BRANDI & CO

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NEWSLETTER

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Why make a Will

To ensure your assets go to the people to whom you wish to benefit, it is imperative that you have a properly prepared Will in place.

A Will ensures you have Executors appointed who you can trust to carry out your instructions.

A properly prepared Will may result in tax benefits being obtained for your estate.

A valid Will drawn up by a legal practitioner will ensure your instructions are documented, whereas a 'Do it Yourself' Will may be ambiguous or invalid.

It is important to consider updating your Will due to changed circumstances.

The act of marriage will revoke your Will and you will be treated as if you do not have one, however a Will is not revoked by separation or divorce.

If you wish to draw up a Will or have any taxation questions about your existing Will contact your Brandi & Co Accountant.

Paid Parental Leave (PPL)

The Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012 takes effect on 1 January 2013:

- Eligible fathers and partners may qualify for two weeks' paid paternity leave
- The entitlement is two weeks' pay at the minimum wage
- Eligibility is based on the same conditions as PPL
- Fathers and partners must care for the child while not working or being on paid leave

NB: Unlike PPL this payment will not be paid through payroll.

State Payroll Taxes

State	Rate	Threshold
NSW	5.45%	$689,000
VIC	4.90%	$550,000
QLD	4.75%	$1,100,000
SA	4.95%	$600,000
WA	5.5%	$750,000
TAS	6.1%	$1,010,000
ACT	6.85%	$1,750,000
NT	5.5%	$1,500,000

NB: Where you have not declared all relevant components of superannuation contributions payments for payroll tax purposes, the State Revenue Office is offering a reduced penalty for voluntary disclosures made before 1 October 2012.

Living Away From Home Allowance

On 29 November 2011, the government announced it will introduce reforms to stop individuals from being able to exploit the tax exemption for Living Away From Home Allowance and benefits. The federal government's proposed changes to the Living Away From Home Allowance (LAFHA) are expected to take effect on 1 October 2012.

When the changes come into effect, the government will:

- Require LAFHA recipients to substantiate their actual expenditure on taxable items
- Limit access to LAFHA for relocations within Australia
- LAFHA taxation will be administered within the income tax system instead of under Fringe Benefit legislation

Transitional rules apply to permanent residents who have employment arrangements for Living Away From Home Allowances and benefits in place prior to 7.30pm (AEST) on 8 May 2012

Superannuation Changes

Superannuation – Concessional Caps

- The concessional superannuation cap is $25,000 from 1 July 2012 for all employees
- The federal government's plan to introduce a new $50,000 concessional cap for people aged 50+ with less than $500,000 in super has been postponed until 1 July 2014

Superannuation on payslips

There have been changes in the legislation on reporting superannuation on payslips since it went before parliament.

Earlier in the year the legislation included a measure requiring "an expected date of payment" on each payslip. This requirement has recently been removed.

Instead from 1 July 2013 employers will need to report on payslips the actual amount of super and the date it was paid on the first payslip that comes out after it has been paid to the employee's fund.

As further amendments are made, ADP will endeavour to communicate these changes and any requirements for employers.

New data processing rules for Superannuation

New data and payment standards legislation for Superannuation came into effect from 1 July 2012. Small employers – those with less than 20 employees – will have to use these standards for sending contributions to superannuation funds from 1 July 2015. Large and medium-size employers must use the standard from 1 July 2014.

Under the new standard employers will be required to make all contributions and rollovers to superannuation funds in an approved electronic form (not by cheque).

The new standards are part of the Government's Super Reform package. They are intended to provide a consistent, reliable electronic method of transacting linked data and payments for superannuation. The goal is:

- to improve the efficiency of the superannuation system
- to improve the timeliness of processing of rollovers and contributions
- reduce the number of lost accounts and unclaimed monies.

Employers will need to ensure that they upgrade their internal systems or use a payroll supplier to help meet the new standards. Other partners, including accountants and clearing houses, funds and their administrators may be able to help as well.

For small businesses with less than 20 employees, the free Small Business Superannuation Clearing House is available to help meet super guarantee obligations. Small businesses can register for the service by visiting the Department of Human Services website: www.medicareaustralia.gov.au/super or by phoning the Department on 1300 660 048.

SMSF ban on off – market transfer of assets deferred to 1 July 2013

The proposed ban on the off-market transfer of permitted assets between self-managed superannuation funds (SMSF) and related parties (which was to commence on 1 July this year) has been deferred to 1 July 2013.

