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Superannuation Guarantee Charge – company directors’ new personal liability

The Government is intent on improving tax compliance and putting a stop to fraudulent phoenix activity. As such, the Australian Taxation Office’s (ATO) powers are set to expand. They will soon be able to issue a ‘Director Penalty Notice’ to pursue company directors personally for their company’s withholding tax.

Under the Government’s proposed legislation, company directors will be held personally liable for their company’s failure to pay employee superannuation guarantee contributions, in addition to unpaid PAYG tax.

The proposed legislation is set to support the Government’s endeavour to counter directors actively involved in ‘phoenix companies’ - those who purposely attempt to avoid company debts.

Phoenix activity involves directors who intentionally transfer the assets of an indebted company at less than market value into a new company, of which they are also a director. The director then liquidates the company to avoid paying the company’s debts, whilst the director continues the business using the newly formed company unencumbered from the debts of the liquidated company.

It is anticipated that company directors will be held personally liable for the entire superannuation guarantee charge (SGC), not only the 9 per cent mandatory superannuation guarantee contribution.

It is expected that the SGC will include the following:

- 9 per cent of each employee’s total salary or wages
- an administration fee for each individual employee, currently set at \$20 per quarter
- interest on the shortfall amount calculated from the beginning of the quarter in which the superannuation contribution was due until the later of either:
 - the lodgement of a superannuation guarantee statement totalling the shortfall amount, or
 - The 28th day of the second month after the end of the relevant quarter.

The proposed legislation should be sufficient incentive for company directors to be more responsible in meeting their company superannuation contributions.

The proposed legislation will also allow the ATO to commence action to wind up companies without the need for a 21-day notice period for liabilities that remain unreported after three months of becoming due. Further, the ATO will have the ability to withhold tax credits from the director’s individual tax returns where a company of which they are a director has failed to pay withheld amounts to the ATO.

The Government will ensure that directors who intend to resign before the SGC is due will still be held liable for any debt that remains payable at the time they held the position as a director. Directors who are appointed after the date that the debt is due will also become liable for

the SGC 14 days after their appointment.

Ultimately, the proposed legislation will provide an additional safety net for unpaid tax and superannuation obligations, enhancing the ATO's ability to pursue company directors personally and possibly bankrupt directors who fail to actively take responsibility for these obligations.

Over 50's can save more Super

From 1 July 2012 individuals aged 50 and over, with total superannuation below \$500,000 will be able to make up to \$50,000 in concessional superannuation contributions.

This doubles the originally stated cap of \$25,000 that was scheduled to apply from 1 July 2012. This change aims to give people aged 50 and over more flexibility to increase their superannuation.

Fair Work Act

The Fair Work Ombudsman has been contacting businesses regarding the *National Clerical Workers Campaign 2011*.

The aim of the campaign is to promote and assess compliance with the Commonwealth Work Place Laws including the *Fair Work Act 2009* (Cwlth), *Fair Work Regulations 2009* and the *Clerks Private Sector Award 2010*.

The Clerks Private Sector Award 2010 is one of 113 Awards that it administered under the *Fair Work Act 2009* (Cwlth). It is important businesses become familiar with all the Awards that cover their employees as other Award campaigns will be undertaken by the Fair Work Ombudsman.

If you are unsure, talk to Roly Wettenhall when planning for the compliance of the Awards.

Alternatively you can look at the website www.fairwork.gov.au which provides information on the Awards including jobs the award covers, hours of work, rosters and annual leave.

The Benefits of an Enduring Power of Attorney

In the unfortunate event of an accident or the premature onset of dementia or Alzheimer's disease, business owners may no longer be able to make any reasonable decisions.

On a short term basis, this can lead to the business' shutdown as the business owner may have no ability to access the entity's bank accounts, pay staff wages and contract new orders – in effect keep the business going.

Many business owners and company directors do not have in place an effective Enduring Power of Attorney (EPA), whereby another nominated person has the immediate ability to make informed and reasonable decisions and act on their behalf.

