



## Welcome...

By Jarrod Bramble,  
Partner

Welcome to the latest issue of Financial Paracetamol. In this issue, we'll look at an effective asset protection strategy for couples, a checklist and guide on Service Entity arrangements, FBT and new tax rates, a guide to ensure your practice is WorkChoices compliant, medical workshop and much more.

If you would like any further information please contact us.

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# Whose name should we put the house in?

*An effective asset protection strategy should separate and confine risk while protecting and maintaining wealth. For married couples, a common approach is to have the person with the highest risk (from creditors and bankruptcy etc.) holding little assets and the spouse with lowest risk holding wealth.*

An example of this strategy would be for the matrimonial home to be solely in the name of the non working spouse (no or lowest risk), or for the working spouse at risk to hold a minority interest say 1%.

Does putting the matrimonial home in the name of a spouse provide protection from creditors? What other implications does owning the home in joint names have compared to as tenants in common?

In the 1984 High Court Case of *Calverly v Green* it was held that if two people provided unequal money to purchase a property which was held in joint names, there is a presumption that the property is held in trust in tenants in common in the proportion in which they contributed the money.

A recent High court case (*Cummings* 2006) dealing with matrimonial property, distinguished itself from the 1984 High Court Case of *Calverly v Green* on the grounds that *Calverly* concerned a de-facto relationship.

In *Cummins* the High Court held that married couples each have a 50 per cent share in the equity in a matrimonial home



regardless of whether the title is held in both names or one and irrespective of the percentage contributed to the acquisition of the property.

Another recent High Court case, *Peldan v Anderson* (2006) highlighted the implications of joint tenancy compared to tenants in common and the death of a spouse.

Joint tenancy provides that when one tenant dies the surviving tenant becomes the sole owner of the property. As compared to tenants in common where a person dies, their interest in the property becomes part of their estate and is dealt with according to their will. This can impact on the assets available to the trustee in bankruptcy.

These cases highlight the need for careful consideration to be given to estate planning and asset protection strategies which go further than solely putting the home in the name of the spouse.

# Service Trusts – are you in order and where are you up to?



As highlighted in previous Cutcher & Neale publications, the Australian Taxation Office (ATO) has introduced significant new rules regarding Service Entity Arrangements. They have outlined their views and guidelines in the Service Entity ruling (TR2006/02) and associated releases.

As part of these guidelines, the ATO indicated that Service Entities have until 30 April 2007 to be in compliance with the new regulations. To ensure you have your Service Entity arrangements in order after the recent cut off date, please refer to the following checklist:

- Insurance policies (public liability, workers compensation, professional indemnity) held in the name of the correct entity.
- Commercial lease in place for the business premises.
- Hire Purchase and other lease agreements held in the name of the correct entity.
- Current Job Descriptions drafted and kept on file.
- Service Entity Business Plan prepared.
- Service Entity Agreement in place.
- Supporting documentation for the Service Entity mark up is valid and correct. (Your current method for calculating the mark up may not be accepted by the ATO under their new guidelines).
- Service Entity management meeting minutes being kept.
- Invoices being issued by the Service Entity to the Practice Entity.
- Practice Entity is paying the Service Entity invoices in full and on time.

If the above checklist is not complete, the ATO may deem your Service Entity arrangement to be non compliant. The result of this is effectively 'double taxation' of the Service Fee paid.

If you are concerned that your Service Entity arrangements may not hold up under ATO audit scrutiny, please do not hesitate to contact Jace Pedonese to discuss the Service Entity Review Package offered by Cutcher & Neale.

## FBT & New Tax Rates

The rate of fringe benefits tax is 46.5% (previously 48.5%) for the year commencing 1 April 2006 and subsequent years. This rate represents the highest marginal tax rate plus the Medicare levy. The rate is applied to the fringe benefits taxable amount which is the employer's aggregate fringe benefits amount for the year grossed-up.

Due to the decreased rate of FBT, the gross up factors have also changed commencing 1 April 2006 and are as follows:

Type I (higher) – 2.0647 (previously 2.1292). This gross up rate is used where the benefit provider is entitled to a GST credit in respect of the provision of a benefit.

Type II (lower) – 1.8692 (previously 1.9417). This gross up rate is used if the benefit provider is not entitled to claim GST credits.

