

---

# HOLDEN & BOLSTER

---

## *Biznews*

Level 10, 34 Hunter Street, SYDNEY NSW 2000  
Facsimile: 61 2 9231 4790 Telephone: 61 2 9231 4133  
Email: [brian@holbol.com.au](mailto:brian@holbol.com.au)  
Web: [www.holbol.com.au](http://www.holbol.com.au)

---

**Issue 11**

**Winter 2002**

---

*Please note: The information in this newsletter is to highlight issues of general interest for Clients and must not be used as a basis to formulate decisions. Please call us for more detailed advice that will be applicable for your specific circumstances. In line with our Privacy Policy, that can be viewed on our web site at [www.holbol.com.au](http://www.holbol.com.au), you can elect not to receive further issues of this publication by notifying us of your request.*

### **Trust in Trusts**

At those friendly BBQ get-togethers, well-meant stories on financial matters are often favourite conversation topics. However despite good intentions, there is usually much mis information taken as guidance.

Trusts as tax vehicles is a popular subject however there are many traps that are not well understood by those of the BBQ brigade.

Trust loss provisions are one such trap as the following demonstrates;

Say MY Discretionary Trust makes a loss of \$50,000 in the 2001 year and is carried forward into 2002. Many would say that the loss is deductible. But the carried loss is not deductible under the trust loss rules unless the Trust satisfies all 4 tests: the 50% stake test, pattern of distributions test, the control test and the income injection test.

Say MY Discretionary Trust owns shares in Company X and Company X owns 100% of Company Y and Company Z. If during 2001/2002 Company Y made a loss of \$70,000 and Company Z had taxable income

of \$100,000, Company Y cannot transfer its loss to Company Z because group companies owned by a discretionary trust cannot transfer losses as they cannot trace through to a "person" as the beneficial owner of the shares. However the BBQ brigade have been heard to say otherwise. The confusion arising because a solution would be for MY Discretionary Trust to become a "family trust" and people constantly confound the two vehicles.

So be wary. There are many nuances associated with Trusts and we are always pleased to guide you onto the most appropriate track for your circumstances.



Ray Beath,  
Managing Partner

---

## **This Issue**

- ◆ **Trust in Trusts**
- ◆ **Around the Tax Traps**
- ◆ **Avoid Insolvency**
- ◆ **Reasonable Allowances**
- ◆ **Super Super Changes**



## **Around the Tax Traps**

### **New effective life changes**

The effective life of a depreciating asset is used to work out the deduction available for the asset under the capital allowances provisions. It will only affect assets acquired after 1 July 2002.

For cars, the effective life has been increased from 6 <sup>2/3</sup> years to 8 years. There are also new lives for other assets including aeroplanes, helicopters, radiology, oil refining, ports heavy mobile mining equipment and telco cables.

### **Car limit**

The indexed car limit for 2002-03 will be \$57,009. Anything above this amount is deemed a 'luxury car' and any portion exceeding that amount is subject to luxury car tax. The limit is used to work out deductions for cars.

### **On-lent money needs nexus**

A taxpayer was not entitled to deductions for interest paid on borrowed funds that were on lent to a unit trust that was an associated entity.

Complex corporate and trust entities were structured to separate ownership of property from businesses operating on those properties for tax reasons. The Court found that there was not sufficient nexus between the unit trust and the taxpayer.

Source: P&G Rocca Pty Ltd v FC of T)

## **Keeping electronic CGT asset registers**

Such registers may be kept instead of original documents concerning CGT assets, acts, transactions, events or circumstances.

They must contain the relevant information for working out whether a taxpayer has made a capital gain or capital loss.

An electronic spreadsheet that can be easily altered is not acceptable. If electronic, records need to be secure to ensure that entries cannot be altered once entered. Audit trails to track additions and deletions to the register are required and it must be in English or convertible to English. Source TR 2002/10)

### **Family way to recoup losses**

Where 50% or more of the shares of loss companies are held by a discretionary trust, they cannot carry-forward and recoup tax losses against future income.

