

The Next Move™

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The Document That Could Cost You Thousands If It's Lost

Watching the awful flood event in Bundaberg had us thinking about businesses that are impacted and for some reason we started thinking about important documents like trust deeds and company constitutions. Probably because most people don't understand the importance of these documents. Losing them in a flood or a fire can cause another big problem down the track at a future time.



A trust deed is the legal document that regulates a trust (along with the law of course — a trust deed can't allow you to breach the law). A trustee of a trust needs to refer to the trust deed when making most of their decisions in relation to the trust. The trust deed also tells us who the beneficiaries are and who has the power to appoint the trustee. It also tells us how we are to deal with all the income and assets of the trust. You may well think that they are all the same but nothing can be further from the truth. All trust deeds are individual. Sure, if we set up all your trusts from a single source then all of those will be very similar but there are also slight changes made by those suppliers regularly deeds there are variances in each constitution.

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It is very similar for a company. The Constitution (or the Articles of Association for old companies) is the document that regulates how the shareholders and directors are to act in relation to the company. Just as with trust deeds there are variances in each constitution.

SO WHY ARE THEY SO IMPORTANT?

First, conflict. Many trusts and companies will experience conflict at some time. Two directors or trustees will not agree. A beneficiary may not be happy with their treatment. Lawyers will need to be called. And the first thing they (and eventually the courts) will ask for is the deeds or the constitution to see what the governing provisions of the entity are. If you don't have one then you will incur costs.

Second is tax. Without a trust deed of a trust no one knows what the rules are and how the income and assets are to be treated. For a trust this could lead to an ATO assessment that all income is to be taxed at 47%. If you need to make a change to the trust and you don't have a deed then the state government may ask for stamp duty on the value of the trust's assets and the tax office will want capital gains tax because there is no evidence you haven't created a new trust.

WHAT IF THEY ARE LOST?

Unfortunately there is no easy solution to a lost trust deed or a lost constitution. A new constitution can be adopted where there is agreement by all the shareholders but if you are looking for it because of a dispute that is almost certainly not going to be approved by the shareholders. In the end you will likely end up in court.

So when you have trust deeds or company constitutions you should treat them like a nugget of gold. They are extremely important documents. Don't keep them somewhere where a flood might destroy them and always have copies available.

If you're unsure whether you have copies of your trust deeds or company constitutions on file, or if you'd like us to hold secure copies for you, please get in touch with our team. We're here to help you protect these vital documents.

Three Million Dollar Super Tax

The government has now passed the new \$3 million superannuation tax and it will apply from 1 July this year.

What it means is that anyone with a personal total superannuation balance over \$3 million will start paying an extra 15% tax on the earnings in their super accounts in proportion to the balance of their super over \$3 million. More than that, where you have a balance over \$10 million then there is an extra ten per cent on the earnings on the proportion of your balance over \$10 million.



It is important to understand that this is based on your total superannuation balance over all your superannuation accounts so you can't simply split them into separate funds to avoid it.

The most tax you will be paying on your super will be 40% (15% plus 15% on the excess over \$3 million plus 10% on the balance over \$10 million) so likely for people in this situation it will still be less than investing in your own name where you will likely be paying 47% tax. The kicker here however is that if you die chances are your estate will have to pay an extra 15% on the capital value and this will take the tax on your super to well over 50%. Is that worth it?

The decision everyone has to make now is whether the extra tax is not such an impost that it is not worth withdrawing the excess over \$3 million from super and simply accept the extra tax. It is also probably worth noting that it is still way less tax than you would have paid on a similar super balance (even adjusting for inflation) before the very generous changes in 2007.

This decision should only be made after a detailed consultation with us to determine the most tax effective structure to hold these funds. We will also need to take into consideration any death taxes that may be payable if the money stays in super. This will be an intergenerational tax planning strategy. There are other structures such as companies where you can limit your tax to 30% and in some circumstances even 25%.

If however, you decide to withdraw funds we then need to determine the best date to do that. Getting this date wrong by even a day can have serious taxation consequences because we need to ensure you obtain the greatest benefit from any superannuation pension accounts going forward that are income tax and capital gains tax exempt. Selling on the 30th of June is substantially different to selling on the 1st of July and then there will be a date after July 1 where it is more tax effective to simply wait until July 1 in 2027 to sell.

If you are one of the small percentage of people that this tax is targeting, please contact us to arrange a consultation. We'll work through the numbers with you and determine the best path forward for your situation.