In other changes applying from 1 April 2007:

- Employers are required to record on payment summaries the grossed-up taxable value of certain fringe benefits provided to employees during the FBT year, where the value of the benefits provided to an employee exceeds \$2,000 (previously the threshold was \$1,000).
- Motor vehicle cents per kilometre rates:

Engine capacity	Rate per kilometre
0 – 2500cc	41 cents
Over 2500cc	49 cents
Motorcycles	12 cents

- Benchmark interest rate – now 8.05% pa (previously 7.30% pa).
- FBT record keeping exemption – now \$6,614 (previously \$6,391).
- Car parking threshold – \$6.62 (previously \$6.47).
- Changes have also been made to living away from home allowance amounts and housing indexation figures.

# Can you afford not to be WorkChoices compliant?

*On the 27 March 2007 the WorkChoices legislation completed its first year of operations. This date is significant, as the grace period for employers to meet the time and wages record keeping and pay slip obligations expired.*

In the last edition, we outlined the record keeping and pay slip requirements for employers. The Office of Workplace Services (OWS) have also developed a multitude of resources to assist employers meet their obligations in the workplace. To find more details, please visit [www.ows.gov.au](http://www.ows.gov.au)

The OWS are responsible for ensuring the rights and obligations of workers and employers under the Act are protected, understood and enforced. The OWS currently have 200 workplace inspectors across Australia to investigate wage matters, including agreement breaches, time and wages record keeping and post-termination entitlements.

In investigating all matters, the OWS seek to resolve all matters through voluntary compliance directly with the employer. In the event of an inspection, the employer must allow access to all time and wages records as requested by the inspector. During this process, reasonable assistance must be given to the inspector. Failure to provide assistance can result in penalties, with the minimum infringement notice currently carrying penalties of \$110 for an individual and \$550 for a body corporate.

In cases where the breach is alleged to be serious, wilful or repeat in nature, or the matter cannot be resolved through voluntary compliance, the OWS have the ability to initiate a litigation case. During the first year of operations, the OWS has successfully finalised eight matters through the courts relating to underpayment matters. In these cases, employees had entitlements totalling between \$2,162 and \$5,528 owing. As well as ordering the employer to pay all outstanding amounts, the courts ordered the employers in these cases to pay penalties between \$2,000 and \$64,000.

To ensure compliance with the WorkChoices legislation, visit the OWS website and download their templates to ensure your current records meet the requirements. In the event of an inspection, ensure you follow these guidelines:

- Provide access to all records.
- Provide assistance where required.
- Should a breach be found, ensure this is investigated immediately to avoid a possible infringement.
- Don't threaten the inspector to take you to court where a breach has occurred – it will happen!



## Starting In Private Practice

Cutcher & Neale were proud sponsors of the Australian Medical Association (NSW) Starting in Private Practice Workshop that was held at Citigate Sebel Hotel Sydney in March of this year. This was the first year that Cutcher & Neale had sponsored and attended the AMA workshop. The workshop outlined the most relevant aspects for Doctors wanting to branch into private practice for the first time.

Cutcher & Neale were there to give the new registrars some insights into structuring, tax and compliance related issues when going into practice. Cutcher & Neale is proud to be associated with the event and the Australian Medical Association (NSW) and look forward to attending again in November 2007.

# Did you know?



## Diary Dates

### June 2007

- 7 Payroll tax monthly instalment
- 21 Monthly Activity Statements for May due for lodgement and payment

### July 2007

- 7 Payroll tax monthly instalment
- 21 Payroll tax Annual Reconciliation

### August 2007

- 7 Payroll tax monthly instalment
- 21 PAYG Summaries

## Marginal rates of tax for Individual Income Tax Payers for 2006/2007 are:

Taxable income	Tax on this income
\$0 – \$6,000	Nil
\$6,001 – \$25,000	15c for each \$1 over \$6,000
\$25,001 – \$75,000	\$2,850 plus 30c for each \$1 over \$25,000
\$75,001 – \$150,000	\$17,850 plus 40c for each \$1 over \$75,000
Over \$150,000	\$47,850 plus 45c for each \$1 over \$150,000

Maximum earnings base for superannuation guarantee purposes for 2006/2007 is:

\$35,240 per quarter (at 9% this equates to \$3,171.60 superannuation per quarter).

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We would also love to hear from you if you have suggestions on what you would like to read in future issues.

## Talent



**Lachlan Fitt**

Originally from the NSW country town of Narrabri, Lachlan joined Cutcher & Neale in February 2004 after being offered a trainee accountant position. Lachlan is a member of the Accounting and Taxation Services Division and is currently in his final year of a commerce degree at the University of Newcastle.

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