If the trust elects to be treated as 'family trust', then under the trust loss rules the company loss can be recouped.

### **New Thin Capitalisation**

New rules introduced to ensure taxpayers who are subject to thin capitalisation do not allocate an inappropriate amount of debt finance to their Australian operations.

They apply to total debt of an entity's Australian operations, rather than just foreign related-party debt. They do not apply where associate-inclusive

debt deductions are no more than \$250,000 for the income year, not where the foreign assets of an entity represent ten percent or less of their combined Australian and foreign assets.

### **Weekender not personal**

Various sections of tax law are misleading with regard to their practical application. For example a "personal use asset" held in a trust for personal use of the trust beneficiaries, expressly excludes land and buildings. So a weekender owned by a family discretionary trust cannot be used without charging the trust beneficiaries who may use it. (Source: s 108-20(3))

### **Sold or auctioned a horse recently?**

The Tax Office recently addressed any confusion that may exist about exporting horses sold or auctioned between 1 July 2000 and 24 March 2002 to ensure that supplies are treated equitably compared to supplies made after this date.

This strategy involves an amnesty period in which horse suppliers, breeders and vendors have an opportunity to obtain documentary evidence of export. From 1 July 2002 the Tax Office will be undertaking compliance activity specifically directed at ensuring that all supplies of horses for export are subject to the correct GST treatment. A supply of a horse for export will be GST-free only if the supplier has the correct documentation.

## Reasonable Allowances Amounts for 2002/03

For the income year commencing 1 July 2002, the Amounts for which substantiation does not apply, in respect of work-related expense claims for:

(i) overtime meal allowance expenses; claims up to \$19.15 are reasonable where the overtime meal allowance is paid under an industrial agreement.

(ii) domestic travel allowance expenses; Where the employee's salary is \$72,450pa or below, for all capital cities, the "food and drink" amount is \$69.45, while the "incidentals" amount is \$13.45.

(iii) overseas travel allowance expenses. As a guide, for employees whose salary is \$72,450pa and below, the amount for meals and incidentals is between \$90 and \$245 per day, depending on the cost center. For employees whose salary is from \$72,451pa to \$129,730pa, the amount is between \$115 and \$290 per day, while for employees with salary above \$129,730pa, this amount is between \$145 and \$360 per day. Source: TR 2002/12

## Foreign Country rental property has deductible interest expenses

Taxpayers are entitled to a deduction for interest expenses incurred from 1 July 2001 in relation to a foreign rental property. This is allowed when the borrowed money to fund the purchase of the rental property and the taxpayer is assessable on the foreign rental

income and the interest expense on the loan exceeds the rental income from the rental property.

'Debt deductions' are deductible costs incurred in obtaining and maintaining debt e.g. interest, amounts in the nature of interest and fees, such as loan establishment fees and draw down fees, in respect of debt. As debt deductions are no longer included in the definition of 'foreign income deduction' for income years commencing on or after 1 July 2001, the calculation of net foreign income (that is, foreign income less deductions) is no longer reduced by debt deductions to the extent that those debt deductions are not attributable to an overseas permanent establishment of the taxpayer. ATO ID 2002/764

*Partner **David Odewahn** assists in team Tax Training as well as his Business Guidance and Audit roles.*



## Improvements to EMDG scheme

The **Export Market Development Grants (EMDG) scheme** pays cash rebates to small and medium sized Australian based businesses that have promoted their products in overseas markets. Up to 50 per cent of eligible expenses may be reimbursed, less the first \$15,000.

To access the scheme for the first time, businesses need to have spent \$15,000 over two years on eligible export marketing expenses. The scheme supports a wide range of industry sectors and products,

including inbound tourism and the export of intellectual property and know-how outside Australia

The scheme has increased the minimum to \$5,000 (previously \$2,500) to apply to applications lodged from 1 July 2002. It is no longer required to submit an export market plan or cash flow projections.