Members of SMSFs should take advantage of this reprieve and to consider bringing forward any intended acquisition or disposal (including in-specie contributions) of permitted assets to their SMFSs to save on additional costs and administration.

The proposed reform

Effective from 1 July 2013, the disposal or acquisition of permitted assets between SMSFs and related parties must be:

(a) conducted through an underlying market where one exists; or

(b) supported by an independent valuation from a registered valuer, where no underlying market exits.

This, according to the Government, will remove any mischief (perceived or otherwise) of manipulation of capital gains or excess contributions tax under the existing SMSF system.

How would this affect you?

The most common asset transfer that will be affected by the reforms will be the transfer of listed securities and commercial properties.

Currently, listed securities can be transferred to a SMSF simply by completing an off-market transfer form (which avoids brokerage fees). Under the reform, listed securities must be sold on and purchased through the market or exchange. Brokers will need to be engaged and broking accounts opened, which will result in an increase in transactions costs.

Further, the delay associated with giving effect to the on-market transaction (such as the time gap between the initial sale and settlement, the transfer of cash and the buying back of same or similar

securities), could be relatively long such that the parties to the transaction may be exposed to the risk of price movement. There may be significant changes to the market price of the security between when it is sold and when it is acquired which could affect the price of equity.

For non-market investments, the need to obtain valuations will also result in additional costs which may be significant in some instances. In the case of commercial property, real estate appraisals which are currently adopted to justify the property's market value under the existing legislation will no longer be sufficient going forward. The requirement to obtain a valuation from a registered valuer will result in a significant increase in the transaction costs associated with such transfer.

Issues such as:

- How current does a valuation have to be?
- Who would be considered a suitably qualified independent valuer?

are yet to be addressed. Hopefully, these will be covered by the ATO's forthcoming publication of valuation guidelines for situations where there is no underlying market, which was also recommended under the reform.

Taxation of early illegally released super

Any amount that is illegally accessed early from a Self Managed Super Fund must be declared as income in the member's individual tax return. The amount should be declared as 'other income' and will be assessed at the marginal tax rate plus the Medicare levy. Failure to declare early accessed super may result in interest charges and other penalties.

Any fees or costs retained from a promoter or their agent for facilitating the early access of funds cannot be claimed as a deduction.

Trustees must be aware that if they are knowingly involved in a scheme, or allow the illegal release of funds, the Australian Taxation Office (ATO) may impose severe penalties, fines and possible jail time. The fund may also be made non-complying.

There are however, some very limited circumstances where the early release of super is not illegal. Members can legally access their super savings in the following instances:

- Compassionate grounds
- Severe financial hardship
- Temporary or permanent incapacity
- Death.

In order to legally access super savings early an application must be made to the ATO and each case will be assessed individually.

The ATO has advised all tax agents to voluntarily disclose or encourage their clients to disclose any information regarding the early release of funds if they have not already done so.

For more information talk to your Brandi & Co Accountant.

Low Income Super Contribution (LISC)

The Government has introduced a new super payment called the Low Income Super Contribution (LISC). The LISC payment took effect from 1 July 2012.

Those eligible must have an adjusted taxable income not exceeding $37,000 of which 10% or more is derived from business or employment, and have made concessional contributions to a complying super fund during that year.

The maximum LISC payable is $500 and the minimum is $20. The LISC is calculated by taking 15% of concessional contributions made from 1 July 2012.

The LISC is paid directly to a nominated super fund on lodgement of the income tax return, after processing and matching details of the super contributions are made for the year.

Amendments to tax laws

Amendments to tax laws by the Australian Taxation Office (ATO) aim to protect employees' entitlements by making directors personally liable for any unpaid superannuation. Currently employees of failed companies may seek to recover their entitlements through the Government's General Employee Entitlements and Redundancy Scheme (GEERS). However this does not include outstanding superannuation and is not available to employees unless the company is placed into liquidation.

The amendments also allow the ATO to withhold tax credits from a director's individual tax returns where a company of which they were a director has failed to pay withheld amounts to the ATO.

Concerns have been raised that these changes may result in payments being made by the indebted company to the ATO in preference to other creditors in order to reduce a director's potential personal liability.

If you have any concerns about these amendments, talk to your Brandi & Co Accountant.