Using a legal practitioner to implement an Enduring Power of Attorney is a simple process. It can also eliminate the need for the family of the business owner or company director to make an application to the Victorian Civil and Administrative Tribunal (VCAT) Guardianship List.

Even though the VCAT application and hearing can be held within a short number of weeks, appointing an administrator to manage the financial affairs for the business does mean it will lose valuable time. Losing a few short weeks can be detrimental if access to bank funds and normal weekly commitments cannot be made.

In most instances the business has just a short number of weeks before customers and staff find alternate suppliers and employment.

Every business owner and company director is advised to establish an effective Enduring Power of Attorney.

Accruing Annual Leave

A study undertaken in 2009 found that Australians have 123 million days of accrued annual leave and that annual leave accrual is endemic across businesses and industries of all sizes.

No business should consider itself too big or too small to feel the impact of accrued annual leave. Stockpiling has become an entrenched workplace behaviour potentially affecting every business.

Within the workplace, there is a consistent perception that leave is more difficult to take than it used to be. This has been driven by two factors.

1/ Increasing work pressures have created barriers for employees who want to take time off.

2/ It is increasingly the individual's responsibility to organise cover for their workloads when on leave; businesses often delegate responsibility to the individual thereby compounding their workload.

Importantly, a significant level of accrued annual leave can be a drain on business. Allowing employees to build up large reserves of leave creates a false economy – it can cost the business more at the time it is taken. This is particularly true if it has been earned at one pay rate but taken at a higher pay rate some years later (with the

addition too of leave loading). If the business is going through a lean period, having to pay out significant accrued annual leave only puts further strain on dwindling reserves and can result in letting staff go.

In addition to all the economic benefits of not accruing annual leave, there is also good business sense in ensuring you and your staff take holidays when they are due. It shows you are recognising the occupational health benefits of leave.

Leave from the office provides everyone with the opportunity to become re-energised and better able to cope with workplace pressures, stress and demands. Take the time to review your staff's accrued annual leave and consider what policies you may be able to implement to address this within your business.

Raising your profile

While the current marketing trend is to favour online promotions there is nothing wrong in the tried and tested approach of face to face conversations to raise your profile. If you are promoting your business or product as the expert, then consider speaking at industry conferences, community events, business lunches and Rotary Club meetings.

Speaking engagements increase your profile as an 'expert' in your industry and business community. If attendees have a good experience with you, they will remember you for a long time.

Another affordable approach to raising your profile is using public relations.

There are many PR firms in the market place and many specialize in public relations for specific industries. While it may be worth considering hiring a PR firm, as a business owner you

may be able to carry out the public relations yourself.

A press release is an effective way to pitch to the media the benefits of your new product, an opportunity offered by your business or just announce the arrival of your business.

A press release highlights your news, offers quotes from you as the expert and provides contact details for more information. When preparing a press release always aim to keep it relevant and newsworthy.

Send the press release to the media, including your local paper, as journalists are always looking for great stories. The result may be an article based on your press release including your comments as the 'expert'.

By using the media to help get your message to your potential customers, you are capturing a much larger audience in a short period of time for a relatively low cost.

Both face-to-face conversations and using the media rely on one thing – establishing you as an authority in your given field. If you enjoy public speaking and being your company's champion, it can prove a very effective means of promoting your business.

Lessons from the building industry

2011 has proven to be a tough year for builders in the residential market.

Clients are cautious and not willing to commit due to uncertainty on interest rates, unemployment and the two speed economy still getting over the GFC (Global Financial Crisis).

Experienced builders are surviving these times by:

- Heavily focusing on marketing, and diverting staff into sales roles to sell the business' services.
- Applying for tenders. The more jobs tendered, the better the chance of a successful winning tender.
- Negotiating with sub-contractors to lower their prices so that they keep their job and the business wins the tender.
- Coping with a squeeze on margins.
- Staying disciplined when the market recovers; not spending up big in boom times, and always putting something away for the inevitable contraction.

