



Making Your
Business Count

REPORTS

OCTOBER/NOVEMBER 2005

1. BUSINESS TOPIC

Business Structuring: Draft Ruling 2005/D5 re Service Entities

The Australian Taxation Office (ATO) has introduced draft tax ruling 2005/D5 in respect of Service Entities. This is not final and is in draft form and there is much discussion about the ruling.

What is a Service Entity? A service entity is a common practice structure for lawyers, doctors, chemists, dentists, architects etc. It is an accepted way to structure a professional practice. The trust owns the office premises, furniture & equipment, employs the staff and *makes these available to the professional practice for a fee*. The trust undertakes other business activities of the practice such as provision of share registry facilities, arranging insurance and collection of overdue fees.

Benefits of Service Entity A Service Entity provides asset-protection for the business as the assets held by the trust and not by the company which carries on the business. Therefore, if the professional service is negligent, these assets are protected from any action against the professional entity.

Some of the income derived by the professional partnership can be diverted to the associated of the partners, subject to antiavoidance provisions in Part 1VA.

What does the Draft Ruling say?

- The fee for which the trust makes available to the professional practice for owning the premises, employing the staff etc must be *commercially realistic* and not excessive.
- Where there is a fee which the trust charges, there should be clear evidence that the service entity has performed a substantive function. Otherwise, there will be no deduction available.

Therefore, there should be an agreement between parties which is properly documented. The service trust should have involvement in employee's employment. There should be records kept for meetings etc of the service entity. The service entity must own the plant and premises.

2. INDIVIDUAL TOPIC

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The bill containing the personal income tax cuts from 1 July 2005 announced in the federal budget received royal assent in August. The tax rates are as follows: -

Tax rates 2005-06

<i>Taxable income</i>	<i>Tax on this income</i>
\$0 – \$6,000	Nil
\$6,001 – \$21,600	15c for each \$1 over \$6,000
\$21,601 – \$63,000	\$2,340 plus 30c for each \$1 over \$21,600
\$63,001 – \$95,000	\$14,760 plus 42c for each \$1 over \$63,000
Over \$95,000	\$28,200 plus 47c for each \$1 over \$95,000

3. SUPERANNUATION TOPIC

Choice of Superannuation Fund

What is Choice of Superannuation Fund? This is a new law that gives many employees the right to choose which superannuation fund will receive their employer superannuation guarantee contributions. Choice of superannuation fund started on 1 July 2005. If you make superannuation contributions for your employee under a state award or state agreement, or an Australian workplace agreement or certified agreement then there is no need to offer choice of superannuation to this employee. A *standard choice form* has to be given to eligible employees and then acted upon.

Employers shortfall penalty for failing to comply with choice of Fund Requirements Any *penalties reduced to nil until 30 June 2006* unless there has been evidence of deliberate non-compliance.

From 1 July 2006, if there is a failure to comply with requirements (eg not paying contributions to the employee-nominated fund), the ATO will impose a penalty if there is deliberate non-compliance. This penalty will be reduced if there is recklessness or failure to take reasonable care. The choice shortfall is about 25% of

the contributions that are paid to this fund. The choice shortfall is limited to \$500 for a notice period per employee.

4. ECONOMY

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The economy still appears to be in good position. The interest rates appear that they will not increase. This is good for the economy. There is an increase in purchases of houses and cars and housing approvals are still strong. These are good economic indicators. The international economy also appears strong. This is good for the Australian economy.

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