Changes to phoenix legislation

The Government has drafted *The Corporation's Amendment (Similar Names) Bill 2012* to curb phoenix activity in Australia.

Phoenix activity involves the intentional transfer of assets by a director of an indebted company at a price below market value to a new company, of which they are also a director. The indebted company is then placed into liquidation and the director continues trading with the company's assets of the indebted company without any existing liability.

The Bill seeks to apply personal liability, jointly and individually, to directors of failed companies by making the directors personally liable for debts incurred while they were a director of a company which has a similar name to the pre-liquidation name of the failed company.

A pre-liquidation name is any name in which the company was known in the year leading up to the winding up of the failed company. This includes its actual name or any name used to carry on its business, including business names.

The Bill will extend a director's liability for debts incurred by phoenix companies within five years of the commencement of winding up of the failed company.

A director's liability may be avoided by obtaining an order from the Court or an exemption from the Liquidator of the failed company. To obtain such an order or exemption the following factors will be considered:

- At the time the debts were incurred, there were reasonable grounds to suspect the company was solvent
- The extent to which the assets, employees and premises of the failed company have become assets, employees and premises of the new company
- Whether any acts of the directors was likely to create the misleading impression that the failed company and the new company are the same entity.

The Courts may only make an order exempting the director if they consider that the director acted honestly, and that in all circumstances the Courts considers it fair that the director not be held liable for some or all of the debts of the failed company.

Questions have been raised regarding situations where a person is the director of a number of companies with similar names. Exemptions are available to directors in this situation. The

exemptions provide that where the similarly named company was carrying on business in the year prior to the failure of the failed company, the director will not be held liable.

It has been raised that this legislation amendment does not adequately provide a solution to phoenix activity. Some believe the Bill only addresses a phoenix company with a similar name to that of a company in liquidation. A person who wishes to engage in phoenix activity may simply circumvent the Bill by starting a new company, which does not have the same or similar name.

Carbon tax price increases - making false claims

The carbon tax has been in place for a few months and businesses are beginning to more accurately estimate the effect it is having on their costs. Before blaming the carbon tax for a price increase however, business owners need to consider the *Competition and Consumer Act 2010* (Cwlth).

The Act states “you must not make false, misleading or deceptive claims about the price of goods or services.” This includes false, misleading or deceptive claims linking price rises to the carbon price.

The Australian Competition & Consumer Commission (ACCC) has cracked down on a number of businesses making false claims about carbon tax increases influencing price rises. If you intend to make similar claims ensure you are able to justify your claim.

In one high profile example Genesis Fitness Club (GFC) in Berwick paid an infringement notice of $6,000 in relation to a carbon price claim made about the cost of gym membership fees.

In April 2012, GFC Berwick Pty Ltd sent a letter to 2,122 of its members promoting a 'RATE FREEZE' offer. In it, they offered members a range of lengthy contract extensions at current or reduced membership rates. The letter represented to members that by taking up this offer members could avoid a fee increase of 9-15% due to the carbon price.

ACCC chairman Rod Sims said, "The ACCC believes that GFC Berwick did not have a reasonable basis for claiming the carbon price would increase the cost of gym memberships by 9-15%. We understand that over 200 members took up the offer and extended their contract.

We are concerned that the false claims about the carbon price may have encouraged these people to sign lengthy contract extensions they otherwise would not have."

"Businesses are free to set their prices as they see fit but must carefully consider the basis for making carbon price claims and ensure such claims are truthful and have a reasonable basis," Mr Sims said.

As part of the resolution of this matter, the CEO of the Genesis Division of Belgravia Health & Leisure Group Pty Ltd, the company which manages the franchise network, wrote to all affected members on behalf of GFC Berwick offering them the opportunity to withdraw from the contract extensions at no cost.

Before making a claim, ensure you have hard evidence including:

- Invoices showing the impact of the carbon price on your supply chain or business input costs – for example, raw materials, packaging and transport cost increases
- Notices/invoices showing the impact of the carbon price on the cost of services – for example, gas, electricity, waste disposal and travel cost increases
- Information from your industry association and the government. This may provide guidance as to likely price impacts as a result of the carbon price in certain industries. Information dealing with your specific business model is more likely to reflect your particular costs.

The ACCC has published a paper called *Carbon Price Claims: Information to support your claims* and can offer further guidance on this issue at www.accc.gov.au/carbon.

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