities
- lump sum payments
- capital gains on any asset sales during the year.

If you're not sure whether some income you have received is taxable, it's best to tell us about it so we can work out the correct tax treatment for you.

Step 3: Maximise your tax deductions

As an employee, you may be able to claim a range of work related expenses, as well as some non-work related items like donations of more than \$2 to an approved charity.

Some of the more common work-related deductions include:

- Self education expenses incurred in developing the skills required for you to do your current job.

Such costs should be fully deductible in the year in which they are incurred.

Generally, self education expenses that qualify you to get a new job will not be deductible.

- Working from home deductions (such as telephone and internet costs).
- Uniforms or specialised clothing (such as a nurse's uniform) and associated dry cleaning/laundry costs.
- Work related travel expenses such as the cost of travel between jobs.
- Subscriptions and union dues.

In addition, individuals will be entitled to deduct donations to approved charities of more than \$2.

Many individuals will also be entitled to claim certain upfront deductions in respect of their rental property, such as:

- Interest on a loan to:
 - Acquire a rental property or land on which to build a rental property
 - Acquire a depreciating asset
 - Finance renovations to the property
 - Make repairs to the property and associated assets such as electrical appliances.
- Costs of repairs to the property (but not generally costs of improvement)
- Cost of preparing a lease agreement

In addition, the following costs can be deducted over time in respect of rental properties:

- Improvements to the property
- Cost of replacing assets
- Decline in value of depreciating assets
- Borrowing costs (such as loan establishment fees).

Taxpayers cannot deduct the following amounts in respect of their rental property but can add such expenses to the cost base of the property:

- Stamp duty
- Legal expenses

You are not entitled to claim deductions for any part of the property or loan that is used for private purposes.

Step 4: Make the most of tax offsets

As with previous years, the ATO is still finding that taxpayers are not taking advantage of a number of rebates (now called "tax offsets") and other concessions.

Tax offsets can reduce any tax you may have to pay on your taxable income and can in some instances even result in a refund.

Make sure you get advice to ensure you are not overlooking an offset that may be of benefit to you (such as the medical expenses offset).

Plan Ahead!

This is also the time of year when you should be considering some forward planning in readiness for the next tax year.

Changes to the employee share scheme rules (including shares acquired by salary sacrificing), mean it's a good time to review your current salary packaging arrangements with your employer in readiness for the new financial year.

TIP
Keep all your records in one place so that at end of year all you need do is summaries them and not have to find them.

PAID PARENTAL LEAVE – ELIGIBILITY

The Government's new paid parental leave (PPL) scheme received Royal Assent on 14 July 2010.

The scheme will apply from 1 January 2011 and will provide eligible working parents with 18 weeks of 'Parental Leave Pay' at the National Minimum Wage (currently \$570 per week before tax).

The scheme is open to parents of children born or adopted after 1 January 2011.

Either parent or carer of the child (though not both parents) will be eligible for the PPL. The eligible parent is referred to as the 'primary claimant'.

In order to be eligible, the primary claimant must have:

- worked at least 10 months out of the 13 months preceding the actual or expected date of birth or placement of his/her child
- worked at least 330 hours during this period (on a casual, part time or permanent basis).
- had an adjusted taxable income of \$150,000 or less in the income year preceding the child's date of birth or placement, or the date of claim (whichever occurs earlier)

If a primary claimant is eligible for both the baby bonus and the PPL, they can elect to take the baby bonus instead. However, parents will only be eligible for either the PPL or the baby bonus in respect of the same child.

TIP
If you are the primary carer in relation to a child that is born or adopted after 1 January 2011, and had an adjusted taxable income of less than \$150,000 or less in the income year prior to the birth or placement of your child, you will likely be eligible to receive paid parental leave.