To keep ahead during these difficult times, learn from the building industry. Talk to Roly Wettenhall about how you can adapt your business to navigate the difficult economic environment.

Succession planning

In this new financial year economic, technological, environmental and political changes abound. For those in small businesses, including farming, it's time to consider succession planning.

Never has it been more challenging. With businesses changing so rapidly over time those who will succeed the existing owner(s) will inevitably take a new approach to the business. This means that business owners cannot be complacent and make assumptions about who will succeed them in business and what they will do to the company.

Discussions, meetings and plans need to be had from an early stage if succession planning is to be successful. It might also be

beneficial to run one business in two divisions – one for yourself and one for your successor so that they can truly gain a ‘feel for the ropes’ and still benefit from having you around.

Talk to Roly Wettenhall as he can assist in those discussions, meetings and planning.

Cloud computing

Do you know there is a good chance you have already made use of some form of cloud computing? If you are one of the 600 million registered users of Hotmail, Yahoo!Mail or Gmail, then you’ve had some experience with cloud computing. Instead of running an email program on your computer, you log into a web email account remotely. The software and storage for your account doesn’t exist on your computer – it’s on the service’s computer cloud.

‘Cloud’ computing refers broadly to the transfer of running an application and storing data processes away from your own computer, to a centrally run and maintained computer which is then accessed by businesses on a pay-per use basis via the web. This means your server is no longer in your office – it runs as part of a larger system in a data centre somewhere or it can be that you use an application such as email or an accounting application that ‘sits in the cloud’ – a modern twist on ‘on the internet’.

There are significant advantages to cloud computing for small businesses. Cloud computing enables small businesses to access an array of previously inaccessible services and software solutions without requiring their own extensive (and often expensive) hardware, staff training or implementation expertise. You need only the basic skills required to access

and use the software. You do not need to understand how it functions or know how it is maintained – that is taken care of by the experts running the computers ‘in the cloud’.

With developments in wireless broadband, smartphones, free urban wi-fi networks and other new technologies, the infrastructure required to successfully utilise cloud computing in businesses improves on a daily basis. Small businesses can now access cost effective and cutting edge IT services that were previously the preserve of large multinational organisations with in-house IT departments.

As an example, when updated software versions become available, your small business can stay up to date without incurring upgrade costs as patches are installed centrally, thereby negating the need for users to individually update their software. Additionally, increased hardware demands caused by newer and more advanced systems won’t exert pressure on your small business’ computing infrastructure but instead on the service provider’s own host systems. Long term IT hardware spend will be significantly cut.

There are some valid concerns with respect to security – there are those uncomfortable entrusting their business critical data in the cloud. Furthermore, the quality of your internet service becomes critical. How easily you access the cloud will depend on having a fast, reliable internet service. When your business is offline or unable to access the cloud, it will be out of action.

As more small businesses gradually move over to the cloud, each business owner will need to assess for themselves the benefits against the risks before deciding whether and when to take their business to the ‘cloud’.

Is your website working for you?

After spending the money to have a website, do you know if it is working effectively? Tracking traffic on your website can give you an idea if your website is working for you.

While paid performance analysis software is available, most small businesses can gain all the information they need by using free analysis software. Some examples of free website analysis software tools are Google Analytics and Yahoo! Web Analytics.

What can they tell you?

- The number of people visiting your website – daily, weekly or monthly
- Where those people are coming from – For example are they directly typing your address, using Google to find you or going via a referral sites
- The length of time that person spent looking at your website
- The bounce rate – the percentage of single-page visits and where the person left your site from the entrance page
- The percentage of new visits.

By gaining a better understanding of all the elements above, you will be able to improve your website and increase your ‘clicks-to-sales’ conversion rate.

DISCLAIMER: *The contents of this publication are general in nature and we accept no responsibility for persons acting on information contained herein without first consulting Roly Wettenhall, Wettenhall & Co on +61 3 9640 0022 or email roly@wettenhallco.com.au*