The Accountant and His Ferrari — and What We Learn From This

A Perth Accountant (yes, you'd think they would know better) has lost his battle with the ATO about his Ferrari being exempt from Fringe Benefits Tax in the Administrative Review Tribunal. He will now be subject to Fringe Benefits Tax on 20% of the value of the Ferrari each and every year until he removes it from his company. That is around \$70,000 per year in Fringe Benefits Tax from 2011 onwards. He thought he was OK putting his \$346,000 car into his business and claiming a tax deduction with no FBT. Now he will owe hundreds of thousands of dollars more than the car is worth in tax alone. He has learned that it is not that easy to have a luxury car in your business. For those so inclined the case citation is: MXSN and Commissioner of Taxation (Taxation) [2026] ARTA 186

WHAT WE LEARNED FROM THIS CASE:

Most importantly, DO NOT fabricate log books. The accountant turned up with perfect log books but the court simply said they were fabricated and tossed them out. The tax office are extremely particular with log books and will even go so far as to check toll records against your trips. This also made the accountant an unreliable witness so the court was not too interested in everything else he had to say.

Every luxury car sale is reported to the tax office. If you buy a luxury car in a company or trust name the ATO will be keeping an eye out for fringe benefits tax returns and if they don't get them you will get an audit.



Lodge nil Fringe Benefits Tax returns. The ATO can amend a tax return for up to 2 or 4 years depending on the taxpayer.

For small businesses it is only two years. Had this accountant lodged a Fringe Benefits Tax return each year since 2011 declaring that he owed no Fringe Benefits Tax then the Tax Office would have only been able to amend the last two returns. This would have saved him hundreds of thousands of dollars. We always suggest that our clients lodge nil returns. Yes you have to pay for them but it is insurance against future ATO scrutiny.

Of course it is also important to understand that the ATO can go back as far as they like where the errors are determined to be fraud or evasion so you can't simply lodge a nil return each year knowing that you have FBT to pay. We wouldn't allow that anyway.

Luxury cars do not belong in your business. The ATO hate it. If you want to buy a luxury car simply understand that you will have to pay your personal income tax rate and then buy the car in your own name. You are then free to use it for business purposes, create a valid log book and claim all the expenses personally in your own income tax return.

Thinking about purchasing a luxury vehicle? Please come and talk to us well before you sign anything. We can help you structure the purchase correctly and avoid a costly mistake like this one.

How an Accountant Can Help You When Buying a New Property



No, we are in no way telling you that we can negotiate on a new property on your behalf. Nor are we traditionally the best advisers as to which property to acquire. Our expertise is tax. And when you think that a property worth \$1 million today could be worth as much as \$4 million in 20 years' time the costs of a tax mistake made now will be multiplied many times over. So yes it is very important to talk to us before you buy a property to ensure that you are not one of the many thousands of people that make tax mistakes when buying a property.

The other thing is that only an accountant charging a fee will actually ensure that you receive the correct tax advice. We have seen buyer's agents tell their own clients that buying a property with a tenant and moving in as soon as the lease expires will still give you a full capital gains tax exemption on your new house. For your information, no it won't. That rental period will always be subject to capital gains tax as an overall proportion of the capital gain you eventually make on the sale of your property. This is exactly the kind of detail we help our clients understand.

According to certain internet websites around 71% of property investors only own one investment property. That is a really interesting number because if done correctly all of those people would be able to have a capital gains tax free life by simply selling their main residence later in life and moving to their investment property for the rest of their life. This is exactly the kind of strategy we discuss with our clients — seeking out an investment property that you would like to retire to. Keep it for 30 years and it will likely be worth 8 times what you paid for it so being CGT exempt would give you a tax saving of more than a million dollars. Was that \$1,100 consultation with us now worth it?

We can discuss things like accessing the six year capital gains tax exemption if you decide you want to rent the property out and would ensure that you moved in first for a period of time. We can talk about the tax advantages of an offset account rather than a redraw if you decide you want to keep this house as a rental and buy a new main residence. We can talk about the tax consequences of renting your home out for four weeks a year on Airbnb when you go on holidays or even just one room for temporary Airbnb guests.

Not making tax mistakes on day one with a property can save you tens or hundreds of thousands of dollars of tax in the future. Maybe even millions. But it is usually too late once you have settled and moved in to your new home.

Considering a property purchase? Contact us before you sign the contract. A consultation now could save you hundreds of thousands of dollars in tax over the life of the property.