We can assist you with your EMDG application and reviewing your tax and finance needs for export.

## Avoid Insolvency

Manage to minimise the risk of your company becoming insolvent:

- ◆ Establish appropriate management and information systems for financial monitoring reviewed regularly & managed by adequately qualified professionals
- ◆ Valuations of assets and liabilities reviewed regularly and are realistic.
- ◆ Plan and use budgets
- ◆ Develop and use a long term corporate plan
- ◆ Any continuing loss-making projects or activities need to be queried and reviewed in context of their long-term contribution.
- ◆ Diversify risk and limit the number of high-risk projects.
- ◆ Avoid Director's loan of unacceptable credit risk.
- ◆ Seek our professional advice

***Brian Willett** is one of the Partners providing Clients with Business Guidance.*



## Super Super Changes

### Superannuation for life

From 1 July 2002 parents, grandparents and friends will be able to contribute to complying superannuation funds and retirement savings accounts on behalf of children. Under this measure, contributions of up to \$3000 in each 3-year period commencing from the first contribution can be made on behalf of a child aged under 18. These contributions will be treated as undeducted contributions and will not attract a tax deduction or rebate for the individual making the contribution.

Note that this measure applies only to superannuation contributions from a parent, relative or friend, and not to contributions a child may receive as a result of employment.

### Super deductions for self-employed people

From 1 July 2002 the fully deductible amount for superannuation contributions by self-employed and other eligible persons will be increased from \$3000 to \$5000.

Contributions above this fully deductible amount will continue to attract a 75 per cent tax deduction, up to a total deduction equal to the taxpayer's age-based limit.

### Reduction in superannuation surcharge rates

From 1 July 2002 the superannuation and termination payments surcharge rates will be

reduced by one-tenth of their current levels for each of the next three income years. Accordingly, the maximum surcharge rates will be reduced to 13.5 per cent for 2002–03, 12 per cent for 2003–04 and 10.5 per cent for 2004–05

### Reduction of the tax rate on excessive eligible termination payments

From 1 July 2002 the tax treatment of an eligible termination payment (ETP) from a superannuation fund that exceeds a taxpayer's reasonable benefits limit will be modified to limit the effective tax rate on that payment to ensure it is no higher than 48.5 per cent. This measure fulfils the Government's commitment to reduce the tax rate on excessive ETPs.

The measure applies only to ETPs from superannuation funds. It does not apply to superannuation pensions

### Continuing superannuation contributions, 70–75 years

From 1 July 2002 working people aged over 70 but less than 75 will be able to make personal contributions to superannuation.

Trustees of a superannuation fund can accept employer contributions for a member aged over 70 only where the contributions are mandated contributions (for example, those made under an industrial award). This measure will allow these people to make personal contributions to superannuation if they are working at least 10 hours a week. This is consistent with the current

treatment of people aged over 65 but less than 70.

Individuals aged over 70 who are making personal superannuation contributions will not be eligible for an income tax deduction unless the contribution is made within 28 days from the end of the month in which the person turned 70. Employers will be able to claim a tax deduction for employer contributions made for individuals aged over 70 only if the contribution is made within 28 days from the end of the month in which the person turned 70, or the contributions are required by a formal state or federal industrial award, or to satisfy a superannuation guarantee obligation. The tax deduction is limited to the amount that must be paid under the award or superannuation guarantee obligation.

### Virtual Financial Planners – the future?

Just because people can go to the AMP website and get a financial plan for \$55 doesn't mean that will be the future for financial planners. Advice is what you pay for when you see a personal financial planner. There is so much more that a personal financial planner provides in a face to face and later when they get to know you, over the phone. Really understanding the Client is the key to ensuring that the Client's portfolio is profitable and handled well. Call Alex Koutzoumis if your financial planning needs a lift.

**Alex Koutzoumis** is the Partner responsible for Investment planning and wealth generation.

